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July 19, 2018

VIA EMAIL

Mike Rodenbaugh
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Re: Asia Green IT Systems v. ICANN, No. 01-15-0005-9838

Dear Mike,

On behalf of ICANN, I write with respect to your letter regarding the *Asia Green IT Systems (AGIT) v. ICANN* Independent Review Process (IRP) Final Declaration and AGIT's applications for .ISLAM and .HALAL (Applications). Your letter requests that ICANN either return the Applications to processing and approve them for contracting without further review or, alternatively, that ICANN facilitate direct dialogue and negotiations between AGIT and the objecting parties. While your letter also makes several additional claims that, in some instances, contradict the IRP Panel's findings, the ICANN Bylaws, and the Applicant Guidebook, not all of which I address herein, this letter responds to your core claims and demands.

As your letter notes, the Board considered the *AGIT v. ICANN* IRP Final Declaration at the Board's meeting on 15 March 2018. The Board resolved to accept that the IRP Panel declared AGIT to be the prevailing party, and that ICANN reimburse AGIT its IRP costs, which was completed in April 2018. The Board further directed the Board Accountability Mechanisms Committee (BAMC) to re-review the Governmental Advisory Committee (GAC) non-consensus advice regarding the Applications, as well as the subsequent communications from or with objecting and supporting parties, in light of the Final Declaration, and to provide a recommendation to the Board as to whether or not the Applications should proceed.

Your letter states that the "BAMC should not be tasked to make such a recommendation at all" because "the decision whether the applications should proceed...has already been made, twice." Presumably, you are referring to the Independent Objector's (IO) decision to not file a community objection against the Applications and the Expert Determinations on the United Arab Emirates' (UAE's) community objections against the Applications. But as you know, neither the IO's decision to not file a community objection nor the Expert Determinations found that the

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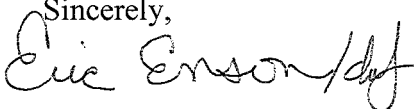
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Applications should proceed to contracting. Rather, each was an independent decision limited to the issue of community objections and limited by the information available at that point in time. Perhaps more importantly, the IRP Panel specifically declared that: “In light of the provisions of both the Guidebook and the Bylaws, it is the opinion of this Panel that the Board is entitled to decide in a manner inconsistent with expert advice.” (Final Declaration, para. 127.) Thus, as the IRP Panel found, the Board maintains the discretion to make a decision on whether the Applications should proceed.

Your letter also states that, as an alternative to approving the Applications, “ICANN must proceed to facilitate direct dialogue and negotiations between AGIT and the governmental objectors, with the view of reaching a mutually acceptable solution to allow for the use of .Islam and .halal as top level domains under AGIT’s management.” You claim that this facilitation would be consistent with the Board’s handling of the .AMAZON matter. But as you know, with respect to the .AMAZON matter, the Board adopted advice provided in the GAC’s Abu Dhabi Communiqué regarding ICANN’s facilitation of negotiations between the ACTO member states and the Amazon corporation. (See 4 February 2018 Board resolution, <https://www.icann.org/resources/board-material/resolutions-2018-02-04-en#2.d>; and GAC Advice Scorecard, <https://www.icann.org/en/system/files/files/resolutions-abudhabi60-gac-advice-scorecard-04feb18-en.pdf>.) No similar GAC advice has been issued regarding the Applications or the AGIT Final Declaration.

Nevertheless, as ICANN has indicated both in the New gTLD Program generally and to AGIT directly, ICANN encourages applicants to engage with objecting parties and attempt to resolve any disputes. To that end, if AGIT would like to submit a summary of its efforts to engage with the objecting parties thus far, as well as AGIT’s proposed approach to further that engagement, ICANN will certainly consider AGIT’s submission if made before the Board takes up this matter in the near future. On the other hand, if AGIT determines that it will not be engaging in any further dialogue with the objecting parties, please inform ICANN as soon as possible, but in any event no later than 31 July 2018.

Sincerely,


Eric P. Enson