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## NEW GENERIC TOP-LEVEL DOMAIN NAMES (“gTLD”) DISPUTE RESOLUTION PROCEDURE

### RESPONSE FORM TO BE COMPLETED BY THE APPLICANT

- Applicant responding to several Objections or Objections based on separate grounds must file separate Responses
- Response Form must be filed in English and submitted by email to [expertise@iccwbo.org](mailto:expertise@iccwbo.org)
- The substantive part is limited to 5000 words or 20 pages, whichever is less

**Disclaimer:** This form is the template to be used by Applicants who wish to file a Response. Applicants must review carefully the Procedural Documents listed below. This form may not be published or used for any purpose other than the proceedings pursuant to the New gTLD Dispute Resolution Procedure from ICANN administered by the ICC International Centre for Expertise (“Centre”).

#### References to use for the Procedural Documents

Name	Abbreviation
Rules for Expertise of the ICC	“Rules”
Appendix III to the ICC Expertise Rules, Schedule of expertise costs for proceedings under the new gTLD dispute resolution procedure	“Appendix III”
ICC Practice Note on the Administration of Cases	“ICC Practice Note”
Attachment to Module 3 - New gTLD Dispute Resolution Procedure	“Procedure”
Module 3 of the gTLD Applicant Guidebook	“Guidebook”

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**Identification of the Parties and their Representatives**

**Applicant**

Name	Dotsecure Inc.
Contact person	Mr. Brijesh Harish Joshi
Address	Contact Information Redacted
City, Country	
Telephone	
Email	

**Objector**

Name	International Banking Federation
Contact person	Sally Scutt, Managing Director
Address	Contact Information Redacted
City, Country	
Telephone	
Email	

**Applicant's Representative(s)**

Name	Dotsecure Inc.
Contact person	Mr. Brijesh Harish Joshi
Address	Contact Information Redacted
City, Country	
Telephone	
Email	

**Applicant's Contact Address**

Name	Dotsecure Inc.
Contact person	Mr. Brijesh Harish Joshi Contact Information Redacted
Address	
City, Country	
Telephone	
Email	

**Other Related Entities**

Name	fTLD Registry Services LLC ("fTLD")
Address	Contact Information Redacted
City, Country	
Telephone	
Email	

Name	American Bankers Association ("ABA")
Address	Contact Information Redacted
City, Country	
Telephone	
Email	

Name	British Bankers' Association ("BBA")
Address	Contact Information Redacted
City, Country	
Telephone	
Email	

Name	The Financial Services Roundtable ("FSR")
Address	Contact Information Redacted
City, Country	
Telephone	
Email	

## Disputed gTLD

**gTLD Applicant has applied to and Objector objects to [.example]**

Name	.BANK
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### Objection

**The Objector filed its Objection on the following Ground (Article 3.2.1 of the Guidebook and Article 2 of the Procedure)**

**Limited Public Interest Objection:** the applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law.

or

**Community Objection:** there is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.

## **Point-by-Point Response to the claims made by the Objector (Article 3.3.3 of the Guidebook and Article 11 of the Procedure)**

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### **Executive Summary**

Dotsecure Inc. (“Dotsecure”) submitted in good faith to ICANN a rigorous .bank application with meticulous registration, trademark, brand, IP protection and abuse mitigation policies and procedures. These policies and procedures are modelled after the BITS recommendations for financial TLDs.

IBFed is supporting fTLD Registry (“fTLD”), the only other .bank applicant. In spite of both applications having near identical rights protection and security policies, IBFed has only objected to the Dotsecure application. We believe that the motives of this objection are suspect given that Mr Frank Keating, a Board member of IBFed that allegedly approved this objection is also President and CEO of the American Bankers Association (“ABA”) that has financially backed the other applicant (fTLD). ABA is also a founding member of IBFed.

We argue that -

- IBFed does not have Standing.
- IBFed fails to prove that the “community invoked” by it is a “clearly delineated community”. Banking is a sector / industry, but it is NOT a “community”.
- IBFed fails to provide evidence that “community opposition to the application is substantial”. We show factual evidence to prove that the opposition alleged by it is not substantial, be it in numbers, representation, stature, or expenses.
- IBFed fails to prove a “strong association” between the purported “global banking community” and the string “bank”. Of primary importance is that the term “bank” has several other meanings and connotations.
- IBFed fails to show a “likelihood of material detriment” to the purported “global banking community”. IBFed has made irrelevant allegations against legal entities separate from Dotsecure in an attempt to smear Dotsecure, and shift the Expert Panel’s focus from Dotsecure’s application content. We assert that IBFed’s obvious self-interest in the fTLD application has prevented IBFed from assessing Dotsecure’s application fairly. IBFed has relied on numerous baseless assumptions and made factually incorrect statements in a desperate attempt to obstruct Dotsecure’s application with the end goal of protecting its founding member’s (ABA) investment in fTLD.

Dotsecure has adhered to the AGB through the course of its decision making, application process, and responding to this objection.

## **Section 1: IBFed lacks standing**

**1.1 Rule:** Per the AGB Section 3.3.2, to qualify for standing, IBFed must prove both: It is an established institution and it has an ongoing relationship with a clearly delineated community.

### **1.2 Arguments**

#### **1.2.1** IBFed is not an “established institution”

IBFed claims to represent 18,000 banks worldwide. However the fact is that it is not an association representing banks. It is a loosely formed association of associations. The IBFed website does not list any management for IBFed except for Sally Scutt who is listed as the Managing Director of IBFed, however with a British Bankers’ Association (“BBA”) email address. The same Sally Scutt is also listed as the full-time Deputy Executive Director of the BBA since 1998. The address for IBFed is the exact same as that of the BBA (Annexure 1.1, 1.2 and 1.3).

IBFed’s financial statements for the year ended December 2011 (Annexure 1.4) reveals that it has no staff, but “relies on staff seconded by BBA” to carry out its work.

IBFed has no full-time employees, no individually owned or used premises and extremely low levels of public recognition. We assert that IBFed is not a robust global institution, but rather a single part time banking executive. IBFed does not pass the standing criteria to be an established institution.

#### **1.2.2** IBFed does not have an ongoing relationship with a “clearly delineated” “global banking community”

As explained in Section 3 of our response, the purported “global banking community” is not a “community” as defined by the AGB, and it is not “clearly delineated” either. Consequently an ongoing relationship with the purported “global banking community” cannot exist.

Even if we assume for the sake of argument that it is a community, IBFed has failed to provide evidence of a relationship with the purported “global banking community” as a whole. We acknowledge IBFed’s relationship with 9 banking associations that form the IBFed members, but the alleged “global banking community” does not consist of 9 associations. Our research shows that there are over 36,110 banks worldwide (Annexure 1.5).

Based on the above IBFed has failed the standing criteria of being an “established institution” and having an “ongoing relationship” with a “clearly delineated community”.

## Section 2: Response to IBFed's objection section II

### 2.1 Rebuttals

None of IBFed's arguments in this section go toward proving any of the elements that it is required to prove.

IBFed makes an argument that ICANN intended for .bank to be a community string. We submit that the very quote IBFed submitted evidences otherwise. While the GAC has called for an expansion in the definition of "community" as defined in the AGB, that issue has been considered and the ICANN Board decided to NOT define community as recommended in the GAC's brief. Please see Annexure 2.1, 2.2 and 2.3 for a detailed analysis of the GAC and ICANN communications. We summarize the analysis:

- ICANN does not consider .bank to constitute a community directly.
- GAC asked ICANN to consider .bank as a community string in its GAC scorecard in Feb 2011 (Annexure 2.1).
- On 4 March 2011 ICANN's Board responded saying they do not agree with the GAC (Annexure 2.2).
- IBFed has neglected to present all the facts in this argument and their conclusions are incomplete and inaccurate (Annexure 2.3).
- GAC clearly considers .bank as a sensitive string. We agree with this.
- GAC spent 10 months analyzing every single new gTLD application from June 2012 to April 2013 and issued 242 Early Warnings on 200 applications. However our application for .bank did not get a GAC Early warning related to "community" or the sensitive nature of the string. This clearly demonstrates that the safeguards in our application have passed the bar of government representatives from 124 countries.
- Additionally the independent objector also had the ability to file an objection against any application on Limited Public Interest and Community grounds, but Dotsecure received no such objection.

We also note the following AGB requirement related to Security Policy (Question 30 criteria): "Complete answer demonstrates... security measures are appropriate for the applied-for gTLD string (For example, applications for strings with unique trust implications, such as financial services-oriented strings, would be expected to provide a commensurate level of security)." We submit that our security measures are appropriate.

ICANN scored applications for strings such as .bank differently, against more stringent criteria. Those criteria were specifically communicated to applicants. Dotsecure's application will pass that heightened test. Therefore, IBFed's claim that Dotsecure cannot meet the requirements to operate .bank is incorrect.



### **Section 3: There is no “clearly delineated” “global banking community”**

**3.1 Rule:** The objector carries the burden of proving that “the *community* invoked by the objector is a clearly *delineated* community,”

#### **3.2 Arguments**

IBFed did not address the criteria stipulated in the AGB in their objection. IBFed chose to present their own definition of community by arguing a common regulatory framework, wording restrictions, ISO standards, international organizations and longevity/scope.

Annexure 3.1 contains our detailed analysis of IBFed’s arguments as measured against the AGB criteria for community. Summarizing our key points:

- 3.2.1 Cohesion:** AGB Module 4, page 4-11 defines community as: “Community” - Usage of the expression “community” has evolved considerably from its Latin origin – “communitas” meaning “fellowship” – while still implying more of cohesion than a mere commonality of interest. There is no evidence existing or presented by IBFed, of cohesion between most banks around the world, let alone every single bank in the world. Banks may have common interests, but they do not “coheses”.
- 3.2.2 Awareness:** We visited website home pages and the “About Us” sections of 20 of the world’s largest banks (Annexure 3.3). None of them carry any mention of a “banking community” or a “global banking community”. A few of them do mention the “banking industry” and / or the “banking sector”. There is no awareness among the purported members.
- 3.2.3 Public Recognition:** A google search for the term “banking community” (Annexure 3.4) does not bring up any single website that mentions the existence of a “global banking community”. In fact the search only yields results for “community banking” which is a type of banking.
- 3.2.4 IBFed itself acknowledges that there is a “banking industry” / “banking sector”** in its communications. However, none of these communications contain any mention of the “global banking community” that it claims to represent. In the course of our research, we found 2 newsletters issued by the IBFed during 2012, which mention the “banking sector” and “financial sector” (Annexure 3.5). Additionally, two letters sent by the IBFed to the IOSB and to HM Treasury also mention the “banking industry” and “financial sector”. They do not however call it the “banking community” (Annexure 3.6).
- 3.2.5 Delineation:** The World Savings Banks Institute and the European Savings Banks Group issued a 162 page report detailing the differences between only US and EU retail banking including a comparison of the “regulation and supervision” in both ([http://www.wsbi.org/uploadedFiles/Publications and Research \(ESBG only\)/Research/078%20EU-US%20STUDY%20FINAL\(1\).pdf](http://www.wsbi.org/uploadedFiles/Publications%20and%20Research%20(ESBG%20only)/Research/078%20EU-US%20STUDY%20FINAL(1).pdf)). The United Kingdom Financial Services Authority (FSA) states: “There is no definition of a 'bank' in the Financial Services and Markets Act 2000.” Annexure 3.2 shows additional variations in bank

definitions in India, Cypress, Belize, and the Cayman Islands as further examples that there is no delineation of the purported “global banking community”.

- 3.2.6** Additionally, IBFed’s Memorandum and Articles of Association submitted as part of their Objection also mentions the “financial services industry”. Interestingly, it **does not claim to represent the purported “global banking community”** as part of its objectives. These communications would lead any unbiased individual to conclude that IBFed itself does not construe banking as a community but rather an industry or sector.

### **3.3 Rebuttals**

#### **3.3.1 A common regulatory framework and operating principles at local and global levels**

IBFed argues that there must be a global banking community because all banks are governed by a regulatory framework. We submit that nowhere in the AGB does ICANN mention that any set of entities that are governed by a common regulatory framework constitute a community.

By this argument any set of entities that are governed by a common regulatory framework would be deemed to be a community. For e.g.: every publically listed company in the USA is governed by SEC regulations. This does not make them a “community of listed companies”.

We also submit that banks are not actually governed by a common universal regulatory framework. Banks around the world have a very disperse and different set of governing regulations (Annexure 3.2).

#### **3.3.2 Regulatory restrictions on the use of the word bank at local/national level**

IBFed argues that there must be a global banking community because there are laws around the restriction of the use of the word “bank”.

Once again we submit that this is a fabricated criterion and ICANN does not recognize this criterion in determining the existence of a community.

For e.g.: in India one cannot use the word “Limited” in a company’s name unless it is a listed company. This does not make all listed companies in India a community.

#### **3.3.3 Various ISO standards relating to the purported community**

IBFed argues that there must be a global banking community because all banks have a unique IBAN number.

Once again, this is a fabricated criterion and ICANN does not recognize this criterion in determining the existence of a community.

IBAN does not indicate cohesion, recognition or awareness of a delineated community. Moreover only a subset of all financial organizations use IBAN and therefore it cannot be used to clearly define membership of a community.

For e.g.: by this logic, since every website in the world has a unique IP address issued by IANA, that would make every website owner in the world a member of a community.

### **3.3.4 International Organizations Serving the purported community**

IBFed argues that since there are a number of international organizations serving banks, that it must be a community.

However they still do not show any evidence of cohesion amongst banks globally, nor do they show any awareness and recognition amongst banks of belonging to a global banking community.

### **3.3.5 Longevity and Global Scope of the purported community**

IBFed simply suggests here that banks have been in existence since 1472.

However nothing in their argument suggests the existence of a “global banking community” since 1472, or for that matter 2013.

## **3.4 Summary**

We do not believe that IBFed has established that there is a clearly delineated community for .bank. In order to demonstrate that there is a “clearly delineated global banking community”, as per the AGB, IBFed must demonstrate –

- Cohesion amongst all the banks in the world and evidence that they tend to unite and stick together for a common cause
- Awareness and recognition amongst banks that they are actually members of such an alleged “community”
- Recognition, locally and globally amongst the public at large of the existence of a global banking community
- A clear and undispersed definition of a member of such a global banking community

IBFed did not present any evidence proving the above.

## **Section 4: Opposition is not substantial**

**4.1 Rule:** AGB Section 3.5.4: The objector must prove that “Community *opposition* to the application is *substantial*”

### **4.2 Rebuttals**

#### **4.2.1 Analyzing the number of expressions of opposition**

The Dotsecure application received opposing public comments from 6 individuals and one formal objection from IBFed. The public comments were from –

- Patrick M. Scott representing Nationwide Mutual Insurance Company
- Chloe Jones representing herself
- Brad Newberg representing the General Electric Company
- Michael Adams of Mayer Brown LLP
- Paul McGrady representing Winston & Strawn LLP
- Jennifer Jones representing herself

Of these –

- Mayer Brown LLP was retained to create the IBFed Memorandum and Articles of Association contained in Annexure A of the objection
- The public comment made by Paul McGrady was made in his capacity as the retained counsel for Karsten Manufacturing Ltd (“Karsten”), a competing applicant of another Radix Registry subsidiary, DotPing Inc. (“DotPing”) on another string, <.ping>. Additionally this comment is not an opposition to Dotsecure’s application for .Bank. Annexure 4.1 contains DotPing’s response letter to McGrady’s allegations.

Our research shows that there are over 36,100 banks combined in the US, EU, Russia, China, Indonesia, India, Philippines, Hong Kong, and Singapore alone (Annexure 1.5).

- Six comments in opposition translate to 0.01%. Six individuals expressing public comments hardly represent a substantial opposition to our application.
- All the letters of support for the objection have the exact same language. This indicates that IBFed circulated this letter to banks / associations to simply execute and return. The Banks themselves have not even made the effort to draft an actual letter of support.

#### **4.2.2 Analyzing the representative nature of entities expressing opposition**

Annexure D of IBFed’s objection presents 18 letters supporting the IBFed objection against Dotsecure. Only 9 of these letters are from actual banks. The other nine are from banking associations. An analysis yields:

<u>Geographic Region</u>	<u>Number of Letters</u>	<u>Banks</u>	<u>Associations</u>
Africa	0	0	0
Asia/Pacific	0	0	0
Europe	14	5	9
North America (USA)	4	4	0
South America	0	0	0
Total	18	9	9

IBFed claims 18,000 member banks through their member associations but only nine banks, with zero representation from Asia, Africa and South America, submitted letters supporting the objection. If we contrast this to 36,110+ banks globally, the number does not remain meaningful in any way.

#### **4.2.3 Analyzing the level of recognized stature or weight among sources of opposition**

The IBFed website does not list any management for IBFed except for Sally Scutt who is listed as the Managing Director of IBFed, however with a British Banking Association (BBA) email address. IBFed purports to represent 18,000 banks globally, yet only one part time resource is listed. Per IBFed's Financial Statements (Annexure 1.4), IBFed had income of only £228,011 in 2011 and £169,759 in 2010. Approximately 60% of income is incurred for personnel or £141,000 in 2011. This level of funding indicates that IBFed is a very, very small organization.

#### **4.2.4 Analyzing the cost incurred by IBFed in expressing opposition**

We submit that the objection was provided by Dotsecure's competitor – fTLD – and IBFed did not incur any costs in preparing this objection. Our evidence for this is the fact that fTLD's parent entity, Financial Services Roundtable ("FSR") has filed a separate objection against another one of Radix's applications for the string .insurance, and the arguments and content of the other objection which was filed by FSR (not by IBFed) is near identical. The same is attached for your reference as Annexure 4.2.

#### **4.3 Clear conflict of interest demonstrated by IBFed**

IBFed has a clear motivation of self-interest in submitting this objection. IBFed is trying to abuse the objection process to secure the .bank TLD for fTLD. Frank Keating, President and CEO of the ABA is also a Board member of IBFed. The objection is nothing more than an attempt to protect the ABA's investment in fTLD and not a good faith use of the community objection process.

IBFed has made the argument that since Dotsecure is not a member of the "banking or financial services community", it is not suitable to operate the .Bank registry. We assert that our separation from the banking industry makes us a better, more neutral candidate to run .Bank.

#### 4.4 Summary

We do not believe that IBFed has established that there is substantial opposition to the Dotsecure application.

- 6 public comments opposing out of 36,110+ banks – 0.016%
- 9 objection support letters from individual banks – 0.023%
- 5 support letters from 4,500+ European Banks – 0.11%
- 4 support letters from 9,441 US Banks – 0.042%
- Africa objections: 0
- Asia Pacific objections: 0
- South America objections: 0
- Canada & Mexico objections: 0
- Frank Keating is CEO of the ABA and IBFed Board member – self-interested motivation
- IBFed is a very small organization with limited stature and influence

IBFed objection does not represent evidence of substantial opposition to the Dotsecure application.

## **Section 5: There isn't a strong association between .Bank and the purported community**

**5.1 Rule:** The third test (AGB Section 3.5.4) that IBFed must pass: There is a ***strong association*** between the community invoked and the applied-for gTLD string

### **5.2 Arguments**

- We submit that “global banking” is not a community and that the word bank does not have a strong association with a purported community of global banks.
- Please refer to Annexure 3.1 for detailed arguments on why the alleged “global banking community” does not qualify as a community.
- The word “bank” has the following meanings in the dictionary
  - an institution offering certain financial services, such as the safekeeping of money, conversion of domestic into and from foreign currencies, lending of money at interest, and acceptance of bills of exchange
  - the building used by such an institution
  - a small container used at home for keeping money
  - the funds held by a gaming house or a banker or dealer in some gambling games
  - in various games
    - the stock, as of money, pieces, tokens, etc, on which players may draw
    - the player holding this stock
  - any supply, store, or reserve, for future use: a data bank; a blood bank
- None of the above definitions suggest the string “BANK” stands for a “global banking community”

## **Section 6: There is no likelihood of Material Detriment**

**6.1 Rule:** The fourth test that IBFed must prove: *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.*

### **6.2 Arguments**

#### **6.2.1 Dotsecure's application is not detrimental to the alleged community**

Dotsecure has put in place a multitude of augmented security measures that not only go above and beyond ICANN's requirements, but also closely match the security measures proposed by fTLD in its application. Such security measures include adoption of recommendations proposed by the SSWG formed by BITS, referenced in the objection. Annexure 6.1 provides a detailed factual analysis of our application policies and strengths as they relate to this objection.

#### **6.2.2 Conflict of interest**

Though IBFed's vociferous support of fTLD is entirely irrelevant to the judgment of this objection; it cannot be ignored for the simple reason that it creates a classic example of a conflict of interest. While IBFed is free to support whichever applicant it chooses, it is not entitled to make unsubstantiated claims.

#### **6.2.3 Dotsecure filed a PIC statement**

As a gesture to prove that our application has been made in good faith and that we intend to follow through on all our commitments, we have filed a PIC statement on 13<sup>th</sup> May 2013 making our commitments legally enforceable (Annexure 6.2).

### **6.3 Rebuttals**

**6.3.1** Dotsecure will pass the heightened ICANN scrutiny for "sensitive strings" that TLDs relating to financial sectors must pass.

**6.3.2** As described in Annexure 6.1, Dotsecure has included many safeguards in the application. New gTLD applicants are required to be truthful in their applications, and our commitments are now legally enforceable.

**6.3.3** IBFed has not referenced a single objectionable sentence, policy or procedure from Dotsecure's application.

**6.3.4** IBFed also failed to review Dotsecure's application fairly before filing this Objection. Had IBFed done so, it would have noted that the level of security measures proposed for .Bank are extraordinary, and in fact benefit the banking industry substantially.



- 6.3.5** IBFed spends much of their ink on smearing the reputation of Directi. IBFed has failed to find any evidence against Dotsecure and Radix FZC which could potentially point to its operation of .Bank causing material detriment to the Banking industry. Consequent to this, it has levelled allegations against another legal entity with the intention of discrediting Dotsecure. These allegations have no bearing on Dotsecure's application for .Bank as well as this objection.
- 6.3.6** The entire picture about Directi, provided by IBFed is flawed and biased. Annexure 6.3 contains a response from Directi to the allegations made by IBFed.
- 6.3.7** IBFed has made an assumption and an allegation regarding Dotsecure's inadequate funding in its Objection. We submit that IBFed should respect the fact that ICANN's evaluation process incorporates assessing the financial stability of applicants (questions 45 – 50) before delegating a gTLD to them.
- 6.3.8** IBFed has repeatedly emphasized the fact that Dotsecure "lacks any relationship with the global banking community". Dotsecure does not deny this, and would like to stress the fact that it has not broken any rules or flouted any AGB requirements by applying for .Bank. In fact, we submit that the lack of an existing relationship with the banking industry makes Dotsecure a more unbiased candidate to run the .Bank registry.
- 6.3.9** Dotsecure, its directors, officers, partners, and major shareholders have all passed ICANN's background screening to confirm their eligibility to operate .Bank. We can be certain of this due to the fact that Dotsecure did not receive any Clarification Question in this regard, indicating that it has cleared this section of ICANN's scoring criteria.
- 6.3.10** IBFed's entire objection assumes that ICANN will not do its job. While IBFed has failed to provide any evidence that incriminates Dotsecure, it also makes the general assumption throughout the objection that ICANN will fail to do its job while evaluating Dotsecure on its background, registry services, technical and operational capability, and financial capability. Had there been any real evidence suggesting that it is not eligible or competent enough to operate the .Bank registry; Dotsecure would not pass ICANN's requirements.
- 6.3.11** IBFed has failed to provide a complete representation of the facts when it states -"at least one other applicant has called into question the qualifications of Dotsecure/ Radix Registry to operate any registry." This "other applicant" is Karsten. IBFed has conspicuously failed to acknowledge the fact that Karsten and Radix subsidiary, DotPing have filed competing applications for .Ping. It has also failed to present the fact that Radix Registry has filed a response letter with ICANN (Annexure 4.1). The letter contains a detailed response to Karsten's and McGrady's allegations, and has

served to provide ICANN with the requisite information in order to determine that DotPing / Dotsecure / Radix Registry are perfectly qualified to operate a registry.

- 6.3.12** IBFed has assumed that Dotsecure will fail to comply with contractual provisions. In the absence of any evidence, IBFed has once again relied on its assumptions that Dotsecure will not comply with contractual provisions and will potentially allow proxy registrations in .Bank. While IBFed has made the very creative assumption that Dotsecure will simply not follow through on its commitments because they are “not currently an enforceable legal obligation”, it has failed to provide any evidence of the same. Dotsecure’s PIC Statement (Annexure 6.2) now makes prohibition of proxy registrations a legally binding commitment.
- 6.3.13** In Annexure 6.1 we have detailed ICANN’s own mechanisms to ensure that registry operators are legally bound to follow through on their contractual commitments.
- 6.3.14** There is no mention of “existence of a clearly superior choice” in the AGB to serve as a criterion for judging the likelihood of material detriment that would result from another applicant’s operation of a gTLD.
- 6.3.15** Quoting Section 3.5.4 (AGB): “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”. Evident from the objection, IBFed was well aware of this provision of the AGB.
- 6.3.16** IBFed has assumed that Dotsecure’s primary objective is “the maximization of revenue while minimizing costs”. It then goes on to assume that Radix, the parent of Dotsecure will “adopt lesser standards to uniformly deploy across Radix’s entire portfolio of gTLDs”. Without any evidence to prove such statements, these allegations are weak attempts on IBFed’s part to portray “likelihood of material detriment”.
- 6.3.17** While IBFed has made allegations that suggest that Dotsecure avoided the Community application option in order to avoid the governance associated with it, these allegations are entirely baseless due to the lack of any evidence. We submit that Dotsecure chose not to apply as a community application as it did not consider it to be appropriate to game the ICANN process by projecting the generic word “bank” to be the name of a “global banking community” in order to try to obtain a generic TLD free of auction cost. Additionally, the PIC statement makes Dotsecure legally bound to its commitments.
- 6.3.18** IBFed has made the argument that there is a potential for a loss of self-governance due to the fact that Dotsecure is a for-profit company. By virtue of this argument IBFed is suggesting that all banks should not be buying any commercial products from

a for-profit company. We submit that purchase of a domain name would likely constitute <0.001% of any typical bank's IT budget. The security, stability and safety of the banking industry is far more dependent on purchases such as commercial banking software, encryption software, data networks, regular computer software, communications software - all of which cost billions of dollars, and are all sold by for-profit commercial enterprises. Just the fact that Dotsecure is a for-profit company in no way can result in a conclusion that the quality of service, the security standards or any such aspect would be compromised in any manner.

**6.3.19** IBFed's supported applicant, fTLD is also a for-profit company, as admitted by FSR in its objection to .Insurance (Annexure 4.2). It has also publically stated it intends to charge over \$400 per registration in .Bank

([http://www.americanbanker.com/btn/24\\_12/dot-bank-gets-mixed-reviews-1044372-1.html?pg=2](http://www.americanbanker.com/btn/24_12/dot-bank-gets-mixed-reviews-1044372-1.html?pg=2)).

**6.3.20** IBFed has alleged that Dotsecure's lack of a relationship with the banking industry will motivate it to allow / encourage cybersquatting in .Bank. Without evidence, this allegation is entirely contrived. Had IBFed chosen to review Dotsecure's application, it would have noted the applicability of a detailed Eligibility Restrictions and a strict Name Selection policy (now legally enforceable). Given these, coupled with the multitude of other security mechanisms detailed in the application, the likelihood of cybersquatting and any loss of institutional reputation in .Bank are immaterial. IBFed has once again attempted to create a weak argument alleging the possibility of cybersquatting based on its own assumptions.

**6.3.21** IBFed has made a statement in their objection, "However, if Dotsecure is given the right to operate .Bank, members of the global banking community will have no option but to defensively register their brands in .Bank even if they have no intention of ever using that domain name." This statement is completely inaccurate.

Dotsecure's policies and processes ensure that only an eligible bank can register a general domain name that it qualifies for as per our policies. No other entity can purchase any general domain names in .Bank. Therefore a bank could choose to register their domain name in .Bank or not register it. In the event that they choose not to register it, they are still protected by the fact that no other entity can register their name in .Bank.

## **Conclusion**

Dotsecure stands by its application for .Bank. We reiterate that our application was submitted in good faith, detailing mechanisms for security of registrants and users that go above and beyond those mandated by ICANN. Our application acknowledges the sensitivities associated with the .Bank namespace, and makes provisions to counter any foreseeable threat that could result from its existence. Last but not the least; our application complies with every possible nuance of the AGB.

We urge the Expert Panel to adjudicate this Objection based on a thorough review of the facts. IBFed's objection has demonstrated an obvious conflict of interest in addition to failing to prove all the four tests established in the AGB for this purpose. It has relied on assumptions, and baseless allegations against other legal entities to lodge this frivolous objection in a desperate attempt to obstruct a perfectly legitimate application.

Based on these facts, we urge the Expert Panel to reject this Objection, and allow Dotsecure to continue in its earnest pursuit of the .Bank gTLD.

**Communication (Article 6(a) of the Procedure and Article 1 of the ICC Practice Note)**

A copy of this Response is/was transmitted to the Objector on: 14th May 2013 by email to the following address: [sally.scutt@bba.org.uk](mailto:sally.scutt@bba.org.uk)

A copy of this Response is/was transmitted to ICANN on: 14th May 2013 by email to the following addresses: [DRfiling@icann.org](mailto:DRfiling@icann.org) and [newgtld@icann.org](mailto:newgtld@icann.org)

**Filing Fee (Article 1 Appendix III to the Rules and Article 11(f) of the Procedure)**

As required, Euros 5,000 was paid to ICC on 9<sup>th</sup> May 2013.

Evidence of the payment is attached for information. (Contained in Annexure 7)

**Description of the Annexes filed with the Response (Article 11(e) of the Procedure)**

Annex 1.1 – IBFed Contacts and Address  
Annex 1.2 – British Bankers' Association (BBA) Contacts  
Annex 1.3 – British Bankers' Association (BBA) Address  
Annex 1.4 – IBFed Financial Statements for the year ended 31<sup>st</sup> December 2011  
Annex 1.5 – A calculation showing the cumulative number of banks in USA, EU, Russia, China, Indonesia, India, Philippines, Hong Kong, and Singapore exceeds 36,100 banks  
Annex 2.1 – GAC Scorecard dated February 2011  
Annex 2.2 – ICANN Board response to GAC Scorecard dated 4<sup>th</sup> March 2011  
Annex 2.3 – Analysis of the IBFed quoted GAC guidance  
Annex 3.1 – Analysis of IBFed's arguments as measured against the AGB criteria for community  
Annex 3.2 – Examples of substantial variations in banking regulations show that a common standard to clearly delineate membership does not exist  
Annex 3.3 – Screenshots of 20 of the largest Banks' websites' "About Us" page  
Annex 3.4 – Google search on the terms "Banking industry", "Banking sector", and "Banking community"  
Annex 3.5 – IBFed Newsletters from 2012 which mention the Banking "industry" and "sector"  
Annex 3.6 – Letters sent by IBFed to IOSB and HM Treasury which mention the "banking industry" and "financial sector"  
Annex 4.1 – Response to McGrady / Karsten Manufacturing Ltd.  
Annex 4.2 – The Financial Services Roundtable (FSR) objection to .Insurance  
Annex 6.1 – Analysis of Dotsecure's application and IBFed objection to prove that the application does not create the likelihood of Material Detriment  
Annex 6.2 – Public Interest Commitment (PIC) Statement filed by Dotsecure  
Annex 6.3 – Letter from The Directi Group refuting IBFed's allegations against it  
Annex 7 – Evidence of payment of Euros 5,050 to ICC

Date: 14<sup>th</sup> May 2013

Signature: \_\_\_\_\_

A handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to read 'Rajal'.



To,  
Mr. Mark Kantor  
Contact Information Redacted

9<sup>th</sup> July 2013

Sub: Additional Submission in relation to ICC EXP/389/ICANN/6

Dear Mr. Kantor,

I write to you on behalf of the Applicant / Respondent, Dotsecure Inc. ("Dotsecure") in the above referenced case. This Additional Submission is being made in accordance with Article 17 of the Procedure, and consequent to the Objector's ("IBFed") communication received on 3<sup>rd</sup> July 2013.

We would like to use this opportunity to address each of the arguments presented by the IBFed in their letter point-by-point. Please find our responses below:

1. IBFed claims that Dotsecure has made "a number of material misrepresentations" in its Response. We submit that IBFed has not provided a single statement in its letter that discredits or proves incorrect any facts or statements from Dotsecure's Response.
2. IBFed attempts to draw parallels between ICANN and itself to portray that it is an "established institution". We would like to point out that while ICANN has a full-time staff of 140 employees (<http://icannwiki.com/index.php/ICANN>); IBFed has a full-time staff of zero (0). While ICANN had revenue of \$72 million in 2011, IBFed had revenue of \$ 0.35 million in 2011. While ICANN has offices in Los Angeles, Washington, Palo Alto, Brussels, and centers under development in Singapore and Istanbul, IBFed does not have a single office of its own. Please see Section 1 of our Response and Annexure 1.4 of our Response which corroborates these facts about IBFed. Consequent to these facts, we submit that our assertion that IBFed lacks Standing can hardly be qualified as "spurious allegations".
3. That being said, even if IBFed does qualify as an "established institution", it has not provided any evidence of an "ongoing relationship" with the 36,000+ institutions that constitute the alleged "global banking community". Clearly, IBFed fails both the Standing criteria offered in the Applicant Guide Book ("AGB").
4. IBFed attempts to downplay the obvious conflict of interest by stating that the "ABA is but one member" of IBFed's membership. It conveniently chooses not to address the more pertinent subject that ABA's President and CEO, Mr. Frank Keating, serves on the IBFed Board, which is comprised of 5 individuals. IBFed has not submitted any evidence to demonstrate that it came up with this objection independently and paid for it from its own revenues.
5. Another important document that demonstrates the links between IBFed and the fTLD application is Annexure 4.2 of our response. A near-identical objection was filed by fTLD's other parent entity, Financial Services Roundtable ("FSR") against another one of its competitors' (Dotfresh Inc.) applications for .Insurance. Undoubtedly, IBFed and FSR worked together to prepare these Objections so that fTLD could advance in its pursuit of .Bank and .Insurance by eliminating competing applications using the Objection process.
6. Also, note that though IBFed claims to have filed this Objection to "protect the financial community"; it has chosen not to file any Objection against the applications for .Finance and .Financial. It has also not voiced any objections against applications for .FinancialAid, .Insure, .TravelersInsurance, .CarInsurance, .AutoInsurance, .LifeInsurance, and .MutualFunds, all of which would be considered to be part of the "financial community" (<http://www.iccwbo.org/WorkArea/DownloadAsset.aspx?id=19327354883>). It cannot be a co-incidence that the only application against which IBFed objected is a competitor of their founding member association, ABA. It is important to note here that IBFed is using this objection process to get rid of the only competition to the .bank application of fTLD and ABA.



7. Furthermore, IBFed has used paragraph-after-paragraph in the 5,000-word limited Objection to influence the Panel about fTLD's application for .Bank, when it is entirely irrelevant to the Objection and its outcome. If its objection was independent it need not have referenced fTLD's applicant at all. This also clearly shows that IBFed is blindly driven to file this Objection to further fTLD's interests.
8. We acknowledge the AGB Section 3.2.2.4, which requires the Panel to balance the factors listed in the AGB as well as other relevant information in order to determine "Standing". In fact our numerical tabulations (which are supported by evidence) have been rightfully presented to the Panel as part of what we consider as "other relevant information".
9. Please refer to Section 2 and Annexes 2.1, 2.2, and 2.3 of our Response for a factual account of ICANN's response to GAC's prior communication to ICANN board.
10. With respect to the guidance quoted in IBFed's letter from GAC's Beijing Communiqué ([https://gacweb.icann.org/download/attachments/27132037/Beijing%20Communiqu%C3%A9%20april2013\\_Final.pdf?version=1&modificationDate=1365666376000&api=v2](https://gacweb.icann.org/download/attachments/27132037/Beijing%20Communiqu%C3%A9%20april2013_Final.pdf?version=1&modificationDate=1365666376000&api=v2)), we submit the following:
  - a. IBFed has incorrectly stated that the above communication contains the GAC's guidance as to "what constitutes a community". In truth, the GAC has simply asked ICANN board to take into account "community support for applications". The AGB is the only document which describes what ICANN considers as a "community".
  - b. We request the Panel to see the New gTLD Program Committee's ("NGPC") response to this item, available under point number 6 of ICANN's announcement on 3<sup>rd</sup> July 2013 (<http://www.icann.org/en/news/announcements/announcement-2-03jul13-en.htm>). More specifically please note the NGPC's position on this issue: "*Criterion 4 for the Community Priority Evaluation process takes into account "community support and/or opposition to the application" in determining whether to award priority to a community application in a contention set.*"
  - c. Consequent to NGPC's clarification, we submit that the quoted guidance may be relevant for scoring within a Community Priority Evaluation for fTLD's application. But it is NOT relevant to Dotsecure's standard application for the generic TLD, ".Bank", and certainly not relevant to this Objection at all.
  - d. We would like the Panel to note that this is one more example of IBFed attempting to further fTLD's application, by way of this Additional Submission.
  - e. On a related note, we would also request the Panel to look at point number 5 of a communication (<http://www.icann.org/en/news/correspondence/schwartz-to-willett-07jun13-en.pdf>) sent by Mr Craig Schwartz, Director of fTLD (<http://www.ftld.com/leadership.html>) to ICANN on 7<sup>th</sup> June requesting that this information in the GAC Communiqué be sent to the DRSPs immediately. Following that, we request the Panel to look at point number 5 of ICANN's response to this letter on 27<sup>th</sup> June (<http://www.icann.org/en/news/correspondence/willett-to-schwartz-27jun13-en.pdf>), which states "*ICANN will work with the DRSP and CPE Panel to ensure that they understand the scope of the evaluation as per the Applicant Guidebook, with which they are contractually obligated to comply. As such, we respectfully assert that it is not necessary to separately provide the NGPC response to the DRSP and CPE Panel.*"
  - f. In spite of the clear guidance issued by ICANN, IBFed thought it necessary to convey its own misrepresentation of the GAC's Communiqué to the DRSP through this letter.
11. We would also like the Panel to note that this is the second time that IBFed has inappropriately quoted GAC's guidance while neglecting to quote ICANN's / NGPC's response to the same in an attempt to mislead the Panel to believe that ICANN intended for .Bank to be a community TLD.
12. IBFed then alleges that "Dotsecure attempts to dissect the individual words" in the AGB "with self-serving definitions". We submit that the definitions and words used in our response were from the AGB itself and from reputed dictionaries (for those words that the AGB did not define), that the Panel may also verify. The allegation that these definitions were "self-serving" for Dotsecure is entirely convoluted. Secondly, the AGB was the document that Dotsecure used in order to conclude that .Bank cannot qualify as a Community application, and our decision to apply as a Standard applicant was based on the same definitions. It appears that IBFed has misunderstood the same, and is now trying to convince the Panel to ignore the plain definitions laid out in the AGB.

13. The IBFed then references how the term “Internet Community” is used by ICANN and by Bhavin Turakhia. We submit that the usage of the term “internet community” by ICANN or anyone else is not subject to the terms set out in the AGB for what constitutes a “community”. For the purpose of this Objection, the Panel is obligated to follow the definitions cited in the AGB to determine whether the alleged “global banking community” meets the specific criteria to qualify as a “clearly delineated community”. We submit that it does not.
14. The IBFed then provides the Panel with some of its own guidance on how “substantial opposition” should be measured. IBFed is asking the panel to dismiss the exact criteria that ICANN has specified in the AGB. We quote from the AGB below:
  - a. **Number of expressions** of opposition relative to the composition of the community;
  - b. The **representative nature** of entities expressing opposition;
  - c. Level of recognized stature or weight among sources of opposition;
  - d. Distribution or **diversity** among sources of expressions of opposition, including:
    - i. **Regional**
    - ii. Subsectors of community
    - iii. Leadership of community
    - iv. Membership of community
  - e. **Historical defense of the community** in other contexts; and
  - f. Costs incurred by objector in expressing opposition, including other channels the objector may have used to convey opposition.
15. The IBFed then says that the Objector “must merely prove that there is a “strong association between the applied-for gTLD string and the community represented by the objector” to prove implicit/explicit targeting.” We submit that the AGB determines what the Objector must prove in order to prove implicit/explicit targeting. And this includes “Associations by the public”. Please note that the public does not associate the term “Bank” with “global banking community”, and neither has IBFed provided any evidence to prove the same. In fact there is no public recognition of the phrase “global banking community” whatsoever as evidenced in our Response.
16. Next the IBFed once again resorts to maligning entities separate from Dotsecure. We once again draw the Panel’s attention to the AGB language, “The Objector must prove that **the application** creates a likelihood of material detriment....”. The Panel’s review of the entire Objection and IBFed’s additional submission will show that IBFed has not been able to find or reference a single objectionable statement / policy / procedure from the application. That is because the application is robust, and does not create any likelihood of material detriment.

We would request the Panel to conduct its own review and analysis of the Dotsecure application and the PIC statement to determine whether this self-serving, contrived, and factually deficient objection deserves to prevail.

In conclusion, Dotsecure is available at the Panel’s request to provide any additional documentation and clarification it may require for consideration of this case.

Sincerely,



Brijesh Joshi  
Dotsecure Inc.