

ATTACHMENT 1

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

CASE No. EXP/403/ICANN/20

PROF. ALAIN PELLET, INDEPENDENT OBJECTOR

(FRANCE)

vs/

MEDISTRY LLC

(USA)

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.

Expert Determination

ICC International Centre for Expertise

EXP/403/ICANN/20

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I.
Abbreviations /Defined Terms

Abbreviation	Full Text
Appendix III	Appendix III to the ICC Expertise Rules, Schedule of expertise costs for proceedings under the new gTLD dispute resolution procedure
Application	The application which is the subject of this Expert Determination.
Centre	ICC International Centre for Expertise
Checklist	Guidance to Experts and Checklist for Expert Determination
Community Objection	An objection in accordance with Art. 3.2.1 Guidebook and Art. 2 Procedure, that there is substantial opposition to the application from a significant portion of the community at which the string may be explicitly or implicitly targeted.
DNS	Domain Name Space
Expert Determination Proceedings	Proceedings for Expert Determination related to the New gTLD Dispute Resolution Procedure
Expert Panel, also Panel	Expert appointed as sole member of the Expert Panel for the purpose of rendering this Expert Determination.
GAC	Government Advisory Committee
gTLD	generic Top Level Domain
Guidebook	ICANN gTLD Applicant Guidebook, Version 2012-06-04
ICANN	Internet Corporation for Assigned Names
ICC Practice Note	ICC Practice Note on the Administration of Cases under the Attachment to Module 3 of the Guidebook
Objection	The objection filed in the present Expert Determination Proceedings
PIC	Public Interest Commitments
Procedure	Attachment to Module 3 of the Guidebook, New gTLD Dispute Resolution Procedure
Response	The response filed in the present Expert Determination Proceedings
Rules	Rules for Expertise of the ICC
WHO	World Health Organization

II.
Parties of the Expert Determination Proceedings

Objector:

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III.
Expert Panel

The sole member of the Expert Panel in this matter is

Fabian von Schlabrendorff

Clifford Chance

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The sole member of the Expert Panel was appointed by the Chairman of the Standing Committee of the Centre on 21 June 2013 pursuant to Art. 3(3) of Appendix I to the Rules.

IV.
Disputed gTLD

The gTLD the Applicant has applied for and to which the Independent Objector objects by way of a Community Objection is

.Med (Application ID: 1-907-38758).

According to the information submitted in the Application form, the Applicant, a limited liability company registered under the laws of Delaware, has been engaged by the Cleveland Clinic to apply for, obtain and operate the .Med gTLD under the guidance and direction of the Cleveland Clinic.

V.
Procedure

- 1 The rules applicable to this Expert Determination are the Rules for Expertise of the ICC ("Rules"), supplemented by the ICC Practice Note on the Administration of Cases ("ICC Practice Note") under the Attachment to Module 3 of the gTLD Applicant Guidebook, New gTLD Dispute Resolution Procedure ("Procedure") of the gTLD Applicant Guidebook ("Guidebook").
- 2 The language of these Expert Determination Proceedings is English, including all submissions by the parties.
- 3 In accordance with Art. 4 (d) Procedure, the place of the proceedings is the location of the Centre, i.e. Paris, France.
- 4 In accordance with Art. 6 (a) Procedure, all communication by the parties, the Expert Panel and the Centre was transmitted electronically.
- 5 The procedural steps taken were as follows (summary):
- On 12 March 2013, the Independent Objector filed a Community Objection.
 - On 22 May 2013, the Applicant filed a Response.
 - On 21 June 2013, the Chairman of the Standing Committee of the Centre appointed the Expert as sole member of the Expert Panel acting in this matter.
 - Following the parties' full payment of the advance of estimated costs, the file of the matter was transferred to the Panel on 31 July 2013 and the Panel fully constituted on this day.
 - On 2 August 2013, the Panel addressed the parties and their representatives with a provisional timetable, suggesting that, subject to later assessment, it did not consider it necessary for the parties to file additional written submissions.
 - On 2 August 2013, in reply to this communication, the Independent Objector sent a letter requesting to be allowed to file an additional written statement.
 - On 2 August 2013, the Panel issued an order allowing the Independent Objector to comment on the Applicant's Response by no later than 12 August 2013, while granting the Applicant the opportunity to submit a reply by no later than 19 August 2013.

- On 2 August 2013, the Applicant voiced concerns regarding the scope of additional submissions. It asked to limit additional submissions to rebuttal and to extend the deadline for the Applicant to respond to 23 August 2013.
- On 4 August 2013, the Panel instructed the parties to limit their additional written submissions to those issues which arise from and are related to the other party's material and arguments. The Panel furthermore extended the time limit for the submission of the Applicant's additional written statement until 23 August 2013.
- The Independent Objector submitted an additional written statement on 12 August 2013, with the Applicant doing so on 23 August 2013.
- No hearing was requested by the parties or held necessary by the Panel.
- The Panel submitted its draft Expert Determination to the Centre for scrutiny within the 45-day time limit pursuant to Art. 21 (a) and (b) of the Procedure.

VI.
Summary of the Parties' Positions

- 6 The Expert Determination to be rendered in this matter concerns a Community Objection in accordance with Art. 3.2.1 of the Guidebook, Art. 2 of the Procedure. Such an objection can be filed on the grounds that there is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted. In the present case, the Community Objection has been filed by the Independent Objector who, according to Art. 3.2.5 of the Guidebook, is granted standing to file Community Objections "notwithstanding the regular standing requirements for such objections". The Application for .Med has been submitted by Medistry LLC engaged by the Cleveland Clinic for the purpose of obtaining and operating the applied-for string under the guidance and direction of the Cleveland Clinic.
- 7 The Independent Objector requests the Expert Panel to uphold the Objection and to determine that his advance payment of costs shall be refunded in accordance with Art. 14 (e) of the Procedure.
- 8 The Applicant requests the Expert Panel to hold that the Objector has failed to carry its burden and correspondingly find in favour of the Applicant. It also requests a determination that its advance payments of costs be refunded.
- 9 Both Parties have submitted divergent views concerning the question of whether the Objection meets the requirements of the Guidebook, namely whether there is proof of a clearly delineated community, of a strong association between the applied-for gTLD string and the community, of substantial opposition within the community, and of a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community. The Parties are in disagreement regarding all four requirements.
- 10 In brief, the positions are as follows:
- a) Community Test
- 11 The Independent Objector is of the opinion that he has shown that there is a medical community which constitutes a clearly delineated community, even if it is not entirely homogeneous and comprises several kinds of professionals and institutions. The Applicant disagrees, arguing that the "medical community" is insufficiently delineated in the Objection by characteristics so vague that it is impossible to determine whether any particular individual or entity is or is not included within the Objection's medical community.

b) Targeting Test

- 12 The Independent Objector takes the view that the .Med TLD, despite the Application not having been framed as a community-based TLD, is explicitly targeted at the medical community in accordance with the general use of the term "medical" by the public and that the Applicant intends the .Med gTLD to be used primarily by the medical community in order to make health-related information available in the medical sector. The Applicant, although not presenting any detailed counterarguments, expresses the view that the Independent Objector fails to meet his burden of proof with regard to the targeting test.

c) Substantial Opposition Test

- 13 The Independent Objector, arguing that even a single comment can trigger a Community Objection and that the material content of comments and oppositions expressed and the importance of the rights and interests at stake also need to be taken into account, takes the position that the comments filed in relation to the Application show substantial grounds for opposition. The Applicant argues that the Independent Objector fails to show any opposition comments since the comments referred to by the Independent Objector are only advisory in nature and since, in its view, it is not permissible to extend the scope of opposition by reference to comments filed against other TLD applications.

d) Detriment Test

- 14 The Independent Objector submits that there is a likelihood of detriment to the medical community, since the Application gives enormous subjective control to a single organisation without any inclination of a possibility for the medical community to participate in the development and modification of the policies and practices of operating the TLD. He sees a significant risk of exclusion of potential registrants which is likely to cause detriment in the form of reputational damage as well as economic harm to significant parts of that community and deprive members of the medical community of the use and benefit from the competitive advantages of the new gTLD.
- 15 In the view of the Applicant, the Independent Objector fails to prove a likelihood of material detriment. The Applicant views the Independent Objector's claims as to a likelihood of detriment to be unsubstantiated and unsupported. In its opinion, the Guidebook factors weigh heavily in its favour. Moreover, the Applicant argues that the likely benefit to the reputation of the majority of the medical community from the Applicant's provision of a trusted space in the .Med TLD under the guidance of the Cleveland Clinic greatly outweighs any unlikely harm to any very small portion of the community. It argues that the Cleveland Clinic's position as a charitable institution, along with its ability to foster broad-based consensus in the global medical community, make the Applicant the ideal operator of the .Med TLD.

VII.
Reasons

- 16 The requirements for the Independent Objector's standing are fulfilled in the present matter; see above paragraph 6.
- 17 In order to evaluate the merits of the Community Objection presented here, the Expert Panel is called to use the principles of adjudication (standards) provided for in the Guidebook for Community Objections (Art. 3.5 Guidebook). The Panel may also refer to other relevant rules of international law in connection with the standards (Art. 3.5 Guidebook).
- 18 In the case of a Community Objection, the Panel is to conduct four tests in order to determine whether there is substantial opposition from a significant portion of the community to which the string may be targeted. In accordance with Art. 3.5.4 Guidebook, for an objection to be successful the objector must prove that
- the community invoked by the objector is a clearly delineated community;
 - there is a strong association between the community invoked and the applied-for gTLD string;
 - community opposition to the application is substantial; and
 - the application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community at which the string may be explicitly or implicitly targeted.
- 19 With regard to each of these tests, the Guidebook provides a number of factors which a panel could consider and balance to determine whether or not the test has been met or not.
- 20 The Parties are in disagreement as to how to interpret these standards; in particular and with regard to all four tests, they also disagree on how this Panel should deal with the factors listed specifically with regard to each of the standards set forth therein. The Independent Objector, arguing that the factors provide guidance, but are neither exclusive nor limitative, takes the position that he bears no burden to specifically provide evidence on each of the factors listed in connection with each Guidebook standard. The Applicant agrees with that proposition in principle, but argues that the Independent Objector cannot ignore the Guidebook factors or weighing the factors, and appears to take the position that the Independent Objector must nevertheless provide some evidence in relation to each of the factors.
- 21 As this issue of the interpretation of the Guidebook standards is of relevance with regard to all four tests to be conducted in relation to the Community Objection sub judice, the Expert Panel considers it useful to deal with this issue up front before proceeding to each of the tests.

(i) Interpretation of the Guidebook Standards

- 22 In the view of the Expert Panel, there can be no doubt that the standards set forth in the Guidebook for community objections are very broad in their character. This emanates from the language used to describe them (clearly delineated community, substantial opposition, strong association between string and community, likelihood of detriment to a significant portion of the community) and it is further demonstrated by the fact that the authors of the Guidebook have seen the need for each of the standards to provide a list of factors more detailed in character which a panel could balance to determine whether a standard has been met.
- 23 The task of this Expert Panel is to apply the Guidebook standards to the case before it. It goes without saying that under the broad concepts provided for in the form of the Guidebook standards, this requires the Expert Panel to consider a variety of aspects of the case before it. In this regard, the factors listed in connection with each Guidebook standard provide guidance. In each case, there is some almost identical wording: "A panel could balance a number of factors to determine this, including but not limited to ...", or "[f]actors that could be balanced by a panel to determine this include but are not limited to...", or "[f]actors that could be used by a panel in making this determination include but are not limited to ...". This language clearly shows that the list of factors mentioned is an open one. The Expert Panel agrees with the Independent Objector and notes that the Applicant has yet to present any arguments opposing the view that the factors are neither exclusive nor limitative. The language used also contains no hint whatsoever that the Expert Panel would be required to consider and balance any of the factors listed, whether on an exclusive basis or not.
- 24 The Panel therefore concludes that the factors listed provide guidance for the understanding of the standards, but that they themselves are not standards. Most of the time, the way a factor is described in the Guidebook already shows by simple logic that it cannot be meant to represent a standard or requirement: Concepts such as "level of formal boundaries", "length of time", "global distribution", "level of recognised stature or weight", "representative nature", "distribution or diversity", "associations by the public", "level of certainty", "nature and extent of concrete or economic damage" all describe aspects of a situation to be considered, but do not in any way define which "level of formal boundaries" or which "nature and extent of concrete or economic damage" is required to fulfil the standard in question. But even factors formulated in other ways, which may make them sound more like a standard, are not meant to be standards in the view of the Expert Panel.
- 25 The language of the Guidebook standards in Art. 3.4.5 very clearly reflects this, since it explicitly states what an objector has to prove with regard to each test.
- The objector must prove that the community expressing opposition can be regarded as a clearly delineated community;

- The objector must prove a strong association between the applied-for gTLD and the community;
- The objector must prove substantial opposition within the community;
- The objector must prove that the application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community.

26 This does not mean, however, that the Panel would therefore feel entitled to ignore the factors listed in connection with each of the Guidebook standards. The contrary is the case. In the view of the Panel, these factors are listed to provide guidance. It therefore stands to reason that the parties are entitled to refer to aspects of the case at hand under the guidance of the lists of factors in the Guidebook and that the Expert Panel is required to carefully consider the parties' allegations and evidence that they have structured around the factors accordingly. But beyond this the Expert Panel is also called to consider any other aspect or factor of the Application to which the Independent Objector or the Applicant refer, provided it is useful and of relevance in determining whether the Guidebook standards have been met in the present case.

(ii) Community Test

27 The Independent Objector has proven that the community expressing opposition can be regarded as a clearly delineated community. In particular, the Independent Objector has shown that the medical community is a community which can be clearly delineated from other internet users.

28 Module 3 of the Guidebook provides no definition of the understanding of the term "community". It only provides certain factors which may be assessed and balanced by the Expert Panel to determine whether a community is clearly delineated from others. It therefore needs to be assessed how the term "community" is to be interpreted in the sense of the Guidebook. The Independent Objector has shown – as is undisputed by the Applicant – that the term "community" refers to a group of people living in the same place or having a particular characteristic in common (page 9 of the Objection). The distinctive element of a community is the commonality of certain characteristics, e.g. sharing a common territory, region or place of residence, a common language, religion, connectivity or other characteristics, values, interests or goals¹.

¹ <http://oxforddictionaries.com/definition/english/community>.

29 This understanding complies with ICANN's understanding. ICANN – the Guidebook's originator – expressed in its 2007 ICANN Final Report² that a "community" should be interpreted broadly and will include, for example, an economic sector, a cultural community or a linguistic community³.

30 Referring to the factor of public recognition listed in the Guidebook, the Independent Objector has convincingly demonstrated that the medical community addressed by the .Med gTLD is such a recognised community. He has shown that it constitutes a group even though it consists of a variety of professionals and institutions whose activities, and this is not disputed by the Applicant, are of critical importance to the achievement of the public policy goal of public health and whose general work and mission is directed towards the diagnosis and treatment, preventive or curative, of diseases. These professionals and institutions have developed their own characteristic system of moral principles that apply values and judgments to the practice of medicine, including the principles of acting in the best interests of the patient, fairness and equality in the distribution of healthcare and resources, non-maleficence, and respect for patients, who have the right to be treated with dignity and honesty.

31 This understanding of the term "community" and its application to the medical community invoked by the Independent Objector in the case at hand is in the Panel's view to be seen as a common understanding of the common characteristics of the medical community as recognised within that community itself as well as among the general public.

32 In the view of the Expert Panel, the Independent Objector has convincingly demonstrated that membership of the medical community as defined is determined by three formal boundaries and that, therefore, the medical community invoked by him as expressing opposition to the Application is a clearly delineated community in distinction to other internet users. The Independent Objector refers to the following factors:

- Membership is directly linked to the qualification to exercise a specific healthcare or medical profession. Access to such professions is regulated by public institutions, and in order to access a medical profession and the medical community, one needs to have successfully completed a specific scientific or professional education programme or to obtain a specifically granted license or authorisation.
- Members of the medical community usually work in specific sectors of activity, including healthcare and medical services, pharmaceuticals, or in the development of medical and similar technologies.

² Final Report – Introduction of new generic top-level domains dated 8 August 2007, accessible at <http://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>

³ See above, page 9 of the Objection

- Despite the variety of actors it includes, the medical community has developed a highly specific and complex system of technical terms and phrases hardly understood by the general public.

33 The Applicant does not object to the Independent Objector's description of the medical community; it admits its existence (additional written statement, p. 6). However, the Applicant argues that because the "medical community" invoked by the Independent Objector is "heterogeneous, expansive and comprised of many, varying entities of different types", it is anything but clearly delineated. In its view, the factors referred to by the Independent Objector are too undefined and vague and their application does not therefore result in a clear delineation of the medical community. Referring to declarations made by the Independent Objector in a letter sent by the Independent Objector to the Applicant in January 2013 with regard to the Independent Objector's investigation of the Applicant's applied-for TLD for potential objections, the Applicant also points out that the Independent Objector himself expressed the view at that time that the medical community is not "clearly defined" and that, for that reason, a Community Objection is not warranted. Finally, the Applicant argues that the Independent Objector fails to carry its burden of proof regarding the existence of a clearly delineated medical community under the Guidebook factors, which, in its view, weigh heavily against the Independent Objector's position.

34 In the view of the Expert Panel, none of these arguments are sufficient to invalidate the finding that the Independent Objector has successfully shown that the medical community invoked by him as expressing opposition can be regarded as a clearly delineated community.

35 As concerns the Applicant's first line of argument concerning the alleged vagueness of the factors referred to by the Independent Objector in defining the formal boundaries of the medical community, the Expert Panel is not convinced that the Applicant's detailed critique of the operational limitations of these criteria, to the extent they are to be recognised, justify the conclusion that the medical community cannot therefore be regarded as a clearly delineated community under the Guidebook standards.

36 The Applicant argues that these factors are too undefined and vague and that the application of the factors presented by the Independent Objector does not therefore result in a clear delineation of the medical community. Hence, it is of vital importance how the term "clearly delineated" is to be interpreted in the sense of the Guidebook. As shown by the Independent Objector (Objection, para. 17) and stated in the Guidebook, the community is to be delineated from internet users in general⁴. The required degree of delineation is "clearly", which broadly means "precisely" or "easy to perceive"⁵. The three factors shown by the Independent Objector are – if applied to persons – factors which separate certain internet users – e.g. those

⁴ Guidebook evaluation, question 20, page A-13.

⁵ <http://oxforddictionaries.com/definition/english/clear>.

with a degree in medicine or health services, working in a hospital and applying certain technical terms – from other internet users who have not qualified in medicine or are active in another field. Application of the factors shown by the Independent Objector enables an observer to sort and categorise individuals meeting the requirements shown by the Independent Objector from those individuals who do not meet these requirements. Consequently, the factors for a clear delineation shown by the Independent Objector are sufficient to clearly delineate members of the community from non-members.

- 37 The Applicant claims that to apply these criteria to professionals in the relevant community leads to vagueness and indefiniteness. The Applicant, referring to doctors, nurses, EMT, pharmaceutical salespersons, insurance providers, actuaries, billing companies, accountants, med-tech, software programmers/providers and clinical trial participants, argues that the level of qualification and the institutions granting the authorisation or qualification remain undefined by the delineating factors offered by the Independent Objector. It further criticises the fact that it remains unclear whether the members of the community defined as members working and exercising in specific sectors of healthcare and medical services comprise a larger group than those defined by the delineating factor of authorisation or qualification and who or what is included.
- 38 These arguments ignore the fact that the term "professional", as used by the Independent Objector in the given context, clearly applies not to professionals in general, but to professionals working in a healthcare, medical, pharmaceutical or medical technology role. Obviously, the delineating factor of a specific authorisation or qualification does not refer to professionals in other disciplines such as accountants, software programmers, insurance providers and other professionals of whatever kind who may work in various (support) roles in specific healthcare sectors, but who do not themselves exercise any healthcare and medical services, pharmaceuticals or medical technology role. The factor of authorisation or qualification applied to individuals working in a healthcare or related role provides for a sufficiently clear delineation of professionals belonging to the medical community.
- 39 In contrast to accountants, actuaries, billing companies, software programmers and other people to which the Applicant refers, these individuals also make use of a specific and complex system of technical terms and phrases relating to healthcare and medicine, a factor which also creates a clear delineation between members of the community and general internet users.
- 40 The Applicant's question regarding the level of authorisation required and the institution which is granting it is of an entirely secondary nature and, in the given context in the view of the Expert Panel, rather irrelevant. The factor of authorisation or qualification provides a sufficiently clear criterion for identifying and separating those who belong to the medical community from those who may be regarded as general internet users. It is not the question of how the authorisation or qualification is achieved, or what level of it is achieved, but rather

whether there is an authorisation or qualification which has to be obtained as a prerequisite for working in the medical sector.

41 In his additional statement, the Independent Objector points out that the Applicant, while disputing the possibility of delineating the medical community by means of diplomas, licenses or credentials, proposes for itself to make use of such criteria in order to select future registrants for the .Med TLD. The Applicant defends itself against such implication concerning its own understanding of the possibility of delineating professionals in the medical sector, arguing that a criterion for membership of the medical community (including those who are not a registrant of a domain in the .Med gTLD) has a different function to a criterion for registrants to be admitted according to allocation guidelines. The Panel agrees that allocation guidelines and criteria for defining a clearly delineated community logically serve different purposes. However, in the view of the Expert Panel, the Applicant's argument nevertheless fails to refute the inescapable truth of the Independent Objector's observation: The fact that the factor of qualification for the Applicant obviously works as a criterion to separate those who may register from those who may not confirms that the same factor also works as an operable criterion to delineate members of the medical community from other internet users or the general public.

42 The Applicant furthermore objects that the criterion of complex language used by members of the medical community is impermissibly vague. The Applicant argues that it is not able to identify what "terms" are meant or if anyone would be confused by them. That the Applicant, which has behind it one of the foremost institutions of hospital care in the United States, takes this position is somewhat of a surprise to the Panel.

43 The Applicant does not deny that complex language as such is used in the medical community, but instead, merely as a point of procedure, takes the position that the Independent Objector would be required to identify the terms used in that complex language before the Applicant could respond and determine "if anyone would be confused by them". However, neither procedural fairness nor anything in the Guidebook would require that an Objector has to go into such detail regarding the presentation of a delineating factor. The Applicant, who states as the mission of the applied-for .Med TLD to provide a "trusted name space wherein users can come to find trusted sources for medical information under the guidance of the Cleveland Clinic", is beyond any doubt in a position to respond to the Independent Objector's claim whether such language is in use and can serve as a delineating factor for identifying the members of the medical community. And the Applicant in fact responds by arguing that many members of the general public are fluent in medical terminology and many of them educate themselves daily on health topics. The Applicant even asserts that under the factor of complex medical language "virtually any educated adult could be considered a member of the medical community".

44 However, the Panel feels that this line of argumentation taken by the Applicant cannot successfully invalidate the Independent Objector's demonstration that members of the

medical community can be additionally delineated by the use of a specific and complex medical language not used by general internet users. The Expert Panel does not doubt that there are general internet users who educate themselves in medical terminology; likewise, it is not atypical that patients by necessity and also out of interest learn about the medical terminology applicable to the particular illness for which they are being treated. And, of course, it is safe to assume that there exist individuals who, even without health or medicine-related education, educate themselves in the use of medical terminology to some degree.

45 But the Applicant's claim that there are many members of the general public who are fluent in medical terminology and that, as a consequence, "any educated adult could be considered a member of the medical community under the Objector's factor", lacks credibility and is contradictory in itself. It is hardly possible to recognise the existence of medical terminology based on and diffused by health or medicine-related education, and, at the same time, claim that many educated adults are also fluent in medical terminology without having obtained such education. The Panel cannot therefore see why the medical community as shown by the Independent Objector, in addition to the other factors presented, cannot also be delineated by the use of a specific complex professional language. The fact that some people without medicine-related education may informally also acquire skills in medical language does not disqualify the use of language as one of several factors delineating members of the medical community from general internet users.

46 The Applicant argues furthermore that the medical community as shown by the Independent Objector is too heterogeneous, expansive and composed of many various entities of different types that it cannot be a clearly delineated community. The Applicant argues that the factors shown by the Independent Objector cannot be used in the case of institutions. It therefore comes to the conclusion that it remains unclear how any institution, such as governments, governmental medical regulatory bodies, an international medical agency or a hospital, a professional association, an insurer, a medical billing company etc., can qualify as being a member of the medical community.

47 The essence of this argument appears to be that the delineating factor of a licence or authorization as a characteristic criterion for identifying members of the medical community does not work in the case of institutions or entities. However, while this is true, it does not as such invalidate the Independent Objector's demonstration of the existence of a clearly delineated medical community. There is no requirement in the Guidebook that the factors applied to the identification of the members of the community need to be applicable to all of them, persons and institutions alike. On the contrary, with regard to many communities, it must be expected that factors determining membership of persons are different from factors determining membership of institutions.

48 The Applicant's argument overlooks the fact that the Independent Objector, demonstrating which individuals and which institutions form part of the membership of the medical community, has taken exactly this approach. He has shown that individuals can be

characterised by the factor "qualification, licence or authorization". And he has shown that all those engaged in activities related to the diagnosis and treatment, preventive or curative, of diseases, the medical professions and healthcare professionals as well as the institutions which deliver these services to users of the healthcare system, including medical treatment centres or medical schools, belong to the medical community (Objection, p. 9). What this boils down to is that the formal boundaries of qualification, licences and authorizations apply to individual members but do not apply in the same way to institutions belonging to the medical community (although some institutions belonging to the medical community may also require some type of public authorization to operate, such as hospitals, diagnostic laboratories etc). Accepting this does not invalidate the operability of the factor "qualification, licences, authorizations" as a formal boundary by which professionals belonging to the medical community can be distinguished from general internet users.

- 49 The issue which remains, however, with regard to institutions belonging to the medical community, is to what extent the Independent Objector has successfully shown that the medical community can, from this perspective, also be regarded as clearly delineated. The Independent Objector presents two further factors of delineation which are also of assistance in delineating institutions belonging to the medical community. Firstly, members of the community usually work and exercise in specific sectors of activity, which includes healthcare and medical services, pharmaceuticals, development of medical technologies, and secondly, the medical community has developed a highly specific and complex system of technical terms and phrases, hardly understood by the general public.
- 50 While these factors present less of a formal boundary than the qualification, license or authorisation factor, they still serve in the eyes of the Panel as useful criteria allowing institutions belonging to the medical community to be distinguished from those not pertaining to it. The list of factors mentioned in the Guidebook for illustrative purposes, and which may be considered by a panel, shows that not only the level of formal boundary but also other factors, such as the level of public recognition of the group as a community at a local and/or global level, can play a role in determining whether a community should be regarded as a clearly delineated community. Under this guidance, the Independent Objector's claim that institutions involved in healthcare and medical services, pharmaceuticals and the development of medical technologies are recognised as belonging to the medical community is convincing. The medical community is therefore more than an amorphous mass of professionals and institutions and forms a clearly delineable community distinguishable from the general public.
- 51 As demonstrated by the Independent Objector, the general public perception also includes the assumption that members of the medical community act in accordance with a certain code of moral principles. True enough, it is not to be disputed that there may be a number of borderline cases, both in the case of individuals and in the case of institutions, where under this criterion it may be doubtful whether such persons or entities belong to the medical community or not. Doubts may arise, e.g. in cases of institutions involved in multiple

activities, even as regards their primary interests, if these do all belong to healthcare and related activities. But such borderline cases, if they do not become dominant, will always exist, particularly among institutions, with regard to any specific community to be considered under a Community Objection, and can therefore hardly serve as such to invalidate the Panel's finding that the Independent Objector has successfully shown that the medical community invoked can be regarded as a clearly delineated community.

- 52 The Applicant seeks to reinforce its critique of the Independent Objector's definition of a clearly delineated medical community by advising the Panel of the position taken by the Independent Objector in this regard prior to filing the Community Objection. However, in the view of the Expert Panel, this evidence does not speak against the position taken by the Independent Objector in the Objection and provides no basis for the Panel to arrive at a different finding.
- 53 The Applicant refers to a letter of January 2013, in which the Independent Objector states: "The medical community is extremely heterogeneous and is composed of entities of very different and various types [...]. It is therefore quite doubtful that they will represent a clearly delineated community." The Applicant argues that this reasoning in the letter of the Independent Objector is highly persuasive and should be determinative with regard to the issue of the medical community not being clearly delineated.
- 54 The Panel does not agree. As shown above, the Independent Objector has successfully demonstrated that a medical community is recognised as existing and has presented factors that can be applied to clearly delineate its members from general internet users. That a given community is heterogeneous in character does not mean that it is not clearly delineable. The delineation is obviously more difficult in such a case but as demonstrated here by the Independent Objector it is possible to delineate members of the medical community, including institutions, from the general public. By providing factors of delineation as above discussed, he has to the satisfaction of the Expert Panel shown, how the admittedly heterogeneous medical community can be separated from other internet users. In the face of this evidence, the Panel cannot see any relevance as to the position on the community issue taken by the Independent Objector prior to filing the Community Objection. Obviously, by doing so the Independent Objector has given up any prior doubts concerning the provability of a clear delineation of the medical community and the Panel is unable to draw any evidentiary consequences from this.
- 55 The Panel also sees no merit in the Applicant's additional fairness and equity argument, presented in footnote 5 of its Response, claiming that the Independent Objector, having apparently seen himself unable to provide evidence for a clearly delineated medical community prior to the filing of the Community Objection, would now be estopped from taking a different position. In the first place it is, in the Panel's mind, highly doubtful whether a concept of "estoppel", if at all, could be applicable in this Procedure, in particular with

regard to declarations of a party made outside of the proceedings. But even if one would assume that a concept of estoppel could apply, the Applicant's argument fails.

56 Regardless of how one wishes to evaluate the Applicant's allegation that it "has been damaged" by the Independent Objector's actions and that it has not been given previous opportunity to provide the Independent Objector with input on the heterogeneous nature of the medical community, the Applicant has been provided with such opportunity in the present proceedings and has made use of it in its Response as well as in its additional written statement.

57 The Applicant also argues that the Independent Objector fails to carry his burden of proof regarding a clearly delineated community under the five factors mentioned in the Guidebook under § 3.5.4. As shown above, there is no requirement for the factors mentioned in the Guidebook to be "fulfilled". The Independent Objector only has to prove that the community can be regarded as a "clearly delineated community" which, in the opinion of the Expert Panel, he has successfully done by referring to and refining some of the factors listed in the Guidebook (public recognition, level of formal boundaries).

58 However, while there is no requirement in the Guidebook to pass a test of all the five factors listed in connection with the standard of a clearly delineated community, the Applicant is of course entitled to draw the Panel's attention to these factors and present counterarguments and counterevidence. In the present case, however, the Panel's consideration of the Applicant's arguments with regard to the five factors does not result in a change of the Panel's finding that the Independent Objector has met his burden of proof regarding the community test.

59 With regard to the Guidebook factor of public recognition, the Applicant argues that such recognition does not exist. The Applicant only recognises public recognition of many disparate communities, referring to the use of different medical terms by different groups, such as terms from a family primary care physician, a nutritionist, an insurance provider, a billing firm, or any of the various med-tech fields.

60 In the eyes of the Panel, this argument fails because it ignores the basis of the Independent Objector's argument: The Independent Objector has shown that there is public recognition of the existence of a medical community, defined as above shown by all those professionals and institutions essential in any health system whose general work and mission is the diagnosis and treatment, preventive or curative, of diseases. The Independent Objector has furthermore shown that these professionals and institutions have developed their own characteristic system of moral principles applying to the practice of medicine. The Applicant's approach of reducing the Independent Objector's position to the issue of the use of language therefore misses the main point. In addition, the argument itself is not convincing since it refers to the use of language by groups of people who might be working in the healthcare sector, but who are clearly not members of the medical community as identified by the Independent Objector,

such as insurance providers, billing firms, and others mentioned by the Applicant. Moreover, as far as the use of language is concerned, the delineating factor referred to by the Independent Objector is the use of complex language relating to medical practice. As these medical practices have become more and more specialized, the disciplines practised at Cleveland Clinic are likely to reflect this, the language used in the various disciplines of medicine has also become more specialised. In the view of the Panel, however, this does not in any way distract from the public recognition of a medical community as a whole.

61 The Applicant argues that the Independent Objector fails to identify any formal boundaries around the medical community; the three delineating factors presented by the Independent Objector are said to lack any formal, defined boundaries. This is not true. As has been shown above and explained in connection with the Applicant's critique of the operability of the three delineating factors identified (see paragraphs 30 to 32 and 33 to 36), these represent cases of formal boundaries which, in each case to a greater or lesser extent, allow professionals and institutions belonging to the medical community to be easily identified. Any borderline cases that may arise cannot refute this.

62 The Applicant claims that the vagueness of the Independent Objector's medical community precludes determination of the length of time of its existence. The Expert Panel observes that in view of the fact that the existence of a medical community has already found public recognition for a long period, the time of existence does not appear to be an issue of any true relevance.

63 With reference to the factor of distribution, the Applicant admits that the medical community is global. But it claims that the heterogeneity of the global community results in it being impossible to determine, from "jurisdiction to jurisdiction", whether an individual or entity is or is not a member of the medical community. The Expert Panel disagrees. The delineating factors identified by the Independent Objector are formulated in abstract terms, without involving any jurisdiction-specific aspects. The obvious differences with regard to required authorisation and the regulation of professionals involved in healthcare services with regard to individual jurisdictions cannot distract from the fact that, globally, a medical community is recognised as existing. The Guidebook standard of a clearly delineated community should not be understood to require uniformity of shared characteristics in every detail in the case of globally recognised communities. Such an interpretation would result in depriving globally recognised communities of the protection offered under the Guidebook rules.

64 The Applicant finally criticises, with reference to the Guidebook factor size, that the size of the medical community as seen by the Independent Objector cannot be determined as, in its view, it may merely include doctors, or it may include other professionals such as orderlies, nurses, medical insurance billing companies, international medical organisations etc. Since the global medical community as identified by the Independent Objector is obviously very large, including a considerable variety of professionals working in health services, this argument by the Applicant does not add anything to the size issue. Its apparent intention is,

however, again to demonstrate the apparent heterogeneity of the medical community. The Panel has dealt with this aspect above. The Applicant's argument is not convincing as it is based on including professionals such as medical insurance billing companies and non-professionals such as orderlies in the definition of a concept of the medical community which clearly, following the delineating factors identified by the Independent Objector, do not belong there.

65 In consequence, the Panel finds that the Independent Objector has met his burden of proof in terms of the medical community he invokes being regarded as a clearly delineated community.

(iii) Targeting Test

66 For a community objection to be successful the Independent Objector must prove that there is a strong association between the applied-for gTLD string and the community invoked by him. There is no opposition of substance from the Applicant regarding this issue.

67 The Panel finds that the Independent Objector has met the requirements of the targeting test. The Application in the present case has not been framed as a community-based TLD for the benefit of the medical community. But the Application, as pointed out by the Independent Objector, contains a number of references showing that it is the intention of the Applicant that the .Med gTLD is to be used primarily by the medical community in order to make health-related information available in the medical sector. Thus, the Application declares that the mission of the string is to provide a "trusted name space wherein users can come to find trusted sources for medical information". It further states that "multiple sectors of the health industry would be implicated in the sharing of trusted information" and that the applicants for a domain name within the .Med gTLD "will at minimum be required to state their qualifications to integrate clinical and hospital care with research and education."

68 The Independent Objector rightly points out that a relevant factor to be taken into account in determining whether an applied-for string is strongly associated with a community is not only the intended use as proposed in the application, but also the test as to whether the general public perceives such an association between the applied-for gTLD string and the community. As the Independent Objector correctly observes, the term "medical", according to the Oxford Dictionary, describes things or professionals "of or relating to the science of medicine, or to the treatment of illness and injuries", and such term is thereby generally associated with the medical community to be defined as the group of medical professions and professionals which deliver diagnostic services and treatment, preventive or curative, for diseases to users of the healthcare system, as well as the institutions involved in the delivery of such services.

(iv) Substantial Opposition Test

- 69 In order to prevail the Objector must prove that there is substantial opposition to the Application within the medical community (Art. 3.5.4 Guidebook). In the view of the Expert Panel, the Independent Objector has met this requirement.
- 70 The Guidebook standard of substantial opposition is a broad concept like the other three Guidebook standards and the term "substantial opposition" is as such not defined. In common language, opposition in its most general sense is defined as "resistance or dissent, expressed in action or argument"⁶ while the word "substantial" is used for something of "considerable importance, size or worth"⁷. Some further guidance can be gained from the factors which the Guidebook lists for the possible use of the panel in order to determine if "substantial opposition" exists with regard to an application, including reference to the number of expressions of opposition relative to the composition of the community, the representative nature of entities expressing opposition, the level of recognised stature or weight among sources of opposition, distribution or diversity among sources of expression of opposition, and historical defense of the community in other contexts.
- 71 The Expert Panel agrees with the view expressed by the Independent Objector that the Guidebook standard "substantial opposition" as described does not limit the Expert Panel to considering the factors listed but allows it to look at any other reasonable criteria for determining whether the Objector has successfully shown that there exists substantial opposition to the Application in the medical community. The Panel also agrees that the number of expressions of opposition, in relation to an application, is as such not necessarily a determining factor from the outset. The Expert Panel is also convinced that it is possible and can be warranted to speak of "substantial" opposition also in consideration of the content and quality of the opposition expressed.
- 72 The Applicant insists that an objector needs to provide proof of substantial opposition and relies in so far on a line of argumentation intended to show that the Independent Objector fails to carry its burden of proof with regard to the six factors set forth in the Guidebook. But the Expert Panel does not see any argument of the Applicant directed against the consideration of other factors in addition to those listed in the Guidebook.
- 73 The Expert Panel accepts that the comments made by the National Association of Boards of Pharmacy (NABP), on which the Independent Objector relies for the purpose of demonstrating substantial opposition, represent an expression of opposition, i.e. resistance or dissent, to the Application, going beyond merely having an advisory character as the Applicant suggests. These are comments from an organisation of international scale

⁶ See <http://oxforddictionaries.com/definition/english/opposition>.

⁷ See <http://oxforddictionaries.com/definition/english/substantial>.

representing the state boards of pharmacy in various countries, including the United States, Australia, eight Canadian Provinces, and New Zealand. Inter alia, in relation to the Application, NABP raised the concern that registries within the health and medical marketplace screen online drug sellers and other health practitioners' web sites for proper credentials. Referring to the recommendation of the ICANN Governmental Advisory Committee that gTLD strings referring to particular sectors, such as those subject to national regulation (such as .bank, .pharmacy) or those that describe or are targeted at a population or industry that is vulnerable to online fraud or abuse, should also be considered "community-based" strings, NABP's comments terminate by saying: "NABP believes that all medical themed gTLDs – whether community-based or not – should have certain safeguard mechanisms hard coded into the registry agreement in order to ensure patient safety and legitimate use of domain names."

74 As the Application filed by the Applicant is not designated as a community-based application and at the time did not contain any of the "hard coded safeguard mechanisms" to which NABP refers, its comments are, in the view of the Panel, to be understood as NABP's expressed opposition against the Application, even though the words "we oppose" are not employed. It cannot be overlooked that the substance of NABP's comments shows resistance to the Application and does not carry the Applicant's theory of a merely advisory character.

75 The additional arguments made by the Applicant do not hold either.

76 Though it may be true that the NABP has filed identical comments to all applicants in the "health" and "medical" field, this by itself does not mean and allow the conclusion that NABP did thereby not express opposition to the applications in regard to which it in each case specifically filed its comments. The Applicant's – unsubstantiated and unproven – allegation that subsequent conversations between the Applicant and the NABP confirmed that the NABP's intent was "not to provide an opposition specifically against Applicant" are also of no avail. As far as it is known to the Panel, NABP has not retracted its public comments.

77 The Applicant's reference to the fact that NABP has submitted its comments under the "community evaluation panel" category rather than the "community objection" category is also of no bearing. Under the comment procedure, this categorisation is undertaken by the commentator for the purpose of channelling the comments through the comment evaluation process of ICANN. It has no bearing on and no interpretative value as to the question of whether comments are provided in opposition to an application or not.

78 While there exists only one direct comment relating to the Application on which the Independent Objector can rely for his case of substantial opposition, the Expert Panel agrees that NABP's comments in opposition are of particular significance, providing evidence of the existence of "substantial" opposition under the Guidebook standard in the medical community.

- 79 This particular significance arises from the contents of these comments, referring to the importance of the rights and interests at stake in the area of health and medical themed gTLDs, referring to the interest of patient safety, the legitimate use of domain names, and the best interest of the community. And it is in this context that the Independent Objector refers to the comments filed by the American Hospital Association in opposition to other .Med applications and to the GAC Early Warning of the French Government concerning .Health applications.
- 80 It is to be conceded to the Applicant that the Independent Objector can of course not rely on comments concerning other applications to apparently increase the number of voices of expression in opposition to the Application in question here. But the Independent Objector is entitled to and in the understanding of the Expert Panel also does not do more than arguing his case of the significance of NABP's comments on the Applicant's Application when he refers to and presents arguments regarding comments directed against other .Med applications such as those of the American Hospital Association (AHA). The same applies to the Independent Objector's references to the GAC Early Warning of the French Government and the arguments presented in connection with this Early Warning.
- 81 As concerns the weight of NABP's opposition raised against the Application, the Expert Panel considers it remarkable that the AHA has filed similar comments apparently with regard to all other .Med applications and the .Medical application, expressing its apprehension that the delegation of the .Med gTLD will be detrimental to public health and safety, and to the interests of the healthcare community targeted by such gTLD. The Panel agrees with the Independent Objector that this fact underlines the importance of the comments raised by NABP against the Application.
- 82 The fact that the AHA has filed comments in opposition to all other .Med applications, but has refrained from doing so in the case of the Applicant, is presented by the Applicant as evidence for the lack of any substantial opposition against its Application. However, the Panel is unable to find the Applicant's position convincing.
- 83 The Applicant argues that the Cleveland Clinic is a member of the AHA, and claims that the AHA, representing many other members, purposefully decided not to file a comment against the current Application. However, this allegation remains curiously unsubstantiated and unsupported by any details. In view of the fact that various motivations may explain why the AHA refrained from filing any comments opposing the Applicant's Application, including even the possibility of omission by negligence, the Panel is unable to ascribe any probative value to AHA's behaviour. But even if the Applicant had established in understandable and verifiable detail that the AHA on purpose decided not to oppose the Application, such decision of the AHA would and could not change the fact that the NABP expressed opposition to the Application on grounds of public health concerns, and that the AHA raised essentially identical concerns with regard to all other .Med applications. The Panel's assessment of NABP'S opposition to the Application as demonstration of a case of substantial

community opposition warranting the filing of a Community Objection would therefore remain unaffected.

84 The GAC Early Warning of the French Government concerning .health applications, to which the Independent Objector refers, additionally supports his case and confirms that the grounds for opposition brought forward by NABP against the Application are clearly substantial. Although it is not related to the .Med applications in general or the Applicant's Application in particular, the Expert Panel is satisfied that it underscores the sensitivity of health and medical related themes by pointing out the "[c]onsumer protection in health is particularly important online, when network rules cannot be effectively enforced, creating new rules for consumers, industry and governments". The GAC Warning goes on by saying: "A .health TLD with insufficient measures to address these risks will undermine consumer trust and confidence and harm legitimate enterprise, competition and the growth of the health industry. ... health is a crossborder concern, and the domain instead must be seen as a TLD with a significant potential for the global community." The Expert Panel agrees with the Independent Objector that similar concerns can be applied to the closely related .med gTLD since the applied-for .Med gTLD has a comparable potential for and impact on the global community.

85 As regards the concerns raised by NABP, the Applicant claims that its Application addresses such concerns. The Applicant refers to the Application as well as to the Public Interest Commitments it has filed. The Expert Panel does not see how this argument can in any way affect the finding that substantial opposition exists within the medical community. First of all, the Applicant filed its Public Interest Commitments in spring of 2013, i.e. at a time after NABP had filed its comments. Assuming that the Applicant's Public Interest Commitments do indeed provide an objectively adequate answer to all of NABP's concerns, the question however remains what becomes of the opposition originally filed by NABP. Does the fact of opposition to an application once filed vanish and become null and void if the applicant responds to the concerns raised in an opposition to the application? The Applicant does not explain this and the Expert Panel does not accept such a consequence. Moreover, the Applicant fails to provide any substance and explanations as to its claim that its Application, together with its later PIC, successfully addresses NABP's concerns in all regards. The Expert Panel has no possibility of verifying the Applicant's claim. Therefore, even if one were to assume that previously existing substantial opposition could vanish as a fact to be considered under the Guidebook (which the Panel does not believe one may assume) the Applicant's argument would still fail for lack of substantiation.

86 The Applicant expresses the opinion that the Objection fails due to not arguing on and establishing the six factors suggested in the Guidebook. However, even if one were to assume that the Independent Objector did have the burden to provide evidence on each of the factors (which the Panel does not recognise), this line of argument cannot disprove the Panel's finding of successful proof by the Independent Objector of substantial opposition against the Application in the medical community.

87 With reference to the Guidebook factor "number of expressions of opposition", the Applicant repeats its argument that the Independent Objector has shown at most one advisory comment from NABP and that this one comment does not constitute a significant number when compared to the vast overall population of the medical community. This argument fails regarding the characterisation of NABP's comments as not expressing opposition, see above paragraphs 73 to 80. It is also unconvincing with regard to the number issue. The number of expressions of opposition can be a factor to be considered and "balanced" (see Art. 3.5.4 Guidebook) with other factors, but the Guidebook does not set it forth as a decisive factor at all. It does not even set it forth as a factor which should be taken into account in all circumstances or in most cases. The Expert Panel does not generally take the view that the number of expressions of opposition is irrelevant; in many cases it may indeed be a relevant factor. In the given case, however, while the number of expressions of opposition is in the view of the Panel very low, in particular if compared to the size of the medical community, the Expert Panel finds that the grounds for opposition expressed in NABP's comments are of such a force and importance, their importance underscored by expressions of opposition with regard to other .Med applications and by the GAC Early Warning of the French Government, that even that one and single direct expression of opposition with regard to the Application, if viewed in context, is sufficient to prove that there exists substantial opposition in the medical community in relation to the Application.

88 Referring to the second Guidebook factor listed, the "representative nature" of the opposition voiced, the Applicant criticises that NABP represents only one facet of the medical field, namely that of pharmacy. However, this argument, too, fails to invalidate the Panel's finding of proven substantial opposition. It fails because in the view of the Panel the grounds for opposition presented by NABP against the Application are of such a basic nature that it is irrelevant whether such opposition arises only in one sector of the medical community and not in a number of them. That the NABP as an association of pharmacy boards is a very weighty representative of an important subsector of the medical community, i.e. that of pharmaceuticals and their application, cannot reasonably be doubted. The Expert Panel therefore, quite in contrast to the Applicant's view, sees the NABP as a downright prototypical member of the medical community and therefore as much a representative of this community as a hospital such as Cleveland Clinic or an association of hospitals such as the AHA would be.

89 Concerning the third Guidebook factor, "level of recognised stature or weight among sources of expressions of opposition", the Expert Panel fails to grasp the Applicant's flat and unreasoned denial of the Independent Objector having shown any opposition of recognised stature or weight. In light of the above, the opposite is true.

90 Following its line of argument along the Guidebook factors, the Applicant notes the lack of distribution or diversity regarding NABP's comment. As the Independent Objector's case is based on one expression of opposition of substance, this argument of the Applicant is obviously inapplicable for logical reasons. In addition, the Expert Panel notes that the

Objector has shown expressions of opposition of a similar nature with regard to other .Med applications coming from the hospital sector. Admittedly, they are of no direct relevance with regard to the Application, in particular since the Applicant claims to have been purposefully spared becoming the subject of such opposition from the hospital sector. Yet, these cases do at least evidence that the basic concerns expressed in the community against the attribution of a .Med gTLD are shared in various sectors of the medical community.

- 91 Finally, regarding the fifth and sixth of the Guidebook factors, namely historical defence and costs, the Applicant alleges that the medical community has shown ample ability to defend itself in other contexts. This claim of the Applicant is so general and unsubstantiated, lacking any references to historical cases, that for that reason alone it has to be disregarded and cannot disprove the Expert Panel's findings.
- 92 Moreover, even if the Applicant were to substantiate his general assertion of the ample abilities of the medical community, the question would remain which sectors and what portion of the medical community can be ascribed to having this degree of sophistication, motivation and funding to allow to conclude that "this community is very capable of defending itself" and to draw from that conclusions as to the quality of opposition reflected by NABP's opposition comments regarding the Application.
- 93 The Panel's assessment and finding of the existence of substantial opposition to the Application is based to a considerable degree on the contents of the grounds for opposition voiced by NABP and on the standing, weight and representative quality of NABP as a commentator speaking for the medical community. In coming to this finding, the Panel has not excluded but included the assumption that within the medical community there are more entities of high sophistication, motivation and with the necessary funds to engage in government interaction and lobbying. The Independent Objector has provided some evidence of this by pointing out the activities of the AHA with regard to other .Med applications. In light of this, one might indeed expect that an application such as that of the Applicant could have drawn a higher number of expressions of opposition than the one comment filed by NABP. However, balancing the factors to be considered here such recognition is, in the eyes of the Expert Panel, not of such decisive weight as to result in a different assessment. Taking into consideration the substance and importance of the concerns raised by the NABP with regard to the Application and taking into account that similar comments of opposition have been raised against other .Med applications, the Expert Panel remains convinced that such expression of opposition deserves to be recognised as substantial, even though in view of the size and degree of sophistication of the medical community, a higher number of expressions of opposition could have been expected.

(v) Detriment Test

- 94 In accordance with Art. 3.5.4 Guidebook, in order to prevail the Independent Objector must prove that the Application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the medical community. The Expert Panel finds that the Independent Objector has met this standard in the present case.
- 95 The detriment test, like the other tests provided for in the Guidebook, is based on a broad concept of "likelihood of material detriment" which is not defined. The Guidebook only provides a negative definition in so far as it explains that "[a]n allegation of detriment that consists only of the applicant being delegated the string instead of the objector, will not be sufficient for a finding of material detriment". Instead, as in the other cases, the Guidebook provides for a list of factors "that could be used by panel in making this determination". The parties disagree in what way the factors listed should be applied in the present case. In the first place, therefore, it is the task of the Expert Panel to explain how it interprets the Guidebook provisions on the detriment test and how it applies them to the parties' allegations relating to the issue of "likelihood of material detriment".
- 96 The Expert Panel is called to apply the standard of "likelihood of material detriment" on the basis of the meaning of this broad concept, obviously formulated so broadly in order to cover many different constellations which may arise in the context of applications for new gTLDs. The factors listed in connection with it do not define it; they, as the Guidebook says, "could be used by a panel" in making its determination, and are, as explained above, to be regarded as guidance only, albeit as guidance to be taken into consideration. But they do not limit a panel in balancing other factors of an application for a new gTLD it considers reasonably to be of relevance in determining whether it has been proven or not that an application creates a likelihood of material detriment.
- 97 In the present case it therefore remains the task of the Expert Panel to determine what the standard of "likelihood of material detriment" requires the Independent Objector to prove. In common language, likelihood is understood as a "state or fact of something's being likely"⁸; probability is considered a synonym. Detriment can be defined as a "state of being harmed or damaged"⁹, whereas the adjective "material" in the given context can be understood to mean "significant, important"¹⁰. The Independent Objector stresses that the dispute resolution procedure has been put into place in order to assess and to remedy in advance any potential negative effects of the operation of a new gTLD and the Expert Panel agrees with this

⁸ See <http://oxforddictionaries.com/definition/english/likelihood>.

⁹ See <http://oxforddictionaries.com/definition/english/detriment>.

¹⁰ See <http://oxforddictionaries.com/definition/english/material>.

proposition as well as with the Independent Objector's conclusion that the "likelihood of detriment" standard and the burden for the objector must be seen against this background.

- 98 However, while an objector can obviously not be asked to prove actual harm or damage but must engage in a risk assessment, the requirement of the standard remains to prove "likelihood of material detriment", which can only mean that an objector must show some probability that harm or damage may occur. The showing of improbable potential negative effects of the operation of a new gTLD, on the other hand, must be regarded as not being sufficient.
- 99 The Expert Panel agrees with the Independent Objector's approach in the present case, in so far not contradicted by the Applicant, that, when conducting the detriment test, attention must be paid not only to the likelihood of detriment to the rights or legitimate interests of a significant portion of the medical community, but also the probable detriment to users and the public in general. If one follows the guidance of the Guidebook factors, material detriment can result from damage to the reputation of the community, from interference with the community's core activities, and /or from concrete or economic damage to the community or a significant portion of it. In order to assess the likelihood of such detriment, the Panel finds guidance in the Guidebook by a number of factors, including the level of certainty that alleged detrimental outcomes would occur, the dependence of the community on the DNS for its core activities, and any evidence 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.
- 100 The Expert Panel notes that the language of the last-referred to Guidebook factor ("... not acting or does not intend to act in accordance with the interests of the community or of users more widely") confirms its position that potential harm to users in general is an element that a panel can take into account when assessing the issue of detriment. In the present case, in the view of the Expert Panel, there is even more reason to do so due to the importance of the rights and interests likely to be harmed concerning the medical community targeted and the public more generally making use of the applied-for gTLD. The Independent Objector has argued and the Applicant has not objected to it, that the applied-for gTLD refers to a community which belongs to those particular sectors, which the GAC has identified as targeted at a population or industry that is vulnerable to online fraud or abuse, and which according to the GAC should therefore be considered "community-based" strings. In the view of the Expert Panel, the Independent Objector has more clearly and thoroughly shown that the medical sector is one of high sensitivity and that therefore, in the event of establishing a gTLD string targeted at the medical community, the public interests of health and trustworthy medical services, that are of primary concern to national governments and international organisations, are at stake. It is therefore obvious to the Panel that such interests, in addition to the rights and interests of the medical community, weigh heavily when assessing the likelihood of detriment.

- 101 The Independent Objector has demonstrated to the satisfaction of the Panel that the Application raises considerable doubts as to whether the applied-for gTLD will be operated in the interest of the medical community and of users more generally. In the view of the Panel, this proves the likelihood of material detriment to the legitimate interests of a significant portion of the medical community.
- 102 As the Application has not been framed as a community-based gTLD, the Applicant and the Cleveland Clinic overseeing its activities, as correctly pointed out by the Independent Objector will not be committed to operate the TLD in a manner that allows the medical community to discuss and participate in the development and modification of practices for the TLD, including registration policies. The Applicant, as the Independent Objector has shown, has not framed its Application as being community-based and has not engaged in any commitment to operate the TLD for the benefit and in the interest of the medical community. Instead, as documented by a number of declarations contained in the Application, it is declared that the mission of .Med is "to perform as a new gTLD consistently with the mission and purpose of the Cleveland Clinic". It is further stated that "the Cleveland Clinic will set forth policies and practices relating to registration and use of domains in .Med" and that proposals towards creating a trusted, differentiated namespace for the exchange of medical-related information will be evaluated in its sole discretion as the steward of the .Med gTLD". The Applicant also states in its Application that "domain name registration in .Med will be limited to CC [i.e. Cleveland Clinic], its partners and other trusted parties from the medical and healthcare fields as CC so determines."
- 103 The Independent Objector additionally notes, which is not contradicted by the Applicant, that the Public Interest Commitments submitted by the Applicant on 6 March 2013 reiterate this policy and confirm the dominant role of the Cleveland Clinic in the operation of the .Med TLD.
- 104 In the view of the Expert Panel, such statements in the Application, reiterated in the Applicant's Public Interest Commitments, raise justified and considerable doubts as to whether the applied-for TLD will be operated in the interests of the medical community. There is no commitment to involve the medical community in the development and modification of policies and practices. Instead, as demonstrated by the Independent Objector, "[i]ts mission is limited to provide medical information trusted under the standards set by the Cleveland Clinic at its sole discretion."
- 105 In the view of the Expert Panel, the Independent Objector has successfully shown that such approach to operating the applied-for TLD is likely to result in material detriment to the medical community or a significant portion of it as well as to the general public.
- 106 The Panel finds the Independent Objector's concern justified that the Application creates a considerable risk of an exclusive misappropriation of a string generally linked to the medical community simply by giving extensive subjective control to a single player in the community

who is not representative of the community. This considerable risk is, in the understanding of the Panel, sufficient to establish a likelihood of detriment.

107 The Panel finds it convincing that the TLD string in question here, according to the Application to be operated as a trusted name space for the use of the Cleveland Clinic, its partners and other trusted parties from the medical and healthcare fields as determined by the Cleveland Clinic at its sole discretion, creates the considerable risk that important parts of the medical community will be excluded from obtaining domain name space in the .Med TLD, simply because they do not share the same policy or opinions as the Cleveland Clinic or do not recognise that it has any leading role. The Panel has no reason to doubt the standing of the Cleveland Clinic as one of the most respectable and respected entities in the healthcare sector, above all in the United States. It also has no reason to doubt the good intentions of the Cleveland Clinic to exercise its intended stewardship of the .Med namespace in an impartial and even way. But the Panel notes that the Cleveland Clinic, as has been demonstrated by the Independent Objector, is not an institution representative of the entire, wider medical community. The intended structure and operation of the .Med namespace by this institution therefore raises, for this structural reason alone, the justified and considerable doubt that significant portions of the medical community will be excluded and will have no possibility to participate in the elaboration and enforcement of policies necessary for the operation of the .Med TLD.

108 The Expert Panel is satisfied that the Independent Objector has successfully shown that the indicated considerable risks of operating the .Med namespace by a single member of the medical community without the participation of the wider community results in likely detriment to significant portions of the community in the form of loss of reputation and even economic harm to members of the community. It cannot be reasonably denied that the exclusion of members of the medical community from the .Med namespace, which is intended to be operated as a trusted space targeted at that community, is likely to cause harm to the reputation of those excluded, loss of the benefits of competition, and ultimately also economic damages.

109 While competition is an issue controversially discussed within the new g TLD setting, it is, in the eyes of the Panel, correctly referred to by the Independent Objector as another relevant element of likely detriment to the medical community since the promotion of competition is, after all, one of the declared primary objectives of ICANN's g TLD programme, as can be gathered from ICANN's Final Report on the Introduction of New Generic Top-Level Domains¹¹ issued in August 2007. The intended operation of the namespace on the basis of registration policies developed solely in the discretion of the Cleveland Clinic indeed carries

¹¹ Generic Names Supporting Organisation Final Report on the Introduction of New Generic Top-Level Domains, 8 August 2007, Principle C (<http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-prata-08aug07.htm#Toc43798015t>).

the likely risk of not allowing members of the medical community to participate which do not agree with the Cleveland Clinic's views, and the Panel agrees with the Independent Objector that even within sensitive sectors such as the health sector concerned here which require special safeguards, the general objectives of ICANN's programme, including the promotion of competition in the provision of registration services, and adding to consumer choices, still need to be adhered to.

- 110 The Expert Panel agrees with the Independent Objector that the intended structure and operation of the .Med namespace by the Applicant carries with it the more general but thereby no less real considerable risk of fostering an artificial link between the medical community, as it will be perceived by the average internet user through presence and content in the .Med name space, and the Cleveland Clinic, as the overseer of the string's operators, with consequential detrimental effects on competition in the provision of registry services, on consumer choice, market differentiation and on geographical and service-provider diversity. These detrimental effects concern the wider medical community as much as members of the general public seeking health-related information.
- 111 While the Independent Objector has not presented direct evidence on such a risk, the Expert Panel is satisfied that the existence of such a risk cannot be reasonably denied. The Panel is therefore convinced that this risk is also to be considered as representing a likely detriment caused by the Application to the medical community and the general public.
- 112 The Applicant denies that its Application creates any likelihood of detriment to the medical community by essentially using four arguments. In the first place, guided by and relying on the factors listed in the Guidebook, the Applicant argues that the Independent Objector has failed to carry his burden of proving a likelihood of material detriment to a significant portion of the community. As a second argument, the Applicant claims that its intended operation of the .Med namespace, contrary to the Independent Objector's submission, will be in the interest of the medical community and of users more generally, and will at any rate have beneficial effects for the general internet user in comparison to the present situation. Thirdly, the Applicant expresses the view that a Community Objection is not the proper forum or venue for the Independent Objector to voice his opinion as to whether the .Med TLD theoretically could have a "better" or "more global" or "less single entity" registration operator. And finally, denying that its operation of the .Med TLD will result in the exclusion of potential registrants, the Applicant argues that the model of registries imposing allocation guidelines which will preclude certain registrants is a business model accepted by ICANN, the GAC and the Guidebook.
- 113 However, in the view of the Expert Panel, none of these arguments give reason to change the above findings.
- 114 The Applicant introduces its first line of argument relying on the individual Guidebook factors by principally denying that its Application creates any risk of misappropriation of the

.Med string by a single organisation not representative of the medical community. It criticises the Independent Objector's concern that its operation of the .Med TLD is likely to exclude potential registrants which are part of the medical community as unsupported, unexplained and completely speculative, as claims which undercut any certainty of detriment.

- 115 The Expert Panel disagrees with this critique of the Independent Objector's showing and cannot accept it as valid. The Objector does not have to show certainty of detriment but only its likelihood. Likelihood comes in degrees and is not defined in the Guidebook.
- 116 It is submitted here that the purpose of the Community Objection is to protect communities from harm that might occur by way of attributing domain space to be associated with them to a specific applicant. It is therefore reasonable to assume that an objector is not required to prove more than a low level of likelihood of the detriment being expected to occur, as long as it still is an actual likelihood and not just an improbability. Particularly in cases where interests of public importance, such as providing the general consumer with reliable and competitive health-related information, is at stake, the Panel feels that proof of even a low degree of likelihood of detriment must suffice. The Applicant's critique of the Independent Objector's risk assessment describes it as speculation. In the view of the Panel, however, the risks invoked by the Independent Objector cannot be reasonably denied to exist.
- 117 The Independent Objector has shown by way of detailed analysis of the text of the Application that the Applicant intends to have the Cleveland Clinic, in its sole discretion, take control of the policies and practices of the operation of the .Med TLD. There will be no involvement of the wider medical community in this and, as stated, the domain name registrations will be limited to Cleveland Clinic, its partners and other trusted parties as Cleveland Clinic so determines. As already explained above, the Panel thinks that this evidence supports the Independent Objector's risk assessment and provides sufficient proof of the intentions of the Applicant who, rather than acting in accordance with the interests of the community, shows himself determined to act in line with the policies of the Cleveland Clinic and under its sole discretion only. As also shown above, this evidence provides sufficient support for the concern that, in this situation, potential registrants who are members of the wider medical community are likely to be excluded and that such exclusion is likely to result in detriment to a significant portion of the community in the form of reputational damage, reduced competition and economic harm, and ultimately detriment to the general internet user seeking health-related information.
- 118 The Independent Objector has convinced the Panel that these are risks rooted in the structure of the establishment and administration of the .Med string as proposed by the Applicant and he has sufficiently shown the likelihood of such detriments by pointing them out and explaining their origin. The Guidebook standards, including the standard of likelihood of detriment, are broad in nature, and it would not be in line with such broad standards, as the Applicant demands, to ask the Independent Objector to provide evidence on specific aspects of attitude or policies of the Applicant, which would additionally explain why the risks

indicated are likely to be realised. The Panel is also satisfied that any of the risks, if they are realised, are likely to affect a significant and not just a negligible proportion of the medical community. In light of the general nature of the detriments shown by the Independent Objector as being likely to occur, i.e. possible exclusion of registrants and negative effects on competition, it would, in the Panel's view, be unreasonable and an exaggeration to ask the Independent Objector for the submission of any more detailed evidence as to "who or what portion of the community would face such risks".

- 119 The Applicant's additional argument presented in this context, namely that the Independent Objector fails to claim any other form of material detriment to the community than the exclusion from the .Med TLD of a significant part of the community is, as already explained, obviously wrong. The Independent Objector has indeed shown that the Application also creates the likelihood of a detriment in the form of the risk of negatively affecting consumers' choice and competition for health-related information on the internet.
- 120 The Applicant denounces the Independent Objector's failure to adequately address the Guidebook factor of "nature and extent of concrete or economic damage". This commentary misses the point because the Objector, as long as he adequately deals with the likelihood of material detriment, is not required to deal with the factor of economic damage in the way imputed by the Applicant. Furthermore, neither the term "material detriment" set out in Art 3.5.4 of the Guidebook nor the illustrative guiding factor of the "nature and extent of concrete or economic damage" suggest that the harm to be demonstrated has to be economic damage of any kind. Instead, both terms lead to the very clear conclusion that the detriment to be shown may be of any nature whatsoever, including loss of reputation, as long as it is material. In addition, the Panel is satisfied that demonstrating damage to reputation sufficiently establishes the likelihood of economic harm.
- 121 The Applicant furthermore finds fault with the Independent Objector not having adequately addressed the factor of dependence of the community for its core activities. It claims that much of the physical practice of medicine takes place outside of the DNS and that the medical community communicates via other means, resulting in a lack of dependence on the DNS for the community's core activities. This argument misses the point as an objector does not have to specifically address any factors but only the issue of likelihood of material detriment to a significant proportion of the community, which the Independent Objector has done in the present case. As to the merits, the Applicant's argument lacks credibility. It is evident and common knowledge that the DNS has developed into a communication system of primary importance to the medical community. As the issue of public health is increasingly taking on international dimensions, requiring global cooperation of governments in the fight against rapidly spreading diseases, it has become increasingly important for the medical community to be part of the speedy global exchange of information via the internet. This includes access to the .Med TLD as a trusted webspace. That information within the medical community is also exchanged via other means, including written texts in paper form, conferences, physician appointments, meetings etc. cannot be denied. But this fact cannot

distract from recognising the dependence of the medical community on the .Med TLD as a key information and communication tool targeted at the medical community. The Panel considers this argument of Applicant as simply unconvincing.

- 122 The Applicant also objects to the Independent Objector's alleged lack of dealing with the factor of "interference with the community's core activities". Here, the same applies as to the preceding point of critique. The Independent Objector is under no requirement to address this particular point and the Applicant has not shown that the detriments demonstrated by the Independent Objector likely to occur would not result in any interference in some of the core activities of the medical community, including the practice of medicine, research, and development of pharma products and medical technologies.
- 123 The Applicant claims that the Independent Objector completely fails to detail the nature and quantify the extent of the alleged damage to the reputation of the community, referring to the corresponding factor of the Guidebook. Again, according to the Panel's interpretation of the Guidebook standards, an objector is under no specific requirement to do so as long as he demonstrates to the satisfaction of the panel the existence of the likelihood of material damage. In the view of the Panel, the Independent Objector has done so successfully by demonstrating that the Application creates an important risk of an exclusive misappropriation of a domain space by a single organisation which is not representative of the wider medical community, a situation which is likely to result in the exclusion of a significant portion of the members of the wider medical community from being registered. The Independent Objector has also shown successfully that such exclusion is likely to result in damage to the reputation of those members of the medical community, also resulting in consequential economic harm. These detriments are of such a general nature and obvious pervasiveness in their likely effects on the medical community that, in the Panel's view, sufficient evidence of likely detriment to a significant portion of the medical community has been provided. There is no need for the Independent Objector to provide additional evidence and further details regarding the nature and even quantity of the alleged damage to the reputation of the medical community.
- 124 Addressing the issue of reputational damage, the Applicant alleges that, if at all, only a very small portion of the medical community might be negatively affected. The Expert Panel, however, sees no reason why it should be assumed that the loss in reputation to which the Independent Objector alludes, should affect only a small part of the community; the Applicant has not provided any support for this allegation. The further argument of the Applicant, according to which it appears logically excluded that there could be any significant damage to the community (because, as the Applicant argues, either the .Med TLD rises to a high level of acceptance, meaning that all concerns raised with regard to its operation have been met and exceeded, versus it does not achieve that level of acceptance, meaning the absence of any person or entity within the TLD will have little impact on its reputation of that entity) is based on an untenable oversimplification of the issue at hand. The level of acceptance by which the .Med TLD may be operated is just as difficult to measure precisely as the loss of reputation for a member of the medical community being precluded

from admission to the DNS. The case stated by the Applicant bears no relation to the realities to be expected. The Expert Panel cannot therefore find any convincing value in this argument presented by the Applicant.

- 125 Referring to the sixth of the factors proposed by the Guidebook to be considered, namely that the Applicant has not proposed or does not institute effective security protection for user interests, the Applicant accuses the Independent Objector of conveniently ignoring that it has, via the Cleveland Clinic, indeed proposed and intends to institute effective security protection for user interests. In particular, the Applicant presents that it has addressed NABP's concerns to subject the TLD "to the more rigid contractual requirements to ensure that they protect the best interest of the community", via the Applicant's Public Interest Commitments.
- 126 The Panel, however, cannot see that the Applicant's Public Interest Commitments do significantly lower the risks arising out of the exclusive appropriation of a string generally related to the medical community by a single organisation which does not stand for and is not a representative of that community. It should firstly be noted that the Applicant has published its PIC under the express reserve to amend, modify, withdraw and otherwise change them in its sole discretion at any time due to any material activity or material change in the substance of certain aspects of Specification 11¹², e.g. modification of Specification 11 by the ICANN Board. This caveat raises the question to what extent actual reliance can be placed on Applicant's commitments.
- 127 More important, however, is that the Applicant continues in its PIC to emphasise the exclusive control of the Cleveland Clinic over the choice of registry, control and expelling measures for the string. The name space is to be provided "consistent with the Cleveland Clinic's mission of integrating clinical and hospital care with research and education in a digital world". The method of domain name allocation will be controlled "under guidelines, rules and criteria as set forth by the Cleveland Clinic in its sole discretion", and requests for proposal "will be reviewed by the Cleveland Clinic in its sole discretion". Additional restrictions, policies or practices "may be set forth by the Cleveland Clinic, in its sole discretion, during initial operations of the .Med gTLD". Instead of providing for participation of the wider medical community in the development and modification of policies and practices for the gTLD, the exclusive control of Cleveland Clinic is therefore maintained and even reinforced. In the view of the Panel, the Applicant's PIC cannot therefore serve as counter-evidence invalidating the Independent Objector having shown that there are considerable and justified concerns that the Applicant is likely not to act in accordance with the interests of the medical community and of users more generally.
- 128 The Applicant more generally argues that the participation of Cleveland Clinic in the .Med gTLD is beneficial. It asserts that its goal is to act in the interests of the community and of

¹² <https://gtdresult.icann.org/applicationstatus/applicationdetails/downloadpicposting/216?t:ac=216>

users in general, and that it realises this goal by engaging the Cleveland Clinic to provide policy and oversight for the .Med gTLD. It declares that the educational goals of the Cleveland Clinic are "very much consistent with the goals of providing a trusted source of medical information for the medical community to provide for users more widely" and it emphasises the charitable status and goals of the Cleveland Clinic which, according to the Applicant, do not allow it to operate in a manner to solely serve the Cleveland Clinic, but require it to provide benefit to the public, encompassing overall public health, thereby making the Applicant the ideal operator of the .Med gTLD.

- 129 In the opinion of the Panel, this argument does not provide sufficient assurances that the detriments shown by the Independent Objector to likely result from the Cleveland Clinic's sole control of the .Med namespace without any involvement of the wider medical community will not occur. The principles and goals pursued by the Cleveland Clinic may indeed be aligned with public health goals and make it a suitable operator of a string providing a trusted source of medical information to the medical community and to users more widely. The Panel has no reason to doubt this. But the risks connected with the operation of a string as sensitive as the .Med TDL by a sole operator not representative of the community remain nevertheless the same. According to the Application, the wider global medical community still remains excluded from the operation of the string and there is no guarantee, even though Cleveland Clinic may pursue goals consistent with the goals of overall public health and public benefit, that members of the medical community will not be excluded from registration because they do not accept Cleveland Clinic's assumed leadership role in determining policies and practices or do not agree with the Clinic's policies and practices or certain aspects of them. In the view of the Panel, therefore, the likelihood of detriment continues to exist.
- 130 The Expert Panel is finally unable to find any merit in the Applicant's argument that its business model of a registry imposing allocation guidelines which will preclude certain registrants is allegedly accepted by ICANN, the GAC and the Guidebook and that the Independent Objector should not be allowed to use a Community Objection to voice his opinion as to whether the .Med theoretically could have a "better" or "more global" or "less single entity" registry operator.
- 131 The Applicant's argument about the allegedly accepted "business model" of registries operating under guidelines precluding certain registrants, be it under the Guidebook, by ICANN or by GAC remains, in the eyes of the of Expert Panel, largely unsubstantiated and unsupported. In particular, the allegation lacks any detail as to which "certain registrants" may be precluded under such model or not. The Panel cannot recognise the existence of any accepted and defined "business model" which would allow the imposition of allocation guidelines precluding whatever sort of "certain registrants" at the sole discretion of the registry operator. Moreover, the Applicant does not show how such alleged "business model" relates to the present case where there is considerable and justified concern that, rather than "certain registrants", members of the medical community will be precluded from registering

in the .Med TLD, as it is foreseen that the power of definition of who may or may not obtain space within the TLD is placed solely into the hands of Cleveland Clinic, without any possibility of the wider medical community being represented and taking part in the shaping of policies and practices for operating the space which is so clearly targeted at it.

- 132 Also without substance is the Applicant's claim that the Independent Objector misuses the Community Objection to voice an opinion on a theoretically suitable applicant.
- 133 The Expert Panel therefore concludes that the Independent Objector has met his burden of proof with regard to the Guidebook standard of a likelihood of detriment to a significant portion of the medical community.

VIII.
Decision

134 In consideration of the above and in accordance with Art.21(d) of the Procedure, I hereby render the following Expert Determination :

1. Prof. Alain Pellet's Independent Objector Community Objection prevails and is upheld.
2. The Applicant, Medistry LLC fails.
3. The advance payment of costs made by Prof. Alain Pellet, Independent Objector shall be refunded by the Centre.

Date: 30 December 2013

Signature: 

Fabian von Schlabrendorff

Expert

ATTACHMENT 2



New gTLD Application Submitted to ICANN by: Medistry LLC

String: MED

Originally Posted: 13 June 2012

Application ID: 1-907-38758

Applicant Information

1. Full legal name

Medistry LLC

2. Address of the principal place of business

Contact Information Redacted

US

3. Phone number

Contact Information Redacted

4. Fax number

5. If applicable, website or URL

Primary Contact

6(a). Name

Mr. Brian David Johnson

6(b). Title

Secretary and General Counsel

6(c). Address

6(d). Phone Number

Contact Information Redacted

6(e). Fax Number

Contact Information Redacted

6(f). Email Address

Contact Information Redacted

Secondary Contact

7(a). Name

Mr. Scott Curtis Finerman

7(b). Title

Chief Financial Officer

7(c). Address

7(d). Phone Number

Contact Information Redacted

7(e). Fax Number

Contact Information Redacted

7(f). Email Address

Contact Information Redacted

Proof of Legal Establishment**8(a). Legal form of the Applicant**

Delaware Limited Liability Company

8(b). State the specific national or other jurisdiction that defines the type of entity identified in 8(a).

Delaware LLC law

8(c). Attach evidence of the applicant's establishment.

Attachments are not displayed on this form.

9(a). If applying company is publicly traded, provide the exchange and symbol.**9(b). If the applying entity is a subsidiary, provide the parent company.****9(c). If the applying entity is a joint venture, list all joint venture partners.****Applicant Background****11(a). Name(s) and position(s) of all directors****11(b). Name(s) and position(s) of all officers and partners**

Brian D. Johnson	Secretary & General Counsel
Dr. C. Martin Harris	Executive Advisor
Dr. Delos M. Cosgrove	Executive Advisor
F. Matthew Embrescia	President
Ray W. Fassett	Executive Vice President
Scott C. Finerman	Chief Financial Officer
Thomas J. Embrescia	Chairman

11(c). Name(s) and position(s) of all shareholders holding at least 15% of shares

CC Web Solutions, Inc.	Not Applicable
Second Genistry LLC	Not Applicable

11(d). For an applying entity that does not have directors, officers, partners, or shareholders: Name(s) and position(s) of all individuals having legal or executive responsibility**Applied-for gTLD string****13. Provide the applied-for gTLD string. If an IDN, provide the U-label.**

MED

14(a). If an IDN, provide the A-label (beginning with "xn--").**14(b). If an IDN, provide the meaning or restatement of the string in English, that is, a description of the literal meaning of the string in the opinion of the applicant.****14(c). If an IDN, provide the language of the label (in English).****14(c). If an IDN, provide the language of the label (as referenced by ISO-639-1).****14(d). If an IDN, provide the script of the label (in English).****14(d). If an IDN, provide the script of the label (as referenced by ISO 15924).****14(e). If an IDN, list all code points contained in the U-label according to Unicode form.****15(a). If an IDN, Attach IDN Tables for the proposed registry.**

Attachments are not displayed on this form.

15(b). Describe the process used for development of the IDN tables submitted, including consultations and sources used.

15(c). List any variant strings to the applied-for gTLD string according to the relevant IDN tables.

16. Describe the applicant's efforts to ensure that there are no known operational or rendering problems concerning the applied-for gTLD string. If such issues are known, describe steps that will be taken to mitigate these issues in software and other applications.

Medistry LLC is unaware of any known operational or rendering problems related to the .MED gTLD.

17. (OPTIONAL) Provide a representation of the label according to the International Phonetic Alphabet (<http://www.langsci.ucl.ac.uk/ipa/>).

Mission/Purpose

18(a). Describe the mission/purpose of your proposed gTLD.

Question 18 (a)

The Cleveland Clinic ("Cleveland Clinic"), founded in 1921 and headquartered in Cleveland Ohio, today is a \$5 billion international medical center with almost 1,000 doctors, offering world-class hospital and outpatient care in virtually every medical specialty. Ranked each year as one of the top five hospital systems in the United States, the Cleveland Clinic is recognized for its achievements in demonstrating unusually high expertise across multiple medical and healthcare related specialties.

The Cleveland Clinic is currently ranked in numerous areas of medical specialty, including rankings of number 1 in Cardiology and Heart Surgery; number 2 in Nephrology; number 2 in Urology; number 2 in Gastroenterology; number 3 in Rheumatology; number 3 in Pulmonology; number 4 in Orthopedics; number 4 in Cardiology; number 5 in Diabetes and Endocrinology; number 6 in Neurology and Neurosurgery; number 7 in Geriatrics; number 7 in Pediatrics: Neurology and Neurosurgery; and number 9 in Cancer. The Cleveland Clinic has received such high rankings on a consistent basis.

Cleveland Clinic's executive management team includes Dr. Toby Cosgrove (Chief Executive Officer and President of the Cleveland Clinic) and Dr. C. Martin Harris (Chief Information Officer of the Cleveland Clinic).

Dr. Cosgrove presides over a \$5 billion healthcare system comprised of the Cleveland Clinic, nine community hospitals, 15 family health and ambulatory surgery centers, Cleveland Clinic Florida, the Lou Ruvo Center for Brain Health in Las Vegas, Nevada, Cleveland Clinic Toronto, and Cleveland Clinic Abu Dhabi. His leadership has emphasized patient care and patient experience, including the re-organization of clinical services into patient-centered, organ and disease-based institutes. He has launched major wellness initiatives for patients, employees and communities.

Dr. Harris, a frequent presenter at national meetings on health care and technology, is on the advisory board of the Association of American Medical Colleges' Better Health 2010 committee and is a judge for the case studies in medicine for The Computerworld Smithsonian Honors Program. He is also a member of the American Medical Informatics Association and the Healthcare Information and Management Systems Society.

The Cleveland Clinic firmly believes that establishment of a .MED top-level domain, imbued with the principles established by the Cleveland Clinic, will promote competition, consumer trust and consumer choice. Towards this end, the Cleveland Clinic has engaged Medistry LLC ("Medistry") to apply for, obtain and operate the .MED gTLD under guidance and direction from the Cleveland Clinic. Medistry is owned and operated by CC Web Solutions, Inc., a wholly owned subsidiary of the Cleveland Clinic, and Second Genistry LLC, which includes the same management team which owns and operates the .JOBS sponsored gTLD. Both Drs. Cosgrove and Harris serve in the formal capacity of Executive Advisors to Medistry.

The mission/purpose of .MED is to perform as a new gTLD consistently with the mission and purpose of the Cleveland Clinic. The mission of the Cleveland Clinic, a nonprofit multispecialty academic medical center, is to integrate clinical and hospital care with research and education. Under the stewardship of the Cleveland Clinic, the .MED gTLD will aim to serve as a source identifier that accomplishes integrating clinical and hospital care with research and education in a digital world, providing a trusted name space wherein users can come to find trusted sources for medical information.

Towards fulfilling this mission/purpose, domain registrations in .MED will not be real-time, but instead will be allocated by Requests for Proposals (RFPs) only. RFP applicants will at minimum be required to set forth their qualifications to integrate clinical and hospital care with research and education, and any registration and/or use of domain names in .MED will be under terms, policies and guidelines as the Cleveland Clinic so determines in its sole discretion, consistent with the above-stated mission/purpose of the .MED gTLD, any applicable ICANN Consensus Policies, ICANN's registry agreement, any applicable rules of law and Cleveland Clinic-approved guidelines.

The Cleveland Clinic firmly believes that the .MED gTLD, as used to promote the above-stated mission/purpose, would provide benefit to Internet users in general. In fulfilling .MED's mission/purpose, the Cleveland Clinic, upon allocation of .MED, intends to explore ways of promoting adoption and use of .MED to fulfill the mission/purpose set forth above, and will likely obtain input from a broad range of medical service providers towards investigating many such ways.

One exemplary way the Cleveland Clinic intends to explore is providing geographic, clinical and/or other medical-related terms not otherwise reserved from registration and/or use for use at the second-level to provide medically-related information in the area associated with the geographic term or the field associated with the clinical/medical term. In conjunction with allocation via RFPs, consumer choice is thus promoted by providing an easily accessible and intuitive source for providing medical-related information.

The Cleveland Clinic believes that medical professionals, educators, patients and, generally, consumers associate the Cleveland Clinic with integrating clinical and hospital care with research and education. People have come to trust the care, research and education provided by the Cleveland Clinic. The Cleveland Clinic believes that its stewardship of the .MED gTLD will extend that trust into the DNS namespace for the .MED gTLD, and that such trust would be created in no small part by the Cleveland Clinic's ability and willingness to protect .MED both through the registration limitations set forth above and compliance with the Cleveland Clinic's mission. When a consumer visits a .MED domain, she can be assured that the registrant has been reviewed and approved by the Cleveland Clinic, and that any content is consistent with the stated mission/purpose of the gTLD.

Medistry will be managed in a highly professional and commercially reasonable manner, consistent with any applicable ICANN Consensus Policies, ICANN's registry agreement and any applicable rules of law, providing a level of comfort to registrants and Internet users alike as being a gTLD powered by the industry's leading back end provider (Verisign, Inc.) and backed by a management team already experienced in the operation of a gTLD and with the executive advice of Drs. Cosgrove and Harris.

Medistry pledges to assist ICANN in reviewing the New gTLD Program as specified in section 9.3 of ICANN's Affirmation of Commitments as such relates to .MED and the materials set forth in this application, including consideration of the extent to which the .MED gTLD has promoted competition, consumer trust and consumer choice, as well as effectiveness of the application and evaluation process for .MED, and all safeguards put in place for .MED to mitigate issues involved in running .MED.

18(b). How do you expect that your proposed gTLD will benefit registrants, Internet users, and others?

Question 18(b)

The proposed .MED gTLD will benefit registrants, Internet users and others by, among other reasons, providing a trusted name space wherein users can come to find trusted sources for medical information, consistent with the Cleveland Clinic's mission of integrating clinical and hospital care with research and education in a digital world. The proposed .MED gTLD will further benefit registrants, Internet users and others by promoting consumer trust by providing a gTLD operated in a professional and commercially reasonable manner by an experienced management team, powered by a world-class back end registry provider (Verisign, Inc.) and backed by the Cleveland Clinic. Use of the .MED gTLD under the Cleveland Clinic's stewardship will provide new

on-line opportunities for medical practitioners, educators, providers, patients, vendors and users alike.

Awareness of the existence of the .MED gTLD will also benefit Internet users -- such awareness will create new choice within the DNS for how to access and locate medically-related information. Users will also benefit from the trusted, valued nature of the .MED space. Users can be confident that a domain in the .MED gTLD has as its registrant an entity which has been reviewed and approved by the Cleveland Clinic, and any content is consistent with the stated mission/purpose of the gTLD.

1. The goals of the .MED gTLD in terms of areas of specialty, service levels and reputation.

A goal of the .MED gTLD is to serve as a trusted source on the Internet for medical-related information, providing people greater choice for obtaining such information. The Cleveland Clinic believes that multiple sectors of the healthcare industry would be implicated in the sharing of trusted information within the .MED gTLD, including:

- * eHealthServices, including Telehealth, Remote Services and Non-Acute Services including Home Health, LTAC, Skilled, and Semi-Skilled Providers
- * Pharma, including Pharmaceutical Providers and Consumers, Pharmacy and Mail-Order Pharmacy
- * Pharmacy Benefits Manager
- * Research, both Basic and Clinical
- * Chronic Disease Patient Management, including Patient Monitoring
- * Personal Health Record
- * Medical Devices, including Medical Device Manufacturers
- * Durable Medical Equipment, including Medical Device Manufacturers
- * Health Exchange
- * Medical Education, including health-related educational materials and continuing Medical Education
- * Commercial Lab, accommodates both For-Profit and Non-Profit Labs
- * Imaging, including Imaging Services
- * Genomics, including educators and researchers

While it is not anticipated that all sectors identified above will become registrants of, or even provide content for, domain names within the .MED gTLD, the Cleveland Clinic anticipates that most, if not all of the above sectors involved in the Healthcare ecosystem would likely be interested in participating in some use of trusted information and/or services provided via the .MED gTLD.

A further goal of the .MED gTLD is to foster collaboration, in the public interest, for the purpose of a new online experience and environment for producers and users of medical-related information. Such collaboration will be fostered by the selected nature of allocation within the gTLD, and by adherence to the policies, rules and guidelines promulgated by the Cleveland Clinic and implemented by Medistry.

The Cleveland Clinic is associated with trust and professionalism in the provision of care, research and education in the medical field. It is the Cleveland Clinic's goal to extend such trust and professionalism to operation and use of the .MED gTLD. In this regard, Cleveland Clinic anticipates that the same level of medical specialty, service and reputation associated with the Clinic's mission/purpose in the non-digital world will cross-over to the .MED gTLD.

In terms of service level goals, it is Medistry's goal for users to experience robust DNS industry standards for technical back-end operations, including but not limited to near 100% uptime; timely zone file dissemination; searchable WHOIS capabilities; and additional security measures such as for DNS Security Extensions (DNSSEC).

In terms of reputation, it is the Cleveland Clinic's goal to provide a gTLD that upholds the Clinic's reputation in the medical industry, and it is Medistry's goal to provide a gTLD operated (and recognized as being operated by users) in a professional and commercially reasonable manner by an experienced management team and powered by a world-class back end registry provider.

2. What the .MED gTLD will add to the current space in terms of competition, differentiation and innovation.

Creation of .MED will provide competition to existing TLD's in the form of a trusted new name space for provision of medical-related information.

The stewardship of the Cleveland Clinic, along with Medistry's intended allocation method, both inherently bring differentiation and innovation to the .MED gTLD. As previously noted, domain name registrations in .MED will not be "real-time". All domain name registrations will take place by Request for Proposal only. Applicants for a .MED domain name will at minimum be required to state their qualifications to integrate clinical and hospital care with research and education. The Cleveland Clinic, through its interest in operating Medistry, is expertly situated to evaluate such applicants and proposals specific to .MED's mission and purpose. Applications for a .MED domain name registration will be accepted or rejected at the sole discretion of the Cleveland Clinic. The Cleveland Clinic has the depth, reach, and expertise to foster a collaborative environment for participants to work together for the common good, which will both differentiate .MED from its gTLD brethren and foster innovation in the .MED namespace. The .MED gTLD will evolve to become known as a source destination for medical information which users are able to trust.

The Cleveland Clinic anticipates that proposals will be received from many of the Healthcare sectors mentioned above. Consistent with its stated mission/purpose, the Cleveland Clinic intends to evaluate all such proposals towards creating a trusted, differentiated namespace for the exchange of medical-related information, and further for the promulgation of any use/registration/RFP policies, rules and/or guidelines, as the Cleveland Clinic sees fit in its sole discretion as the steward of the .MED gTLD, to foster user awareness, adoption, growth and use of the gTLD, all within the confines of the stated mission/purpose.

Over time, the Cleveland Clinic anticipates a single dedicated name space under the unique .MED gTLD, in combination with the reputation and professionalism users associate with the Cleveland Clinic, will resonate with users to create differentiation that otherwise could not exist in current gTLD's. Further, provision of the .MED gTLD as a trusted, valued space will differentiate .MED from other, untrusted TLD's.

While it is difficult to predict in exact terms what future innovation may occur as a result of the existence of the .MED gTLD, we expect the Cleveland Clinic to demonstrate the same capacity to innovate and adapt as they have shown over nearly one hundred years of operation. One possible example of this innovation which the Cleveland Clinic intends to explore is the option of providing a hierarchical and intuitive framework for the .MED namespace by using geographical identifiers as second-level domain names, as described further in the answer to Question 22.

3. User experience goals of the .MED gTLD.

A goal of .MED is for users to experience robust DNS industry standards for technical back-end operations, including but not limited to near 100% uptime; timely zone file dissemination; searchable WHOIS capabilities; and additional security measures such as for DNS Security Extensions (DNSSEC).

Over time, an additional goal is for users to experience .MED websites as trusted, valued sources for professional clinical information, and particularly medical and care related information. One goal the Cleveland Clinic intends to explore is to provide professional information at domains which are associated with geographic and/or subject matter terms. Over time, users desiring to locate medical and care related information in a specific area, or services in a particular type, will be conditioned to navigate to "geographic.MED" or "subjectmatter.MED". Consistent with the Cleveland Clinic's mission/purpose for the .MED gTLD, the Cleveland Clinic will determine, in its sole discretion, who may register domains in .MED.

4. Intended registration policies in the .MED gTLD in support of the goals listed above.

Consistent with the stated mission/purpose for the .MED gTLD, the Cleveland Clinic will determine, in its sole discretion, who may register domains in .MED, and how such domains may be used. The Cleveland Clinic will set forth policies and practices relating to registration and use of domains in .MED which are reasonably necessary for the management, operations and purpose of the gTLD in light of its stated mission/purpose, and which are consistent with such mission/purpose. As set forth above, allocation will be by RFP under guidelines, rules and criteria as set forth by the Cleveland Clinic in its sole discretion.

Additional restrictions, policies or practices may be set forth by the Cleveland Clinic during initial operations of the .MED gTLD so that the .MED gTLD can be launched and initially operated in a controlled manner, granting the gTLD the opportunity to fulfill its stated mission (s)/purpose(s), and allowing the Cleveland Clinic the opportunity to study use of the gTLD and

user adoption of the gTLD. Any such restrictions, policies or practices will also allow the Cleveland Clinic the ability to explore and implement user experience goals noted above and to find additional ways of achieving the missions/purposes identified above.

Cleveland Clinic will periodically review progress and adoption of the .MED gTLD with an eye towards maintaining consistency with the gTLD's stated mission/purpose and achieving the goals set forth above. The Cleveland Clinic - in its sole discretion - may add, delete, amend or otherwise modify registration restrictions, policies and practices in support of the goals listed above. The Cleveland Clinic may also adopt use policies consistent with the principles set forth herein.

5. Measures for protecting the privacy and confidentiality of registrants and users.

Applicant does not at this time propose any measures for protecting the privacy of confidential information of registrants or users of .MED domain names, outside of what is required under applicable statute, contract or law.

6. Outreach and communications which will help achieve projected benefits.

The primary outreach and communications that will occur for .MED will be through the Cleveland Clinic and its related entities through existing channels of communication. Over time, Medistry expects these existing channels of communication to produce widespread awareness for .MED.

18(c). What operating rules will you adopt to eliminate or minimize social costs?

Question 18(c)

It is Medistry's intent to operate .MED as a restricted gTLD, at least as compared to open, unrestricted TLD's such as .com and .net, consistent with its stated mission/purpose and employing the registration and use restrictions set forth herein and as promulgated by the Cleveland Clinic from time to time. The restricted nature of the gTLD, along with allocation via RFP, will help eliminate or minimize social costs, as registrants will be limited to individuals or entities which have been vetted by the Cleveland Clinic. Further, the .MED gTLD implicates Cleveland Clinic's reputation, further minimizing or eliminating social costs as compared to users/operators of unrestricted gTLD's, which have no such reputations to protect.

To further help eliminate or minimize social costs, Medistry will implement all abuse mitigation and rights protection mechanisms set forth in applicable ICANN Consensus Policies, ICANN's registry agreement, any applicable rules of law and any policies implicated for compliance with Medistry's response to Questions 28 and 29 related to mitigation of abusive registrations and rights protection mechanisms.

Medistry and the Cleveland Clinic are both committed to operating the .MED gTLD in a professional and commercially reasonable manner. Medistry does not believe that operating a gTLD in a manner that unreasonably facilitates undue and unreasonable (at Medistry's sole determination) social costs is professional or commercially reasonable. In that regard, Medistry will reserve the right to adopt registration and use policies as commercially reasonably necessary, in Medistry's and the Cleveland Clinic's sole discretion, to mitigate any such undue and unreasonable social costs towards fulfillment of the mission/purpose of the .MED gTLD and the goals set forth in Medistry's answer to Question 18(b).

1. Resolving multiple applications for a particular domain name.

All domains in the .MED gTLD will be allocated by RFP at the sole discretion of the Cleveland Clinic pursuant to the mission/purpose of the gTLD as set forth herein. Resolution of any contention over a .MED domain name must be consistent with the Cleveland Clinic's mission and the mission/purpose of the .MED gTLD. In the event multiple applicants are not distinguishable in light of Cleveland Clinic's mission and the mission/purpose of the gTLD, the Cleveland Clinic will seek to resolve any such contention by encouraging the applicants to work together for the common good and in pursuit of the mission/purpose of the .MED gTLD. In the event the multiple applicants are still not distinguishable, Medistry and the Cleveland Clinic will evaluate industry-practiced and commercially reasonable ways to distinguish the applicants. While the Cleveland Clinic does not intend to use an auction process to resolve any such situations, Medistry and the Cleveland Clinic reserve the right to explore resolving the contention via an auction process. Any such auction, in the event one should take place, would be performed by an experienced domain auction provider under best auction practices. In any event, the Cleveland Clinic reserves the right to make final determinations in all multiple applicant/contention situations.

2. Cost benefits for registrants in the .MED gTLD.

Medistry, in consultation with the Cleveland Clinic, intends to investigate the provision of one or more introductory discounts, advantageous pricing and/or bulk registration discounts during initial operations of the .MED gTLD, and will review the results of any such discount(s) or pricing to determine if further discounts or other advantageous pricing should be implemented at any further time during operations of the .MED gTLD. Medistry, in consultation with the Cleveland Clinic, will receive pricing proposals, including any proposed cost benefits for applicant/registrants, at the discretion of the RFP applicant, and will review any such pricing proposals with the Cleveland Clinic towards final determination regarding any proposal submitted under the RFP.

3. Price escalation.

Medistry does not intend to make contractual commitments to registrants regarding the magnitude of price escalation.

Community-based Designation

19. Is the application for a community-based TLD?

No

20(a). Provide the name and full description of the community that the applicant is committing to serve.

20(b). Explain the applicant's relationship to the community identified in 20(a).

20(c). Provide a description of the community-based purpose of the applied-for gTLD.

20(d). Explain the relationship between the applied-for gTLD string and the community identified in 20(a).

20(e). Provide a description of the applicant's intended registration policies in support of the community-based purpose of the applied-for gTLD.

20(f). Attach any written endorsements from institutions/groups representative of the community identified in 20(a).

Attachments are not displayed on this form.

Geographic Names

21(a). Is the application for a geographic name?

No

Protection of Geographic Names**22. Describe proposed measures for protection of geographic names at the second and other levels in the applied-for gTLD.**

In responding to the issues indicated in Question 22, Medistry LLC ("Medistry") has considered GAC advice set forth at https://gacweb.icann.org/display/gacweb/New+gTLDs+and+https://gacweb.icann.org/download/attachments/1540128/gTLD_principles_0.pdf?version=1&modificationDate=1312358178000. Medistry has also considered the methodology developed for the reservation and release of country names in the .INFO tld, and specifically the information relating to .INFO at Resolution 01-92 at <http://www.icann.org/en/minutes/minutes-10sep01.htm> and ICANN's proposed action plan at <http://www.icann.org/en/meetings/montevideo/action-plan-country-names-09oct01.htm>. Medistry has also reviewed the Second WIPO Internet Domain Name Process - The Recognition and Rights and the Use of Names in the Internet Domain Name System, Section 6, Geographical Identifiers, at <http://www.wipo.int/amc/en/processes/process2/report/html/report.html> and ICANN's Generic Names Supporting Organization Reserved Names Working Group - Final Report at <http://gnso.icann.org/issues/new-gtlds/final-report-rn-wg-23may07.htm>.

Initial Reservation of Country and Territory Names

Medistry is committed to initially reserving, at no cost to governments, public authorities or inter-governmental organizations, the country and territory names contained in the internationally recognized lists described in Article 5 of Specification 5 attached to the New gTLD Applicant Guidebook Draft New gTLD Registry Agreement at the second level and at all other levels within the .MED generic top-level domain (gTLD) at which Medistry will provide for registrations. Specifically, Medistry will reserve:

1. The short form (in English) of all country and territory names contained on the ISO 3166-1 list, as updated from time to time, including the European Union, which is exceptionally reserved on the ISO 3166-1 list, and its scope extended in August 1999 to any application needing to represent the name European Union, http://www.iso.org/iso/support/country_codes/iso_3166_code_lists/iso-3166-1_decoding_table.htm - EU;
2. The United Nations Group of Experts on Geographical Names, Technical Reference Manual for the Standardization of Geographical Names, Part III Names of Countries of the World; and
3. The list of United Nations member states in 6 official United Nations languages prepared by the Working Group on Country Names of the United Nations Conference on the Standardization of Geographical Names.

To the extent Article 5 of Specification 5 of the final version of the New gTLD Registry Agreement is amended to include additional country, territory or other geographic identifiers, Medistry will similarly initially reserve all such names.

It is Medistry's intent to initially reserve the names mentioned above by blocking them from registration at the registry level (for example, Medistry's back end provider, Verisign, would block the names from registration), but Medistry may use any other method for initially reserving the names as not prohibited by the final version of the New gTLD Registry Agreement, such as, for example, registering such names in its own name in order to withhold them from delegation or use.

Use of Non-Reserved Geographical Identifiers

Medistry believes that it is important to be able to register and/or use non-reserved geographical identifiers to promote competition in the DNS, competition among TLD operators, and to promote user acceptance and registrant interest in .MED. However, Medistry recognizes that such registration and/or use should be in a fair and non-misleading manner.

Because of the importance in geographical identification in helping consumers locate medical information, Medistry and the Cleveland Clinic (CC) intend to explore the option of providing a

hierarchical and intuitive framework for the .MED namespace by using geographical identifiers as second-level domain names. Medistry and CC believe the use of geographical identifiers to the left of the gTLD and as part of the domain name itself will have a direct and material impact on consumer adoption and search engine algorithms, along with corresponding query results. In addition, such naming conventions are intuitive and practiced by direct navigation Internet users. Medistry and CC believe that .MED may provide an online, single-source identifying function, allowing consumers to locate medical information relating to domain-specified geographic areas. As ICANN has largely premised this new gTLD round on promoting innovation, Medistry and CC would like to determine if this type of hierarchical and intuitive use of second-level domain names within a gTLD provides increased consumer functionality.

Medistry and CC recognize that there is concern regarding misuse of geographical identifiers in the international, regional and national levels. Medistry and CC, acting as responsible global businesses, seek to avoid business practices that could potentially mislead consumers and misuse geographical identifiers. Medistry and CC believe that it is important to be able to use geographical identifiers in a fair and non-misleading manner, as such use can benefit Internet users and consumers.

Medistry's and CC's intent is to consider using non-reserved geographic identifiers as part of a hierarchical and intuitive framework in a fair and non-misleading manner to help consumers navigate the .MED namespace. One option that may be considered is creation of GeographicLocation.MED website(s) which include listings of medical information at such "GeographicLocation." Medistry and CC are committed to operating the .MED namespace in a manner that minimizes potential consumer confusion, and will actively work with others in the ICANN community regarding any future policy development in this area.

As set forth in the answer to Question 29, an additional registry service which Medistry will offer, commonly used in the marketplace today, is the use of RFPs (Request for Proposals) in the first three years of operation to determine string allocation in appropriate circumstances. Medistry and CC intend to explore allocating some non-reserved geographical identifiers as set forth herein.

Alleged Abuses of Geographic Names

Medistry does not anticipate any disputes with governments or public authorities arising in connection with the registration and use of geographic names within the .MED gTLD based upon its proposed use set forth in Answer 18 of this application and the statements made herein. Nevertheless, Medistry and CC are committed to working with governments, public authorities, or IGOs to quickly resolve any such potential disputes, and as such ensure that such governments, public authorities and IGO's will at minimum have access to .MED's abuse prevention procedure(s) and rights protection mechanisms set forth in answers to Questions 28 and 29 of this Application in order to ensure an ability to address alleged abuses of names with national or geographic significance at the second level of .MED.

Potential Future Release of Initially Reserved Names

Medistry looks forward to collaborating with other new gTLD Registry Operators in potentially working with the GAC and ICANN to explore processes that could permit the release of initially reserved country names, such as Registry Service Evaluation Processes (RSEP) requests that have been filed by existing gTLD Registry Operators in releasing previously reserved domain names.

Creation and Updating the Policies

Should the need arise in the future for the creation or updating of the policies regarding this class of domain names, Medistry will act in an open and transparent manner to develop such a policy and/or recommendation.

Medistry is also committed to the ongoing review and updating of these lists to prevent the misleading use of geographical identifiers. Consistent with this commitment, Medistry intends to participate in any ongoing ICANN policy discussion regarding the protection of geographic names within the DNS.

Registry Services

23. Provide name and full description of all the Registry Services to be provided.

1 CUSTOMARY REGISTRY SERVICES

As Medistry LLC's ("Medistry") selected provider of backend registry services, Verisign provides a comprehensive system and physical security solution that is designed to ensure a TLD is protected from unauthorized disclosure, alteration, insertion, or destruction of registry data. Verisign's system addresses all areas of security including information and policies, security procedures, the systems development lifecycle, physical security, system hacks, break-ins, data tampering, and other disruptions to operations. Verisign's operational environments not only meet the security criteria specified in its customer contractual agreements, thereby preventing unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with applicable standards, but also are subject to multiple independent assessments as detailed in the response to Question 30, Security Policy. Verisign's physical and system security methodology follows a mature, ongoing lifecycle that was developed and implemented many years before the development of the industry standards with which Verisign currently complies. Please see the response to Question 30, Security Policy, for details of the security features of Verisign's registry services.

Verisign's registry services fully comply with relevant standards and best current practice RFCs published by the Internet Engineering Task Force (IETF), including all successor standards, modifications, or additions relating to the DNS and name server operations including without limitation RFCs 1034, 1035, 1982, 2181, 2182, 2671, 3226, 3596, 3597, 3901, 4343, and 4472. Moreover, Verisign's Shared Registration System (SRS) supports the following IETF Extensible Provisioning Protocol (EPP) specifications, where the Extensible Markup Language (XML) templates and XML schemas are defined in RFC 3915, 5730, 5731, 5732, 5733, and 5734. By strictly adhering to these RFCs, Verisign helps to ensure its registry services do not create a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems. Besides its leadership in authoring RFCs for EPP, Domain Name System Security Extensions (DNSSEC), and other DNS services, Verisign has created and contributed to several now well-established IETF standards and is a regular and long-standing participant in key Internet standards forums.

Figure 23-1 summarizes the technical and business components of those registry services, customarily offered by a registry operator (i.e., Verisign), that support this application. These services are currently operational and support both large and small Verisign-managed registries. Customary registry services are provided in the same manner as Verisign provides these services for its existing gTLDs.

Through these established registry services, Verisign has proven its ability to operate a reliable and low-risk registry that supports millions of transactions per day. Verisign is unaware of any potential security or stability concern related to any of these services.

Registry services defined in the Figures below are not intended to be offered in a manner unique to the new generic top-level domain (gTLD) nor are such services unique to this application's registry. An additional registry service which Medistry will offer, commonly used in the marketplace today, is the use of RFPs (Request for Proposals) in the first three years of operation to determine string allocation in appropriate circumstances. Yet another service which Medistry may offer is the use of Auctions and First Come, First Serve (potentially at a higher annual fee) to determine string allocation in appropriate circumstances, such as in allocation of any premium names.

Figure 23-1: See Medistry LLC_Q23_registry services

As further evidence of Verisign's compliance with ICANN mandated security and stability requirements, Verisign allocates the applicable RFCs to each of the five customary registry services (items A - E above). For each registry service, Verisign also provides evidence in Figure 23-2 of Verisign's RFC compliance and includes relevant ICANN prior-service approval actions.

Figure 23-2: See attached

Critical Operations of the Registry

i. Receipt of Data from Registrars Concerning Registration of Domain Names and Name Servers

See Item A in Figure 23-1 and Figure 23-2.

ii. Provision to Registrars Status Information Relating to the Zone Servers

Verisign is Medistry's selected provider of backend registry services. Verisign registry services

provisions to registrars status information relating to zone servers for the TLD. The services also allow a domain name to be updated with clientHold, serverHold status, which removes the domain name server details from zone files. This ensures that DNS queries of the domain name are not resolved temporarily. When these hold statuses are removed, the name server details are written back to zone files and DNS queries are again resolved. Figure 23-3 describes the domain name status information and zone insertion indicator provided to registrars. The zone insertion indicator determines whether the name server details of the domain name exist in the zone file for a given domain name status. Verisign also has the capability to withdraw domain names from the zone file in near-real time by changing the domain name statuses upon request by customers, courts, or legal authorities as required.

Figure 23-3: See attached

iii. Dissemination of TLD Zone Files

See Item B in Figure 23-1 and Figure 23-2.

iv. Operation of the Registry Zone Servers

Verisign is Medistry's selected provider of backend registry services. Verisign, as a company, operates zone servers and serves DNS resolution from 76 geographically distributed resolution sites located in North America, South America, Africa, Europe, Asia, and Australia. Currently, 17 DNS locations are designated primary sites, offering greater capacity than smaller sites comprising the remainder of the Verisign constellation. Verisign also uses Anycast techniques and regional Internet resolution sites to expand coverage, accommodate emergency or surge capacity, and support system availability during maintenance procedures. Verisign operates Medistry's gTLD from a minimum of eight of its primary sites (two on the East Coast of the United States, two on the West Coast of the United States, two in Europe, and two in Asia) and expands resolution sites based on traffic volume and patterns. Further details of the geographic diversity of Verisign's zone servers are provided in the response to Question 34, Geographic Diversity. Moreover, additional details of Verisign's zone servers are provided in the response to Question 32, Architecture and the response to Question 35, DNS Service.

v. Dissemination of Contact and Other Information Concerning Domain Name Server Registrations

See Item C in Figure 23-1 and Figure 23-2.

2 OTHER PRODUCTS OR SERVICES THE REGISTRY OPERATOR IS REQUIRED TO PROVIDE BECAUSE OF THE ESTABLISHMENT OF A CONSENSUS POLICY

Verisign, Medistry's selected provider of backend registry services, is a proven supporter of ICANN's consensus-driven, bottom-up policy development process whereby community members identify a problem, initiate policy discussions, and generate a solution that produces effective and sustained results. Verisign currently provides all of the products or services (collectively referred to as services) that the registry operator is required to provide because of the establishment of a Consensus Policy. For the .MED gTLD, Verisign implements these services using the same proven processes and procedures currently in-place for all registries under Verisign's management. Furthermore, Verisign executes these services on computing platforms comparable to those of other registries under Verisign's management. Verisign's extensive experience with consensus policy required services and its proven processes to implement these services greatly minimize any potential risk to Internet security or stability. Details of these services are provided in the following subsections. It shall be noted that consensus policy services required of registrars (e.g., Whois Reminder, Expired Domain) are not included in this response. This exclusion is in accordance with the direction provided in the question's Notes column to address registry operator services.

2.1 Inter-Registrar Transfer Policy (IRTP)

Technical Component: In compliance with the IRTP consensus policy, Verisign, Medistry's selected provider of backend registry services, has designed its registration systems to systematically restrict the transfer of domain names within 60 days of the initial create date. In addition, Verisign has implemented EPP and "AuthInfo" code functionality, which is used to further authenticate transfer requests. The registration system has been designed to enable compliance with the five-day Transfer grace period and includes the following functionality:

- * Allows the losing registrar to proactively 'ACK' or acknowledge a transfer prior to the expiration of the five-day Transfer grace period

- * Allows the losing registrar to proactively 'NACK' or not acknowledge a transfer prior to the expiration of the five-day Transfer grace period

- * Allows the system to automatically ACK the transfer request once the five-day Transfer grace

period has passed if the losing registrar has not proactively ACK'd or NACK'd the transfer request.

Business Component: All requests to transfer a domain name to a new registrar are handled according to the procedures detailed in the IRTF. Dispute proceedings arising from a registrar's alleged failure to abide by this policy may be initiated by any ICANN-accredited registrar under the Transfer Dispute Resolution Policy. Medistry's compliance office serves as the first-level dispute resolution provider pursuant to the associated Transfer Dispute Resolution Policy. As needed Verisign is available to offer policy guidance as issues arise.

Security and Stability Concerns: Verisign is unaware of any impact, caused by the service, on throughput, response time, consistency, or coherence of the responses to Internet servers or end-user systems. By implementing the IRTF in accordance with ICANN policy, security is enhanced as all transfer commands are authenticated using the AuthInfo code prior to processing.

ICANN Prior Approval: Verisign has been in compliance with the IRTF since November 2004 and is available to support Medistry in a consulting capacity as needed.

Unique to the TLD: This service is not provided in a manner unique to the .MED TLD.

2.2 Add Grace Period (AGP) Limits Policy

Technical Component: Verisign's registry system monitors registrars' Add grace period deletion activity and provides reporting that permits Medistry to assess registration fees upon registrars that have exceeded the AGP thresholds stipulated in the AGP Limits Policy. Further, Medistry accepts and evaluates all exemption requests received from registrars and determines whether the exemption request meets the exemption criteria. Medistry maintains all AGP Limits Policy exemption request activity so that this material may be included within Medistry's Monthly Registry Operator Report to ICANN.

Registrars that exceed the limits established by the policy may submit exemption requests to Medistry for consideration. Medistry's compliance office reviews these exemption requests in accordance with the AGP Limits Policy and renders a decision. Upon request, Medistry submits associated reporting on exemption request activity to support reporting in accordance with established ICANN requirements.

Business Component: The Add grace period (AGP) is restricted for any gTLD operator that has implemented an AGP. Specifically, for each operator:

* During any given month, an operator may not offer any refund to an ICANN-accredited registrar for any domain names deleted during the AGP that exceed (i) 10% of that registrar's net new registrations (calculated as the total number of net adds of one-year through ten-year registrations as defined in the monthly reporting requirement of Operator Agreements) in that month, or (ii) fifty (50) domain names, whichever is greater, unless an exemption has been granted by an operator.

* Upon the documented demonstration of extraordinary circumstances, a registrar may seek from an operator an exemption from such restrictions in a specific month. The registrar must confirm in writing to the operator how, at the time the names were deleted, these extraordinary circumstances were not known, reasonably could not have been known, and were outside the registrar's control. Acceptance of any exemption will be at the sole and reasonable discretion of the operator; however "extraordinary circumstances" that reoccur regularly for the same registrar will not be deemed extraordinary.

In addition to all other reporting requirements to ICANN, Medistry identifies each registrar that has sought an exemption, along with a brief description of the type of extraordinary circumstance and the action, approval, or denial that the operator took.

Security and Stability Concerns: Verisign is unaware of any impact, caused by the policy, on throughput, response time, consistency, or coherence of the responses to Internet servers or end-user systems.

ICANN Prior Approval: Verisign, Medistry's backend registry services provider, has had experience with this policy since its implementation in April 2009 and is available to support Medistry in a consulting capacity as needed.

Unique to the TLD: This service is not provided in a manner unique to the .MED TLD.

2.3 Registry Services Evaluation Policy (RSEP)

Technical Component: Verisign, Medistry's selected provider of backend registry services, adheres to all RSEP submission requirements. Verisign has followed the process many times and is fully

aware of the submission procedures, the type of documentation required, and the evaluation process that ICANN adheres to.

Business Component: In accordance with ICANN procedures detailed on the ICANN RSEP website (<http://www.icann.org/en/registries/rsep/>), all gTLD registry operators are required to follow this policy when submitting a request for new registry services.

Security and Stability Concerns: As part of the RSEP submission process, Verisign, Medistry's backend registry services provider, identifies any potential security and stability concerns in accordance with RSEP stability and security requirements. Verisign never launches services without satisfactory completion of the RSEP process and resulting approval.

ICANN Prior Approval: Not applicable.

Unique to the TLD: gTLD RSEP procedures are not implemented in a manner unique to the .MED TLD.

3 PRODUCTS OR SERVICES ONLY A REGISTRY OPERATOR IS CAPABLE OF PROVIDING BY REASON OF ITS DESIGNATION AS THE REGISTRY OPERATOR

Verisign, Medistry's selected backend registry services provider, has developed a Registry-Registrar Two-Factor Authentication Service that complements traditional registration and resolution registry services. In accordance with direction provided in Question 23, Verisign details below the technical and business components of the service, identifies any potential threat to registry security or stability, and lists previous interactions with ICANN to approve the operation of the service. The Two-Factor Authentication Service is currently operational, supporting multiple registries under ICANN's purview.

Medistry is unaware of any competition issue that may require the registry service(s) listed in this response to be referred to the appropriate governmental competition authority or authorities with applicable jurisdiction. ICANN previously approved the service(s), at which time it was determined that either the service(s) raised no competitive concerns or any applicable concerns related to competition were satisfactorily addressed.

3.1 Two-Factor Authentication Service

Technical Component: The Registry-Registrar Two-Factor Authentication Service is designed to improve domain name security and assist registrars in protecting the accounts they manage. As part of the service, dynamic one-time passwords augment the user names and passwords currently used to process update, transfer, and/or deletion requests. These one-time passwords enable transaction processing to be based on requests that are validated both by "what users know" (i.e., their user name and password) and "what users have" (i.e., a two-factor authentication credential with a one-time-password).

Registrars can use the one-time-password when communicating directly with Verisign's Customer Service department as well as when using the registrar portal to make manual updates, transfers, and/or deletion transactions. The Two-Factor Authentication Service is an optional service offered to registrars that execute the Registry-Registrar Two-Factor Authentication Service Agreement.

Business Component: There is no charge for the Registry-Registrar Two-Factor Authentication Service. It is enabled only for registrars that wish to take advantage of the added security provided by the service.

Security and Stability Concerns: Verisign is unaware of any impact, caused by the service, on throughput, response time, consistency, or coherence of the responses to Internet servers or end-user systems. The service is intended to enhance domain name security, resulting in increased confidence and trust by registrants.

ICANN Prior Approval: ICANN approved the same Two-Factor Authentication Service for Verisign's use on .com and .net on 10 July 2009 (RSEP Proposal 2009004) and for .name on 16 February 2011 (RSEP Proposal 2011001).

Unique to the TLD: This service is not provided in a manner unique to the .MED TLD.

3.2 Other allocation methods

As set forth above, an additional registry service which Medistry will offer, commonly used in the marketplace today, is the use of RFPs (Request for Proposals) in the first three years of operation to determine string allocation in appropriate circumstances. Yet another service which Medistry may offer is the use of Auctions and First Come, First Serve (potentially at a higher annual fee) to determine string allocation in appropriate circumstances, such as in allocation of any premium names.

Demonstration of Technical & Operational Capability

24. Shared Registration System (SRS) Performance

1 ROBUST PLAN FOR OPERATING A RELIABLE SRS

1.1 High-Level Shared Registration System (SRS) System Description

Verisign, Medistry LLC's ("Medistry") selected provider of backend registry services, provides and operates a robust and reliable SRS that enables multiple registrars to provide domain name registration services in the top-level domain (TLD). Verisign's proven reliable SRS serves approximately 915 registrars, and Verisign, as a company, has averaged more than 140 million registration transactions per day. The SRS provides a scalable, fault-tolerant platform for the delivery of gTLDs through the use of a central customer database, a web interface, a standard provisioning protocol (i.e., Extensible Provisioning Protocol, EPP), and a transport protocol (i.e., Secure Sockets Layer, SSL).

The SRS components include:

- * **Web Interface:** Allows customers to access the authoritative database for accounts, contacts, users, authorization groups, product catalog, product subscriptions, and customer notification messages.
- * **EPP Interface:** Provides an interface to the SRS that enables registrars to use EPP to register and manage domains, hosts, and contacts.
- * **Authentication Provider:** A Verisign developed application, specific to the SRS, that authenticates a user based on a login name, password, and the SSL certificate common name and client IP address.

The SRS is designed to be scalable and fault tolerant by incorporating clustering in multiple tiers of the platform. New nodes can be added to a cluster within a single tier to scale a specific tier, and if one node fails within a single tier, the services will still be available. The SRS allows registrars to manage the .MED gTLD domain names in a single architecture.

To flexibly accommodate the scale of its transaction volumes, as well as new technologies, Verisign employs the following design practices:

- * **Scale for Growth:** Scale to handle current volumes and projected growth.
- * **Scale for Peaks:** Scale to twice base capacity to withstand "registration add attacks" from a compromised registrar system.
- * **Limit Database CPU Utilization:** Limit utilization to no more than 50 percent during peak loads.
- * **Limit Database Memory Utilization:** Each user's login process that connects to the database allocates a small segment of memory to perform connection overhead, sorting, and data caching. Verisign's standards mandate that no more than 40 percent of the total available physical memory on the database server will be allocated for these functions.

Verisign's SRS is built upon a three-tier architecture as illustrated in Figure 24-1 and detailed here:

- * **Gateway Layer:** The first tier, the gateway servers, uses EPP to communicate with registrars. These gateway servers then interact with application servers, which comprise the second tier.
- * **Application Layer:** The application servers contain business logic for managing and maintaining the registry business. The business logic is particular to each TLD's business rules and requirements. The flexible internal design of the application servers allows Verisign to easily leverage existing business rules to apply to the .MED gTLD. The application servers store Medistry's data in the registry database, which comprises the third and final tier. This simple, industry-standard design has been highly effective with other customers for whom Verisign provides backend registry services.
- * **Database Layer:** The database is the heart of this architecture. It stores all the essential information provisioned from registrars through the gateway servers. Separate servers query the

database, extract updated zone and Whois information, validate that information, and distribute it around the clock to Verisign's worldwide domain name resolution sites.

Figure 24-1: See Medistry LLC_Q24_shared registration system performance

Scalability and Performance. Verisign, Medistry's selected backend registry services provider, implements its scalable SRS on a supportable infrastructure that achieves the availability requirements in Specification 10. Verisign employs the design patterns of simplicity and parallelism in both its software and systems, based on its experience that these factors contribute most significantly to scalability and reliable performance. Going counter to feature-rich development patterns, Verisign intentionally minimizes the number of lines of code between the end user and the data delivered. The result is a network of restorable components that provide rapid, accurate updates. Figure 24-2 depicts EPP traffic flows and local redundancy in Verisign's SRS provisioning architecture. As detailed in the figure, local redundancy is maintained for each layer as well as each piece of equipment. This built-in redundancy enhances operational performance while enabling the future system scaling necessary to meet additional demand created by this or future registry applications.

Figure 24-2: See attached

Besides improving scalability and reliability, local SRS redundancy enables Verisign to take down individual system components for maintenance and upgrades, with little to no performance impact. With Verisign's redundant design, Verisign can perform routine maintenance while the remainder of the system remains online and unaffected. For the .MED gTLD registry, this flexibility minimizes unplanned downtime and provides a more consistent end-user experience.

1.2 Representative Network Diagrams

Figure 24-3 provides a summary network diagram of Medistry's selected backend registry services provider's (Verisign's) SRS. This configuration at both the primary and alternate-primary Verisign data centers provides a highly reliable backup capability. Data is continuously replicated between both sites to ensure failover to the alternate-primary site can be implemented expeditiously to support both planned and unplanned outages.

Figure 24-3: See attached

1.3 Number of Servers

As Medistry's selected provider of backend registry services, Verisign continually reviews its server deployments for all aspects of its registry service. Verisign evaluates usage based on peak performance objectives as well as current transaction volumes, which drive the quantity of servers in its implementations. Verisign's scaling is based on the following factors:

- * Server configuration is based on CPU, memory, disk IO, total disk, and network throughput projections.
- * Server quantity is determined through statistical modeling to fulfill overall performance objectives as defined by both the service availability and the server configuration.
- * To ensure continuity of operations for the .MED gTLD, Verisign uses a minimum of 100 dedicated servers per SRS site. These servers are virtualized to meet demand.

1.4 Description of Interconnectivity with Other Registry Systems

Figure 24-4 provides a technical overview of the Medistry's selected backend registry services provider's (Verisign's) SRS, showing how the SRS component fits into this larger system and interconnects with other system components.

Figure 24-4: See attached

1.5 Frequency of Synchronization Between Servers

As Medistry's selected provider of backend registry services, Verisign uses synchronous replication to keep the Verisign SRS continuously in sync between the two data centers. This synchronization is performed in near-real time, thereby supporting rapid failover should a failure occur or a planned maintenance outage be required.

1.6 Synchronization Scheme

Verisign uses synchronous replication to keep the Verisign SRS continuously in sync between the two data centers. Because the alternate-primary site is continuously up, and built using an identical design to the primary data center, it is classified as a "hot standby."

2 SCALABILITY AND PERFORMANCE ARE CONSISTENT WITH THE OVERALL BUSINESS APPROACH AND PLANNED SIZE OF THE REGISTRY

Verisign is an experienced backend registry provider that has developed and uses proprietary system scaling models to guide the growth of its TLD supporting infrastructure. These models direct Verisign's infrastructure scaling to include, but not be limited to, server capacity, data storage volume, and network throughput that are aligned to projected demand and usage patterns. Verisign periodically updates these models to account for the adoption of more capable and cost-effective technologies.

Verisign's scaling models are proven predictors of needed capacity and related cost. As such, they provide the means to link the projected infrastructure needs of the .MED gTLD with necessary implementation and sustainment cost. Using the projected usage volume for the most likely scenario (defined in Question 46, Template 1 - Financial Projections: Most Likely) as an input to its scaling models, Verisign derived the necessary infrastructure required to implement and sustain this gTLD. Verisign's pricing for the backend registry services it provides to Medistry fully accounts for cost related to this infrastructure, which is provided as "Total Critical Registry Function Cash Outflows" (Template 1, Line IIb.G) within the Question 46 financial projections response.

3 TECHNICAL PLAN THAT IS ADEQUATELY RESOURCED IN THE PLANNED COSTS DETAILED IN THE FINANCIAL SECTION

Verisign, the Medistry's selected provider of backend registry services, is an experienced backend registry provider that has developed a set of proprietary resourcing models to project the number and type of personnel resources necessary to operate a TLD. Verisign routinely adjusts these staffing models to account for new tools and process innovations. These models enable Verisign to continually right-size its staff to accommodate projected demand and meet service level agreements as well as Internet security and stability requirements. Using the projected usage volume for the most likely scenario (defined in Question 46, Template 1 - Financial Projections: Most Likely) as an input to its staffing models, Verisign derived the necessary personnel levels required for this gTLD's initial implementation and ongoing maintenance. Verisign's pricing for the backend registry services provided to Medistry fully accounts for this personnel-related cost, which is provided as "Total Critical Registry Function Cash Outflows" (Template 1, Line IIb.G) within the Question 46 financial projections response.

Verisign employs more than 1,040 individuals of which more than 775 comprise its technical work force. (Current statistics are publicly available in Verisign's quarterly filings.) Drawing from this pool of on-hand and fully committed technical resources, Verisign has maintained DNS operational accuracy and stability 100 percent of the time for more than 13 years for .com, proving Verisign's ability to align personnel resource growth to the scale increases of Verisign's TLD service offerings.

Verisign projects it will use the following personnel roles, which are described in Section 5 of the response to Question 31, Technical Overview of Proposed Registry, to support SRS performance:

- * Application Engineers: 19
- * Database Administrators: 8
- * Database Engineers: 3
- * Network Administrators: 11
- * Network Architects: 4
- * Project Managers: 25
- * Quality Assurance Engineers: 11
- * SRS System Administrators: 13
- * Storage Administrators: 4
- * Systems Architects: 9

To implement and manage the .MED gTLD as described in this application, Verisign, Medistry's selected backend registry services provider, scales, as needed, the size of each technical area now supporting its portfolio of TLDs. Consistent with its resource modeling, Verisign periodically reviews the level of work to be performed and adjusts staff levels for each technical area.

When usage projections indicate a need for additional staff, Verisign's internal staffing group uses an in-place staffing process to identify qualified candidates. These candidates are then interviewed by the lead of the relevant technical area. By scaling one common team across all its TLDs instead of creating a new entity to manage only this proposed gTLD, Verisign realizes significant economies of scale and ensures its TLD best practices are followed consistently. This consistent application of best practices helps ensure the security and stability of both the Internet and this proposed gTLD, as Verisign holds all contributing staff members accountable to the same procedures that guide its execution of the Internet's largest TLDs (i.e., .com

and .net). Moreover, by augmenting existing teams, Verisign affords new employees the opportunity to be mentored by existing senior staff. This mentoring minimizes start-up learning curves and helps ensure that new staff members properly execute their duties.

4 EVIDENCE OF COMPLIANCE WITH SPECIFICATION 6 AND 10 TO THE REGISTRY AGREEMENT

Section 1.2 (EPP) of Specification 6, Registry Interoperability and Continuity Specifications. Verisign, Medistry's selected backend registry services provider, provides these services using its SRS, which complies fully with Specification 6, Section 1.2 of the Registry Agreement. In using its SRS to provide backend registry services, Verisign implements and complies with relevant existing RFCs (i.e., 5730, 5731, 5732, 5733, 5734, and 5910) and intends to comply with RFCs that may be published in the future by the Internet Engineering Task Force (IETF), including successor standards, modifications, or additions thereto relating to the provisioning and management of domain names that use EPP. In addition, Verisign's SRS includes a Registry Grace Period (RGP) and thus complies with RFC 3915 and its successors. Details of the Verisign SRS' compliance with RFC SRS/EPP are provided in the response to Question 25, Extensible Provisioning Protocol. Verisign does not use functionality outside the base EPP RFCs, although proprietary EPP extensions are documented in Internet-Draft format following the guidelines described in RFC 3735 within the response to Question 25. Moreover, prior to deployment, Medistry will provide to ICANN updated documentation of all the EPP objects and extensions supported in accordance with Specification 6, Section 1.2.

Specification 10, EPP Registry Performance Specifications. Verisign's SRS meets all EPP Registry Performance Specifications detailed in Specification 10, Section 2. Evidence of this performance can be verified by a review of the .com and .net Registry Operator's Monthly Reports, which Verisign files with ICANN. These reports detail Verisign's operational status of the .com and .net registries, which use an SRS design and approach comparable to the one proposed for the .MED gTLD. These reports provide evidence of Verisign's ability to meet registry operation service level agreements (SLAs) comparable to those detailed in Specification 10. The reports are accessible at the following URL: <http://www.icann.org/en/tlds/monthly-reports/>.

In accordance with EPP Registry Performance Specifications detailed in Specification 10, Verisign's SRS meets the following performance attributes:

- * EPP service availability: < or = 864 minutes of downtime (approx. 98%)
- * EPP session-command round trip time (RTT): < or = 4000 milliseconds (ms), for at least 90 percent of the commands
- * EPP query-command RTT: < or = 2000 ms, for at least 90 percent of the commands
- * EPP transform-command RTT: < or = 4000 ms, for at least 90 percent of the commands

25. Extensible Provisioning Protocol (EPP)

1 COMPLETE KNOWLEDGE AND UNDERSTANDING OF THIS ASPECT OF REGISTRY TECHNICAL REQUIREMENTS

Verisign, Medistry LLC's ("Medistry") selected backend registry services provider, has used Extensible Provisioning Protocol (EPP) since its inception and possesses complete knowledge and understanding of EPP registry systems. Its first EPP implementation— for a thick registry for the .name generic top-level domain (gTLD)—was in 2002. Since then Verisign has continued its RFC-compliant use of EPP in multiple TLDs, as detailed in Figure 25-1.

Figure 25-1: See Medistry LLC_Q25_extensible provisioning protocol_F25-1

Verisign's understanding of EPP and its ability to implement code that complies with the applicable RFCs is unparalleled. Mr. Scott Hollenbeck, Verisign's director of software development, authored the Extensible Provisioning Protocol and continues to be fully engaged in its refinement and enhancement (U.S. Patent Number 7299299 – Shared registration system for registering domain names). Verisign has also developed numerous new object mappings and object extensions following the guidelines in RFC 3735 (Guidelines for Extending the Extensible Provisioning Protocol). Mr. James Gould, a principal engineer at Verisign, led and co-authored the most recent EPP Domain Name System Security Extensions (DNSSEC) RFC effort (RFC 5910).

All registry systems for which Verisign is the registry operator or provides backend registry services use EPP. Upon approval of this application, Verisign will use EPP to provide the backend registry services for this gTLD. The .com, .net, and .name registries for which Verisign is the registry operator use an SRS design and approach comparable to the one proposed for this gTLD. Approximately 915 registrars use the Verisign EPP service, and the registry system performs more

than 140 million EPP transactions daily without performance issues or restrictive maintenance windows. The processing time service level agreement (SLA) requirements for the Verisign-operated .net gTLD are the strictest of the current Verisign managed gTLDs. All processing times for Verisign-operated gTLDs can be found in ICANN's Registry Operator's Monthly Reports at <http://www.icann.org/en/tlds/monthly-reports/>.

Verisign has also been active on the Internet Engineering Task Force (IETF) Provisioning Registry Protocol (provreg) working group and mailing list since work started on the EPP protocol in 2000. This working group provided a forum for members of the Internet community to comment on Mr. Scott Hollenbeck's initial EPP drafts, which Mr. Hollenbeck refined based on input and discussions with representatives from registries, registrars, and other interested parties. The working group has since concluded, but the mailing list is still active to enable discussion of different aspects of EPP.

1.1 EPP Interface with Registrars

Verisign, Medistry's selected backend registry services provider, fully supports the features defined in the EPP specifications and provides a set of software development kits (SDK) and tools to help registrars build secure and stable interfaces. Verisign's SDKs give registrars the option of either fully writing their own EPP client software to integrate with the Shared Registration System (SRS), or using the Verisign-provided SDKs to aid them in the integration effort. Registrars can download the Verisign EPP SDKs and tools from the registrar website (<http://www.Verisign.com/domain-name-services/current-registrars/epp-sdk/index.html>).

The EPP SDKs provide a host of features including connection pooling, Secure Sockets Layer (SSL), and a test server (stub server) to run EPP tests against. One tool—the EPP tool—provides a web interface for creating EPP Extensible Markup Language (XML) commands and sending them to a configurable set of target servers. This helps registrars in creating the template XML and testing a variety of test cases against the EPP servers. An Operational Test and Evaluation (OT&E) environment, which runs the same software as the production system so approved registrars can integrate and test their software before moving into a live production environment, is also available.

2 TECHNICAL PLAN SCOPE/SCALE CONSISTENT WITH THE OVERALL BUSINESS APPROACH AND PLANNED SIZE OF THE REGISTRY

Verisign, Medistry's selected backend registry services provider, is an experienced backend registry provider that has developed and uses proprietary system scaling models to guide the growth of its TLD supporting infrastructure. These models direct Verisign's infrastructure scaling to include, but not be limited to, server capacity, data storage volume, and network throughput that are aligned to projected demand and usage patterns. Verisign periodically updates these models to account for the adoption of more capable and cost-effective technologies.

Verisign's scaling models are proven predictors of needed capacity and related cost. As such, they provide the means to link the projected infrastructure needs of the .MED gTLD with necessary implementation and sustainment cost. Using the projected usage volume for the most likely scenario (defined in Question 46, Template 1 - Financial Projections: Most Likely) as an input to its scaling models, Verisign derived the necessary infrastructure required to implement and sustain this gTLD. Verisign's pricing for the backend registry services it provides to Medistry fully accounts for cost related to this infrastructure, which is provided as "Total Critical Registry Function Cash Outflows" (Template 1, Line IIb.G) within the Question 46 financial projections response.

3 TECHNICAL PLAN THAT IS ADEQUATELY RESOURCED IN THE PLANNED COSTS DETAILED IN THE FINANCIAL SECTION

Verisign, Medistry's selected backend registry services provider, is an experienced backend registry provider that has developed a set of proprietary resourcing models to project the number and type of personnel resources necessary to operate a TLD. Verisign routinely adjusts these staffing models to account for new tools and process innovations. These models enable Verisign to continually right-size its staff to accommodate projected demand and meet service level agreements as well as Internet security and stability requirements. Using the projected usage volume for the most likely scenario (defined in Question 46, Template 1 - Financial Projections: Most Likely) as an input to its staffing models, Verisign derived the necessary personnel levels required for this gTLD's initial implementation and ongoing maintenance. Verisign's pricing for the backend registry services it provides to Medistry fully accounts for cost related to this infrastructure, which is provided as "Total Critical Registry Function Cash Outflows" (Template 1, Line IIb.G) within the Question 46 financial projections response.

Verisign employs more than 1,040 individuals of which more than 775 comprise its technical work force. (Current statistics are publicly available in Verisign's quarterly filings.) Drawing from this pool of on-hand and fully committed technical resources, Verisign has maintained DNS

operational accuracy and stability 100 percent of the time for more than 13 years for .com, proving Verisign's ability to align personnel resource growth to the scale increases of Verisign's TLD service offerings.

Verisign projects it will use the following personnel roles, which are described in Section 5 of the response to Question 31, Technical Overview of Proposed Registry, to support the provisioning of EPP services:

- * Application Engineers: 19
- * Database Engineers: 3
- * Quality Assurance Engineers: 11

To implement and manage the .MED gTLD as described in this application, Verisign, Medistry's selected backend registry services provider, scales, as needed, the size of each technical area now supporting its portfolio of TLDs. Consistent with its resource modeling, Verisign periodically reviews the level of work to be performed and adjusts staff levels for each technical area.

When usage projections indicate a need for additional staff, Verisign's internal staffing group uses an in-place staffing process to identify qualified candidates. These candidates are then interviewed by the lead of the relevant technical area. By scaling one common team across all its TLDs instead of creating a new entity to manage only this proposed gTLD, Verisign realizes significant economies of scale and ensures its TLD best practices are followed consistently. This consistent application of best practices helps ensure the security and stability of both the Internet and this proposed TLD, as Verisign holds all contributing staff members accountable to the same procedures that guide its execution of the Internet's largest TLDs (i.e., .com and .net). Moreover, by augmenting existing teams, Verisign affords new employees the opportunity to be mentored by existing senior staff. This mentoring minimizes start-up learning curves and helps ensure that new staff members properly execute their duties.

4 ABILITY TO COMPLY WITH RELEVANT RFCS

Verisign, Medistry's selected backend registry services provider, incorporates design reviews, code reviews, and peer reviews into its software development lifecycle (SDLC) to ensure compliance with the relevant RFCs. Verisign's dedicated QA team creates extensive test plans and issues internal certifications when it has confirmed the accuracy of the code in relation to the RFC requirements. Verisign's QA organization is independent from the development team within engineering. This separation helps Verisign ensure adopted processes and procedures are followed, further ensuring that all software releases fully consider the security and stability of the TLD.

For the .MED gTLD, the Shared Registration System (SRS) complies with the following IETF EPP specifications, where the XML templates and XML schemas are defined in the following specifications:

- * EPP RGP 3915 (<http://www.apps.ietf.org/rfc/rfc3915.html>): EPP Redemption Grace Period (RGP) Mapping specification for support of RGP statuses and support of Restore Request and Restore Report (authored by Verisign's Scott Hollenbeck)
- * EPP 5730 (<http://tools.ietf.org/html/rfc5730>): Base EPP specification (authored by Verisign's Scott Hollenbeck)
- * EPP Domain 5731 (<http://tools.ietf.org/html/rfc5731>): EPP Domain Name Mapping specification (authored by Verisign's Scott Hollenbeck)
- * EPP Host 5732 (<http://tools.ietf.org/html/rfc5732>): EPP Host Mapping specification (authored by Verisign's Scott Hollenbeck)
- * EPP Contact 5733 (<http://tools.ietf.org/html/rfc5733>): EPP Contact Mapping specification (authored by Verisign's Scott Hollenbeck)
- * EPP TCP 5734 (<http://tools.ietf.org/html/rfc5734>): EPP Transport over Transmission Control Protocol (TCP) specification (authored by Verisign's Scott Hollenbeck)
- * EPP DNSSEC 5910 (<http://tools.ietf.org/html/rfc5910>): EPP Domain Name System Security Extensions (DNSSEC) Mapping specification (authored by Verisign's James Gould and Scott Hollenbeck)

5 PROPRIETARY EPP EXTENSIONS

Verisign, Medistry's selected backend registry services provider, uses its SRS to provide registry services. The SRS supports the following EPP specifications, which Verisign developed

following the guidelines in RFC 3735, where the XML templates and XML schemas are defined in the specifications:

- * IDN Language Tag (<http://www.verisigninc.com/assets/idn-language-tag.pdf>): EPP internationalized domain names (IDN) language tag extension used for IDN domain name registrations
- * RGP Poll Mapping (<http://www.verisigninc.com/assets/whois-info-extension.pdf>): EPP mapping for an EPP poll message in support of Restore Request and Restore Report
- * Whois Info Extension (<http://www.verisigninc.com/assets/whois-info-extension.pdf>): EPP extension for returning additional information needed for transfers
- * EPP ConsoliDate Mapping (<http://www.verisigninc.com/assets/consolidate-mapping.txt>): EPP mapping to support a Domain Sync operation for synchronizing domain name expiration dates
- * NameStore Extension (<http://www.verisigninc.com/assets/namestore-extension.pdf>): EPP extension for routing with an EPP intelligent gateway to a pluggable set of backend products and services
- * Low Balance Mapping (<http://www.verisigninc.com/assets/low-balance-mapping.pdf>): EPP mapping to support low balance poll messages that proactively notify registrars of a low balance (available credit) condition

As part of the 2006 implementation report to bring the EPP RFC documents from Proposed Standard status to Draft Standard status, an implementation test matrix was completed. Two independently developed EPP client implementations based on the RFCs were tested against the Verisign EPP server for the domain, host, and contact transactions. No compliance-related issues were identified during this test, providing evidence that these extensions comply with RFC 3735 guidelines and further demonstrating Verisign's ability to design, test, and deploy an RFC-compliant EPP implementation.

5.1 EPP Templates and Schemas

The EPP XML schemas are formal descriptions of the EPP XML templates. They are used to express the set of rules to which the EPP templates must conform in order to be considered valid by the schema. The EPP schemas define the building blocks of the EPP templates, describing the format of the data and the different EPP commands' request and response formats. The current EPP implementations managed by Verisign, Medistry's selected backend registry services provider, use these EPP templates and schemas, as will the proposed TLD. For each proprietary XML template/schema Verisign provides a reference to the applicable template and includes the schema.

XML templates/schema for idnLang-1.0: See Medistry LLC_Q25_extensible provisioning protocol_xml

XML templates/schema for rgp-poll-1.0: See Medistry LLC_Q25_extensible provisioning protocol_xml

XML templates/schema for whoisInf-1.0: See Medistry LLC_Q25_extensible provisioning protocol_xml

XML templates/schema for sync-1.0 (consoliDate) : See Medistry LLC_Q25_extensible provisioning protocol_xml

XML templates/schema for namestoreExt-1.1: See Medistry LLC_Q25_extensible provisioning protocol_xml

XML templates/schema for lowbalance-poll-1.0: See Medistry LLC_Q25_extensible provisioning protocol_xml

6 PROPRIETARY EPP EXTENSION CONSISTENCY WITH REGISTRATION LIFECYCLE

Medistry's selected backend registry services provider's (Verisign's) proprietary EPP extensions, defined in Section 5 above, are consistent with the registration lifecycle documented in the response to Question 27, Registration Lifecycle. Details of the registration lifecycle are presented in that response. As new registry features are required, Verisign develops proprietary EPP extensions to address new operational requirements. Consistent with ICANN procedures Verisign adheres to all applicable Registry Services Evaluation Process (RSEP) procedures.

26. Whois

1 COMPLETE KNOWLEDGE AND UNDERSTANDING OF THIS ASPECT OF REGISTRY TECHNICAL REQUIREMENTS

Verisign, Medistry LLC's ("Medistry") selected backend registry services provider, has operated the Whois lookup service for the gTLDs and ccTLDs it manages since 1991, and will provide these proven services for the .MED gTLD registry. In addition, it continues to work with the Internet community to improve the utility of Whois data, while thwarting its application for abusive uses.

1.1 High-Level Whois System Description

Like all other components of Medistry's selected backend registry services provider's (Verisign's) registry service, Verisign's Whois system is designed and built for both reliability and performance in full compliance with applicable RFCs. Verisign's current Whois implementation has answered more than five billion Whois queries per month for the TLDs it manages, and has experienced more than 250,000 queries per minute in peak conditions. The proposed gTLD uses a Whois system design and approach that is comparable to the current implementation. Independent quality control testing ensures Verisign's Whois service is RFC-compliant through all phases of its lifecycle.

Verisign's redundant Whois databases further contribute to overall system availability and reliability. The hardware and software for its Whois service is architected to scale both horizontally (by adding more servers) and vertically (by adding more CPUs and memory to existing servers) to meet future need.

Verisign can fine-tune access to its Whois database on an individual Internet Protocol (IP) address basis, and it works with registrars to help ensure their services are not limited by any restriction placed on Whois. Verisign provides near real-time updates for Whois services for the TLDs under its management. As information is updated in the registration database, it is propagated to the Whois servers for quick publication. These updates align with the near real-time publication of Domain Name System (DNS) information as it is updated in the registration database. This capability is important for the .MED gTLD registry as it is Verisign's experience that when DNS data is updated in near real time, so should Whois data be updated to reflect the registration specifics of those domain names.

Verisign's Whois response time has been less than 500 milliseconds for 95 percent of all Whois queries in .com, .net, .tv, and .cc. The response time in these TLDs, combined with Verisign's capacity, enables the Whois system to respond to up to 30,000 searches (or queries) per second for a total capacity of 2.6 billion queries per day.

The Whois software written by Verisign complies with RFC 3912. Verisign uses an advanced in-memory database technology to provide exceptional overall system performance and security. In accordance with RFC 3912, Verisign provides a website at whois.nic.<TLD> that provides free public query-based access to the registration data.

Verisign currently operates both thin and thick Whois systems.

Verisign commits to implementing a RESTful Whois service upon finalization of agreements with the IETF (Internet Engineering Task Force).

Provided Functionalities for User Interface

To use the Whois service via port 43, the user enters the applicable parameter on the command line as illustrated here:

- * For domain name: whois EXAMPLE.TLD
- * For registrar: whois "registrar Example Registrar, Inc."
- * For name server: whois "NS1.EXAMPLE.TLD" or whois "name server (IP address)"

To use the Whois service via the web-based directory service search interface:

- * Go to <http://whois.nic.<TLD>>
- * Click on the appropriate button (Domain, Registrar, or Name Server)
- * Enter the applicable parameter:
 - o Domain name, including the TLD (e.g., EXAMPLE.TLD)
 - o Full name of the registrar, including punctuation (e.g., Example Registrar, Inc.)
 - o Full host name or the IP address (e.g., NS1.EXAMPLE.TLD or 198.41.3.39)
- * Click on the Submit button.

Provisions to Ensure That Access Is Limited to Legitimate Authorized Users and Is in Compliance with Applicable Privacy Laws or Policies

To further promote reliable and secure Whois operations, Verisign, Medistry's selected backend registry services provider, has implemented rate-limiting characteristics within the Whois service software. For example, to prevent data mining or other abusive behavior, the service can throttle a specific requestor if the query rate exceeds a configurable threshold. In addition,

QoS technology enables rate limiting of queries before they reach the servers, which helps protect against denial of service (DoS) and distributed denial of service (DDoS) attacks.

Verisign's software also permits restrictions on search capabilities. For example, wild card searches can be disabled. If needed, it is possible to temporarily restrict and/or block requests coming from specific IP addresses for a configurable amount of time. Additional features that are configurable in the Whois software include help files, headers and footers for Whois query responses, statistics, and methods to memory map the database. Furthermore, Verisign is European Union (EU) Safe Harbor certified and has worked with European data protection authorities to address applicable privacy laws by developing a tiered Whois access structure that requires users who require access to more extensive data to (i) identify themselves, (ii) confirm that their use is for a specified purpose and (iii) enter into an agreement governing their use of the more extensive Whois data.

1.2 Relevant Network Diagrams

Figure 26-1 provides a summary network diagram of the Whois service provided by Verisign, Medistry's selected backend registry services provider. The figure details the configuration with one resolution/Whois site. For the .MED gTLD Verisign provides Whois service from 6 of its 17 primary sites based on the proposed gTLD's traffic volume and patterns. A functionally equivalent resolution architecture configuration exists at each Whois site.

Figure 26-1: See Medistry LLC_Q26_whois

1.3 IT and Infrastructure Resources

Figure 26-2 summarizes the IT and infrastructure resources that Verisign, Medistry's selected backend registry services provider, uses to provision Whois services from Verisign primary resolution sites. As needed, virtual machines are created based on actual and projected demand.

Figure 26-2: See attached

1.4 Description of Interconnectivity with Other Registry Systems

Figure 26-3 provides a technical overview of the registry system provided by Verisign, Medistry's selected backend registry services provider, and shows how the Whois service component fits into this larger system and interconnects with other system components.

Figure 26-3: See attached

1.5 Frequency of Synchronization Between Servers

Synchronization between the SRS and the geographically distributed Whois resolution sites occurs approximately every three minutes. Verisign, Medistry's selected backend registry services provider, uses a two-part Whois update process to ensure Whois data is accurate and available. Every 12 hours an initial file is distributed to each resolution site. This file is a complete copy of all Whois data fields associated with each domain name under management. As interactions with the SRS cause the Whois data to be changed, these incremental changes are distributed to the resolution sites as an incremental file update. This incremental update occurs approximately every three minutes. When the new 12-hour full update is distributed, this file includes all past incremental updates. Verisign's approach to frequency of synchronization between servers meets the Performance Specifications defined in Specification 10 of the Registry Agreement for new gTLDs.

2 TECHNICAL PLAN SCOPE/SCALE CONSISTENT WITH THE OVERALL BUSINESS APPROACH AND PLANNED SIZE OF THE REGISTRY

Verisign, Medistry's selected backend registry services provider, is an experienced backend registry provider that has developed and uses proprietary system scaling models to guide the growth of its TLD supporting infrastructure. These models direct Verisign's infrastructure scaling to include, but not be limited to, server capacity, data storage volume, and network throughput that are aligned to projected demand and usage patterns. Verisign periodically updates these models to account for the adoption of more capable and cost-effective technologies.

Verisign's scaling models are proven predictors of needed capacity and related cost. As such, they provide the means to link the projected infrastructure needs of the .MED gTLD with necessary implementation and sustainment cost. Using the projected usage volume for the most likely scenario (defined in Question 46, Template 1 - Financial Projections: Most Likely) as an input to its scaling models, Verisign derived the necessary infrastructure required to implement and sustain this gTLD. Verisign's pricing for the backend registry services it provides to Medistry fully accounts for cost related to this infrastructure, which is provided as "Total Critical Registry Function Cash Outflows" (Template 1, Line IIb.G) within the Question 46 financial projections response.

3 TECHNICAL PLAN THAT IS ADEQUATELY RESOURCED IN THE PLANNED COSTS DETAILED IN THE FINANCIAL SECTION

Verisign, Medistry's selected backend registry services provider, is an experienced backend registry provider that has developed a set of proprietary resourcing models to project the number and type of personnel resources necessary to operate a TLD. Verisign routinely adjusts these staffing models to account for new tools and process innovations. These models enable Verisign to continually right-size its staff to accommodate projected demand and meet service level agreements as well as Internet security and stability requirements. Using the projected usage volume for the most likely scenario (defined in Question 46, Template 1 - Financial Projections: Most Likely) as an input to its staffing models, Verisign derived the necessary personnel levels required for this gTLD's initial implementation and ongoing maintenance. Verisign's pricing for the backend registry services it provides to Medistry fully accounts for cost related to this infrastructure, which is provided as "Total Critical Registry Function Cash Outflows" (Template 1, Line IIB.G) within the Question 46 financial projections response.

Verisign employs more than 1,040 individuals of which more than 775 comprise its technical work force. (Current statistics are publicly available in Verisign's quarterly filings.) Drawing from this pool of on-hand and fully committed technical resources, Verisign has maintained DNS operational accuracy and stability 100 percent of the time for more than 13 years for .com, proving Verisign's ability to align personnel resource growth to the scale increases of Verisign's TLD service offerings.

Verisign projects it will use the following personnel roles, which are described in Section 5 of the response to Question 31, Technical Overview of Proposed Registry, to support Whois services:

- * Application Engineers: 19
- * Database Engineers: 3
- * Quality Assurance Engineers: 11

To implement and manage the .MED gTLD as described in this application, Verisign, Medistry's selected backend registry services provider, scales, as needed, the size of each technical area now supporting its portfolio of TLDs. Consistent with its resource modeling, Verisign periodically reviews the level of work to be performed and adjusts staff levels for each technical area.

When usage projections indicate a need for additional staff, Verisign's internal staffing group uses an in-place staffing process to identify qualified candidates. These candidates are then interviewed by the lead of the relevant technical area. By scaling one common team across all its TLDs instead of creating a new entity to manage only this proposed gTLD, Verisign realizes significant economies of scale and ensures its TLD best practices are followed consistently. This consistent application of best practices helps ensure the security and stability of both the Internet and this proposed gTLD, as Verisign holds all contributing staff members accountable to the same procedures that guide its execution of the Internet's largest TLDs (i.e., .com and .net). Moreover, by augmenting existing teams, Verisign affords new employees the opportunity to be mentored by existing senior staff. This mentoring minimizes start-up learning curves and helps ensure that new staff members properly execute their duties.

4 COMPLIANCE WITH RELEVANT RFC

Medistry's selected backend registry services provider's (Verisign's) Whois service complies with the data formats defined in Specification 4 of the Registry Agreement. Verisign will provision Whois services for registered domain names and associated data in the top-level domain (TLD). Verisign's Whois services are accessible over Internet Protocol version 4 (IPv4) and Internet Protocol version 6 (IPv6), via both Transmission Control Protocol (TCP) port 43 and a web-based directory service at whois.nic.<TLD>, which in accordance with RFC 3912, provides free public query-based access to domain name, registrar, and name server lookups. Verisign's proposed Whois system meets all requirements as defined by ICANN for each registry under Verisign management. Evidence of this successful implementation, and thus compliance with the applicable RFCs, can be verified by a review of the .com and .net Registry Operator's Monthly Reports that Verisign files with ICANN. These reports provide evidence of Verisign's ability to meet registry operation service level agreements (SLAs) comparable to those detailed in Specification 10. The reports are accessible at the following URL: <http://www.icann.org/en/tlds/monthly-reports/>.

5 COMPLIANCE WITH SPECIFICATIONS 4 AND 10 OF REGISTRY AGREEMENT

In accordance with Specification 4, Verisign, Medistry's selected backend registry services provider, provides a Whois service that is available via both port 43 in accordance with RFC 3912, and a web-based directory service at whois.nic.<TLD> also in accordance with RFC 3912, thereby providing free public query-based access. Verisign acknowledges that ICANN reserves the right to specify alternative formats and protocols, and upon such specification, Verisign will

implement such alternative specification as soon as reasonably practicable.

The format of the following data fields conforms to the mappings specified in Extensible Provisioning Protocol (EPP) RFCs 5730 - 5734 so the display of this information (or values returned in Whois responses) can be uniformly processed and understood: domain name status, individual and organizational names, address, street, city, state/province, postal code, country, telephone and fax numbers, email addresses, date, and times.

Specifications for data objects, bulk access, and lookups comply with Specification 4 and are detailed in the following subsections, provided in both bulk access and lookup modes.

Bulk Access Mode. This data is provided on a daily schedule to a party designated from time to time in writing by ICANN. The specification of the content and format of this data, and the procedures for providing access, shall be as stated below, until revised in the ICANN Registry Agreement.

The data is provided in three files:

* **Domain Name File:** For each domain name, the file provides the domain name, server name for each name server, registrar ID, and updated date.

* **Name Server File:** For each registered name server, the file provides the server name, each IP address, registrar ID, and updated date.

* **Registrar File:** For each registrar, the following data elements are provided: registrar ID, registrar address, registrar telephone number, registrar email address, Whois server, referral URL, updated date, and the name, telephone number, and email address of all the registrar's administrative, billing, and technical contacts.

Lookup Mode. Figures 26-4 through Figure 26-6 provide the query and response format for domain name, registrar, and name server data objects.

Figure 26-4: See attached

Figure 26-5: See attached

Figure 26-6: See attached

5.1 Specification 10, RDDS Registry Performance Specifications

The Whois service meets all registration data directory services (RDDS) registry performance specifications detailed in Specification 10, Section 2. Evidence of this performance can be verified by a review of the .com and .net Registry Operator's Monthly Reports that Verisign files monthly with ICANN. These reports are accessible from the ICANN website at the following URL: <http://www.icann.org/en/tlds/monthly-reports/>.

In accordance with RDDS registry performance specifications detailed in Specification 10, Verisign's Whois service meets the following proven performance attributes:

- * RDDS availability: < or = 864 min of downtime (approx 98%)
- * RDDS query RTT: < or = 2000 ms, for at least 95% of the queries
- * RDDS update time: < or = 60 min, for at least 95% of the probes

6 SEARCHABLE WHOIS

Verisign, Medistry's selected backend registry services provider, provides a searchable Whois service for the .MED gTLD. Verisign has experience in providing tiered access to Whois for the .name registry, and uses these methods and control structures to help reduce potential malicious use of the function. The searchable Whois system currently uses Apache's Lucene full text search engine to index relevant Whois content with near-real time incremental updates from the provisioning system.

Features of the Verisign searchable Whois function include:

- * Provision of a web-based searchable directory service
- * Ability to perform partial match, at least, for the following data fields: domain name, contacts and registrant's name, and contact and registrant's postal address, including all the sub-fields described in EPP (e.g., street, city, state, or province)
- * Ability to perform exact match, at least, on the following fields: registrar ID, name server name, and name server's IP address (only applies to IP addresses stored by the registry, i.e.,

glue records)

- * Ability to perform Boolean search supporting, at least, the following logical operators to join a set of search criteria: AND, OR, NOT

- * Search results that include domain names that match the selected search criteria

Verisign's implementation of searchable Whois is EU Safe Harbor certified and includes appropriate access control measures that help ensure that only legitimate authorized users can use the service. Furthermore, Verisign's compliance office monitors current ICANN policy and applicable privacy laws or policies to help ensure the solution is maintained within compliance of applicable regulations. Features of these access control measures include:

- * All unauthenticated searches are returned as thin results.

- * Registry system authentication is used to grant access to appropriate users for thick Whois data search results.

- * Account access is granted by Medistry's defined .MED gTLD admin user.

Potential Forms of Abuse and Related Risk Mitigation. Leveraging its experience providing tiered access to Whois for the .name registry and interacting with ICANN, data protection authorities, and applicable industry groups, Verisign, Medistry's selected backend registry services provider, is knowledgeable of the likely data mining forms of abuse associated with a searchable Whois service. Figure 26-7 summarizes these potential forms of abuse and Verisign's approach to mitigate the identified risk.

Figure 26-7: See attached

27. Registration Life Cycle

1 COMPLETE KNOWLEDGE AND UNDERSTANDING OF REGISTRATION LIFECYCLES AND STATES

Starting with domain name registration and continuing through domain name delete operations, Medistry LLC's ("Medistry") selected backend registry services provider's (Verisign's) registry implements the full registration lifecycle for domain names supporting the operations in the Extensible Provisioning Protocol (EPP) specification. The registration lifecycle of the domain name starts with registration and traverses various states as specified in the following sections. The registry system provides options to update domain names with different server and client status codes that block operations based on the EPP specification. The system also provides different grace periods for different billable operations, where the price of the billable operation is credited back to the registrar if the billable operation is removed within the grace period. Together Figure 27-1 and Figure 27-2 define the registration states comprising the registration lifecycle and explain the trigger points that cause state-to-state transitions. States are represented as green rectangles within Figure 27-1.

Figure 27-1: See Medistry LLC_Q27_registration lifecycle

Figure 27-2: See attached

1.1 Registration Lifecycle of Create/Update/Delete

The following section details the create/update/delete processes and the related renewal process that Verisign, Medistry's selected backend registry services provider, follows. For each process, this response defines the process function and its characterization, and as appropriate provides a process flow chart.

Create Process. The domain name lifecycle begins with a registration or what is referred to as a Domain Name Create operation in EPP. The system fully supports the EPP Domain Name Mapping as defined by RFC 5731, where the associated objects (e.g., hosts and contacts) are created independent of the domain name.

Process Characterization. The Domain Name Create command is received, validated, run through a set of business rules, persisted to the database, and committed in the database if all business rules pass. The domain name is included with the data flow to the DNS and Whois resolution services. If no name servers are supplied, the domain name is not included with the data flow to the DNS. A successfully created domain name has the created date and expiration date set in the database. Creates are subject to grace periods as described in Section 1.3 of this response, Add

Grace Period, Redemption Grace Period, and Notice Periods for Renewals or Transfers.

The Domain Name Create operation is detailed in Figure 27-3 and requires the following attributes:

- * A domain name that meets the string restrictions.
- * A domain name that does not already exist.
- * The registrar is authorized to create a domain name in .MED.
- * The registrar has available credit.
- * A valid Authorization Information (Auth-Info) value.
- * Required contacts (e.g., registrant, administrative contact, technical contact, and billing contact) are specified and exist.
- * The specified name servers (hosts) exist, and there is a maximum of 13 name servers.
- * A period in units of years with a maximum value of 10 (default period is one year).

Figure 27-3: See attached

Renewal Process. The domain name can be renewed unless it has any form of Pending Delete, Pending Transfer, or Renew Prohibited.

A request for renewal that sets the expiry date to more than ten years in the future is denied. The registrar must pass the current expiration date (without the timestamp) to support the idempotent features of EPP, where sending the same command a second time does not cause unexpected side effects.

Automatic renewal occurs when a domain name expires. On the expiration date, the registry extends the registration period one year and debits the registrar account balance. In the case of an auto-renewal of the domain name, a separate Auto-Renew grace period applies. Renewals are subject to grace periods as described in Section 1.3 of this response, Add Grace Period, Redemption Grace Period, and Notice Periods for Renewals or Transfers.

Process Characterization. The Domain Name Renew command is received, validated, authorized, and run through a set of business rules. The data is updated and committed in the database if it passes all business rules. The updated domain name's expiration date is included in the flow to the Whois resolution service.

The Domain Name Renew operation is detailed in Figure 27-4 and requires the following attributes:

- * A domain name that exists and is sponsored by the requesting registrar.
- * The registrar is authorized to renew a domain name in .MED.
- * The registrar has available credit.
- * The passed current expiration date matches the domain name's expiration date.
- * A period in units of years with a maximum value of 10 (default period is one year). A domain name expiry past ten years is not allowed.

Figure 27-4: See attached

Registrar Transfer Procedures. A registrant may transfer his/her domain name from his/her current registrar to another registrar. The database system allows a transfer as long as the transfer is not within the initial 60 days, per industry standard, of the original registration date.

The registrar transfer process goes through many process states, which are described in detail below, unless it has any form of Pending Delete, Pending Transfer, or Transfer Prohibited.

A transfer can only be initiated when the appropriate Auth-Info is supplied. The Auth-Info for transfer is only available to the current registrar. Any other registrar requesting to initiate a transfer on behalf of a registrant must obtain the Auth-Info from the registrant.

The Auth-Info is made available to the registrant upon request. The registrant is the only party other than the current registrar that has access to the Auth-Info. Registrar transfer entails a specified extension of the expiry date for the object. The registrar transfer is a billable operation and is charged identically to a renewal for the same extension of the period. This period can be from one to ten years, in one-year increments.

Because registrar transfer involves an extension of the registration period, the rules and

policies applying to how the resulting expiry date is set after transfer are based on the renewal policies on extension.

Per industry standard, a domain name cannot be transferred to another registrar within the first 60 days after registration. This restriction continues to apply if the domain name is renewed during the first 60 days. Transfer of the domain name changes the sponsoring registrar of the domain name, and also changes the child hosts (ns1.sample.xyz) of the domain name (sample.xyz).

The domain name transfer consists of five separate operations:

- * Transfer Request (Figure 27-5): Executed by a non-sponsoring registrar with the valid Auth-Info provided by the registrant. The Transfer Request holds funds of the requesting registrar but does not bill the registrar until the transfer is completed. The sponsoring registrar receives a Transfer Request poll message.

- * Transfer Cancel (Figure 27-6): Executed by the requesting registrar to cancel the pending transfer. The held funds of the requesting registrar are reversed. The sponsoring registrar receives a Transfer Cancel poll message.

- * Transfer Approve (Figure 27-7): Executed by the sponsoring registrar to approve the Transfer Request. The requesting registrar is billed for the Transfer Request and the sponsoring registrar is credited for an applicable Auto-Renew grace period. The requesting registrar receives a Transfer Approve poll message.

- * Transfer Reject (Figure 27-8): Executed by the sponsoring registrar to reject the pending transfer. The held funds of the requesting registrar are reversed. The requesting registrar receives a Transfer Reject poll message.

- * Transfer Query (Figure 27-9): Executed by either the requesting registrar or the sponsoring registrar of the last transfer.

The registry auto-approves a transfer if the sponsoring registrar takes no action. The requesting registrar is billed for the Transfer Request and the sponsoring registrar is credited for an applicable Auto-Renew grace period. The requesting registrar and the sponsoring registrar receive a Transfer Auto-Approve poll message.

Figure 27-5: See attached

Figure 27-6: See attached

Figure 27-7: See attached

Figure 27-8: See attached

Figure 27-9: See attached

Delete Process. A registrar may choose to delete the domain name at any time.

Process Characterization. The domain name can be deleted, unless it has any form of Pending Delete, Pending Transfer, or Delete Prohibited.

A domain name is also prohibited from deletion if it has any in-zone child hosts that are name servers for domain names. For example, the domain name "sample.xyz" cannot be deleted if an in-zone host "ns.sample.xyz" exists and is a name server for "sample2.xyz."

If the Domain Name Delete occurs within the Add grace period, the domain name is immediately deleted and the sponsoring registrar is credited for the Domain Name Create. If the Domain Name Delete occurs outside the Add grace period, it follows the Redemption grace period (RGP) lifecycle.

Update Process. The sponsoring registrar can update the following attributes of a domain name:

- * Auth-Info
- * Name servers
- * Contacts (i.e., registrant, administrative contact, technical contact, and billing contact)
- * Statuses (e.g., Client Delete Prohibited, Client Hold, Client Renew Prohibited, Client Transfer Prohibited, Client Update Prohibited)

Process Characterization. Updates are allowed provided that the update includes the removal of any Update Prohibited status. The Domain Name Update operation is detailed in Figure 27-10.

A domain name can be updated unless it has any form of Pending Delete, Pending Transfer, or

Update Prohibited.

Figure 27-10: See attached

1.2 Pending, Locked, Expired, and Transferred

Verisign, Medistry's selected backend registry services provider, handles pending, locked, expired, and transferred domain names as described here. When the domain name is deleted after the five-day Add grace period, it enters into the Pending Delete state. The registrant can return its domain name to active any time within the five-day Pending Delete grace period. After the five-day Pending Delete grace period expires, the domain name enters the Redemption Pending state and then is deleted by the system. The registrant can restore the domain name at any time during the Redemption Pending state.

When a non-sponsoring registrar initiates the domain name transfer request, the domain name enters Pending Transfer state and a notification is mailed to the sponsoring registrar for approvals. If the sponsoring registrar doesn't respond within five days, the Pending Transfer expires and the transfer request is automatically approved.

EPP specifies both client (registrar) and server (registry) status codes that can be used to prevent registry changes that are not intended by the registrant. Currently, many registrars use the client status codes to protect against inadvertent modifications that would affect their customers' high-profile or valuable domain names.

Verisign's registry service supports the following client (registrar) and server (registry) status codes:

- * clientHold
- * clientRenewProhibited
- * clientTransferProhibited
- * clientUpdateProhibited
- * clientDeleteProhibited
- * serverHold
- * serverRenewProhibited
- * serverTransferProhibited
- * serverUpdateProhibited
- * serverDeleteProhibited

1.3 Add Grace Period, Redemption Grace Period, and Notice Periods for Renewals or Transfers

Verisign, Medistry's selected backend registry services provider, handles Add grace periods, Redemption grace periods, and notice periods for renewals or transfers as described here.

* Add Grace Period: The Add grace period is a specified number of days following the initial registration of the domain name. The current value of the Add grace period for all registrars is five days.

* Redemption Grace Period: If the domain name is deleted after the five-day grace period expires, it enters the Redemption grace period and then is deleted by the system. The registrant has an option to use the Restore Request command to restore the domain name within the Redemption grace period. In this scenario, the domain name goes to Pending Restore state if there is a Restore Request command within 30 days of the Redemption grace period. From the Pending Restore state, it goes either to the OK state, if there is a Restore Report Submission command within seven days of the Restore Request grace period, or a Redemption Period state if there is no Restore Report Submission command within seven days of the Restore Request grace period.

* Renew Grace Period: The Renew/Extend grace period is a specified number of days following the renewal/extension of the domain name's registration period. The current value of the Renew/Extend grace period is five days.

* Auto-Renew Grace Period: All auto-renewed domain names have a grace period of 45 days.

* Transfer Grace Period: Domain names have a five-day Transfer grace period.

1.4 Aspects of the Registration Lifecycle Not Covered by Standard EPP RFCs

Medistry's selected backend registry services provider's (Verisign's) registration lifecycle processes and code implementations adhere to the standard EPP RFCs related to the registration lifecycle. By adhering to the RFCs, Verisign's registration lifecycle is complete and addresses each registration-related task comprising the lifecycle. No aspect of Verisign's registration lifecycle is not covered by one of the standard EPP RFCs and thus no additional definitions are provided in this response.

2 CONSISTENCY WITH ANY SPECIFIC COMMITMENTS MADE TO REGISTRANTS AS ADAPTED TO THE OVERALL BUSINESS APPROACH FOR THE PROPOSED gTLD

The registration lifecycle described above applies to the .MED gTLD as well as other TLDs managed by Verisign, Medistry's selected backend registry services provider; thus Verisign remains consistent with commitments made to its registrants. No unique or specific registration lifecycle modifications or adaptations are required to support the overall business approach for the .MED gTLD.

To accommodate a range of registries, Verisign's registry implementation is capable of offering both a thin and thick Whois implementation, which is also built upon Verisign's award-winning ATLAS infrastructure.

3 COMPLIANCE WITH RELEVANT RFCs

Medistry's selected backend registry services provider's (Verisign's) registration lifecycle complies with applicable RFCs, specifically RFCs 5730 - 5734 and 3915. The system fully supports the EPP Domain Name Mapping as defined by RFC 5731, where the associated objects (e.g., hosts and contacts) are created independent of the domain name.

In addition, in accordance with RFCs 5732 and 5733, the Verisign registration system enforces the following domain name registration constraints:

- * Uniqueness/Multiplicity: A second-level domain name is unique in the .MED database. Two identical second-level domain names cannot simultaneously exist in .MED. Further, a second-level domain name cannot be created if it conflicts with a reserved domain name.

- * Point of Contact Associations: The domain name is associated with the following points of contact. Contacts are created and managed independently according to RFC 5733.

- * Registrant
- * Administrative contact
- * Technical contact
- * Billing contact

- * Domain Name Associations: Each domain name is associated with:

- * A maximum of 13 hosts, which are created and managed independently according to RFC 5732
- * An Auth-Info, which is used to authorize certain operations on the object
- * Status(es), which are used to describe the domain name's status in the registry
- * A created date, updated date, and expiry date

4 DEMONSTRATES THAT TECHNICAL RESOURCES REQUIRED TO CARRY THROUGH THE PLANS FOR THIS ELEMENT ARE ALREADY ON HAND OR READILY AVAILABLE

Verisign, Medistry's selected backend registry services provider, is an experienced backend registry provider that has developed a set of proprietary resourcing models to project the number and type of personnel resources necessary to operate a TLD. Verisign routinely adjusts these staffing models to account for new tools and process innovations. These models enable Verisign to continually right-size its staff to accommodate projected demand and meet service level agreements as well as Internet security and stability requirements. Using the projected usage volume for the most likely scenario (defined in Question 46, Template 1 - Financial Projections: Most Likely) as an input to its staffing models, Verisign derived the necessary personnel levels required for this gTLD's initial implementation and ongoing maintenance. Verisign's pricing for the backend registry services it provides to Medistry fully accounts for cost related to this infrastructure, which is provided as "Total Critical Registry Function Cash Outflows" (Template 1, Line IIb.G) within the Question 46 financial projections response.

Verisign employs more than 1,040 individuals of which more than 775 comprise its technical work force. (Current statistics are publicly available in Verisign's quarterly filings.) Drawing from this pool of on-hand and fully committed technical resources, Verisign has maintained DNS operational accuracy and stability 100 percent of the time for more than 13 years for .com, proving Verisign's ability to align personnel resource growth to the scale increases of Verisign's TLD service offerings.

Verisign projects it will use the following personnel roles, which are described in Section 5 of the response to Question 31, Technical Overview of Proposed Registry, to support the registration lifecycle:

- * Application Engineers: 19
- * Customer Support Personnel: 36

- * Database Administrators: 8
- * Database Engineers: 3
- * Quality Assurance Engineers: 11
- * SRS System Administrators: 13

To implement and manage the .MED gTLD as described in this application, Verisign, Medistry's selected backend registry services provider, scales, as needed, the size of each technical area now supporting its portfolio of TLDs. Consistent with its resource modeling, Verisign periodically reviews the level of work to be performed and adjusts staff levels for each technical area.

When usage projections indicate a need for additional staff, Verisign's internal staffing group uses an in-place staffing process to identify qualified candidates. These candidates are then interviewed by the lead of the relevant technical area. By scaling one common team across all its TLDs instead of creating a new entity to manage only this proposed gTLD, Verisign realizes significant economies of scale and ensures its TLD best practices are followed consistently. This consistent application of best practices helps ensure the security and stability of both the Internet and this proposed gTLD, as Verisign holds all contributing staff members accountable to the same procedures that guide its execution of the Internet's largest TLDs (i.e., .com and .net). Moreover, by augmenting existing teams, Verisign affords new employees the opportunity to be mentored by existing senior staff. This mentoring minimizes start-up learning curves and helps ensure that new staff members properly execute their duties.

28. Abuse Prevention and Mitigation

1. COMPREHENSIVE ABUSE POLICIES, WHICH INCLUDE CLEAR DEFINITIONS OF WHAT CONSTITUTES ABUSE IN THE TLD, AND PROCEDURES THAT WILL EFFECTIVELY MINIMIZE POTENTIAL FOR ABUSE IN THE TLD

The .MED gTLD will have a comprehensive abuse policy, which includes a clear definition of what constitutes abuse in .MED, and procedures in place to effectively minimize potential for abuse in .MED. It is a core goal of .MED to provide a trusted namespace that minimizes harm to Internet users (such as identity theft, harm to children and a general erosion of trust), while not negatively impacting Internet stability or security. Medistry LLC (Medistry) takes abuse prevention and mitigation seriously, and the following core elements of the plan (what constitutes abuse, what we will do if we find abuse, how we can be made aware of abuse, and the processes and procedures we will invoke) shows Medistry's commitment to abuse prevention and mitigation in .MED.

1.1 .MED Abuse Prevention and Mitigation Implementation Plan

Medistry takes abuse prevention and mitigation seriously. The attached .MED Abuse Prevention and Mitigation plan (the "Plan") will be published on .MED's registry website and details many of .MED's policies and procedures regarding abuse prevention and mitigation. The goal of the Plan is to address significant potential harm to Internet users, including identity theft, harm to children and erosion of trust by Internet users, and to address those who abuse the DNS and otherwise engage in illegal or fraudulent activity via the .MED gTLD.

The Plan includes a single abuse point of contact responsible for addressing matters requiring expedited attention and providing a timely response to abuse complaints concerning all .MED names registered through all registrars of record, including those involving a reseller. The Plan identifies an Abuse Prevention Manager who will be tasked with being the primary point of contact for receiving all abuse complaints.

The Plan also includes a clear definition of what constitutes "abuse." Particularly, "abuse" or "abusive use" of a .MED domain name is the wrongful or excessive use of power, position or ability with regard to a .MED domain, and includes, without limitation, the following:

- * Illegal or fraudulent actions;
- * Spam: The use of electronic messaging systems to send unsolicited bulk messages. The term applies to e-mail spam and similar abuses such as instant messaging spam, mobile messaging spam, and the spamming of Web sites and Internet forums. An example, for purposes of illustration, would be the use of email in denial-of-service attacks;
- * Phishing: The use of counterfeit Web pages that are designed to trick recipients into divulging sensitive data such as usernames, passwords, or financial data;
- * Pharming: The redirecting of unknowing users to fraudulent sites or services, typically through DNS hijacking or poisoning;

* Willful distribution of malware: The dissemination of software designed to infiltrate or damage a computer system without the owner's informed consent.

Examples include, without limitation, computer viruses, worms, keyloggers, and trojan horses;

* Botnet command and control: Services run on a domain name that are used to control a collection of compromised computers or "zombies," or to direct denial-of-service attacks (DDoS attacks);

* Distribution of child pornography; and

* Illegal Access to Other Computers or Networks: Illegally accessing computers, accounts, or networks belonging to another party, or attempting to penetrate security measures of another individual's system (often known as "hacking"). Also, any activity that might be used as a precursor to an attempted system penetration (e.g., port scan, stealth scan, or other information gathering activity).

"Abuse" or "abusive use" of a .MED domain name also includes violation or breach of any policies or rules regarding registration and/or use of the .MED gTLD as set forth by the Cleveland Clinic ("CC"). This allows CC, as steward of the .MED gTLD, to adopt, address, evolve and enforce current and additional policies in place to prevent or mitigate any abusive use of the .MED gTLD.

The Plan also includes reservation of the right on Medistry's part to deny, cancel or transfer any registration or transaction, or place any domain name(s) on registry lock, hold or similar status, that Medistry deems necessary: (1) to protect the integrity and stability of .MED; (2) to comply with any applicable laws, government rules or requirements, requests of law enforcement, or any dispute resolution process; (3) to avoid any liability, civil or criminal, on Medistry's and CC's part, as well as affiliates, subsidiaries, officers, directors, and employees; (4) per the terms of the registration agreement or (5) to correct mistakes made by Medistry, CC or any registrar in connection with a domain name registration. Medistry also reserves the right to place upon registry lock, hold or similar status a domain name during resolution of a complaint.

Medistry acknowledges that it is not capable of making final determinations of matters which are appropriately determined in other fora, such as determination of guilt on a criminal matter, determination of child pornography, or determination of other illegality. As such, with regard to any abuse claim made under color or rule of law, statute or code of any jurisdiction, Medistry will most likely defer final determination on any such claim to an appropriate tribunal in an appropriate jurisdiction. However, as set forth above, Medistry also reserves the right to lock, suspend, place on hold (or similar status) any domain which is the subject of an abuse claim while the substance of the claim is pending adjudication or otherwise final determination by the appropriate tribunal in the appropriate jurisdiction.

The Plan also includes procedures that will effectively minimize potential for abuse in the .MED gTLD, as set forth more completely in Section 1.2 below.

The Plan is aimed at illegal and abusive use of domains, and is not intended as a substitute, replacement, circumvention or alternative venue for complaints, matters and issues more appropriately addressed by trademark rights protection mechanisms set forth in response to Question 29, such as, for example, the UDRP, URS, Sunrise Period and the Trademark Clearinghouse, or the PDDRP as set forth in Question 29.

1.2 Policies for Handling Complaints Regarding Abuse

Abuse complaints may be submitted to the Abuse Prevention Manager by email (likely to be "abuse" (at) RegistryOperatorWebsite.MED or similar) or by written mail to: Attention: Abuse Prevention Manager / 3029 Prospect Avenue / Cleveland / OH / 44115 / United States, or other address as identified on .MED's registry website. This will allow the complaint to be formally recognized and processed.

A complaint should include: the .MED domain name at issue; the nature of the alleged abuse; the date(s) the abuse allegedly occurred; any materials the claimant may have illustrating the abuse (for example, spam email, screen shots, etc.); any authority the complainant may have with regard to the claim (for example, if the complainant is with law enforcement); and the claimant's contact information, including a preferred method of contact (such as email).

Complaints must be submitted in English. In the event a complainant is not capable of submitting a complaint in English, or is otherwise incapable of communicating in English, Medistry will take commercially reasonable efforts to accommodate the complainant and determine an effective means of communication, but makes no guarantee that any complaint will be processed in any language outside of English.

Commercially reasonable attempts will be made to respond to the complainant via the method of communication identified in the complaint (e.g., by email or written mail; by phone if requested

and reasonable). If the complaint contains no contact information, or incomplete contact information that does not allow a response, the complaint will be dismissed.

Once received, a complaint will be assigned a unique identifier, which will be maintained during the life cycle of the complaint and communicated to the complainant upon Medistry's first response to the complainant.

Every complaint will be initially screened to determine if it is to be substantively processed or otherwise identified as incomplete, frivolous, incomprehensible, stating a claim for which no relief can be granted, non-topical or otherwise not subject to substantive processing. Medistry will endeavor to make this threshold determination within ten business days of receiving a complaint, or three business days if the complainant is a member of law enforcement.

If the complaint is deemed to be incomplete or incomprehensible, Medistry will respond to the complainant asking for a complete and comprehensible complaint, and will cease processing the complaint until a complete and comprehensible complaint is received. If the complaint is deemed frivolous, Medistry will reply that the complaint is frivolous and invite the complainant to justify why the complaint is not frivolous; if the complainant cannot overcome this burden, the complaint will be dismissed. If the complaint is non-topical or makes claim for which no relief can be granted under .MED's Abuse Prevention and Mitigation Plan, Medistry will respond accordingly and invite the claimant to respond or direct the claimant to a more appropriate forum or mechanism for addressing the claimant's complaint, such as the UDRP, other rights protection mechanisms as set forth in the answer to Question 29, civil litigation in an appropriate forum, or referral to law enforcement. In either event, Medistry will cease processing such a complaint until a response is received from the complainant. If a review of the complaint determines that the complaint cannot be substantively processed for any other reason, Medistry will respond to the complainant accordingly and processing of the complaint will cease until a response is received from complainant.

In the event Medistry's initial screening determines that the complaint is complete, non-frivolous, comprehensible, states a claim for which relief can be granted, topical and otherwise capable of substantive processing by Medistry, Medistry will substantively process the complaint. Medistry will establish and follow a variety of methods for tracking claimed abuse and for addressing the nature of the alleged abuse. These methods may include, but not be limited to, coordination with CC, law enforcement, engaging security vendors, internal investigations, engaging our back-end provider (Verisign) and employing Verisign's resources regarding abuse detection/prevention, engaging the registrar of record, and any other industry-standard mechanisms for addressing domain abuse. Complaint processing, analysis and resource allocation will be on a case-by-case basis as needed for each complaint.

In the event Medistry initiates substantive processing of a complaint, Medistry will inform CC, the registrant of record, the registrar of record and the complainant of such initiation, and will submit requests for information, comment or feedback as required on a case-by-case basis for each complaint. The registrant of record will be contacted via the WHOIS information associated with the registration. Medistry will work with CC and the registrar of record to determine the nature of the alleged abuse, and the necessary and appropriate steps to address same. Medistry will contact the registrar of record by phone, email or other method as identified in the agreement between Medistry and the registrar.

At any time during processing of a complaint, CC may contact Medistry and direct Medistry to take any of the actions set forth herein (such as, for example, suspending the domain pending further investigation). CC is committed to working with Medistry in the fair and reasonable implementation of the Plan as set forth herein, and in the fair and reasonable processing of each complaint.

Medistry acknowledges that the registrar of record may initiate its own abuse investigation, at which point Medistry will process the complaint in parallel with the registrar. Again, Medistry will work with the registrar of record with regard to contacting the registrant (if the registrar wishes to be the point of contact with the registrant) and processing the complaint.

During Medistry's processing of a complaint, Medistry may elect to suspend, lock, or otherwise place the domain at issue on hold pending resolution of the complaint. The registrant of record will be sent notice via contact information in the WHOIS that the domain will be suspended, locked or otherwise placed on hold pending resolution of the complaint. If the registrant of record chooses to respond, Medistry will consider their response and may release the suspension, lock or hold if appropriate. Medistry is committed to a fair and impartial process for addressing abuse complaints, and will endeavor to ensure that mistakes in processing or suspending/locking/holding do not occur, but Medistry recognizes that rarely false-positive suspension may occur. In this event, Medistry notes that the domain at issue will not be deleted (until potentially completion of complaint processing), which will allow for quick correction of the suspension/lock/hold in the rare case of a false-positive. In any event, Medistry will comply with any appropriate court or tribunal order directed to Medistry to release a

suspended/locked/on-hold domain if complainant provides such to Medistry.

After processing of a complaint, Medistry may approve or deny the claim, make comments on the claim, conditionally approve the claim, suspend the claim pending further action, and may take any action set forth herein (such as, for example, cancelling or transferring the domain at issue). In matters in which the ultimate determination as to whether the substance of a claim is illegal or otherwise more appropriately determined by a court or tribunal in other fora, Medistry may delay final processing of a claim, pending resolution and/or direction in the matter from such court or tribunal. In matters in which the ultimate determination as to whether an abuse has occurred is more appropriately determined by CC in its position as steward of the .MED gTLD, Medistry may delay final processing of a claim pending CC's determination of appropriate action.

Medistry will notify the claimant, CC, the registrant of record and the registrar of record of Medistry's final determination regarding the complaint and any actions Medistry may take/have taken in regard to the matter. The registrant (or entity claimed to have abusively acted) or the claimant may, within ten business days of Medistry sending out such notice, inform Medistry that such entity wishes Medistry to reconsider its decision. Such reconsideration request should be submitted to the Abuse Prevention Manager in the same manner as the complaint was submitted, or otherwise as provided in the notice of Medistry's decision. Any reconsideration request must address why reconsideration should be considered, and should identify any new information which was not considered by Medistry in Medistry's final decision, and which would be considered material enough to justify a reversal of Medistry's determination. If the reconsideration request contains such material new information, Medistry may decide to reopen processing of the complaint, and would then notify CC, the complainant, the registrant, the registrar and any other interested parties of such reopening. If the reconsideration request fails to contain any material new information, or if Medistry that the material new information provided is not sufficient for Medistry to change its position, Medistry will deny the reconsideration request. At that point Medistry will cease processing the claim, but will still respond to appropriate court or tribunal orders directed to Medistry regarding the matter.

In the event a complainant identifies themselves as a member of law enforcement investigating a potential illegal activity, Medistry will endeavor to initially respond to such a complaint within twenty four hours, but in no event less than seventy-two hours, and may respond sooner if the complaint requests a quicker turnaround and provides an adequate reason for needing a quicker turnaround. Medistry is committed to working with law enforcement relating to abusive actions in the .MED gTLD, and will put forth commercially reasonable efforts to communicate with law enforcement, accommodate law enforcement requests and generally work with law enforcement towards expedited processing of a complaint.

Medistry is a Delaware limited liability company with a principal place of business at 3029 Prospect Avenue, Cleveland Ohio 44115, and is subject to Ohio and Delaware law. In the event Medistry receives a court or tribunal order for any reason, Medistry will review the order to determine its reasonableness and the extent to which the issuing court or tribunal has authority over Medistry, CC or any party implicated in a complaint. Medistry may consult with outside legal counsel in such a review. If Medistry elects to respond or take action pursuant to the order, Medistry will endeavor to do so within any time frame set forth in the order, so long as practicable.

For complaints arising from matters relating to abuse or misuse of CC's policies governing use of the .MED gTLD ("CC Policies"), Medistry will work with CC to determine the processing of such a complaint. In complaints relating to CC Policies, CC may choose to invoke any of its own policies or procedures which will be developed and adapted to address abuses or violations of CC Policies. Medistry will work with CC, at CC's direction, to assist in processing any claim. Medistry will also comply with any direction to action given by CC related to suspension, lock, hold, transfer or cancellation of any domain in a complaint primarily regarding CC Policies. As previously stated, CC is committed to the fair and impartial implementation of the Plan.

Medistry is committed to preventing and mitigating abuse in the .MED gTLD, and will comply with all terms regarding such in the final version of the Registry Agreement and all consensus policies relating to such. Working with CC and registrars, Medistry will remain flexible on the Plan and its implementation policies/procedures to address future and unconventional abuses which are not currently known, and looks forward to working with other gTLD registry operators and ICANN in determining industry standard abuse prevention and mitigation plans, policies and procedures.

1.3 Proposed Measures for Removal of Orphan Glue Records

Although orphan glue records often support correct and ordinary operation of the Domain Name System (DNS), registry operators will be required to remove orphan glue records (as defined at <http://www.icann.org/en/committees/security/sac048.pdf>) when provided with evidence in written form that such records are present in connection with malicious conduct. Medistry's selected backend registry services provider's (Verisign's) registration system is specifically designed to

not allow orphan glue records. Registrars are required to delete/move all dependent DNS records before they are allowed to delete the parent domain.

To prevent orphan glue records, Verisign performs the following checks before removing a domain or name server:

Checks during domain delete:

- * Parent domain delete is not allowed if any other domain in the zone refers to the child name server.

- * If the parent domain is the only domain using the child name server, then both the domain and the glue record are removed from the zone.

Check during explicit name server delete:

- * Verisign confirms that the current name server is not referenced by any domain name (in-zone) before deleting the name server.

Zone-file impact:

- * If the parent domain references the child name server AND if other domains in the zone also reference it AND if the parent domain name is assigned a serverHold status, then the parent domain goes out of the zone but the name server glue record does not.

- * If no domains reference a name server, then the zone file removes the glue record.

1.4 Resourcing Plans

Details related to resourcing plans for the initial implementation and ongoing maintenance of Medistry's abuse plan are provided in Section 2 of this response.

1.5 Measures to Promote Whois Accuracy

1.5.1 Authentication of Registrant Information

As set forth in the answer to Question 18, domain name registrations in .MED will be limited to CC, its partners and other trusted parties from the medical and healthcare fields as CC so determines. As further set forth in the answer to Question 18, during the initial three years of operation of the .MED gTLD, all domains will be allocated by Request for Proposal (RFP). This will afford CC and Medistry the ability to authenticate all registrant information by reviewing and evaluating RFP proposal information. All RFP applicants will be required to identify themselves, and selected applicants will be required to provide their RFP identification information as the subject domain's Whois information. Further, by the nature of the registration limitations set forth above, registrants (and their Whois information) will relate to entities that CC knows or otherwise trusts.

Beyond the initial three years of operation, CC and Medistry will review Whois accuracy during the initial three years of operation and determine appropriate authentication processes based upon (i) their review of the initial three year's worth of Whois information and its accuracy; (ii) the needs of users as determined by CC and Medistry; (iii) the stated mission/purpose of the .MED gTLD; and (iv) any Consensus Policies or other ICANN mandates regarding Whois accuracy.

CC and Medistry will work with accredited registrars to ensure that the RFP process provides for the opportunity to evaluate applicant information with a view towards including such information in the subject domain's Whois information.

1.5.2 Regular Monitoring of Registration Data for Accuracy and Completeness

As all .MED domains during the initial three years of operation will be allocated by RFP, Medistry is confident that Whois data will remain accurate and complete. Part of compliance with the RFP criteria will be agreeing to provide complete and accurate applicant information which will be reflected in the subject domain's Whois information. During the first three years of operation, in the event that CC or Medistry receives information that a .MED domain's Whois information is inaccurate; Medistry will investigate the matter and take appropriate action. Subsequent to the first three years of operation, CC and Medistry will determine appropriate procedures for addressing claims of Whois inaccuracy or incompleteness.

Medistry recognizes that monitoring of registration data for accuracy and completeness is an important matter to ICANN and many ICANN stakeholders. Medistry will comply with all monitoring provisions in the final version of the Registry Agreement and all consensus policies relating to monitoring. Medistry will work with all accredited registrars towards this goal. Medistry will

also work with CC to establish procedures for cross-checking WHOIS data with records relating to RFP applicant information.

Verisign, Medistry's selected backend registry services provider, has established policies and procedures to encourage registrar compliance with ICANN's Whois accuracy requirements. Verisign provides the following services to Medistry for incorporation into its full-service registry operations.

Registrar self certification.

The self-certification program consists, in part, of evaluations applied equally to all operational ICANN accredited registrars and conducted from time to time throughout the year. Process steps are as follows:

- * Verisign sends an email notification to the ICANN primary registrar contact, requesting that the contact go to a designated URL, log in with his/her Web ID and password, and complete and submit the online form. The contact must submit the form within 15 business days of receipt of the notification.
- * When the form is submitted, Verisign sends the registrar an automated email confirming that the form was successfully submitted.
- * Verisign reviews the submitted form to ensure the certifications are compliant.
- * Verisign sends the registrar an email notification if the registrar is found to be compliant in all areas.
- * If a review of the response indicates that the registrar is out of compliance or if Verisign has follow-up questions, the registrar has 10 days to respond to the inquiry.
- * If the registrar does not respond within 15 business days of receiving the original notification, or if it does not respond to the request for additional information, Verisign sends the registrar a Breach Notice and gives the registrar 30 days to cure the breach.
- * If the registrar does not cure the breach, Verisign terminates the Registry-Registrar Agreement (RRA).

Whois data reminder process. Verisign regularly reminds registrars of their obligation to comply with ICANN's Whois Data Reminder Policy, which was adopted by ICANN as a consensus policy on 27 March 2003 (<http://www.icann.org/en/registrars/wdrp.htm>). Verisign sends a notice to all registrars once a year reminding them of their obligation to be diligent in validating the Whois information provided during the registration process, to investigate claims of fraudulent Whois information, and to cancel domain name registrations for which Whois information is determined to be invalid.

1.5.3 Use of Registrars

As of the submission date of this application, ICANN has not provided final guidance as to the nature and the details of the procedures which will be implemented by registrars to ensure accuracy and completeness of WHOIS data. Medistry has followed and will continue to follow closely the progress of the negotiations between ICANN and the Registrar Negotiations Team (NT) regarding the revised Registrar Accreditation Agreement (RAA). Medistry acknowledges the interests of law enforcement agencies (LEA), who generally are seeking greater openness, accuracy and accountability in WHOIS data. Medistry also acknowledges the countervailing position of those who wish to maintain WHOIS privacy, and those (such as registrars) who wish to keep WHOIS costs down.

In the 1 March 2012 Progress Report on Negotiations on the Registrar Accreditation Agreement, ICANN notes that ICANN and the NT are currently undertaking a "comprehensive review" of the RAA and addressing twelve enumerated requests from LEA relating to WHOIS accuracy, accountability and completeness. ICANN and the NT appear to have an agreement in principle on eleven of the twelve principals, agreeing in principle on (1) guidelines for Privacy/Proxy Accreditation Services; (2) a gross negligence standard for knowledge in permitting criminal activity regarding WHOIS information; (3) registrar contact information; (4) public display of registrar officer information; (5) registrar ownership; (6) notice of change to registrar; (7) registrar certification; (8) registrar accountability and disclosure obligations; (10) validation of WHOIS data; (11) abuse point of contact; and (12) SLA for port 43 servers - while not having an agreement in principle on (9) registrar collection and maintenance of data on the persons initiating requests for registrations, as well as source IP addresses and financial transaction information. ICANN and the NT are also addressing approximately twenty-two other issues relating to the RAA, of which approximately half have an agreement in principle.

Medistry is committed to support WHOIS accuracy and completeness procedures and policies which support the WHOIS policies and procedures which result from eventual agreement between ICANN and the NT regarding matters of WHOIS accuracy, accountability and openness as set forth in the final version of the RAA.

1.6 Controls to Ensure Proper Access to Domain Functions

To ensure proper access to domain functions, Medistry incorporates Verisign's Registry-Registrar Two-Factor Authentication Service into its full-service registry operations. The service is designed to improve domain name security and assist registrars in protecting the accounts they manage by providing another level of assurance that only authorized personnel can communicate with the registry. As part of the service, dynamic one-time passwords (OTPs) augment the user names and passwords currently used to process update, transfer, and/or deletion requests. These one-time passwords enable transaction processing to be based on requests that are validated both by "what users know" (i.e., their user name and password) and "what users have" (i.e., a two-factor authentication credential with a one-time-password).

Registrars can use the one-time-password when communicating directly with Verisign's Customer Service department as well as when using the registrar portal to make manual updates, transfers, and/or deletion transactions. The Two-Factor Authentication Service is an optional service offered to registrars that execute the Registry-Registrar Two-Factor Authentication Service Agreement. As shown in Figure 28-1, the registrars' authorized contacts use the OTP to enable strong authentication when they contact the registry. There is no charge for the Registry-Registrar Two-Factor Authentication Service. It is enabled only for registrars that wish to take advantage of the added security provided by the service.

Figure 28-1: See Medistry_Q28_Figures

2. TECHNICAL PLAN THAT IS ADEQUATELY RESOURCED IN THE PLANNED COSTS DETAILED IN THE FINANCIAL SECTION

Resource Planning

Medistry's management team is an experienced team which has managed a gTLD (.JOBS) for over six years and is well-acquainted with domain abuse prevention and mitigation.

During initial operation of .MED, the Abuse Prevention Manager will be the General Counsel of Medistry. In processing a complaint, the Abuse Prevention Manager may seek the assistance of any of the Executive Management Personnel, including the Vice President of Registry Operations for .MED policy-related issues. The Abuse Prevention Manager may also seek the assistance of either or both Customer Support personnel and Technical Labor personnel, depending upon the nature of the complaint and the volume of complaints. The Abuse Prevention Manager may also engage the services of outside legal counsel for advice or representation if the nature of a complaint or processing the complaint requires.

Operations of the Abuse Prevention Manager will scale as needed to accommodate the volume and nature of complaints received, including shifting allocations of time from Customer Support personnel and Technical Labor personnel. In the event registration volume and related income allow, and complaint volume dictates, additional personnel may be added to accommodate the complaints, up to and including addition of a dedicated Abuse Prevention Manager with a staff commensurate to need.

Costs for Medistry's operations as detailed above are addressed in the response to Question 47. Specifically, \$5,000 has been attributed to legal as part of general administrative expenses per year (see table 3 provided in response to Question 47). In addition, per the Financial Projections Template submitted in response to Question 46, \$10,000 per year is budgeted under Other Operating Costs in case of unexpected contingencies, such as outside legal counsel.

CC is a world-famous and multi-national medical institution. CC has an experienced management team, compliance team and legal team which may be employed for overseeing use of the .MED gTLD. With regard to abuse complaints that relate to CC Policies, CC will deploy appropriate management resources to establish, implement and maintain internal procedures for addressing such claims. Such procedures may involve input from management, compliance and legal, and legal may consult with outside legal counsel. CC has sufficient resources and personnel to provide the compliance services attributed to CC herein.

CC's internal costs for abuse complaint procedures will be borne by CC, and are thus not included in the response to Question 47.

Resource Planning Specific to Backend Registry Activities

Verisign, Medistry's selected backend registry services provider, is an experienced backend registry provider that has developed a set of proprietary resourcing models to project the number and type of personnel resources necessary to operate a TLD. Verisign routinely adjusts these staffing models to account for new tools and process innovations. These models enable Verisign to continually right-size its staff to accommodate projected demand and meet service level agreements as well as Internet security and stability requirements. Using the projected usage volume for the most likely scenario (defined in Question 46, Template 1 - Financial Projections: Most Likely) as an input to its staffing models, Verisign derived the necessary personnel levels required for this gTLD's initial implementation and ongoing maintenance. Verisign's pricing for the backend registry services it provides to Medistry fully accounts for cost related to this infrastructure, which is provided as "Total Critical Registry Function Cash Outflows" (Template 1, Line IIb.G) within the Question 46 financial projections response.

Verisign employs more than 1,040 individuals of which more than 775 comprise its technical work force. (Current statistics are publicly available in Verisign's quarterly filings.) Drawing from this pool of on-hand and fully committed technical resources, Verisign has maintained DNS operational accuracy and stability 100 percent of the time for more than 13 years for .com, proving Verisign's ability to align personnel resource growth to the scale increases of Verisign's TLD service offerings.

Verisign projects it will use the following personnel roles, which are described in Section 5 of the response to Question 31, Technical Overview of Proposed Registry, to support abuse prevention and mitigation:

- * Application Engineers: 19
- * Business Continuity Personnel: 3
- * Customer Affairs Organization: 9
- * Customer Support Personnel: 36
- * Information Security Engineers: 11
- * Network Administrators: 11
- * Network Architects: 4
- * Network Operations Center (NOC) Engineers: 33
- * Project Managers: 25
- * Quality Assurance Engineers: 11
- * Systems Architects: 9

To implement and manage the .MED gTLD as described in this application, Verisign, Medistry's selected backend registry services provider, scales, as needed, the size of each technical area now supporting its portfolio of TLDs. Consistent with its resource modeling, Verisign periodically reviews the level of work to be performed and adjusts staff levels for each technical area.

When usage projections indicate a need for additional staff, Verisign's internal staffing group uses an in-place staffing process to identify qualified candidates. These candidates are then interviewed by the lead of the relevant technical area. By scaling one common team across all its TLDs instead of creating a new entity to manage only this proposed gTLD, Verisign realizes significant economies of scale and ensures its TLD best practices are followed consistently. This consistent application of best practices helps ensure the security and stability of both the Internet and this proposed gTLD, as Verisign holds all contributing staff members accountable to the same procedures that guide its execution of the Internet's largest TLDs (i.e., .com and .net). Moreover, by augmenting existing teams, Verisign affords new employees the opportunity to be mentored by existing senior staff. This mentoring minimizes start-up learning curves and helps ensure that new staff members properly execute their duties.

3. POLICIES AND PROCEDURES IDENTIFY AND ADDRESS THE ABUSIVE USE OF REGISTERED NAMES AT STARTUP AND ON AN ONGOING BASIS

The anti-abuse policies and procedures set forth in the answers to this Question 28 address, and are applicable, to abusive use of registered names in .MED at both startup and on an ongoing basis.

3.1 Start-Up Anti-Abuse Policies and Procedures

Medistry's anti-abuse policies and procedures set forth above will be available as of start-up of .MED.

Verisign, Medistry's selected backend registry services provider, provides the following domain name abuse prevention services, which Medistry incorporates into its full-service registry operations. These services are available at the time of domain name registration.

Registry Lock. The Registry Lock Service allows registrars to offer server-level protection for their registrants' domain names. A registry lock can be applied during the initial standup of the

domain name or at any time that the registry is operational.

Specific Extensible Provisioning Protocol (EPP) status codes are set on the domain name to prevent malicious or inadvertent modifications, deletions, and transfers. Typically, these 'server' level status codes can only be updated by the registry. The registrar only has 'client' level codes and cannot alter 'server' level status codes. The registrant must provide a pass phrase to the registry before any updates are made to the domain name. However, with Registry Lock, provided via Verisign, Medistry's subcontractor, registrars can also take advantage of server status codes.

The following EPP server status codes are applicable for domain names: (i) serverUpdateProhibited, (ii) serverDeleteProhibited, and (iii) serverTransferProhibited. These statuses may be applied individually or in combination.

The EPP also enables setting host (i.e., name server) status codes to prevent deleting or renaming a host or modifying its IP addresses. Setting host status codes at the registry reduces the risk of inadvertent disruption of DNS resolution for domain names.

The Registry Lock Service is used in conjunction with a registrar's proprietary security measures to bring a greater level of security to registrants' domain names and help mitigate potential for unintended deletions, transfers, and/or updates.

Two components comprise the Registry Lock Service:

* Medistry and/or its registrars provides Verisign, Medistry's selected provider of backend registry services, with a list of the domain names to be placed on the server status codes. During the term of the service agreement, the registrar can add domain names to be placed on the server status codes and/or remove domain names currently placed on the server status codes. Verisign then manually authenticates that the registrar submitting the list of domain names is the registrar-of-record for such domain names.

* If Medistry and/or its registrars requires changes (including updates, deletes, and transfers) to a domain name placed on a server status code, Verisign follows a secure, authenticated process to perform the change. This process includes a request from a Medistry-authorized representative for Verisign to remove the specific registry status code, validation of the authorized individual by Verisign, removal of the specified server status code, registrar completion of the desired change, and a request from the Medistry-authorized individual to reinstate the server status code on the domain name. This process is designed to complement automated transaction processing through the Shared Registration System (SRS) by using independent authentication by trusted registry experts.

Medistry intends to charge registrars based on the market value of the Registry Lock Service. A tiered pricing model is expected, with each tier having an annual fee based on per domain name/host and the number of domain names and hosts to be placed on Registry Lock server status code(s).

3.2 Ongoing Anti-Abuse Policies and Procedures

Medistry's anti-abuse policies and procedures set forth in the answers to this Question 28 will be available on an on-going basis for .MED.

3.2.1 Policies and Procedures That Identify Malicious or Abusive Behavior

Verisign, Medistry's selected backend registry services provider, provides the following service to Medistry for incorporation into its full-service registry operations.

Malware scanning service. Registrants are often unknowing victims of malware exploits. Verisign has developed proprietary code to help identify malware in the zones it manages, which in turn helps registrars by identifying malicious code hidden in their domain names.

Verisign's malware scanning service helps prevent websites from infecting other websites by scanning web pages for embedded malicious content that will infect visitors' websites. Verisign's malware scanning technology uses a combination of in-depth malware behavioral analysis, anti-virus results, detailed malware patterns, and network analysis to discover known exploits for the particular scanned zone. If malware is detected, the service sends the registrar a report that contains the number of malicious domains found and details about malicious content within its TLD zones. Reports with remediation instructions are provided to help registrars and registrants eliminate the identified malware from the registrant's website.

3.2.2 Policies and Procedures That Address the Abusive Use of Registered Names

Suspension processes conducted by backend registry services provider. In the case of domain name

abuse, Medistry will determine whether to take down the subject domain name as set forth in Section 1 of the answer to this Question 28. Verisign, Medistry's selected backend registry services provider, will follow the following auditable processes to comply with the suspension request.

Figure 28-2: See Medistry_Q28_Figures

Verisign Suspension Notification. Medistry submits the suspension request to Verisign for processing, documented by:

- * Threat domain name
- * Registry incident number
- * Incident narrative, threat analytics, screen shots to depict abuse, and/or other evidence
- * Threat classification
- * Threat urgency description
- * Recommended timeframe for suspension/takedown
- * Technical details (e.g., Whois records, IP addresses, hash values, anti-virus detection results/nomenclature, name servers, domain name statuses that are relevant to the suspension)
- * Incident response, including surge capacity

Verisign Notification Verification. When Verisign receives a suspension request from Medistry, it performs the following verification procedures:

- * Validate that all the required data appears in the notification.
- * Validate that the request for suspension is for a registered domain name.
- * Return a case number for tracking purposes.

Suspension Rejection. If required data is missing from the suspension request, or the domain name is not registered, the request will be rejected and returned to Medistry with the following information:

- * Threat domain name
- * Registry incident number
- * Verisign case number
- * Error reason

Registrar Notification. Once Verisign has performed the domain name suspension, and upon Medistry request, Verisign notifies the registrar of the suspension. If Medistry does not request that Verisign notify the registrar, Medistry will notify the registrar. Registrar notification includes the following information:

- * Threat domain name
- * Registry incident number
- * Verisign case number
- * Classification of type of domain name abuse
- * Evidence of abuse
- * Anti-abuse contact name and number
- * Suspension status
- * Date/time of domain name suspension

Registrant Notification. Once Verisign has performed the domain name suspension, and upon Medistry request, Verisign notifies the registrant of the suspension. If Medistry does not request that Verisign notify the registrant, Medistry will notify the registrant. Registrant notification includes the following information:

- * Threat domain name
- * Registry incident number
- * Verisign case number
- * Classification of type of domain name abuse
- * Evidence of abuse
- * Registrar anti-abuse contact name and number

Domain Suspension. Verisign places the domain to be suspended on the following statuses:

- * serverUpdateProhibited
- * serverDeleteProhibited
- * serverTransferProhibited
- * serverHold

Suspension Acknowledgement. Verisign notifies Medistry that the suspension has been completed. Acknowledgement of the suspension includes the following information:

- * Threat domain name
- * Registry incident number
- * Verisign case number
- * Case number
- * Domain name
- * Medistry abuse contact name and number, or registrar abuse contact name and number
- * Suspension status

4. WHEN EXECUTED IN ACCORDANCE WITH THE REGISTRY AGREEMENT, PLANS WILL RESULT IN COMPLIANCE WITH CONTRACTUAL REQUIREMENTS

It is Medistry's good faith belief that the plans and procedures set forth herein, when executed, will place .MED in compliance with the contractual requirements set forth in the Registry Agreement. As a final version of the Registry Agreement has not been provided, Medistry is committed to being in compliance with all abuse-prevention terms and obligations set forth in the final version of the Registry Agreement, and will amend and augment any and all anti-abuse plans and procedures set forth herein to be in compliance with the terms and obligations regarding anti-abuse plans and procedures set forth in the final version of the Registry Agreement and any Consensus Policies relating to abuse prevention and mitigation.

5. TECHNICAL PLAN SCOPE/SCALE THAT IS CONSISTENT WITH THE OVERALL BUSINESS APPROACH AND PLANNED SIZE OF THE REGISTRY

Scope/Scale Consistency

Medistry's anti-abuse plans and procedures set forth herein are consistent with the technical, operational and financial approach and details set forth in other parts of this application, and other answers to the Questions therein. As detailed in answers to Question 47, Medistry has allocated more than adequate levels of resources on hand and committed to enable full functionality of the plan and procedures, and Medistry's experienced management team and new hires, along with the resources of CC and Verisign, are more than capable of successfully carrying out the functions set forth herein.

Scope/Scale Consistency Specific to Backend Registry Activities

Verisign, Medistry's selected backend registry services provider, is an experienced backend registry provider that has developed and uses proprietary system scaling models to guide the growth of its TLD supporting infrastructure. These models direct Verisign's infrastructure scaling to include, but not be limited to, server capacity, data storage volume, and network throughput that are aligned to projected demand and usage patterns. Verisign periodically updates these models to account for the adoption of more capable and cost-effective technologies.

Verisign's scaling models are proven predictors of needed capacity and related cost. As such, they provide the means to link the projected infrastructure needs of the .MED gTLD with necessary implementation and sustainment cost. Using the projected usage volume for the most likely scenario (defined in Question 46, Template 1 - Financial Projections: Most Likely) as an input to its scaling models, Verisign derived the necessary infrastructure required to implement and sustain this gTLD. Verisign's pricing for the backend registry services it provides to Medistry fully accounts for cost related to this infrastructure, which is provided as "Other Operating Cost" (Template 1, Line I.L) within the Question 46 financial projections response.

29. Rights Protection Mechanisms

1 MECHANISMS DESIGNED TO PREVENT ABUSIVE REGISTRATIONS

Rights protection is a core objective of Medistry LLC ("Medistry"). Medistry will implement and adhere to any rights protection mechanisms (RPMs) that may be mandated from time to time by ICANN, including each mandatory RPM set forth in the Trademark Clearinghouse model contained in the Registry Agreement, specifically Specification 7. Medistry acknowledges that, at a minimum, ICANN requires a Sunrise period, a Trademark Claims period, and interaction with the Trademark Clearinghouse with respect to the registration of domain names for the .MED gTLD. It should be noted that because ICANN, as of the time of this application submission, has not issued final guidance with respect to the Trademark Clearinghouse, Medistry cannot fully detail the specific implementation of the Trademark Clearinghouse within this application. Medistry will adhere to all processes and procedures to comply with ICANN guidance once this guidance is finalized.

As described in this response, Medistry will implement a Sunrise period and Trademark Claims service with respect to the registration of domain names within the .MED gTLD. Certain aspects of the Sunrise period and/or Trademark Claims service may be administered on behalf of Medistry by

Medistry-approved registrars or by subcontractors of Medistry, such as its selected backend registry services provider, Verisign. Medistry will also use, as detailed in the answer to Question 18, eligibility requirements which will also provide rights protection and which will be performed by Medistry and/or the Cleveland Clinic (CC), with enactment (for example, suspension or transfer) by Medistry.

Sunrise Period. As provided by the Trademark Clearinghouse model set forth in the ICANN Applicant Guidebook, the Sunrise service pre-registration procedure for domain names continues for at least 30 days prior to the launch of the general registration of domain names in the gTLD (unless Medistry decides to offer a longer Sunrise period).

During the Sunrise period, holders of marks that have been previously validated by the Trademark Clearinghouse receive notice of domain names that are an identical match (as defined in the ICANN Applicant Guidebook) to their mark(s). Such notice is in accordance with ICANN's requirements and is provided by Medistry either directly or through Medistry-approved registrars.

Medistry requires all registrants, either directly or through Medistry-approved registrars, to i) affirm that said registrants meet the Sunrise Eligibility Requirements (SER) and ii) submit to the Sunrise Dispute Resolution Policy (SDRP) consistent with Section 6 of the Trademark Clearinghouse model. At a minimum Medistry recognizes and honors all word marks for which a proof of use was submitted and validated by the Trademark Clearinghouse as well as any additional eligibility requirements as specified in Question 18.

During the Sunrise period, Medistry and/or Medistry-approved registrars, as applicable, are responsible for determining whether each domain name is eligible to be registered (including in accordance with the SERs).

Trademark Claims Service. As provided by the Trademark Clearinghouse model set forth in the ICANN Applicant Guidebook, all new gTLDs will have to provide a Trademark Claims service for a minimum of 60 days after the launch of the general registration of domain names in the gTLD (Trademark Claims period).

During the Trademark Claims period, in accordance with ICANN's requirements, Medistry or the Medistry-approved registrar will send a Trademark Claims Notice to any prospective registrant of a domain name that is an identical match (as defined in the ICANN Applicant Guidebook) to any mark that is validated in the Trademark Clearinghouse. The Trademark Claims Notice will include links to the Trademark Claims as listed in the Trademark Clearinghouse and will be provided at no cost.

Prior to registration of said domain name, Medistry or the Medistry-approved registrar will require each prospective registrant to provide the warranties dictated in the Trademark Clearinghouse model set forth in the ICANN Applicant Guidebook. Those warranties will include receipt and understanding of the Trademark Claims Notice and confirmation that registration and use of said domain name will not infringe on the trademark rights of the mark holders listed. Without receipt of said warranties, Medistry or the Medistry-approved registrar will not process the domain name registration.

Following the registration of a domain name, the Medistry-approved registrar will provide a notice of domain name registration to the holders of marks that have been previously validated by the Trademark Clearinghouse and are an identical match. This notice will be as dictated by ICANN. At a minimum Medistry will recognize and honor all word marks validated by the Trademark Clearinghouse.

Eligibility Restrictions. As set forth in the answer to Question 18, domain name registrations in .MED will be limited to CC, its partners and other trusted parties from the medical and healthcare fields as CC so determines. As set forth in the answer to Question 28, during the initial three years of operation of the .MED gTLD, all domains will be allocated by Request for Proposal (RFP). This will afford CC and Medistry the ability to employ eligibility restrictions in CC's discretion in the RFP criteria. At minimum, all RFP applicants will be required to identify themselves, and selected applicants will be required to provide their RFP identification information. Further, by the nature of the registration limitations set forth above, registrants will relate to entities that CC knows or otherwise trusts.

Beyond the initial three years of operation, CC and Medistry will review RFP allocation and determine appropriate methods for complying with the eligibility restrictions set forth the answer to Question 18 based upon (i) their review of the initial three year's worth of RFP allocation; (ii) the needs of users as determined by CC and Medistry; and (iii) the stated mission/purpose of the .MED gTLD.

Medistry will work with accredited registrars to ensure that required back-end functionality for the above allocation method is available.

2 MECHANISMS DESIGNED TO IDENTIFY AND ADDRESS THE ABUSIVE USE OF REGISTERED NAMES ON AN ONGOING BASIS

In addition to the Sunrise and Trademark Claims services described in Section 1 of this response, Medistry implements and adheres to RPMs post-launch as mandated by ICANN, and confirms that registrars accredited for the .MED gTLD are in compliance with these mechanisms. Certain aspects of these post-launch RPMs may be administered on behalf of Medistry by Medistry-approved registrars or by subcontractors of Medistry, such as its selected backend registry services provider, Verisign.

These post-launch RPMs include the established Uniform Domain-Name Dispute-Resolution Policy (UDRP), as well as the newer Uniform Rapid Suspension System (URS) and Trademark Post-Delegation Dispute Resolution Procedure (PDDRP). Where applicable, Medistry will implement all determinations and decisions issued under the corresponding RPM.

After a domain name is registered, trademark holders can object to the registration through the UDRP or URS. Objections to the operation of the gTLD can be made through the PDDRP.

The following descriptions provide implementation details of each post-launch RPM for the .MED gTLD:

* UDRP: The UDRP provides a mechanism for complainants to object to domain name registrations. The complainant files its objection with a UDRP provider and the domain name registrant has an opportunity to respond. The UDRP provider makes a decision based on the papers filed. If the complainant is successful, ownership of the domain name registration is transferred to the complainant. If the complainant is not successful, ownership of the domain name remains with the domain name registrant. Medistry and entities operating on its behalf adhere to all decisions rendered by UDRP providers.

* URS: As provided in the Applicant Guidebook, all registries are required to implement the URS. Similar to the UDRP, a complainant files its objection with a URS provider. The URS provider conducts an administrative review for compliance with filing requirements. If the complaint passes review, the URS provider notifies the registry operator and locks the domain. A lock means that the registry restricts all changes to the registration data, but the name will continue to resolve. After the domain is locked, the complaint is served to the domain name registrant, who has an opportunity to respond. If the complainant is successful, the registry operator is informed and the domain name is suspended for the balance of the registration period; the domain name will not resolve to the original website, but to an informational web page provided by the URS provider. If the complainant is not successful, the URS is terminated and full control of the domain name registration is returned to the domain name registrant. Similar to the existing UDRP, Medistry and entities operating on its behalf adhere to decisions rendered by the URS providers.

* PDDRP: As provided in the Applicant Guidebook, all registries are required to implement the PDDRP. The PDDRP provides a mechanism for a complainant to object to the registry operator's manner of operation or use of the gTLD. The complainant files its objection with a PDDRP provider, who performs a threshold review. The registry operator has the opportunity to respond and the provider issues its determination based on the papers filed, although there may be opportunity for further discovery and a hearing. Medistry participates in the PDDRP process as specified in the Applicant Guidebook.

Additional Measures Specific to Rights Protection. Medistry provides additional measures against potentially abusive registrations. These measures help mitigate phishing, pharming, and other Internet security threats. The measures exceed the minimum requirements for RPMs defined by Specification 7 of the Registry Agreement and are available at the time of registration. These measures include:

* **Rapid Takedown or Suspension Based on Court Orders:** Medistry complies promptly with any order from a court of competent jurisdiction that directs it to take any action on a domain name that is within its technical capabilities as a TLD registry. These orders may be issued when abusive content, such as child pornography, counterfeit goods, or illegal pharmaceuticals, is associated with the domain name.

* **Anti-Abuse Process:** Medistry implements an anti-abuse process that is executed on domain name takedown requests. The scope of the anti-abuse process includes malicious exploitation of the DNS infrastructure, such as phishing, botnets, and malware.

* **Authentication Procedures:** Verisign, Medistry's selected backend registry services provider, uses two-factor authentication to augment security protocols for telephone, email, and chat communications.

* **Registry Lock:** This Verisign service allows registrants to lock a domain name at the registry level to protect against both unintended and malicious changes, deletions, and transfers. Only

Verisign, as Medistry's backend registry services provider, can release the lock; thus all other entities that normally are permitted to update Shared Registration System (SRS) records are prevented from doing so. This lock is released only after the registrar makes the request to unlock.

* **Malware Code Identification:** This safeguard reduces opportunities for abusive behaviors that use registered domain names in the gTLD. Registrants are often unknowing victims of malware exploits. As Medistry's backend registry services provider, Verisign has developed proprietary code to help identify malware in the zones it manages, which in turn helps registrars by identifying malicious code hidden in their domain names.

* **DNSSEC Signing Service:** Domain Name System Security Extensions (DNSSEC) helps mitigate phishing attacks that use cache poisoning to redirect unsuspecting users to fraudulent websites or addresses. It uses public key cryptography to digitally sign DNS data when it comes into the system and then validate it at its destination. The .MED gTLD is DNSSEC-enabled as part of Verisign's core backend registry services.

3. RESOURCING PLANS

Resource Planning

Resourcing plans for the initial implementation of, and ongoing maintenance for, the rights protection mechanisms in Part 1 of the answer to this Question 29, except for those relating to eligibility requirements, are set forth in the answer to Question 49(a) - contingency planning (detailed further below). As ICANN has not issued final guidance with regard to the Trademark Clearinghouse, and particularly the costs associated with the Clearinghouse, subcontractors and backend providers, such as Verisign, have not been able to quote costs and resource allocations for implementation of the Clearinghouse and other RPMs which incorporate the Clearinghouse. Medistry will determine which entity(ies) will provide which services, and allocate costs and resources accordingly, once ICANN has determined a Clearinghouse cost and Medistry can determine subcontractor/Verisign pricing and availability. In any event, Medistry has a firm commitment from Verisign that, at minimum, Verisign will work with Medistry to provide all the necessary resources and services to implement and maintain the RPMs contemplated in this answer, and as set forth in Question 49(a), Medistry has allocated sufficient committed resources to ensure sufficient resources to cover Verisign's (or other subcontractor's) costs.

With regard to the other RPMs identified herein, Medistry's management team is an experienced team which has managed an sTLD (.JOBS) for over six years and is well-acquainted with domain abuse prevention and mitigation.

Medistry internal operations for all RPMs will scale as needed to accommodate the volume and nature of all matters not handled by Verisign or subcontractors, including shifting allocations of time from the management team, General Counsel, Customer Support personnel and Technical Labor personnel. In the event registration volume and related income allow, and RPM matter volume dictates, additional personnel may be added to accommodate the matters, up to and including addition of a dedicated RPM Manager with a staff commensurate to need.

Costs for Medistry's operations as detailed above are addressed in the response to Question 47. Specifically, \$5,000 has been attributed to legal as part of general administrative expenses per year (see table 3 provided in response to Question 47). In addition, per the Financial Projections Template submitted in response to Question 46, \$10,000 per year is budgeted under Other Operating Costs in case of unexpected contingencies, such as the use of outside legal counsel.

With regard to operation of RPMs relating to eligibility requirements, CC is a world-famous and multi-national medical institution. CC has an experienced management team, compliance team and legal team for overseeing use of the .MED gTLD. With regard to eligibility requirement complaints or other complaints which relate to rights protection which may violate any CC policy, CC will establish, implement and maintain internal procedures for addressing such claims. Such procedures may involve input from management, compliance and legal, and legal may consult with outside legal counsel. CC has sufficient resources and personnel to provide the compliance services attributed to CC herein.

CC's internal costs for abuse complaint procedures will be borne by CC, and are thus not included in the response to Question 47.

Resource Planning Specific to Backend Registry Activities

Verisign, Medistry's selected backend registry services provider, is an experienced backend registry provider that has developed a set of proprietary resourcing models to project the number and type of personnel resources necessary to operate a TLD. Verisign routinely adjusts these staffing models to account for new tools and process innovations. These models enable Verisign to

continually right-size its staff to accommodate projected demand and meet service level agreements as well as Internet security and stability requirements. Using the projected usage volume for the most likely scenario (defined in Question 46, Template 1 - Financial Projections: Most Likely) as an input to its staffing models, Verisign derived the necessary personnel levels required for this gTLD's initial implementation and ongoing maintenance. Verisign's pricing for the backend registry services it provides to Medistry fully accounts for cost related to this infrastructure, which is provided as Line IIb.G, Total Critical Registry Function Cash Outflows, within the Question 46 financial projections response.

Verisign employs more than 1,040 individuals of which more than 775 comprise its technical work force. (Current statistics are publicly available in Verisign's quarterly filings.) Drawing from this pool of on-hand and fully committed technical resources, Verisign has maintained DNS operational accuracy and stability 100 percent of the time for more than 13 years for .com, proving Verisign's ability to align personnel resource growth to the scale increases of Verisign's TLD service offerings.

Verisign projects it will use the following personnel roles, which are described in Section 5 of the response to Question 31, Technical Overview of Proposed Registry, to support the implementation of RPMs:

- * Customer Affairs Organization: 9
- * Customer Support Personnel: 36
- * Information Security Engineers: 11

To implement and manage the .MED gTLD as described in this application, Verisign, Medistry's selected backend registry services provider, scales, as needed, the size of each technical area now supporting its portfolio of TLDs. Consistent with its resource modeling, Verisign periodically reviews the level of work to be performed and adjusts staff levels for each technical area.

When usage projections indicate a need for additional staff, Verisign's internal staffing group uses an in-place staffing process to identify qualified candidates. These candidates are then interviewed by the lead of the relevant technical area. By scaling one common team across all its TLDs instead of creating a new entity to manage only this proposed gTLD, Verisign realizes significant economies of scale and ensures its TLD best practices are followed consistently. This consistent application of best practices helps ensure the security and stability of both the Internet and this proposed gTLD, as Verisign holds all contributing staff members accountable to the same procedures that guide its execution of the Internet's largest TLDs (i.e., .com and .net). Moreover, by augmenting existing teams, Verisign affords new employees the opportunity to be mentored by existing senior staff. This mentoring minimizes start-up learning curves and helps ensure that new staff members properly execute their duties.

30(a). Security Policy: Summary of the security policy for the proposed registry

1 DETAILED DESCRIPTION OF PROCESSES AND SOLUTIONS DEPLOYED TO MANAGE LOGICAL SECURITY ACROSS INFRASTRUCTURE AND SYSTEMS, MONITORING AND DETECTING THREATS AND SECURITY VULNERABILITIES AND TAKING APPROPRIATE STEPS TO RESOLVE THEM

Medistry LLC's ("Medistry") selected backend registry services provider's (Verisign's) comprehensive security policy has evolved over the years as part of managing some of the world's most critical TLDs. Verisign's Information Security Policy is the primary guideline that sets the baseline for all other policies, procedures, and standards that Verisign follows. This security policy addresses all of the critical components for the management of backend registry services, including architecture, engineering, and operations.

Verisign's general security policies and standards with respect to these areas are provided as follows:

*** Architecture**

Information Security Architecture Standard: This standard establishes the Verisign standard for application and network architecture. The document explains the methods for segmenting application tiers, using authentication mechanisms, and implementing application functions.

Information Security Secure Linux Standard: This standard establishes the information security requirements for all systems that run Linux throughout the Verisign organization.

Information Security Secure Oracle Standard: This standard establishes the information security requirements for all systems that run Oracle throughout the Verisign organization.

Information Security Remote Access Standard: This standard establishes the information security requirements for remote access to terminal services throughout the Verisign organization.

Information Security SSH Standard: This standard establishes the information security requirements for the application of Secure Shell (SSH) on all systems throughout the Verisign organization.

* Engineering

Secure SSL/TLS Configuration Standard: This standard establishes the information security requirements for the configuration of Secure Sockets Layer/Transport Layer Security (SSL/TLS) for all systems throughout the Verisign organization.

Information Security C++ Standards: These standards explain how to use and implement the functions and application programming interfaces (APIs) within C++. The document also describes how to perform logging, authentication, and database connectivity.

Information Security Java Standards: These standards explain how to use and implement the functions and APIs within Java. The document also describes how to perform logging, authentication, and database connectivity.

* Operations

Information Security DNS Standard: This standard establishes the information security requirements for all systems that run DNS systems throughout the Verisign organization.

Information Security Cryptographic Key Management Standard: This standard provides detailed information on both technology and processes for the use of encryption on Verisign information security systems.

Secure Apache Standard: Verisign has a multitude of Apache web servers, which are used in both production and development environments on the Verisign intranet and on the Internet. They provide a centralized, dynamic, and extensible interface to various other systems that deliver information to the end user. Because of their exposure and the confidential nature of the data that these systems host, adequate security measures must be in place. The Secure Apache Standard establishes the information security requirements for all systems that run Apache web servers throughout the Verisign organization.

Secure Sendmail Standard: Verisign uses sendmail servers in both the production and development environments on the Verisign intranet and on the Internet. Sendmail allows users to communicate with one another via email. The Secure Sendmail Standard establishes the information security requirements for all systems that run sendmail servers throughout the Verisign organization.

Secure Logging Standard: This standard establishes the information security logging requirements for all systems and applications throughout the Verisign organization. Where specific standards documents have been created for operating systems or applications, the logging standards have been detailed. This document covers all technologies.

Patch Management Standard: This standard establishes the information security patch and upgrade management requirements for all systems and applications throughout Verisign.

* General

Secure Password Standard: Because passwords are the most popular and, in many cases, the sole mechanism for authenticating a user to a system, great care must be taken to help ensure that passwords are "strong" and secure. The Secure Password Standard details requirements for the use and implementation of passwords.

Secure Anti-Virus Standard: Verisign must be protected continuously from computer viruses and other forms of malicious code. These threats can cause significant damage to the overall operation and security of the Verisign network. The Secure Anti-Virus Standard describes the requirements for minimizing the occurrence and impact of these incidents.

Security processes and solutions for the .MED TLD are based on the standards defined above, each of which is derived from Verisign's experience and industry best practice. These standards comprise the framework for the overall security solution and applicable processes implemented across all products under Verisign's management. The security solution and applicable processes include, but are not limited to:

- * System and network access control (e.g., monitoring, logging, and backup)
- * Independent assessment and periodic independent assessment reports
- * Denial of service (DoS) and distributed denial of service (DDoS) attack mitigation
- * Computer and network incident response policies, plans, and processes
- * Minimization of risk of unauthorized access to systems or tampering with registry data
- * Intrusion detection mechanisms, threat analysis, defenses, and updates
- * Auditing of network access
- * Physical security

Further details of these processes and solutions are provided in Part B of this response.

1.1 Security Policy and Procedures for the Proposed Registry

Specific security policy related details, requested as the bulleted items of Question 30 - Part A, are provided here.

Independent Assessment and Periodic Independent Assessment Reports. To help ensure effective security controls are in place, Medistry, through its selected backend registry services provider, Verisign, conducts a yearly American Institute of Certified Public Accountants (AICPA) and Canadian Institute of Chartered Accountants (CICA) SAS 70 audit on all of its data centers, hosted systems, and applications. During these SAS 70 audits, security controls at the operational, technical, and human level are rigorously tested. These audits are conducted by a certified and accredited third party and help ensure that Verisign in-place environments meet the security criteria specified in Verisign's customer contractual agreements and are in accordance with commercially accepted security controls and practices. Verisign also performs numerous audits throughout the year to verify its security processes and activities. These audits cover many different environments and technologies and validate Verisign's capability to protect its registry and DNS resolution environments. Figure 30A-1 lists a subset of the audits that Verisign conducts. For each audit program or certification listed in Figure 30A-1. Verisign has included, as attachments to the Part B component of this response, copies of the assessment reports conducted by the listed third-party auditor. From Verisign's experience operating registries, it has determined that together these audit programs and certifications provide a reliable means to ensure effective security controls are in place and that these controls are sufficient to meet ICANN security requirements and therefore are commensurate with the guidelines defined by ISO 27001.

Figure 30A-1: See Medistry LLC_Q30A_security policy

Augmented Security Levels or Capabilities. See Section 5 of this response.

Commitments Made to Registrants Concerning Security Levels. See Section 4 of this response.

2 SECURITY CAPABILITIES ARE CONSISTENT WITH THE OVERALL BUSINESS APPROACH AND PLANNED SIZE OF THE REGISTRY

Verisign, Medistry's selected backend registry services provider, is an experienced backend registry provider that has developed and uses proprietary system scaling models to guide the growth of its TLD supporting infrastructure. These models direct Verisign's infrastructure scaling to include, but not be limited to, server capacity, data storage volume, and network throughput that are aligned to projected demand and usage patterns. Verisign periodically updates these models to account for the adoption of more capable and cost-effective technologies.

Verisign's scaling models are proven predictors of needed capacity and related cost. As such, they provide the means to link the projected infrastructure needs of the .MED gTLD with necessary implementation and sustainment cost. Using the projected usage volume for the most likely scenario (defined in Question 46, Template 1 - Financial Projections: Most Likely) as an input to its scaling models, Verisign derived the necessary infrastructure required to implement and sustain this gTLD. Verisign's pricing for the backend registry services it provides to Medistry fully accounts for cost related to this infrastructure, which is provided as "Total Critical Registry Function Cash Outflows" (Template 1, Line IIb.G) within the Question 46 financial projections response.

3 TECHNICAL PLAN ADEQUATELY RESOURCED IN THE PLANNED COSTS DETAILED IN THE FINANCIAL SECTION

Verisign, Medistry's selected backend registry services provider, is an experienced backend registry provider that has developed a set of proprietary resourcing models to project the number and type of personnel resources necessary to operate a TLD. Verisign routinely adjusts these staffing models to account for new tools and process innovations. These models enable Verisign to continually right-size its staff to accommodate projected demand and meet service level agreements as well as Internet security and stability requirements. Using the projected usage volume for the most likely scenario (defined in Question 46, Template 1 - Financial Projections: Most Likely) as an input to its staffing models, Verisign derived the necessary personnel levels

required for this gTLD's initial implementation and ongoing maintenance. Verisign's pricing for the backend registry services it provides to Medistry fully accounts for cost related to this infrastructure, which is provided as "Total Critical Registry Function Cash Outflows" (Template 1, Line IIb.G) within the Question 46 financial projections response.

Verisign employs more than 1,040 individuals of which more than 775 comprise its technical work force. (Current statistics are publicly available in Verisign's quarterly filings.) Drawing from this pool of on-hand and fully committed technical resources, Verisign has maintained DNS operational accuracy and stability 100 percent of the time for more than 13 years for .com, proving Verisign's ability to align personnel resource growth to the scale increases of Verisign's TLD service offerings.

Verisign projects it will use the following personnel role, which is described in Section 5 of the response to Question 31, Technical Overview of Proposed Registry, to support its security policy:

* Information Security Engineers: 11

To implement and manage the .MED gTLD as described in this application, Verisign, Medistry's selected backend registry services provider, scales, as needed, the size of each technical area now supporting its portfolio of TLDs. Consistent with its resource modeling, Verisign periodically reviews the level of work to be performed and adjusts staff levels for each technical area.

When usage projections indicate a need for additional staff, Verisign's internal staffing group uses an in-place staffing process to identify qualified candidates. These candidates are then interviewed by the lead of the relevant technical area. By scaling one common team across all its TLDs instead of creating a new entity to manage only this proposed gTLD, Verisign realizes significant economies of scale and ensures its TLD best practices are followed consistently. This consistent application of best practices helps ensure the security and stability of both the Internet and this proposed gTLD, as Verisign holds all contributing staff members accountable to the same procedures that guide its execution of the Internet's largest TLDs (i.e., .com and .net). Moreover, by augmenting existing teams, Verisign affords new employees the opportunity to be mentored by existing senior staff. This mentoring minimizes start-up learning curves and helps ensure that new staff members properly execute their duties.

4 SECURITY MEASURES ARE CONSISTENT WITH ANY COMMITMENTS MADE TO REGISTRANTS REGARDING SECURITY LEVELS

Verisign is Medistry's selected backend registry services provider. For the .MED gTLD, no unique security measures or commitments must be made by Verisign or Medistry to any registrant.

5 SECURITY MEASURES ARE APPROPRIATE FOR THE APPLIED-FOR gTLD STRING (FOR EXAMPLE, APPLICATIONS FOR STRINGS WITH UNIQUE TRUST IMPLICATIONS, SUCH AS FINANCIAL SERVICES-ORIENTED STRINGS, WOULD BE EXPECTED TO PROVIDE A COMMENSURATE LEVEL OF SECURITY)

No unique security measures are necessary to implement the .MED gTLD. As defined in Section 1 of this response, Verisign, Medistry's selected backend registry services provider, commits to providing backend registry services in accordance with the following international and relevant security standards:

* American Institute of Certified Public Accountants (AICPA) and Canadian Institute of Chartered Accountants (CICA) SAS 70

* WebTrust/SysTrust for Certification Authorities (CA)

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ATTACHMENT 3

Comment ID: 8u7jazet

Name: Carmen A Catizone MS RPh DPh

Affiliation: National Association of Boards of Pharmacy

Applicant: Medistry LLC

String: MED

Application ID: 1-907-38758

Panel/Objection Ground: Community Evaluation Panel

Subject: Health- and Medicine-Related gTLDs

Comment Submission Date: 9 August 2012 at 20:42:06 UTC

Comment:

As the independent, international, and impartial Association that supports its member boards of pharmacy in protecting the public health, National Association of Boards of Pharmacy® (NABP®) would like to ensure that new generic top-level domains (gTLDs) relating to health and medicine are operated responsibly in the interest of patient safety.

Founded in 1904, NABP represents the state boards of pharmacy in all 50 United States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, Australia, eight Canadian Provinces, and New Zealand.

At a time when some 97% of Web sites selling prescription drugs online do so illegally – many of them selling unapproved, substandard, and counterfeit medicine – it is crucial that registries within the health and medical marketplace screen online drug sellers and other health practitioner Web sites for proper credentials. Illegal online drug sellers frequently dispense prescription medicine without a valid prescription or medical oversight. They also provide an easy way for unapproved, substandard, and counterfeit medications to enter the supply chain, posing a global health concern. For this reason, NABP, with the support of a global coalition of stakeholders, has applied to own and operate the new .PHARMACY gTLD. NABP seeks to establish .PHARMACY as a secure and trustworthy destination where consumers can be sure that the medications they buy online are authentic and safe.

In addition to pursuing a gTLD, NABP would like to contribute to the Internet Corporation for Assigned Names and Numbers (ICANN) multi-stakeholder model by providing thought leadership in connection with various medical themed gTLDs. Specifically, NABP supports the recommendation of the ICANN Governmental Advisory Committee that gTLD strings referring to “particular sectors, such as those subject to national regulation (such as .bank, .pharmacy) or those that describe or are targeted to a population or industry that is vulnerable to online fraud or abuse, should also be considered ‘community-based’ strings.” Under this guidance, all such gTLD applicants would be subject to the more rigid contractual requirements to ensure that they protect the best interest of the community. While not every applicant pursuing a medical themed gTLD elected to seek a community designation, NABP believes that all medical themed gTLDs – whether community-based or not – should have certain safeguard mechanisms hard coded into the registry agreement in order to ensure patient safety and legitimate use of domain names.

ATTACHMENT 4

Comment ID: kswu7m9h

Name: John Bell

Affiliation: .JOBS Charter Compliance Coalition

Applicant: Medistry LLC

String: MED

Application ID: 1-907-38758

Panel/Objection Ground: Background Screening

Subject: Applicant's Prior Noncompliant Conduct

Comment Submission Date: 25 September 2012 at 20:47:19 UTC

Comment:

The applicant's management team is the same group that owns and operates Employ Media LLC ("EM"), the registry operator of the .JOBS sponsored TLD. EM is currently involved in an arbitration proceeding against ICANN concerning its operation of .JOBS – an arbitration instigated by EM in "bad faith" according to ICANN. The arbitration stems from a breach notice issued by ICANN to EM in February 2011, which stated that EM had "exclusively served [its] financial interests" to "the detriment of some participants of the human resources community." ICANN asserted that the breach notice "reflects our serious commitment to contractual compliance with registries and registrars." ICANN's July 2011 arbitration answer found that EM's violative conduct had "transcended the very purpose behind the creation of the TLD" and engaged in a "backroom deal" rather than in a transparent manner.

This forum does not permit a detailed description of EM's improper actions. The evaluation panel's review must therefore include an examination of the arbitration filings and the submissions from our Coalition's Reconsideration Request 10-2, relating to the same issues that remain in dispute. These and other relevant filings are available on the ICANN website under the "Litigation" and "Requests for Reconsideration" tabs.

We commend ICANN CEO Fadi Chehadé for recently elevating and realigning ICANN's contractual compliance function as an independent function reporting directly to the CEO. However, ICANN faces another critical test in the contractual compliance

area: will it award new gTLDs to a party that has consistently disregarded ICANN's compliance authority and presented hostile and meritless arguments to support its mismanagement of an existing TLD. Our Coalition respectfully submits that there is no justifiable basis to entrust this applicant with new gTLDs.

EM has abused its influential position as the .JOBS registry operator by engaging in deceptive conduct and defying ICANN's authority. For example, EM argues that ICANN lacks enforcement authority where a registry operator operates the TLD in a manner that clearly violates its Charter. EM instead incorrectly contends that the sponsor of the .JOBS TLD should regulate the conduct in dispute – despite the sponsor's public acknowledgment of a "limited role" in this matter. EM strains to support its positions by manipulating contractual language to its advantage with unreasonable interpretations. EM claims ICANN is bound by its initial approval of EM's August 2010 amendment to the .JOBS registry agreement, even though EM's subsequent implementation clearly violated the .JOBS Charter and contradicted the original intent of the TLD. In essence, EM argues that ICANN's failure to initially detect EM's deceit should result in the entire Internet community suffering the detriments of a noncompliant TLD. The record, however, is clear that the ICANN Board's approval of the amendment was premised on the basis that EM would not expand the universe of registrants for the TLD, as EM eventually did. In other words, EM is contravening the explicit intent of the ICANN Board while erroneously asserting that the Board approved EM's plans.

For these reasons and numerous others, ICANN should demonstrate its commitment to contractual compliance by disqualifying this EM-affiliated management team from participation in the new gTLD program.

John Bell - Chairman of the .JOBS Charter Compliance Coalition

ATTACHMENT 5

gTLD String: .med
Applicant Entity Name: Medistry LLC
Application ID#: 1-907-38758

**SPECIFICATION 11
PUBLIC INTEREST COMMITMENTS**

1. Registry Operator will use only ICANN accredited registrars that are party to the Registrar Accreditation Agreement approved by the ICANN Board of Directors on [date to be determined at time of contracting], 2013(or any subsequent form of Registrar Accreditation Agreement approved by the ICANN Board of Directors) in registering domain names. A list of such registrars shall be maintained by ICANN on ICANN’s website.

2. Registry Operator will operate the registry for the TLD in compliance with all commitments, statements of intent and business plans stated in the following sections of Registry Operator’s application to ICANN for the TLD, which commitments, statements of intent and business plans are hereby incorporated by reference into this Agreement. Registry Operator’s obligations pursuant to this paragraph shall be enforceable by ICANN and through the Public Interest Commitment Dispute Resolution Process established by ICANN ((posted at [url to be inserted when final procedure is adopted]), as it may be amended by ICANN from time to time, the “PICDRP”). Registry Operator shall comply with the PICDRP. Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Registry Agreement) following a determination by any PICDRP panel and to be bound by any such determination.

[Registry Operator to insert specific application sections here, if applicable]

3. Registry Operator agrees to perform following specific public interest commitments, which commitments shall be enforceable by ICANN and through the PICDRP. Registry Operator shall comply with the PICDRP. Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Registry Agreement) following a determination by any PICDRP panel and to be bound by any such determination.

Registry Operator submits the following based upon ICANN’s requirement that Public Interest Commitments (“PIC” or “PICs”) be submitted to ICANN by 5 March 2013, even though (i) the relevant Specification 11 (“Spec 11”) of the Revised New gTLD Registry Agreement (this Agreement) has not cleared the reply period for public comment, (ii) Spec 11 is thus subject to modification unilaterally by the ICANN Board, (iii) ICANN has released few, if any, standards, procedures, guidelines or details regarding the PICDRP, (iv) the PICDRP is subject to modification unilaterally by the ICANN Board, and (v) GAC advice, for which Spec 11 is in main part directed, is not due until substantially after 5 March 2013, not affording Registry Operator the ability to respond to any such advice in the below.

Accordingly, Registry Operator reserves the right to amend, modify, withdraw and otherwise change the below in its sole discretion at any time due to any material activity or material change in the substance of any of the enumerated points in the paragraph immediately preceding this one which materially impacts Registry Operator’s ability to perform its obligations under this Agreement and specifically the language in this Spec 11 PIC (3).

In light of the above, Registry Operator will perform the following PICs, with a sixty (60) day window to cure (as define below):

- 1. The purpose of .MED is to benefit registrants, Internet users and others by, among other reasons, providing a trusted name space wherein users can come to find trusted sources for medical related information, consistent with the Cleveland Clinic's mission of integrating clinical and hospital care with research and education in a digital world.**
- 2. The lone method of domain name allocation in .MED will be by Request for Proposal (RFP) under guidelines, rules and criteria as set forth by the Cleveland Clinic in its sole discretion.**
- 3. Request for Proposals for domain name registration in .MED will be reviewed for approval by the Cleveland Clinic, in its sole discretion, independent of Medistry LLC (the Registry Operator under contract with ICANN).**
- 4. Additional restrictions, policies or practices may be set forth by the Cleveland Clinic, in its sole discretion, during initial operations of the .MED gTLD so that the .MED gTLD can be launched and initially operated in a controlled manner, granting the gTLD the opportunity to fulfill its stated mission(s)/purpose(s), and allowing the Cleveland Clinic the opportunity to study use of the gTLD and user adoption of the gTLD.**
- 5. Medistry LLC will provide a single point of contact responsible for addressing reports of registration abuse and to constructively work with law enforcement to address reported cases of abuse.**
- 6. Medistry LLC will use commercially reasonable efforts to ensure accurate and accessible WHOIS information of all .MED domain name registrations.**
- 7. Medistry LLC will prevent registration of exact matches of IGO names at the second level, according to the list to be provided by the GAC as per the GAC Toronto Communiqué of 17 October 2012, except by authorized representatives of the IGO in question.**

As ICANN has yet to provide any details regarding application of the PICDRP, Registry Operator reserves the right to cure any judgment, adjudication, determination, decision or otherwise of the PICDRP within sixty (60) days of written issue thereof, including taking any action Registry Operator deems necessary to place Registry Operator in compliance with the terms of Spec 11 as interpreted by the PICDRP. ICANN shall withhold enacting any remedy ICANN may have under the Agreement, including for avoidance of doubt the termination of this Agreement pursuant to Section 4.3(e) therein, until after Registry Operator has been given the full sixty (60) day window to cure.

Given the current uncertainty surrounding Spec 11, and in particular that many material details of the PICDRP are yet to be determined, the express PICs set forth above state the sole public interest commitments by Registry Operator for .MED at this time. While it is Registry Operator's position that the PICs set forth above are entirely consistent with statements of intent and business plans made in Registry Operator's application to ICANN for .MED, and as such do not warrant an amendment to the application for .MED for new matter and do not otherwise impact Registry Operator's representations and warranties under Section 1.3 herein regarding material information provided and statements made in the .MED application, Registry Operator makes no other representations or warranties, express or implied, to ICANN, any entity engaging the PICDRP or any other entity, regarding Registry Operator's operation of .MED, outside of, or in addition to, the express PICs set forth above. Except for the express PICs set forth above, with regard to any public interest commitment, Registry Operator hereby disclaims all

warranties, express or implied, whether in fact or by operator of law, statutory or otherwise, including but not limited to warranties of merchantability and fitness for a particular purpose.

ATTACHMENT 6



International Chamber of Commerce

The world business organization

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

RESPONSE FORM TO BE COMPLETED BY THE APPLICANT

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

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

References to use for the Procedural Documents

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

ICC International Centre for ADR Centre international d'ADR de la CCI
38 Cours Albert 1er, 75008 Paris, France
Tel +33 (0)1 49 53 30 52 Fax +33 (0)1 49 53 30 49
E-mail expertise@iccwbo.org Website www.iccexpertise.org

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Identification of the Parties and their Representatives

Applicant

Name	Medistry LLC
Contact person	Brian Johnson
Address	Contact Information Redacted
City, Country	
Telephone	
Email	

Objector

Name	Prof. Alain Pellet, Independent Objector
Contact person	Contact Information Redacted
Address	
City, Country	
Telephone	
Email	

Copy the information provided by the Objector.

Applicant's Representative(s)

Name	The Cleveland Clinic Foundation
Contact person	Contact Information Redacted
Address	
City, Country	
Telephone	
Email	

Add separate tables for any additional representative (for example external counsel or in-house counsel).

Applicant's Representative(s)

Name	The Cleveland Clinic Foundation
Contact person	Mr. David W. Rowan, Esq., Chief Legal Officer Contact Information Redacted
Address	
City, Country	
Telephone	
Email	

Applicant's Contact Address

Name	Medistry LLC
Contact person	Brian Johnson Contact Information Redacted
Address	
City, Country	
Telephone	
Email	

This address shall be used for all communication and notifications in the present proceedings. Accordingly, notification to this address shall be deemed as notification to the Applicant. The Contact Address can be the Applicant's address, the Applicant's Representative's address or any other address used for correspondence in these proceedings.

Other Related Entities

Name	The Cleveland Clinic Foundation
Address	Contact Information Redacted
City, Country	
Telephone	
Email	

Add separate tables for any additional other related entity.

Disputed gTLD

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

Name	.Med (Application ID: 1-907-38758)
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Objection

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

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

or

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

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

The Cleveland Clinic, a world-class, not-for-profit, multispecialty hospital and academic center,¹ in partnership with a management team with experience operating a TLD, created Medistry LLC (“Applicant”) to apply for .med. .med is intended to be a trusted Internet space that provides reliable health-related information, consistent with the Clinic’s charitable mandate and commitment to community benefit, education and communication.

Accordingly, domain registrations in .med will only be allocated by requests for proposals.² Registrants must demonstrate their qualifications and intentions to carry out the educational and health mission of .med, and the use of domain names would be according to terms set by the Cleveland Clinic, consistent with its charitable mandate.³ In addition, because the Cleveland Clinic’s stewardship of .med will affect the Clinic’s own reputation, it will naturally establish policies to ensure that .med remains a trusted, valuable name space.

¹ See www.ClevelandClinic.org

² See Application Submitted to ICANN by: Medistry LLC for .MED, Application No. 1-907-38758, public version available at <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadapplication/216?t:ac=216>, and particularly the answer to Question 18 attached herein as **Annex A**. See also Applicant’s Public Interest Commitments (“PIC” or “PICs”) which will contractually obligate Applicant to the terms therein, publicly available at <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadpicposting/216?t:ac=216> and attached hereto as **Annex B**.

³ *Id.*

Despite assurances of the Clinic's and Applicant's intent to provide a trusted space for reliable health-related information, the Community Objection filed against Applicant seemingly ignores the significance of the Clinic's stewardship and guidance in a failed attempt to carry Objector's burden of proof under the Guidebook's requirements for prevailing on a Community Objection.

I. Objector fails at least three out of the four tests required for prevailing on a Community Objection

In order to prevail in a Community Objection, Objector must prove all of the following:

1. The community invoked by the objector is a clearly delineated community;
2. 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.

Guidebook, § 3.5.4

"The objector bears the burden of proof in each case." *Id.*, § 3.5 "The objector *must meet all four* tests in the standard for the objection to prevail." *Id.*, § 3.5.4.

In this case, the Objector fails to prove a clearly delineated community; fails to prove that community opposition to the application is substantial; and fails to prove any likelihood of material detriment to the rights or legitimate interests of a significant portion of the community.⁴ As the Objector fails to carry tests (1), (2) and (4), this objection fails.

II. Objector fails to carry its burden of proving that the invoked community is clearly delineated

Objector appears to claim that the "clearly delineated community" is the "medical community." See, Objection ¶¶ 18-20. Yet the "medical community", as claimed by Objector, is heterogeneous, expansive and comprised of many, varying entities of different types. It is anything but "clearly delineated." Objector's claim that the medical community is "clearly delineated" (A) contradicts Objector's written position that the so-called "medical community" is not a "clearly delineated community"; (B) is vague and undefined; and (C) runs contrary to the Guidebook factors.

⁴ Applicant does not concede test (3), the "targeting" test (Guidebook, § 3.5.4) requiring a strong association between the community invoked and the applied-for string, as Objector's failure to appropriately define the "community invoked" (*see infra*, Section II) precludes Objector's ability to show "a strong association". In light of briefing length restrictions, however, Applicant focuses on tests (1), (2) and (4).

A. Objector's own statements show that the "medical community" is not a "clearly delineated community"

The conclusion that the "medical community" is extremely heterogeneous and not clearly defined is supported by the Objector's own previous written statement.

In January of 2013 Objector, in furtherance of duties as Independent Objector, contacted Applicant (the "Letter") with regard to Objector's investigation of Applicant's applied-for TLD ".med" for potential objections on both Community and Limited Public Interest ("LPI") grounds. See, **Annex C**. The Letter solicits Applicant's comments regarding a potential LPI objection, but did not solicit information regarding a potential Community Objection, concluding that a Community Objection was not warranted *because the medical community as a community is not clearly delineated*.

The Letter notes that the medical community "in the broadest sense encompasses numerous stakeholders, who do not always share similar primary interests", and includes numerous organizations, such as UNICEF, UNDP, UNODC, USAID, CARE and MSF. *Id.* at pg. 4. It further notes that the medical community broadly includes "other entities, which have primary focus on their commercial interests", such as "the pharmaceutical industry", and further includes "healthcare professionals and practitioners". *Id.*

The Letter concludes, with regard to a determination of whether the medical community is a "clearly defined community" for the purposes of a Community Objection, that such a community is not "clearly defined", and for that reason, a Community Objection is "not warranted." Specifically, the Letter concludes:

[the medical community] is *extremely heterogeneous and is composed of entities of very different and various types... It is therefore quite doubtful that they represent a clearly delineated community. Id.*

Objector's reasoning in the Letter is highly persuasive and should be determinative⁵ with regard to the ultimate issue of the medical community not being "clearly delineated" for the purposes of a Community Objection. The so-called "medical community" remains extremely heterogeneous and comprised of entities of very different and various types. The

⁵ Under principles of fairness and equity, Objector could be estopped from prevailing on this Community Objection. In reasonable reliance upon statements made by Objector in the Letter regarding the *unwarranted* nature of a Community Objection, Applicant did not address the nature of the medical community in its response, nor attempt to educate Objector regarding same. After receipt of this Community Objection, Applicant's attempts to educate Objector regarding the heterogeneous nature of the community were refused by Objector on the grounds that Applicant had already been given the opportunity to respond to Objector's concerns in the Letter. See, **Annex D**. Applicant has been damaged by Objector's actions, as Applicant now faces the prospect of losing its application due to this Community Objection. Based on Objector's prior substantive position in the Letter, Objector could be estopped from averring that the community is "clearly delineated". Based upon Objector's actions vis-à-vis refusing Applicant's input after initially claiming no input was required, Objector could be estopped from submitting this objection.

Letter is correct in concluding that “it is quite doubtful that they represent a clearly delineated community.” By Objector’s own reasoning and verbiage, this objection fails.

B. Objector’s “medical community” is impermissively vague

In a complete and unexplained about-face, Objector now concludes that the community at issue is the “medical community”, but fails to identify with any specificity who or what entities are included, or excluded, therefrom. Objector’s recitation of the “medical community” is so vague and undefined as to make it virtually impossible for Applicant to respond, particularly as subsequent tests (such as community opposition and material detriment) require Applicant to respond accordingly to the nature of the “community”.

Objector claims that three factors delineate the medical community (the “Claimed Delineating Factors”): (1) membership is linked to “the qualification to exercise a specific healthcare, medical profession”, see Objection ¶ 18, which appears to be associated with some form of education, license or authorization; (2) members who “work and exercise in specific sectors”, including “healthcare and medical services, pharmaceuticals, but also the development of medical and alike technologies”, *id.*; and (3) the development of “a highly specific and complex system of technical terms and phrases” which “creates a clear delineation between members of the community and the general public who, usually, can hardly understand the specific language and terms used by medical community members”. *Id.*

Yet Objector also states that *both* “professionals and institutions” (*id.*) comprise the community. As the Claimed Delineating Factors appear to be directed to professionals, it is unclear how any institution, such as a government, a government medical regulatory body, an international medical agency, or even a hospital, a professional association, an insurer, a medical billing company, etc., could qualify.

Application of the Claimed Delineating Factors to “professionals” only leads to vagueness and indefiniteness. Under Claimed Delineating Factor (1), what level of qualification is required? Doctor? Nurse? Orderly? EMT? Pharmaceutical salesperson? Insurance provider? Actuary? Billing company? Accountant? Med tech? Software programmer/provider? Clinical trial participants (non-physician)? How is authorization achieved? By an educational institution, a government, a professional practice? Is the universe of the “medical community” under Claimed Delineating Factor (2) greater than (1), as membership is allowed without the authorization/qualification required in (1)? If so, just how large is group (2), and who/what is included?

Most disturbingly, the scope of Claimed Delineating Factor (3) is impermissibly vague. Objector attempts to create a delineation based upon use of “complex language”. It

is impossible for Applicant to defend this Objection with Factor (3), because Applicant has absolutely no way of being able to identify what “terms” are referenced, or if anyone would be confused by them. Further, Objector’s assumption is wrong as the general public is, by its nature, a heterogeneous population comprising all walks of life and all levels of education, many of whom are very fluent in medical terminology and many of whom educate themselves daily related to health topics. Under Objector’s Factor (3), virtually any educated adult could be considered a member of the “medical community”, regardless of the lack of health- or medical-related education, license, authorization or experience required under Factors (1) or (2).

The matter is further confused by Objector’s statements regarding the medical community in Objector’s arguments relating to “Targeting Test”. Objector seems to indicate that it is the term “medical” that “qualifies the targeted community,” *id.* at ¶ 12. In the example cited by Objector, this “definition” of community would include those “of or relating to the science of medicine, or to the treatment of illness and injuries.” *Id.* This would seemingly include educators, sales people, technicians, scientists, accountants, government actors, regulators, mobile app developers, maintenance, and many undefined others. It is unclear how this definition would sync with any of the Claimed Delineating Factors.

Objector’s recitations of the “medical community” are impermissibly vague, ill-defined and broad, making it impossible for Applicant to respond to the Objection. The objection must fail accordingly.

C. Objector fails to carry its burden of providing a “clearly delineated community” under the Guidebook factors

The Guidebook sets forth five factors to balance in determining whether the community can be regarded as a “clearly delineated community.” Guidebook, § 3.5.4. Objector fails all five.

(1) Public recognition. Objector fails to show public recognition of the group as a *community*. In Claimed Delineating Factor (3) Objector claims some level of recognition with regard to medical terms, but fails to show how such recognition is anything but heterogeneous. Certainly clinical trial terms would be viewed as coming from a different “community” as terms from a family primary care physician, a nutritionist, from an insurance provider, a billing firm, or any of the various med tech fields. If anything, this proves public recognition of *many disparate communities* within the broad medical field.

(2) Formal boundaries. Objector fails to identify *any* formal boundaries around the community, instead identifying three Claimed Delineating Factors which themselves lack any formal, defined boundaries.

(3) Time of existence. The vagueness of Objector's "medical community" precludes determination of the length of time of its existence, as such time could run anywhere from the first use of complex medical terminology (centuries) to the most recent educational qualifications for a med tech (months).

(4) Global distribution. The community is global, but Objector fails to overcome the heterogeneous nature of the medical field globally. It is impossible to determine, from jurisdiction to jurisdiction, whether an individual or entity is or is not a member of the "medical community" under the Claimed Delineating Factors.

(5) Size. There is tremendous variation in the size of Objector's purported "clearly delineated community". It is as likely that the "medical community" is as small as merely including doctors, to as large as including orderlies, nurses, medical insurance billing companies, international medical organizations, etc.

The existence of a clearly delineated community is the crux of a Community Objection; it is the base from which all three other tests are derived. None of the other three tests can be evaluated without the existence of a clearly delineated community. Objector has failed to provide a well-defined, clearly delineated community, failing on all five Guidebook criteria. The Objector's initial conclusion, as set forth in the Letter, was correct. There is no clearly delineated community. This Objection fails.

III. The Objector fails to prove substantial opposition, noting only one advisory comment and attempting to justify this deficiency by impermissibly expanding its scope to cover comments filed against *unrelated* TLD applications

"The objector must prove *substantial opposition* within the community it has identified." Guidebook, § 3.5.4 (emphasis added) "If some opposition within the community is determined, but it does not meet the standard of substantial opposition, the objection will fail." *Id.* Objector so completely fails to show *substantial* opposition that Objector impermissibly crafts argument from *unrelated TLD applicants* in an attempt to justify Objector's position.

A. Objector fails to show any opposition comments

Only one substantive, yet topical, comment was submitted regarding Applicant's application for ".med"⁶ - the National Association Boards of Pharmacy (NABP) comment

⁶ The current application received two total comments, one from the NABP and one from John Bell. Bell's self-serving comment was to an unrelated matter concerning an arbitration that was pending between ICANN and Applicant's parent entity over the TLD .jobs. The arbitration subsequently settled, on Applicant's parent's terms, with ICANN publicly announcing that Applicant's parents are in good standing and not in breach of any ICANN registry agreement. See <http://www.icann.org/en/news/litigation/employ-media-v-icann> Thus Bell's comment has no impact on the case at hand.

referenced in the Objection and attached herein as **Annex E**. No other comments were submitted.

The NABP comment does not even rise to the level of “opposition” to the current application, having been submitted under the “community evaluation panel” category rather than the “community objection” category. The NABP, an applicant itself for the TLD .pharmacy, filed a virtually identical awareness comment to all applicants in the “health” and “medical” field. As such, the NABP comment does not oppose specifically the current application. As noted in the Objection, the NABP comment offers general advice regarding (i) a desire that health and medicine related TLD’s are operated responsibly in the interests of patient safety, including having certain safeguards hard coded into the registry agreement; and (ii) NABP’s opinion that it agrees with the GAC that certain strings relating to certain sectors preferably be treated as community-based strings. Subsequent conversations between Applicant and the NABP confirm that NABP’s intent was to provide general guidance for health related gTLDs, not to provide an opposition specifically against Applicant.

While Applicant does not view the NABP comment as “opposition,” Applicant believes that its application addresses NABP’s concerns. Applicant engages the Cleveland Clinic to provide policy oversight and ensure that the .med TLD will be operated consistently with the Clinic’s charitable mandate and commitment to community benefit, education and communication. See *Applicant’s application and PICs cited in footnote 2, infra*. Registrants in .med will be vetted by the Cleveland Clinic for compliance with the Clinic’s standards. *Id.* As Applicant has included these safeguards in Applicant’s PICs, such safeguards will be hard-coded into Applicant’s registry agreement. *Id.*

With regard to NABP’s second concern above, NABP’s purpose is not to grant subject-matter jurisdiction for a Community-based objection, but rather to subject the TLD “to the more rigid contractual requirements to ensure that they protect the best interest of the community.” See **Annex E**. NABP’s concerns are addressed via Applicant’s PICs. Applicant thus addresses NABP’s concerns.

The Objector has failed to demonstrate not only *substantial* opposition, but *any* opposition to the application since there were no *opposition* comments directed to the current application.⁷

⁷ Applicant notes that pursuant to § 3.5.2 of the Guidebook, the Independent Objector “shall not object to an application unless at least one comment in opposition to the application is made in the public sphere.” As there has not been at least one comment submitted in opposition to this application, the Independent Objector does not have standing to file this Objection.

B. Objector's attempt to include comments in opposition for unrelated applications does not carry Objector's burden

As Objector cites only one comment on ICANN's comment board (which was not even in opposition to the Application), Objector turns to comments *filed against unrelated applicants* in an attempt to carry the burden of proof regarding substantial opposition. Yet there is no support for such action under the Guidebook; the Objector cannot go outside of the current application to cull comments concerning unrelated applications.

Objector references comments *regarding unrelated applications* made by the American Hospital Association ("AHA") and the French Government via GAC early warnings. Notably, these comments were specifically not submitted against Applicant's application, and were submitted by sophisticated entities who are very capable and quite aware of whom they are (and aren't) submitting against.⁸

Still, Objector avers that even though the AHA did not file a comment against the current Application, somehow the "concerns" raised in AHA's comments to unrelated applications "applies in the same way to Medistry's Application." Objection, ¶ 28. Applicant had already advised Objector that the current application was the only of the .med applications which did not receive the AHA comment. *Id.* Objector attempts to discount this fact by noting that the Cleveland Clinic is a member of AHA. *Id.* Yet this contention does not *demonstrate* substantial opposition, it *disproves* it. The Cleveland Clinic is a member the AHA, and the AHA, representing many other members of their community, purposefully decided *not* to file a comment against the current application. This is conclusive evidence that the AHA does *not oppose* the application, and is *not* part of any purported substantial opposition.

To allow the use of comments to unrelated applications potentially exposes every application to thousands of comments, the vast majority of which would not apply. It also runs a serious risk of attributing meaning to comments which were not intended by the comment's author.

Objector should not be allowed to unfairly expand the reach of public comments in an attempt to carry Objector's burden. These unrelated third-party comments referenced in the Objection cannot be used against Applicant and do not provide any support for proving "substantial" opposition.

⁸ For example, France issued warnings about applications from non-health entities for open, generic, and/or unrestricted .HEALTH gTLDs in which "requests for domain registrations will be handled on a first-come, first-served basis" with no "specific quality assurance measures" utilized. See, e.g., France, GAC Early Warning-Health-FR-3442 (Afilias Limited) (Nov. 20, 2012). Such an early warning was not issued against Applicant's .med application.

C. Objector's attempt to focus on the "substance" of comments does not carry Objector's burden

Objector's attempts to focus attention on the "substance" of comments rather than the "number" of comments, see Objection ¶¶ 24-26, 28-29, does not obviate Objector's burden for proving substantial opposition. As set forth above, there are no Applicant-opposition comments from which "substance" can be derived. Further, Applicant *has* substantively addressed the concerns related in the AHA's and French Government's comments, even though such comments do not apply to Applicant.

D. Objector fails to carry its burden of proof regarding "substantial" opposition under the Guidebook criteria

The Guidebook sets forth six criteria for determining whether substantial opposition exists. Objector fails all six.

(1) Number of expressions. Objector has failed to show any expressions of opposition, at most showing one advisory comment from NABP and attempting to incorporate two comments from unrelated applications. This is not a significant number of expressions when compared to the vast overall population of the medical community (using any of Objector's definitions), *none* of which expressed any opposition to Applicant.

(2) Representative nature. As no entities have directly opposed Applicant, there is no "representative opposition" against Applicant. Even NABP (which did not even submit an "opposition" to Applicant) represents only one facet (pharmaceuticals) of the broad, heterogeneous medical field. Objector fails to evince the representative nature of any opposition.

(3) Recognized stature or weight. As with "representative nature" above, Objector has failed to show any opposition of recognized stature or weight. This absence weighs heavily against Objector's burden under this test.

(4) Distribution; diversity. There is no distribution or diversity among Objector's one noted NABP comment, and a lack of other opposition comments evinces a complete lack of distribution and diversity of any opposition to Applicant.

(5 and 6) Historical defense and costs. The medical "community" has shown ample ability to defend itself in other contexts. This "community" even defends itself with regard to other health-related TLD applications. The "community", under any definition, contains highly sophisticated, motivated and funded entities which have a history of government interaction and lobbying. This "community" is very capable of defending itself. It is significant that it has not chosen to oppose Applicant.

Objector fails to carry its burden of showing any true “opposition” and certainly not substantial opposition. The Objection fails.

IV. Objector has failed to carry its burden of proving a likelihood of material detriment to a significant portion of the community

“The objector must prove 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.” Guidebook, § 3.5.4 “If opposition by a community is determined, but there is no likelihood of material detriment to the targeted community resulting from the applicant’s operation of the applied-for gTLD, the objection will fail.” *Id.*

A. Objector fails to prove a likelihood of material detriment to a significant portion of the community under the Guidebook criteria

It appears that Objector’s sole claim to material detriment is that there is a “*risk* of exclusive misappropriation” (see Objection, ¶ 45) based upon “confiscation of the entire name space...by a single non representative organization [which] deprives the members of the medical community to use and to benefit from the competitive advantages of the gTLD.” *Id.* Objector’s logic continues that “exclusion” from the .med TLD “of a significant part of the community at the sole discretion of the Cleveland Clinic will have *detrimental effect to the visibility* of these members of the community in the Internet and for potential users. It is *likely* to cause detriment to their reputation and economic harm.” *Id.* (emphasis added)

This unsubstantiated claim, on its face, is completely unsupported and insufficient to carry Objector’s burden of showing “material detriment” under the six factors set forth in the Guidebook.

(1) Level of certainty. Objector’s claims regarding detriment are highly speculative and very uncertain. Objector’s claims are hedged as “risk” that something “may not” happen, and are further attenuated by arguing that such will cause a “detrimental effect to visibility”, which itself is “likely” to cause some undetailed form of “reputation and economic harm.”

Such subjective, unsupported claims undercut any certainty of detriment. The level of certainty decreases with each uncertain step: the “risk” of not obtaining a domain; the uncertainty that not having a .med domain will have any impact on an entity at all (see “damage to reputation”, below); the uncertainty that such will impact an entity’s reputation; and the uncertainty that such a reputational impact will lead to economic harm. The compounding nature of the multiple steps required to reach “detriment” results in an

uncertainty from which the level of “materiality” and “detriment” cannot be ascertained to any level of certainty.

The “level of certainty” of any alleged detriment must be viewed in the context of proving that the alleged detriment affects a “significant portion of the community.” Objector’s claims regarding “exclusion” of a “significant portion of the community” are unsupported, unexplained and completely speculative, as Objector fails to identify who, or what portions, of the community would face such risks. Particularly as Applicant has already agreed to rights protection mechanisms in .med, it is unclear to which portion(s) of the community Objector’s concerns are directed.

Objector fails to claim any *other* form of material detriment to a significant portion of the community.

(2) Nature and Extent of Concrete or Economic Damage. Objector has failed to adequately address this factor; although Objector asserts that the application is “likely to cause detriment to [others’] reputation and economic harm”, this is a conclusory assertion for which no explanation, support or reason is given.

Economic harm is specific harm and cannot be vaguely assumed from alleged and unproven detriment. This is particularly true as the stated factor relates to “concrete” indicia of material damage, for which none are presented.

(3) Dependence for Core Activities. Objector also fails to adequately address this factor, likely because the relevant medical community is not dependent upon the DNS for its core activities.

Much of the physical practice of medicine, of healing the sick and injured, takes place outside of the DNS. The medical community has already established numerous mechanisms for maintaining its activities outside of the DNS, including direct connections, phone interaction, and other electronic interfacing. The stated purpose for Applicant’s .med TLD – providing a trusted source for medical information – is also routinely achieved by the medical industry via other mechanisms of communication, including written communication (pamphlets, patient documents, learned texts, rules and regulations, etc.) and oral communication (seminars, educational classes, physician appointments, etc.).

This lack of dependence on the DNS for the community’s core activities weighs heavily against a showing of any material detriment to the relevant community.

(4) Interference with Core Activities. As with factor (3) above, Objector fails to adequately address this factor. Extending this analysis, Applicant’s .med TLD would not

interfere at all with the relevant community's core activities. Indeed, the .med TLD would be complimentary to the community's current use of the DNS, providing a trusted space for members of the community to provide relevant information for users.

(5) Damage to reputation. Objector completely fails to detail the nature, and to quantify the extent, of the alleged damage to the reputation of the community. Objector's sole claim here appears to be that there is a risk that some members of the community may not be "visible" in the .med TLD because they do not qualify for registering a domain.

For Objector's claim to have merit, the .med TLD will have to rise to a level of acceptance within both the Internet in general and the medical community wherein an entity's *absence* from the TLD is somehow noteworthy. If indeed the .med TLD ever rises to this level of acceptance, Applicant will have exceeded all of the NABP's, the GAC's and the French Government's concerns with regard to operation of a health-related TLD – proof that the .med TLD is being operated to the benefit of the medical community. If the .med TLD fails, however, to achieve such general level of acceptance, for whatever reason, Objector's point is moot because the absence of general acceptance of the TLD means that the absence of any particular entity within the TLD will have little impact on that particular entity. So, in either event, Objector fails to prove material detriment. Objector also fails to carry its burden of proof in quantifying the extent to which any entity's reputation would be harmed by not being "visible" in the .med TLD.

Any unlikely potential damage to the reputation of a very small portion of the community (and Applicant does not concede that any such community members would be so damaged) must be weighed against the potential boost in the reputation to the community from Applicant's provision of a TLD as a trusted space for medical information. As Objector fails to identify any other "damage" to any other entity's "reputation", the likely benefit to the reputation of the majority of the medical community from Applicant's and the Cleveland Clinic's provision of a trusted space in the .med TLD greatly outweighs any unlikely harm to any very small portion of the community.

(6) User and Community Interests; Effective Security Protection. Objector claims that the Guidebook puts "particular attention" to this factor, and implies that the absence of effective security protection leads to a conclusion that it is "more than likely" that the rights and interests of the community will be "detrimentally affected." See Objection ¶ 33. Objector offers no citation to the Guidebook to support the position that this factor should weigh more than any other factors.

Objector never claims that Applicant *fails* to propose or institute effective security protection for user interests, instead merely claiming that the application "*raises doubts*" in

that regard. See Objection ¶ 35. Averring that doubts are raised does not carry Objector's burden of proof. In fact, Objector conveniently ignores that Applicant, via the Cleveland Clinic, has indeed proposed and intends to institute effective security protection for user interests, as detailed above, *see supra* Section III (A).

Objector has also failed to prove that Applicant "is not acting or does not intend to act in accordance with the interests of the community or of users more widely...". Again, Objector conveniently ignores that Applicant, along with the Cleveland Clinic, has a stated goal to act in the interests of the community and of users more widely, *see supra* Section III (A).

Objector has failed to carry its burden of proof under any of the six factors above, and Objector fails to meet its burden of showing a likelihood of material damage to the rights and legitimate interests of a significant portion of the community. Objector's claims are speculative, fail to show any economic damage, show no dependence upon or interference with the core activities of the community, show no damage to any entity's reputation, and fail to prove that Applicant is not acting in the interests of the community or users.

B. Objector's claims regarding "capture" of the .med TLD are misplaced

In the absence of showing any material detriment to a significant portion of the community, Objector focuses on the suggestion that the .med TLD "will be established and operated in the sole interest of the Cleveland Clinic", Objection ¶ 40, further suggesting that such operation would not be for the benefit of and in the interest of the medical community. See Objection ¶ 41.

Objector fails to indicate how this "suggestion" furthers Objector's burden of proving material detriment. Objector does not even attempt to link this "suggestion" to any concrete or economic damage to any portion of the community. As such, such "suggestion" does not bolster Objector's case.

Substantively, Objector fails to grasp that that the Cleveland Clinic's participation the .med TLD is beneficial, not detrimental. It is Applicant's goal to act in the interests of the community and of users more widely, and Applicant enacts this goal by engaging the Cleveland Clinic to provide policy and oversight for the .med TLD. The educational goals of the Cleveland Clinic are very much consistent with the goals of providing a trusted source of medical information for the medical community to provide for users more widely.

Applicant appreciates the potential gravity of a .med TLD to global public health. Applicant's .med TLD will be operated consistently with that of a charitable organization, the

Cleveland Clinic, whose charitable status and goals scale in its operations on a worldwide basis.

In particular, Objector appears to have a core misunderstanding related to the fact that Cleveland Clinic's mission and purpose actually is in alignment with, and scales with, overall public health, rather than purporting to capture the operations of .med for its internal benefit and to the exclusion of overall benefit to the public, as Objector has suggested. In other words, Cleveland Clinic's charitable mission does not permit the Cleveland Clinic to operate in a manner to solely serve the Cleveland Clinic. Rather, the Cleveland Clinic is organized and operated to provide community benefit through better care of the sick, investigation of their problems and education of those who serve. In regard to operating .med, this would encompass overall public health. This makes the Cleveland Clinic, along with its ability to foster broad based consensus in the global medical community, the ideal operator of the .med TLD.

V. Conclusion

Objector has failed in its burden of proof related to at least three of the four required tests to achieve a Community Objection. This Objection fails.

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

A copy of this Response is/was transmitted to the Objector on 22 May 2013
by e-mail to the following address: Contact Information Redacted

A copy of this Response is/was transmitted to ICANN on 22 May 2013
by e-mail to the following address: DRfiling@icann.org

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

As required, Euros 5 000 were paid to ICC on 21 May 2013.

Evidence of the payment is attached for information as Annex F.

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

List and Provide description of any annex filed.

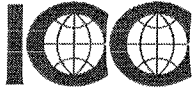
Annex Description

- A Application Question 18 response
- B Application PICs
- C Independent Objector's Initial Inquiry
- D Independent Objector's response to mediation request
- E NABP public advisory comment
- F Wire Transfer Information

Date: 22 May 2013

Signature: /Brian Johnson/

ATTACHMENT 7



International Chamber of Commerce

The world business organization

International Centre for Expertise Centre international d'expertise

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

OBJECTION FORM TO BE COMPLETED BY THE OBJECTOR

- *Objections to several Applications or Objections based on more than one ground must be filed separately*
- *Form must be filed in English and submitted by email to expertise@iccwbo.org*
- *The substantive part is limited to 5000 words or 20 pages, whichever is less*

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

References to use for the Procedural Documents

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

ICC International Centre for ADR Centre international d'ADR de la CCI
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Identification of the Parties, their Representatives and related entities

Objector

Name	Prof. Alain Pellet, Independent Objector
Contact	Contact Information Redacted
Address	
City, Country	
Telephone	
Email	

Objector's Representative(s)

Name	Ms Héloïse Bajer-Pellet
Contact	Contact Information Redacted
Address	
City, Country	
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Name	Mr. Daniel Müller
Contact	Contact Information Redacted
Address	
City, Country	
Telephone	
Email	

Name	Mr. Phon van den Biesen
Contact	Contact Information Redacted
Address	
City, Country	
Telephone	
Email	

Name	Mr. Sam Wordsworth
Contact	Contact Information Redacted
Address	
City, Country	
Telephone	
Email	

Applicant

Name	Medistry LLC
Contact	Mr. Brian David Johnson
Address	Contact Information Redacted
City, Country	
Telephone	
Email	

Other Relevant Entities

Name	-
Address	-
City, Country	-
Telephone	-
Email	-

Add separate tables for any additional relevant related entity

Disputed gTLD

gTLD Objector objects to [.example]

Name	.Med (Application ID: 1-907-38758)
------	------------------------------------

If there is more than one gTLD you wish to object to, file separate Objections.

Objection

What is the ground for the Objection (Article 3.2.1 of the Guidebook and Article 2 of the Procedure)

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

or

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

Check one of the two boxes as appropriate. If the Objection concerns more than one ground, file a separate Objection.

Objector's Standing to object (Article 3.2.2 of the Guidebook and Article 8 of the Procedure)

(Statement of the Objector's basis for standing to object, that is, why the Objector believes it meets the requirements to object.)

In accordance with Article 3.2.5 of the Guidebook, the Independent Objector (IO) is granted standing to file Community Objections "notwithstanding the regular standing requirements for such objections". He is acting in the best interests of the public who use the global Internet and initiates and prosecutes the present objection in the public interest.

The Guidebook further states that "[i]n light of the public interest goal noted above, the IO shall not object to an application unless at least one comment in opposition to the application is made in the public sphere." This condition is met. Comments in opposition to the Application of Medistry LLC for the gTLD .Med have been made in the public sphere.¹

According to Article 3.2.5 of the Guidebook "the IO must be and remain independent and unaffiliated with any of the gTLD applicants". The IO reassures that he has no link with any of the Applicants having applied for gTLD during the current Program. This is equally true for all his legal representatives. The IO considers himself to be impartial and independent as required by the Guidebook; he confirms that he is acting in no other interest but the best interests of the public who use the global Internet.

¹ See, e.g., <https://gtldcomment.icann.org/comments-feedback/applicationcomment/commentdetails/5006>.

Description of the basis for the Objection (Article 3.3.1 of the Guidebook and Article 8 of the Procedure) - Factual and Legal Grounds

(Description of the basis for the Objection, including: a statement giving the specific ground upon which the Objection is being filed, and a detailed explanation of the validity of the Objection and why it should be upheld.)

1. The Application for .Med has been submitted by Medistry LLC, a limited liability company registered under the law of Delaware.

2. According to the information submitted in the Application form, the Applicant has been engaged by the Cleveland Clinic to apply for, obtain and operate the gTLD .Med under guidance and direction of the Cleveland Clinic. The Cleveland Clinic "is a \$5 billion international medical center with almost 1,000 doctors, offering world-class hospital and outpatient care in virtually every medical specialty".² It is based in Cleveland, Ohio in the United States. The Cleveland Clinic and its activities are highly recognized in the United States.

3. The Applicant states that "[t]he mission/purpose of .MED is to perform as a new gTLD consistently with the mission and purpose of the Cleveland Clinic. The mission of the Cleveland Clinic, a nonprofit multispecialty academic medical center, is to integrate clinical and hospital care with research and education."³ It further states that the applied-for TLD "will benefit registrants, Internet users and others by, among other reasons, providing a trusted name space wherein users can come to find trusted sources for medical information, consistent with the Cleveland Clinic's mission of integrating clinical and hospital care with research and education in a digital world."⁴

4. The IO communicated to the Applicant its preliminary assessment concerning the .Med Application by his Initial Notice on 23 January 2013⁵. Medistry has responded to this Initial Notice on 11 February 2013. After that exchange of views, the IO decided to file the present objection against the Application for .Med on the ground of the "Community objection" provided by Article 3.2.1 of the Guidebook.

² Application, point 18 (a).

³ *Ibid.*

⁴ *Ibid.*, point 18 (b).

⁵ For a description of the procedure, see <http://www.independent-objector-newgtlds.org/english-version/the-dispute-resolution-process/the-objection-process-and-the-independent-objector/>.

1. Statement of the Ground upon Which the Objection is being Filed

5. According to the Guidebook, a "community objection" is warranted when "there is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted."

6. In order to evaluate the merits of a "community objection" the Expert Panel shall "use appropriate general principles (standards)" as set out in Section 3.5 of the Guidebook, as well as "other relevant rules of international law in connection with the standards."

7. Article 3.5.4 sets out four tests which need to be met cumulatively for a "Community objection" to prevail:

- The community invoked by the objector is a clearly delineated community (Community test);
- Community opposition to the application is substantial (Substantial opposition test);
- There is a strong association between the community invoked and the applied-for gTLD string (Targeting test);
- 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 (Detriment test).

2. Detailed Explanation of the Validity of the Objection and Why the Objection should be Upheld

8. The four tests of a community objection provided for in the Guidebook are met in the present case. The Application for .Med encounters substantial opposition from a significant portion of the community to which the string may be targeted, and from the public more generally, and is likely to create material detriment to the rights or legitimate interests of the medical community. The applied-for gTLD string .Med targets the medical community (a), which constitutes a clearly delineated community in the sense of the Guidebook (b). The opposition against the Application is substantial (c) and the Application creates a likelihood of material detriment to the rights and legitimate interests of the members of the medical community, the health care system in general, and the public interest goal of public health (d).

a. *Targeting Test*

9. A “community objection” is warranted in the event of a strong association between the applied-for gTLD string and a specific community. In other words, the string used is or could be clearly linked to a community the rights and interests of which are at stake. This link can be explicit or implicit.

10. The Application submitted by Medistry for the Cleveland Clinic has not been framed as a community-based TLD for the benefit of the medical community. Nevertheless, it targets explicitly this community. The Application points out that the mission of the .Med TLD is to provide a “trusted name space wherein users can come to find trusted sources for *medical* information”.⁶ It acknowledges that “multiple sectors of the healthcare industry would be implicated in the sharing of trusted information”,⁷ even if “it is not anticipated that all sectors identified above will become registrants of, or even provide content for, domain names within the .MED gTLD”.⁸ According to the Application, the targeted applicants for a domain name within the .Med gTLD “will at minimum be required to state their qualifications to integrate clinical and hospital care with research and education”.⁹ The Applicant unquestionable intends the .Med gTLD to be used primarily by the medical community in order to make available health-related information in the medical sector.

11. Further, as stated in the Guidebook: “All applicants should understand that a formal objection may be filed against any application on community grounds, even if the applicant has not designated itself as community-based or declared the gTLD to be aimed at a particular community.” (Section 1.2.3.2 of the Guidebook).

12. The Guidebook also confirms that a relevant factor to be taken into account in order to evaluate the Targeting test is “[a]ssociations by the public”. The 2007 ICANN Final Report on the Introduction of New Generic Top-Level Domains also indicates that “implicitly targeting means that the objector makes an assumption of targeting or that the objector believes there may be confusion by users over its intended use”.¹⁰ The test is therefore not limited to the assumptions and the intended use proposed in the Application, but is primarily concerned with the expectations of the average Internet users and their perception of and associations with the string. In the present case, the term “medical” qualifies the targeted community. As an adjective it describes things or professionals “of or relating to the science

⁶ Application, point 18 (a) (emphasis added).

⁷ Application, point 18 (b)(1).

⁸ *Ibid.*

⁹ Application, point 18 (b)(2).

¹⁰ Implementation Guideline P, <http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-part-a-08aug07.htm> (“2007 ICANN Final Report”).

of medicine, or to the treatment of illness and injuries".¹¹ The term is generally associated to activities related to the diagnostic and treatment, preventive or curative, of diseases, the medical professions and professionals which deliver these services to users of the healthcare system, as well as to institutions specific to the medical community, including medical treatment centres or medical schools.

13. According to the Applicants own statements and the general use of the term by the public, there is a strong association between the medical community and the applied-for gTLD string.

b. Community Test

14. The Guidebook does not provide a clear definition of the term "community". It merely recalls that an objector "must prove that the community expressing opposition can be regarded as a clearly delineated community" (Article 3.5.4) and refers to a list of non-limited "factors" that the Expert Panel could use in order to check if this test is met. It includes, for example, the recognition at a local/global level, the level of formal boundaries, the length of existence, the global distribution, or the size of the community.

15. The term "community" refers to a group of people living in the same place or having a particular characteristic in common.¹² The distinctive element of a community is therefore the commonality of certain characteristics. The individuals or entities composing a community can share a common territory, region or place of residence, a common language, a common religion, a common activity or sector of activity, or other characteristics, values, interests or goals which distinguish them from others.

16. The Guidebook does not determine which kind of common characteristics, values or goals are relevant for the issue whether a given group constitutes a community, nor does it put any limits in that regard. The 2007 ICANN Final Report confirms that "community should be interpreted broadly and will include, for example, an economic sector, a cultural community, or a linguistic community."¹³

17. One of the relevant criteria is whether the group of individuals or entities can be clearly delineated from others and whether members of the "community [are] delineated from Internet users in general"¹⁴ with reference to their common characteristics and particularities. The recognition of the community among its members, on the one hand, and by the general

¹¹ http://oxforddictionaries.com/definition/american_english/medical.

¹² See <http://oxforddictionaries.com/definition/english/community>.

¹³ Implementation Guideline P, <http://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-part0-08aug07.htm>.

¹⁴ Evaluation question No 20 of the Guidebook, Attachment to Module 2.

public at a global or a local level, on the other hand, depending on its actual distribution, is, in that regard, a useful factor to be taken into account.

18. In the present case, the community targeted by the Application is the medical community. The professionals and institutions which constitute this community are essential in any health system. Their general work and mission, as part of the health policy in a given system, is to the diagnostic and treatment, preventive or curative, of diseases. Their activities are of critical importance to the achievement of the public policy goal of public health, especially through medical treatment of ill persons and the restoration of health. They have developed their own characteristic system of moral principles that apply values and judgments to the practice of medicine, including the principles to act in the best interest of the patient, fairness and equality in the distribution of healthcare and resources, non-maleficence, the respect for patients who have the right to be treated with dignity, and truthfulness and honesty.

19. The medical community comprises a great variety of different health professionals. Despite their variety, the medical community can be clearly delineated with regard to others by several factors. First, membership to the medical community is directly linked to the qualification to exercise a specific healthcare, medical profession. Access to such professions is regulated and controlled by public institutions. In order to access a medical profession and the medical community, one needs to have successfully completed a specific scientific or professional education program or to get a specifically granted licence or authorization to exercise a medical profession and to deliver medical services. Membership to the community is therefore restricted and not open to the public or all internet users. Second, members of the community usually work and exercise in specific sectors of activity. This includes healthcare and medical services, pharmaceuticals, but also the development of medical and alike technologies. Third, the medical community, despite the variety of actors it includes, has developed a highly specific and complex system of technical terms and phrases. This creates a clear delineation between members of the community and the general public who, usually, can hardly understand the specific language and terms used by medical community members.

20. It is therefore submitted that the medical community which is clearly targeted by the applied-for gTLD constitutes a clearly delineated community in the sense of the Guidebook.

c. *Substantial Opposition Test*

21. According to the Guidebook, a "Community objection" is warranted in the event of "substantial opposition within the community". This test and its scope of application depend largely on the circumstances and on the context of each case.

22. The Guidebook includes several factors which the Expert Panel could use in order to determine if such "substantial opposition" with regard to an application exists. These factors include the number of expressions of opposition relative to the composition of the community, the representative nature of entities expressing opposition, the level of recognized stature or weight among sources of opposition, distribution or diversity among sources of expressions of opposition (regional, subsectors of community, leadership of community, membership of community), and historical defense of the community in other contexts.

23. This list of factors is not limitative. It focuses on the number of oppositions expressed or the representative nature of those having expressed opposition, i.e., the part of the community represented by those having expressed opposition and its significance with regard to the community in its entirety.

24. A mere numerical criterion was certainly not the intent of the authors of the Guidebook and the Expert Panel is not limited to a mere numerical analysis balancing the number of those having expressed opposition or are deemed to be represented by those having expressed opposition, on the one hand, and the overall size of the concerned community, on the other hand. The word "substantial" cannot be defined as limited in that way. If it can certainly refer to an important size or number, it is also used for something of "considerable importance" or "considerable ... worth"¹⁵. It is therefore not only the number of opposition which should be taken into account, but also the material content of comments and oppositions expressed by those concerned, and in particular, the importance of the rights and interests at stake. Particular importance should be paid in that regard to comments made by governments through the GAC Early Warning Procedure.

25. The very fact that the IO was granted the possibility to file "Community Objections" confirms the necessary broad meaning of the terms "substantial opposition". Indeed, as he has pointed out¹⁶, the IO would not file a formal "Community objection" if a single established institution is better placed to represent the community concerned. The role of the IO is to defend the public interest and to act on behalf of the public for the defense of rights and

¹⁵ See <http://oxforddictionaries.com/definition/english/substantial>.

¹⁶ See, e.g., <http://www.independent-objector-newgtlds.org/english-version/the-independent-objector-s-comments-on-controversial-applications/africa-general-comment/>.

interests of communities that lack an institution which obviously could represent the community in the present context. Article 3.2.5 of the Guidebook also indicates:

“In light of the public interest goal noted above, the IO shall not object to an application unless *at least one comment* in opposition to the application is made in the public sphere.” (emphasis added)

26. This shows that even a single comment can trigger a “Community objection” if it raises issues in relation to rights and interests of a community that can be associated with the applied-for gTLD.

27. The Applicant’s .Med Application has triggered a relatively small number of direct comments on ICANN’s public comments website. The National Association of Boards of Pharmacy (NABP), an American independent and impartial association in the pharmaceuticals’ industry, has drawn attention to the necessity that “new generic top-level domains (gTLDs) relating to health and medicine are operated responsibly in the interest of patient safety”.¹⁷ NABP also expressed its opinion that medical themes gTLD should be considered as “community-based” strings because “applicants would be subject to the more rigid contractual requirements to ensure that they protect the best interest of the community”.¹⁸ Moreover it underlined that all medical themes gTLDs “should have certain safeguard mechanisms hard coded into the registry agreement in order to ensure patient safety and legitimate use of domain names”.¹⁹

28. Similar concerns concerning the protection of the community and of the healthcare users have been voiced by the American Hospital Association (AHA) with regard to the other .Med Applications²⁰ and the .Medical Application.²¹ In its response to the IO’s Initial Notice, the Applicant has put forward that AHA having not commented negatively on Medistry’s Application – but on all other .Med Applications – can be interpreted as AHA’s support. It must however be underlined that according to Cleveland Clinic’s 2012 United Nations Global Compact Report: “Cleveland Clinic is a dues-paying member of ... the Association of American Medical Colleges ... and the American Hospital Association. [It] provide[s] guidance to these organizations on their healthcare policy positions, and by extension benefit from their lobbying activities (as do their other member organizations).”²² However, the

¹⁷ <https://gtldcomment.icann.org/comments-feedback/applicationcomment/commentdetails/5006>.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ <https://gtldcomment.icann.org/comments-feedback/applicationcomment/commentdetails/10936>;

<https://gtldcomment.icann.org/comments-feedback/applicationcomment/commentdetails/10933>;

<https://gtldcomment.icann.org/comments-feedback/applicationcomment/commentdetails/10931>.

²¹ <https://gtldcomment.icann.org/comments-feedback/applicationcomment/commentdetails/10943>.

²² Cleveland Clinic Health System, *2012 United Nations Global Compact Report*, p. 48, available on http://my.clevelandclinic.org/Documents/About-Cleveland-Clinic/overview/CC_UNreport_2012.pdf.

concerns raised in its others comments apply in the same way to Medistry's Application, and to all healthcare related Applications in general.

29. The grounds for opposition are clearly substantial. They concern the medical community in general and, most importantly, public interest issues of considerable importance for the international community, i.e., public health and the protection of healthcare users. It is highly significant that similar concerns and oppositions have been voiced by numerous governments and institutions, from a large variety of geographical regions, with regard to applications for closely connected strings, and in particular, .Health²³. The GAC Early Warning of the French Government concerning .Health Applications underscores that "[c]onsumer protection in health is particularly important online, where national rules cannot be effectively enforced, creating new risks for consumers, industry and governments. A .HEALTH TLD with insufficient measures to address these risks will undermine consumer trust and confidence and harm legitimate enterprise, competition and the growth of the health industry."²⁴ It has been added that "Health is a cross-border concern, and the domain instead must be seen as a TLD with a significant potential for the global community."²⁵ The same considerations and concerns can be transposed to the closely related .Med gTLD.

30. For these reasons, it is submitted that the opposition against the .Med Application is substantial.

d. Detriment Test

31. The present Application for the .Med gTLD creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the medical community and, most importantly, to users and the public in general.

32. The Guidebook includes some guidance with regard to the Detriment test, which needs to be addressed with regard to the specific elements and particularities of each application, on the one hand, and the interests and rights of the community to which the applied-for gTLD can be targeted, on the other hand. The material detriment can result from harm to 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. In order to assess the likelihood of such harm or damage, the Expert panel can

²³ The .Health Applications have triggered 97 comments on ICANN public comments website and nine GAC Early Warnings.

²⁴ <https://gacweb.icann.org/download/attachments/22938690/Health-FR-6394.pdf?version=1&modificationDate=1353451859000>.

²⁵ *Ibid.*

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 evidenced in the Application, but also the importance of the rights and interests likely to be harmed for the community targeted and for the public more generally.

33. The Applicant Guidebook puts particular attention to the issue whether the Applicant is not acting or does not intend to act in accordance with the interests of the community or of users more widely, including evidence that the applicant has not proposed or does not intend to institute effective security protection for user and community interests. In such a case, it is more than likely that the rights and interests of the community will be detrimentally affected by operation of the gTLD as projected by the applicant.

34. The IO has noted that Medistry LLC intends to operate the gTLD .Med, together with its partner and under the stewardship of the Cleveland Clinic, as “a trusted name space wherein users can come to find trusted sources for medical information”.²⁶ This goal is a general mantra of the Application and repeated several times in different contexts.²⁷ It has also been recalled in Medistry’s reply to the IO’s Initial Notice.

35. Despite this general commitment, the Application raises doubts whether Medistry LLC and the Cleveland Clinic will operate the gTLD .Med in the interest of the medical community explicitly and implicitly targeted by the string.

36. It is striking that the Application has not been framed by Medistry as a community based gTLD. As a result, Medistry and the Cleveland Clinic will not be committed to “operate the TLD in a manner that allows the TLD community to discuss and participate in the development and modification of policies and practices for the TLD”²⁸ and to “procedures for the enforcement of registration policies for the TLD, and resolution of disputes concerning compliance with TLD registration policies”.²⁹ Even if the Applicant is free to present and frame its Application in the way it considers most suitable,³⁰ the GAC has expressed the view that “strings that refer to particular sectors, such as those subject to national regulation (such as .bank, .pharmacy) or those that describe or are targeted to a population or industry that is vulnerable to online fraud or abuse, should also be considered ‘community-based’ strings.”³¹

37. Without any doubt, the medical community targeted by Medistry’s Application is such a particular sector. The membership to the medical community and the activities of the

²⁶ Application, point 18 (a).

²⁷ *Ibid.*, points 18 (b), 18 (b)(1), 18 (b)(2), 18 (b)(3), and 28.

²⁸ Article 2.18, Draft New gTLD Registry Agreement (annexed to the Applicant Guidebook).

²⁹ *Ibid.*

³⁰ Article 1.3.2.1 of the Guidebook.

³¹ GAC indicative scorecard on new gTLD outstanding issues, 23 February 2011, point 2.2, available at <http://archive.icann.org/en/topics/new-gtlds/gac-scorecard-23feb11-en.pdf>.

community are highly regulated. Because of the public interests at stake, the access to and activities of the medical community are subject to important safeguards, including specific licensing and monitoring requirements imposed by public authorities on qualification, as well as appropriate enforcement mechanisms. It is a primary concern of governmental action and policy – indeed, the responsibility of governments³² – to provide the most efficient and qualified health service system to its population, including through education and selection of the medical professionals.³³

38. Specifically imposed limits and safeguards serve the protection of the interests and rights of users of the healthcare system as well as the achievement of the goal of global public health, a concern shared by the entire international community. “The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.”³⁴ Under Article 12 of the 1966 International Covenant on Economic, Social and Cultural Rights³⁵ adopted by the General Assembly of the United Nations, States have recognized “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” (paragraph 1) and the necessity to create “conditions which would assure to all medical service and medical attention in the event of sickness.” (paragraph 2 (d)). The “attainment by all peoples of the highest possible level of health” is a key objective of the WHO³⁶ and its 194 Member States. In 2010, the Heads of States and Governments of the United Nations have reiterated their commitment to this objective and committed themselves again to “accelerating progress in promoting global public health”.³⁷

39. However, the Applicant does not seem to recognize the existence of a delineated medical community, and has made no commitment to operate the .Med gTLD for the benefit and in the interest of this medical community.

40. The information provided by the Applicant suggests that the gTLD .Med will be established and operated in the sole interest of the Cleveland Clinic. Indeed, the stated mission of .Med is “to perform as a new gTLD *consistently with the mission and purpose of the Cleveland Clinic*.”³⁸ The Application further states:

“The Cleveland Clinic anticipates that proposals will be received from many of the Healthcare sectors mentioned above. Consistent with its stated mission/purpose, the

³² Preamble, Constitution of the WHO, New York, 22 July 1945, United Nations, *Treaty Series*, Vol. 14, No. I-221, p. 185.

³³ See also WHO, *Health Systems: Improving Performance*, The World Health Report, 2000, p. 117.

³⁴ Preamble, *op. cit.* (fn. 32).

³⁵ United Nations, *Treaty Series*, Vol. 993, No. I-14531, p. 3.

³⁶ Article 1, *op. cit.* (fn. 32).

³⁷ United Nations, General Assembly, Resolution 65/1, *Keeping the promise: united to achieve the Millennium Development Goals*, 22 September 2010, para. 73.

³⁸ Application, point 18 (a) (emphasis added).

Cleveland Clinic intends to evaluate all such proposals towards creating a trusted, differentiated namespace for the exchange of medical-related information, and further for the promulgation of any use/registration/[Request for Proposal] policies, rules and/or guidelines, *as the Cleveland Clinic sees fit in its sole discretion as the steward of the .MED gTLD*, to foster user awareness, adoption, growth and use of the gTLD, all within the confines of the stated mission/purpose.³⁹

41. The Applicant further explains the tented registration policies in the following manner:

“Consistent with the stated mission/purpose for the .MED gTLD, the Cleveland Clinic will determine, *in its sole discretion*, who may register domains in .MED, and how such domains may be used. The Cleveland Clinic will set forth policies and practices relating to registration and use of domains in .MED which are reasonably necessary for the management, operations and purpose of the gTLD in light of its stated mission/purpose, and which are consistent with such mission/purpose. As set forth above, allocation will be by [Requests for Proposals] under guidelines, rules and criteria as set forth by the Cleveland Clinic *in its sole discretion*.”⁴⁰

42. Finally, the Applicant admits that “domain name registrations in .MED will be limited to CC [i.e., Cleveland Clinic], its partners and other trusted parties from the medical and healthcare fields as CC so determines.”⁴¹ The Public Interest Commitments submitted by the Applicant on 6 March 2013⁴² reiterate this policy and confirm the dominant role of the Cleveland Clinic in the operation of the .Med TLD.

43. In conclusion, the .Med gTLD will not be operated in the interests of the medical community as such, but in the sole interests and under the restrictions and policy of the Cleveland Clinic. The .Med gTLD would indeed be some kind of specifically closed TLD for the exclusive use by the Cleveland Clinic and those associated with this organization. Its mission is limited to provide medical information trusted under the standards set by the Cleveland Clinic at its sole discretion.

44. Even if the Cleveland Clinic is a respectable and respected actor in the healthcare sector, especially in the United States, it is far from being a representative for the entire medical community which can be associated with the .Med string all over the world. The .Med string is not associated with the Cleveland Clinic and those associated with this organization, but with the larger medial community. The structure and operation of the .Med TLD would potentially exclude important parts of the medical community from obtaining domain names in the .Med namespace and to participate in the elaboration and the enforcement of the policies necessary for the management of the .Med TLD.

³⁹ *Ibid.*, point 18 (b)(2) (emphasis added).

⁴⁰ *Ibid.*, point 18 (b)(4) (emphasis added).

⁴¹ *Ibid.*, point 28 (1.5.1) and point 29 (1).

⁴² <https://gtldresult.icann.org/application-result/applicationstatus/applicationchangehistory:downloadtodocument/780?t:ac=216>.

45. Medistry's Application for the .Med TLD creates an important risk of exclusive misappropriation of a string generally linked to the medical community. The confiscation of the entire name space within the .Med TLD by a single non representative organization for its own goals deprives the members of the medical community to use and to benefit from the competitive advantages of the gTLD. The exclusion from what is called to become the trusted namespace for medical information, compared to other TLDs, of a significant part of the community at the sole discretion of the Cleveland Clinic will have detrimental effect to the visibility of these members of the community in the Internet and for potential users. It is likely to cause detriment to their reputation and economic harm.

46. Consequently, the launch of the gTLD .Med as foreseen by the Applicant creates a likelihood of detriment to the rights or legitimate interests of a significant part of the medical community.

Remedies Requested

(Indicate the remedies requested.)

The Independent Objector requests the Expert panel to hold that the present objection is valid. Therefore, the Expert panel should uphold the present Objection against the .Med Application (ID: 1-907-38758).

In addition, the Independent Objector requests that its advance payments of costs shall be refunded in accordance with Article 14 (e) of the Procedure (Attachment to Module 3 - New gTLD Dispute Resolution Procedure).

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

A copy of this Objection ~~is~~was transmitted to the Applicant on 13 March 2013 by e-mail to the following address:
Contact Information
Redacted

A copy of this Objection ~~is~~was transmitted to ICANN on 13 March 2013 by e-mail to the following address: newgtld@icann.org

Filing Fee (Article 1 Appendix III to the Rules and Article 8(c) of the Procedure)

In accordance with Article 3.2.5 of the Guidebook, ICANN is responsible to provide the funding on behalf of the Independent Objector.

The Independent Objector hereby explicitly grants ICC the right to contact ICANN directly with regard to any payment matters for the Objections.

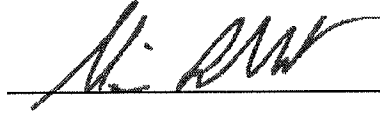
Description of the Annexes filed with the Objection (Article 8(b) of the Procedure)

List and Provide description of any annex filed.

-

Date: 12 March 2013

Signature:

A handwritten signature in black ink, appearing to be "N. RW", is written over a horizontal line.

ATTACHMENT 8



International Chamber of Commerce
The world business organization

International Centre for Expertise Centre international d'expertise

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

ADDITIONAL WRITTEN STATEMENT

Filed by the Independent Objector

Community Objection

Disputed gTLD

gTLD Objector objects to

Name	.Med (Application ID: 1-907-38758)
ICC Case No.	EXP/403/ICANN/20

EXPERT PANEL

Name	Mr. Fabian von Schlabrendorff Contact Information Redacted
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Identification of the Parties, their Representatives and related entities

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Applicant's Representative(s)

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Applicant's Contact Address

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Contact person	Brian Johnson
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Procedure

On 12 March 2013, the Independent Objector electronically filed a Community objection to the Application of Medistry LLC, for the gTLD string .Med (Application ID: 1-907-38758). Electronic copies of the objection were transmitted to the Applicant and to ICANN on 13 March 2013.

On 28 March 2013, the DRSP informed the Independent Objector that it “has conducted the administrative review of the Objection in the above-referenced matter (Article 9 of the Procedure)” and that “the Objection is in compliance with Articles 5 – 8 of the Procedure and with the Rules.”

On 22 April 2013, the DRSP informed the Parties of its decision not to consolidate the present case with the case EXP/404/ICANN/21 concerning a Community Objection filed by the Independent Objector against the .Med Application of Charleston Road Registry.

On the same day, the Parties were informed that ICANN had published its Dispute Announcement pursuant to Article 10(a) of the Procedure on 12 April 2013. It invited the Applicant to file a Response within 30 days of the transmission of this invitation (Article 11(b) of the Procedure).

On 22 May 2013, the Applicant electronically filed its Response to the Objection with Annexes. Electronic copies were transmitted to the Independent Objector, as well as to ICANN.

On 25 June 2013, the DRSP informed the Parties that the Chairman of the Standing Committee appointed Mr Fabian von Schlabrendorff as the Expert in the case, and invited both Parties to make the required advance payment of costs for the Panel to be fully constituted. On 31 July 2013, the DRSP further informed the Parties of the receipt of the necessary advance payment and transferred the case file to the Expert Panel.

By E-Mail of 2 August 2013, the Expert Panel invited the Independent Objector to comment on the Applicant’s Response by no later than 12 August 2013.

The present Additional Written Statement is filed accordingly.

Observations on the Response Submitted by the Applicant

1. Applicant's Response to the Community objection filed by the Independent Objector (IO) concerning its Application for the .Med gTLD raises two particular issues on which the IO wishes to provide some further clarifications in order to assist the Expert Panel in its task and to refine the standards fixed in the Applicant's Guidebook (hereafter the "Guidebook"). The first issue relates to the interpretation and the application of the Community test. The second issue concerns IO burden to show "likelihood of detriment" under the Detriment test.

2. Before turning to these particular issues, the IO wishes to emphasise that, under the Community objection standards, the question is not whether the Applicant could apply for a string like .Med, but rather if it can use and operate this gTLD in the way it describes in its Application. It is clear from the Guidebook standards that the operation of such a new gTLD should not cause 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. The IO has considered extensively "assurances of the Clinic's and Applicant's intent to provide a trusted space for reliable health-related information" (Response, p. 5). Nevertheless, it is still IO's position that the Applicant does not sufficiently respond to the IO's concern that, under the commitments of the Applicant contained in the Application or in its Response, a .Med gTLD will be beneficial to the entire medical community and will not become a namespace entirely dominated by the sole Cleveland Clinic, the ultimate parent of the Applicant. Without doubt, the Cleveland Clinic has an important position within the medical community, and the IO does not intend to dispute this. Nevertheless, the Cleveland Clinic is not the policy making organ of the community and should not be allowed to impose its own policy – however suitable it might be – to the entire medical community and the operation of the .Med gTLD. The Cleveland Clinic cannot be equated to the medical community and a .Med gTLD which targets the later community at least implicitly, should not be operated and organized as a medium of the policy goals of the sole Cleveland Clinic. This is, however, what is foreseen according to the information provided in the Application (see Objection, paras 40-43).

1. The Interpretation and Application of the Community Test

3. The Applicant has a much too narrow understanding of the Community test aimed at proving that the "community invoked by the objector is a clearly delineated community" (Guidebook, Article 3.5.4). In particular, the Applicant asserts that the IO has not discharged its burden to prove the "factors" listed in Article 3.5.4 of the Guidebook. However, the Guidebook itself clarifies that these "factors" are not meant to define in an absolute manner

what a community actually is. They are only illustrative and not at all exclusive. Indeed, “[a] panel could balance a number of factors to determine [whether the community expressing opposition can be regarded as a clearly delineated community], including but not limited to” the five factors (Article 3.5.4) to which the Applicant puts so much weight.

4. The crucial element for the Community test is, and the IO has pointed to this fact in his Objection, whether “the group of individuals or entities can be clearly delineated from others and whether members of the ‘community [are] delineated from Internet users in general” (Objection, para. 17 (reference omitted)). There is no indication in the Guidebook, but also no limitation, concerning the factors which can be used to delineate the community *vis-à-vis* others. It is however clear that the community needs to be something more than a mere group of peoples or entities.

5. The IO has shown in its Objection that the medical community constitutes such a clearly delineated community. Even if it is not entirely homogenous and comprises certainly several kinds of professionals and institutions, it can still be delineated through some distinctive criteria which evidence the values and characteristics shared by the medical community. The Applicant disputes the relevance of these common characteristics, such as necessary education, licencing or credentials to exercise a medical profession, a highly specialised language (Objection, para. 19), or a “characteristic system of moral principles that apply values and judgments to the practice of medicine” (Objection, para. 18). It is interesting to point to the fact that the Applicant, while disputing the possibility to delineate the community through diploma, licences or credentials, proposed to use exactly those in order to select future registrants within the .Med gTLD. As stated in point 18 (a) of the Application, future applicants for a .Med domain name “will at minimum be required to set forth *their qualifications* to integrate clinical and hospital care with research and education.” (emphasis added) This commitment has been specifically reaffirmed by the Applicant in response to the GAC Safeguard Advice contained in the Beijing Communiqué of 11 April 2013 and requiring some additional safeguard measures for gTLDs “associated with market sectors which have clear and/or regulated entry requirements (such as: financial, gambling, professional services, environmental, health and fitness, corporate identifiers, and charity) in multiple jurisdictions.”¹ Applicant has commented that “this approach to registration in .MED is consistent with the [GAC] advice ‘to verify and validate the registrants’ authorizations, charters, licenses and/or other credentials for participation” at the time of registration.”² Therefore, in Applicant’s own understanding, those who will be eligible to be

¹ <http://www.icann.org/en/news/correspondence/gac-to-board-18apr13-en.pdf>, Annex I, Category 1, at p. 10.

² <http://newgtlds.icann.org/sites/default/files/applicants/23may13/gac-advice-response-1-907-38758-en.pdf>, at p. 4.

part of the trusted namespace the Cleveland Clinic intends to establish, can be and will be delineated through their qualifications.

6. What is more, the existence of a “community” seems to be admitted by the Applicant in its Response. In particular, the Applicant asserts that it is its “goal to act *in the interests of the community* and of users more widely, and [that] Applicant enacts this goal by engaging the Cleveland Clinic to provide policy and oversight for the .med TLD.” (Response, p. 16) It also affirms that the Cleveland Clinic is able “foster broad based consensus in the global medical community” (*ibid.*, p. 17). In a different context, the Applicant argues that “[t]he medical ‘community’ has shown ample ability to defend itself in other contexts” and that this community “contains highly sophisticated, motivated and funded entities which have a history of government interaction and lobbying.” (*ibid.*, p. 12) Even if disapproving the conclusions drawn from these arguments, it is clear that the medical community constitutes a community in the sense of the Guidebook and has been seen and recognized as such, in particular by the Applicant itself.

2. The Interpretation and Application of the Detriment Test

7. The Applicant contends that the IO has not met the « burden of showing ‘material detriment’ under the six factors set forth in the Guidebook » (Response, p. 13).

8. The Applicant even goes as far as asserting that the IO needs to submit “certainty of detriment” (Response, pp. 13, 14), “[show] any material detriment to the relevant” (Response, p. 14) or “prove material detriment” (Response, p. 15) rather than to merely prove a “*likelihood* of detriment”. This is to forget that during the preparatory work of ICANN concerning the new gTLD program and its guiding policy, it has been proposed that “evidence of detriment to the community or to users more widely must be provided”.³ This proposal has not been retained by the Final Report of GNSO that preferred to retain the need for “a likelihood of detriment”.

9. Requesting from an objector to provide actual evidence of detriment or harm under a community objection does indeed not make any sense. The dispute resolution procedure has been put into place in order to assess and to remedy in advance any potential negative effects of the operation of a new gTLD. By definition, detriment has not yet occurred as the gTLD has not yet been attributed and put into operation. The “likelihood of detriment”

³ Proposed Implementation Guideline P (point h), reproduced in NCUC Minority Statement, Final Report of the Generic Names Supporting Organization (GNSO) on the Introduction of New Generic Top-Level Domains, 8 August 2007, Annex C, http://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-part-a-08aug07.htm#_Toc48210877.

standard must be seen against this background. It is a risk assessment only aimed at avoiding detriment for the community or parts of it.

10. This is also corroborated by the standards guiding other grounds of objection. According to Article 3.5.1 of the Guidebook, a String Confusion Objection is warranted if

“the applied-for gTLD string is *likely* to result in string confusion. String confusion exists where a string so nearly resembles another that it is *likely* to deceive or cause confusion.” (emphasis added)

Article 3.5.2 concerning Legal Rights Objections also embodies the idea of “risk”. A Legal Rights Objection Panel has, under the standards of Guidebook, to determine

“whether the *potential* use of the applied-for gTLD by the applicant takes unfair advantage of the distinctive character or the reputation of the objector’s registered or unregistered trademark or service mark (“mark”) or IGO name or acronym ..., or unjustifiably impairs the distinctive character or the reputation of the objector’s mark or IGO name or acronym, or otherwise creates an impermissible *likelihood* of confusion between the applied-for gTLD and the objector’s mark or IGO name or acronym.” (emphasis added)

11. Article 3.5.4 of the Guidebook lists “factors that could be used by a panel in making this determination [of the likelihood of material detriment]”. Again, this list is only a guidance and is not limitative nor exclusive. Nothing suggests that an objector has to provide evidence for each of these factors in order to meet the Detriment test.

12. What is more, these factors confirm indeed that an objector does not have to prove detriment or harm, but only to establish the likelihood of such detriment to the community or to Internet users more widely. Indeed, the Guidebook includes factors like the “[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” (emphasis added). In particular, one of the factors confirms expressly that an objector has to demonstrate the “level of certainty that alleged detrimental outcomes would occur”. If the Guidebook standards would require certainty as implied to some extent by the Applicant (Response, pp. 13-14), this last factor would remain without any concrete meaning and effect.

13. The IO has developed many elements establishing that there exists a likelihood of detriment, in particular because .Med gTLD will not be operated in the interests of the medical community as such, but in the sole interests and under the restrictions and policy dictated by the Cleveland Clinic. As has been underlined in the Objection, the Application repeatedly affirms that the .Med gTLD, its policy, its eligibility criteria and their application, and content control within the namespace will be established and conducted “in the sole discretion of the Cleveland Clinic” (Objection, paras. 40-44).

14. The GAC Beijing communiqué of 11 April 2013 listed the .Med gTLD within the “sensitive strings that merits particular safeguards” because, as had been underlined by the IO (Objection, para. 34), this string is “likely to invoke a level of implied trust from consumers, and carry higher levels of risk associated with consumer harm”.⁴ The answer of the Applicant to these advices confirms the IO concerns about the Cleveland Clinic dominant role and oriented interest. Indeed, it stated that it is “[u]nder the stewardship of the Cleveland Clinic [that] the .MED gTLD will aim to serve as a source identifier that accomplishes integrating clinical and hospital care with research and education in a digital world, providing a global trusted name space wherein users can come to find trusted sources for medical information. As we state in response to Question 18: ‘People have come to trust the care, research and education *provided by the Cleveland Clinic.*’” It also reaffirmed that “establishment of a .MED top-level domain, [will be] *imbued with the principles established by the Cleveland Clinic,* [to] promote competition, consumer trust and consumer choice within the global structure of applicable law”. It finally reaffirmed that “all domains in the .MED gTLD will be allocated by [Request for Proposal] *at the sole discretion of the Cleveland Clinic* pursuant to the mission/purpose of the gTLD.”⁵ Choice of registry, control and expelling measures are all under Cleveland Clinic control. The participation of the wider medical community in the development and modification of policies and practices for the gTLD is not envisaged or even evoked.

15. It is however all the more important that the recent Resolution adopted by the Sixty-sixth World Health Assembly on 27 May 2013 on “eHealth standardization and interoperability” clearly confirmed the particular sensitivity of this applied-for gTLD raised by the IO. Indeed, in this Resolution, the World Health Assembly stated:

“Recognizing that it is essential to ensure secure online management of health data, given their sensitive nature, and to increase trust in eHealth tools and health services as a whole;

Emphasizing that health-related global top-level domain names in all languages, including “.health”, should be operated in a way that protects public health, including by preventing the further development of illicit markets of medicines, medical devices and unauthorized health products and services;

[...]

2. Requests the Director- General [...]:

⁴ <http://www.icann.org/en/news/correspondence/gac-to-board-18apr13-en.pdf>, Annex I, Category 1, p. 8 (Annex 1).

⁵ <http://newgtlds.icann.org/sites/default/files/applicants/23may13/gac-advice-response-1-907-38758-en.pdf> (emphasis added).

(6) to convey to the appropriate bodies, including the ICANN Governmental Advisory Committee and ICANN constituencies, the need for health-related global top-level domain names in all languages, including “.health”, to be consistent with global public health objectives”. (see **Annex** for the full text)

16. Thus, the IO reaffirms with renewed vigour that Medistry’s Application for the .Med gTLD creates an important risk of exclusive misappropriation of a string generally linked to the medical *community* by giving an enormous subjective control to a single organization. Applicant’s assurances that “access to .MED should be administered in a transparent way, as [it has] described, that does not give an undue preference to any registrars or registrants, including itself, and shall not subject registrars to an undue disadvantage” does not lower the risk of exclusion of potential registrants which being part of the medical community will be excluded of “Cleveland Clinic’s medical community” just because they do not share the same policy or opinions as the Cleveland Clinic. A .Med namespace organized and administrated “at the sole discretion of the Cleveland Clinic” is therefore likely to exclude significant parts of the medical community which do not see or recognize any leading role to the Cleveland Clinic, on the one hand, and foster an artificial link between the medical community as it will be perceived by the average Internet user through the presence and the content in the .Med namespace and the Cleveland Clinic, on the other hand. That would be highly prejudicial to the public in general and to the community targeted in particular as a study showed the importance of the researches made on internet on health information matters. Moreover, even within sensible sectors which, of course, necessitate specific safeguard measures in order to protect a specifically targeted community and the public more generally, one of the primary objectives of ICANN’s gTLD program needs to be present, i.e., “to promote competition in the provision of registry services, to add to consumer choice, market differentiation and geographical and service-provider diversity”.⁶

Remedies Requested

The Independent Objector requests the Expert panel to uphold his Objection against the .Medical Application.

⁶ Generic Names Supporting Organisation Final Report on the Introduction of New Generic Top-Level Domains, 8 August 2007, Principle C (http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-part-a-08aug07.htm#_Toc43798015t).

In addition, the Independent Objector requests that his advance payments of costs shall be refunded in accordance with Article 14 (e) of the Procedure (Attachment to Module 3 - New gTLD Dispute Resolution Procedure).

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

A copy of this Additional Written Statement is transmitted to the Applicant and its representatives on 12 August 2013 by E-Mail to the following address: *Contact Information Redacted*
Contact Information Redacted

A copy of this Additional Written Statement is transmitted to ICANN on 12 August 2013 by E-Mail to the following address: *drfiling@icann.org*.

Description of the Annexes filed with the Objection (Article 8(b) of the Procedure)

List and Provide description of any annex filed.

Annex:

- Sixty-Sixth World Health Assembly, Resolution WHA66.24, eHealth standardization and interoperability, 27 May 2013 (http://apps.who.int/gb/ebwha/pdf_files/WHA66/A66_R24-en.pdf)

Date: 12 August 2013

Signature:



eHealth standardization and interoperability

The Sixty-sixth World Health Assembly,

Having considered the report by the Secretariat,¹

Recalling resolution WHA58.28 on eHealth;

Recognizing that information and communication technologies have been incorporated in the Millennium Development Goals;

Recognizing that the Regional Committee for Africa adopted resolution AFR/RC60/R3 on eHealth in the African Region and that the 51st Directing Council of the Pan American Health Organization adopted resolution CD51.R5 on eHealth and has approved the related Strategy and Plan of Action;²

Recognizing that the secure, effective and timely transmission of personal data or population data across information systems requires adherence to standards on health data and related technology;

Recognizing that it is essential to make appropriate use of information and communication technologies in order to improve care, to increase the level of engagement of patients in their own care, as appropriate, to offer quality health services, to support sustainable financing of health care systems, and to promote universal access;

Recognizing that the lack of a seamless exchange of data within and between health information systems hinders care and leads to fragmentation of health information systems, and that improvement in this is essential to realize the full potential of information and communication technologies in health system strengthening;

Recognizing that, through standardized electronic data: health workers can gain access to fuller and more accurate information in electronic form on patients at the point of care; pharmacies can receive prescriptions electronically; laboratories can transmit test results electronically; imaging and diagnostic centres have access to high-quality digital images; researchers can carry out clinical trials and analyse data with greater speed and accuracy; public health authorities have access to electronic reports on vital events in a timely manner, and can implement public health measures based on the analysis of health data; and individuals can gain access to their personal medical information, which supports patient empowerment;

¹ Document A66/26.

² See document CD/51/13.

Recognizing that advances in medical health care, coupled with an exponential increase in the use of information and communication technologies in the health sector and other related fields, including the environment, have brought about a need to collect, store and process more data about patients and their environment in multiple computer and telecommunication systems and, therefore, ehealth standardization and interoperability should address standardization and interoperability issues related to hardware, systems, infrastructure, data and services;

Recognizing that the electronic collection, storage, processing and transmission of personal health data require adherence to the highest standards of data protection;

Recognizing that the electronic transmission of personal or population data using health information systems based on information and communication technologies requires adherence to standards in health data and technology in order to achieve a secure, timely and accurate exchange of data for health decision-making;

Emphasizing that scientific evaluation of the impact on health care outcomes of health information systems based on information and communication technologies is necessary to justify strong investment in such technologies for health;

Highlighting the need for national eHealth strategies to be developed and implemented, in order to provide the necessary context for the implementation of ehealth and health data standards, and in order that countries undertake regular, scientific evaluation;

Recognizing that it is essential to ensure secure online management of health data, given their sensitive nature, and to increase trust in eHealth tools and health services as a whole;

Emphasizing that health-related global top-level domain names in all languages, including “.health”, should be operated in a way that protects public health, including by preventing the further development of illicit markets of medicines, medical devices and unauthorized health products and services;

1. URGES Member States:¹

(1) to consider, as appropriate, options to collaborate with relevant stakeholders, including national authorities, relevant ministries, health care providers, and academic institutions, in order to draw up a road map for implementation of ehealth and health data standards at national and subnational levels;

(2) to consider developing, as appropriate, policies and legislative mechanisms linked to an overall national eHealth strategy, in order to ensure compliance in the adoption of ehealth and health data standards by the public and private sectors, as appropriate, and the donor community, as well as to ensure the privacy of personal clinical data;

(3) to consider ways for ministries of health and public health authorities to work with their national representatives on the ICANN Governmental Advisory Committee in order to coordinate national positions towards the delegation, governance and operation of health-related global top-level domain names in all languages, including “.health”, in the interest of public health;

¹ And, where applicable, regional economic integration organizations.

2. REQUESTS the Director-General, within existing resources:
- (1) to provide support to Member States, as appropriate, in order to integrate the application of ehealth and health data standards and interoperability in their national eHealth strategies through a multistakeholder and multisectoral approach including national authorities, relevant ministries, relevant private sector parties, and academic institutions;
 - (2) to provide support to Member States, as appropriate, in their promotion of the full implementation of ehealth and health data standards in all eHealth initiatives;
 - (3) to provide guidance and technical support, as appropriate, to facilitate the coherent and reproducible evaluation of information and communication technologies in health interventions, including a database of measurable impacts and outcome indicators;
 - (4) to promote full utilization of the network of WHO collaborating centres for health and medical informatics and eHealth in order to support Member States in related research, development and innovation in these fields;
 - (5) to promote, in collaboration with relevant international standardization agencies, harmonization of eHealth standards;
 - (6) to convey to the appropriate bodies, including the ICANN Governmental Advisory Committee and ICANN constituencies, the need for health-related global top-level domain names in all languages, including “.health”, to be consistent with global public health objectives;
 - (7) to continue working with the appropriate entities, including the ICANN Governmental Advisory Committee and ICANN constituencies as well as intergovernmental organizations, towards the protection of the names and acronyms of intergovernmental organizations, including WHO, in the Internet domain name system;
 - (8) to develop a framework for assessing progress in implementing this resolution and report periodically, through the Executive Board, to the World Health Assembly, using that framework.

Ninth plenary meeting, 27 May 2013
A66/VR/9

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ATTACHMENT 9



International Chamber of Commerce

The world business organization

International Centre for Expertise Centre international d'expertise

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

APPLICANT’S REBUTTAL TO THE ADDITIONAL WRITTEN STATEMENT FILED BY THE OBJECTOR

Community Objection

gTLD Applicant has applied to and Objector objects to

Name	.Med (Application ID: 1-907-38758) EXP/403/ICANN/20
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Expert Panel

Name	Mr. Fabian von Schlabrendorff
Address	Contact Information Redacted
City, Country	
Telephone	
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ICC International Centre for ADR Centre international d’ADR de la CCI

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Applicant

Name	Medistry LLC
Contact person	Brian Johnson
Address	Contact Information Redacted
City, Country	
Telephone	
Email	

Objector

Name	Prof. Alain Pellet, Independent Objector
Contact person	
Address	Contact Information Redacted
City, Country	
Telephone	
Email	

Representatives

Party representatives are electronically carbon copied via email transmission of this Rebuttal.

APPLICANT'S REBUTTAL

Medistry's¹ Response to the Community Objection filed by the Independent Objector² demonstrated that the IO failed to meet his burden of proof on any of the four prongs³ required by the Applicant Guidebook. The Response particularly focused on the IO's failure to meet three out of the four prongs: the failure to set forth a clearly delineated community (prong 1), the failure to show substantial community opposition (prong 2) and the failure to prove a likelihood of material detriment to a significant portion of the community (prong 4).

The IO's recent Reply to Medistry's Response makes no attempt to address prong 2. There is insufficient evidence of objection to Medistry's application for .med from any relevant community. The IO's Reply does not—and cannot—remedy this.

The IO's Reply does attempt to remedy the Objection's failure to meet prongs 1 and 4, but this attempt fails. The Reply argues the standards for determining the existence of a clearly delineated community and the likelihood of material detriment, but under any reasonable interpretation of the standards laid out in the Guidebook, the IO has failed to carry his burden of proving either a clearly delineated community or the likelihood of material detriment. Moreover, offered an opportunity to reconcile his previous opinion that there was *no* clearly delineated community, the IO completely ignores his proven inconsistency on this issue. This inconsistency bears directly on the credibility of the IO's current arguments, and his lack of response is telling.

The Reply continues to promote the IO's personal opinion that the Cleveland Clinic is not the *best* TLD operator for .med, apparently preferring instead some unidentified global policy-making body which did not even apply for the .med TLD (see Reply, para 2). A Community objection, however, is not the appropriate mechanism or venue for any entity, including the Independent Objector, to voice an opinion as to who *should ideally* be running any particular TLD.

This submission (Medistry's "Rebuttal") will focus on prongs 1 and 4 under the Guidebook, as the Reply fails to address the Objection's deficiencies on prong 2. Because the Objection and the Reply fail to meet prongs 1 and 4—and, indeed, because no objection to .med could meet those prongs—the Objection must fail.

¹ The Applicant for the .med gTLD, referred to below as either the Applicant or Medistry.

² Prof. Alain Pellet, referred to below as either the Objector or the IO.

³ Objector has the burden to prove the following four prongs:

- (1) The community invoked by the objector is a clearly delineated community;
 - (2) Community opposition to the application is substantial;
 - (3) There is a strong association between the community and the TLD; 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.
- Guidebook § 3.5.4

1. The IO still fails to identify a “clearly delineated community”

The Reply’s attempt to clarify the community test instead demonstrates the failure of the IO’s arguments. Most notably, the IO’s Reply fails to provide *any* precision to the definition of the alleged community. Moreover, the IO fails to provide any explanation for reversing his position on the existence of a sufficiently delineated community on which to base an objection.

(a) The alleged “community” is still vague and indefinite

The “medical community” alleged in the Objection is insufficiently delineated to serve as the basis for the Objection. Medistry already demonstrated the inadequacies of the community in its Response. (See, Response, pages 7 – 8). Particularly, the Objection’s claims that the “medical community” can be distinguished based on certain qualifications, sectors of activity, or specialized terminology are so lacking in detail and specificity that they fail to provide any *useful* definition of the alleged community. Indeed, these characteristics are so vague that, when taken in context with the claimed reach of the “medical community” to both “professionals and institutions”, it is impossible to determine whether any particular individual or entity is or is not included within the Objection’s “medical community”. (*Id.*).

The Reply fails to add precision – any specificity or certainty – to the required “clear delineation” of a community, but merely asserts, via conclusory statements, that the community was already sufficiently defined in the Objection (“The IO has shown in its Objection that the medical community constitutes such a clearly delineated community.” Reply, para. 5), and adds only vague and indefinite statements that provide no further clarity (“[the community] can still be delineated through some distinctive criteria which evidence the values and characteristics shared by the medical community.” *Id.*). Yet the Reply, like the Objection, fails to identify any “distinctive criteria” or shared “values and characteristics”.

The net result is that even after Objector’s comments in the Reply, it is still impossible to determine the composition of the alleged “medical community”, or whether any particular individual (doctor, nurse, academic, med tech, medical billing agent, insurance agent) or entity/institution (hospital, primary care office, insurance provider, outpatient services) is part of the alleged “community”.

As set forth in the Medistry’s Response, this is a critical failure on the part of the Objection. (See, Response page 9). The remaining three prongs under the Guidebook are premised upon the existence of a “clearly delineated community”, and cannot be fulfilled in the absence of such a community. The Objection’s failure to carry its burden to establish a “clearly delineated community” is thus determinative, and the Objection must fail.

(b) The Reply fails to reconcile the IO’s previous statement that there is no “clearly delineated community” with his current position to the contrary

Before filing the current Objection, the Objector had already opined, in writing, that the “medical community” is extremely heterogeneous and not a “clearly defined community”. Medistry discussed the Objector’s statement in some detail in its Response, and attached the Objector’s letter containing that opinion as Annex 3 to the Response. The Reply clearly presented the IO with an opportunity to address his earlier statement. Instead, the IO continues to ignore that statement (perhaps hoping that the Panel does as well), failing to provide any explanation for the apparent change in his opinion or to reconcile his previous opinion with the contrary assertions in his Objection. Nor can those opinions be reconciled; there is nothing that could possibly have made the alleged “medical community” more clearly delineated now than it was at the time of the IO’s earlier statement. Applicant submits that the Objector’s own reasoning is quite persuasive as such relates to the lack of a “clearly delineated community”:

[the medical community] is extremely heterogeneous and is composed of entities of very different and various types... It is therefore quite doubtful that they represent a clearly delineated community. (Objector, as quoted in Response, page 6.)

(c) The Independent Objector is incorrect in arguing that Medistry’s Response admits the existence of a “clearly delineated community”

Perhaps to compensate for the inability to provide a distinct “clearly delineated community”, the Reply cites Applicant’s registration requirements (Reply, para. 5) and plays word games with the Response (Reply, para. 6). Neither attempt succeeds in carrying Objector’s burden of proving the existence of a “clearly delineated community.”

The Reply (second half of para. 5) seems to argue that Medistry’s commitment to query applicant qualifications proves that a clearly delineated community exists. However, this argument conflates two completely distinct questions and therefore proves nothing about the existence of a clearly delineated community.

Medistry purposefully did not file as a Community TLD because both it and the Cleveland Clinic strongly believed (and continue to believe) that there is no sufficiently “clearly delineated community” relating to the character string “med”.

Accordingly, Medistry and the Cleveland Clinic strove to create allocation guidelines⁴ which were consistent with a non-community TLD that wishes to be a trusted Internet space that provides reliable medical-related information, consistent with the Clinic’s charitable mandate and commitment to community benefit, education and communication. (See, Response pages 4 – 5). The allocation

⁴ For example, allocation of domains by request for proposal only and requirement for registrants to demonstrate their qualifications and intentions to carry out the educational and health mission of .med. See, Response pages 4 – 5.

guidelines were not created for the purpose of defining a “clearly delineated community”, but rather for determining whether or not a domain name applicant will be given a domain name.

The concept of a “clearly delineated community” within the context of a Community objection relates to far more than just a registrant of a domain name, but also, by definition, seeks to address the impact on those (if any) who are not a registrant of a domain in such TLD. In this light, the scope of the two elements (Guidebook Community objection “clearly delineated community” and Applicant allocation guidelines) are vastly different, as are the burdens of proof appurtenant to each.

In this matter, the Community objection pending before this Expert Panel, the issue is whether the Objector has carried the required burden of proving the existence of a “clearly delineated community” as such is set forth in the Guidebook relating to Community objections. Applicant’s allocation guidelines do not impact on this decision, and it is disappointing that the Objector attempted to add such confusion to this issue.

The Reply’s attempts to play word games with Applicant’s use of the term “community”, however (see Reply, para. 6), are even more disappointing. The Reply seems to posit that Medistry’s use of the term “community” in the Response is an admission of the existence of a “community”. Applicant’s use however, elicits no such admission.

The Objector’s failure to provide a definition or description of a “clearly delineated medical community” has already been established. This does not deny the existence of a “medical community”, however, but rather indicates that there is no *clearly delineated* community that can be identified to such a degree as to assert any rights or interests in the gTLD. Thus, Medistry’s commitment to operate .med in a manner consistent with the interests of the “medical community” is wholly consistent with the fact that there is no sufficiently defined community (as required by ICANN’s Guidebook for purposes of an objection) to support the current objection.

Nor can the Objector credibly assert that Medistry’s arguments in the Response that (assuming the relevant community existed) the other 3 required prongs have not been met constitutes *any* admission that a sufficiently delineated community exists. Even if particular phrases in the Response can be taken out of context in apparent support of such an admission⁵, such an argument is completely disingenuous given the totality of Medistry’s Response.

⁵ For example, the IO cites Medistry’s use of the term “community” in Medistry’s discussion of the fifth and sixth criteria under prong 3 in Medistry’s Response at page 15. As these criteria relate to historical defense and cost to the “community”, it is virtually impossible to discuss such criteria *without* using the term “community”. Medistry, however, recognizing potential confusion, *placed each use of the term “community” within quotes*. This was done to distinguish the “community” as such related to the current criteria with the “clearly delineated community” of prong 1. It is unfortunate that the IO was unable to appreciate the distinctions in such usage. In other instances cited by the IO, Medistry elected brevity in using “community” rather than “community as such term is used generically and not as such term is used in the determination of the existence of a ‘clearly delineated community’ as such is set forth under the Guidebook”.

In any event, any suggestion that use of the term “community” in Medistry’s Response, as such is referenced in the Reply, as being an admission against interest is frivolous and untrue, and it is unfortunate to have to address such a claim in this Response.

(d) The Guidebook factors weigh heavily against Objector’s position

The Reply argues that Applicant “has a much too narrow understanding of the Community test” (Reply, para. 3) and notes that the factors in the Guidebook are “illustrative and not at all exclusive”. (Id.) Applicant agrees that this Expert Panel is not limited to the five criteria set forth in Section 3.5.4 of the Guidebook, but the IO sets forth no compelling reason (in fact, no reason at all) for this Panel to either ignore or deemphasize such factors, and further sets forth no *other* criteria under which Objector proposes this Panel perform any evaluation.

Indeed, the Reply completely ignores the five evaluation criteria set forth under the Guidebook and discussed in the Response (Response, pages 8 – 9). The Guidebook identifies these as factors “to balance in determining whether the community can be regarded as a ‘clearly delineated community’”. Guidebook, § 3.5.4. Applicant avers that “formal boundaries” and “public recognition” are particularly important in the case *sub judice*, as are the other factors “time of existence”, “global distribution” and “size”. Objector’s failure to provide *any* formal boundaries in the Objection or the Reply precludes a determination of a “clearly delineated community” and vitiates Objector’s claims to carrying its burden for any other prong required under the Guidebook.

Of note, Objector’s own references in the Reply illustrate a lack of “public recognition” of any “clearly delineated community”. The Reply cites the 27 May 2013 World Health Assembly Resolution (Reply, para. 15), which itself is based upon the report by the Secretariat (Document A66/26, available at http://apps.who.int/gb/ebwha/pdf_files/WHA66/A66_26-en.pdf the “WHA Report”). While the WHA Report is related to the .health TLD applications, and thus not directly related to the case *sub judice*, the Report’s description of numerous eHealth strategies adopted by different countries and the lack of global consistency is illustrative regarding the heterogeneous nature of the “medical community” and the general lack of any global “public recognition” of a single policy body or “clearly delineated community”.⁶

⁶ The WHA Report comments upon global initiatives regarding eHealth, but notes that instead of a single, or a few, initiatives, there are “**72** national eHealth strategies and plans [which] have been developed.” (Id., para. 7, emphasis added.) The WHA Report details several of these disparate strategies and plans, but notes that “[l]ack of data interoperability within and between systems hinders care and leads to fragmentation of health information systems”, (Id., para. 15) and further notes a lack of public recognition of a single, clearly delineated community:

“Although health is a highly regulated sector at the national level, the global nature of the Internet makes national laws difficult to enforce. ... Quality seals and voluntary codes of conduct are still ineffective after a decade of use. Efforts to educate consumers are insufficient and governmental actions, such as accreditation schemes, have had limited impact on a global medium” (Id., para. 21).

The Reply fails to state any reason or offer any support as to why a lack of public recognition of any “clearly delineated community” or why a lack of any formal boundaries defining a “clearly delineated community” should *not* be weighed by this Panel. Indeed, as Objector fails to promote any *other* factors, Applicant avers that the five factors set forth in the Guidebook should be weighed heavily by this Panel, and indeed should be determinative with regard to the outcome.

Although the Reply (para. 4) asserts that the “crucial element” for the Community test is whether “the group of individuals or entities can be clearly delineated from others and whether members of the community are delineated from Internet users in general”, this merely restates the Guidebook standard, and does not provide any proof of the existence of a sufficiently delineated community. The IO, in both the Objection and the recent response, has failed to fulfill the Guidebook’s requirements that there be a clearly delineated community to justify a community objection.

2. The Objector still fails to prove substantial opposition

Medistry’s Response detailed how the Objection fails to carry Objector’s burden of proving substantial opposition within the community it has identified. See Response, pages 9 – 13. The Reply fails to rehabilitate Objector’s deficiencies in this regard; indeed, the Reply ignores this issue entirely. Objector must prove this prong of a Community objection in order to prevail. *Id.* As the Response argues, *inter alia*, the dearth of qualified “opposition”, and the Reply fails to identify *any* additional opposition at all, the Response’s arguments are uncontroverted; Applicant avers that Objector’s failure regarding this prong is determinative and the Objection must fail.

3. The Objector still fails to prove a likelihood of material detriment to a significant portion of the community

While the Reply exerts substantial effort with regard to the burden of proof regarding this prong, the Reply spends no effort in adding further evidence, analysis or other support to any of the Objection’s flawed claims regarding the likelihood of material detriment to a significant portion of the community. Indeed, the Objection’s only real claim to detriment, Objector’s claim regarding how the .med TLD will be operated under the sole interests of the Cleveland Clinic and how this will somehow exclude some potential registrants and how such an exclusion will somehow harm such excluded registrants, is merely repeated. The burden of proof issue will be addressed below, but the Reply truly misses the mark; Objector has failed to prove a likelihood of material detriment to a significant portion of the community under any reasonable interpretation of Objector’s burden of proof.

(a) The Guidebook is clear that Objector carries the burden of proving a likelihood of material detriment to a significant portion of the community

Bolstered only by short phrases from Medistry’s Response, quoted completely out of context, the Objector’s Reply wrongly claims that Medistry incorrectly described the standards for material detriment. The Guidebook is clear, and Medistry has never claimed differently: Objector carries the burden to “prove 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.” (emphasis added) Guidebook § 3.5.4.

As set forth in the Response, the Objector thus carries the burden of *proving* (i.e., not just alleging) a *likelihood* (i.e., not just possible, but at least more likely than not, if not a higher burden) of *material* (i.e., substantial) detriment to a *significant* (i.e., not small) portion of the community. Objector’s claims in paragraphs 8 and 9 of the Reply are thus curious, as reference is made to portions of the Response in which the Guidebook factors relating to “level of certainty” and “nature and extent of concrete or economic damage” are discussed, including language relating to both. Indeed, the IO’s claim (Reply, para. 9) that his burden “is a risk assessment only aimed at avoiding detriment for the community or parts of it” is facially incorrect under the Guidebook.

(b) The Objector still fails to prove the likelihood of material detriment to a significant portion of the community

Once again, the IO’s Reply fails to offer any additional evidence in support of his claims, but merely asserts that those claims were sufficiently proved in the Objection (“IO has developed many elements establishing that there exists a likelihood of detriment...” Reply, para. 13). Medistry’s response has already demonstrated why the Objection’s claims of detriment are insufficient.

In short, instead of the claimed “many elements establishing...a likelihood of detriment”, the Objector’s sole allegation of potential detriment is that Medistry’s operation of .med might exclude potential registrants who are part of the medical community. This claim has not changed since the Objection, and the IO offers no additional evidence supporting the claim, no further logic or analysis expanding upon the claim, and no further support regarding the materiality of the claim, the likelihood of occurrence of the claim, or the pervasiveness of the claim. In a nutshell, Objector’s claim is an unsupported assertion, and the Reply does nothing to fulfill the burden of proof regarding this prong.

It should be noted that Objector’s claim of detriment is not unique to the case *sub judice*. Objector’s sole claim could be levied against any of the applications cited in the GAC Beijing communiqué of 11 April 2013 cited at paragraph 14 of the Reply, for, as the Reply points out, each such TLD is “likely to invoke a level of implied trust” (id.) and the GAC is adamant that each such TLD include allocation guidelines which, in effect, would preclude certain applicants. In this light, every single registry operator of every single TLD identified in the GAC Beijing communiqué should be subject to a Community objection from the Independent Objector, as every single application thus faces the prospect of “likely excluding a significant part of [the relevant] community” due to “operations in the sole interests and under the restrictions and policy” of each respective registry operator.

Yet this is clearly not the case. ICANN, the GAC, the Guidebook and portions of the Guidebook relating to Community objections contemplate that certain TLD’s will be operated by registries which impose allocation guidelines which will preclude certain registrants. Such a business model is certainly not precluded under the Guidebook, and the GAC stopped far short from demanding that all such applicants be denied their TLDs. Thus ICANN, the GAC, the Internet community and the Guidebook have all contemplated Objector’s sole claim as such relates to TLD applicants, and rejected such a claim.

Otherwise, Objector's position would affect far more applicants than the case *sub judice* and the remaining Independent Objector Community objections.

(i) The IO's claim is unsupported and highly unlikely

With respect to the case *sub judice*, Objector's sole claim is too attenuated, too unlikely and too unsupported to rise to the level of carrying Objector's burden of proof regarding a likelihood of material detriment. (See Response, pp. 13-14). As detailed in Medistry's Response at pages 13 – 14, the claim relies on a series of events (e.g., unspecified exclusionary guidelines; significant portion of the community affected; prejudice to precluded registrants, etc.), each of which has a level of uncertainty. In combination, the uncertainty of each event multiplies, until the level of certainty of the outcome (e.g., material detriment) is extremely low, and certainly not (as the Guidebook requires) a likelihood.

Initially, Objector offers no support that the allocation guidelines set forth by the Cleveland Clinic will be anything but fair and appropriate⁷ in light of the Clinic's stated goal for operating the .med TLD as a trusted internet space that provides reliable medical-related information. The Reply itself acknowledges the "important position within the medical community" held by the Cleveland Clinic (Reply, para. 2). Nothing in the Application or Applicant's PICs gives any indication that the Clinic will create any allocation guidelines which are not consistent with the Clinic's chartable mandate and commitment to community benefit, education and communication. Indeed, the IO's claim is not based upon what Medistry has said, but upon Objector's *speculation* about what Medistry *may* do and the IO's connotation that there *may be* potential registrants out there who do not share the policy or opinions of the Cleveland Clinic (Reply, para. 16). The IO doesn't identify who such potential registrants may be, what policy or opinions would be at issue, or whether such differing opinions would justify exclusion from registration.

Similarly, the IO offers no support that a "*significant portion* of the community" will be affected. The IO's claim regarding impact to "*significant parts of the medical community*" (Reply, para. 16) is an unsupported and conclusory statement. The IO does not identify which "part" of the alleged medical community may be so impacted, and does not quantify whether this part is in any way "significant".

Still further, the IO offers no support that the alleged detriment is "material". The IO fails to address any of Medistry's arguments relating to lacking any "nature and extent of concrete or economic damage" (see Response, page 14) and "damage to reputation" (*id.*, at page 15), instead claiming that Medistry's management of the .med TLD would "be highly prejudicial to the public in general and to the community targeted in particular as a study showed the importance of the researches made on internet on health information matters" (Reply, para. 16). The IO of course offers no support for this baseless conclusory claim, and does not even attempt to explain what form of prejudice is implicated, or how any such prejudice would manifest itself in any certain or concrete way, or what form of economic damage may be suffered, or how core activities may be affected, or how reputation may be damaged or whether any form of security protection is implicated. The IO does not even provide the source of the "study" referenced in the Reply, nor explain how the alleged results of the study at all support the IO's claims.

⁷ Indeed, the Reply acknowledges that the Clinic's policy just "might be" "suitable". Reply, para. 2.

Objector has the burden of proving the “likelihood” of material detriment to a significant portion of the community, which, under any definition, means “more likely than not”. Indeed, “likelihood” often means “probably” or “probable” or a similarly higher burden than “more likely than not”.⁸ Under any definition of “likelihood”, the IO has failed to carry his burden of proof, as his sole claim is highly speculative, very uncertain, conclusory in nature, unsupported by any evidence and certainly not “more likely than not”.

(ii) The Guidebook factors weight heavily in favor of Medistry

A recurring theme of the Reply is that the factors of the Guidebook are only guidance, and not requirements; with respect to the Guideline’s factors relating to the determination of a likelihood of material detriment, the Reply notes that such factors are “only a guidance and ... not limitative nor exclusive”. (Reply, para. 11) The Reply urges that “[n]othing suggests that an objector has to provide evidence for each of these factors in order to meet the Detriment test”. (Id.)

Applicant agrees that the factors are “non-exclusive” guidance, and that the objector need not provide evidence for each factor. However, the Objector need provide at least *some* evidence at some point to carry its burden of proof relating to this prong of the Community objection, and Objector has completely failed to do so. Further, Objector cites no support for *ignoring* the Guidebook factors or weighing the factors as Objector suggests; Applicant avers that the guidance provided by the Guidebook factors leads to one inescapable conclusion – namely, that Objector has failed to carry its burden of proof relating to proving a likelihood of material detriment to a significant portion of the community.

As detailed in the Response (see pages 13 – 16), each factor of the Guidebook weighs heavily in favor of Applicant; Objector fails to carry a single factor.

Neither the Objection nor the Reply provides any evidence of any damage to the reputation of the alleged “medical community” that could be caused by excluding some potential registrants from .med. Neither the IO’s Objection nor the Reply provides any *evidence* that the Applicant would not act in the interests of the “medical community”, consistent with the Clinic’s charitable mandate and commitment to community benefit, education and communication. Neither the IO’s Objection nor the Reply provides any *evidence* that the operation of one particular gTLD by one health-related entity would somehow interfere with any core activities of the “medical community,” or interfere with the use of the DNS for those activities; indeed, not only are the “medical community’s” core activities not

⁸ Objector’s reference at paragraph 10 in the Reply to the standards for “likely” under String Confusion Objections is notable as multiple Expert Panelists have now interpreted the burden for such “likelihood” to equate to the higher standard of proof of “probable”. See, .TV v. .TVS, ICDR No. 50 504 257 13 available at http://images.go.adr.org/Web/AmericanArbitrationAssociation/%7B846e79ca-8587-4d7a-ab06-be0239d765fd%7D_50_504_T_00257_13_determination.pdf (“likelihood” equates to “probability of”). See also, .BIZ v. .GBIZ, ICDR No. 50 504 245 13 available at http://images.go.adr.org/Web/AmericanArbitrationAssociation/%7B77142dd1-39a5-4ec8-bb64-ea7538608d0f%7D_50_504_T_00245_13_determination.pdf (likelihood requires probable, not merely possible).

dependent on the DNS, they are certainly not dependent on the use of one particular gTLD in the DNS.⁹ Neither the IO's Objection nor the Reply provide any indication of the nature and extent of economic harms to the alleged community, nor even offer any concrete evidence that such harms will occur beyond conclusory statements that some unknown number of potential registrants who are excluded might be disadvantaged—but such harm is not harm to the “community,” but rather to individuals or entities who may sometimes be in cooperation and other times in competition with the Cleveland Clinic. Finally, neither the IO's Objection nor the Reply demonstrate any sufficient “level of certainty” that harm will occur, beyond bare statements that it “might”.

Although the IO placed particular emphasis on the “effective security protection” factor, the Reply fails to address the Medistry's position in that regard, particularly as the Response notes that this factor actually weighs in favor of Medistry as Applicant and the Cleveland Clinic have proposed to institute effective security protection for user interests (Response, page 15 – 16), and those security protections have received top passing marks in ICANN's review of the security protection portions of the Application.¹⁰ If, as Objector avers, this factor is of particular importance, the Reply's inability to rebut Medistry's Response, and ICANN's judgment in favor of the Application, leads to the conclusion that this factor of such “particular importance” weighs in Medistry's favor.

Thus under any interpretation of Objector's burden under a “likelihood” standard, and taking into account the guidance of the factors set forth in the Guidebook, the Reply has failed to rehabilitate the Objection's failure to carry the IO's burden to *prove* the likelihood of material detriment to a significant portion of the alleged community.

4. A Community Objection is not the appropriate venue for the Independent Objector to assert his opinion as to what entity should ideally be running a particular TLD

The Reply furthers the Objector's audacious position, first set forth in the Objection, that the IO does not personally believe that the Cleveland Clinic is the entity which should ideally be running the .med TLD; instead preferring some unnamed, unidentified, and likely mystical global governing body which, it must be noted, did not apply for the .med TLD. This is the case despite the fact that the Objector admits that the Cleveland Clinic may indeed be able to provide entirely “suitable” policy to the .med TLD. (Reply, para. 2)

Objector's analysis is thus clouded by comparing the current Applicant with a hypothetical “competing” application from a global “policy making organ of the community” which, following the

⁹ The WHO Secretariat has since at least 2003 recognized that the addition of a new TLD (for example, .health) would not preclude health information providers from using the internet generally or obtaining a domain in another TLD: “As health information providers can voluntarily apply for their sites to be listed in the .health domain or use another domain name, the introduction of the new domain name would not restrict use of the Internet generally or otherwise censure the type of content that can be made available through the Internet.” Document EB112/10, referenced in the WHA Report at footnote 2 and available at http://apps.who.int/gb/archive/pdf_files/EB112/eeb11210.pdf

¹⁰ The current Application received 30 points under ICANN's review of the “Technical and Operational Capability” section of the Application (only 22 points are needed to pass), including a score of 2 out of 2 for security question 30. See <http://newgtlds.icann.org/sites/default/files/ier/ciasie0hjec3lamxawrle7ia/ie-1-907-38758-en.pdf>

hypothetical, could provide allocation guidelines which would reflect the interests of each and every member of such a “community”. Indeed, this clouded judgment is illustrated by Objector’s belief that “Medistry’s Application for the .Med gTLD creates an important risk of exclusive misappropriation of a string generally linked to the medical *community*...” (Reply, para. 16).

A Community objection is not the proper forum or venue for the Independent Objector to voice his opinion as to whether the .med TLD theoretically could have a “better” or “more global” or “less single entity” registry operator. The purpose of a Community objection is to measure and evaluate the effects of a particular Application on a clearly delineated community, not to weigh the effects of a particular Application against the hypothetical effects of a hypothetically ideal applicant. The Independent Objector exceeds the bounds of a Community objection when he bases his argument on the presumption that the .med TLD should be operated by the “policy making organ of the community”, rather than his evaluation of the current Applicant. Indeed, the Guidebook provides that “[a]n allegation of detriment that consists only of the applicant being delegated the string instead of the objector will not be sufficient for a finding of material detriment.” (Guidebook, Module 3.5.4). The mere fact that the Objector is asserting such detriment on behalf of hypothetical community members who would be excluded from a TLD does not make such claims any more acceptable.

There is no language in the Guidebook which prohibits a single entity from running a particular TLD. In fact, the very language cited by Objector in the conclusion of the Reply relating to promoting competition (Reply, para. 16) supports the conclusion that ICANN encouraged entities such as Applicant and the Cleveland Clinic to apply to operate TLD’s like .med.

The Objector’s insistence on viewing the current Application through the lens of an “ideal” applicant (“ideal” as to the perception of the Independent Objector himself) is both unfair to Medistry and well outside the bounds of the Guidebook.

The fact remains that the Applicant, in conjunction with the Cleveland Clinic, has applied for the .med TLD and has done everything ICANN, and the GAC, has asked of an applicant. The Community objection filed against Medistry should be judged under the terms of the Guidebook, the Application and the Applicant itself, not against a hypothetical “ideal” global institution that did not apply for the TLD when given the opportunity.

Conclusion

Medistry respectfully requests that the Expert Panel hold that the Objector has failed to carry its burden on numerous required prongs under a Community objection, and correspondingly find in favor of Applicant.

Applicant also requests that its advance payments of costs be refunded.

ATTACHMENT 10



nabp

National Association of Boards of Pharmacy

1600 Feehanville Drive • Mount Prospect, IL 60056-6014
Tel: 847/391-4406 • Fax: 847/391-4502
Web Site: www.nabp.net

January 10, 2014

Joe Turk, Sr. Director, Information Technology
Business Development
Cleveland Clinic
17325 Euclid Ave, CL30
Cleveland, OH 44112

Dear Mr Turk:

In its August 9, 2012 comment on Medistry LLC's .MED application, National Association of Boards of Pharmacy[®] (NABP[®]) stresses that new gTLDs relating to health and medicine must be operated responsibly, in the interest of patient safety, and that these registries should be required to screen online drug sellers and other health practitioner Web sites for proper credentials. NABP further stated its belief that "all medical themed gTLDs – whether community-based or not – should have certain safeguard mechanisms hard coded into the registry agreement in order to ensure patient safety and legitimate use of domain names."

We wish to clarify that NABP's comment was intended to be advisory in nature, stressing that health-related gTLDs should account for patient safety and implement protections against fraud and abuse. In submitting this comment, NABP did not oppose Medistry's application to be the Registry Operator for the .MED TLD, nor take any position as to whether Medistry's .MED application contained appropriate safeguards.

NABP acknowledges that the Public Interest Commitments filed by Medistry in response to the Governmental Advisory Committee's Safeguard Advice may satisfactorily address the issues raised in NABP's Public Comment.

We hope this serves to clarify NABP's Public Comment and apologize for any prior confusion on this matter.

Sincerely,

NATIONAL ASSOCIATION OF
BOARDS OF PHARMACY

Carmen A Catizone, MS, RPh, DPh
Executive Director/Secretary

ATTACHMENT 11



**American Hospital
Association**

Liberty Place, Suite 700
325 Seventh Street, NW
Washington, DC 20004-2802
(202) 638-1100 Phone
www.aha.org

January 14, 2014

Joe Turk, Sr. Director, Information Technology
Business Development
Cleveland Clinic
17325 Euclid Ave, CL30
Cleveland, OH 44112

Dear Mr. Turk:

It has come to the attention of the American Hospital Association (“AHA”) that Public Comments AHA filed against HEXAP SAS, DocCheck AG, and Charleston Road Registry on September 26, 2012 have been mistakenly used by a Panelist in Case No. EXP/403/ICANN/20 against an unintended party, Medistry LLC.

As a sophisticated association, and after careful review and consideration, AHA affirmatively filed Public Comments objecting to HEXAP SAS, DocCheck AG, and Charleston Road Registry related to any of these three entities operating the gTLD string .MED for the reasons outlined in AHA’s Public Comments. AHA purposefully did not file a similar Public Comment related to Medistry LLC. Any other interpretation of AHA’s Public Comments related to HEXAP SAS, DocCheck AG, and Charleston Road Registry, and any purported expansion of those Public Comments to apply to any other party, are mistakes of fact. AHA Public Comments are only to be applied to those entities to which AHA has objected.

Again, so there can be no ambiguity: AHA did not then, and does not now, express any comment in opposition (or resistance) to Medistry LLC’s application for .MED. We hope this serves to clarify AHA’s Public Comment.

Sincerely,

Melinda Reid Hatton
Senior Vice President & General Counsel





**American Hospital
Association**

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Washington, DC 20004-2802
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ATTACHMENT 12

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

CASE No. EXP/414/ICANN/31

PROF. ALAIN PELLET, INDEPENDENT OBJECTOR

(FRANCE)

vs/

MEDISTRY, LLC

(USA)

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

INTERNATIONAL CHAMBER OF COMMERCE
INTERNATIONAL CENTRE FOR EXPERTISE
CASE NO. EXP/414/ICANN/31

between

Prof. Alain Pellet, Independent Objector

Objector

and

Medistry, LLC

Applicant

Under ICANN's *New gTLD Dispute Resolution Procedure* and the
Rules for Expertise of the International Chamber of Commerce
as supplemented by the *ICC Practice Note* of March 2012

Re: Limited Public Interest Objection concerning Application 1-907-38758 (.MED)

Expert Panel:

Prof. Fabien Gélinas (Chair)

Mr. John Gaffney (Co-Expert)

Prof. Guglielmo Verdirame (Co-Expert)

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1. INTRODUCTION

1. The Internet Corporation for Assigned Names and Numbers (“ICANN”) has launched a program for the introduction of new generic Top-Level Domain Names (“gTLDs”). Applicants may apply for new gTLDs, in accordance with terms and conditions set by ICANN, notably in the gTLD Applicant Guidebook (the “Guidebook”).¹
2. The Guidebook contains, as an Attachment to Module 3, a New gTLD Dispute Resolution Procedure (the “Procedure”). The Procedure governs the resolution of disputes between an entity that applies for a new gTLD (an applicant) and an entity objecting to the application (an objector).
3. Dispute resolution proceedings are administered by a Dispute Resolution Service Provider (a “DRSP”) in accordance with the Procedure and the applicable DRSP rules. Four kinds of objections can be brought under the Guidebook: String Confusion, Existing Legal Rights, Limited Public Interest, and Community. The DRSP responsible for Limited Public Interest objections is the International Centre for Expertise of the International Chamber of Commerce (“ICC”), and the applicable DRSP rules are the Rules for Expertise of the ICC (the “Rules”), as supplemented by the ICC. In March 2012, the ICC supplemented the Rules by issuing a Practice Note on the Administration of Cases under the New gTLD Dispute Resolution Procedure (the “ICC Practice Note”).

¹ gTLD Applicant Guidebook, v. 2012-06-04, Module 3, available at <http://newgtlds.icann.org/en/applicants/agb> [hereinafter Guidebook].

4. According to section 3.2.5 of the Guidebook, the Independent Objector may file a formal objection to a gTLD application. The Independent Objector's role is to act not on behalf of any particular persons or entities, but in the best interests of the public who use the global Internet. Neither ICANN staff nor the ICANN Board of Directors has authority to direct or require the Independent Objector to file or not to file any particular objection. If the Independent Objector determines that an objection should be filed, he will initiate and file the objection in the public interest.
5. The Independent Objector may file objections against "highly objectionable" gTLD applications to which no objection has been filed. The Independent Objector is limited to filing two types of objections: (1) Limited Public Interest objections and (2) Community objections. The Independent Objector is granted standing to file objections on these enumerated grounds, notwithstanding the regular standing requirements imposed on others for such objections.
6. In light of the public interest goal noted above, the Independent Objector shall not object to an application unless at least one comment in opposition to the application is made in the public sphere.
7. These proceedings arise out of a Limited Public Interest objection (the "Objection") to the application filed by Medistry, LLC ("Medistry") for the .MED gTLD (the "Application").
8. The Objection to the Application was filed by the Independent Objector on 13 March 2013.

2. AGREEMENT CONCERNING THE PROCEDURE

9. As stated in Article 1(d) of the Procedure, by applying for a new gTLD under the Guidebook, an applicant accepts the Procedure and the relevant DRSP rules governing possible objections. Similarly, by filing an objection, an objector accepts the Procedure and the applicable rules.
10. Pursuant to Article 8 of the ICC Practice Note, by accepting the process defined in the Procedure, the “parties are deemed to have agreed that the expert determination shall be binding upon the parties” as provided in Article 12(3) of the Rules.
11. As provided in Article 4(d) of the Procedure, “the place of the proceedings, if relevant, shall be the location of the DRSP that is administering the proceedings”. In this case this place is Paris, France.
12. As provided in Article 5(a) of the Procedure, the language of the submissions and proceedings is English.
13. The Expert Determination Procedure to which the parties have agreed to submit this dispute provides a specific procedural framework that is different from typical legal proceedings. It involves brief submissions (which are subject to strict word limits) and an expedited schedule. Hence, while the important and complex matters at issue have received serious consideration by both the parties and the Panel within that framework, the Panel has endeavored to apply a principle of economy to the preparation of this document.

3. THE PARTIES AND THEIR COUNSEL

3.1. The Independent Objector

14. Professor Alain Pellet is the Independent Objector selected by ICANN pursuant to section 3.2.5 of the Guidebook.²

15. The contact information for the Independent Objector is as follows:

Prof. Alain Pellet, Independent Objector

Contact Information Redacted

Email: Contact Information Redacted

16. The Independent Objector is represented in these proceedings by:

Ms. Héloïse Bajer-Pellet

Contact Information Redacted

Email: Contact Information Redacted

Mr. Daniel Müller

Contact Information Redacted

Email: Contact Information Redacted

² See ICANN Press Release of 14 May 2012, available at <http://www.icann.org/en/news/announcements/announcement-14may12-en.htm>

Mr. Phon van den Biesen
Contact Information Redacted

Email: Contact Information Redacted

Mr. Sam Wordsworth
Contact Information Redacted

Email: Contact Information Redacted

3.2. The Applicant

17. Medistry, LLC (“Medistry” or the “Applicant”) was created by the Cleveland Clinic to apply for, obtain and operate the .MED gTLD under its guidance and direction. The Cleveland Clinic is an international medical center headquartered in Cleveland Ohio with the mission to integrate clinical and hospital care with research and education.
18. The contact information for the Applicant is as follows:

Medistry, LLC

Mr. Brian David Johnson
Contact Information Redacted

Email Contact Information Redacted

19. The Applicant is represented in these proceedings by:

The Cleveland Clinic Foundation
Mr. Kevin Michael Mooney, Esq., Counsel

Contact Information Redacted

Email: Contact Information Redacted

The Cleveland Clinic Foundation

Mr. David W. Rowan, Esq., Chief Legal Officer
Contact Information Redacted

4. THE EXPERT PANEL

20. According to Article 13(b)(iii) of the Procedure, proceedings involving a Limited Public Interest objection are referred to a panel of three experts (the “Expert Panel” or “Panel”), recognized as eminent jurists of international reputation, one of whom shall be designated as the Chair. The Chair shall be of a nationality different from the nationalities of the Applicant and of the Independent Objector. Pursuant to Article 3 of Appendix 1 to the Rules, experts are appointed by the Chairman of the Standing Committee of the ICC Centre for Expertise.
21. On 12, 13 and 14 June 2013, each of the experts completed and filed a Declaration of Acceptance and Availability and Statement of Impartiality and Independence, in accordance with Article 3 of the Rules.
22. On 21 June 2013, the Chairman of the Standing Committee of the ICC International Centre for Expertise appointed the Panel pursuant to Article 3(3) of Appendix I to the Rules. Professor Fabien Gélinas, a Canadian national, was appointed as the Chair of the Panel and Mr. John Gaffney and Professor Guglielmo Verdirame were appointed as Co-Experts of the Panel in accordance with Article 13(b)(iii) of the Procedure. The experts’ contact details are as follows:

Prof. Fabien Gélinas
Contact Information Redacted

Email: Contact Information Redacted

Mr. John Gaffney
Contact Information Redacted

Email: Contact Information Redacted

Prof. Guglielmo Verdirame
Contact Information Redacted

Email Contact Information Redacted

23. The parties were notified of the appointment of the Panel on 24 June 2013 and asked to pay an advance on costs before transmission of the file to the Panel.
24. After payment of the advance by both parties, the Panel received the file on 1 August 2013 and was deemed fully constituted on that date for the purpose of the Procedure.

5. HISTORY OF THE PROCEEDINGS

25. This Objection relates to Medistry's application to register the string .MED. The Application was posted on ICANN's website on 13 June 2012 and given ID Number

1-907-38758 in the ICANN system.³ The Application passed the initial evaluation process in accordance with subsection 1.1.2.5 of Module 1 of the Guidebook, which is independent from the dispute resolution process laid out in the Procedure.⁴

26. On 12 March 2013, the Independent Objector filed the Objection to the Application with the DRSP. A copy of the Objection was transmitted to the Applicant on 13 March 2013. The requisite filing fee had been paid to the DRSP when the Objection was filed, following Article 8(c) of the Procedure and Article 1 of Appendix III to the Rules.
27. Pursuant to Article 9 of the Procedure, the DRSP conducted an administrative review of the Objection for compliance with its Rules and with Articles 5-8 of the Procedure (Language, Communications and Time Limits, Filing of the Objection, and Content of the Objection). On 2 April 2013, the DRSP notified the parties that the Objection was compliant. On 12 April 2013, ICANN made a dispute announcement under Article 10 of the Procedure, listing the objections that had passed administrative review, including this Objection.
28. On 12 April 2013, the DRSP sought the comments of the parties on the possible consolidation of this case with two other cases in which the string .MED was at issue, as contemplated by Article 12 of the Procedure. On 19 April 2013, the DRSP notified the parties that the cases would not be consolidated.
29. On 22 May 2013, the Applicant filed a Response to the Objection (the “Response”). A copy of the Response was transmitted to the Independent Objector and his Representatives on the same day. Pursuant to Article 11(f) of the Procedure, the Applicant paid the requisite filing fee to the ICC on the same day.

³ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/216>.

⁴ <http://newgtlds.icann.org/sites/default/files/ier/ciasie0hj3lamxawrle7ia/ie-1-907-38758-en.pdf>.

30. On 21 June 2013, the Chairman of the Standing Committee of the ICC International Centre for Expertise appointed the Expert Panel pursuant to Article 13 of the Procedure and Article 9(5)(d) of the Rules.
31. On 24 June 2013, the DRSP informed the parties of the appointment of the Expert Panel and of the estimate of total costs in this matter. The parties were informed that the Panel would not be deemed fully constituted and the matter would not proceed until each of the parties had made advance payment of the estimated costs.
32. On 1 August 2013, the DRSP informed the parties of the receipt of the necessary advance payment and transferred the file to the Panel. The Panel received the file and was deemed fully constituted on that date for the purpose of the Procedure.
33. On 2 August 2013, the Independent Objector requested leave from the Panel to file an additional written statement to address issues that were raised in the Applicant's Response. On the same date, the Applicant responded to the Independent Objector's request.
34. On 5 August 2013, the Expert Panel wrote to the parties asking the Applicant to comment on the Independent Objector's request and seeking the parties' observations on the conduct of the proceedings generally and, in the event the Independent Objector's request were to be granted, the appropriate length and timing of any additional round of submissions.
35. On 9 August 2013, the Independent Objector and the Applicant each provided observations.
36. On 12 August 2013, the Expert Panel notified the parties that it had conducted the "quick look procedure" in accordance with subsection 3.2.2.3 of Module 3 of the

Guidebook and had not found the Objection to be manifestly unfounded or an abuse of the right to object such that it should be summarily dismissed.

37. On the same day, in accordance with Article 17 of the Procedure, the Expert Panel granted the Independent Objector leave to submit an additional written statement within ten days and gave the Applicant the opportunity to reply within ten days of the Independent Objector's submission.
38. The Independent Objector submitted an additional statement on 22 August 2013 and the Applicant a reply on 30 August 2013. These submissions addressed, among other things, a preliminary issue raised by the Independent Objector concerning the admissibility of certain documents annexed to the Response.
39. As required by Article 5(a) of the Procedure, submissions and communications were made in English. In accordance with Article 6(a) of the Procedure, all communications in the proceedings were submitted electronically.
40. On 3 September 2013, the Panel notified the parties that it was moving into a deliberative phase. The Panel also notified the parties that the issue raised by the Independent Objector concerning the admissibility of certain documents would be addressed in the Determination. The Panel then considered the entire record, except for two documents, as noted later, and proceeded with the preparation of a draft Expert Determination.
41. On 4 September and on 3 October 2013, the DRSP granted the Panel extensions for the submission of its draft Expert Determination to 5 October and 12 October 2013, respectively.

42. On 12 October 2013, the Expert Determination was submitted in draft form to the DRSP for scrutiny in accordance with Article 12(6) of the Rules and Article 21(b) of the Procedure.

6. SUMMARY OF THE PARTIES' RESPECTIVE POSITIONS

43. The Objection considered in these proceedings is a Limited Public Interest objection. The Guidebook provides the applicable standards, or principles of adjudication, for a Limited Public Interest objection. In terms of standing, since the Independent Objector acts solely in the best interest of the public who use the global Internet, he shall not object to an application unless at least one comment in opposition to the application has been made in the public sphere. On the merits, the Independent Objector must demonstrate that the applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law. The parties' respective positions concerning the application of these principles are summarized below.

6.1. The Independent Objector's Objection

44. The Independent Objector first argues that he has standing to bring this Objection because, as required by the Guidebook, at least one comment in opposition to the Application was made in the public sphere. In fact, various non-governmental organizations have submitted Public Comments with respect to all four of the Applications that have been submitted to ICANN for the .MED gTLD. Many of these comments express great concern about the reliability and trustworthiness of a .MED gTLD that is run by a private enterprise. Although several of these Comments were submitted under the heading of a Community objection, the Independent Objector has

taken notice of the contents thereof in his decision to submit the present Objection since the substance of the objections expressed often refers to “public interest” and “public health” as rationale for these concerns. Given the status of health as a fundamental human right and of the medical sector as a constitutive element thereof, the Independent Objector argues, these concerns fall within the parameters set for a Limited Public Interest objection.

45. Concerning the merits, the Independent Objector’s position is that the applied-for gTLD string would be contrary to specific principles of international law as reflected in relevant international instruments of law.
46. The Independent Objector alleges that “med” as an abbreviation for “medical” and “medicine”, as well as similar terms in multiple languages, is inextricably connected to health, since it refers to the goods, services and facilities that are necessary for the effective fulfillment of the right to health. Therefore, the Independent Objector states that his appreciation of a .MED gTLD is directly linked to his appreciation of the very concept of health.
47. The Independent Objector submits that health was recognized as a fundamental human right in international law for the first time in 1948, in the Universal Declaration of Human Rights. Since then, several instruments of international law have confirmed the human rights status of health. The Independent Objector argues that the promotion and protection of international health is inherent in the due respect of generally accepted legal norms of public order that are recognized under fundamental principles of international law.
48. The right to health was defined by the United Nations Committee on Economic, Social and Cultural Rights (the “Committee”) as “a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health.” The Committee lists health care as the very first

element covered by the right to health while interpreting the right to health as not only extending to health care but also to the underlying determinants including access to health-related education and information. The Independent Objector also refers to the case law of regional human rights courts that confirm that access to information is an essential element of specific human rights.

49. The Independent Objector is of the view that any entity applying for a .MED gTLD should demonstrate awareness of its duty to see to it that this gTLD is organized, set up and managed in such a way that the right to health, with all of the implications discussed above, including the necessity of reliability and trustworthiness of medical information, is fully respected and, consequently, should demonstrate that this duty will be effectively and continuously implemented. In addition, the Applicant should demonstrate how, given the public interest at stake, the policies and decision-making of the Applicant will be properly connected to the public authorities, national as well as international, that are under a legal obligation to respect, protect and fulfill the right to health. In the view of the Independent Objector, these are requirements that are fully justified given the specific principles of international law as reflected in the relevant international instruments of law discussed above.

50. The Application shows that the applied-for gTLD is intended to become a trusted source for medical-related information, that the eligibility for domain operating will be restricted, that there is no clear view on future developments and related policies and that the stated goal is to operate the gTLD in a professional and commercially reasonable manner. It is also clear that all relevant decisions will be made by the Applicant and Cleveland Clinic and that all these stated positions, rules and policies may be changed in the Applicant's and Cleveland Clinic's sole discretion. In the view of the Independent Objector, the Application does not provide for any views on the international nature of this undertaking, while for a gTLD the world at large seems to be the natural environment, as is confirmed by the Applicant.

51. The Independent Objector submits that, more importantly, the Applicant does not demonstrate awareness of the fact that “med”, referring to medical services and to medical-related information as essential elements, is not only a “term” but that it also represents a fundamental right, indissociable from the right to health, which involves extensive obligations for national and international public authorities across the globe as well as for citizens and private enterprises. Providing medical related information on a worldwide basis might interfere with efforts of public authorities to fulfill their obligations, while for developing countries “there is a growing concern that an unrestricted health gTLD will bypass regulatory controls”. The Application is silent on these aspects of fundamental importance. The “Public Interest Commitments” filed by the Applicant on 6 March 2013 do not change this picture. They merely reiterate elements already contained in the Application.
52. For these reasons the Independent Objector requests the Expert Panel to hold that the Objection is valid and to uphold the Objection against the Application. In the alternative, the Independent Objector requests the Expert Panel to hold that the Objection is valid as long as the Applicant has not provided solutions for the serious objections raised above.
53. In addition, the Independent Objector requests that his advance payment of costs be refunded in accordance with Article 14(e) of the Procedure.

6.2. The Applicant’s Response

54. The Applicant’s position is that the Objection must be dismissed.
55. The mission stated in the Application for the .MED gTLD is to serve as a trusted source on the Internet for medical-related information, providing people greater choice for obtaining such information, allowing the sharing of trusted information by multiple

sectors of the healthcare industry, and fostering collaboration, in the public interest and in a new online environment, between producers and users of medical-related information.

56. The Applicant submits that the Objection must be considered in light of the scope of both the role of the Independent Objector and the substantive rules for a Limited Public Interest objection, which are far more limited than the Independent Objector has portrayed them. In particular, the Limited Public Interest standards cover only objectionable strings, not the presumed content within a domain. The Independent Objector is authorized under the Guidebook to object to “highly objectionable” strings. The possibility of objectionable content is insufficient for an objection if the string itself is not objectionable. The Applicant emphasizes that .MED is not contrary to international law because it “might” interfere with states’ obligations. Not only is it unlikely, given the Cleveland Clinic’s reputation for reliability and its corresponding plans for .MED, that the information will be unreliable, but the mere possibility is not enough justification to restrict the almost-universally recognized right to freedom of expression.

57. The Applicant submits that the right to health is more limited than portrayed in the Objection. First, although the scope and content of the right, and who it obligates, are far from clear, it is clear that it does not prevent anyone from simply sharing health information, in a gTLD or otherwise, and that non-state actors have no direct international obligations related to health. Second, international law does not limit private actions just because they interfere with state obligations, and even if it did, private dissemination of health information does not interfere with any state obligations. Third, international law affirmatively protects, and even encourages, private creation and dissemination of health-related information. Finally, even assuming the right to health could be impaired by a health-related gTLD, such a concern does not rise to the level of a threat to public order, and, moreover, is inapplicable to the restricted .MED gTLD proposed by Medistry.

58. As the Independent Objector notes, access to reliable and trustworthy information is an essential element of the right to health. The Applicant believes that since .MED will only allow information posted by vetted, reliable sources, and will provide increased global access to accurate, reliable information, it will actually promote the right to health. As provided in the Public Interest Commitments (PICs) submitted in relation to the .MED Application, any eventual registry agreement for .MED will contain specific contract commitments to maintaining the gTLD as a trusted space with reliable information and to giving the Cleveland Clinic sole discretion to approve or reject all potential registrants. This demonstrates the Applicant's commitment to maintaining the quality of the gTLD, to subjecting itself to liability in the event that its commitment is not fulfilled, as well as its willingness to respond to concerns expressed by governments.
59. The Applicant further submits that the Independent Objector cannot meet his burden because no principle of international law prevents private parties from providing health-related information. The Applicant is a non-state actor and the right to health as reflected in relevant instruments of law is limited and directed to state actors. Furthermore, to the extent customary international law recognizes a right to health, it is very limited. International law imposes no direct obligations on non-state actors regarding provision of health-related information. Finally, potential violations are not contrary to international law. Indeed, the assertion that .MED might conflict with the right to health is insufficient.
60. Besides, the Applicant states that .MED is not contrary to any generally accepted legal norm of morality and public order. .MED poses no threat to either public or individual health, and certainly poses no threat serious enough to qualify as a question of public order. Accordingly, even if .MED is somehow contrary to a specific principle of international law as reflected in some international instrument, which the Applicant contends it is not, .MED is not contrary to any norm of public order and therefore the Objection must fail.

61. The Applicant states that there is no generally accepted norm limiting private actions that interfere or might interfere with state obligations. Provision of health-related information by private parties does not interfere with state obligations to protect the right to health. Whether or not .MED exists, states have the right to regulate certain health-related information. Regulations applicable to existing information sources, including online information, will apply to .MED.
62. The Applicant goes further by stating that international law actually protects the right of private parties to provide health-related information – i.e., the Limited Public Interest objection is explicitly limited by the right to freedom of expression. Furthermore, the Applicant argues that preventing dissemination of health-related information to protect the right to health is not proportional, since the violation is only potential.
63. The Applicant submits that the Objection should be dismissed as it fails to establish a specific right to health, reflected in any binding international instrument, regarding private dissemination of health information; fails to establish any direct obligation on private actors to respect the right to health; and fails to demonstrate that .MED is contrary to any specific, generally accepted principles of international law reflected in international instruments. It is instead both protected by the right to freedom of expression and consistent with the right to health and the goal of increasing access to trustworthy, reliable health information.

6.3. The Independent Objector's Additional Statement

64. The Independent Objector raises a preliminary issue concerning the length of the Response. According to the Procedure, the Objection and the Response are each limited to 5,000 words or 20 pages, whichever is less, excluding attachments. The Independent Objector submits that the substantive part of the Response, including the

footnotes, counts well over 6,600 words; without the footnotes, the Response remains within the 5,000 words limit. However, among the Annexes (2 and 3) submitted by the Applicant there are two expert reports that may be taken as extensions or expansions of the Applicant's Response, bringing the latter to a page number well in excess of the limit imposed by the Procedure.

65. The Independent Objector is of the opinion that the only way to remedy this violation of the Procedure is to have Annexes 2 and 3 removed from the file as inadmissible.
66. The Independent Objector therefore requests that Annexes 2 and 3 be declared inadmissible, that the Applicant be ordered to delete these Annexes from the file and that any reference to them in the text of the Applicant's Response be ignored.
67. Reacting to the substance of the Applicant's Response, the Independent Objector contends that he did not act outside his mandate as alleged by the Applicant. Limited Public Interest objections are not exclusively reserved for objections holding that the string, as such, would be objectionable. In this case, the subject-matter of the Objection is not the text of the string ".MED" but rather its intended use, and in particular, its confiscation for purely commercial purposes which is contrary to general principles of international law for morality and public order and likely to cause harmful consequences to the public. From the definition provided in the Guidebook, the Independent Objector's position is not that the word, or better the abbreviation "med", would be objectionable *per se* but that the Application does not guarantee its use in full respect for these general principles.
68. Concerning the Applicant's suggestion that the Independent Objector infringes on its, and the public's, right to free speech, the Independent Objector recalls that the concept of freedom of expression is not free of any limits and carries special duties and responsibilities. The concept of raising Limited Public Interest objections, and for that matter all objections envisaged by the Guidebook, implies that these limits may lead to the rejection of certain applied-for strings, as it is the case for this particular gTLD.

69. The Independent Objector refers to the recent Resolution adopted by the Sixty-sixth World Health Assembly on 27 May 2013 on “eHealth standardization and interoperability” as providing a confirmation of his approach. In this Resolution, the World Health Assembly requests its Director-General “to convey to the appropriate bodies, including the ICANN Governmental Advisory Committee and ICANN constituencies, the need for health-related global top-level domain names in all languages, including “.HEALTH”, to be consistent with global public health objectives”.
70. The Independent Objector submits that the Application does not meet the standards that have to be applied to a highly sensitive gTLD and that the launch of this applied-for .MED gTLD would, indeed, be contrary to specific principles of international law as reflected in relevant international instruments of law.

6.4. The Applicant’s Reply to the Independent Objector’s Additional Statement

71. The Applicant maintains that the Independent Objector is wrong in arguing that it exceeded permitted length limit through the use of footnotes and inclusion of expert reports. According to the Procedure and the Guidebook, attachments are excluded from the length limitation. Although the Rules are silent on the inclusion of footnotes, the DRSP expressly directed that neither table of contents nor footnotes will count towards the 5000-word limit and the DRSP moreover confirmed that the Response was compliant with Article 11. Furthermore, every significant element of Medistry’s analysis was presented within the allowed length limit; the expert reports simply provide additional background on the relevant principles applicable to a controversial and unsettled aspect of international law. It is common to provide expert opinions on the scope of relevant international law and justice demands a thorough analysis of relevant international law principles.

72. On the merits, the Applicant submits that the .MED gTLD will be restricted to trustworthy sources of information; the Cleveland Clinic possesses the requisite expertise and incentives to vet sources of information; and the strategy for operating the gTLD includes review of any complaints by the Cleveland Clinic for quality assurance.
73. Concerning the World Health Assembly Resolution quoted by the Independent Objector, the Applicant argues that not only is such a resolution not binding, but its very general exhortation “that health-related gTLDs should “be consistent with global public health objectives” does not call for prohibiting such gTLDs, or even imposing the Independent Objector’s suggested requirement of connection with public authorities and non-commercial purpose.
74. The Independent Objector has not proven, and cannot prove, that international law would prevent a private party from disseminating health-related information, even if such actions “might” interfere with states’ obligations. .MED is not contrary to any principles of international law, is consistent with the goal of promoting health and is protected by the right to free expression.

7. ANALYSIS

75. In the following section the standards of adjudication and relevant legal principles for a Limited Public Interest objection are discussed in detail and applied to the facts of the case. In applying the standards the Panel is mindful that the Independent Objector bears the burden of proof in respect of both standing and merits.⁵ If he has standing, the Independent Objector must show that the applied-for gTLD string is contrary to

⁵ Guidebook, s. 3.5; Procedure, art. 20(c).

generally accepted legal norms of morality and public order that are recognized under principles of international law.

76. It should be noted that the Expert Panel comes to this Determination applying a principle of judicial economy arising out of the nature of these proceedings, which involve brief submissions (which are subject to strict word limits) and an expedited schedule for their disposal. Hence, while the issues raised are complex and have received serious consideration by both the parties and the Panel, the Panel's determination will be correspondingly brief.

7.1. The "Quick Look" Procedure

77. Subsection 3.2.2.3 of the Guidebook provides that anyone may file a Limited Public Interest objection. Due to this inclusive standing base, however, objectors are subject to a "quick look" procedure designed to identify and eliminate frivolous or abusive objections. An objection found to be manifestly unfounded or an abuse of the right to object may be dismissed at any time.
78. The quick look was the Panel's first task after its appointment by the DRSP and involved an initial review on the merits of the Objection in the light of the requirements of subsection 3.2.2.3 of the Guidebook. A Limited Public Interest objection would be manifestly unfounded if it did not fall within one of the categories defined as the grounds for such an objection at section 3.5.3 of the Guidebook. A Limited Public Interest objection may also be an abuse of the right to object. An objection may be framed to fall within one of the accepted categories for Limited Public Interest objections, but other facts may clearly show that the objection is abusive.

79. On 13 August 2013, the Expert Panel informed the parties that it had conducted the “quick look” procedure contemplated in subsection 3.2.2.3 of the Guidebook and had not found the Objection to be manifestly unfounded or an abuse of the right to object such that it should be summarily dismissed.

7.2. The Independent Objector’s Standing

80. Section 3.2.5 of the Guidebook provides that a formal objection to a gTLD application may be filed by the Independent Objector on the grounds of Limited Public Interest or Community. The Independent Objector may file a Limited Public Interest objection to an application even if a Community objection has been filed, and vice versa. The Independent Objector may file an objection notwithstanding the fact that a String Confusion objection or a Legal Rights objection has also been filed in respect of that application. Absent extraordinary circumstances, the Independent Objector is not permitted to file an objection to an application where an objection has already been filed on the same ground. There is no issue here in any of these respects because this Objection was brought on the ground of Limited Public Interest and no other objection has been filed on the same ground.
81. Section 3.2.5 of the Guidebook also imposes a public comment requirement. The Guidebook states that “in light of the public interest goal” associated with his role, “the Independent Objector shall not object to an application unless at least one comment in opposition to the application is made in the public sphere.” As the Independent Objector indicates, several public comments were filed on the ICANN website in respect of the Application. The Panel is satisfied that the public comment requirement imposed by the Guidebook has been met in this case.
82. One last point bears mention in the context of our analysis of standing. According to section 3.2.5 of the Guidebook, “the Independent Objector may file objections against

‘highly objectionable’ gTLD applications.” Conceivably, this could be viewed as raising a question of standing. The parties have not formally addressed the issue as a matter of standing, however, and the Panel will therefore treat it as a question of merits.

7.3. The Admissibility of Certain Documents

83. A preliminary objection raised by the Independent Objector as to the admissibility of certain documents submitted as evidence by the Applicant must now be considered before the Panel turns to the merits.
84. The Independent Objector raised a preliminary question concerning the admissibility of two expert reports filed by the Applicant as Annex 2 and Annex 3 to the Response. These are presented by the Applicant as expert evidence on international law and are referenced in the Response. The Independent Objector argues that the reports are essentially a means for the Applicant to get around the page limits imposed by the Procedure. Each of the reports is approximately of the same length as the maximum respectively allowed for the Objection and the Response pursuant to the Procedure. The Independent Objector concludes that the annexes, “under the disguise of ‘expert opinions’, are nothing more (or nothing less) than extensions and/or expansions of the Applicant’s Response”. The Independent Objector requests that the annexes be struck from the record as inadmissible.
85. The Applicant objects to the request and disagrees with the Independent Objector’s allegations, arguing that every significant element of its analysis was presented within the prescribed length limitation and that the expert reports simply provided additional background on the relevant principles applicable to a controversial an unsettled aspect of international law.

86. The Panel reserved this preliminary issue to its Determination and informed the parties accordingly. Neither party objected to this course of action. In the meantime, the Panel members refrained from reviewing the expert reports.
87. The Panel finds it unnecessary to decide this preliminary issue because it has been able to dispose of the Objection on the merits without having to consult the expert reports at issue.

7.4. The Standards of Adjudication and Legal Principles

88. Section 3.5 of the Guidebook stipulates that each panel will use appropriate general principles (standards) to evaluate the merits of each objection, while Article 20(a) of the Procedure obliges each panel to apply the standards that have been defined by ICANN. In addition, pursuant to Article 20(b) of the Procedure, the Panel “may refer to and base its findings upon the statements and documents submitted and any rules or principles that it determines to be applicable.”
89. In the case of a Limited Public Interest objection, section 3.5.3 of the Guidebook specifies that an expert panel will consider “whether the applied-for gTLD string is contrary to general principles of international law for morality and public order”.
90. The first point to consider is the appropriate object of the Panel’s analysis. The Applicant argues that the true purpose of the Limited Public Interest objection is to prevent the delegation of strings that are, in and of themselves, objectionable. The Independent Objector, however, maintains that the question is not, or at least not only, whether the string is objectionable, but rather whether the applied-for gTLD string and its intended operation may be objectionable from the perspective of general principles of international law for morality and public order. The Independent Objector’s position is not that the word or abbreviation “med” would be objectionable *per se* but

that the Application does not guarantee its use in full respect of general principles of international law for morality and public order.

91. One example should be enough to show that the Independent Objector’s position on this point is correct. Suppose an enterprise specializing in the production of films intended for adults was applying for the .KIDS string and proposing to operate it as a domain reserved for pornographic materials. It should be obvious that the Limited Public Interest objection was intended to cover such a case. Yet, there would be nothing highly objectionable in the string .KIDS considered independently from the context of the intended purpose of the gTLD.
92. The Panel notes that the correct approach is quite clearly stated in the Guidebook, which provides that “the Panel will conduct its analysis on the basis of the applied-for gTLD string itself” but “may, if needed, use as additional context the intended purpose of the gTLD as stated in the Application.” The Panel will thus proceed on that basis.
93. Section 3.5.3 of the Guidebook provides useful guidance concerning “the general principles of international law for morality and public order” which it contemplates:

Examples of instruments containing such general principles include, but are not limited to:

- The Universal Declaration of Human Rights (UDHR);
- The International Covenant on Civil and Political Rights (ICCPR);
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);
- The International Convention on the Elimination of All Forms of Racial Discrimination;
- Declaration on the Elimination of Violence against Women;
- The International Covenant on Economic, Social, and Cultural Rights;

- The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment;
- The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families;
- The Slavery Convention;
- The Convention on the Prevention and Punishment of the Crime of Genocide; and
- The Convention on the Rights of the Child.

94. The Guidebook notes that these instruments “are included to serve as examples, rather than an exhaustive list,” and that they “vary in their ratification status.” The Guidebook also observes that “states may limit the scope of certain provisions through reservations and declarations indicating how they will interpret and apply certain provisions.”

95. One principle which finds express mention in section 3.5.3 of the Guidebook is freedom of expression. The Guidebook however adds that “the exercise of this right carries with it special duties and responsibilities” and that “certain limited restrictions may apply.”

96. The following part of section 3.5.3. elaborates on the grounds upon which an applied-for gTLD string may be considered contrary to generally accepted legal norms relating to morality and public order that are recognized under principles of international law. Four such grounds are identified:

- Incitement to or promotion of violent lawless action;
- Incitement to or promotion of discrimination based upon race, color, gender, ethnicity, religion or national origin, or other similar types of discrimination that violate generally accepted legal norms recognized under principles of international law;
- Incitement to or promotion of child pornography or other sexual abuse of children;

or

- A determination that an applied-for gTLD string would be contrary to specific principles of international law as reflected in relevant international instruments of law.

97. The present Objection is based upon the fourth ground, namely that the string would be contrary to specific principles of international law as reflected in relevant international instruments of law.
98. According to the Applicant, this ground should be considered in the context of the other three, pursuant to an *ejusdem generis* approach. The Applicant maintains that the first three grounds “set a high standard for general acceptance” and that “[o]nly specific international norms with a similar degree of general acceptance should form a basis” for a Limited Public Interest objection. Relying on explanatory memoranda published by ICANN during the development process of the new gTLD program, the Applicant adds that the first three categories are generally accepted as “legitimate restrictions on expression”, but that other categories – for example, incitement to non-violent illegal activities – are not.
99. The Independent Objector disagrees with this analysis, discounting the memoranda and arguing that the fourth ground is different in kind from the other three, thus excluding the *ejusdem generis* approach. He also argues that the “or” that separates the third and fourth grounds (as opposed to an “and”) takes away any doubt as to the scope for applying the *ejusdem generis* approach.
100. In the Panel’s view there can be no doubt that the four grounds are similar insofar as they all correspond to a notion of contrariety to generally accepted norms of morality and public order. If a situation of contrariety to international law does not relate to morality and public order, then an objection cannot stand. At the same time, the Panel notes that the fourth ground is indeed different from the first three in an important way.

The first three grounds each provide a specific basis for a finding that the string is “contrary to generally accepted legal norms relating to morality and public order that are recognized under principles of international law.” They refer to specific actions deemed contrary to the relevant norms, i.e., “incitement to or promotion of [...] violent, lawless action”, “discrimination” and “sexual abuse of children”. The fourth ground, by contrast, leaves open the scope of further possible substantive violations, but imposes an important requirement: the string must be contrary to *specific* principles of international law that rise to the level of generally accepted legal norms relating to morality and public order.

101. Under the overall requirement of contrariety “to generally accepted legal norms relating to morality and public order that are recognized under principles of international law”, the fourth ground leaves it to the discretion of the Expert Panel to determine if the applied-for gTLD is contrary to a specific principle or principles of international law relating to morality and public order. In this limited sense the *ejusdem generis* approach is appropriate. The three preceding grounds provide an indication to the Expert Panel of the kinds of principles of international law that are sufficiently specific, and of the kinds of grounds considered sufficiently serious, to restrict the right to freedom of expression of the Applicant.
102. The Panel notes that the first three grounds mentioned in section 3.5.3 could potentially afford a basis for necessary and proportionate restrictions on free expression under international law, in terms, for example, of Article 19(3)(b) and Article 20(2) of the ICCPR. There are other grounds on which free expression may be limited, i.e.: respect for the rights or reputations of others, national security, public order, public health or morals. In the Panel’s view, the reference to “morality” and “public order” in the first paragraph of section 3.5.3 of the Guidebook does not exclude limitations of free expression on such other grounds as are mentioned in the ICCPR. While also accepting that – as underscored in section 3.5.3 of the Guidebook – state practice on the interpretation of these provisions (including the right to free

expression) varies, in the Panel’s view there is a specific principle of international law, reflected in relevant international legal instruments, which permits limitation of free expression on public health grounds.

7.5. The Merits of the Objection

103. The Independent Objector alleges that the applied-for gTLD string, in light of the Application, is contrary to a specific principle of international law, namely the right to health, as protected under international law. He argues that his appreciation of the .MED gTLD is directly linked to his appreciation of the concept of health, since the abbreviation “med” for medical and medicine is inextricably connected to health. He lists several instruments of international law that confirm the existence of a right to health and concludes that the promotion and protection of health is inherent in the due respect of generally accepted legal norms of public order that are recognized under fundamental principles of international law. He argues that the right to health extends to access to reliable and trustworthy health-related education and information.

104. The Applicant does not contest that the right to health “as reflected in relevant international instruments of law” is “generally accepted,” and that it relates to “morality and public order”. However, the Applicant submits that the scope and content of the right to health, and whom it obligates, are far from clear, and also contends that it clearly does not prevent anyone from simply sharing health information, in a gTLD or otherwise. The Applicant submits that non-state actors have no direct international obligations related to health. Moreover, the Applicant argues that, even assuming the right to health could be impaired by a health-related gTLD, such a concern does not rise to the level of a threat to public order, and, moreover, is inapplicable to the restricted .MED gTLD proposed by Medistry.

105. The Independent Objector has framed his Objection in terms of the right to health rather than in terms of public health as a valid ground for limiting freedom of expression. There are analytical differences between the right to health as an individual human right (enshrined, for example, in Article 12 of the International Covenant on Economic, Social, and Cultural Rights (“ICESCR”)) and public health as a ground for limiting freedom of expression (in terms, for example, of Article 19 of the ICCPR). It is worth exploring these differences to cast light on the state of international law in this area.
106. The right to health is defined by the United Nations Committee on Economic, Social and Cultural Rights as the right to the highest attainable standard of physical and mental health.⁶ In the interpretation of the Committee, the right to health also includes the right to receive and have access to information about health.⁷ As the terms of Article 12 of the ICESCR indicate, the principal obligor is the state. The Independent Objector has however stressed that “not only public authorities, but also the private sector have responsibilities vis-à-vis the protection of human rights.” The Panel does not consider it necessary to come to a definitive view on the question of the extent to which, if any, non-state actors may be bound by international human rights obligations, because, as explained below, the right to health question can be resolved by reference to the content of the right.
107. Where public health appears as a ground for restricting freedom of expression, as for example in the case of Article 19 of the ICCPR, it has permissive rather than obligatory effects. States are permitted to limit the exercise of free expression on public health grounds. But they are not obliged to do so – at least not in terms of Article 19 of the ICCPR.

⁶ United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 14, *The right to the highest attainable standard of health (art.12 of the Covenant on Economic, Social and Cultural Rights)*, 11 August 2000, E/C. 12/2000/4, para.9.

⁷ *Id.*, para. 11.

108. It is conceivable that an obligation to restrict freedom of expression may arise as part of a state's obligation vis-à-vis the right to health. But such a restriction would still have to satisfy the conditions in the limitation clause in Article 19 (or other equivalent provisions protecting free expression). A restriction of free expression cannot be justified solely on the basis of its purported positive consequences on the right to health. To do so would result in endless expansions in the permissible limitations of freedom of expression by reference to consequentialist arguments about the impact that a particular restriction could have on the enjoyment of other rights. Moreover, such restrictions must be both necessary and proportionate.
109. Furthermore, as the Independent Objector has himself noted, the information-related element of the right to health is the right to *have access* to information that is reliable and trustworthy. It does not follow from this right that a state has a duty to censor all information on health that is not deemed reliable and trustworthy.
110. The above analysis of the relationship between the right to health, freedom of expression and public health as a ground for limiting free expression informs the approach of the Panel. The Panel accepts that the right to health is a specific principle of international law, but that right has to be considered in light of the right to freedom of expression and of the limited grounds upon which it is permissible to restrict this right.
111. Starting from those premises, the Independent Objector bears the burden of proving that the applied-for gTLD string, in light of the Application, would be “contrary” to the right to health, that a restriction on freedom of expression would be permissible under section 3.5.3 of the Guidebook, and hence that the Objection should be sustained (Article 20 of the Procedure). The Panel finds that the Independent Objector has failed to discharge its burden of proof in this case.

112. The Applicant rightly points out that the right to health, on its face, does not prevent anyone from simply sharing health information, in a gTLD or otherwise. The Independent Objector affirms, but fails to establish, that the right to health prohibits the dissemination of health-related information on a commercial basis.
113. The Independent Objector claims that the private sector has responsibilities vis-à-vis the protection of human rights, but links these responsibilities to the idea of a possible interference with the obligations imposed on public authorities by international law: “[p]roviding medical related information on a worldwide basis”, he writes, “*might* interfere with efforts of public authorities to fulfill their obligations” under international law. (emphasis added)
114. The Independent Objector has not demonstrated to the Panel’s satisfaction that the capacity or efforts of public authorities to fulfill their international obligations by protecting and promoting the right to health would be affected by the delegation of the applied-for string and, furthermore, how such alleged interference by the applied-for gTLD string (in the context of the intended purpose thereof) would be contrary to a specific principle of international law relating to public morality, public health or public order.
115. Even if the Panel were to assume, *arguendo*, that the capacity and efforts of public authorities to protect and to promote the right to health might be adversely affected, it would still be necessary to show that morality and public order – or any of the other grounds on which limitations of free expression are justifiable under international law – are engaged in a way that justifies a limitation on freedom of expression. Free expression cannot be limited merely on the grounds of policy convenience. As noted earlier, the threshold for a permissible restriction is higher. In the case of public health, the restriction must also be shown to be necessary to the protection of public health. The Independent Objector does not meet this necessity test.

116. Even if one were to consider the Independent Objector’s case exclusively on right to health grounds, and not take into account the principles governing the limitation of freedom of expression, the Objection would have to fail. In fact, in the view of the Committee on Economic, Social and Cultural Rights, information accessibility in relation to the right to health “includes the right to seek, receive and impart information and ideas concerning health issues.” It does not include the right to be protected from the mere risk of misleading or misleading or unreliable information. Had there been proof of a significant risk of dissemination of misleading or unreliable information, or a deliberate intention to this effect, the Panel’s assessment may well have differed. But the Independent Objector has offered no such evidence. For its part, the Applicant has provided various assurances, most notably in relation to the administration of the gTLD.
117. The Panel thus finds that the Independent Objector has failed to bridge the large gap between, on the one hand, his bare allegation that the capacity or efforts of states to fulfill their obligations under the right to health *might* be affected by the applied-for gTLD, and, on the other hand, a demonstration of how such a scenario would be contrary to a specific principle of international law relating to public morality, public health or public order. The Objection must therefore fail.

7.6. The Alternative Remedy

118. In the event the Objection is not successful, the Independent Objector seeks an alternative remedy. He asks this Panel “to hold the present Objection is valid as long as the Applicant has not provided solutions for the serious objections raised”. The Independent Objector does not provide details of this alternative remedy or of its basis in the Guidebook or the Procedure. The Procedure indicates quite clearly that the available remedies are “limited to the success or dismissal of an Objection and to the refund by the DRSP to the prevailing party, as determined by the Panel in its Expert


Determination, of its advance payment(s) of costs pursuant to Article 14(e) of this Procedure and any relevant provisions of the applicable DRSP Rules.” The Panel finds that there is no basis in the Procedure for the alternative remedy sought by the Independent Objector.

119. This does not take away from the serious concerns raised by the Independent Objector. However, the very difficult policy questions surrounding the delegation and operation of health-related strings are not matters for this Panel to decide. It was not in particular this Panel’s task to decide on matters of public interest broadly defined, although the expression “Limited Public Interest” might suggest otherwise. This Panel was asked only to determine whether the Objection could be sustained on the basis that the applied-for gTLD string (in the context of its intended purpose) was contrary to general principles of international law for morality or public order. It was not, in other words, the task of this Panel to determine whether granting the Application advances the public interest in a more general sense. This Panel’s task was to impartially apply the tests as they are found in the Guidebook and as they may be understood from a consideration of the broader context in which they came to be formulated.

8. DETERMINATION

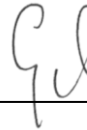
120. For the reasons provided above and in accordance with Article 21(d) of the Procedure, the Panel
- **DISMISSES** the Limited Public Interest Objection to Medistry, LLC’s Application for the string .MED brought by the Independent Objector;
 - **DECLARES** that the prevailing party for the purpose of cost advance refund under Article 14(e) of the Procedure is Medistry, LLC; and

- DISMISSES all other requests in these proceedings.



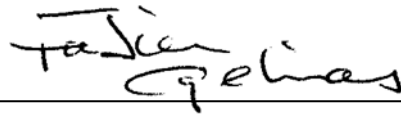
Mr. John Gaffney

Co-Expert of the Expert Panel



Professor Guglielmo Verdirame

Co-Expert of the Expert Panel



Professor Fabien Gélinas

Chair of the Expert Panel

Date: 19 December 2013