

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

CASE No. EXP/400/ICANN/17

PROF. ALAIN PELLET, INDEPENDENT OBJECTOR

(FRANCE)

vs/

SPRING REGISTRY LIMITED

(GIBRALTAR)

(Consolidated with Cases No.

EXP/395/ICANN/12

PROF. ALAIN PELLET, INDEPENDENT OBJECTOR (FRANCE) vs/ CORN LAKE, LLC (USA)  
and

EXP/399/ICANN/16

PROF. ALAIN PELLET, INDEPENDENT OBJECTOR (FRANCE) vs/ EXCELLENT FIRST  
LIMITED (CAYMAN ISLANDS))

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

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

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

**EXP/400/ICANN/17  
(consolidated with EXP/395/ICANN/12 and EXP/399/ICANN16)**

BETWEEN

**PROF. ALAIN PELLET, INDEPENDENT OBJECTOR (France)**

Objector

AND

**SPRING REGISTRY LIMITED (Gibraltar)**

Applicant

**EXPERT DETERMINATION**

BEFORE

Mr. Tim Portwood

Expert Panel

TABLE OF CONTENTS

- 1. The Parties ..... 5
- 2. The Expert Panel ..... 6
- 3. Summary of the Expert Determination Proceeding ..... 7
- 4. Issues to be Determined by the Expert Panel..... 9
  - 4.1. IO’s Impartiality and Independence ..... 9
    - 4.1.1. IO’s Position ..... 9
    - 4.1.2. Applicant’s Position ..... 9
  - 4.2. IO’s Standing ..... 9
    - 4.2.1. IO’s Position ..... 9
    - 4.2.2. Applicant’s Position ..... 9
  - 4.3. The Community Objection ..... 9
    - 4.3.1. IO’s Position ..... 10
    - 4.3.2. Applicant’s Position ..... 17
- 5. Expert Panel’s Determination ..... 23
  - 5.1. IO’s Independence and Impartiality ..... 23
  - 5.2. IO’s Standing ..... 23
  - 5.3. The Community Objection ..... 24
    - 5.3.1. The Community Test ..... 24
    - 5.3.2. The Targeting Test ..... 26
    - 5.3.3. The Substantial Opposition Test ..... 26
    - 5.3.4. The Detriment Test ..... 28
    - 5.3.5. Conclusion ..... 31
  - 5.4. Costs of the Expert Determination ..... 31
  - 5.5. Expert Panel’s Determination ..... 32

## TABLE OF ABBREVIATIONS

Abbreviation	Definition
ACC	Association of Corporate Counsel
Applicant	Spring Registry Limited
Applicant Additional Written Statement	The Additional Written Statement submitted by Applicant on 6 September 2013
Application	The new gTLD application by Applicant “.Charity”, application ID: 1-1241-87032
Centre	The International Centre for Expertise of the International Chamber of Commerce
Community Objection	An objection to a gTLD application falling with the definition of “Community Objection” in section 3.2.1 of Module 3 of the Guidebook (and also contained in Article 2(e)(iv) of the Procedure)
Costs	As per the meaning set out in Article 14(a) of the Procedure
Expert	Mr. Tim Portwood
Expert Panel	The expert panel comprising the Expert
Guidebook	The gTLD Applicant Guidebook issued by ICANN (version 2012-04-06)
ICC Practice Note	The ICC Practice Note on the Administration of Cases under the Procedure
IO or Objector	The Independent Objector (Prof. Alain Pellet)

IO Additional Written Statement	The Additional Written Statement submitted by IO on 22 August 2013
Objection	The Objection Form dated 12 March 2013 transmitted by IO to ICANN on 13 March 2013 by email
Parties	The IO and the Applicant
Party	The IO or the Applicant as the case may be
Procedure	The New gTLD Dispute Resolution Procedure issued by ICANN as the Attachment to Module 3 of the Guidebook
Response	The Response (as per the meaning set out in Article 11(b) of the Procedure) submitted by Applicant on 5 June 2010
Rules	The Rules for Expertise of the International Chamber of Commerce (in force as from 1 January 2003)

**1. THE PARTIES**

1. IO:

PROF. ALAIN PELLET, Independent Objector, an individual residing at:

16, avenue Alphonse de Neuville,  
92380 Garches,  
France.

2. IO is represented in this Expert Determination proceeding by:

Ms Héloïse Bajer-Pellet  
15, rue de la Banque,  
75002 Paris,  
France

Mr. Daniel Müller  
20, avenue du Général de Gaulle,  
78290 Croissy sur Seine,  
France

Mr. Phon van den Biesen  
VDBK Advocaten,  
De Groene Bocht,  
Keizersgracht 253,  
Amsterdam, 1016 EB,  
The Netherlands

Mr. Sam Worsworth  
Essex Court Chambers,  
24 Lincoln's Inn Fields,  
London WC2A 3EG,  
United Kingdom

3. Applicant:

SPRING REGISTRY LIMITED, a company incorporated under the laws of Gibraltar, with offices at:

Spring Registry Limited  
6A Queensway  
Gibraltar, GX11 1AA

4. Applicant is represented in this Expert Determination proceeding by:

Mr. Peter Young  
Famous Four Media Limited,  
Suite 2-4 Leisure Island Business Centre,  
Ocean Village,  
Gibraltar, GX11 1AA

2. **THE EXPERT PANEL**

5. On 4 July 2013 and pursuant to Article 3(3) of Appendix 1 to the Rules, the Chairman of the Standing Committee appointed Mr. Tim Portwood as the Expert. In accordance with Article 13 of the Procedure, the Expert is the sole member of the Expert Panel.
6. On 2 August 2013, the Centre acknowledged receipt of payment of the Parties' respective shares of the advance payment of the estimated Costs and confirmed the full constitution of the Expert Panel.
7. The Expert's contact details are as follows:

Mr. Tim Portwood  
Bredin Prat,  
130, rue du Faubourg Saint Honoré,  
75008 Paris,  
France

**3. SUMMARY OF THE EXPERT DETERMINATION PROCEEDING**

8. The present Expert Determination proceeding concerns IO's Community Objection to Applicant's application for the new gTLD ".Charity".
9. The Expert Determination is governed by and has been conducted in accordance with the Procedure and the Rules, supplemented by the ICC Practice Note.
10. IO transmitted to the Centre its Objection on 13 March 2013.
11. On 28 March 2013, the Centre informed IO that it had conducted the administrative review of the Objection pursuant to Article 9 of the Procedure and confirmed that the Objection was in compliance with Articles 5 to 8 of the Procedure and with the Rules. The Objection was therefore registered for processing under Article 9(b) of the Procedure.
12. The Centre wrote to the Parties on 12 April 2013 informing them that the Centre was considering consolidating the Objection with two other cases, namely EXP/395/ICANN/12 – a Community Objection filed by IO against an application by Corn Lake, LLC (USA) for new gTLD ".charity" – and EXP/399/ICANN/16 – Community Objection filed by IO against an application by Excellent First Limited (Cayman Islands) for a new gTLD ".慈善 (Charity)".
13. On 7 May 2013, the Centre informed the Parties that it had decided to consolidate the Objection with the two other above-referenced cases.
14. The Chairman of the Standing Committee having appointed the Expert on 4 July 2013, on 2 August 2013 the Centre confirmed to the Parties the full constitution of the Expert Panel (comprising the Expert as sole member). On the same day, the Centre forwarded the file to the Expert Panel.
15. On 2 August 2013, IO wrote to the Expert Panel requesting leave to file an Additional Written Statement.
16. On 9 August 2013, having considered the Parties' submissions, the Expert Panel wrote to the Parties informing them of its view that it would be assisted by a second round of written submissions and inviting the Parties each to submit an Additional Written Statement in accordance with the following timetable: IO to file its Additional Written



Submission on or before 22 August 2013 and Applicant to file its Additional Written Submission on or before 2 September 2013.

17. On 10 August 2013, IO wrote to the Expert Panel requesting an extension of two days to the timetable for the Additional Written Submissions.
18. On 11 August 2013, Applicant wrote to the Expert Panel stating that it had no objection to IO's requests for a 2 day extension to the timetable.
19. On 13 August 2013, the Expert Panel granted IO's request, extending the deadline for the filing of IO's Additional Written Submission to 24 August 2013 and the deadline for the filing of Applicant's Additional Written Submission to 4 September 2013.
20. On 15 August 2013, the applicant in EXP/395/ICANN/12 requested a further extension of 2 days (i.e., 6 September 2013) for the filing of its additional written statement to which IO indicated on the same day that it had no objection and that such extension would benefit all of the applicants in the consolidated cases, including the Applicant. That extension was therefore extended to Applicant.
21. On 22 August 2013, IO filed by email its Additional Written Statement.
22. On 22 August 2013, the Expert Panel acknowledged receipt of IO's Additional Written Statement and confirmed that the deadline for the filing by Applicant of its Additional Written Submission was 6 September 2013.
23. On 6 September 2013, Applicant filed by email its Additional Written Statement.
24. No hearing took place.
25. The Expert Panel submitted the draft Expert Determination to the Centre for scrutiny under Article 21(b) of the Procedure within the time limit contained in Article 21(a) of the Procedure.
26. In accordance with Article 5(a) of the Procedure, the language of the proceedings is English.
27. In accordance with Article 6(a) of the Procedure, all communications by the Parties with the Centre and the Expert Panel were submitted electronically.
28. Pursuant to Article 4(d) of the Procedure, the place of the proceedings is Paris, France.

#### **4. ISSUES TO BE DETERMINED BY THE EXPERT PANEL**

##### **4.1. IO's Impartiality and Independence**

###### ***4.1.1. IO's Position***

29. IO confirms that he is acting exclusively in the best interests of the public who use the global internet and not in accordance with what he himself might prefer or with self-interest<sup>1</sup>.

###### ***4.1.2. Applicant's Position***

30. Applicant does not contest IO's impartiality and independence.

##### **4.2. IO's Standing**

###### ***4.2.1. IO's Position***

31. IO confirms that it meets the standing requirements and other admissibility conditions in section 3.2.5 of the Guidebook.

###### ***4.2.2. Applicant's Position***

32. Applicant does not contest IO's standing and the admissibility of the Objection.

##### **4.3. The Community Objection**

33. IO's objection is a Community Objection to Applicant's Application of ".Charity" as a new gTLD.

---

<sup>1</sup> IO Additional Written Statement, para. 2.

34. The Expert Panel is therefore to determine whether there is substantial opposition to the Application from a significant portion of the community to which the gTLD string “.Charity” may be explicitly or implicitly targeted (Article 2(e)(iv) of the Procedure).
35. Under section 3.5.4 of Module 3 of the Guidebook, the Expert Panel must be satisfied that IO had proven that (i) the community invoked by IO is a clearly delineated community; (ii) community opposition to the Application is substantial; (iii) there is a strong association between the community invoked and the applied-for gTLD string (“.Charity”); and (iv) 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.

#### ***4.3.1. IO’s Position***

36. According to IO, an objector making a Community Objection must satisfy four tests under section 3.5.4 of the Guidebook. IO states these four tests as: (a) a Community test, namely that the community invoked by the objector is a clearly delineated community; (b) a Substantial opposition test, namely that community opposition to the application is substantial; (c) a Targeting test, namely that there is a strong association between the community invoked and the applied-for gTLD string; and (d) a Detriment test, namely that 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<sup>2</sup>.
37. IO argues that the four tests are met. He submits that the applied-for gTLD string “.Charity” targets the charity sector such that the Targeting test is satisfied, even though the Application has not been framed as a community based TLD for the benefit of the charity community<sup>3</sup>. IO states that the charity sector constitutes a clearly delineated community in the sense of the Guidebook, thereby fulfilling the Community test<sup>4</sup>. IO claims that the opposition to the Application is substantial, meaning that the Substantial opposition test is met<sup>5</sup>. Finally, IO pleads that the Application creates a likelihood of material detriment to the rights and legitimate interests of the charity community, fulfilling the Detriment test<sup>6</sup>.

---

<sup>2</sup> Objection, para. 7.

<sup>3</sup> Objection, para 8.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

#### 4.3.1.1. *The Community Test*

38. IO's position is that the Community test in the Guidebook does not require that the gTLD string describes a clearly delineated community (which would render the Targeting Test otiose) but that there exists a community identified by the objector comprising a group of persons clearly delineated from others including internet users in general<sup>7</sup>.
39. According to IO, the community in question is the charity sector<sup>8</sup>, comprising all charitable institutions, including those that are specifically registered or regulated in some form in the states where they operate such that they must be not for profit institutions<sup>9</sup>.
40. IO points out that the Guidebook does not provide a clear definition of the term "community". Instead, the Guidebook refers to a non-exhaustive list of factors to which the Expert Panel may refer including the recognition of the community at a local/global level, the level of formal boundaries, the length of existence, the global distribution, or the size of the community<sup>10</sup>.
41. For IO, the distinctive element of a community is the commonality of certain characteristics, whatever they might be<sup>11</sup>.
42. Referring to Evaluation question No.20 of the Guidebook, Attachment to Module 2, IO argues that a relevant criterion is whether the group of persons comprising the community can be clearly delineated from the others – including internet users in general<sup>12</sup>. Recognition of the community as such (by its members and others) is an important factor in this regard<sup>13</sup>.

---

<sup>7</sup> Objection, para. 16; IO Additional Written Submission, paras 3 to 12.

<sup>8</sup> Objection, para. 19.

<sup>9</sup> Objection, para. 20.

<sup>10</sup> Objection, para. 15 referencing section 3.5.4 of the Guidebook.

<sup>11</sup> Objection, para. 16.

<sup>12</sup> Objection, para. 18.

<sup>13</sup> Ibid.

43. IO points out that charities and charitable organizations (i.e., the charity sector) are included in the “‘charity-based enterprises’, the providers of ‘online charity services’ and ‘charity information and donation services’” explicitly targeted by the Applicant<sup>14</sup>.
44. The common characteristics of the persons comprising the charity sector identified by IO are such persons’ “charitable aims”, “often the status of a not for profit institution”, exemption from a range of regulatory requirements applicable to for-profit entities and funding through donations or public money<sup>15</sup>. Whilst not endorsing Applicant’s survey, it notes that 86.6% of the participants associated the term “charity” with donating to a registered organization<sup>16</sup>.
45. IO accepts that the charity sector is not an organized community with an entity dedicated to the community and its activities, but argues that the meaning of community in the Guidebook is not limited to organized communities and covers less structured communities, like those based on a common place of origin or a common language or a common activity or common set of goals or interests or values<sup>17</sup> and refers to the 2007 ICANN Final Report which confirms that “community should be interpreted broadly and will include, for example, an economic sector, a cultural community, or a linguistic community”<sup>18</sup>.
46. IO points out that the charity sector is delineated as a recognizable community, distinct from others by both its members and the public, referring to public comments made on the meaning of the word “community” in the context of community objections<sup>19</sup>. IO argues that whilst corporations may perform charitable acts, the possibility of competing motives or even ulterior profit making motives sets them apart from the not-for-profit activities of a charity or charitable organization<sup>20</sup>.
47. IO underlines that his position is confirmed by the Advice contained in the GAC’s Beijing Communiqué dated 11 April 2013<sup>21</sup> which considered the charity community as a market sector delineated by clear and/or regulated entry requirements on account of

---

<sup>14</sup> Objection, paras 10 & 19.

<sup>15</sup> Objection, para. 20.

<sup>16</sup> IO Additional Written Statement, para. 10.

<sup>17</sup> Objection, para. 21.

<sup>18</sup> Objection, para. 17.

<sup>19</sup> Objection, para. 20 ; IO Additional Written Statement, para. 11.

<sup>20</sup> IO Additional Written Statement, para. 9.

<sup>21</sup> <http://www.icann.org/en/news/correspondence/gac-to-board-18apr13-en.pdf> -Annex 1 to IO Additional Written Statement, para. 11.

the level of implied trust from consumers and risk of consumer harm associated with its activities<sup>22</sup>. The GAC included “.Charity” in its list of sensitive strings necessitating safeguard measures<sup>23</sup>.

#### 4.3.1.2. *The Targeting Test*

48. IO argues that the “.Charity” string targets the charity community (comprising charities and charitable organizations)<sup>24</sup> and that therefore the Targeting test is met<sup>25</sup>.
49. IO notes that in the Application, Applicant explicitly targets “‘charity-based enterprises’, the providers of ‘online charity services’ and ‘charity information and donation services’” – which include all charitable institutions<sup>26</sup>. By virtue of Applicant’s own statements, therefore, the “.Charity” string explicitly targets the charity sector<sup>27</sup>.
50. IO disagrees with Applicant that the word “charity” is a generic term such as the word “book” and argues that the community identified by IO as associated with “charity” is significantly narrower than the stakeholders that might be associated with generic terms such as “book”<sup>28</sup>. IO refers also to one of the meanings of the word “charity” as charities and charitable institutions which indicates that it is generally associated in the public mind with giving for what is seen as a good cause and likewise with not for profit institutions that are directed to some form of charitable outcome<sup>29</sup>. IO adds that simply because the word bears several meanings, this does not preclude the string from having a strong association with one of those meanings if the general public is likely to make that association<sup>30</sup>.
51. IO accepts that there may be issues in delimiting the members of the charity sector at the peripheries of the community as a matter of domestic law, but this does not detract

---

<sup>22</sup> IO Additional Written Statement, para. 11.

<sup>23</sup> Ibid.

<sup>24</sup> Objection, para. 10.

<sup>25</sup> Objection, paras 8 and 14.

<sup>26</sup> Objection, para. 10.

<sup>27</sup> Objection, para. 14.

<sup>28</sup> IO Additional Written Statement, para. 6.

<sup>29</sup> IO Additional Written Statement, para. 5.

<sup>30</sup> Ibid.

from the existence of the charity sector as a community within the meaning of the Guidebook<sup>31</sup>.

52. IO concludes that according to Applicant's own statements and the general use of the term "charity" by the public, there is a strong association between the charity sector and ".Charity"<sup>32</sup>.

#### 4.3.1.3. *The Substantial Opposition Test*

53. According to IO, the test whether there is "substantial opposition within the community" to the Application is largely casuistic<sup>33</sup>.
54. IO refers to the non-exhaustive list of factors in the Guidebook which an Expert Panel may use to identify substantial opposition to the Application<sup>34</sup> noting that the factors are more useful in cases of well-organized and structured communities than in cases like the present of communities lacking organizational structures or clear representation<sup>35</sup>.
55. IO argues that a mere numerical criterion – the number of voiced oppositions to the Application – was not the intent of the Guidebook, the word "substantial" meaning not simply a large number but also something of "considerable importance" or "considerable worth"<sup>36</sup>. IO points out that since a condition for admissibility of an objection by an independent objector is the existence of at least one public comment in opposition, that must mean that an objection can succeed if there is just one such public comment<sup>37</sup>. According to IO, therefore, the material content of comments and oppositions and the rights and interests of those expressing those comments and oppositions must be taken into account<sup>38</sup>.
56. IO identifies opposition comments having been posted on the public comments website by the Charity Commission for England and Wales, the National Council for

---

<sup>31</sup> IO Additional Written Statement, para. 6.

<sup>32</sup> Objection, para. 14.

<sup>33</sup> Objection, para. 22.

<sup>34</sup> Objection, para. 23.

<sup>35</sup> Objection, para. 24.

<sup>36</sup> Objection, para. 25.

<sup>37</sup> IO Additional Written Statement, para. 13.

<sup>38</sup> Objection, para. 25.

Voluntary Organizations and the Association of Charitable Foundations, the first being the regulator of charities in England and Wales and the last representing a membership of some 330 charitable trusts and foundations in England and Wales<sup>39</sup>. IO refers also to the Australian member of the GAC having issued an Early Warning regarding “.Charity”<sup>40</sup>. According to IO, the common underlying concern of such opposition comments and Early Warning is the potential harm to the system of trust on which charities and charitable are largely dependent that would be caused in the absence of sufficient protection mechanisms such as strict eligibility criteria for users of the string<sup>41</sup>.

57. IO admits that the opposition to or concerns over the Application have largely emanated from the UK and Australia (respectively) but argues that the concerns that have been voiced are substantively substantial, are “without doubt ... of much more general application”<sup>42</sup> and include the views of one or more governments (referencing section 1.1.2.4 of the Guidebook)<sup>43</sup>.
58. IO argues that no conclusions can be drawn from non-objections since an independent objector is required to demonstrate substantial opposition from the comments that have been made<sup>44</sup>.

#### 4.3.1.4. *The Detriment Test*

59. IO emphasizes that the Detriment test requires a finding of “a likelihood of detriment”<sup>45</sup> and not of actual detriment – which would be anathema, the string not yet having been put into use<sup>46</sup> – the idea of requiring a finding of actual detriment having been abandoned during the *travaux* of ICANN<sup>47</sup>.

---

<sup>39</sup> Objection, para. 27.

<sup>40</sup> Objection, para. 31.

<sup>41</sup> Objection, paras 27 to 31.

<sup>42</sup> Objection, para. 33.

<sup>43</sup> Objection, para. 32.

<sup>44</sup> IO Additional Written Statement, para. 14.

<sup>45</sup> Objection, para. 34.

<sup>46</sup> IO Additional Written Statement, para. 16.

<sup>47</sup> Ibid.



60. According to IO, the likelihood of detriment must be created by the Application and therefore must take into account the Applicant and the security protection for user and community interests that Applicant has proposed or intends to adopt<sup>48</sup>.
61. IO underlines that the likelihood of detriment must be to the rights or legitimate interests of the community or to users more widely, referring to Implementation Guideline P<sup>49</sup>. He refers to the guidance in the Guidebook and summarizes that detriment may include harm to the reputation of the community, interference with the community's core activities, economic or other concrete damage to the community or significant portions of the community<sup>50</sup>.
62. IO points out that the Expert Panel may take into account a variety of factors, including the dependence of the community on the DNS for its core activities, the intended use of the gTLD as stated in the Application, the importance of the rights and interests exposed for the community targeted and for the public more generally<sup>51</sup> and whether the Applicant intends to act in accordance with those rights and interests<sup>52</sup>.
63. IO argues, in line with the GAC's Beijing Communiqué of 11 April 2013<sup>53</sup>, that the charity sector relies on public trust without which its gift and other funding would be threatened. Public regulation exists in many jurisdictions precisely to protect and nurture that trust<sup>54</sup>. Administration of the ".Charity" string outside such or similar protections and safeguards could, according to IO, citing the Charity Commission of England and Wales, lead to "scope for confusion, misunderstanding and, perhaps, deliberate abuse, resulting in turn in significant damage to charities if public support dropped as a result"<sup>55</sup>.
64. IO asserts that the Application does not address the specific needs of the charity community and points to four factors that demonstrate a likelihood of detriment to that community: (i) Applicant has not framed the Application as a community based gTLD, thereby avoiding certain consequences for the evaluation of the Application and

---

<sup>48</sup> Objection, para. 36.

<sup>49</sup> Objection, para. 34.

<sup>50</sup> Objection, para. 35.

<sup>51</sup> Objection para. 35.

<sup>52</sup> Objection, para. 36.

<sup>53</sup> IO Additional Written Statement, para. 24 and Annex 1 thereto.

<sup>54</sup> Objection, paras. 37 & 38.

<sup>55</sup> Objection, para. 39.

the terms (such as user registration requirements) under which the gTLD would be operated<sup>56</sup>; (ii) the manner in which Applicant proposes to address certain of the specific issues of the “.Charity” string is responsive ex-post facto to abuse without requiring stringent registrant eligibility criteria – the needs and requirements of the charity community would not be addressed in a preventive manner with a review after 2 years of operation to monitor abuse and its treatment<sup>57</sup>; (iii) the governance council proposed by Applicant would have a non-binding advisory role which IO considers inadequate protection for the needs (in particular in terms of consumer trust) identified for the charity sector<sup>58</sup>; and (iv) the broad registration criteria proposed by Applicant would enable persons not part of the charity sector (such as commercial bodies) to use the string<sup>59</sup>.

65. IO concludes that Applicant fails to address the specific characteristics of the “.Charity” string, including the need to protect public trust in charities and charitable organizations being the community implicitly targeted by the string and instead applies a policy largely identical to that proposed by Applicant’s parent and its other subsidiaries for strings with different features such as “.Poker”<sup>60</sup>.

#### ***4.3.2. Applicant’s Position***

66. Applicant bases its Response on the understanding that an objector making a Community objection must satisfy four tests to succeed, namely, the Community test, the Targeting test, the Substantial Opposition test and the Detriment test<sup>61</sup>.
67. Applicant’s position is that none of the tests is met by IO<sup>62</sup> and in any event the Objection has become redundant in light of the Eligibility Policy it has submitted to ICANN for inclusion in all registration agreements it enters into with ICANN supported by safeguards ensuring compliance by all registry operators<sup>63</sup>.

---

<sup>56</sup> Objection, para. 42.

<sup>57</sup> Objection, paras 43 & 44.

<sup>58</sup> Objection, para. 45.

<sup>59</sup> Objection, para. 46.

<sup>60</sup> Objection, para. 48.

<sup>61</sup> Response, pages 5 to 15.

<sup>62</sup> Response, page 5.

<sup>63</sup> Applicant Additional Written Statement, page 3.

#### 4.3.2.1. *The Community Test*

68. Applicant argues that no clearly delineated “charity” community exists for a number of reasons<sup>64</sup>.
69. Firstly, Applicant argues that those involved in charity do not necessarily share similar goals, values or interests<sup>65</sup>.
70. Secondly, Applicant claims that IO’s definition of “community” is different from that of the Guidebook, is more malleable and expansive and being premised on a commonality of characteristics is circular. The commonality of characteristics advocated by IO is superficial and differs based on region<sup>66</sup>.
71. Thirdly, Applicant asserts that IO’s “charity sector” is an arbitrary subset of the persons targeted by the Application.<sup>67</sup>
72. Fourthly, Applicant points out that there are no or at best a low level of formal boundaries around the “charity community” and considerable uncertainty as to who would be included. IO’s idea of delineation from other internet users has no basis in the Guidebook<sup>68</sup>.
73. Fifthly, Applicant argues that the “charity community” cannot be measured by time of existence, global distribution or number of members since anyone from the public sector to entrepreneurial philanthropists can engage in charitable activity<sup>69</sup>.
74. Sixthly, Applicant points out the word “charity” has many meanings and even within the meaning of “charitable institution” there is considerable difficulty of definition as shown by the history of the Charities Act 2006 in the UK<sup>70</sup>. Further, there is disparity between different countries as to what constitutes a charitable institution – often

---

<sup>64</sup> Response, pages 5 to 9.

<sup>65</sup> Response, page 5.

<sup>66</sup> Ibid.

<sup>67</sup> Response, pages 5 to 6.

<sup>68</sup> Response, page 6.

<sup>69</sup> Ibid.

<sup>70</sup> Response, page 7.

dictated by political considerations<sup>71</sup>. Within any such definition there is considerable scope for divergent aims and conflicting goals<sup>72</sup>.

75. Finally, Applicant asserts that there is a lack of public recognition of the alleged charity community and relies upon its own survey showing that only 5.4% of respondents agreed that only government regulated entities can undertake charitable acts<sup>73</sup>.

#### 4.3.2.2. *The Substantial Opposition Test*

76. Applicant refers to section 3.5.4 of the Guidelines and argues that IO must prove substantial opposition to the Application from the community on whose behalf IO purports to speak<sup>74</sup>. Applicant extracts from that section six factors to be taken into account: (i) the number of expressions of opposition; (ii) the representative nature of those expression opposition; (iii) the stature or weight of the opposition; (iv) the distribution or diversity of opposition within the community; (v) the defence of the community in other contexts by those expressing opposition; and (vi) costs incurred in expressing opposition<sup>75</sup>.
77. Applicant points out that the dozen or so public commentators, which are mainly sourced from the UK, are far outnumbered by the large non-objection populations of the “charity” community (including worldwide charitable organizations, corporate and entrepreneurial philanthropists, charity services and individuals engaging in charitable acts). Although for Applicant the content of comments is irrelevant for assessing whether there is “substantial” opposition, Applicant notes that several have identical wording and originated from a single source following an orchestrated campaign against the applications for “.Charity”<sup>76</sup>.
78. Applicant disputes the representative nature of the opposition comments – constituting at best 1% of the global population and the absence of any comments from

---

<sup>71</sup> Ibid.

<sup>72</sup> Response, pages 7 to 9.

<sup>73</sup> Response, page 9.

<sup>74</sup> Ibid.

<sup>75</sup> Response, pages 9 to 10.

<sup>76</sup> Response, page 9.

unregistered charities, corporate and entrepreneurial philanthropists, charity services and individuals engaged in charitable acts<sup>77</sup>.

79. Applicant states that the relative stature and weight of the opposition comments is limited given the many important non-objecting stakeholders<sup>78</sup>. Applicant asserts that the Australian GAC member Early Warning is not evidence of substantial opposition (given the purpose of GAC early warnings) and in any event misrepresents the situation of charitable organizations worldwide (assimilating them to those regulated in the UK or Australia)<sup>79</sup>.
80. Applicant asserts that the diversity of the opposition comments is minimal relative to the non-objecting stakeholders<sup>80</sup>.
81. Applicant points out that no evidence has been adduced by IO as to the costs incurred by those expressing opposition<sup>81</sup>.

#### 4.3.2.3. *The Targeting Test*

82. Applicant relies on section 3.5.4 of the Guidebook and argues that IO must prove a “strong association” between the applied-for string and the community he invokes by relying on statements in the Application, public statements by the Applicant and public associations between the string and the community<sup>82</sup>.
83. Applicant criticizes IO for having relied upon a derivative association between the applied-for string and the “community sector” arguing that the string is more strongly associated with the broader group actually targeted by Applicant<sup>83</sup>.
84. Applicant argues that there is at best an ancillary or derivative public association of the “.Charity” string with the “charity sector” – relying on its survey<sup>84</sup>.

---

<sup>77</sup> Response, page 10.

<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

<sup>81</sup> Ibid.

<sup>82</sup> Response, page 11.

<sup>83</sup> Ibid.

<sup>84</sup> Ibid.

#### 4.3.2.4. *Detriment Test*

85. According to Applicant who relies on section 3.5.4 of the Guidebook, the detriment test requires an independent objector to prove “likelihood” of “material detriment” which in turn calls for proof of (i) the nature and extent of potential damage to the “community” or its reputation from Applicant’s operation of the string; (ii) evidence that Applicant does not intend to act consistently with the interests of that “community”; (iii) interference with the core activities of that “community” by Applicant’s operation of the string; (iv) the extent to which the “community” depends on the DNS for core activities; and (v) the level of certainty that detrimental outcomes will occur<sup>85</sup>.
86. Applicant criticizes IO for limiting its arguments to the attraction of gifts of money and time and services from donors, the definition of charity being much broader<sup>86</sup>. Applicant underlines its sensitivity to the concerns expressed by IO and argues that the robust policies and mechanisms that it is offering address those concerns with the Governance Council it is proposing being a platform for the charity sector to shape the policies of the gTLD’s operation, consumer trust being a core operating and abuse detection and sanctioning principle, and registry surveys ensuring monitoring of those policies and principles<sup>87</sup>. Applicant disagrees with IO’s strict registration criteria arguing that they would not be possible on a global level given the diversity of meanings of “charity”<sup>88</sup>.
87. Applicant argues that many of the public comments are not representative of the interests of the group targeted by the Application, that the Governance Council will be a platform for those interests to shape operating policies, and that the Applicant undertakes to try in good faith to operate the gTLD in an inclusive and respectful manner as evidenced by the mechanisms it will apply<sup>89</sup>.
88. Applicant asserts that there is no evidence that the core activities of the alleged charity sector will be interfered with. On the contrary, Applicant argues that the mechanisms it will introduce will protect those core activities (including through the Governance

---

<sup>85</sup> Response, pages 11 to 15.

<sup>86</sup> Response, page 11.

<sup>87</sup> Response, pages 11 to 12.

<sup>88</sup> Response, page 12.

<sup>89</sup> Response, pages 12 to 13.

Council)<sup>90</sup>. For Applicant, the fact that it has not made a community-based application for the gTLD is a factor of the lack of clear delineation of the supposed community<sup>91</sup>. Applicant points out that the core activities of the “charity” community are independent of the gTLD and will be enhanced by the string<sup>92</sup>.

89. Applicant points out that there is no evidence of the alleged “charity” community being dependent upon the DNS – with much charitable giving taking place off-line<sup>93</sup>.
90. In its Additional Written Statement, Applicant argues that the Objection has become redundant on account of the eligibility policy that it has submitted to ICANN as an amendment to its Public Interest Comment Specification which will be included in any registry agreement which Applicant would sign with ICANN if its Application is successful and which Applicant will therefore be contractually obliged to implement at the risk of legal action under the PIC Dispute Resolution Procedure in the event of breach. Applicant states that its eligibility policy defines a “subset of the community” targeted by the applied-for string<sup>94</sup>. Registration will be limited to that subset<sup>95</sup>. The policy limits eligibility to “incorporated entities, unincorporated associations or entities, foundations or trusts which can establish that they are a charity or ‘not for profit’ enterprise with charitable purposes”<sup>96</sup>. Each registrant applicant must provide the registrar with evidence that either (i) it is a charity or equivalent with a governmental body (other than a tax authority) or organization authorized by a government body to maintain such registration; or (ii) if exempt from such registration requirements on grounds of size, evidence that it would not be required for such registration on the basis of such exemption; or (iii) it is registered with a tax authority as a charity or not for profit organization and evidence of activities restricted to “charitable purposes for the public benefit” within the meaning of the UK Charities Act 2011 (or any replacement legislation) or broadly equivalent activities considered charitable and eligible for tax advantages in its jurisdiction of domicile or incorporation; or (iv) evidence that it is a not for profit organization prohibited from making distributions to members and evidence of activities restricted to “charitable purposes for the public benefit” within the meaning of the UK Charities Act 2011 (or

---

<sup>90</sup> Response, pages 12 to 13.

<sup>91</sup> Response, pages 13 to 14.

<sup>92</sup> Response ,page 14.

<sup>93</sup> Ibid.

<sup>94</sup> Applicant Additional Written Statement, pages 3 to 4.

<sup>95</sup> Applicant Additional Written Statement, page 3.

<sup>96</sup> Annex 2 to Applicant Additional Written Statement.

any replacement legislation) or broadly equivalent activities considered charitable in its jurisdiction of domicile or incorporation<sup>97</sup>. Acceptable evidence includes, but is not limited to organization documents, statutory restrictions, binding agreements or commitments enforceable by third parties. Subsequent failure to meet an applicable eligibility requirement allows the registry to cancel the registration<sup>98</sup>. Various safeguards are promised with respect to registry operators to ensure compliance with the foregoing<sup>99</sup>.

91. Applicant states that the eligibility policy has been developed following and in response to charity sector, its own research on charity regimes around the world and in view of the Objection<sup>100</sup>. Applicant points out that it has defined the policy in part based on UK law which has one of the most developed charities law regimes in the world<sup>101</sup>.

## 5. EXPERT PANEL'S DETERMINATION

### 5.1. IO's Independence and Impartiality

92. There being no challenge to IO's independence and impartiality, the Expert Panel accepts IO's confirmation of the same.

### 5.2. IO's Standing

93. As an independent objector, IO fulfills the standing requirement of the Guidebook to make a Community Objection. There being no challenge to the existence of the admissibility conditions, the Expert Panel determines, therefore, that this Objection is admissible.

---

<sup>97</sup> Ibid.

<sup>98</sup> Ibid.

<sup>99</sup> Ibid.

<sup>100</sup> Applicant Additional Written Statement, page 3.

<sup>101</sup> Ibid.



### 5.3. The Community Objection

94. In order for his Objection to succeed under section 3.5.4 of the Guidebook, IO bears the burden of proving that four tests are met: (a) a Community test, namely that the community invoked by the objector is a clearly delineated community; (b) a Substantial Opposition test, namely that community opposition to the application is substantial; (c) a Targeting test, namely that there is a strong association between the community invoked and the applied-for gTLD string; and (d) a Detriment test, namely that the application creates a likelihood of material detriment to the rights or legitimate interests of a significant of the community to which the string may be explicitly or implicitly targeted.

#### 5.3.1. The Community Test

95. Pursuant to section 3.5.4 of the Guidebook, IO has the burden of proving to the Expert Panel that *“the community invoked by the objector is a clearly delineated community”*.
96. The “community” in question is the one invoked by the objector – it is not the community targeted by the string, the applicant or the application.
97. The objector in this case is IO. The community invoked by IO is “the charity sector” comprising all “charitable institutions”.
98. The question for determination, therefore, is whether IO has proven to the Expert Panel that the “charity sector” comprising all “charitable institutions” constitutes a “clearly delineated community”.
99. The Guidebook does not provide a definition of “clearly delineated community” but lists five factors that an Expert Panel may balance when making its determination. That list is neither exhaustive, conclusive nor imperative. None of the cited factors goes to the heart of what is a “community” but each assists in identifying a “community” when it exists: public recognition of the community, level of formal boundaries, length of existence, global distribution and number of members.
100. IO and Applicant agree that for a community to exist there must be a degree of “communality” among the members whether of “interest” or “characteristics” but disagree over the degree of commonality required. The Expert Panel is not convinced by Applicant’s arguments that among charitable institutions around the world the

various interests and characteristics are diverse and sometimes conflicting such that the “charity sector” is in fact an arbitrary delineation. Whilst the aims of charitable activities can be widely different and conflicting it is the functioning characteristics of charities and charitable institutions which set them apart from others: status as not-for-profit institutions, often exemption from regulatory requirements applicable to for-profit entities and funding through donations or public money. Given the obviousness of each of these characteristics in the Expert Panel’s view, none requires the support of specific evidence to be found as facts. Indeed, the very fact that Applicant has defined its eligibility policy around the “charity sector” based upon the meaning of that community in UK legislation suggests that the community is capable of clear delineation.

101. Indeed, the existence in many jurisdictions, such as the UK, of regulators of the charity sector is an indication that that sector is capable of delineation and is considered publicly to be different from others. The Expert Panel acknowledges differences in definition of charitable institutions and their regulation around the world which leads to a problem of boundary definition and ascertainment of global distribution. However, it is of the view that such differences are at the periphery of the community definition which is not a conclusive factor. ICANN recognizes (for instance in its Final Report of 2007) that precise definition of communities is unnecessary.
102. The public comments made with respect to the Application indicate that publicly the charity sector is considered to exist separately from other sectors of activity. The survey submitted by Applicant lacks acceptable representative criteria and is capable of a multitude of different analyses, but the Expert Panel notes that there is considerable recognition among respondents that “charity” is associated with giving to a registered organizations – one of the key characteristics of the charity sector as defined by IO.
103. IO accepts that the “charity sector” has no clear geographical boundaries – indeed it is global – and is not structured in any way. These are factors which may be taken into account as indices of the absence of a community but are not conclusive.
104. Balancing these various factors and considerations, the Expert Panel finds that the charity sector, comprising all charitable institutions, constitutes a clearly delineated community within the meaning of section 3.5.4 of the Guidebook. The “Community test” has therefore been passed by IO.

### 5.3.2. *The Targeting Test*

105. Pursuant to section 3.5.4 of the Guidebook, IO has the burden of proving “a strong association between the applied-for gTLD string and the community” invoked by the objector.
106. The “strong association” sometimes referred to as “targeting”, that must be shown by IO to exist therefore is between the applied-for gTLD and the community invoked by IO: namely, between “.Charity” and the “charity sector”.
107. The Guidebook does not define “a strong association” or “targeting” but identifies three sources of evidence that an independent objector may use to show that it exists: statements in the application, other public statements by the applicant and associations by the public. Those three factors are neither exhaustive, imperative nor conclusive.
108. In the Application, Applicant states that the applied-for gTLD is aimed at “charity-based enterprises”, “the providers of online charity services” and “charity information and donation services”. Following the introduction of its eligibility policy, however, the targeting of the “.Charity” gTLD of the Application corresponds to the community identified by IO.
109. That targeting is supported by Applicant’s own survey (despite its failings) which shows that a high percentage of respondents understand the word charity to refer to giving to a registered organization, thus singling out that specific meaning of the word “charity” from others.
110. The GAC Beijing Advice provides further evidence that the public would associate “.Charity” with charitable institutions – the charity sector – given the concern expressed over the sensitive nature of the applied-for gTLD string precisely because of the regulated nature of the charity sector and level of implied trust from consumers invoked by the string. Such concern implies the “strong association” required by the Targeting test.
111. The Expert Panel is therefore satisfied that IO has proven that the requirements of the Targeting test are met.

### 5.3.3. *The Substantial Opposition Test*

112. Substantial opposition is not defined in the Guidebook other than to indicate that the opposition is to be to the application (as opposed to the Applicant). Instead, section

3.5.4 of the Guidebook provides a list of factors which the Expert Panel may balance to determine whether substantial opposition to the Application exists. That list is neither exhaustive, imperative nor conclusive.

113. IO and Applicant disagree over the meaning of “substantial”. IO argues that “substantial” may refer to the number of statements of opposition relative to the composition of the community and/or to the substantive importance or worth of the statements of opposition. Applicant considers that the factors listed in section 3.5.4 of the Guidebook should be applied in accordance with their terms which exclude the substantive subjective importance of any given view the latter being relevant to the Detriment test only.
114. A review of the factors listed in section 3.5.4 indicates that a mere numerical meaning for “substantial” would be wrong. Those factors include not only the relative number of statements of opposition but also the representative nature of those expressing opposition and the recognized weight or stature of the expressions of opposition.
115. IO relies upon public comments from the Charity Commission for England and Wales, the National Council for Voluntary Organizations, the Association of Charitable Foundations, the Australian member of the GAC (in the form of an Early Warning) and the Office of the Scottish Charitable Regulator (as part of a legal rights objection). The Charity Commission is the regulator of charities in England and Wales. The Association of Charitable Foundations represents some 330 charitable trusts and foundations in England and Wales. The National Council for Voluntary Organizations represents just under 10,000 voluntary organizations (not all charitable institutions) in the UK. The Office of the Scottish Charitable Regulator is the regulator of charities in Scotland. The Australian member of the GAC is a representative of the Australian government.
116. The Charity Commission for England and Wales, the Office of the Scottish Charitable Regulator, the Association of Charitable Foundations and the National Council for Voluntary Organizations state their opposition on the basis of the potential harm to the system of trust on which charities and charitable giving are dependent if the “.Charity” string were to be run by a for-profit organization – arguing that had the Application been made as a community-based application their concerns would be assuaged given the status requirements for a community-based applicant. Similar concerns are expressed by the Australian member of the GAC.

117. IO refers to the other public opposition comments made to ICANN<sup>102</sup>. These include opposition from the ACC which has over 30,000 members (in-house counsel) employed by over 10,000 organizations in more than 75 countries. The Association's Not-for-profit Organizations Committee offers a collective voice to over 1,400 in-house counsel practising law in nonprofit institutions across the globe. In addition to concerns over abuse (for which the ACC proposes two types of safeguards), the ACC points to the need for protection "*given the intimate and obvious connection between [.Charity] and our members' organizations that operate in the philanthropy field*".
118. Applicant's focus on non-objecting stakeholders is unhelpful and not referenced in the Guidebook. Indeed, without evidence as to why stakeholders have not filed objections no helpful conclusions can be drawn.
119. The relative number of statements of opposition is small. Those statements come from the same or similar common law jurisdictions. These are two factors that militate against a finding that there is substantial opposition.
120. This small number of opposition statements comes from bodies that are representative of a larger number of members of the charity sector not only in jurisdictions where regulation of charitable activities is historically strong, developed and well-established but also in the case of ACC, worldwide. These are factors which militate in favour of a finding that there is substantial opposition.
121. The fact that the opposition raised by the different statements is substantively similar does not detract from the number of statements or from their representative nature or relative importance.
122. On balance, the Expert Panel is satisfied that IO has provided evidence of substantial opposition to the Application such that the Substantial opposition test has been passed.

#### 5.3.4. *The Detriment Test*

123. Pursuant to section 3.5.4 of the Guidebook it is for IO to prove that the Application (or rather use of the applied-for gTLD as contemplated by 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.

---

<sup>102</sup> <http://gtldcomment.icann.org/comments-feedback/applicationcomment/viewcomments>

124. The test requires evidence of a likelihood of material detriment and not evidence of actual detriment – which would be impossible given the prospective nature of the objection process.
125. Evidence of a likelihood of something happening – cause and effect occurring in the future – is inherently difficult. It is no doubt for this reason that the Guidebook focuses on a variety of factors (none of which is imperative or conclusive) that IO may prove to lead to the conclusion that material detriment is likely. These factors include the dependence of the community on the DNS for its core activities, the intended use of the gTLD as stated in the Application, the importance of the rights and interests exposed for the community and the public, and whether the Applicant intends acting in accordance with those rights and interests.
126. The various public statements of opposition to the Application are all premised on the importance of the global internet as a means of recognition and fund-raising for the charity sector. It is therefore generally accepted that the DNS is important for a core activity of the community.
127. Those public statements of opposition all focus on the need clearly to distinguish charitable organizations from for-profit enterprises in particular in public giving and fund-raising activities. They point out the absence, prior to the introduction by Applicant of its eligibility policy, of any limitation in the Application of the “.Charity” string to not-for-profit or charitable organizations. This concern is the origin of the suggestion in many of the public statements of opposition that the “.Charity” string should be treated only as a community-based gTLD.
128. The public statements of opposition identify the rights and interests of the community and the public that are exposed to harm if the Application were to proceed as the need of the charity sector for public funding to finance its activities; the trust and confidence of the public in the charity sector that donations will be used for the stated charitable ends. They point out that those rights and interests are protected outside the internet by public regulation of recourse to public giving for charitable purposes. They, and IO, emphasize the need for strict registration eligibility criteria limited to persons regulated as charitable bodies or their equivalent depending upon domestic law.
129. The eligibility policy defined by Applicant and inspired by the criteria of the UK Charities Act 2011 which will be included in any registration agreement entered into by Applicant with ICANN together with appropriate safeguards for registry operators respond in the Expert Panel’s view to the Detriment test concerns raised by IO.

130. In particular the defined “subset of the community” to which registration will be limited consists of “incorporated entities, unincorporated associations or entities, foundations or trusts which can establish that they are a charity or ‘not for profit’ enterprise with charitable purposes”<sup>103</sup>. The process for registration will require each registrant applicant to provide the registrar with evidence that either (i) it is a charity or equivalent with a governmental body (other than a tax authority) or organization authorized by a government body to maintain such registration; or (ii) if exempt from such registration requirements on grounds of size, evidence that it would not be required for such registration on the basis of such exemption; or (iii) it is registered with a tax authority as a charity or not for profit organization and evidence of activities restricted to “charitable purposes for the public benefit” within the meaning of the UK Charities Act 2011 (or any replacement legislation) or broadly equivalent activities considered charitable and eligible for tax advantages in its jurisdiction of domicile or incorporation; or (iv) evidence that it is a not for profit organization prohibited from making distributions to members and evidence of activities restricted to “charitable purposes for the public benefit” within the meaning of the UK Charities Act 2011 (or any replacement legislation) or broadly equivalent activities considered charitable in its jurisdiction of domicile or incorporation<sup>104</sup>. Acceptable evidence includes, but is not limited to, organization documents, statutory restrictions, binding agreements or commitments enforceable by third parties. Subsequent failure to meet an applicable eligibility requirement will allow the registry to cancel the registration<sup>105</sup>. Various safeguards are promised with respect to registry operators to ensure compliance with the foregoing<sup>106</sup>. In short, registration will be limited to members of the charity sector as narrowly defined by analogy with the definitions of “charity” and “charitable purposes for the public benefit” found in the UK Charities Act 2011.
131. According to Applicant, the eligibility policy has been developed following and in response to charity sector comments, its own research on charity regimes around the world and in view of the Objection<sup>107</sup>. Applicant points out that it has defined the policy in part based on UK law which has one of the most developed charities law regimes in the world<sup>108</sup>.

---

<sup>103</sup> Annex 2 to Applicant’s Additional Written Statement.

<sup>104</sup> Ibid.

<sup>105</sup> Ibid.

<sup>106</sup> Ibid.

<sup>107</sup> Applicant Additional Written Statement, page 3.

<sup>108</sup> Ibid.

132. Provided that Applicant's undertaking is honoured, the Expert Panel considers, therefore, that there would be no material detriment as identified by IO to the charity sector – registrants being limited to the members of that sector.
133. In view of the foregoing, the Expert Panel finds that IO has failed to prove that the Detriment test has been met.

#### **5.3.5. Conclusion**

134. Having reviewed the Parties' submissions and supporting evidence and for the foregoing reasons, one of the four tests not having been proven, the Expert Panel rejects IO's Community objection against the Application.

#### **5.4. Costs of the Expert Determination**

135. Article 14(e) of the Procedure provides which of the Parties shall bear the Costs.
136. The Objection has been rejected.
137. In accordance with Article 14(e) of the Procedure, the advance payment on Costs made by Applicant is therefore to be reimbursed to it.



### 5.5. Expert Panel's Determination

138. In the light of the above and in accordance with Article 21(d) of the Procedure, I hereby render the following Expert Determination:

- i. The Independent Objector's Objection is rejected and Applicant Spring Registry Limited prevails.
- ii. The advance payment of Costs made by Applicant shall be reimbursed to it by the Centre pursuant to Article 14(e) of the Procedure.

Done in Paris

9 January 2014



---

Mr. Tim Portwood  
Expert Panel