

INDEPENDENT REVIEW PROCESS

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

Dot Sport Limited ) ICDR CASE NO. 01-14-0001-5004  
 )  
Claimant, )  
 )  
and )  
 )  
INTERNET CORPORATION FOR ASSIGNED )  
NAMES AND NUMBERS, )  
 )  
Respondent. )  
\_\_\_\_\_ )

**ICANN'S RESPONSE TO CLAIMANT DOT SPORT LIMITED'S  
REQUEST FOR INDEPENDENT REVIEW PROCESS**

Jeffrey A. LeVee  
Eric P. Enson  
Rachel H. Zernik  
JONES DAY  
Contact Information Redacted

Counsel to Respondent  
The Internet Corporation  
For Assigned Names and Numbers

## TABLE OF CONTENTS

	Page
INTRODUCTION.....	1
BACKGROUND FACTS.....	4
STANDARD OF REVIEW.....	12
ARGUMENT.....	14
I. THE BOARD PROPERLY DENIED CLAIMANTS' RECONSIDERATION REQUESTS REGARDING THE ALLEGED CONFLICT OF INTEREST.....	14
A. THE BOARD CORRECTLY FOUND THAT THE ICC AND EXPERT HAD FOLLOWED ESTABLISHED PROCEDURES WITH RESPECT TO THE EXPERT'S APPOINTMENT .....	15
B. THE BOARD CORRECTLY FOUND THAT CLAIMANT'S CHALLENGE TO THE EXPERT WAS UNTIMELY .....	18
C. THE BOARD PROPERLY DID NOT CONSIDER A DRAFT REPORT FROM ICANN'S OMBUDSMAN .....	19
II. CLAIMANTS' CONTENTION THAT THE EXPERT ERRED IS IRRELEVANT TO THIS IRP, AND IS IN ANY EVENT MERITLESS.....	21
III. THE BOARD HAD NO OBLIGATION TO INTERVENE FURTHER WITH RESPECT TO THE EXPERT'S DETERMINATION .....	22
IV. CLAIMANTS' CHALLENGES TO THE GUIDEBOOK'S OBJECTION PROCEDURES ARE UNSUPPORTED AND TIME BARRED.....	23
V. RESPONSE TO THE CLAIMANTS' REQUESTED RELIEF.....	25
CONCLUSION .....	25

## INTRODUCTION

The Internet Corporation for Assigned Names and Numbers (“ICANN”) hereby submits this Response to the Request for Independent Review Process (“IRP Request”) submitted by claimant Dot Sport Limited (“Claimant”) on 12 March 2015.

1. Claimant applied to ICANN for the opportunity to operate the new generic top level domain (“gTLD”) .SPORT (“Application”). The New gTLD Applicant Guidebook (“Guidebook”) that ICANN and the community developed over a number of years to evaluate new gTLD applications provides that a “community objection” may be filed against an application where “[t]here is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.”<sup>1</sup>

2. SportAccord, an umbrella organization for international sports federations and other sport-related international associations, filed a community objection to Claimant’s .SPORT Application. The International Centre for Expertise of the International Chamber of Commerce (“ICC”), which is the independent dispute resolution provider identified in the Guidebook as the provider administering community objections, appointed an expert panelist (“Expert”) to evaluate SportAccord’s objection.

3. The Expert ultimately issued a determination upholding SportAccord’s community objection (“Expert Determination”). Disappointed with that outcome, Claimant has used a number of arguments to challenge the Expert Determination. Claimant filed two requests for reconsideration with ICANN’s Board, arguing that the

---

<sup>1</sup> Guidebook, § 3.2.1. (Cl. Ex. RM-5). Claimant submitted two sets of numbered exhibits with its IRP Request: (1) “Annexes”; and (2) “Reference Materials”. Citations to “Cl. Ex. Annex-\_\_” refer to exhibits submitted in Claimant’s Annexes, citations to “Cl. Ex. RM-\_\_” refer to exhibits submitted in Claimant’s Reference Materials. Citations to “Resp. Ex. \_\_” refer to exhibits submitted by ICANN.

Expert had substantively erred in reaching its Expert Determination and that the Expert was not impartial, based on information that was publicly available before the Expert Determination was issued.

4. ICANN's Board (through its authorized Board committees) reviewed and denied both of Claimant's requests because the Claimant did not state a proper basis for reconsideration, as set forth in ICANN's Bylaws. In this IRP, the Claimant now challenges the Board's denial of its two reconsideration requests, as well as the ICC's appointment of the Expert. But as set forth below, the Board did not violate any Article or Bylaws provision by denying Claimant's reconsideration requests. Rather, the Board correctly determined that the ICC and the Expert followed established procedure with respect to the appointment of the Expert and the Expert Determination.

5. In this IRP, Claimant also asserts general challenges to the ICANN Board's failure to intervene in the Expert Determination as well as the dispute resolution procedures set forth in the Guidebook. In another IRP filed against ICANN in 2014, *Booking.com v. ICANN*, Booking.com made similar claims. In that IRP, Booking.com, which had applied for the new generic top level domain .HOTELS, argued that ICANN's Board should have intervened with respect to a third-party expert determination issued in conjunction with the New gTLD Program.<sup>2</sup> Booking.com also challenged the dispute resolution process set out in the Guidebook.<sup>3</sup>

6. In its Final Declaration dated March 3, 2015, the *Booking.com* IRP Panel unanimously rejected Booking.com's claims, determining that Booking.com improperly sought to challenge the independent judgment of ICANN's Board and that

---

<sup>2</sup> *Booking.com v. ICANN*, ICDR Case No. 50-20-1400-0247, Final Determination ("*Booking.com* Final Determination") ¶ 80 (Resp. Ex. 1).

<sup>3</sup> *Id.* ¶¶ 71-78.

Booking.com's challenges to the Guidebook, which was issued in 2012, were time-barred.<sup>4</sup> This Panel should reach the same result.

7. IRP proceedings are conducted pursuant to Article IV, Section 3 of ICANN's Bylaws, which provide for a non-binding method of evaluating certain actions of ICANN's Board of Directors.<sup>5</sup> This IRP Panel has one (and only one) responsibility: to provide a declaration stating the Panels' opinion as to "whether the Board has acted consistently with the provisions of [ICANN's] Articles of Incorporation and Bylaws."<sup>6</sup>

8. Ultimately, neither the appointment of the Expert nor the Expert Determination constitutes ICANN Board action. The only Board actions at issue here are: (1) the decisions by the Board to deny Claimants' two Reconsideration Requests; and (2) the Board's adoption of the Guidebook. As discussed herein, in making those decisions, the Board unequivocally followed ICANN's Articles and Bylaws.

9. ICANN understands that Claimant is disappointed that its Application will not proceed as a result of the Expert Determination. However, as recommended by ICANN's Generic Names Supporting Organization ("GNSO") – the part of the ICANN community designated by the Bylaws as "responsible for developing and recommending to the ICANN Board substantive policies relating to generic top-level domains"<sup>7</sup> – gTLD applications should be "rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted."<sup>8</sup> That is exactly what happened in this case, and there is

---

<sup>4</sup> *Id.* ¶¶ 129, 138, 146.

<sup>5</sup> ICANN's Bylaws ("Bylaws"), Art. IV, § 3 (Cl. Ex. RM-2), *also available at* <http://www.icann.org/en/about/governance/bylaws>.

<sup>6</sup> *Id.*, Art. IV, § 3.4.

<sup>7</sup> *Id.*, Art. X, § 1.

<sup>8</sup> GNSO Final Report on the Introduction of New Generic Top-Level Domains at 5 (Recommendation 20) (Cl. Ex. RM-9).

no support for the notion that this result was based on the ICANN Board violating ICANN's Articles or Bylaws.

## **BACKGROUND FACTS**

### **Background Information On ICANN**

10. ICANN was formed in 1998. It is a California not-for-profit public benefit corporation. As set forth in its Bylaws, ICANN's mission "is to coordinate, at the overall level, the global Internet's system of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems," including the domain name system ("DNS").<sup>9</sup>

11. ICANN is a complex organization that facilitates input from stakeholders around the globe. ICANN has an international Board of Directors and over 300 staff members. Yet, ICANN is much more than just the corporation—it is a community of participants. In addition to the Board, the staff, and an Ombudsman,<sup>10</sup> the ICANN community includes a Nominating Committee,<sup>11</sup> three Supporting Organizations,<sup>12</sup> four Advisory Committees,<sup>13</sup> a group of technical expert advisors,<sup>14</sup> and a large, globally distributed group of community members who participate in ICANN's processes.

12. In its early years, and in accordance with its Core Values, ICANN focused on increasing the number of companies that could sell domain name registrations to consumers ("registrars"). ICANN also focused on expanding, although more slowly, the number of companies that operate gTLDs ("registries"). In 2000, ICANN approved seven gTLDs in a "proof of concept" phase that was designed to confirm that the addition

---

<sup>9</sup> Bylaws, Art. I, § 1 (Cl. Ex. RM-2).

<sup>10</sup> *Id.*, Art. V.

<sup>11</sup> *Id.*, Art. VII.

<sup>12</sup> *Id.*, Arts. VIII-X.

<sup>13</sup> *Id.*, Art. XI.

<sup>14</sup> *Id.*, Art. XI-A, § 2.

of new gTLDs would not adversely affect the stability and security of the Internet. In 2004 and 2005, ICANN approved a handful of additional TLDs.

### **Background Information On The New gTLD Program**

13. The New gTLD Program (“Program”) constitutes by far ICANN’s most ambitious expansion of the Internet’s naming system. The Program’s goals include enhancing competition and consumer choice, and enabling the benefits of innovation via the introduction of new gTLDs, including both new ASCII gTLDs and new non-ASCII, internationalized domain name (“IDN”) gTLDs.<sup>15</sup> In developing the Program with the ICANN community, numerous versions of the Guidebook were prepared, distributed for public comment, and then revised as a result of the public input received. That process repeated many times and over many years until ultimately, ICANN went forward with the Program based on the version of the Guidebook published on 4 June 2012, which provides detailed instructions to gTLD applicants and sets forth the procedures as to how new gTLD applications would be evaluated. As a result, the Program has been a great success at achieving its goals: ICANN received 1,930 gTLD applications, and as of this writing, almost 600 new gTLDs have been added to the Internet, with hundreds more to come.

14. Within the Program, section 3.2.1 of the Guidebook enumerates grounds upon which objections to gTLD applications may be filed.<sup>16</sup> One grounds for objection is a “community objection,” i.e., that “[t]here is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be

---

<sup>15</sup> IDN gTLDs are gTLDs that include characters not within the US-ASCII (American Standard Code for Information Exchange) or Latin alphabets.

<sup>16</sup> Guidebook, § 3.2.1 (Cl. Ex. RM-5).

explicitly or implicitly targeted.”<sup>17</sup> Section 3.2.3 of the Guidebook provides that if a community objection is filed, the ICC will administer the dispute resolution process.<sup>18</sup>

15. Section 3.5.4 of the Guidebook provides that a community objection will be upheld if the objector demonstrates that: (1) “the community invoked by the objector is a clearly delineated community,” (2) “[c]ommunity opposition to the application is substantial,” (3) “[t]here is a strong association between the community invoked and the applied-for gTLD string,” and (4) “[t]he application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted.”<sup>19</sup> Section 3.5.4 also includes detailed descriptions of the requirements to demonstrate each of these elements.<sup>20</sup>

#### **Relevant Facts Concerning Reconsideration Requests and ICANN’s Ombudsman**

16. ICANN’s Bylaws provide for two accountability mechanisms in addition to the IRP procedures. First, those who have been materially affected by actions or inactions by ICANN’s Board, staff, or a third-party service provider or expert with respect to the New gTLD Program, may request reconsideration if: (1) the Board acted without consideration of material information or in reliance on false or inaccurate material information; or (2) staff or a third-party service provider or expert for the New gTLD Program acted in “contradict[ion of] established ICANN policy(ies).”<sup>21</sup>

17. In addition, ICANN has an Ombudsman authorized to “provide an independent internal evaluation of complaints by members of the ICANN community

---

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* § 3.2.3.

<sup>19</sup> *Id.* § 3.5.4.

<sup>20</sup> *Id.*

<sup>21</sup> Bylaws, Art. IV, § 2.2(a); BGC Recommendation on Request 13-5 at 4, *available at* <https://www.icann.org/en/system/files/files/recommendation-booking-01aug13-en.pdf>.



who believe that the ICANN staff [or] Board [] ha[ve] treated them unfairly.”<sup>22</sup>

Importantly, the Bylaws make clear that complaints to the Ombudsman cannot be pursued concurrently with other accountability mechanisms.<sup>23</sup>

**Relevant Facts Regarding the Community Objection Against Claimant’s Application for .SPORT**

18. The Claimant and SportAccord each submitted an application for .SPORT. On 13 March 2013, SportAccord filed a community objection against Claimant’s Application. On 20 June 2013, the ICC appointed Jonathan P. Taylor as the expert to assess SportAccord’s Objection.

19. As permitted pursuant to Article 11(4) of the Rules for Expertise of the ICC (“ICC Rules”) and Paragraph 9 of the ICC Practice Note on the Administration of Cases Under the New gTLD Dispute Resolution Procedure (“Practice Note”), Claimant objected to Mr. Taylor’s appointment on 27 June 2013, within five days of his appointment.<sup>24</sup> Claimant objected to the fact that Mr. Taylor was a sports lawyer and noted that he had represented the International Rugby Board – which had objected to another string for which Claimant had applied, .RUGBY – and worked for the IOC.<sup>25</sup> On 25 July 2013, the ICC determined not to confirm the appointment of Mr. Taylor.<sup>26</sup>

20. On 29 July 2013, the ICC nominated Dr. Guido Santiago Tawil to consider SportAccord’s Objection and notified the parties of the appointment. Dr. Santiago Tawil provided his CV and filled out a Declaration of Acceptance and Availability and Statement of Impartiality and Independence, stating that he had nothing

---

<sup>22</sup> *Id.*, Art. V, § 2.

<sup>23</sup> *Id.*

<sup>24</sup> Rules for Expertise of the ICC, Art. 11(4) (Resp. Ex. 2); ICC Practice Note on the Administration of Cases Under the New gTLD Dispute Resolution Procedure ¶ 9 (Resp. Ex. 3).

<sup>25</sup> Claimant’s Objection to Jonathan P. Taylor at 3 (Cl. Ex. Annex-12).

<sup>26</sup> 25 July 2013 Letter from the ICC to SportAccord and Claimant (Cl. Ex. Annex-13).

to disclose and could be impartial and independent.<sup>27</sup> Dr. Santiago Tawil's practice focuses not on sports law, but on international arbitration, administrative law, and regulator practice.<sup>28</sup>

21. Again, Claimant had the right to object to Dr. Santiago Tawil's appointment, but did not do so, and on 23 October 2013, the Expert rendered a Determination upholding SportAccord's Objection.

22. Following the issuance of the Expert Determination—over six months after the Expert's appointment, and well after Claimant's right to object to his appointment had expired—Claimant claimed to have discovered that Dr. Santiago Tawil had allegedly participated as co-chair of a panel at a conference entitled "The quest for optimizing the dispute resolution process in major sport-hosting events." ("Dispute Resolution Conference")<sup>29</sup>

23. On 2 November 2013, the Claimant filed Reconsideration Request 13-16 ("First Reconsideration Request"), seeking reconsideration of the Expert Determination on the grounds that: (1) the Expert applied the wrong standard for assessing community objections; and (ii) the Expert failed to disclose material information relevant to his appointment, meaning his involvement in the Dispute Resolution Conference. The Claimant argued that the Expert's involvement in the Dispute Resolution Conference indicated that the Expert was attempting to create connections within the organized sporting industry, an industry of which SportAccord was a part.<sup>30</sup>

24. On 8 January 2014, ICANN's Board Governance Committee ("BGC"),

---

<sup>27</sup> Guido Santiago Tawil Nomination Materials (Cl Ex. Annex-14).

<sup>28</sup> *Id.*

<sup>29</sup> IRP Request ¶ 32.

<sup>30</sup> Request 13-16 at 6-7 (Cl. Ex. Annex-15).

which is tasked by the ICANN Board with reviewing reconsideration requests, denied Claimant's First Reconsideration Request.<sup>31</sup> The BGC found no support for Claimant's contention that the Expert applied the wrong standard for assessing community objections.<sup>32</sup> With respect to Claimant's argument about the Expert's alleged failure to disclose information relevant to his involvement in the Dispute Resolution Conference, the BGC noted that pursuant to the Guidebook, the ICC Rules of Expertise govern challenges to the appointment of experts, and that Claimant had provided no evidence that either the Expert, or the ICC itself, had failed to follow the ICC's rules.<sup>33</sup>

25. A few days later, on 15 January 2014, Claimant for the first time raised with the ICC the issue of the Expert's alleged failure to disclose his participation in the Dispute Resolution Conference.<sup>34</sup> Claimant requested that the ICC reconsider the Expert's appointment and "provide details of his interest, or the interest of any member of his firm [] in the subject of commercialization of the Olympics and/or sporting arbitration cases."<sup>35</sup>

26. On 6 February 2014, Claimant filed a complaint with ICANN's Ombudsman ("Complaint") reiterating the arguments Claimant had raised in its First Reconsideration Request regarding the substantive findings of the Expert Determination.<sup>36</sup>

27. Purportedly, on 25 March 2014 the Claimant discovered additional facts regarding an alleged relationship between the Expert and the International Olympic

---

<sup>31</sup> BGC Determination on Request 13-16 (Cl. Ex. Annex-21).

<sup>32</sup> *Id.* at 7-11.

<sup>33</sup> *Id.* at 12-13.

<sup>34</sup> 15 January 2014 Letter from Claimant to the ICC at 3 (Cl. Ex. Annex-16).

<sup>35</sup> *Id.*

<sup>36</sup> Claimant's Ombudsman Complaint (Cl. Ex. Annex-17).

Committee (“IOC”). Specifically, the Claimant claimed to have discovered that: (i) DirecTV, a client of the Expert’s firm,<sup>37</sup> acquired broadcasting rights for the Olympics from the IOC on 7 February 2014; and (ii) a partner in the Expert’s law firm is the president of Torneos y Competencias S.A. (“TyC”), a company that has a history of securing Olympic broadcasting rights.

28. Claimant forwarded this information to ICANN’s Ombudsman.<sup>38</sup> In addition, on 27 March 2014, Claimant sent a letter to the ICC regarding this information, stating that in Claimant’s view there was “little question . . . that Dr. Tawil provided false and/or information [*sic*] in respect to his declaration of impartiality” and requesting further information regarding the “specific steps leading to the selection and the appointment of Dr. Guido Tawil by the relevant ICC Standing Committee, including but not limited to any correspondence, minutes and the CVs of other potential candidates who may have been suggested.”<sup>39</sup>

29. On 29 March 2014, the ICC responded to Claimant.<sup>40</sup> The ICC informed Claimant that the ICC’s Rules and the Practice Note “set a specific time limit for objections,” and that the case had been closed and “neither the [Practice Note] nor the [ICC’s] Rules provide[d] a basis for reopening of a matter or a challenge of the Expert after closure of the matter.”<sup>41</sup> In addition, the ICC provided Claimant further information regarding its process for appointing experts.<sup>42</sup>

30. On 31 March 2014, without seeking comment from the ICC, and relying

---

<sup>37</sup> Claimant does not allege that DirecTV is the Expert’s client.

<sup>38</sup> See 31 March 2014 Email from Ombudsman to ICANN (Cl. Ex. Annex-23).

<sup>39</sup> 27 March 2014 Letter from Claimant to the ICC (Resp. Ex. 4).

<sup>40</sup> 29 March 2014 Letter from ICC to Claimant (Resp. Ex. 5).

<sup>41</sup> *Id.* at 1, 2.

<sup>42</sup> *Id.* at 1-2.

solely on the ICC's letter to Claimant, the Ombudsman sent an email to ICANN, copying the Claimant, regarding Claimant's complaint, and recommending that the Objection be reheard with a different expert.<sup>43</sup> On 1 April 2014, the ICC sent a letter to ICANN, objecting that the Ombudsman had never contacted the ICC for comment regarding the issue of the Expert and that it "was not given the opportunity to provide [the Ombudsman] with information relevant to the issues raised in the letter or to request additional comments from the concerned expert."<sup>44</sup> In response, the Ombudsman clarified for the Claimant that his email was not a final report and recommendation, and offered the ICC a chance to comment.

31. On 2 April 2014, the Claimant filed Reconsideration Request 14-10 ("Second Reconsideration Request"), seeking reconsideration of: (i) the BGC's denial of the First Reconsideration Request; (ii) the Expert Determination, and (iii) the ICC's appointment of the Expert.<sup>45</sup> But pursuant to Article V, Section 2 of ICANN's Bylaws, a complaint with the Ombudsman may not be pursued concurrently with another accountability mechanism, such as a request for reconsideration.<sup>46</sup> On or about 13 May 2014, the Ombudsman advised ICANN that the Claimant had confirmed that it was fully aware of this Bylaws provision and chose to pursue its Second Reconsideration Request, rather than its complaint with the Ombudsman.<sup>47</sup>

32. On 21 June 2014, the BGC recommended that the Second Reconsideration be denied, finding that the Claimant's arguments regarding the allegedly newly-

---

<sup>43</sup> 31 March 2014 Email from Ombudsman to ICANN (Cl. Ex. Annex-23).

<sup>44</sup> 1 April 2014 Letter from the ICC to ICANN at 2 (Resp. Ex. 6).

<sup>45</sup> Reconsideration Request 14-10 (Cl. Ex. Annex-24).

<sup>46</sup> Bylaws, Art. V, § 2 (Cl. Ex. RM-2).

<sup>47</sup> BGC Recommendation on Request 14-10 at 4 (Cl. Ex. Annex-25). The Second Reconsideration Request sought reconsideration of a Board action, namely the BGC's denial of Claimant's First Reconsideration Request. For reconsideration requests involving staff action, the BGC may make a final determination; for requests involving Board action, the BGC issues a recommendation to the Board. Bylaws, Art. IV, § 2.3(f)-(g).

discovered information regarding the Expert's conflict of interest were not timely, under the ICC's rules, and in any event did not support reconsideration.<sup>48</sup> On 18 July 2014, ICANN's New gTLD Program Committee ("NGPC") accepted the BGC's recommendation.<sup>49</sup>

33. Claimant then initiated a Cooperative Engagement Process ("CEP") with ICANN,<sup>50</sup> and then subsequently filed this IRP. Due to its invocation of those processes, Claimant never renewed or pursued its Ombudsman Complaint and thus the ICANN Board appropriately did not consider the Ombudsman's draft report.

#### STANDARD OF REVIEW

34. The IRP is a unique, non-binding process available under ICANN's Bylaws for persons or entities that claim to have been materially and adversely affected by a decision or action of the ICANN Board, and only to the extent that Board action was inconsistent with ICANN's Articles or Bylaws.<sup>51</sup> The IRP Panel is tasked with providing its opinion as to whether the challenged Board actions violated ICANN's Articles or Bylaws.<sup>52</sup> ICANN's Bylaws specifically identify the standard of review that the IRP Panel must apply when evaluating the actions of the ICANN Board, focusing on:

- a. Did the Board act without conflict of interest in taking its decision?;
- b. Did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?; and

---

<sup>48</sup> *Id.*

<sup>49</sup> NGPC Resolution No. 2014.07.18.NG01 (Cl. Ex. Annex-26). The NGPC is a Board committee composed of all ICANN Board members without any conflicts with respect to any new gTLD applicants. ICANN's Board delegated the NGPC all decisionmaking authority with respect to the New gTLD Program. Resolutions 2012.04.10.01-2012.04.10.03, *available at* <https://www.icann.org/resources/board-material/resolutions-2012-04-10-en>.

<sup>50</sup> Bylaws, Art. IV, § 3.14 (Cl. Ex. RM-2). Claimants are encouraged to enter into CEP with ICANN prior to filing IRP requests in order to resolve or narrow the issues that are contemplated to be brought to the IRP. *See* Cooperative Engagement Process, *available at* <https://www.icann.org/en/system/files/files/cep-11apr13-en.pdf>.

<sup>51</sup> *Id.*, Art. IV, §§ 3.1, 3.2.

<sup>52</sup> *See id.* Art. IV, §§ 3.2, 3.4.

c. Did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?<sup>53</sup>

35. The IRP Panel is not to substitute its judgment for that of the Board.<sup>54</sup> As the IRP panel in *Booking.com v. ICANN* explained:

So long as the Board acts without conflict of interest and with due care, it is entitled—indeed, required—to exercise its independent judgment in acting in what it believes to be the best interests of ICANN . . . .

In other words, in making decisions the Board is required to conduct itself reasonably in what it considers to be ICANN’s best interests; where it does so, the only question is whether its actions are or are not consistent with the Articles, Bylaws, and, in this case, with the policies and procedures established by the Guidebook.”<sup>55</sup>

36. ICANN has appointed the International Centre for Dispute Resolution (“ICDR”) as ICANN’s IRP Provider. ICANN’s Bylaws and the Supplementary Procedures that the ICDR has adopted specifically for ICANN IRP proceedings apply here.<sup>56</sup> The Bylaws provide that the IRP be conducted via “email and otherwise via the Internet to the maximum extent feasible.”<sup>57</sup> The IRP Panel may also hold meetings via telephone where necessary, and “[i]n the unlikely event that a telephone or in-person hearing is convened, the hearing shall be limited to argument only; all evidence, including witness statements, must be submitted in writing in advance.”<sup>58</sup>

37. Consistent with ICANN’s Bylaws, the IRP Panel is to issue a written

---

<sup>53</sup> *Id.*, Art. IV, § 3.4.

<sup>54</sup> *See id.*

<sup>55</sup> *Booking.com* Final Declaration, ¶¶ 108-109 (Resp. Ex. 1).

<sup>56</sup> Absent a governing provision in ICANN’s Bylaws or the ICDR’s Supplemental Procedures, the ICDR Rules apply. In the event of any inconsistency between the Supplementary Procedures and the ICDR’s Rules, the Supplementary Procedures shall govern. *Id.*, Art. IV, § 3.8; *see also* ICDR Supplementary Procedures for Internet Corporation for Assigned Names and Numbers, Independent Review Process (“Supplementary Procedures”) § 2, (Resp. Ex. 7), *also available at*

<https://www.adr.org/cs/groups/international/documents/document/z2uy/mde0/~edisp/adrstage2014403.pdf>.

<sup>57</sup> Bylaws, Art. IV, § 3.12 (Cl. Ex. RM-2).

<sup>58</sup> *Id.*, Art. IV, § 3.12; Supplementary Procedures ¶ 10 (Resp. Ex. 7).

declaration designating, among other things, the prevailing party.<sup>59</sup> The Board will give serious consideration to the IRP Panel’s opinion and, “[w]here feasible,” shall consider the IRP Panel’s declaration at the Board’s next meeting.<sup>60</sup>

### ARGUMENT

38. Claimant identifies three Board actions – the denial of Claimant’s two reconsideration requests and the approval of the Guidebook – to support its IRP Request. But these Board actions were fully consistent with ICANN’s Articles and Bylaws.

#### **I. THE BOARD PROPERLY DENIED CLAIMANTS’ RECONSIDERATION REQUESTS REGARDING THE ALLEGED CONFLICT OF INTEREST.**

39. Claimant argues in the IRP that ICANN’s Board – acting through the BGC and the NGPC – improperly denied its two reconsideration requests seeking reconsideration of the ICC’s appointment of the Expert. Claimant, however, fails to demonstrate that the BGC or the NGPC violated ICANN’s Articles or Bylaws with respect to its determinations on Claimant’s reconsideration requests.

40. In its two reconsideration requests, Claimant argued, as it does here, that reconsideration was warranted because the Expert had failed to disclose information allegedly material to his appointment. In the First Reconsideration Request, Claimant argued that the Expert should have disclosed his participation in the Dispute Resolution Conference. In the Second Reconsideration Request, Claimant argued that the Expert should have disclosed his law firm’s relationships with two companies with alleged ties to the IOC.

41. Reconsideration of the actions of a third-party service provider or expert in the New gTLD Program, such as the ICC (or its appointed expert), is appropriate only

---

<sup>59</sup> Bylaws, Art. IV, § 3.18 (Cls. Ex. RM-2).

<sup>60</sup> *Id.*, Art. IV, § 3.21.



when its actions “contract[ed] established ICANN policy(ies)” or procedures.<sup>61</sup> The Board (through the BGC and the NGPC) properly denied both of Claimant’s reconsideration requests because, as the Board explained, the evidence reflects that: (1) both the ICC and the Expert followed the ICC’s established policies and procedures with respect to the Expert’s appointment (and thereby, followed ICANN’s established procedure that the ICC use its process for determining an expert’s impartiality); and (2) Claimant’s challenge to the Expert was untimely under the ICC’s Rules and Practice Note (and thereby ICANN’s established procedure that challenges to experts must comport with the ICC’s rules).

**A. THE BOARD CORRECTLY FOUND THAT THE ICC AND EXPERT HAD FOLLOWED ESTABLISHED PROCEDURES WITH RESPECT TO THE EXPERT’S APPOINTMENT.**

42. Section 3.4.4 of the Guidebook provides that the ICC must “follow its adopted procedures for requiring [expert] independence, including procedures for challenging and replacing an expert for lack of independence.”<sup>62</sup> As such, ICANN’s established procedure is that the ICC’s Rules and Practice Note govern the procedure for the appointment of experts, the disclosure of potential conflicts, and for challenges to the independence of those experts.

43. Article 7(4) of the ICC’s Rules requires that:

Before an appointment, a prospective expert shall sign a statement of independence and disclose in writing to the [ICC] any facts or circumstances which might be of such a nature as to call into question the expert’s independence in the eyes of the parties. The Centre shall provide such information to the parties in writing and fix a time limit for any comments from them.<sup>63</sup>

---

<sup>61</sup> *Id.*, Art. IV, § 2.2(a).

<sup>62</sup> Guidebook, § 3.4.4 (Cl. Ex. RM-5).

<sup>63</sup> ICC Expertise Rules, Art. 7(4) (Resp. Ex. 2).

44. In making their determinations, the BGC and NGPC were clear that Claimant did not argue that the ICC failed to follow established ICC procedure with respect to the appointment of the Expert. Indeed, Claimant has conceded that the ICC informed the parties of SportAccord's Objection and the appointment of the Expert, and that the ICC provided the Expert's CV and signed Declaration of Acceptance and Availability, Statement of Impartiality and Independence ("Impartiality Statement"), all in accordance with established ICC procedures.<sup>64</sup>

45. Claimant's argument on reconsideration was that the Expert allegedly failed to disclose information material to his appointment on his Impartiality Statement. Specifically, in the First Reconsideration Request, Claimant alleged that the Expert should have disclosed his involvement the Dispute Resolution Conference, as Claimant argues here. And, in the Second Reconsideration Request, Claimant argues that the Expert should have disclosed that DirectTV, a client of the Expert's firm, acquired broadcasting rights for the Olympics on 7 February 2014 ("DirecTV Contract") and that a partner in the Expert's law firm is the president of a TyC, a company that has a history of securing Olympic broadcasting rights ("TyC Relationship"), as Claimant also argues here.

46. However, the BGC and NGPC correctly determined that the Expert had followed established policy and procedure in completing the Impartiality Statement required by the ICC. Disclosure requirements for neutrals are generally assessed in accordance with the guidelines set forth in the International Bar Association's Guidelines on Conflicts of Interest in International Arbitration ("IBA Conflict Guidelines").<sup>65</sup>

---

<sup>64</sup> Guido Santiago Tawil Nomination Materials (Cl. Ex. Annex-14).

<sup>65</sup> The IBA Conflict Guidelines were first draft in 2004 and were amended in 2014, after the appointment of the Expert in 2013. The relevant provisions of the IBA Conflict Guidelines did not materially change for the purpose of the present analysis.

Nothing in the IBA Conflict Guidelines, however, requires disclosure of the type of information identified by Claimant.

47. First, as to the Dispute Resolution Conference, there is no provision in the IBA Conflict Guidelines that could possibly be interpreted to require the Expert to disclose that he participated in a conference involving an area of law—here, sports law—allegedly relevant to one of the parties.

48. Second, Paragraph 2.3.6 of the IBA Conflict Guidelines, which requires a neutral to disclose when his “law firm currently has a significant commercial relationship with one of the parties or an affiliate with one of the parties,” does not apply to the DirecTV Contract or the TyC Relationship.<sup>66</sup> Neither the DirecTV Contract nor the TyC Relationship involves a commercial relationship with the IOC. In both cases, the commercial relationship is with parties across the table from and *adverse to* the IOC – both DirecTV and TyC negotiate with the IOC for Olympic broadcasting rights. For this reason, Paragraph 2.3.6 of the IBA Conflict Guidelines did not require the Expert to disclose the DirecTV Contract or the TyC Relationship.

49. Finally, even if there were a commercial relationship (not to mention a “significant commercial relationship”) between the Expert’s law firm and the IOC (and there is no evidence of such relationship), the IOC is not an affiliate of SportAccord. As Claimant acknowledges, SportAccord is an umbrella organization for all international sports federations (*Olympic and non-Olympic*), as well as organizers of multi-sport games and sport-related international associations. SportAccord has ninety-two full members; the IOC is not among them.<sup>67</sup> Nor is SportAccord a member of the IOC.<sup>68</sup> In

---

<sup>66</sup> IBA Conflict Guidelines, ¶ 2.3.6 (Resp. Ex. 8).

<sup>67</sup> See <http://www.sportaccord.com/about/mission/>.

an industry as interconnected as the international sporting industry, the mere fact that (1) the IOC's website notes that SportAccord is one of several associations organizing IOC-recognized sports federations;<sup>69</sup> and (2) that *two* of the six members of SportAccord's Executive Council are among the *102* members of the IOC does not demonstrate an affiliation.<sup>70</sup>

50. The BGC and NGPC appropriately found that the Expert had followed established ICC procedure with respect to his appointment because the IBA Conflict Guidelines did not require the Expert to disclose the attenuated and irrelevant type of information Claimant presented on reconsideration, and here.

**B. THE BOARD CORRECTLY FOUND THAT CLAIMANT'S CHALLENGE TO THE EXPERT WAS UNTIMELY.**

51. The BGC and NGPC also appropriately determined that Claimant's objection to the Expert was untimely. Pursuant to the Articles 7(4) and 11(4) of the ICC's Rules and Paragraph 9 of the Practice Note, the time for objecting to an expert is

---

<sup>68</sup> See <http://www.olympic.org/ioc-members-list>.

<sup>69</sup> The IOC recognizes various international sports federations that "administer[] one or more sports at world level" and whose rules and activities "conform with the Olympic Charter." On its website, the IOC notes that there are a number of associations, including SportAccord, that those federations use to "discuss common problems and decide on events calendars." <http://www.olympic.org/content/the-ioc/governance/international-federations/>

<sup>70</sup> Far from being affiliates, SportAccord and the IOC in recent years have in fact been competitors. On 20 April 2015, SportAccord's president, Marius Vizier made a speech that was sharply critical of the IOC. He called on the IOC's president to "stop blocking [] SportAccord [] in its mission to identify and organize conventions and multi-sport games" and noted that he had "tried to develop a constructive collaboration with the IOC" but that that had "never become a reality."

Reuters noted that the IOC has had an "uneasy relationship" with Mr. Vizier (who took over SportAccord in 2013) due to Mr. Vizier's unsuccessful attempt to set up a competing international multi-sports event, the United World Games. "SportAccord chief launches scathing attack on IOC," (Reuters, 20 April 2015) (Resp. Ex. 9), *also available at* <http://www.reuters.com/article/2015/04/20/us-olympics-ioc-sportaccord-idUSKBN0NB13M20150420>; *see also* "Marius Vizier voted SportAccord Chief," (ESPN.com, 31 May 2013) ("In a potential direct challenge to the IOC and the Olympics, [] Marius Vizier plans to organize a global world championship[] every four years for all international sports federations . . . . Vizier won on a platform of transforming SportAccord into a more powerful and lucrative body"), (Resp. Ex. 10), *also available at* [http://espn.go.com/olympics/story/\\_/id/9328014/new-sportaccord-chief-marius-vizer-plans-global-games](http://espn.go.com/olympics/story/_/id/9328014/new-sportaccord-chief-marius-vizer-plans-global-games).

five days.<sup>71</sup> Claimant is well aware of this time limitation—it referenced it when successfully objecting to the appointment of Mr. Taylor, the expert originally appointed to evaluate SportAccord’s Objection.<sup>72</sup>

52. Despite this, Claimant failed to timely challenge the appointment of the Expert. By the time Claimant forwarded to the ICC the information regarding the DirecTV Contract and the TyC Relationship, the ICC’s case for SportAccord’s Objection had been closed for at least two months.<sup>73</sup> Nothing in the ICC’s Rules or Practice Note allows for the re-opening of a closed case. As the ICC noted in its 1 April 2014 letter to ICANN, the choice not to allow for the reopening of closed cases was deliberate. Should the reopening of cases be allowed, “it c[ould] easily be anticipated that the same request would be filed in other cases by the parties which did not prevail.”<sup>74</sup>

53. Moreover, all of the information Claimant cites to support its conflicts argument was publicly available and could have been discovered earlier with an exercise of due diligence. Claimant itself acknowledges that it discovered this information conducting further investigations *after* receiving the Expert Determination (and after it had unsuccessfully attempted to challenge the merits of the Expert Determination).<sup>75</sup> Thus, the BGC and NGPC correctly determined that the ICC had followed established policy in declining to reopen a closed case or consider Claimant’s untimely objection.

**C. THE BOARD PROPERLY DID NOT CONSIDER A DRAFT REPORT FROM ICANN’S OMBUDSMAN.**

---

<sup>71</sup> Rules for Expertise of the ICC, Art. 11(4) (Resp. Ex. 2); ICC Practice Note on the Administration of Cases Under the New gTLD Dispute Resolution Procedure ¶ 9 (Resp. Ex. 3).

<sup>72</sup> Claimant’s Objection to Jonathan P. Taylor at 2-3 (Cl. Ex. Annex-12).

<sup>73</sup> 29 March 2014 Letter from ICC to Claimant at 1 (Resp. Ex. 5).

<sup>74</sup> 1 April 2014 Letter from ICC to ICANN at 2 (Resp. Ex. 6).

<sup>75</sup> IRP Request ¶ 32; Reconsideration Request 14-10. Claimant’s belated attempt to challenge an Expert who issued a determination unfavorable to it demonstrate why it would be inappropriate to allow parties to assert challenges to experts after those determinations are issued.

54. Finally, Claimant also argues that in denying its Second Reconsideration Request, the BGC and NGPC failed to consider the Ombudsman's recommendation that SportAccord's Objection be reheard with a new expert. But as Claimant is well aware, the Ombudsman never issued a final report with recommendations regarding Claimant's Complaint. The 31 March 2014 email that Claimant refers to was sent before either the ICC or the Expert had an opportunity to respond to Claimant's allegations.<sup>76</sup> And, more importantly, Claimant filed its Second Reconsideration Request before either the ICC or the Expert could submit a response and the Ombudsman could issue a final report. Pursuant to Article V, Section 2 of ICANN's Bylaws, a complaint with the Ombudsman may not be pursued concurrently with another accountability mechanism, such as reconsideration.<sup>77</sup>

55. As noted in the Determination on the Second Reconsideration Request, Claimant advised the Ombudsman that it was aware of this Bylaws provision, and that it chose to pursue its Second Reconsideration Request, rather than its complaint with the Ombudsman.<sup>78</sup> Indeed, following the Determination on the Second Reconsideration Request, Claimant pursued other accountability mechanisms, namely this IRP. As such, Claimant never renewed its Complaint with the Ombudsman and the Ombudsman never issued a final report with respect to that Complaint. As such there was nothing for the Board to consider. The Board's failure to consider something it is not required to consider, and should not have considered, cannot constitute a violation of ICANN's Articles or Bylaws.

---

<sup>76</sup> 1 April 2014 Letter from ICC to ICANN at (Cl. Ex. Annex-24).

<sup>77</sup> Bylaws, Art. V, § 2 (Cl. Ex. RM-2).

<sup>78</sup> NGPC Resolution No. 2014.07.18.NG01 (Cl. Ex. Annex-26).

## II. CLAIMANTS' CONTENTION THAT THE EXPERT ERRED IS IRRELEVANT TO THIS IRP, AND IS IN ANY EVENT MERITLESS.

56. Ultimately, Claimant disagrees with the substantive findings in the Expert Determination. But there was *no Board action* with respect to that Expert Determination other than the Board's consideration of Claimant's Reconsideration Requests.

57. Reconsideration of an expert determination is appropriate only where a third party service provider's or expert's actions "contradict[ed] established ICANN policy(ies)" or procedures.<sup>79</sup> As discussed in detail in the BGC's Determination on Claimant's First Reconsideration Request, the Expert applied the factors set forth in the Guidebook in determining that Claimant's Application created a "likelihood of material detriment" because, among other things, there were "several links between potential detriments that the Sport Community may suffer and the operation of the gTLD by an unaccountable registry, such as the sense of official sanction or the disruption of some community efforts."<sup>80</sup> There is no Article or Bylaws provision that the BGC and NGPC violated in finding: (1) that the Expert followed established procedure; and (2) that Claimant's substantive challenge to the determination was not a basis for reconsideration.

58. Although substantive disagreement with an expert determination is not a basis for independent review, ICANN notes that a different expert evaluating a different community objection to an application for .SPORTS upheld that objection, finding, as did the Expert here, that the application created a likelihood of material detriment to the sports community.<sup>81</sup>

---

<sup>79</sup> Bylaws, Art. IV, § 2.2.

<sup>80</sup> BGC Determination on Request 13-16 at 7-11 (Cl. Ex. Annex-21); *see also* Expert Determination, ¶ 158 (Cl. Ex. Annex-3).

<sup>81</sup> Expert Determination on Steel Edge Objection, ¶¶ 38-44 (Resp. Ex. 11).

### III. THE BOARD HAD NO OBLIGATION TO INTERVENE FURTHER WITH RESPECT TO THE EXPERT'S DETERMINATION.

59. Claimant also argues that the Board “needed to decide whether or not to grant the expert determination” and improperly decided to accept the Expert Determination.<sup>82</sup> But there is no Article or Bylaws provision that requires the ICANN Board to review expert determinations. To the contrary, the Guidebook explicitly provides that “[t]he findings of the [expert assessing a community objection] will be considered an expert determination and advice that ICANN will accept within the dispute resolution process.”<sup>83</sup> According to the Guidebook, where an objector prevails in a community objection, “the [objected-to] application will proceed no further.”<sup>84</sup>

60. Nor has Claimant identified an Article or Bylaws provision violated by the ICANN Board in exercising its independent judgment not to intervene further with respect to the Expert Determination. As the IRP Panel in *Booking.com* found, “the fact that the ICANN Board enjoys [the] discretion [to individually consider an application for a New gTLD] and may choose to exercise it at any time does not mean that it is bound to exercise it, let alone at the time and in the manner demanded by [a claimant].”<sup>85</sup>

61. It is not the role of the BGC (or, for that matter, this IRP Panel) to second-guess the substantive determinations of independent, third-party service providers or experts. The decision not to have ICANN (much less ICANN's Board) perform substantive reviews of third party determinations reflects a considered decision of ICANN's Board, made after significant public input and comment, that third party experts (and not ICANN) should be resolving these types of issues with respect to the

---

<sup>82</sup> IRP Request ¶ 66.

<sup>83</sup> Guidebook, § 3.4.6 (Cl. Ex. RM-5).

<sup>84</sup> *Id.*, § 1.1.2.9.

<sup>85</sup> *Booking.com* Final Determination ¶ 138 (Resp. Ex. 1).



hundreds of gTLD applications that were expected and the 1,930 applications that ICANN in fact received.

62. Nor did the Expert's alleged conflict of interest require intervention by the Board. The BGC and NGPC evaluated Claimant's conflict arguments in Claimants' Reconsideration Requests and properly found that the ICC and the Expert followed ICC procedures (and thus, ICANN's established procedure was followed) regarding the Expert's appointment.

#### **IV. CLAIMANTS' CHALLENGES TO THE GUIDEBOOK'S OBJECTION PROCEDURES ARE UNSUPPORTED AND TIME BARRED.**

63. Claimant appears to challenge the fact that the Guidebook does not provide for ICANN to review expert determinations, and to more generally challenge the dispute resolution procedures set forth in the Guidebook.<sup>86</sup> Again, Claimants' arguments find no support in the Articles or the Bylaws, and the time for Claimant to have objected to the procedures set forth in the Guidebook has long since passed.

64. As detailed in the Board's Rationales for the Approval of the Launch of the New gTLD Program, issued in June 2011, the dispute resolution procedures, including the community objection procedures, were adopted by the ICANN Board only after years of rigorous policy development and implementation that included extensive review and analysis by ICANN, as well as input and comment from legal and arbitration experts, numerous ICANN constituents and Internet stakeholders, and community members from around the world, all in compliance with ICANN's Articles and Bylaws.<sup>87</sup>

65. Rather than pointing to an Article or Bylaws provision that the Board

---

<sup>86</sup> IRP Request ¶¶ 57-62.

<sup>87</sup> ICANN Board Rationales for the Approval of the Launch of the New gTLD Program ("ICANN Board Rationales") (Cl. Ex. RM-11) at 66-67.

violated in adopting the process set forth in the Guidebook, Claimant relies on a witness statement from Kurt Pritz, a former ICANN officer, to argue that the community objection process is flawed. Mr. Pritz's after-the-fact critique – in an adversarial proceeding – of the work he and his now former ICANN colleagues performed years ago should be seen for precisely what it is and be given no weight.

66. Claimant's wholesale attack on the community objection procedures is also untimely because the current version of the Guidebook was published on 4 June 2012 following an extensive review process, including public comment on multiple drafts.<sup>88</sup> Despite having ample opportunity to do so, Claimant did not object to these aspects of the Guidebook at the time the Guidebook was implemented. If Claimant had concerns related to these issues, it should have pursued them at the time, not years later, only after receiving an Expert Determination with which it disagreed.<sup>89</sup>

67. As the IRP Panel in *Booking.com v. ICANN* found, "the time has long since passed for Booking.com or any other interested party to ask an IRP panel to review the actions of the ICANN Board in relation to the establishment of the string similarity review process, including Booking.com's claims that specific elements of the process and the Board decisions to implement those elements are inconsistent with ICANN's Articles and Bylaws. Any such claims, even if they had any merit, are long since time-barred by the 30-day limitation period set out in Article IV, Section 3(3) of the Bylaws."<sup>90</sup> While the Guidebook process at issue in this case is different—the string confusion objection process rather than the string similarity review process—the *Booking.com* Panel's reasoning applies equally. Because both processes were developed years ago, as part of

---

<sup>88</sup> See Guidebook, Cl. Ex. RM-5, Preamble.

<sup>89</sup> Bylaws, Art. IV, § 3.3 (30-day limitation period for IRP claims) (Cl. Ex. RM-5).

<sup>90</sup> *Booking.com.com* Final Declaration, Resp. Ex. 1, ¶ 129

the development of the Guidebook, challenges to both are undeniably time-barred.

## V. RESPONSE TO THE CLAIMANTS' REQUESTED RELIEF.

68. Claimant's IRP Request should be denied in its entirety, including its request for relief. Claimant requests that this IRP Panel issue a declaration that "ICANN must reject the expert determination granting SportAccord's community objection."<sup>91</sup> An IRP Panel, however, is explicitly limited to stating its opinion as to "whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws" and recommending, if requested, that the Board stay any action or decision or take any interim action until such time as the Board reviews and acts upon the opinion of the IRP Panel.<sup>92</sup> Even if there were a basis for some kind of relief here (which there is not), neither this Panel nor any IRP panel has the authority to award affirmative relief.<sup>93</sup>

## CONCLUSION

69. ICANN respectfully requests that Claimant's IRP Request be denied.

Respectfully submitted,

JONES DAY

By: Eric P. Enson / RHZ  
Eric P. Enson

Dated: May 8, 2015

Counsel for Respondent ICANN

---

<sup>91</sup> IRP Request at 25.

<sup>92</sup> Bylaws, Art. IV, §§ 3.4, 3.11(c-d) (Cls. Ex. RM-2).

<sup>93</sup> Indeed, the IRP Panel in the first ever IRP found that "[t]he IRP cannot 'order' interim measures but do no more than 'recommend' them, and this until the Board 'reviews' and 'acts upon the opinion' of the IRP." See Advisory Declaration of IRP Panel, *ICM Registry, LLC v. ICANN*, ICDR Case No. 50 117 T 00224 08, ¶ 133, available at <https://www.icann.org/en/system/files/files/-panel-declaration-19feb10-en.pdf>.