

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

CASE No. EXP/396/ICANN/13 (c. EXP/397/ICANN/14, EXP/398/ICANN/15)

PROF. ALAIN PELLET, INDEPENDENT OBJECTOR (FRANCE)

vs/

AMAZON EU S.À.R.L. (LUXEMBOURG)

and

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

**International Chamber of Commerce
International Centre for Expertise**

Case No.

396/ICANN/13 (c. EXP/397/ICANN/14, EXP/398/ICANN/15)

in re “.AMAZON”; アマゾン and 亚马逊 gTLD

EXPERT DETERMINATION

Prof. Alain Pellet, Independent Objector

– Objector –

vs.

AMAZON EU S.à.r.l.

– Applicant –

Expert

Professor Luca G. Radicati di Brozolo

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DEFINITIONS

| | |
|----------------------|---|
| AGB | ICANN gTLD Applicant Guidebook, version 2012-06-04 |
| Amazon Community | The community defined in § 40 below |
| Applicant | AMAZON EU S.à.r.l. |
| Centre | International Centre for Expertise of the International Chamber of Commerce |
| Expert | Professor Luca G. Radicati di Brozolo |
| gTLD | Generic top level domain |
| IO | Independent Objector |
| Objection Procedures | Module 3 of the AGB |
| OTCA | Amazon Cooperation Treaty Organization |
| Procedure | New gTLD Dispute Resolution Procedure, Attachment to Module 3 of the AGB |
| Strings | “.AMAZON”, “.アマゾン” and “.亚马逊” gTLDs |

1. This Expert Determination is rendered in the consolidated dispute settlement proceedings arising from the community objections to three applications for the generic top-level domain (“gTLD”) name “.AMAZON”, and the Japanese and Chinese terms for AMAZON (respectively アマゾン and 亚马逊) within the framework of the ICANN gTLD Application Process governed by the ICANN gTLD Applicant Guidebook, version 2012-06-04 (the “AGB”).

I. INTRODUCTION

2. The three community objections at the origin of these proceedings (the “**Objections**”) were filed on March 12, 2013 with the International Centre for Expertise of the International Chamber of Commerce (the “**Centre**”) by the Independent Objector, Professor Alain Pellet, 12, Avenue Alphonse de Neuville, 92380 Garches, France, contact@independent-objector-newgtlds.org (the “**IO**”).
3. The Objections (EXP/396/ICANN/13, EXP/397/ICANN/14 and EXP/398/ICANN/15) relate to three applications (the “**Applications**”) filed by AMAZON EU S.à.r.l., 5 Rue Plaetis, Luxembourg L-2338, LU, lorna.gradden.am@valideus.com (the “**Applicant**”) respectively for the “.AMAZON”, “.アマゾン” and “.亚马逊” gTLDs (collectively the “**Strings**”).
4. The content of all the Objections is practically identical.
5. On April 23, 2013 the Centre informed the Parties of its decision to consolidate the Objections.
6. The Applicant filed its Responses to the Objections on May 24, 2013.
7. The IO is represented in these proceedings by Ms Heloïse Bajer-Pellet, 15 Rue de la Banque, 75002 Paris, France, avocat@bajer.fr; Mr Daniel Müller, 20, Avenue Charles de Gaulle, 78290 Croissy sur Seine, France, mail@muellerdaniel.eu; Mr Phon van den Biesen, De Groene Bocht, Kaizergrecht 253, 1016 EB Amsterdam, The Netherlands, phonvandenbiesen@vdbkadvocaten.eu; and Mr Sam Wordsworth, 24 Lincoln Inn Fields, London WC2A 3EG, UK, SWordsworth@essexcourt.net.
8. The Applicant is represented in these proceedings by Messrs. Nick Bolter and Gareth Dickson, Edwards Wildman Palmer UK LLP, Dashwood, 69 Old Broad St, London UK, NBolter@EdwardsWildman.com.
9. On June 28, 2013 the Centre informed the Parties that on June 24, 2013 the Chairman of the Standing Committee appointed as sole member of the Panel of Experts Professor Luca G. Radicati di Brozolo, Arblit Radicati di Brozolo Sabatini, 15 Via Alberto da Giussano, 20145 Milan, Italy, Luca.Radicati@arblit.com (the “**Expert**”), who submitted his declaration of acceptance and availability and statement of impartiality and independence on June 26, 2013.
10. The file of the case was transmitted by the Centre to the Expert on August 1, 2013.

Article 21(a) of the Procedure provides that the Centre and the Expert shall make reasonable efforts to ensure that the Expert renders his decision within 45 days of the "*constitution of the Panel*". The Centre considers that the Panel is constituted when the Expert is appointed, the Parties have paid their respective advances on costs in full and the file is transmitted to the Expert.

11. Following an exchange of correspondence with the IO and the Applicant (collectively the "**Parties**"), the Expert issued the Expert Mission on September 3, 2013.
12. At the request of the IO, the Expert allowed an exchange of submissions on the Applicant's challenge to the IO. The IO filed his additional written statement on August 16, 2013 whilst the Applicant filed its reply on August 22, 2013.
13. On September 9, 2013 the Centre informed the Expert that the time limit for submission of the draft expert determination was extended until October 5, 2013.
14. On the same date the Centre agreed to the Expert's request to deal with all three Objections in a single expert determination. The request was based on the consideration that the Applicant and the Objector are the same in all the consolidated proceedings and that the issues raised by all three Objections are practically identical and raise almost identical factual and legal issues.
15. In accordance with Article 19 of the the New gTLD Dispute Resolution Procedure (the "**Procedure**"),¹ and in the absence of any request by the Parties, no oral hearing was held.
16. The draft expert determination was submitted by the Expert for scrutiny to the Centre within the extended time limit in accordance with Article 21(a) and (b) of the Procedure.
17. These proceedings are administered by the Centre pursuant to Article 3(d) of the Procedure, which is applicable by virtue of its Article 1(d).
18. The proceedings are governed, as to matters of procedure, by the Procedure and by the Rules for Expertise of the International Chamber of Commerce, as supplemented by the ICC Practice Note on the Administration of Cases under the New gTLD Dispute Resolution Procedure (Article 4(a) and 4(b)(iv) of the Procedure).
19. Pursuant to Article 5(a) of the Procedure, the language of all submissions and proceedings was English. Moreover, in accordance with Article 6(a) of the Procedure, all communications by the Parties, the Expert and the Centre were submitted electronically.
20. As dictated by Article 20 of the Procedure, the merits of the dispute before the Expert are to be decided by reference to the relevant standards defined by ICANN, in particular in Module 3 of the AGB (the "**Objection Procedures**"), as well as to any rules and principles that the Expert determines to be applicable, having due regard

¹ Attachment to Module 3 of the AGB.

to the statements and documents submitted by the Parties. The burden of proof that the Objection should be sustained rests with the Objector in accordance with the applicable standards.

21. As agreed by the Centre, and given that the issues raised by the three Objections are for the most part identical, this Expert Determination deals with all three Objections collectively. Reference to the individual Objections will only be made insofar as they raise different issues from the other Objections.

II. THE CHALLENGE TO THE IO AND THE IO'S STANDING

(a) *The Position of the Applicant*

22. On April 6, 2013, after the filing of the Objections by the IO, the Applicant wrote to ICANN denouncing that "*the office of the IO exhibits a Conflict of Interest within the meaning of ICANN's Conflict of Interest Policy*". The challenge contended that the IO's Objections were based on comments in the Early Warning Procedure by the Governments of Peru and Brazil, with whom the IO has "*special links*" due to his professional ties with them, as he has with the Governments of Bolivia and Argentina, likewise identified as opponents of the Applications. Those links are asserted to have influenced and to continue to influence the IO's decision-making process in these proceedings. For the Applicant the Objections were used to formalize the objections of the governments of Brazil and Peru, in contrast with the principle that the IO can only act on behalf of the public who uses the global internet. The conflict of interest is viewed as the reason for the alleged inconsistency between the IO's approach to this application and to the ones for similar gTLDs (for instance for ".africa", ".persiangulf" and ".islam"). According to the Applicant, allowing the Objections to proceed would damage the integrity of the gTLD dispute resolution process, because the challenges would be made public, leading to the perception that the IO is not a safety net for the public. The Applicant concluded with the request that ICANN set aside the Objection on account of the conflict of interest and, if deemed necessary, appoint another non-conflicted IO. The Applicant accepted to maintain confidentiality over its challenge, while reserving its right to raise the matter if the Objection were allowed to proceed.
23. The Applicant wrote to ICANN again on April 24 and May 18, 2013 reiterating its challenge and soliciting a response prior to the deadline for responding to the Objection.
24. Referring to its correspondence with ICANN, in the Response to the Objection the Applicant restated that the IO lacks standing in these proceedings because of the conflict of interest. Indeed, under the AGB he has standing only to represent "*the public who use the global internet*", and cannot act on behalf of any particular entity or entities, as he is purportedly doing in these proceedings.
25. In its reply of August 22, 2013 to the IO's additional statement of August 16, 2013, the Applicant puts forward three sets of arguments. *First*, it argues that the IO has a "*clear*" conflict of interest requiring him to recuse himself. It contests that the AGB

does not require the IO to be independent of anyone standing to benefit from the objection and releases him from the “*universally recognized obligation to decline additional work where it would create a conflict of interest with an existing relationship*”. While recognizing that the IO does not act as a judge, arbitrator or expert, the Applicant underscores that the AGB binds him to the same basic rules of ethics that apply to those offices in relation not only to ICANN and applicants, but also to any other influences. The Applicant concedes that “*a normal average social life*” does not necessarily entail a conflict of interest or lack of independence, but asserts that the IO’s ties to the governments of Brazil or Peru are not merely part of such a social life.

26. Second, the Applicant restates that the IO can only represent the community made up of those who use the internet (referred to by the parties also as the “*internet community*”) and that it is “*plainly wrong*” that he can only represent a community that is “*delineated and distinguishable from internet users in general*”. The IO is granted special standing to fulfill his role within the gTLD program and, unlike “*ordinary*” objectors, does not have to prove an on-going relationship with a community. Consequently, he loses his special standing if he acts outside his role, e.g. on behalf of a community comprising particular persons or entities. In the case at hand the community represented by the IO is not the public who use the internet. The IO requests the same remedy sought by his client Peru, who is the largest financial contributor to the Amazon Cooperation Treaty Organization (“**OTCA**”). Notwithstanding that the Applications generated no reasoned or substantiated comments from the public, unlike similar applications (“*.gcc*”, “*.islam*”, “*.persiangulf*” and “*.africa*”), the IO only objected to the Applicant’s ones. The Applicant also contests that OTCA lacks the capacity to file an objection and differs in this respect from other organizations that could have objected to the strings to which the IO did not object. It adds that objections to the Applications could have been put forward by other entities. Had he followed the same criteria as for other objections, the IO would have concluded that OTCA and the governments of Brazil and Peru were in at least as good a position as the IO to file an objection. The IO’s failure to demonstrate his complete independence and his apparent pursuit of the interest of particular persons or entities deprives him of standing in this case.
27. Third, the Applicant refers to a statement of the Centre that the decision over the IO’s independence falls within the Expert’s authority². The Applicant argues that whether the IO has exceeded his role is a serious issue, because the Expert Determination will be accepted by ICANN (Section 3.4.6 of the Objection Procedures). This means that, if the issue is not decided by the Expert, the Applicant

² The Applicant refers to a letter of the Center dated July 8, 2013 in reply to a request submitted by it on this point. Actually the Center’s letter of that date states that “*Whether a decision on this question [i.e. the independence of the IO] falls into the Expert Panel’s scope and authority pursuant to the applicable rules and procedures, will have to be decided by the Expert Panel itself. Should the Expert Panel decide that it does fall into the scope of its work, it will then be directly on the Expert Panel to take a decision on the raised question.*”

risks “*unjustly and unfairly los[ing] with limited, if any, scope for a remedy*”. This would result in irreparable damage to the integrity of the gTLD dispute resolution process.

(b) *The position of the IO*

28. In a letter to counsel for the Applicant of June 8, 2013 the IO denounced the inappropriateness of the Applicant’s direct approach to ICANN on the matter of his independence, stating that it is not for ICANN to take a position on it. The IO argued that the claim concerning his alleged bias “*has to be dealt with by the Expert panel, who has full authority to decide in all impartiality*”.
29. In the Objection the IO disclosed his relations with the Governments of Brazil and Peru, but clarified that in the present proceedings he is not representing them and is acting in the sole interests of the public who use the internet and that his relation with a State has nothing to do with his decision to object or not.
30. In his additional statement of August 16, 2013 the IO noted that Article 11(4) of the Rules is not relevant to a challenge of the IO, since the IO is only a party to these proceedings. He acknowledged, however, that the absence of a general procedure concerning the IO’s independence and the possibility to challenge him for the entire gTLD program does not mean that no remedy is available. The IO recalls that in his June 8 letter referred to above he recognized that the Expert has the power to assess the IO’s independence and to draw the necessary conclusions with regard to the Objection. Indeed, adds the IO, “*the Expert Panel is the guardian of the integrity of the process and it has the duty to ensure that the Expert Determination is soundly based on the standards established by the Guidebook*”. Although it affects only the IO’s standing, the condition that the IO must not act on behalf of any particular person or entity, but solely in the best interests of the users of the internet (Objection Procedures, Section 3.2.5), needs to be addressed by the Expert even if in Article 2(d) of the Procedure the expert determination is referred to only as a “*decision upon the merits of the objection*”. The Expert must also address the standing of the Objector (Objection Procedures, Section 3.2.2). On this point the IO concludes that the Expert has the power to address whether the IO acts in the interest of the internet public or of a particular category of persons, regardless of whether the issue pertains to standing or to the merits. The matter must be decided in a single expert determination, there being no option to have separate decisions on standing and merits.
31. On the merits of the challenge, the IO posits that, pursuant to Section 3.2.5 of the Objection Procedures, he must remain independent and unaffiliated with any gTLD applicant. He considers that the Applicant’s understanding that conflicts can occur where an objection is filed in furtherance of the interests of a potential community with ties to the IO “*hardly makes any sense and would ultimately exclude any person having a normal average social life to serve as the Independent Objector*”. The Applicant should not be entitled to construct its case on the artificial alleged bias deriving from the IO’s professional relationships when he was appointed. While accepting that the AGB directs him to act in the sole interest of “*the public who use*

the global internet", the IO cannot accept that this implies that that public is the only community that he has standing to represent. The fact that the IO is dispensed from proving the regular standing requirements for the types of objections that he can file (Objection Procedures, Section 3.2.5) does not mean that his community objections can concern only the rights and interests of a "hypothetical" community of internet users. This would entail a profound change in one of the four tests for community objections, the one relating to the existence of a clearly delineated community, because the public who use the internet is not such a community. Even if the community relevant here were the one of those living in the geographical region with strong links to the Amazon, it would not follow that the IO is acting on its behalf, also considering the Applicant's acknowledgment that such community would not benefit from the rejection of the Application. The AGB does not require that every string which targets a community be applied for by a representative of that community. It is irrelevant whether the Applicant intends to target a specific community or to reserve its gTLD for it. However, the operation of the gTLD must not impinge on the rights and legitimate interests of a significant portion of the community to which the string is explicitly or implicitly targeted. The IO points to Section 1.2.3.2 of the Objection Procedures, which permits community applications even if the application is not designated as community-based or aimed at a particular community. Therefore, what is relevant is not who is targeted by the applicant, but whether a particular community is targeted by the string. The IO acts for a public interest even if he invokes the interest of a particular community and mitigates the risk that in some cases a valid objection might not be raised by those entitled to do so. As such he acts as a safety net. Finally, the IO notes that his policy is not to file an objection when there is "a single established institution" that could do so. In the present case there is no such single institution. OTCA, in particular, could not validly have filed an objection because it is not aimed at representing the interests of the Amazon region, but at realizing the economic interest of its Member States within that region.

(c) *The Determination of the Expert*

32. In light of the Expert's conclusions on the merits of the Objection (Section III below), an analysis of the challenge to the IO's independence could be moot. However, the issues raised by the Applicant in this connection have been amply debated by the Parties and raise important questions of principle for the gTLD dispute resolution process. The Expert therefore deems it appropriate to address them.

(i) The Expert's power to decide the challenge

33. The Parties' arguments raise, as a preliminary matter, the issue whether it falls within the Expert's mandate to address the existence of the IO's alleged conflict of interest and, in the event, to draw the consequences of a finding that a conflict exists.
34. Both the Applicant and the IO concur that the Expert has authority to decide a challenge to the IO's independence.

35. The Expert shares this view.
36. As noted by the Parties, there is no rule explicitly dealing with the power to decide on challenges to the independence of the IO, and in particular vesting it on the Expert. Such a power is not conferred on the Expert by the Rules, Article 11(4) of which deals only with challenges to the independence of the expert panel, nor by the Objection Procedures or the Procedure, the latter of which defines the expert determination as “*the decision on the merits of the Objection*” (Article 2(d)).
37. Nonetheless, as noted by the Applicant, whether the IO has exceeded his role is a serious issue that can impact on the decision on an objection and that must be capable of being decided. This is all the more so because Section 3.4.6 of the Objection Procedures stipulates that expert determinations will be accepted by ICANN, thus in essence making them final.³ The power to decide a challenge to the IO would therefore seem to inure to the Expert’s inherent powers.
38. The issue is even less problematic if, as acknowledged by the Parties, the question of the IO’s independence can be characterized as pertaining to the IO’s standing. Indeed, it is indisputably within the Expert’s powers to rule on the standing requirements of objectors (Objection Procedures, Section 3.2.2). There is no reason to hold that this does not hold true also for the standing of the IO.

(ii) The merits of the challenge to the IO

39. It being accepted that the Expert has jurisdiction to deal with a challenge to the IO’s independence, the next question debated by the Parties that needs to be addressed is whether, as contended by the Applicant, the IO may only file objections on behalf of the community consisting of “*the public who uses the global internet*” or whether, instead, he is entitled to object on behalf of, or at least in the interest of, more strictly defined groups or communities.
40. This issue is preliminary to the one of conflict of interest. In the present case, even on the IO’s admission, the Objection relates not to the interests of the internet public but to those of a particular group of individuals or entities, which will be referred to here as the “**Amazon Community**” with an expression used also by the Parties⁴. Accepting the Applicant’s preliminary arguments would therefore entail that the IO would lack standing altogether, so that the conflict issue would not even have reason to be raised.
41. The Applicant relies on a strict reading of the statement in Section 3.2.5 of the Objection Procedures that the IO “*does not act on behalf of any particular persons or interests, but acts solely in the best interests of the public who use the internet*”.

³ Section 3.4.6. of the AGB reads as follows: “*The findings of the panel will be considered an expert determination and advice that ICANN will accept within the dispute resolution process*”.

⁴ This definition leaves unprejudiced whether the Amazon Community is a community within the meaning of the substantive standards for the sustainability of a community objection under Section 3.5.4 of the Objection Procedures. This issue is addressed in Section III below.

42. In the Expert's opinion such a formalistic interpretation would result in an unduly restrictive conception of the IO's role. Indeed, there is merit in the IO's position that the internet community is not clearly delineated (and perhaps even, in his words, "*hypothetical*"). This being so, the Applicant's position would entail that the IO's objections would never meet the clear delineation test. What is more, since the internet community is somewhat amorphous, if the IO's standing to object were limited to applications affecting the interests of that community his role would be seriously curtailed, because few applications would qualify as such.
43. The language of Section 3.2.5 of the Objection Procedures allows a more constructive interpretation. The statement that the IO's role is to file objections when "*no objection has been filed*" can be construed in the sense that his role is to raise objections in situations where, for whatever reason, no objection will be forthcoming, even if the application is "*highly objectionable*". This could occur, for instance, if there is nobody in a position to represent the community or if those who could raise the objection are unwilling to do so for fear of negative repercussions, lack of financial means and so on. Likewise, the statement that the IO "*does not act on behalf of any particular person or entities*" can be understood as permitting the IO to raise an objection in situations where, while not technically acting "*on behalf*" of anybody (in the sense that nobody has given him a mandate to act or would even want him to act), he takes into account what can be considered the interests of a given community that would be prejudiced by an application.
44. The conclusion must therefore be that the Objections' admissibility is not affected by the fact that it concerns interests possibly coinciding with those of the Amazon Community, rather than those of the broader internet community.
45. In light of this conclusion and of the asserted coincidence between the interests of the Amazon Community defended by the Objections and those of the States with which the IO has professional relations, the issue of conflict of interest raised by the Applicant becomes relevant.
46. On the subject of the IO's conflicts of interest Section 3.2.5 of the Objection Procedures requires the IO to be and to remain independent and unaffiliated "*with any of the gTLD applicants*". In this connection, it points to the "*various rules of ethics for judges and international arbitrators*" as models to assess independence. It is silent, instead, on the possible conflicts arising from the IO's relations with the persons or entities whose interests he may be deemed to further by means of a given objection.
47. This silence could be explained by the fact that the Objection Procedures deal with the IO's independence in relation to his selection process, which occurs when the potential objectors are not yet identified and possibly even identifiable. It is therefore not conclusive. Although the IO is not in the same position as a judge or an arbitrator, the requirement that he be independent of one of the parties with an interest in the outcome of the proceedings (the applicant) seems to militate in favor of imposing the same requirement with respect to the other interested party (the group in whose purported interest the objection is filed). The IO's acceptance that

the Expert has jurisdiction to examine the challenge implies an acknowledgement on his part that a conflict with parties standing to benefit from his Objection is potentially fatal to the Objection.

48. The Expert has difficulty accepting the IO's assertion that a finding of conflict in circumstances such as those of the present case would preclude anybody with "*a normal average social life*" from serving as the IO. The question is not whether the existence of special ties with certain persons or entities or categories of entities (which anybody will inevitably have) prevents a person from being appointed IO.⁵ Rather, it is whether the existence of such ties becomes problematic in the event that the IO raises an objection that can be correlated to the interests of those with whom the ties exist.
49. The Applicant does have a point when it contests that the IO's professional ties at issue here do not fall within the notion of normal average social life. Such a definition does not sit well with the IO's representation of two sovereign States in international judicial proceedings.
50. In any event, if regard must be had to the standards applicable to judges and arbitrators (as predicated by Section 3.2.5 of the Objection Procedures), the relevant perspective in international arbitration nowadays is an objective one. In the words of the *IBA Guidelines on Conflicts of Interest in International Arbitration* (General Standard 2(c)), it is that of "*a reasonable and informed third party*", whilst the ICC Rules of Arbitration refer to independence "*in the eyes of the parties*" (Article 11.2). By such standards, the IO's ties to two prominent members of the Amazon Community could give rise to a presumption of conflict in this case, completely regardless of whether, in filing the Objection, the IO acted "*on behalf*" of his clients, as contended but in no way substantiated by the Applicant.
51. There is one argument that could be advanced to refute the allegation of conflict of interest. It has to do with the absence of any indication that the two Governments "*on whose behalf*" he is alleged to be acting could not have filed an objection themselves (§ 91 ff. below) and would therefore have had to rely only on the IO to do it for them. In these conditions, the lack of initiative on the part of those Governments could denote that they had no interest in the Objections and that therefore the IO's action was prompted by other considerations. In the view of the Expert, however, such an argument does not carry sufficient weight. The decision on the existence of a conflict of interest cannot be made to depend on speculations as to the reasons why an objection was made by the IO rather than by the entities that could in principle stand to benefit from them.
52. Likewise, the Expert does not believe that the conflicts between the IO and the potential beneficiaries of an objection should be assessed differently from those with applicants. Admittedly, the practical relevance of the two types of conflicts

⁵ The Applicant does not suggest that the IO should not have accepted his role at the outset because of ties of that kind.

could be different.⁶ Yet, the Expert considers it paramount for the confidence in the gTLD dispute resolution process that any decision on the IO's independence be taken on purely objective criteria and bearing in mind the need to ensure the perception of complete neutrality and impartiality of the office of the IO.

53. The Expert is of the view that, objectively considered, the links between the IO and two major representatives of the Amazon Community lead to justifiable doubts as to his independence in the eyes of the Applicant and of the broader public. Given the importance of ensuring the perception of neutrality, independence and impartiality of the office of the IO and of the entire gTLD dispute resolution process, the Expert finds that the Applicant's challenge to the independence of the IO must therefore be upheld.

III. THE MERITS OF THE OBJECTION

54. The Objection Procedures do not address the consequences of an upholding of a challenge to the independence of the IO. In particular, they do not provide that, upon a finding of a conflict of interest of the IO, the IO loses standing or that another IO must be appointed for the specific case, as suggested by the Applicant; nor do they provide for any other solution. If the consequence of a finding of lack of independence were a loss of standing by the IO, any consideration on the merits of the challenge would be moot. However, given the silence of the Objection Procedures and the resulting uncertainty on the consequences of the finding that the IO lacks the requisite independence in this case, the Expert considers it appropriate to deal also with the merits of the Objections and to decide whether they would deserve to be upheld, regardless of the IO's standing.
55. In accordance with Section 3.5.4 of the Objection Procedures, objections can be sustained if the Expert ascertains the existence of substantial opposition from a significant portion of the community to which the string may be targeted. This provision applies also to objections filed by the IO.
56. For a showing of such opposition the IO must prove that:
- (i) the community invoked by him is clearly delineated;
 - (ii) there is substantial community opposition to the Applications;
 - (iii) there is a strong association between the community invoked by the IO and the Strings;
 - (iv) the Applications create a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the

⁶ Conflicts of interest of the IO with respect to an applicant entail a risk that no objection would be raised, despite the application's potential adverse impact on general interests. On the other hand, a conflict with respect to a party standing to benefit from an objection might lead to an objection being filed by the IO where none would otherwise be filed. However, the objection would still have to be assessed on its merits by a third party (the expert panel).

Strings may be explicitly or implicitly targeted.

57. The four criteria will be addressed here in the order in which they have been addressed by the IO in the Objections.

III.A Targeting: the association between the community invoked by the IO and the Strings

(a) The position of the IO

58. According to the IO, although the Applications have not been framed as community-based, since they only target the Applicant and its subsidiaries, the Strings can be implicitly linked to a specific community different from the Applicant. The test to assess the Applications' implicit target is not limited to the intended use of the Strings by the Applicant, but is primarily concerned with the expectation of the average internet users and with their perceptions of the Strings and their associations.
59. The Applications target also "*the South-American region with the same English name around the Amazon River*". The identity between the Applicant's business name and brand and the English word for the South American river is not coincidental. The Applicant itself intentionally links the Strings to the Amazon river and region in its communications. The correlation between the Strings and the Amazon river and region is corroborated by the consistent use of the term "*Amazon*" to describe and characterize the Amazon region and the community. The term "*Amazon region*" is used by the 1978 Treaty for Amazon Cooperation and by UNESCO, which has included parts of the Amazon region in the World Heritage List under the 1972 Convention concerning the Protection of the World Cultural and Natural Heritage. The denomination is used also by the World Wildlife Fund.
60. In the eyes of the IO, all the foregoing demonstrates a strong association between the Amazon region and its community and the Strings.

(b) The position of the Applicant

61. The Applicant premises its argument on this point on the consideration that under the AGB only one community is targeted by an application, since the AGB requires more than a mere nexus between the applied-for string and the asserted community; it requires a "*strong association*". The IO has failed to show that the Strings target the public who use the global internet, if this is the only community that the IO is entitled to represent, nor has he proved that the Strings target any other community.
62. According to the Applicant, it is not possible to target someone accidentally, since targeting implies precision and looks to the intent of the party alleged to be doing the targeting. The Application makes no mention of the community invoked by the IO and is "*clearly targeted*" at the Applicant's brand. The IO's argument on implicit targeting is too simplistic because it ignores the Applicant's strong brand recognition

in the eyes of the public who use the global internet and holds that the Applicant will forever target Amazonia with its present and future services. The argument that the targeting test is based on the existence of a certain link or possible association by the public based on string similarity has been rejected by ICANN, which acknowledges that brand names and other strings that happen to relate to some geographic entities may also have legitimate unrelated uses. The Applicant “*clearly has ‘legitimate uses’*” for its marks, global brand and company name as a gTLD string, including in local languages, which it has used since 1994. The Applicant cites the example of the “.patagonia” gTLD, that was found not to target the community of Patagonia.

(c) *The Determination of the Expert*

63. In the Objection Procedures (Section 3.5.4) the term “*targeting*” is used in relation to the third substantive test that must be satisfied by a community objection, i.e. the one of strong association between the invoked community and the applied-for string.
64. The Objection Procedures point to the following non-exclusive factors that can be balanced to indicate a strong association between a community and the applied-for-string: (i) statements contained in the application; (ii) other public statements by the applicant; (iii) associations by the public.
65. The reason for dealing with this test at the outset in the present case is that, prior to establishing whether there is a strong association between the Strings and a community, the community having the purportedly strong association must be identified. As seen above, in the context of the challenge to the IO’s independence the Parties debated the IO’s standing to file an objection in the interest of a community other than the internet community. In relation to the substantive test, the dispute between the Parties on the identification of the community is framed in terms of whether the community in whose interest an objection is brought can differ from the one “*targeted*” by the applicant.
66. The Applicant contends that consideration can only be given to the community “*explicitly*” targeted by the Applications, which in this case is the one revolving around the business activities of the Applicant’s group and the Amazon brand. No relevance can be given to the Amazon Community which is, instead, the focus of the Objections. The IO, for his part, adopts a broader approach, which relies on the community “*implicitly*” targeted by the Applications, which in this case is the Amazon Community.
67. The Objection Procedures do not bear out the Applicant’s interpretation. Although the standard of strong association is dealt with under the heading “*targeting*”, the “*target*” of the objection is not considered in Section 3.5.4. This provision requires proof that the applied-for gTLD be strongly associated with the community “*represented by the objector*”. The focus is therefore on the community that the objector, and in this case the IO, considers to be affected, or prejudiced, by an application (and, in this sense, targeted) and on whose behalf or interest he acts. It

is not relevant whether that community is the one to which the applicant intends to direct its gTLD. The IO is persuasive in his argument that the association between a community and a string depends primarily on the expectations and perceptions of the average internet user.

68. The Applicant implies that only one community can be “*targeted*” by a gTLD and an application. The Expert finds no support in the Objection Procedures for this position, which is actually counterintuitive. If the term “*targeted*” is properly understood as meaning “*affected*”, there is no reason why there cannot be more than one community affected by a given application for a gTLD. A gTLD can well have an impact on a broader range of persons or entities than the one envisaged by the applicant. The requirement invoked by the Applicant that the association between the community and the string be “*strong*” is not conclusive, since more than one of a string’s possible multiple associations can be strong.
69. The Applicant’s argument also risks upsetting the functioning of the gTLD objection procedure, which is aimed at protecting interests other than those of gTLD applicants. If applicants were in a position to render objections virtually impossible, in practice by determining themselves the community on whose behalf objections can be brought, in most cases no objection would be possible.
70. In light of this, the Applicant’s emphasis on the intent of the party alleged to be doing the targeting and on the impossibility to target something accidentally is misplaced, because it relies on a notion that is not relevant for the strong association test. For the same reason, the insistence on the Applicant’s “*legitimate uses*” for the applied-for gTLDs and on its “*strong brand recognition in the eyes of the public*” is beside the point in this context.
71. In the case at hand, therefore, the point is not the undisputed link between the Strings and the Amazon company name and brand, which quite probably exists in the perception of a large number of internet users. Rather, the point is whether there may also exist an at least equally strong association between the Strings and other communities affected by the Application, and in particular the one whose interests the IO purports to further.
72. The answer can only be affirmative. The Strings coincide with the name of the Amazon River and thereby entail an obvious association with the Amazon Community. Leaving aside for the moment whether there is such a community (which will be addressed in the following subsection III.B), there is no doubt that not only there exists an association between the Strings and the alleged Amazon Community, but that such association is “*strong*” in the perception of internet users.
73. This is borne out by the IO’s evidence. As a matter of fact, not even the Applicant seems to dispute this, since its arguments go only to the preliminary points of whether the Amazon Community can be relevant for this test and of whether it exists at all, which is the subject of the next substantive test to be addressed.
74. The Expert is thus satisfied that the IO’s Objection meets the test of “*strong association*” between the Strings and the community in whose interest it is filed.

III.B The clear delineation of the community invoked by the IO

(a) *The position of the IO*

75. The IO recalls that the AGB does not define the term “community”. However, in requiring that the community expressing opposition be “clearly delineated” it lists certain non-limited factors, such as the recognition at local or global level, the level of formal boundaries and length of existence, the global distribution or the size of the community. The term community refers to a group of people living in the same place or having some characteristic in common, such as a territory, a region or place of residence, a language, a religion, an activity or values, interests or goals.
76. One of the relevant criteria is whether the group of individuals or entities can be delineated from others and whether members of the community are delineated from internet users in general and whether the community is recognized amongst its members and by the general public at global or local level. The IO quotes the description of the World Wildlife Fund which points to the Amazon’s vast geographic expanse that embraces the territories of nine countries, to the features of its landscape in terms of variety of species, extension of the forests and in particular tropical ones, and the number and length of rivers, to the variety of ethnic and indigenous groups and to the link between the health of the region and the health of the planet.
77. The Amazon community can be clearly delineated from the general public by its strong link with the Amazon region. The community does not only share the geographic region. It has more far-reaching common interests and ties, including economic ones and those relating to the respect of the environment and the preservation of the indigenous culture and of the archeological and ethnological wealth. These common interests are recognized and protected through OTCA by the States which share the region and a common understanding of the specificities of the Amazon community and have put in place a process of cooperation, *inter alia* to achieve sustainable development.
78. The most interested States that share the Amazon territory have thus recognized the specificities of the region, the interests of the community and their particular needs. Their cooperation shows that the community is clearly recognized as a whole, irrespective of the divisions of sovereign States. All this leads to the conclusion that the community is clearly delineated.

(b) *The position of the Applicant*

79. The Applicant points to Section 4.2.3 of the AGB which states the need for “very stringent” requirements for a clearly delineated community and that community implies “more of cohesion than mere commonality of interest”. It then acknowledges that, if the IO may only represent the public who use the global internet, that class meets the requirements of clear delineation. If, on the other hand, it is accepted that the IO may act on behalf of particular persons or entities, then the IO has not shown that the community he claims to be acting for has the required cohesiveness to be

considered as a community. The asserted community comprises eight separate and sovereign countries with their own geography, economy, history, population and bio-diversities, which entail a diversity that rules out the idea of cohesiveness. Even the existence of common interests, ties and characteristics, assuming it could be proved factually, does not establish a community under the AGB. In any event, the alleged community is not clearly delineated because it lacks formal boundaries, which is a strict requirement under the AGB. Specific and strong links with a region are insufficient to establish clear delineation.

(c) *The Determination of the Expert*

80. As discussed above, the community whose clear delineation must be considered here is the Amazon Community, and not that of internet users in general, as contended by the Applicant.
81. The Expert recalls that, in accordance with Section 3.5.4 of the Objection Procedures, the factors that can be balanced to determine whether the invoked community is clearly delineated include, but are not limited to, (i) the level of the community's public recognition, (ii) the level of formal boundaries around it and what persons or entities are considered to form it, (iii) the length of time it has been in existence, (iv) its global distribution and (v) the number of people or entities that make it up.
82. The Expert considers that some of the factors highlighted by the IO could indicate the existence of an Amazon Community. The economic interests and ties within the Amazon region, and the community that can be considered related to it, are significant. More pertinently, the Amazon Community is characterized by its importance in terms of wealth of culture, archeology, ethnology and environment, as well as by its impact on the environment of the world as a whole. It therefore has its own specificity and interests, and its interests to a certain extent coincide with those of the broader public, in particular as concerns the environment. In general terms it can also be seen to be recognized as a community by outsiders. Moreover, the Amazon Community unquestionably has a very large population and has been in existence for a long time.
83. On the other hand, as underlined by the Applicant, the purported community is composed of several different countries and exhibits within itself a considerable diversity in terms of geography, economy, population and bio-diversity. This could rule out the idea of cohesiveness, that arguably lies at the core of the notion of community and might imply something more than a mere commonality of interests. Furthermore, the IO has not focused particularly on the existence of formal barriers, which is one of the possible relevant criteria for the clear delineation test.
84. The record is therefore mixed and doubts could be entertained as to whether the clear delineation criterion is satisfied. However, in light of the conclusions on the other tests, there is no need to reach a conclusive finding on clear delineation.

III.C Whether there is a substantial opposition to the Strings within the community

(a) *The position of the IO*

85. The IO avers that the mere numerical criterion was not the intent of the drafters of the AGB, so that the Expert is not limited to a simple comparison between the number of those having expressed opposition and the overall size of the community. The word “*substantial*” can also be used to designate something of considerable importance or worth. In addition to the number of oppositions, regard must be had to their material content. Particular importance should be paid in that regard to the comments of the Governments in the Early Warning Procedure.
86. The broad meaning of the term substantial opposition is confirmed by the fact that the possibility to file community objections was granted to the IO, who has pointed out that he will abstain from filing an opposition if a single established institution is better placed to represent the community concerned. This shows that the IO’s role is to defend the public interest by acting on behalf of the public for the defense of rights and interests that lack an institution which obviously could represent it. The IO also refers to Section 3.2.5 of the Objection Procedures, which makes the IO’s objection conditional upon at least one comment in opposition having been made.
87. The IO acknowledges that the Application for the “.Amazon” string has triggered “*only a small number of comments*” and that those for the other two Strings have triggered “*no direct comments*”. This can be explained by the limited awareness of members of the community of the new gTLD program and, in the case of the Strings in the Japanese and Chinese languages, by their language. This in itself is not enough to disqualify the Objection. Indeed, it is an essential part of the IO’s mission to protect the users of the internet who are less aware of the ICANN Program and of its impact on their rights and interests. Particular importance must be accorded to the Early Warning issued by the Brazilian and Peruvian members of the GAC⁷, given that Brazil shares more than half of the Amazon region and Peru is particularly interested in the protection and promotion of the interests and rights of the Amazon Community. In support of its position on the weight of the opposition the IO points also to the endorsement by Bolivia, Ecuador and Guayana. He further notes that the Application has not received the support of any government in the region.

(b) *The position of the Applicant*

88. For the Applicant, the IO has not proved substantial opposition within “*his asserted community*” or the larger one of the internet public. In its words, “[t]here are many significant voices who could speak out in the event of genuine community opposition

⁷ The IO acknowledged that the Early Warning related only to the “.Amazon” string, but noted that it is equally relevant for the other two Strings. The concerns expressed by the Brazilian GAC member were expressed to relate also “*to possible future or existing applications in other languages, including IDN applications*”.

to the gTLDs before any opposition could be said to be ‘substantial’”. The Applicant points to OTCA,⁸ of which eight States are members and four are on ICANN’s Governmental Advisory Committee, to the millions of people who live and do business in the region, to the many environmental groups working to preserve the region’s environment and to the representatives of its indigenous peoples. The Applicant notes that, despite having knowledge of the process and the means to object, none of these potential opponents felt the need to file an objection, or even to comment or register concern regarding the Applications in the Applications Comments Forum or to oppose them in ICANN’s At-Large Advisory Committee (“ALAC”), including the Regional At-Large Organization (“RALO”) for Latin America and the Caribbean Islands. The Early Warning filed by the Governments of Brazil and Peru in November 2012, which was only directed at the Application for “.Amazon”, only requested that the Application “*be included in the GAC early warning process*”, which is not an objection. According to Section 1.1.2.4 of the AGB, it is up to governments to file an objection if they remain opposed to an application. In response to the early warning, and before the lapse of the objection period, the Applicant established contacts with the Governments involved, who have preferred to continue negotiations rather than file objections. This means that the Governments “*believe this objection does not have to succeed to protect their interests*”.

(c) *The Determination of the Expert*

89. According to the Objection Procedures (Section 3.5.4) the factors that can be balanced to establish substantial opposition to the application within the community purported to be represented by an objector include (i) the number of expressions of opposition relative to the composition of the community, (ii) the representative nature of the entities expressing opposition, (iii) their stature and weight, (iv) their distribution or diversity, (v) their historical defense of the community in other contexts and (vi) the costs incurred by the objector to convey opposition.
90. As evidence of substantial opposition to the Applications the IO relies essentially on the position expressed by the Governments of Brazil and Peru in the Early Warning Procedure. The two Governments undoubtedly have significant stature and weight within the Amazon Community. However, as noted by the Applicant, beyond their expressions of opposition in the Early Warning Procedure, the two Governments did not voice disapproval of the initiative in other forms. As a matter of fact, they engaged in discussions with the Applicant.
91. This is not without significance. Indeed, had the two Governments seriously intended to oppose the Application, they would presumably have done so directly. There is no reason to believe that they could have been deterred from doing so by the fear of negative consequences or by the costs of filing an objection. The

⁸ As mentioned in the discussion on the Applicant’s challenge, the Applicant is of the view that OTCA does have the power to object to the Application.

Applicant is persuasive in arguing that the Brazilian and Peruvian Governments' attitude is an indication of their belief that their interests can be protected even if the Objection does not succeed. Indeed, in assessing the substantial nature of the opposition to an objection regard must be had not only to the weight and authority of those expressing it, but also to the forcefulness of their opposition.

92. The IO acknowledges that the Applications triggered only a small number of comments, and that actually the Applications for the Chinese and Japanese translations of "Amazon" triggered none at all. He explains this with the alleged limited awareness of the Applications within the Amazon Community. This is not entirely convincing.
93. It is not necessary here to enter into the discussion between the Parties on whether, in strict legal terms, the OTCA would have had the power to file an Objection, or to consider whether, albeit lacking formal powers, it could nonetheless have made its voice heard in a debate on the Applications' potential negative consequences. However, it is difficult to ignore the argument that there were many other parties defending interests potentially affected by the Applications (environmental groups, representatives of the indigenous populations and so on) that could have voiced some form of opposition to the Applications, had they been seriously concerned about the consequences. Particularly given the standing of at least some of those organizations, it is implausible that none of them would have been aware of the Applications.
94. These considerations lead the Expert to find that the IO has failed to make a showing of substantial opposition to the Applications within the purported Amazon Community.

III.D Whether the Applications create a likelihood of material detriment to a significant portion of the Amazon community

(a) The position of the IO

95. The IO underscores that the Applications are aimed exclusively at providing "*a unique and dedicated platform for Amazon while simultaneously protecting the integrity of its brand and reputation*" and that the only eligible registrants are the Applicant and its subsidiaries. If the Applications were upheld, the Strings would become closed brand gTLDs which the Applicant intends to operate without taking into account the Amazon Community's particular needs and interests. Domain names in the gTLDs in question will be "*used to support the business goals of Amazon*" and will not be offered to third parties, including the Governments and members of the targeted community.
96. This entails a risk of misappropriation, because granting exclusive rights on the Strings to a private company would prevent the use of the domains for public interest purposes related to the protection, promotion and awareness-raising on issues related to the Amazon region. The "*confiscation*" of the entire name space within the Strings by a single corporate entity would deprive the members of the

community and owning its cultural heritage of the possibility of obtaining the Strings and of benefitting from the reputation linked to the name of their community and region. This would lead to a disappearance of the link between the term Amazon and the Amazon region *“with far reaching consequences for the region and its population”*, because the users of the global internet *“will probably link the [Strings] exclusively to the Applicant and its corporate entities”*. Furthermore, the global internet users’ awareness of the existence and importance of the region will suffer, causing harm to the core issues of the region, and ultimately to the health of the planet which is clearly linked to the health of the Amazon.

97. The IO concludes that the launch of closed-brand gTLDs as foreseen in the Applications is very likely to interfere with the legitimate interests of the Amazon Community and to cause material harm to it and to the public who use the global internet.

(b) The position of the Applicant

98. The Applicant premises its discussion of this point by underscoring the self-standing nature of the criterion of detriment. It also notes that ICANN amended the AGB to include the qualification that the detriment should be material and to the community, and not just to the objector. It also points to ICANN’s statement that there is a *“presumption”* in favor of granting new gTLDs to eligible applicants. The Applicant contests the relevance of the IO’s argument that, in case of success of the Applications, *“the peoples and entities being part of the Amazon community”* would be unable to obtain the Strings, underlining that the AGB makes it clear that *“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”*. Moreover, the detriment to the community would be the same even if the Applications were rejected, because it would still be unable to use the Strings, since neither it nor anyone else applied for them. In relation to the Chinese and Japanese translations of “Amazon” the Applicant adds that there is no evidence that the asserted community would want to use the Chinese or Japanese domain names. The Applicant also underscores that it has used “Amazon” as a trademark in many countries, including the ones of the Amazon region, for many years with no evidence of reduced awareness of, or confusion with, the Amazon region. Indeed, even the countries in the Amazon region have granted Amazon trademark registrations or lower-level domain names for “Amazon”. The Applicant highlights the absence of negative impact of the Amazon brand (described as *“one of the world’s most recognized and trusted brands”*) on the Amazon region since its introduction in 1994. Since then, only the Applicant and its group of companies have used “Amazon.com” and other “Amazon” domain names and trademarks, including in Latin America. There is no evidence that this has been detrimental to the Amazon region, nor that the elimination of the *“inconsequential ‘.com”* would change the perception of users of the global internet in such a way that Amazonia will be removed from public consciousness and the region and the world will suffer the dire consequences presented by the IO.

(c) *The Determination of the Expert*

99. The Objection Procedures list the following factors that can be taken into account to assess whether the Application is likely to create material detriment to the rights and legitimate interests of a significant proportion of the community: (i) the nature and extent of the damage to the community's reputation; (ii) evidence that the applicant does not act, or intend to act, in accordance with the interests of the community; (iii) interference with core activities of the community; (iv) nature and extent of the concrete or economic damages to the community and (v) level of certainty of alleged detrimental outcomes.
100. There is no dispute that the Applicant intends to use the Strings to operate closed domains. Consequently, no one, including the Amazon Community or anyone with coinciding interests, will be allowed to use the Strings. However, as the Applicant remarks, even if the Objections were sustained the Amazon Community would still not be entitled to use the Strings, since it did not apply for them. The Expert considers that, in and of itself, the failure of the Amazon Community, or of anybody sharing its interests, to apply for the Strings can be regarded as an indication that the inability to use the Strings is not crucial to the protection of the Amazon Community's interests.
101. In any event, the Amazon Community's inability to use the Strings is not an indication of detriment, and even less of material detriment. The Objection Procedures are clear in specifying that "*[a]n allegation of detriment that consists only of the applicant being delegated the string instead of the objector will not be sufficient for a filing of material detriment*" (Section 3.5.4).
102. Furthermore, the IO does not explain how the impossibility for the Amazon Community or entities or persons connected to it to use the Strings and their use by the Applicant would lead to a loss of the link between the term Amazon and the Amazon region. On the other hand, as the Applicant points out, "Amazon" has been used as a brand, trademark and domain name for nearly two decades also in the States arguably forming part of the Amazon Community. It is even registered in those States. There is no evidence, or even allegation, that this has caused any harm to the Amazon Community's interests, or has led to a loss of reputation linked to the name of the region or community or to any other form of damage.
103. As further noted by the Applicant, it is unlikely that the loss of the ".com" after "Amazon" will change matters. More generally, there is no evidence either that internet users will be incapable of appreciating the difference between the Amazon group and its activities and the Amazon River and the Amazon Community, or that Amazonia and its specificities and importance for the world will be removed from public consciousness, with the dire consequences emphasized by the IO. Were a dedicated gTLD considered essential for the interests of the Amazon Community, other equally evocative strings would presumably be available. ".Amazonia" springs to mind.
104. Indirect confirmation of the absence of a risk of detriment to the interests of the

Amazon Community comes also from the lack of serious opposition to the Application by those that might be considered to have the Community's interests at heart, which has already been underscored in Section III.C above. Of course, opposition to an application and detriment are considered under two different tests in the Objection Procedures. Opposition is not necessarily evidence of detriment, just as non-opposition is not conclusive evidence of lack of detriment. However, in this case very significant potential consequences are alleged and there are many entities that could have expressed opposition had their interests been threatened. The fact that none of them was prompted to raise any objection, whether formally or at least informally, can be taken as a significant indication of lack of likelihood of detriment. It further corroborates the position that the use by the Applicant of the Strings for closed gTLDs cannot impair the interests of the Amazon Community

105. In these conditions the Expert holds that the IO has failed to satisfy its burden of proof in relation to the material detriment requirement.

IV. CONCLUSION

106. The Expert finds that he has jurisdiction to rule on the challenge to the IO's independence and that, given the need to guarantee the perception of neutrality of the gTDL dispute resolution system, the challenge must be upheld.
107. On the merits of the Objections the Expert has found that the IO has sufficiently proven the strong relation between the Strings and the Amazon Community. Instead, the IO has not shown that there is substantial opposition to the Application within that community or that the Application would lead to substantial detriment. These findings make it unnecessary to decide on the clear delineation test.
108. Since pursuant to Section 3.5.4 of the Objection Procedures all four tests must be met for a community objection to prevail, the Objections must be rejected.

V. DECISION

109. For the reasons set out above and in accordance with Art. 21(d) of the Procedure, the Panel hereby renders the following Expert Determination:
- (i) The Independent Objector's Objections are dismissed and therefore the Applicant is the prevailing party in all consolidated cases;
 - (ii) The Applicant AMAZON EU S.à.r.l is entitled to the refund of the advance payment of costs in all consolidated cases by the Centre pursuant to Article 14(e) of the Procedure.

Place of the Expertise: Paris

January 27, 2014

The Expert

A handwritten signature in blue ink, appearing to be 'Luca G. Radicati di Brozolo', written in a cursive style.

Professor Luca G. Radicati di Brozolo