

**IN THE MATTER OF AN INDEPENDENT REVIEW PROCESS BEFORE THE
INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION**

Gulf Cooperation Council

Gulf Cooperation Council Building

Contact Information

Redacted

(Claimant)

v.

**Internet Corporation for
Assigned Names and Numbers
(ICANN)**

12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536

(Respondent)

ICDR Case No. _____

**CLAIMANT GULF COOPERATION COUNCIL'S REQUEST FOR INDEPENDENT
REVIEW PROCESS**

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I. INTRODUCTION

1. By its own admission, Respondent Internet Corporation for Assigned Names and Numbers (“ICANN”) is committed to acting for the public interest.¹ As such, ICANN concedes generic Top-Level-Domains (“gTLDs”) that refer to geographic names should be protected due to their geographic, cultural, and national significance. To protect their significance, ICANN recently proclaimed: “Geographic names *should not be* allowed to be registered as gTLDs, *unless requested by the relevant communities* where they belong or *after a specific authorization* given by the government or community to the applicant.”² ICANN made this recent proclamation to protect better geographic gTLDs in the future *after* acknowledging it failed to protect adequately geographic names during the present gTLD application process.³

2. Nowhere are ICANN’s failures to protect adequately the geographic, cultural, and national significance associated with geographic names in the present gTLD application process more apparent than in its mishandling of the .PERSIANGULF gTLD. By allowing the .PERSIANGULF gTLD to proceed, even though it lacks community support and raises national and cultural sensitivities, ICANN has ignored established principles specifically created to respect public policy concerns raised by geographic names, ignored its own Bylaws and Articles of Incorporation requiring it to be fair and consistent, and ignored its own decisions to not allow other gTLD applications with even less opposition to proceed, prompting the Gulf Cooperation Council’s (the “GCC”) request for independent review.⁴

¹ See ICANN Articles of Incorporation [<https://www.icann.org/resources/pages/articles-2012-02-25-en>] at ¶ 4.

² See Annex 1 [“The protection of geographic names in the new gTLDs process”] at ¶ 3 (emphasis added).

³ See *id.* at ¶ 1.

⁴ Because ICANN intends to sign the registry agreement for the .PERSIANGULF gTLD imminently, the GCC has concurrently filed a request for emergency interim relief to enjoin ICANN from signing the registry agreement while the GCC’s request for independent review is pending.

3. By way of background, the correct name of the Gulf region has been disputed for more than 50 years. The Arab nations that border the Gulf and also comprise the GCC prefer the name “Arabian Gulf,” while Iran, the sole non-Arab nation in the area, insists upon “Persian Gulf.” The Gulf name dispute is emblematic of the vast geographical, cultural, and national differences between Iran and the GCC’s member nations, often producing tension and conflict in the region.

4. Although aware of the naming dispute and the pervasive turmoil in the Gulf, ICANN wrongly approved the .PERSIANGULF gTLD application, a gTLD neither requested nor approved by the GCC or its member nations, over the GCC’s objections. To make matters worse, the applicant for the .PERSIANGULF gTLD is Asia Green IT System Bilgisayar San. ve Tic. Ltd. Sti (“Asia Green”), a non-Gulf, private Turkish company founded by Iranian nationals that refuses to sell .PERSIANGULF domain names to anyone, such as the GCC or its members, who disavow the Persian Gulf name.⁵

5. ICANN’s conduct has materially affected the GCC. ICANN denied the GCC the right to a fair and transparent process to raise concerns about the .PERSIANGULF gTLD application. ICANN discriminated against the GCC and the Arab community it represents by siding with the Persians over the GCC on a decades-long naming dispute and by effectively suppressing the GCC’s legitimate concerns in favor of a non-Gulf entity’s (Asia Green) desire to unite Persians worldwide. And, by giving Asia Green, and its Persian-centric view of the Gulf region, license to act on behalf of the entire Gulf region, ICANN is giving the Internet community the false perception that Asia Green speaks for the Gulf region and that the GCC endorses Asia Green’s speech. In short, ICANN’s actions lead to one conclusion: in ICANN’s

⁵ See Annex 2 [GCC v. AGITSys, Int’l Ctr. for Expertise of the Int’l Chamber of Commerce Case No. EXP/423/ICANN/40, Expert Determination (Oct. 30, 2013)] at ¶ 22.

eyes, the rights and interests of Iran outweigh those of the GCC. Accordingly, the GCC has standing to seek independent review.⁶

6. This Panel is uniquely situated to right ICANN's past wrongs now, without waiting for a future round of gTLDs. Since the GCC strongly opposes the .PERSIANGULF gTLD—a gTLD of a disputed geographic name without community support—this Panel can and should grant the GCC's request for an order prohibiting ICANN from signing the registry agreement for the .PERSIANGULF gTLD, and prohibiting ICANN from taking any further action on the .PERSIANGULF gTLD application.

II. PARTIES TO THIS DISPUTE

a. **Claimant: The GCC.**⁷

7. The GCC is a political and economic alliance of six Middle Eastern countries: the United Arab Emirates (“UAE”); Saudi Arabia; Kuwait; Qatar; Bahrain; and Oman.⁸ The GCC was established in 1981 and is located in the Contact Information Redacted

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8. Natasha Kohne and Kamran Salour of Akin Gump Strauss Hauer & Feld LLP represent the GCC in these proceedings. Ms. Kohne's office is located at Contact Information Redacted

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⁶ See ICANN Bylaws [<https://www.icann.org/resources/pages/bylaws-2012-02-25-en>] at Art. 4, § 3.

⁷ The GCC authorized the Telecommunications Regulatory Authority (“TRA”) of the United Arab Emirates to represent it in all matters related to objecting to the .PERSIANGULF gTLD application. See Annex 3 [Mar. 6, 2013 Letter from the GCC to WIPO].

⁸ See Annex 4 [The GCC Charter] at p. 1.

⁹ *Id.*

¹⁰ To avoid any potential time-zone complications, only Mr. Salour's contact information has been provided on the Notice of Independent Review.

9. The six member countries that comprise the GCC share common geographic, cultural, political, and religious ties.¹¹ In light of this commonality, the GCC strives to foster cooperation between its members to strengthen these ties for the betterment of the citizens of their respective countries.¹²

10. As just one example of this cooperation, the GCC is currently united against Iran in a long standing dispute over the name of the Gulf region.¹³ As ICANN itself acknowledges, “the dispute between Arab States and supporters, on the one hand, and the Islamic Republic of Iran and its supporters, on other hand, over the denomination of the Gulf, has subsisted for more than 50 years.”¹⁴ Iran insists upon the term “Persian Gulf,” while the GCC prefers the term “Arabian Gulf.”¹⁵ Unquestionably, the Gulf name dispute is a sensitive issue for the GCC and its members.¹⁶

b. Respondent: ICANN.

11. ICANN is a California non-profit public benefit corporation established under the laws of the State of California on September 20, 1998. ICANN is located at 12025 Waterfront Drive, Suite 300, Los Angeles, CA 90094-2536.

12. Like the GCC, ICANN also strives to serve the interests of a community, the Internet community. To assist ICANN in its service of the Internet community, ICANN operates under a set of “core values” that are intended to avoid the unfair and inconsistent result ICANN reached

¹¹ See Annex 4 [The GCC Charter] at p. 1.

¹² *Id.* at p. 2, Art. 4.

¹³ See Annex 5 [Josh Levs, *Iran threatens to sue Google for not labeling Persian Gulf*, CNN, <http://www.cnn.com/2012/05/17/world/meast/iran-google-gulf/> (last visited Dec. 2, 2014)].

¹⁴ See Annex 2 [*GCC v. AGITSys*, Int’l Ctr. for Expertise of the Int’l Chamber of Commerce Case No. EXP/423/ICANN/40, Expert Determination, at ¶ 42 (Oct. 30, 2013)].

¹⁵ See *id.* at ¶ 8.

¹⁶ See Annexes 6-10 [October 14, 2012 Letter from UAE Director General to ICANN and GAC; October 22, 2012 Letter from Bahrain General Director to ICANN and GAC; October 23, 2012 Letter from Qatar Secretary General to ICANN and GAC; October 2012 Letter from Oman Chief Executive to ICANN and GAC; and November 20, 2012 GAC Early Warning for .PERSIANGULF].

with the .PERSIANGULF gTLD. ICANN's core values require it to operate consistently and fairly.¹⁷ To help achieve consistent and fair decisions, ICANN's Bylaws require it to seek and support informed participation, including taking into account government recommendations¹⁸ to reflect the geographic and cultural diversity of the Internet.¹⁹ In short, ICANN must adhere to well-established guidelines designed to ensure fairness to specific communities, while still protecting the interests of the Internet community.²⁰

13. To help ensure fairness to specific communities, ICANN's Governmental Advisory Committee ("GAC") was formed to consider and provide advice on ICANN's activities as they relate to public policy issues.²¹

III. THE NEW gTLD PROGRAM

a. GAC Released a Series of Guidelines to Assist ICANN with New gTLDs.

14. In June 2011, ICANN launched the New gTLD Program to allow prospective registry operators to apply for new gTLDs.²² With the launch of additional gTLDs, ICANN intended to foster diversity, encourage competition, and benefit Internet users across the globe.²³

15. Before the launch, GAC released a set of principles regarding the issuance of the new gTLDs.²⁴ Those principles, which were created with ICANN's core values in mind,²⁵ aim

¹⁷ See ICANN Bylaws [<https://www.icann.org/resources/pages/bylaws-2012-02-25-en>] at Art. 1, § 2 (Core Value No. 7).

¹⁸ *Id.* at Art. 1, § 2 (Core Value No. 11).

¹⁹ *Id.* at Art. 1, § 2 (Core Value No. 4).

²⁰ See ICANN Articles of Incorporation [<https://www.icann.org/resources/pages/articles-2012-02-25-en>] at ¶ 4.

²¹ See gTLD Applicant Guide Book at Module 3.

²² See *id.* at Preamble.

²³ *Id.*

²⁴ See Annex 11 ["GAC Principles Regarding New gTLDs"].

²⁵ *Id.* at 1.4.

to recognize the potential sensitivities raised by geographic names: “The protection of geographic names should be [the] object of *special concern* within the New gTLD Program.”²⁶

16. In light of the special concern afforded geographic names, GAC advised ICANN that the new gTLDs should respect “[t]he sensitivities regarding terms with national, cultural, geographic and religious significance.”²⁷ GAC also advised “ICANN [to] avoid country, territory or place names, and country, territory or regional language or people descriptions, *unless in agreement* with the relevant governments or public authorities.”²⁸

17. ICANN agrees that gTLDs “that refer to different names of geographic references like regions of countries, regions of continents, sub-regions of countries, rivers, mountains, among others, should be protected in the name of public interest, due to their geographic, cultural and national relevance.”²⁹

18. Despite GAC’s advisories to ICANN to respect gTLDs with national, cultural, and geographic significance and to avoid a gTLD of a disputed geographic name, and ICANN’s acknowledgement of the same, ICANN is still allowing the .PERSIANGULF gTLD to proceed.

b. The gTLD Applicant Guidebook Established Procedures to Challenge a gTLD Application.

19. Also as part of the New gTLD Program, ICANN issued the *gTLD Applicant Guidebook* to outline the evaluation, objection, and dispute resolution procedures of prospective gTLDs should ICANN runs afoul of its core values or the gTLD specific guidelines.³⁰

²⁶ See Annex 1 [“The protection of geographic names in the new gTLDs process”] at ¶ 3.

²⁷ See Annex 11 [“GAC Principles Regarding New gTLDs”] at 2.1(b).

²⁸ *Id.* at 2.2 (emphasis added).

²⁹ See Annex 1 [“The protection of geographic names in the new gTLDs process”] at ¶ 3.

³⁰ See *gTLD Applicant Guidebook* at Modules 2 & 3.

20. For instance, under the *gTLD Applicant Guidebook*, a GAC member (such as the objecting GCC member nations) can voice opposition to a particular gTLD application by notifying GAC, by objecting to the gTLD application, or both.³¹

21. GAC members can raise concerns about any application to GAC and GAC, as a whole, will consider the raised concerns. This process intends to address gTLD applications that are identified by governments to be problematic, for example, applications such as the .PERSIANGULF gTLD that potentially violate national law or *raise sensitivities*³² and notify ICANN of these concerns.

22. Similarly, an accepted third party (such as the GCC) may file a formal objection to a particular gTLD application on certain specified grounds and have its formal objection considered by an expert panel.³³ One such ground is a “community objection.” Under a community objection, the objecting party asserts “[t]here is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.”³⁴ This process also intends to address concerns raised by a gTLD and to notify ICANN of the same.

23. ICANN purportedly understands how community interests may be affected by a gTLD. According to ICANN, “[t]he national community and geographic meaning of the requested strings as new gTLDs *must prevail above any other interest*.”³⁵ ICANN, however, is allowing the .PERSIANGULF gTLD to proceed despite the strong community opposition to it as voiced by the GCC through GAC and through the GCC’s community objection to the .PERSIANGULF gTLD.

³¹ *Id.* at Module 3.1 & 3.2.

³² *Id.* at Module 3.1 (emphasis added).

³³ *Id.* at Module 3.2

³⁴ *Id.* at Module 3.2.1.

³⁵ *See* Annex 1 [“The protection of geographic names in the new gTLDs process”] at ¶ 3 (emphasis added).

24. As is explained further below, ICANN disregarded guidelines specifically created to respect public policy concerns raised by geographic names; violated the provisions in its Bylaws and Articles of Incorporation that require ICANN to be fair and consistent; and ignored the concerns of the GCC, to allow Asia Green's .PERSIANGULF gTLD to proceed. In so doing, ICANN has denied the GCC the right to a fair process to challenge the issuance of a controversial and sensitive gTLD and discriminated against the GCC by unfairly allowing only Iran to advance its preferred version of the Gulf name.

IV. THE DISPARATE GEOGRAPHIC, POLITICAL, AND CULTURAL BELIEFS BETWEEN IRAN AND THE GCC MAKE THE GULF-REGION RIPE FOR CONFLICT

25. The Gulf area is no stranger to conflict. For almost 40 years, the UAE and Iran have been embroiled in a dispute relating to three contested islands in the Gulf region. The dispute began when Iran occupied the Abu Musa, Greater Tunb, and Lesser Tunb islands in 1971, and has been a source of continuous geopolitical strife since.³⁶ Sovereignty of these islands is critically important, as they are located in the center of Gulf shipping and tanker lanes.³⁷ The Arab League Ministerial Council calls the island dispute destabilizing to security and stability in the region and the world.³⁸ At times, Iran has used this island dispute as an opportunity to espouse its position on another disputed issue: that the Gulf should only be called the "Persian Gulf."³⁹

³⁶ See Annex 12 [*Ahmadinejad's visit to island prompts UAE to recall Iran ambassador*, CNN (Apr. 12, 2012), <http://www.cnn.com/2012/04/12/world/meast/uae-iran-ambassador-recall/> (last visited Dec. 2, 2014)].

³⁷ See Annex 13 [*Is trouble brewing between the UAE and Iran?*, ALJAZEERA (Apr. 19, 2012), <http://www.aljazeera.com/programmes/insidestory/2012/04/20124196714608791.html> (last visited Dec. 2, 2014)].

³⁸ See Annex 14 [*Arab League calls for Iran to resolve islands dispute with UAE*, THE NATIONAL <http://www.thenational.ae/uae/arab-league-calls-for-iran-to-resolve-islands-dispute-with-uae> (last visited Dec. 2, 2014)].

³⁹ See Annex 12 [*Ahmadinejad's visit to island prompts UAE to recall Iran ambassador*, CNN (April 12, 2012), <http://www.cnn.com/2012/04/12/world/meast/uae-iran-ambassador-recall/> (last visited Dec. 2, 2014)].

26. The dispute between Arab countries and Iran over the denomination of the Gulf has been going on for over 50 years.⁴⁰ Iran “stands for the denomination ‘Persian Gulf’,” while the GCC maintains the correct name is the “Arabian Gulf.”⁴¹

27. Each side takes the naming dispute seriously and goes to considerable lengths to make its stance on the naming dispute known. For example, Iran has: (1) threatened to ban commercial airlines from landing in Iran or using Iranian airspace if they refer to the Arabian Gulf;⁴² (2) refused to allow Iranian soccer players to play in the Arabian Gulf League;⁴³ and (3) banned the National Geographic atlas for listing Arabian Gulf in addition to “Persian Gulf;”⁴⁴ and *The Economist* magazine for simply referring to the body of water as “the Gulf.”⁴⁵

28. For its part, the GCC pulled out of the Islamic Solidarity Games when it learned that the medals and officials logo referred to the waterway as “Persian Gulf.”⁴⁶ The UAE even banned the use of the term “Persian Gulf” across its country.⁴⁷

⁴⁰ See Annex 2 [*GCC v. AGITSys*, Int’l Ctr. for Expertise of the Int’l Chamber of Commerce Case No. EXP/423/ICANN/40, Expert Determination (Oct. 30, 2013)] at ¶ 42.

⁴¹ *Id.* at ¶ 8.

⁴² See Annex 15 [*Iran threatens airline ban over “Arabian Gulf” tag*, REUTERS (Feb. 22, 2010), <http://www.reuters.com/article/2010/02/22/us-iran-arabs-airlines-idUSTRE61L2EI20100222> (last visited Dec. 2, 2014)].

⁴³ See Annex 33 [James M. Dorsey, *Gulf rivalry between Iran, UAE transferred to the football pitch*, DAILY NEWS, <http://www.hurriyetdailynews.com/gulf-rivalry-between-iran-uae-transferred-to-the-football-pitch.aspx?pageID=238&nID=51560&NewsCatID=364> (last visited Dec. 3, 2014)].

⁴⁴ See Annex 16 [Megan K. Stack, *Iran’s Anger Over a New Map Magnifies a Perception Gulf*, LA TIMES (Dec. 2, 2004), <http://articles.latimes.com/2004/dec/02/world/fg-gulfwar2> (last visited Dec. 2, 2014)].

⁴⁵ See Annex 18 [*Iran bans The Economist for publishing map depicting ‘the Gulf,’ instead of Persian Gulf*, USA Today (Jun. 14, 2006), http://usatoday30.usatoday.com/news/world/2006-06-14-economist_x.htm (last visited Dec. 2, 2014)].

⁴⁶ See Annex 17 [*Gulf dispute halts Islamic games*, BBC NEWS (Jan. 18, 2010), http://news.bbc.co.uk/2/hi/middle_east/8465235.stm (last visited Dec. 2, 2014)]; & Annex 19 [Habib Toumi, *GCC to protest ‘Persian Gulf’ name by Fifa*, GULF NEWS (Sep. 24, 2013), <http://gulfnews.com/news/gulf/bahrain/gcc-to-protest-persian-gulf-name-by-fifa-1.1234937> (last visited Dec. 2, 2014)].

⁴⁷ See Annex 20 [*Persian Gulf Name Disputing*, http://www.cais-soas.com/CAIS/Geography/persian.gulf/persian_gulf_name_disputing.htm (last visited Dec. 2, 2014)].

29. Importantly, both ICANN and GAC were well aware of the Gulf name dispute, and its sensitive nature, before ICANN decided to approve erroneously the .PERSIANGULF gTLD application over the GCC's objections.⁴⁸

V. **THE .PERSIANGULF gTLD's SOLE OBJECTIVE IS TO UNIFY PERSIANS**

30. Asia Green applied for the .PERSIANGULF gTLD on July 8, 2012.⁴⁹

31. In its application, Asia Green speculates that the .PERSIANGULF gTLD will promote competition by bringing together people across the globe that have ties to the region.⁵⁰ But this is based on a false notion; it conspicuously ignores the geographic, cultural, and national significance of the Arab countries in that region. As Asia Green admits, the .PERSIANGULF gTLD is directed solely to the vast Persian community: "There are in excess of a hundred million of Persians worldwide. *They* are a disparate group, yet *they* are united through *their* core beliefs. *They* are a group whose origins are found several millennia in the past, *their* ethnicity often inextricably linked with *their* heritage. Hitherto, however, there has been no way to easily *unify them and their* common cultural, linguistic and historical heritage. The .PERSIANGULF gTLD will help change this."⁵¹ The application boasts that "[a]pproximately 30,000 people have signed a petition to ICANN supporting our effort. As members of the *Persian* community, *these people* recognize the importance of the .PERSIANGULF gTLD to *Persians* and endorse this effort."⁵²

32. In short, the paramount and sole objective of the proposed .PERSIANGULF gTLD is to provide an internet link among *Iranians* and persons of *Iranian heritage*, whether those

⁴⁸ See Annex 19 [March 13, 2013 letter from Dr. At-Twajiri to ICANN and GAC].

⁴⁹ See Annex 22 [.PERSIANGULF gTLD application].

⁵⁰ *Id.* at 18A.

⁵¹ *Id.* (emphasis added).

⁵² *Id.* at 18B.

persons live in or outside of Iran.⁵³ The .PERSIANGULF gTLD therefore only seeks to unite Persians, a group that is indisputably at odds with the GCC over the correct name for the Gulf. Indeed, Asia Green’s application states “it would not plan to sell the .PersianGulf domain names to persons in the region ‘who disavow the very name.’”⁵⁴

a. Given Its Singular Purpose, the GCC Voiced Strong Opposition to the .PERSIANGULF gTLD.

33. After being made aware of the .PERSIANGULF gTLD, the GCC turned to the two available avenues under the New gTLD Program to voice its strong opposition to the .PERSIANGULF gTLD by: (1) expressing its concerns to GAC and (2) filing a Community Objection.⁵⁵ ICANN, however, effectively denied the GCC’s right to challenge the .PERSIANGULF gTLD.

34. For instance, the UAE wrote to ICANN and GAC on October 14, 2012 to raise its disapproval and non-endorsement of the .PERSIANGULF gTLD application. In particular, the UAE letter highlights the sensitivities surrounding the Gulf-naming-dispute: “The applied for new gTLD string ‘the Persian Gulf’ refers to the body of water separating the Arabian Peninsula from the Iranian plateau (The Arabian Gulf). Throughout the history, this body of water has been known by different names including among others Arabian Gulf, Basreh Gulf, Ghatif Gulf, Bahrain Gulf. The most dominant names that are currently used for this body of water are Arabian Gulf and Persian Gulf. *The naming of the Arabian Gulf has been [a] controversial and debatable subject in various national and international venues and levels.*”⁵⁶

⁵³ See Annex 2 [*GCC v. AGITSys*, Int’l Ctr. for Expertise of the Int’l Chamber of Commerce Case No. EXP/423/ICANN/40, Expert Determination, at ¶ 34 (Oct. 30, 2013)].

⁵⁴ *Id.* at ¶ 22.

⁵⁵ See *gTLD Applicant Guidebook* at Module 3.1 and 3.2.

⁵⁶ See Annex 6 [October 14, 2012 letter from UAE Director General to ICANN and GAC] (emphasis added).

35. The UAE letter also refers to Resolution no. III/20 United Nations Expert Group on Geographical Names which “recommends that when countries sharing a given geographical feature do not succeed in agreeing on a common name, it should be a general rule of international cartography that the name used by each of the countries concerned will be accepted. *A policy of accepting only one or some of such names while excluding the rest would be inconsistent in principle as well as inexpedient in practice*”⁵⁷

36. The governments of Oman, Qatar, and Bahrain also wrote to ICANN and GAC, raising identical concerns.⁵⁸

37. In addition to these letters, the governments of the UAE, Oman, Qatar, and Bahrain voiced their concerns about the .PERSIANGULF gTLD through the GAC Early Warning process.⁵⁹ In particular, they noted that the .PERSIANGULF gTLD is problematic as it refers to a disputed name and lacks community involvement or support.⁶⁰

38. The GCC did not stop there. On March 13, 2013, the GCC filed a Community Objection to the .PERSIANGULF application.⁶¹ To bring a Community Objection, the objecting party must merely show “[t]here is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.”⁶²

39. To meet this standard, the GCC highlighted the Gulf name dispute, noted Google’s decision to leave the area unnamed so as to not get involved in a political dispute, and

⁵⁷ *Id.*

⁵⁸ See Annexes 7–9 [October 22, 2012 Letter from Bahrain General Director to ICANN and GAC; October 23, 2012 Letter from Qatar Secretary General to ICANN and GAC; and October 2012 Letter from Oman Chief Executive to ICANN and GAC].

⁵⁹ See Annex 10 [November 20, 2012 GAC Early Warning for .PERSIANGULF].

⁶⁰ *Id.*

⁶¹ See Annex 2 [*GCC v. AGITSys*, Int’l Ctr. for Expertise of the Int’l Chamber of Commerce Case No. EXP/423/ICANN/40, Expert Determination, at ¶ 2 (Oct. 30, 2013)].

⁶² See *gTLD Applicant Guidebook* at Module 3.2.1.

cautioned that ICANN not “bring this dispute into the cyber world and by doing so give credence to one side over the other.”⁶³ The GCC also cautioned that use of .PERSIANGULF “is likely to increase the possibility of social unrest in the Arabian gulf region.”⁶⁴

40. On the same day the GCC filed its Community Objection, the Assistant General Secretary for Economic Affairs at the League of Arab States wrote to ICANN and GAC expressing concern over the .PERSIANGULF application. Specifically, he noted that “[t]he name of the gulf has been [a] controversial and debatable subject in various national, regional and international venues and levels.” He also noted that the .PERSIANGULF application is *without any support from the League of Arab States*.⁶⁵

41. The next month, during the April 11, 2013 GAC Committee Meeting, GAC advised ICANN to not proceed beyond the initial evaluation stage with the .PERSIANGULF gTLD application.⁶⁶ Three months later, during the next GAC Committee Meeting, GAC advised ICANN it was unable to reach a consensus but nonetheless advised ICANN to “[c]onsider to take better account of community views, and improve outcomes for communities, within the existing framework. . . .”⁶⁷

b. The Independent Expert Agreed that There Is a Strong Association between the gTLD and the GCC and that the GCC Strongly Opposes the gTLD.

42. On October 30, 2013, the appointed Independent Expert decided the GCC’s Community Objection.⁶⁸

⁶³ See Annex 2 [GCC v. AGITSys, Int’l Ctr. for Expertise of the Int’l Chamber of Commerce Case No. EXP/423/ICANN/40, Expert Determination, at ¶ 9 (Oct. 30, 2013)].

⁶⁴ See *id.* at ¶ 12.

⁶⁵ See Annex 21 [March 13, 2013 letter from Dr. At-Twajjri to ICANN and GAC] (emphasis added).

⁶⁶ See Annex 23 [ICANN Government Advisory Committee, Communique – Beijing, People’s Republic of China (“Beijing Communique”), at § IV (Apr. 11, 2013)].

⁶⁷ See Annex 24 [ICANN Government Advisory Committee, Communique – Durban, South Africa (“Durban Communique”), at § IV ¶ 3 and 7(b)(ii) (Jul. 13-18, 2013)].

⁶⁸ See Annex 2 [GCC v. AGITSys, Int’l Ctr. for Expertise of the Int’l Chamber of Commerce Case No. EXP/423/ICANN/40, Expert Determination, at ¶¶ 26-43 (Oct. 30, 2013)].

43. To determine whether to sustain the GCC's Community Objection, the Independent Expert need only look to four factors, whether: (1) the community invoked by the objector is a clearly delineated community; (2) the community opposition to the application is substantial; (3) there is a strong association between the community invoked and the applied-for gTLD string; and (4) 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.⁶⁹

44. The Independent Expert agreed the GCC has standing to raise its objections because it was an established institution with an ongoing relationship with a clearly delineated community.⁷⁰ The Independent Expert also noted the GCCs and its member nations' substantial opposition to the .PERSIANGULF gTLD.⁷¹ The Independent Expert also concluded that there is a strong association between the community invoked (the GCC) and the applied-for gTLD string (.PERSIANGULF).⁷²

45. Inexplicably, however, the Independent Expert could not find material detriment. To show detriment, the GCC need only show 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 is targeted, i.e. the Arab community.⁷³

46. The Independent Expert conceded that the dispute is of importance to the Arabs and their interests. He also conceded that the sole objective of the .PERSIANGULF gTLD is to provide a link among Iranians and persons of Iranian heritage, an objective indisputably at odds

⁶⁹ See *gTLD Applicant Guidebook* at Module 3.5.4.

⁷⁰ See Annex 2 [*GCC v. AGITSys*, Int'l Ctr. for Expertise of the Int'l Chamber of Commerce Case No. EXP/423/ICANN/40, Expert Determination, at ¶ 29 (Oct. 30, 2013)].

⁷¹ See *id.* at ¶ 31.

⁷² See *id.* at ¶ 11.

⁷³ See *gTLD Applicant Guidebook* at Module 3.5.4.

with the Arab-Gulf-community.⁷⁴ The Independent Expert even aptly questioned the need to tie the persons of Persian heritage to the Gulf—which consists of predominately Arab nations.⁷⁵ Yet the Independent Expert ignored these salient facts and simply concluded that because “the practical effect of the registration of .PERSIANGULF gTLD is difficult to discern and weigh. . . it follows that a likelihood of material detriment has not been established.”⁷⁶ The Independent Expert failed to elaborate on any rationale why material detriment had not been established, especially in the face of contrary evidence.

47. The GCC will suffer material detriment because it will be denied the opportunity to obtain a .PERSIANGULF domain name, even though the GCC is part of the Gulf community, since Asia Green will not sell .PERSIANGULF domain names to entities, such as the GCC, that disavow the Persian Gulf name.⁷⁷ The GCC will suffer reputational harm too. Allowing operation of .PERSIANGULF out of Turkey will be a source of confusion, misleading ordinary Internet users as to the true source of the content appearing across that gTLD.⁷⁸

48. In light of ICANN’s repeated failures to follow its own guidelines and its inability to discern obvious material detriment, the GCC seeks independent review of ICANN’s decision. To prevail, the GCC need only show ICANN violated its guidelines and those violations resulted in material harm to the GCC.

⁷⁴ See Annex 2 [*GCC v. AGITSys*, Int’l Ctr. for Expertise of the Int’l Chamber of Commerce Case No. EXP/423/ICANN/40, Expert Determination, at ¶¶ 41, 34-36 (Oct. 30, 2013)].

⁷⁵ See *id.* at ¶ 36.

⁷⁶ See *id.* at ¶ 40.

⁷⁷ See *id.* at ¶ 22.

⁷⁸ See Concurrently Filed Expert Report of Steven Tepp at ¶¶ 49-57.

VI. ICANN FAILED TO ACT FAIRLY AND CONSISTENTLY TO THE MATERIAL DETRIMENT OF THE GCC

a. ICANN Promises to Apply Its Policies Consistently to Ensure Fairness.

49. “ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.”⁷⁹ To ensure consistency and fairness, ICANN promises to make decisions by applying documented policies neutrally and objectively.⁸⁰ And ICANN promises to not apply its policies inequitably or to single out any particular group for disparate treatment.⁸¹ Put simply, ICANN promises to operate for the benefit of the Internet community while acting in conformity with its Bylaws and Articles of Incorporation.⁸²

b. To Ensure Consistency and Fairness, ICANN Promises to Listen to Third Parties Voicing Public Policy Concerns.

50. ICANN promises to seek informed participation reflecting the geographic and cultural diversity of the Internet at all levels of policy development and decision-making.⁸³ ICANN also promises to “duly tak[e] into account governments’ or public authorities’ recommendations.”⁸⁴ ICANN further promises to cooperate with the relevant international organizations.⁸⁵

c. ICANN Promises to Respect Sensitivities Surrounding Geographic Names.

51. When implementing the New gTLD Program, GAC issued additional principles, beyond the general ones in ICANN’s Bylaws and Articles of Incorporation, that are specific to

⁷⁹ See ICANN’s Bylaws [<https://www.icann.org/resources/pages/bylaws-2012-02-25-en>] at Art. 3, § 1.

⁸⁰ *Id.* at Art. 1, § 2.

⁸¹ *Id.* at Art. 1, § 3.

⁸² See ICANN’s Articles of Incorporation [<https://www.icann.org/resources/pages/articles-2012-02-25-en>] at Art. 4.

⁸³ See ICANN Bylaws at Art 1. Sec 2.

⁸⁴ *Id.*

⁸⁵ See ICANN’s Articles of Incorporation [<https://www.icann.org/resources/pages/articles-2012-02-25-en>] at Art. 4.

the new gTLDs.⁸⁶ GAC, which was formed to advise ICANN on government concerns relating to public policy matters, created these principles with ICANN’s Bylaws and Articles of Incorporation in mind.⁸⁷

52. Of particular importance here, the GAC-created gTLD principles caution that when ICANN considers the introduction, delegation, and operation of new gTLDs, ICANN must respect the sensitivities regarding such gTLDs containing terms with national, cultural, geographic and religious significance.⁸⁸ The GAC principles also warn ICANN to “avoid country, territory or place names. . .*unless in agreement with the relevant governments or public authorities.*”⁸⁹

53. In addition to relying on the GAC principles to decide whether a gTLD should be approved, ICANN also relies on GAC’s advice, which can take one of three forms. First, if GAC advises ICANN that it reached a consensus that a particular application should not proceed, then there is a presumption that the ICANN Board should not approve the application. Second, if GAC advises ICANN that it has not reached a consensus but nonetheless there are concerns about a particular application, the ICANN Board is expected to enter into a dialogue with GAC to understand the scope of concerns and the ICANN Board is also expected to provide a rationale for its ultimate decision. Third, if GAC advises ICANN that an application should not proceed unless remediated, then there is a strong presumption the ICANN Board should not allow the application to proceed unless it is remediated.⁹⁰

54. Here, in evaluating the .PERSIANGULF gTLD, ICANN failed to abide by guidelines specifically created to respect public policy concerns raised by geographic names;

⁸⁶ See Annex 11 [“GAC Principles Regarding New gTLDs”].

⁸⁷ See *id.* at 1.4.

⁸⁸ See *id.* at 2, 2.1(b).

⁸⁹ See *id.* 2.2 (emphasis added).

⁹⁰ See *gTLD Applicant Guidebook* at Module 3.1.

failed to follow its Bylaws and Articles of Incorporation requiring it to be fair and consistent; and failed to heed the concerns of the GCC and GAC. Accordingly, ICANN denied the GCC the right to a fair process to challenge the issuance of a controversial and sensitive gTLD and discriminated against the GCC as a result.

55. First, ICANN ignored the public policy principles under the New gTLD Program. Under these public policy principles, ICANN must respect sensitivities regarding terms with national, cultural, geographic and religious significance.⁹¹ ICANN was on notice of the sensitive nature of the .PERSIANGULF application long before deciding to approve it. Indeed, long before deciding to approve the .PERSIANGULF application, the Arab governments of Oman, Bahrain, Qatar, and the UAE all wrote to ICANN and the GAC that the Gulf name is “controversial and debatable” and is without community support.⁹² The next month, GAC issued an Early Warning against the .PERSIANGULF application highlighting the sensitive nature of the gTLD and noting it lacked community support. The UAE and the GCC again raised these concerns when filing the Community Objection in March 2013.

56. Second, ICANN failed to properly consider GAC’s advice. During the April 11, 2013 GAC Committee Meeting, GAC advised ICANN to not proceed beyond the initial evaluation stage with the .PERSIANGULF gTLD.⁹³ Three months later, although unable to reach a consensus, “[t]he GAC noted the opinion of GAC members from the UAE, Oman, Bahrain and Qatar that this application should not proceed due to lack of community support and

⁹¹ See Annex 11 [“GAC Principles Regarding New gTLDs”] at 2.1.

⁹² See Annexes 7–9 [October 22, 2012 Letter from Bahrain General Director to ICANN and GAC; October 23, 2012 Letter from Qatar Secretary General to ICANN and GAC; and October 2012 Letter from Oman Chief Executive to ICANN and GAC].

⁹³ See Annex 23 [ICANN Government Advisory Committee, Communique – Beijing, People’s Republic of China (“Beijing Communique”), at § IV (Apr. 11, 2013)].

controversy of the name.”⁹⁴ ICANN focused solely on the lack of GAC consensus and ignored the noted concerns of the GCC.

57. Third, ICANN compounded this mistake by ignoring GAC’s principles that state “ICANN should avoid country, territory or place names. . . unless in agreement with the relevant governments or public authorities.”⁹⁵ There can be no dispute that the relevant governments do not agree to the “Persian Gulf” name.

58. As a result, the GCC suffered the very material detriment that ICANN’s Bylaws, Articles of Incorporation, and the *gTLD Applicant Guidebook* are designed to prevent. GCC has been denied the right to a fair and transparent challenge to the .PERSIANGULF gTLD. And, the GCC has suffered discrimination. Not only did ICANN ignore the GCC’s position on the Gulf naming dispute, thereby giving credence only to the Iranians’ position, but ICANN silenced the GCC as well when it ignored its Community Objection and government opposition to the .PERSIANGULF gTLD. Allowing the .PERSIANGULF gTLD to issue will further discriminate against the GCC; it will falsely create the perception that the GCC accepts the disputed “Persian Gulf” name.⁹⁶

59. Not surprisingly, ICANN’s actions with respect to .PERSIANGULF are inconsistent with other application under similar facts.

d. Under Near Identical Facts, ICANN Reached a Decidedly Different Outcome on the .ISLAM and .HALAL applications.

60. As part of the current round of gTLDs, Asia Green also applied for the gTLDs .ISLAM and .HALAL. As it did with the .PERSIANGULF gTLD, GAC issued an Early Warning,

⁹⁴ See Annex 34 [ICANN Government Advisory Committee, Communique – Durban, South Africa-Meeting Minutes (“Durban Communique”), at p. 2 (Jul. 13-18, 2013)].

⁹⁵ See Annex 11 [“GAC Principles Regarding New gTLDs”] at 2.2.

⁹⁶ Although the GCC did not formally initiate the Cooperative Engagement Process (CEP) with ICANN before filing this request for independent review, the GCC and ICANN have participated in ongoing discussions to resolve this dispute. These discussions, however, have not lead to a resolution, thereby necessitating the GCC’s request for independent review.

highlighting the sensitivity of these strings and their lack of community involvement and support for both.⁹⁷

61. Soon after the GAC Early Warning, the GCC filed a Community Objection against both the .ISLAM and .HALAL strings.⁹⁸ Similar to the .PERSIANGULF gTLD, the Independent Expert overruled the Community Objection. Unlike the .PERSIANGULF gTLD, however, the Independent Expert found *a lack* of substantial community opposition for the .ISLAM and .HALAL strings.⁹⁹ Although the Independent Expert found the affected communities did not substantially oppose the .ISLAM and .HALAL strings, ICANN still did not allow these two strings to proceed. Inexplicably, ICANN allowed the .PERSIANGULF gTLD to proceed over substantial community opposition.

62. ICANN's inconsistency did not stop there. During the GAC Committee Meeting in April 2013, GAC noted that although there was no consensus, "the applications for .ISLAM and .HALAL lack community involvement and support. It is the view of these GAC members that these applications should not proceed."

63. Following the July 2013 GAC Meeting in Beijing, ICANN wrote to GAC stating it will wait for further advice from GAC before making any decisions on the .ISLAM and .HALAL gTLD applications. GAC, however, indicated that no additional advice was forthcoming.¹⁰⁰ Because there was no GAC consensus, ICANN did not proceed with either the .ISLAM or .HALAL applications. Conversely, here, ICANN allowed the .PERSIANGULF gTLD to proceed even though there was no GAC consensus.

⁹⁷ See Annexes 25 & 26 [GAC Early Warnings for gTLD applications for .ISLAM and .HALAL, respectively].

⁹⁸ See Annexes 27 & 28 [*GCC v. AGITSys*, Int'l Ctr. for Expertise of the Int'l Chamber of Commerce Case No. EXP/430/ICANN/47, Expert Determination (Oct. 24, 2013) at ¶ 11 (ISLAM) and *GCC v. AGITSys*, Int'l Ctr. for Expertise of the Int'l Chamber of Commerce Case No. EXP/427/ICANN/44, Expert Determination (Oct. 24, 2013) at ¶ 10 (HALAL)].

⁹⁹ See *id.* at ¶ 108 (ISLAM) and ¶ 115 (HALAL).

¹⁰⁰ See Annex 29 [November 29, 2013 Letter from GAC to ICANN].

64. What is more, ICANN spurned Asia Green’s attempts to persuade ICANN to proceed with these two applications. Asia Green contacted ICANN to inquire the status of those applications.¹⁰¹ In that letter, Asia Green noted that it prevailed against the objections filed to oppose both .ISLAM and .HALAL; that there is tremendous support for these two applications and that Asia Green intends “to allow all Muslim community stakeholders to become active participants in the governance of .ISLAM and .HALAL.” Asia Green pleaded for ICANN to move forward with these two gTLD applications.¹⁰² ICANN, however, was not persuaded by Asia Green’s pleas to move forward. Instead, ICANN indicated that in light of Community Objections it would not take further action until such issues between ICANN and the objecting communities were resolved.¹⁰³

	.ISLAM/.HALAL	.PERSIANGULF
Applicant	Asia Green	Asia Green
GAC Early Warning Issued?	Yes	Yes
Community Objection?	Yes	Yes
Objection Denied?	Yes	Yes
Independent Expert’s Key Findings	No Substantial Community Opposition and No Material Harm	No Material Harm
GAC Consensus	No	No
Application Proceed?	No	Yes

¹⁰¹ See Annex 30 [December 4, 2013 Letter from Asia Green to ICANN].

¹⁰² *Id.*

¹⁰³ See Annex 31 [February 7, 2014 Letter from ICANN to Asia Green].

65. As if ICANN's inconsistent handling of the .PERSIANGULF gTLD application, and the resulting harm to the GCC, was not reason alone to grant the GCC's request for independent review, Asia Green *already* has a gTLD intended to unite the Persian community. As part of the 2011 gTLDs, Asia Green applied for yet another gTLD, .PARS gTLD. The .PARS gTLD has already issued.¹⁰⁴

66. The .PARS application has the same objective as the .PERSIANGULF gTLD: to unite Persians. Indeed, the .PARS application states: "There are in excess of a hundred million of *Persians* worldwide. *They* are a disparate group, yet *they* are united through *their* core beliefs. *They* are a group whose origins are found several millennia in the past, *their* ethnicity often inextricably linked with their heritage. Hitherto, however, there has been no way to easily *unify them* and their common cultural, linguistic and historical heritage. The .PARS gTLD, and the community it creates, will change this."¹⁰⁵

67. Asia Green relies on the identical language in its .PERSIANGULF gTLD application: "A robust gTLD has the power to bring together people across national borders in a free-flowing exchange of information and commerce. There is not a .COM or .ORG equivalent of .PARS--a domain that has universal appeal across a common origin. ICANN is dedicated to creating more competition in the TLD space, and the introduction of the Persian community through a .PARS gTLD does so in one simple stroke."¹⁰⁶

68. Asia Green therefore seeks to achieve the same objective from .PARS and .PERSIANGULF. That a gTLD already exists for the Persian Community highlights ICANN's disparaging treatment towards the GCC. ICANN ignored the GCC's strong opposition to the .PERSIANGULF gTLD to grant the Iranians, not one, but two gTLDs intended to unite Persians.

¹⁰⁴ See Annex 32 [.PARS application].

¹⁰⁵ See *id.* at 18A (emphasis added).

¹⁰⁶ Compare Annex 22 [.PERSIANGULF gTLD application] and 32 [.PARS gTLD application].

By approving the controversial and disputed .PERSIANGULF gTLD, ICANN unnecessarily: took a stance (against the GCC) on a hotly-contested naming dispute, made it known that the GCC's concerns are secondary to the Iranians' desires, and risked misleading the Internet community into believing that a Turkish company represents the interests of the entire Gulf region, including the six Arab nations that make up the GCC.

69. ICANN cannot explain its inconsistent application of its rules by pointing to competition.¹⁰⁷ Nor could it. There is no .ARABIANGULF gTLD (or a derivation thereof); and, accordingly, no competitive need to give the Persian Community a commensurate voice, especially when .PARS already exists.

e. The Independent Expert Failed to Apply Properly the Detriment Standard.

70. The *gTLD Applicant Guidebook* lists several non-exhaustive factors to support a finding of material harm. For instance: (1) “[e]vidence that the applicant is not acting or does not intend to act in accordance with the interests of the community or of users more widely. . .”; (2) “[i]nterference with the core activities of the community that would result from the applicant's operation of the applied-for gTLD string;” and (3) “[n]ature and extent of damage to the reputation of the community represented by the objector that would result from the applicant's operation of the applied-for gTLD string,”¹⁰⁸ are factors to consider in determining material harm.

¹⁰⁷ See ICANN's Bylaws at Art. 2, § 3 (“ICANN shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition.”).

¹⁰⁸ See *gTLD Applicant Guidebook* at Module 3.5.4.

71. Although the Independent Expert conceded that denomination disputes can be of high importance,¹⁰⁹ he concluded: “In the perception of the Expert, the fact remains that the practical effect of registration of .PERSIANGULF gTLD is difficult to discern and weigh.”¹¹⁰

72. Just because the Independent Expert could not discern harm, it does not follow that no harm exists.¹¹¹ The Independent Expert conceded the GCC promotes the cooperative benefit of the Arab Gulf community, yet he failed to consider that the GCC community and the Persian community have decided, and well-documented, differences when it comes to the naming of the Gulf region. Because Asia Green and the GCC are on opposite sides of the divisive Gulf naming dispute, Asia Green undoubtedly does not intend to act in accordance with the GCC. And when a gTLD that openly promotes the “Persian Gulf” name and seeks to unite other individuals (i.e. Persians) that also support the “Persian Gulf” name, it necessarily follows that the .PERSIANGULF gTLD will interfere with the activities of the GCC.

73. Additionally, by allowing a Turkish (non-Gulf) entity to register .PERSIANGULF, the GCC is further harmed. The unsuspecting Internet community is now conditioned to refer to the Gulf region as the “Persian Gulf,”—thereby minimizing the GCC’s position on the dispute. It also creates the false perception that Turkey, or perhaps Iran, solely speaks for and represents the values and beliefs of the Gulf region, further diluting the Arab voice in the Gulf area.¹¹² ICANN improperly ignored this harm.

74. Nor can the GCC’s harm be excused, as the Independent Expert believes, by applying for the .ARABIANGULF gTLD.¹¹³ The gTLD application process is closed. Even if the

¹⁰⁹ See Annex 2 [*GCC v. AGITSys*, Int’l Ctr. for Expertise of the Int’l Chamber of Commerce Case No. EXP/423/ICANN/40, Expert Determination, at ¶ 41 (Oct. 30, 2013)].

¹¹⁰ *Id.* at ¶ 40.

¹¹¹ See Concurrently Filed Expert Report of Steven Tepp at ¶¶ 49-57.

¹¹² *Id.* at ¶ 55.

¹¹³ See Annex 2 [*GCC v. AGITSys*, Int’l Ctr. for Expertise of the Int’l Chamber of Commerce Case No. EXP/423/ICANN/40, Expert Determination, at ¶ 42 (Oct. 30, 2013)].

GCC could still apply for that gTLD, the existence of an alternative does not, in and of itself, prevent harm.¹¹⁴ Because Asia Green will not sell domain names on the .PERSIANGULF gTLD to anyone that disavows the Persian Gulf name, the GCC is prohibited from even attempting to have their values and beliefs represented by the .PERSIANGULF gTLD.

VII. ICANN CAN RIGHT ITS WRONGS BY GRANTING THE GCC ITS REQUESTED RELIEF

75. In light of ICANN's violations, and the material harm the GCC has suffered as a result, the GCC seeks a declaration: (1) stating that the ICANN Board breached the aforementioned guidelines set forth its Articles of Incorporation, its Bylaws and the *gTLD Applicant Guidebook*; (2) requiring ICANN to refrain from signing the registry agreement with Asia Green, or any other entity; (3) awarding the GCC its costs in this proceeding, including, without limitation, all legal fees and expenses; and (4) awarding such other relief as the Panel may find appropriate or that the GCC may request. Alternatively, should this Panel insist that the ICANN be allowed to sign the registry agreement for the .PERSIANGULF gTLD, the GCC seeks a declaration allowing it the opportunity to review and object to all applications for a domain name using the .PERSIANGULF gTLD.

December 5, 2014

Respectfully submitted,

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¹¹⁴ See Concurrently Filed Expert Report of Steven Tepp at ¶¶ 58-59.