

ICC Determination

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

CASE No. EXP/389/ICANN/6

INTERNATIONAL BANKING FEDERATION

(UK)

vs/

DOTSECURE INC.

(UAE)

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.

Expert Determination
In the Matter of the Community Objection by International Banking Federation to the “.bank”
Application by Dotsecure Inc.

as of November 26, 2013

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ICC EXP/389/ICANN/6

International Banking Federation (UK) vs/ Dotsecure Inc. (United Arab Emirates)

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This Expert Determination is made in connection with the Community Objection (collectively with annexes thereto, the “Objection”) made by International Banking Federation (“IBFed” or the “Objector”) to the Application (the “Application”) made by Dotsecure Inc. and publicly available in November 2012 (“Dotsecure” or the “Applicant”) for the generic top-level domain (“gTLD”) “.bank”. For the reasons set forth below, the Panel determines that the Objection should be upheld and the Application denied.

I. Introduction

1. Dotsecure, a company located at F/19, BC1, Ras Al Khaimah FTZ, P.O. Box #16113, United Arab Emirates, has applied for the new gTLD “.bank”. Dotsecure is a member of the corporate family of Directi Inc. (“Directi”), a company located in Mumbai, India, a subsidiary of Radix FCZ (“Radix”) and an affiliate of Public Domain Registry (“PDR”). The contact for Dotsecure in these proceedings is Mr. Brijesh Harish Joshi.
2. IBFed is an association with members having its principal office at Pinners Hall, 105-108 Broad Street, London, EC2n 1EX, England, United Kingdom. The contact for IBFed in these proceedings is Ms. Sally Scutt, Managing Director.
3. The establishment of new gTLDs requires the operation of a domain registry and a demonstration of technical and financial capacity for such operations and the management of registrar relationships. On 13 March 2013, IBFed filed with the International Centre for Expertise (the “Centre”) of the International Chamber of Commerce (“ICC”) its Objection to the Dotsecure application for “.bank”. The Objection was made as a community objection under the Attachment to Module 3 of the gTLD Applicant Guidebook (the “Guidebook”), New gTLD Dispute Resolution Procedure (the “Procedure”) for resolution in accordance with the Rules for Expertise (the “Rules”) of the ICC supplemented by the ICC Practice Note on the Administration of Cases (the “ICC Practice Note”) and Appendix III thereto.
4. Pursuant to Article 1(d) of the Procedure, the Applicant by applying for the gTLD “.bank”, and the Objector by filing the Objection, have each accepted the applicable principles in the Procedure and the Rules.
5. Article 3(d) of the Procedure specifies that community objections shall be administered by the Centre.
6. Terms used in this Expert Determination and not otherwise defined herein shall have the respective defined meanings given to them in the Procedure and the Rules, as the case may be.
7. Pursuant to the Procedure, these findings “will be considered an Expert Determination and advice that ICANN [the Internet Corporation for Assigned Names and Numbers] will accept within the dispute resolution process.” Guidebook, Paragraph 3.4.6.
8. Neither the Applicant nor the Objector has objected to the application of the Procedure or the Rules to make this Expert Determination.

9. The Centre conducted the administrative review of the Objection called for under Article 9 of the Procedure. By letter dated 28 March 2013, the Centre informed IBFed and Dotsecure “that the Objection is in compliance with Articles 5-8 of the Procedure and with the Rules. Accordingly the Objection has been registered for processing (Article 9(b) of the Procedures).”

10. On 14 May 2013, Dotsecure filed its Response to the Objection (collectively with annexes thereto, the “Response”).

11. By letter dated 14 June 2013, the Centre advised Dotsecure and IBFed that, pursuant to Article 13 of the Procedure, Article 9(5)(d) of the Rules and Article 3(3) of Appendix I to the Rules, the Chairman of the Standing Committee had appointed the undersigned, Mark Kantor, on 12 June 2013 as the Expert in this matter and the sole member of the Panel.

12. By letter dated 3 July 2013, the Centre advised Dotsecure and IBFed that all advance payments had been received. Therefore, estimated Costs have been paid in full. Accordingly, “the Centre confirm[ed] the full constitution of the Expert Panel” and transferred the file to the undersigned Expert in accordance with the Procedure and the Rules, together with any relevant correspondence between the Centre and the parties in this matter.

13. Pursuant to the Procedure, a draft Expert Determination must be submitted to the Centre within 45 days following the Constitution of the Expert Panel, subject to extensions granted by the Centre upon a reasoned request. Procedure Article 21 (A). No such extension was requested.

14. On 3 July 2013 as well, the Panel confirmed receipt by email of the materials forwarded by the Centre. The Panel further inquired of the Applicant and Objector pursuant to Articles 17 and 19 of the Procedure whether any party was seeking permission to make Additional Written Submissions or have a hearing held in this matter.

15. By email dated 4 July 2013, Dotsecure noted that IBFed had submitted an Additional Written Submission to the ICC on 3 July 2013 replying to Dotsecure’s Response. Dotsecure requested the opportunity to make an Additional Written Submission itself addressing the points made by IBFed in the Objector’s July 3 Additional Written Submission. With respect to a hearing, Dotsecure stated that it “did not believe that it would serve to change or enhance any of the facts presented in our Response.” If, however, the Panel believed a hearing would be required, then “Dotsecure would comply with the requirements thereof.”

16. On 4 July 2013, the Panel requested the parties to confer with respect to Dotsecure’s request to make an Additional Written Submission. The Panel requested as well a short Response from IBFed to that request and the question of the hearing.

17. Following extensions due to the Fourth of July holiday weekend in the United States, IBFed advised on 9 July 2013 that it had nothing further to add at the time. Accordingly, the Panel responded on the same day authorizing Dotsecure to reply to the IBFed 3 July 2013 Additional Written Submission on the following terms:

The reply (i) should not exceed the same three pages in length of the IBFed July 3 letter, (ii) should address only matters covered in the July 3 letter not previously argued in earlier Dotsecure submissions, and (iii) should not repeat arguments previously made by Dotsecure in earlier submissions in this proceeding.

18. The Panel informed the parties at the same time (July 9) to make no further submissions in this matter unless the Panel so requested and that, in light of the views of the parties, the Panel would not hold a hearing this proceeding.

19. By letter dated 9 July 2013, Dotsecure made its Additional Written Submission in substantial conformity with the foregoing. That letter concluded the submissions in this proceeding.

20. All submissions in the Procedure were made, and the Procedure was conducted, in English. All communications by the parties and the Expert were submitted electronically. The place of these proceedings is the location of the Centre in Paris, France. See Procedure Articles 5(a),6(a) and 4(d).

21. Neither party has challenged the undersigned as Expert or raised any question as to the fulfillment by the undersigned of my duties as Expert or the qualifications, the impartiality or independence of the undersigned as Expert.

II. Applicable Standards

22. IBFed's Objection to Dotsecure's Application was filed as a community objection. A community objection, according to the Procedure and the Guidebook, refers to an objection that "there is substantial opposition to the application from a significant portion of the community to which the string [here, ".bank"] may be explicitly or implicitly targeted." Procedure, Article 2(e)(iv).

23. Article 20 of the Procedure sets out the standards to be applied by an Expert Panel with respect to each category of objections, including a community objection. Article 20 states as follows:

Article 20. Standards

(a) For each category of objection identified in Article 2(e), the panel shall apply the standards that have been defined by ICANN.

(b) In addition, 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.

(c) The objector bears the burden of proving that its objection should be sustained in accordance with the applicable standards.

24. ICANN has set out standards in the Guidebook for determining whether or not the Objector has standing to make a community objection.

3.2.2.4 Community objection

Established institutions associated with clearly delineated communities are eligible to file a community objection. The community named by the objector must be a community strongly associated with the applied-

for gTLD string in the application that is the subject of the objection. To qualify for standing for a community objection, the objector must prove both of the following:

It is an established institution – Factors that may be considered in making this determination include, but are not limited to:

- Level of global recognition of the institution;
- Length of time the institution has been in existence; and
- Public historical evidence of its existence, such as the presence of a formal charter or national or international registration, or validation by a government, inter-governmental organization, or treaty. The institution must not have been established solely in conjunction with the gTLD application process.

It has an ongoing relationship with a clearly delineated community – Factors that may be considered in making this determination include, but are not limited to:

- The presence of mechanisms for participation in activities, membership, and leadership;
- Institutional purpose related to the benefit of the associated community;
- Performance of regular activities that benefit the associated community; and
- The level of formal boundaries around the community.

The panel will perform a balancing of the factors listed above, as well as other relevant information, in making its determination. It is not expected that an objector must demonstrate satisfaction of each and every factor considered in order to satisfy the standing requirements.

25. In addition, ICANN has set out standards in the Guidebook for the Panel to determine whether or not a community objection will be successful.

3.5.4 Community objection

The four tests described here will enable a DRSP panel to determine whether there is substantial opposition from a significant portion of the community to which the string may be targeted. For an objection to be successful, the objector must prove that:

- The community invoked by the objector is a clearly delineated community; and
- Community opposition to the application is substantial; and
- There is a strong association between the community invoked and the applied-for gTLD string; and
- 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.

Each of these tests is described in further detail below.

Community – The objector must prove that the community expressing opposition can be regarded as a clearly delineated community. A panel could balance a number of factors to determine this, including but not limited to:

- The level of public recognition of the group as a community at a local and/or global level;
- The level of formal boundaries around the community and what persons or entities are considered to form the community;
- The length of time the community has been in existence;
- The global distribution of the community (this may not apply if the community is territorial); and
- The number of people or entities that make up the community.

If opposition by a number of people/entities is found, but the group represented by the objector is not determined to be a clearly delineated community, the objection will fail.

Substantial Opposition – The objector must prove substantial opposition within the community it has identified itself as representing. A panel could balance a number of factors to determine whether there is substantial opposition, including but not limited to:

- Number of expressions of opposition relative to the composition of the community;
- The representative nature of entities expressing opposition;
- Level of recognized stature or weight among sources of opposition;
- Distribution or diversity among sources of expressions of opposition, including:
 - Regional
 - Subsectors of community
 - Leadership of community
 - Membership of community
- Historical defense of the community in other contexts; and
- Costs incurred by the objector in expressing opposition, including other channels the objector may have used to convey opposition.

If some opposition within the community is determined, but it does not meet the standard of substantial opposition, the objection will fail.

Targeting – The objector must prove a strong association between the applied-for gTLD string and the community represented by the objector. Factors that could be balanced by a panel to determine this include but are not limited to:

- Statements contained in application;
- Other public statements by the applicant;
- Associations by the public.

If opposition by a community is determined, but there is no strong association between the community and the applied-for gTLD string, the objection will fail.

Detriment – 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. An allegation of detriment that consists only of the applicant being delegated the string instead of the objector will not be sufficient for a finding of material detriment.

Factors that could be used by a panel in making this determination include but are not limited to:

- Nature 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;
- 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, including evidence that the applicant has not proposed or does not intend to institute effective security protection for user interests;
- Interference with the core activities of the community that would result from the applicant's operation of the applied-for gTLD string;
- Dependence of the community represented by the objector on the DNS for its core activities;
- Nature and extent of concrete or economic damage to the community represented by the objector that would result from the applicant's operation of the applied-for gTLD string; and
- Level of certainty that alleged detrimental outcomes would occur.

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. The objector must meet all four tests in the standard for the objection to prevail.

26. The Guidebook refers back to the ICANN Final Report Regarding the Introduction of New Generic Top-Level Domains, dated 8 August 2007 (the "Final Report"). The Final Report set out a table of Implementation Guidelines with views regarding the determination by the Panel of *inter alia* "community," "substantial opposition" and "material detriment" in connection with a community objection.

IG P* The following process, definitions and guidelines refer to Recommendation 20.

Process

Opposition must be objection based.

Determination will be made by a dispute resolution panel constituted for the purpose.

The objector must provide verifiable evidence that it is an established institution of the community (perhaps like the RSTEP pool of panelists from which a small panel would be constituted for each objection).

Guidelines

The task of the panel is the determination of substantial opposition.

- a) **substantial** – in determining substantial the panel will assess the following: signification portion, community, explicitly targeting, implicitly targeting, established institution, formal existence, detriment
- b) **significant portion** – in determining significant portion the panel will assess the balance between the level of objection submitted by one or more established institutions and the level of support provided in the application from one or more established institutions. The panel will assess significance proportionate to the explicit or implicit targeting.
- c) **community** – community should be interpreted broadly and will include, for example, an economic sector, a cultural community, or a linguistic community. It may be a closely related community which believes it is impacted.

d) **explicitly targeting** – explicitly targeting means there is a description of the intended use of the TLD in the application.

e) **implicitly targeting** – 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.

f) **established institution** – an institution that has been in formal existence for at least 5 years. In exceptional cases, standing may be granted to an institution that has been in existence for fewer than 5 years.

Exceptional circumstances include but are not limited to a re-organization, merger or an inherently younger community.

The following ICANN organizations are defined as established institutions: GAC, ALAC, GNSO, ccNSO, ASO.

g) **formal existence** – formal existence may be demonstrated by appropriate public registration, public historical evidence, validation by a government, intergovernmental organization, international treaty organization or similar.

h) **detriment** – the objector must provide sufficient evidence to allow the panel to determine that there would be a likelihood of detriment to the rights or legitimate interests of the community or to users more widely.

27. The parties have referred in their respective submissions to the statements by the European Commission and the U.S. Federal Deposit Insurance Corporation (FDIC), among others, with specific respect to the sensitivity of the “.bank” gTLD. IBFed has relied on those statements to support its Objection, while Dotsecure has argued that reliance is misplaced.

28. The comments by supranational and national authorities do not constitute standards for purposes of ruling on community objections and are not binding on the Panel. Those comments do, however, assist the Panel in understanding the nature of community objections, determining how to assess “whether there is substantial opposition,” determining how to assess the strength of “the association between the applied-for gTLD string and the community,” and identifying factual elements relevant in assessing “the 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.”

29. In late November 2012, the Director of the Directorate-General for Communications Networks, Content and Technology of the European Commission wrote to ICANN and to the

applicants for 58 sensitive names, including the two applicants for “.bank.” In that letter, the Director noted that those applications "could raise issues of compatibility with the existing legislation ... and/or with policy positions and objectives of the European Union."

30. Further, the Director noted that “[g]enerally speaking, all new gTLD applications should properly take into account the “GAC Principles regarding new gTLDs” of 2007, as well as the more specific concerns expressed by a number of GAC members, *inter alia* in the Communiqué of the GAC of 17 October 2012.” (footnotes omitted)

31. The Director stated the Commission’s desire to open a dialogue with each applicant.

32. That letter illustrates the heightened sensitivity for European policy-makers and regulators with respect to how the “.bank” string must be managed.

33. In December 2008, the FDIC stated directly to ICANN its prudential regulatory concerns that a “.bank” gTLD might potentially create additional risks of financial fraud, consumer confusion and misdirected trust in the .bank gTLD. Moreover, according to the FDIC, creation of a .bank gTLD could require the financial services industry to incur additional intellectual property protection expenses during the ongoing time of economic stress.

34. The FDIC therefore recommended *inter alia* that (i) financial sector gTLDs be subject to community-established governance rules, including measures established by financial sector regulators and (ii) applicants should demonstrate their intent and ability to comply with these governance rules in the application process.

35. The governance requirements, according to the FDIC, should include, at a minimum: (a) financial capability to carry out its governance requirement; (b) a process for ensuring intellectual property rights such as trade names; and (c) a requirement for registrant due diligence.

36. In addition, the FDIC recommended that the process and rules for objecting to any financial sector gTLD applications include the ability to object on the grounds of insufficient governance as proposed by the application as well as a process for financial regulatory objection.

37. The FDIC further recommended an additional process to permit financial sector gTLD ownership to be revocable or transferable at any time in the future when the represented community or regulatory body determines and shows that the sponsored gTLD has not satisfied its governance requirements.

38. In operative part of its December 2008 letter, the FDIC comments emphasized the central role of industry and regulatory body endorsements in connection with a financial services gTLD such as “.bank”.

Regulatory Concerns

Through its deposit insurer and regulatory roles, the FDIC is a community leader for the US financial sector on the Internet and is at the forefront of issues related to consumer confidence in the banking systems, including Internet banking. While the FDIC has historically encouraged industry-led technical innovations,

and prefers an industry-led effort to establish standards and guidance for the safe and sound implementation of those innovative technologies, we are very concerned that new gTLDs could potentially create new rounds of financial fraud, consumer confusion, misdirected trust in a gTLD, and could force trade name protection costs onto the financial industry during a period of economic stress. As such, we encourage ICANN to include industry representatives such as financial trade associations (e.g., American Bankers Association, Financial Services Roundtable, Independent Community Bankers, etc.) in its deliberations regarding the value of financial sector specific gTLDs.

The FDIC is also concerned that financial sector gTLDs could potentially impact consumer trust and confidence in Internet banking, and the banking system in general, if such gTLDs are misused. Financial sector gTLDs such as ".bank" could intuitively, and mistakenly, imply industry (including regulatory) endorsement to the public. The draft application processes does not provide sufficient requirement that such industry endorsement exists. Without sufficient industry endorsement, and an integrated governance requirement for financial sector gTLDs, we believe that a financial sector gTLD could be detrimental to consumers and undermine established confidence in Internet banking.

Recommendations

With respect to the proposed gTLD Guidebook, the FDIC believes more consideration should be given to the regulated environment of the financial sector and the potential impact that a financial sector gTLD could have on the financial industry and consumers. To remedy these concerns, the FDIC recommends a separate and distinct application process for financial sector gTLDs. Specifically, we offer the following suggestions for a financial sector gTLD process:

- 1) The draft Guidebook permits gTLD applications as either "open" applications or "community-based" applications. The FDIC recommends that a financial sector gTLD be implemented from a top down approach to ensure that no unsponsored gTLDs are issued, and that if issued, such gTLDs are managed within an industry and regulatory framework. Furthermore, the FDIC recommends that the financial sector gTLDs process not permit "open applications" and that any applications include explicit endorsement of the financial industry community including regulatory bodies.
- 2) The FDIC recommends that financial sector gTLDs be subject to community-established governance rules, including various laws, regulations, guidance and policy established by the financial sector regulators. Additionally, applicants should demonstrate their intent and ability to comply with these governance rules in the application process. The governance requirement should include, at a minimum:
 - a. Financial capability to carry out its governance requirements
 - b. A process for ensuring intellectual property rights such as trade names
 - c. A requirement for registrant due diligence
- 3) The draft Guidebook provides a process for objecting to applications. The FDIC recommends that the process and rules for objecting to any financial sector gTLD applications include the ability to object on the grounds of insufficient governance as proposed by the application as well as a process for financial regulatory objection.
- 4) The FDIC recommends an additional process to permit financial sector gTLD ownership to be revocable or transferable at any time in the future when the represented community or regulatory body determines and shows that the sponsored gTLD has not satisfied its governance requirements.

39. ICANN did not wholesale adopt these FDIC recommendations into the final version of the Guidebook. The policy concerns stated by the FDIC remain relevant, however, to the determination of "substantial opposition," "strong association" and "material detriment."

40. In November 2009, the Canadian Office of the Superintendent of Financial Institutions in Canada (“OSFI”) informed ICANN as to possible problems under the Canadian Bank Act that would be faced by applicants for a “.bank” gTLD. According to OSFI, all persons and entities are prohibited by the Bank Act and regulations thereunder from using in Canada the word “bank” to indicate or describe a financial service other than banks regulated by OSFI. Accordingly, OSFI advised ICANN that any entity found using a “.bank” gTLD in violation of the Bank Act would be required to abandon the domain name regardless of associated costs or expenses incurred.

41. Senior Director Evanoff of OSFI wrote to ICANN in the following terms.

By means of this letter OSFI would like to inform you of the importance of this initiative to OSFI and that there are issues that any prospective applicant for a “.bank” gTLD will need to consider. In particular, as a general rule, Canada’s *Bank Act* prohibits any person, other than a bank that is regulated by OSFI, to use the word “bank” to indicate or describe a financial services business in Canada. The objective of this provision is to protect the Canadian public from incorrectly assuming they are dealing with a Canadian bank that is subject to the *Bank Act* and OSFI’s regulatory oversight. At the same time the provision contributes to the public’s confidence in Canada’s financial system by protecting the integrity of the word “bank” as a word that is generally reserved for entities that are regulated and supervised as a bank in Canada.

As such, and consistent with OSFI’s role to promote and administer a safe and sound regulatory framework, a person that OSFI find to be in contravention of the prohibition above would be asked to relinquish the “.bank” gTLD irrespective of associated cost or inconvenience for that person. We note that a contravention of the prohibition would constitute a criminal offense.

42. This comment from the Canadian regulatory authorities underscores the difficulties a holder of the “.bank” gTLD would face if it were not embedded inside the banking community. Those difficulties would in turn affect the availability and reliability of service for users of the top-level domain, difficulties that would be compounded if the holder of the gTLD was not familiar with bank regulatory compliance requirements in all global financial centers and elsewhere.

43. In making this Expert Determination, the Panel has applied the foregoing ICANN standards and taken account of the principles underlying the substantive concerns expressed by national regulatory authorities to the extent the Panel considered them applicable and appropriate. Procedure, Article 20.

III. Standing and Merits

44. In this Section of the Expert Determination, the Panel summarizes the positions of the parties as set out in the Objection, the Response and related correspondence. This summary is made for the convenience of the reader and does not purport to be exhaustive. The Panel has carefully reviewed the Objection (including all annexes), the Response (including all annexes), the Additional Written Submissions, other correspondence from the parties, the Procedure, the Rules, the Guidebook and any other rules or principles that I have determined to be applicable. The absence in this Expert Determination of any specific reference to any particular information, document or provision is not to be taken as an indication that the Panel has failed in any way to consider fully the submissions of the parties or the standards, principles and rules applicable under the Procedure.

A. Standing

45. Dotsecure asserts that IBFed does not have standing to pursue a community objection. Pursuant to Article 20 of the Procedure, IBFed has the burden of proving it has standing to assert a community objection. IBFed must prove, among other matters, that it is an “established institution,” that there is a “clearly delineated community” corresponding to the “global banking community” and that IBFed has an “ongoing relationship” with such a community. Recognizing that it has the burden of proof, IBFed initially set forth its position regarding standing in its Objection. IBFed detailed in the Objection its background, the identity of its members, and its interaction with national and international bank regulatory authorities on behalf of its members.

The IBFed was formed in March 2004 to represent the combined views of a group of national banking associations. IBFed’s membership list is available on its website and includes the following: American Bankers Association, Australian Bankers’ Association, Canadian Bankers Association, European Banking Federation, Japanese Bankers Association, China Banking Association, Febraban, Indian Banks Association, Korea Federation of Banks, Association of Russian Banks, and the Banking Association of South Africa. The IBFed’s members collectively represent more than 18,000 banks with 275,000 branches, including around 700 of the world’s top 1000 banks which alone manage worldwide assets of over \$31 trillion. This worldwide reach enables the IBFed to function as the key international forum for considering legislative, regulatory and other issues of interest to the global banking industry. See Annex A for the list of IBFed objectives from its Memorandum and Articles of Association.

Guided by these objectives, the IBFed’s advocacy on behalf of the global banking community has created strong relationships with inter-governmental organisations (e.g., G20, the Basel Committee on Banking Supervision, the Financial Stability Board, the International Accounting Standards Board, the International Organisation of Securities Commissions, and the Financial Action Task Force on Money Laundering). By way of example, the IBFed works closely with the inter-governmental Financial Action Task Force to promote national and international policies to combat money laundering and to prevent the financing of terrorism. The reform agenda extends across the entire regulatory landscape and encompasses all the main international standard setters and involves the regulatory and supervisory authorities of all the G20 countries.

The primary mechanism the IBFed utilizes in the advocacy efforts is a series of working groups including, but not limited to, Consumer Affairs, Financial Crime, Financial Markets and Value Transfer Networks that can be accessed on its website.

46. In support of its argument that IBFed has an ongoing relationship with a clearly delineated global banking community, IBFed also pointed to a number of annexes to the Objection as further demonstrations that IBFed satisfies the standing requirements to pursue a community objection. Those annexes include *inter alia* statements of support for IBFed’s formal opposition by the community against Dotsecure’s application (Annex D) and statements of opposition filed against Dotsecure’s application submitted to ICANN’s public forum (Annex E).

47. Dotsecure argues in its Response that IBFed has failed to sustain that proof, as follows.

48. With respect to IBFed’s assertion that it is an “established institution,” Dotsecure responds that IBFed is an “association of associations” that has only one full-time employee, an individual who is associated as well with the British Bankers Association (BBA). IBFed’s financial statements for Fiscal Year 2011 state that the Federation “relies on staff seconded by BBA” to carry out its work. Moreover, IBFed utilizes BBA premises rather than holding its own premises.

49. Dotsecure further argues that IBFed does not have an “ongoing relationship” with a “clearly delineated” community known as the “global banking community.” Dotsecure principally argues that no such community can be found and that the purported community is not “clearly delineated.” By reference to dictionary definitions and references to Guidebook Module 4 (p. 4-11), Dotsecure asserts that the purported community lacks coherence and the purported members lack awareness of the community. Websites of the world’s largest banks, and Google searches generally, do not show the phrase “banking community.” Rather, banking websites and public perceptions, reports Dotsecure, refer to a “banking industry,” a “banking sector” or similar phrases. Similar phrases, but not the phrase “banking community,” are found in IBFed letters to regulatory authorities. Nor do the IBFed charter documents employ the phrase “banking community.”

50. Moreover, says Dotsecure, regulation and supervision in many countries of the world contain “variations” in bank definitions and in the nature of the regulatory regime.

51. Additionally, Dotsecure argues that IBFed misstates in its submissions the impact of the history of the GAC and ICANN, including the Beijing communiqué. For Dotsecure, that correspondence and the New gTLD Program Committee’s (“NGPC”) positions may be relevant for scoring a community priority, but are “not relevant to this Objection at all.”

52. Dotsecure further claims that, even if IBFed is an “established institution,” IBFed has not provided evidence of a direct relationship with the 36,000+ organizations that carry on banking worldwide sufficient to satisfy the requirement of an “ongoing relationship” with the community. All of IBFed’s relationships are with other representative associations, its members.

53. Dotsecure also objects to the persuasiveness of IBFed’s showing of “substantial opposition” by members of the community, by counting the number of opposition letters and comparing that number to the total number of banks in the world.

54. Dotsecure additionally argues that IBFed has failed to show a “strong association” between the community and the string “.bank.” In that regard, Dotsecure notes that the word “bank” has several other meanings and connotations, such as the bank in a poker game or a piggybank. Even a cursory review of the Oxford English Dictionary demonstrates that most words in the English language have multiple meanings. The proposed requirement that a “strong association” between a community and a term such as “bank” can exist only if there is just one possible meaning of that term is unrealistic. That approach is not required by the Guidebook, nor are the GAC-ICANN exchanges and the NGPC comments to the contrary.

55. IBFed has argued that the nature of the national and international regulatory framework supports the position that a “clearly delineated global banking community” exists. Dotsecure seeks to rebut that position by asserting that the multiplicity of regulatory regimes for the banking community shows otherwise. Dotsecure further argues that the regulatory controls on the use of the word “bank” in business activities is no different in substance than the prohibition of the use of the term “Limited” except for certain companies. In this regard, Dotsecure overstates the matter. Bank regulatory agencies and securities regulatory agencies seek to coordinate policy both formally (e.g., the Basle process) and informally (e.g., through central bank cooperation facilitated

by the BIS). Dotsecure’s counter-examples of a “community of listed companies” and regulatory restrictions on the use of the word “Limited” are exaggerations rather than helpful comparisons.

56. Although not directly tied to any particular standing requirement in the Guidebook, Dotsecure draws the attention of the Panel to the role IBFed may have in connection with the “.bank” application by fTLD, a company affiliated with IBFed member the American Bankers Association. Dotsecure asserts this relationship shows a clear conflict of interest. This Panel, however, is not assessing the fTLD application or the motivations of an objector. Rather, the Panel is tasked with objectively reviewing the standing of the objector and the merits of the Objection. Dotsecure’s conflict allegation is not relevant to those tasks.

57. In its 3 July Additional Written Statement replying to Dotsecure’s Response, IBFed argued that:

In its response, Dotsecure seeks to undermine the credibility, standing and relevance of the IBFed. In the global banking community the IBFed’s operations are analogous to ICANN’s operations within the Internet community in that both rely extensively, particularly as it relates to policy development, on a network of volunteer subject matter experts and industry professionals. The IBFed reaffirms that its work in the areas of Consumer Affairs, Financial Crimes, Financial Markets, Financial Reporting, and Prudential Regulation is undertaken by a vast network of professionals from the global banking community. These IBFed working groups are comprised on average of between forty and fifty individuals from across IBFed’s membership. The IBFed will allow its body of work to speak for itself in response to the spurious allegations that it lacks standing to bring this action.

Dotsecure also insinuates that the IBFed’s decision to file the community objection against its application was motivated by the American Bankers Association (ABA), a participant in fTLD Registry Services, LLC (fTLD), a competing applicant for the .bank gTLD. The ABA is but one member of IBFed’s broad, global membership. The decision by IBFed’s Board to file a community objection against Dotsecure was based on a desire to protect the financial community that the association serves. The ABA’s association with fTLD was properly disclosed to the IBFed Board as part of its due diligence prior to voting on the resolution to file the Objection to Dotsecure.

The IBFed stands ready to provide any additional documentation that Mr. Kantor may need to ascertain the true facts for this proceeding. Specifically, the IBFed would respectfully like to highlight the following areas where additional facts may provide clarification for Mr. Kantor’s consideration:

- According to Section 3.2.2.4 of the Applicant Guidebook, standing is determined based upon a panelist’s balancing of the factors as well as other relevant information. This fact would render Dotsecure’s self-serving numerical tabulations irrelevant to the panel.
- ICANN’s Governmental Advisory Committee’s (GAC) continuing advice/guidance to ICANN Board per ICANN’s bylaws is germane with respect to what constitutes a community per Section 3.5.4 of the Applicant Guidebook, see also GAC’s Beijing Communiqué https://gacweb.icann.org/download/attachments/27132037/Beijing%20Communiqué%20april2013_Final.pdf?version=1&modificationDate=1365666376000&api=v2 (“Community Support for Applicants”).
- Rather than interpreting the plain meaning of the guidance set forth in ICANN’s Applicant Guidebook to assess if the global banking community is a clearly delineated community, Dotsecure attempts to dissect the individual words with self-serving definitions. IBFed encourages Mr. Kantor to look to the Applicant Guidebook in how ICANN references the “Internet Community” as well as statements referencing the same by Bhavin Turakhia, founder and CEO of Directi Group, Dotsecure’s parent company.

- Substantial opposition is based upon Mr. Kantor’s weighing of non-exhaustive subjective factors enumerated in the Applicant Guidebook, not a mere numerical compilation in which the representative nature of the commenters, the geographic diversity of the commenters and their historic defense of the community are dismissed.
- Objector must merely prove that there is a “strong association between the applied-for gTLD string and the community represented by the objector” to prove implicit/explicit targeting.

58. In its 9 July 2013 Additional Written Submission in reply, Dotsecure responded to IBFed’s 3 July 2013 submission. The substance of that response as it relates to standing has been summarized above in paragraphs 45-56.

59. After reviewing the positions of the parties as to standing, the Panel has determined that IBFed has the requisite standing to pursue a community objection.

i. Analogy to ICANN

60. As an initial matter, the Panel notes that IBFed has argued in its 3 July 2013 Additional Written Submission that its operations are analogous to the operations of ICANN in the Internet community, particularly as those operations relate to policy development. That argument is unpersuasive – ICANN is fundamentally a different organization, and has different types of members and responsibilities, from a professional and trade association such as IBFed. Nevertheless, the other facts identified in this Section of the Expert Determination point convincingly to the existence of a global banking community and to IBFed’s ongoing relationship with that community.

ii. Established Organization

61. Turning first to the requirement that the Objector be an “established organization,” the Panel is satisfied that IBFed is an established organization for purposes of making a community objection.

62. The ICANN Guidebook points the Applicant and the Panel to several non-exhaustive factors that weigh in the balance, including the level of global recognition of IBFed, the length of time IBFed has existed and the presence of charter documents showing continued existence. IBFed easily satisfies these requirements.

63. The Implementation Guidelines table in the ICANN Final Report states that an “established institution” is “an institution that has been in formal existence for at least 5 years.”

64. IBFed has existed, established working groups, undertaken substantive representative tasks and generated reports and position papers on behalf of its banking community membership since 2004. The Objection sets out undisputed information about these activities of IBFed, which are corroborated by a very large number of exhibits as well as by publicly available on IBFed’s website. There is, of course, also no dispute between the parties that IBFed has charter documents dating back to its initial organization as a legal entity (appended as Annex A to the Objection).

65. Each member of IBFed (other than associate members) is entitled to a representative on the Board of Directors of the Federation. The chief executive officer of the banking trade association in whose premises the Federation's Secretariat is located is an *ex officio* member of the Board as well. Through its membership and through almost a decade of dialogue with regulatory authorities and policy makers, IBFed has been recognized as a representative by both banking institutions and national and international regulators.

66. Dotsecure's argument to the contrary is based on the structure of IBFed as an "association of associations" and its use of seconded staff and member representatives to conduct its work rather than *inter alia* employing a stand-alone staff and its own premises. That argument is not persuasive. The argument, however, would deny any association staffed by its members from status as an established institution, a situation that does not correspond in the Panel's experience to the manner in which many representative trade and industry associations are operated. The Guidebook does not limit representative status only to organizations that have stand-alone staffs and premises, and large budgets.

67. A trade association may rely on seconded staff and member representatives to conduct its work, just as many government bodies and subsidiary companies do. Additionally, the fact that IBFed as an "association of associations" does not prevent it from being an established organization.

68. That latter criticism by Dotsecure also relates to other factors in the standing formula - the existence of a clearly delineated community and whether IBFed has an ongoing relationship with that community. The Panel addresses those elements of standing below.

iii. Clearly Delineated Global Banking Community

69. The Panel is also satisfied that a clearly delineated global banking community exists.

70. The Final Report recommends that "community should be interpreted broadly." Without disputing that interpretive principle, the Panel does not need, in light of the characteristics of the global banking community, to rely upon that tool of interpretation to conclude that the global banking community is clearly delineated and that Dotsecure's Application for the string ".bank" explicitly and implicitly targets members of that community and its clients.

71. The Panel begins by noting that the dispute between the parties with respect to the GAC-ICANN exchange is not dispositive of this issue. Nor is the NGPC response. There is nothing talismanic under the Guidebook with respect to the word "community." Banks and their associations can, and do, convey the same idea by means of other phrases, such as "banking sector" and "banking industry." The concept of a community is functional – it is not a magic term that must be used by community participants as a condition to fulfilling the requirements of a "community" for purposes of a community objection.

72. IBFed points in its Objection to a number of factors that support this conclusion.

- Common regulatory framework and operating principles at a local and global level

- Regulatory restrictions on the use of the word “Bank” at local and national levels
- Various ISO standards related to the banking community
- The existence of international organizations as forums for coordination of regulatory measures for the global banking community, including the Financial Stability Council and the Basel Committee on Banking Supervision
- The longevity and global scope of the banking community

73. Of considerable persuasive import in that regard, governments around the world consider that a global banking community exists. The formal boundaries of the banking community are set by a coordinated national regulatory environment identifying which institutions are entitled to take deposits from the public and may employ the term “bank” in their corporate name. Those parameters conform to most of the institutions who are members of the national trade associations making up the membership of IBFed.

74. Governments seek to coordinate their regulatory measures with respect to banks to assure harmonization of regulation in an interconnected world where deposit-taking, payments systems, extending credit, making loans and other financings, underwriting, other bank products and services, and customers and counterparties cross borders continuously. Bank regulatory agencies worldwide coordinate their regulation of banking institutions that take deposits and make loans through, *inter alia*, the Financial Stability Board and the Basel Committee on Banking Supervision.

75. The size and composition of the global banking community, unsurprisingly, has changed over time. Nevertheless, an extensive community of banks globally has existed at least since bank regulatory authorities were established and began to cooperate to regulate commercial banks more than a century ago and inter-bank deposit and similar markets arose to address the funding needs of banks.

76. Legislatures too treat banking as a clearly delineated community – for example, the United States Senate has a “Banking Committee” that is the principal forum for that body to consider legislation and provide oversight relating to inter alia bank regulatory measures and markets.

77. Most recently, those various public bodies and their members have harmonized capital adequacy requirements for commercial banks in response to the recent financial crisis. The capital adequacy rules for commercial banks are different in many respects from the capital adequacy rules for other financial institutions, thereby demonstrating that the competent government authorities consider deposit-taking banks to be a clearly delineated separate component of the financial system.

78. Other international organizations also specifically address banking as a distinct sector. Illustratively, the Annex on Financial Services to the WTO General Agreement on Trade in

Services (GATS) singles out banking and related financial services as a special sector of financial services distinct from insurance services.

79. Significantly, commercial banking organizations have themselves organized into their own national trade associations to coordinate their responses to public policy and regulatory measures at the national and international levels (many of the most influential of which are members of IBFed and sit on its Board of Directors) and through international associations such as IBFed itself.

80. The existence of inter-bank deposit and funding markets, such as the London inter-bank market, illustrates the existence of a global banking community as a business matter, not just as a regulatory matter. Similarly, the Abu Dhabi Interbank Offered Rate (“ADIBOR”) is the average interest rate at which term deposits are offered between prime banks in the UAE wholesale inter-bank market.

81. Dotsecure argues, in connection with comments by the GAC, that “ICANN does not consider .bank to constitute a community directly.” Dotsecure refers to Annexes 2.1, 2.2 and 2.3 of its Response as support for this argument.

82. Those Annexes merely show, instead, that ICANN views the dispute resolution process as the proper forum to resolve disputes as to the existence and identity of a community.

83. As Dotsecure itself points out in Annex 2.2, the GAC specifically referred to “.bank” in its comments as a string “subject to national regulation” that “should also be considered a “community-based” string” and that “*a priori* characterisation of strings is inherently problematic.”

84. Further, Dotsecure itself stated in Annex 2.3 that” [i]n the final version of the AGB, ICANN identified .bank as a “sensitive string” that might get a GAC Early Warning.” Indeed, ICANN expressly quoted the GAC concern in footnote 1 to Module 1 of the Guidebook, including the reference to “.bank”.

85. ICANN’s responses cannot reasonably be construed as expressing skepticism by ICANN regarding the existence of a clearly delineated global banking community.

86. Moreover, denying the existence of a global banking community in the aftermath of the recent financial crisis is an unpersuasive exercise of linguistic distinctions in the face of commercial and regulatory reality.

iv. Ongoing Relationship

87. IBFed has an “ongoing relationship” with the global banking community. IBFed’s membership of national trade associations demonstrates that ongoing relationship.

88. IBFed's founding members are:

American Bankers Association
Australian Bankers' Association
Canadian Bankers Association
European Banking Federation
Japanese Bankers Association
Banking Association of South Africa

89. IBFed's associate members are:

China Banking Association
Febraban
Indian Banks Association
Korea Federation of Banks
Association of Russian Banks

90. Mr. Wim Mijs, Chief Executive Officer of the Dutch Banking Association and Chairman of the Executive Committee of the European Banking Federation (“EBF”), serves as IBFed chairman. The Managing Director of IBFed, Ms. Sally Scutt, is Deputy Chief Executive of the British Bankers' Association (“BBA”). The Dutch Banking Association and the BBA are yet two more broad-based representative banking voices that thus participate in the work of IBFed.

91. Collectively, according to IBFed, the national associations with membership in IBFed “represent more than 18,000 banks with 275,000 branches, including around 700 of the world's top 1000 banks which alone manage worldwide assets of over \$31 trillion.”

92. The fact that IBFed is an “association of associations,” rather than having individual banks as direct members, in no way undermines the relationship. Each of the national banking associations that is a direct member of IBFed itself has very large numbers of individual banking organizations as members. Those individual banks look to their representative associations to participate in policy and regulatory developments in a coordinated fashion on their behalf.

93. Dotsecure appears to argue that, for IBFed to have an “ongoing relationship,” it must itself be in privity with the 36,000+ banking enterprises in the world. That argument misconceives the nature of the requisite relationship. A representative association may maintain a relationship by means of intermediary associations, as is the case for IBFed. Dotsecure seeks to introduce an artificial requirement that any relationship between an association and the enterprises within a community must be direct, one-on-one and exhaustive before that relationship will be recognized as an “ongoing relationship” for purposes of the Guidebook. That purported requirement cannot be found in the Guidebook. In any event, it is unrealistic – such a limitation, if it existed, would disqualify a very great number of well-respected professional, trade and industry associations from satisfying the “ongoing relationship” Procedure requirement to the detriment of the purpose of the community objection process.

94. IBFed's working group efforts, newsletters, reports, public comments, meetings with policymakers and regulators and the like show, individually and cumulatively, that IBFed's institutional purposes are efforts intended for the benefit of the global banking community.

95. IBFed maintains working groups, staffed by representatives of its member organizations, for a broad range of activities comprising principal business and regulatory concerns of its banking constituents; financial markets, financial reporting, prudential regulation, regulatory reform, value transfer networks, consumer affairs and financial crimes. Here again, reliance on seconded staff and member representatives to undertake the work of coordinating positions across national boundaries and communicating those positions to policy-makers and regulators does not undermine the relationship – rather it reinforces the relationship.

96. Those IBFed working groups, and their substantive responsibilities, demonstrate persuasively that IBFed has an ongoing relationship with a clearly delineated global banking community.

97. Dotsecure’s position also fails to take account of the direct lobbying and policy efforts of IBFed with national and international financial services regulatory bodies. Government regulatory bodies comprise part of the global banking community just like private sector participants.

v. Substantial Opposition

98. Although the Guidebook makes the “substantial opposition” requirement a merits test, Dotsecure has raised the issue with respect to both standing and merits. IBFed has put forth formidable evidence of “substantial opposition” to Dotsecure’s application. Dotsecure’s critique of the opposition relies to a considerable extent on a formalistic counting of opposition letters compared with the total number of banks worldwide in the global banking community. That kind of quantitative measurement ignores the representative nature of IBFed itself as an association, the endorsement of IBFed’s Objection by its members, who themselves are broad representative associations and the function of representative associations as voices for their members and their community. The professional world is simply not organized on the mass membership basis that Dotsecure sees as a requirement for a showing of “substantial opposition.” Rather, many arenas of trade and commerce, including financial services, rely on representative associations for that purpose. The Guidebook does not refuse to recognize that means of organizing voices in a community. Here, the representative nature of IBFed and each of its members, the recognized stature of those organizations and their geographic and cultural diversity weigh heavily in favor of proving “substantial opposition.” Additionally, IBFed has provided letters from organizations and individuals who associate with the Federation, but also with organizations and individuals who are independent.

vi. ABA Sponsorship of fTLD Registry Services

99. Dotsecure points to the participation of the American Bankers Association (“ABA”) on the Board of Directors of IBFed and as co-sponsor in fTLD Registry Services, the competing applicant for the “.bank” gTLD. Dotsecure argues that ABA’s participation is a conflict of interest. After considering Article 20 of the Procedure and Paras. 3.2.2.4 and 3.5.4 of the Guidebook, the Panel determines that allegation relates in substance to the merits claims in the Objection rather than to the question of whether IBFed has the requisite standing to pursue a community objection. The assertion is consequently best addressed in the Section of this Expert Determination covering the merits of the Objection.

vii. Conclusions as to Standing

100. For the reasons described above, the Panel determines that IBFed has standing to pursue this community objection.

B. Merits Objection and Response

101. The Panel now turns to the substantive objections to Dotsecure's Application presented by IBFed. Pursuant to Article 20 of the Procedure, IBFed again has the burden of proving its substantive objections.

i. IBFed's Position

102. In summary, IBFed argues that, if Dotsecure is awarded the right to manage the gTLD ".bank", "there would be a material detriment to the global banking community ... based upon deficiencies in Dotsecure's application, its lack of any apparent connection to or engagement with the community it has targeted and the superiority of fTLD Registry Service's community application for .bank that has been formally endorsed by IBFed and over thirty global banking community members."

103. As part of those asserted "deficiencies," IBFed urges in its Opposition, *inter alia*, as follows:

- a. The ICANN Governmental Advisory Committee (GAC) has repeatedly advocated the need for heightened safeguards in connection with potential "sensitive strings," including an express statement by the GAC that "those 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." (Emphasis added)
- b. Additional governmental concerns regarding the sensitive nature of the .bank string expressed in December 15, 2008 correspondence from the Federal Deposit Insurance Corporation (FDIC) to ICANN. The FDIC urged that no financial sector gTLDs not sponsored by the financial community be issued.
- c. The collective position of IBFed and its member associations (and their member associations and institutions) is that gTLDs that have public interest implications, such as .bank and other financial-oriented gTLDs, must be operated by a trusted member of the community that understands the needs and interests of the community and the consumers served. Dotsecure is neither a member of the banking nor financial services community.
- d. In analysing the opposition to Dotsecure's application, the panel should also consider the extensive support within the banking community for fTLD's community-based application which is in contention with Dotsecure's application. At the time of this objection filing, more than 30 global banking associations and institutions have formally endorsed fTLD's application with new community members continuing to join.
- e. The strong association between the word "bank" and the global banking community. Notwithstanding the strong association between the global banking community and the applied for string (.bank), Dotsecure readily acknowledges that it has no formal ties to the banking community. A review of Dotsecure's application (Question 18) as well as other public comments made by Dotsecure leave no doubt that it intends to target a community that it has no ties to should it be awarded the .bank gTLD and IBFed opposes this.

- f. Dotsecure is part of the Directi family of companies. According to the Anti-Phishing Working Group (APWG) report, “Global Phishing Survey: Trends and Domain Name Use in 1H2012,” Directi accounted for the largest percentage of malicious domain name registrations of any named registrar.
- g. Another concern of the IBFed is the ability of Dotsecure/Radix to provide sufficient resources to ensure the secure and stable operation of the .bank gTLD, in light of Radix’s portfolio of 31 gTLD applications (including for example .CLICK, .SITE, etc.). As IBFed does not have access to Dotsecure’s responses to the financial questions in their application, it is unclear whether Dotsecure is adequately resourced and whether funds are properly segregated for its 31 applications. As Directi has acknowledged in public comments in connection with its .bank application, its primary expertise is as a domain name registration authority.
- h. The ability for Radix to safeguard any “sensitive string” is a paramount concern in light of a current gTLD in which the registry operator had no meaningful and on-going relationship with the community targeted by the gTLD.
- i. Public Domain Registry (PDR) is another Directi entity providing domain name registrations services. Notwithstanding clear legal provisions in its registration agreement that permit the registrar “to delete, suspend, deny, cancel, modify, take ownership of or transfer” of a domain name in a wide range of instances, there have been numerous documented instances in which members of the global banking and financial services sectors have had to expend financial and legal resources to file an ICANN Uniform Domain-Name Dispute-Resolution Policy (UDRP) proceeding to combat abusive domain name registrations sponsored by PDR.
- j. The failure of Directi and its controlled registrars to duly act in accordance with contractual provisions set forth in its registration agreement and proactively address cybersquatting and other abusive registration practices directed at the banking and financial services sector represents a clear and material detriment to the global banking community. Directi’s decision not to act upon these contractual provisions, calls into question its ability to be a proper steward of the .bank gTLD on behalf of the global banking community.
- k. It is appropriate for the ICC panel to factor into its analysis the choice of a more suitable trustee for the .bank gTLD. fTLD, created and governed by members of the global banking community, filed a community application for .bank on behalf of this community.
- l. Permitting Dotsecure the potential to operate the .bank gTLD with no apparent connection to the global banking community would represent a material detriment in connection with the historic self-governance model promoted within the global banking community.
- m. When a registry operator with no established ties with the targeted community operates a gTLD their primary objective is often the maximization of revenue while minimizing costs. The potential for Radix, the parent of Dotsecure, to adopt lesser standards to uniformly deploy across Radix’s entire portfolio of gTLDs would be detrimental to the global banking community.
- n. Because Dotsecure is not a member of the global banking community and its interests appear driven solely by the registration and hosting of domain names, Dotsecure will no doubt place its commercial interests ahead of the community’s interests. This coupled with Directi’s previous track record and business practices creates the likelihood for cybersquatting and a broader loss of institutional reputation within the .bank gTLD.
- o. If fTLD is selected to operate the .bank gTLD, members could voluntarily elect to register and use a domain name or they could in full confidence elect not to defensively register knowing full well there will be no non-compliant/abusive registrations in the .bank name space. However, if Dotsecure is given the right to operate .bank, members of the global banking community will have no option but to defensively register their brands in .bank even if they have no intention of ever using that domain name.

104. In its 3 July Additional Written Submission, IBFed offers further comments, in reaction to Dotsecure's Response as explained below.

- With regard to likelihood of material detriment to the community, IBFed has reviewed Dotsecure's Public Interest Commitments (PIC) statement and stands by its concern regarding a likelihood of material detriment. Moreover, the distinction Dotsecure makes between its treatment of general names (i.e., some apparent form of restrictions) vs. other names (i.e., with no restrictions at all) is quite problematic for the global banking community.
- While the words in Dotsecure's application promise one thing, the actions of its sister companies demonstrate something entirely else. Directi, in an ex parte communication to the ICC dated 9-May-2013, attempts to rebut the statements made about its business practices and what it is legally entitled to do. The IBFed welcomes Mr. Kantor to review the relevant contractual provisions and reach his own conclusions. Moreover, the IBFed would encourage Mr. Kantor to review the actions, associated with a "spam-outbreak", that another Directi company, .PW registry, is currently addressing in connection with its recently re-launched .PW registry, see <http://domaingang.com/domain-news/pw-registry-addresses-recent-explosion-in-spam-emails-from-pw-domains/>.
- While the IBFed does acknowledge some of the "reactive" measures that Dotsecure's sister companies have undertaken in connection with abusive/malicious registrations, the global banking community finds little comfort in this approach. Harm to institutions and consumers usually happens within minutes and/or hours of malicious domain names being purchased and activated and Dotsecure has not proffered a proactive approach to mitigate this activity.

ii. Dotsecure's Position

105. Dotsecure rejects the objections made by IBFed. In summary, Dotsecure argues in its Response:

- IBFed fails to provide evidence that "community opposition to the application is substantial". We show factual evidence to prove that the opposition alleged by it is not substantial, be it in numbers, representation, stature, or expenses.
- IBFed fails to prove a "strong association" between the purported "global banking community" and the string "bank". Of primary importance is that the term "bank" has several other meanings and connotations.
- IBFed fails to show a "likelihood of material detriment" to the purported "global banking community". IBFed has made irrelevant allegations against legal entities separate from Dotsecure in an attempt to smear Dotsecure, and shift the Expert Panel's focus from Dotsecure's application content. We assert that IBFed's obvious self-interest in the fTLD the application has prevented IBFed from assessing Dotsecure's application fairly. IBFed has relied on numerous baseless assumptions and made factually incorrect statements in a desperate attempt to obstruct Dotsecure's application with the end goal of protecting its founding member's (ABA) investment in fTLD.

106. Dotsecure fleshes out these responses along the following lines in the same submission.

IBFed makes an argument that ICANN intended for .bank to be a community string. We submit that the very quote IBFed submitted evidences otherwise. While the GAC has called for an expansion in the definition of "community" as defined in the AGB, that issue has been considered and the ICANN Board decided to NOT define community as recommended in the GAC's brief. Please see Annexure 2.1, 2.2 and 2.3 for a detailed analysis of the GAC and ICANN communications. We summarize the analysis:

- ICANN does not consider .bank to constitute a community directly.

- GAC asked ICANN to consider .bank is a community string in it's GAC scorecard in Fed 2011 (Annexure 2.1).
- On 4 March 2001 ICANN's Board responded saying that they do not agree with the GAC (Annexure 2.2).
- IBFed has neglected to present all the facts in this argument in their conclusions are incomplete and inaccurate (Annexure 2.3).
- GAC clearly considers .bank is a sensitive string. We agree with this.
- GAC spent 10 months analyzing every single new gTLD application from June 2012 to April 2013 and issued 242 Early Warnings on 200 applications. However our application for .bank did not get a GAC Early Warning related to "community" or the sensitive nature of the string. This clearly demonstrates that the safeguards in our application have passed the bar of government representatives from 124 countries.
- Additionally the independent objector also has the ability to file an objection against any application on Limited Public Interest and Community Grounds, but Dotsecure received no such objection.

We also note the following AGB requirement related to Security Policy (Question 30 criteria): "Complete answer demonstrates ... 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)." We submit that our security measures are appropriate.

107. In its Response, Dotsecure explained each one of these points more fully. Dotsecure began by arguing that it proposed to put in place "a multitude of augmented security measures that not only go above and beyond ICANN's requirements, but also closely match the security measures proposed by fTLD in its application (see Annexure 6.1).

108. Further, on 13 May 2013 Dotsecure filed a PIC statement making its commitments enforceable as provided therein.

109. Dotsecure argues that IBFed's allegations against Directi "have no bearing on Dotsecure's application for .bank as well as this objection." Directi's own response is found at Annexure 6.3.

110. With respect to IBFed's assertions regarding inadequate funding of Dotsecure, the Applicant argues that IBFed "should respect that ICANN's evaluation process incorporates assessing the financial stability of applicants (questions 45 – 50) before delegating a gTLD to them." Dotsecure did not, however, persuasively and substantively address IBFed's financial resources allegations.

111. As to the assertion that Dotsecure has no relationship with the global banking community, "Dotsecure does not deny this, and would like to stress the fact that it has not broken any rules or flouted any ABG requirements by applying for .Bank. In fact, we submit that the lack of an existing relationship with the banking industry makes Dotsecure a more unbiased candidate to run the .Bank registry."

112. Dotsecure has challenged what it regards as the lack of evidence from IBFed to support IBFed's claim that Dotsecure will not properly perform its tasks operating the .bank string.

Dotsecure points to the absence of any ICANN objection as evidence that Dotsecure is competent to operate the .bank registry.

113. Regarding the role of the American Bankers Association in both IBFed and fTLD Registry Services, Dotsecure argued in its 9 July 2013 Additional Written Submission that IBFed, the ABA, the Financial Services Roundtable and cooperating institutions in the financial community are seeking to eliminate competing applications by objections. In support of this position, Dotsecure notes that the Financial Services Roundtable filed a “near-identical objection” against Dotfresh’s application for the string “.insurance”. Moreover, points out Dotsecure, IBFed has not filed objections to applications for several other finance-oriented strings; among them “.finance,” “.financial,” “.insure” and “.mutualfunds,” “all of which would be considered to be part of the “financial community.” Dotsecure asserts this cannot be a coincidence, since the ABA did not apply to operate any of those strings.

iii. Analysis

114. To prevail on its Objection, IBFed must prove to the Panel (a) that “substantial opposition within the community” to the Application exists, (b) the existence of a “strong association between “.bank” and the community,” and (c) that the Application “creates a likelihood of material detriment to the rights or legitimate interests of the community to which “.bank” may be explicitly or implicitly targeted.”

115. In addition, IBFed must also prove that the community expressing opposition can be regarded “as a clearly delineated community.” The Panel has addressed this factor above in connection with reviewing the issue of IBFed’s standing to pursue the community objection. The Panel incorporates the conclusion that a clearly delineated global banking community exists from that standing discussion into this analysis of the merits of the Objection.

116. As explained below, the Panel has determined that IBFed has proven each of these elements and that Dotsecure’s responses are not persuasive.

a. Substantial Opposition

117. As noted above, Dotsecure seems to have raised the requirement of “substantial opposition” in the context of both standing and merits. The comments in paragraph 98 of the Standing section above apply equally to the merits analysis and are incorporated herein by reference. The Guidebook identifies a number of non-exhaustive factors a panel may balance to determine whether substantial opposition to the Application exists within the global banking community, including numbers, representative nature, stature or weight among sources of opposition, historical defense of the community and costs incurred. IBFed’s objection satisfies each of these factors, other than costs incurred.

118. IBFed is itself an “association of associations.” Accordingly, when IBFed speaks, it does so as the “representative body for national and international banking federations from leading financial nations around the world.” See, e.g., Letter from IBFed to Board of Governors of the Federal Reserve System Re: Enhanced Prudential Standards and Early Remediation Requirements

for Foreign Banking Organizations and Foreign Nonbank Financial Companies (30 April 2013)(publicly available on IBFed's website).

119. As noted above, IBFed's member associations include leading banking trade associations from the United States, the European Union, Japan, China, India, Canada, Australia, Korea, Russia and South Africa. IBFed persuasively explains that those national associations, in turn, collect and represent the views of more than 18,000 banks, including about 700 of the world's largest 1000 banks.

120. As IBFed explained in its Objection, the Board of Directors of IBFed, representing the views of its member federations, approved in writing the presentation of the Objection and has supervised IBFed's participation in the comment process with respect to the ICANN gTLD effort. As stated above, each of the full members of the Federation appoints a representative to the Board, and thus the approval by the Board is in fact approval by each of the member national banking associations. The extent of the opposition to the Dotsecure application is expressed by that vote, even without looking further.

121. In addition, representatives of the national associations and their constituent banks have staffed IBFed's participation in that process and the development of the Objection.

122. IBFed's activities with respect to the gTLD process have been reported regularly to its members and, through them, to constituent banks, as well as to national and international bank regulatory authorities. In particular, IBFed has reported to the international banking community and bank regulatory bodies the opposition of its member national associations to the Dotsecure application as expressed by approval of the Objection and the related actions of IBFed. There is no evidence at all that any member bank of any national association, or any national bank regulatory agency, has offered any opposition to the position of IBFed in this regard. Rather, both banks and regulators have supported the national associations and IBFed in their opposition. See, e.g., Annex D to the Objection for support by banking enterprises for the Objection.

123. Those facts, by themselves, are sufficient to show that the Objection reflects substantial opposition to Dotsecure's Application within the global banking community - in numbers relative to the composition of the community, in the representative nature of IBFed's opposition and the opposition of its member associations, and in the recognized stature and weight of IBFed speaking as the voice of leading national associations in the financial centers of the world and their member banks.

124. In addition, IBFed has also annexed to the Objection letters demonstrating that substantial opposition to the Application extends well beyond the member associations of IBFed.

125. Among those statements of opposition are letters from a large United States insurance and financial services company (Nationwide Mutual Insurance Company), one of the world's largest companies, with a prominent financial services division (General Electric Company), a direct banking and payment services provider (Discover Financial Services), a "super-regional" banking corporation in the United States (Regions Financial Corporation), two major United States bank holding companies (SunTrust Banks, Inc. and KeyCorp), the Spanish Banking Association

(Asociación Española de Banca), two leading United Kingdom global banking organizations (the Royal Bank of Scotland Group PLC and Lloyds Banking Group), a Nordic regional banking corporation based in Denmark (Nykredit Bank A/S), a Nordic regional banking corporation based in Sweden (Nordea Bank Danmark A/S), the Norwegian national association for financial institutions (Finance Norway), the Federation of Finnish Financial Services (FFI) and a regional bank holding company in the United States (First Horizon National Corporation).

126. The broad worldwide membership of IBFed’s Board of Directors explained above, as well as its member associations, and the representative positions of IBFed’s chair (member, EBF Executive Committee) and managing director (Deputy Chief Executive, BBA) attest to the broad geographic and business distribution and diversity of this community opposition. That conclusion is reinforced by the additional opposition noted above from specific institutions in Europe and the United States, crucial global financial centers.

127. As contemplated by the ICANN Guidebook factors, IBFed has also undertaken “defense of the global banking community” in a wide variety of subject areas. Since its establishment in 2004, IBFed has represented the global banking community in reviewing, commenting and seeking to shape policy and regulatory measures in numerous areas of continuing importance to the community. IBFed maintains permanent working groups on regulatory reform, prudential regulation, financial reporting, financial markets, financial crime and consumer affairs.

128. IBFed also establishes ad hoc working groups on a case-by-case basis.

129. In connection with these activities, IBFed regularly meets and corresponds with international and national regulators and legislators, international accounting bodies, central banks and monetary authorities on behalf of its membership, as well as submitting formal comments on banking policy and regulatory proposals throughout the world. These various activities outlined in this and the preceding paragraphs illustrate the representative nature of the Federation. The opposition to Dotsecure’s application expressed by IBFed is made in its representative capacity, and with full knowledge and concurrence of its members and the national associations, undertaken after broad and regular consultation.

130. The last factor identified by ICANN for balancing is “costs incurred by the objector in expressing opposition,” including other channels for conveying opposition. IBFed does not offer evidence speaking to this point, although it is apparent that IBFed has spent time and resources in pursuing the Objection. The absence of proof of this factor does not weigh heavily in the balance.

131. Dotsecure criticizes IBFed for cooperating with the Financial Services Roundtable in preparing the opposition to a gTLD application for another financial services top-level domain, “.insurance”. However, cooperation between organizations with common interests and attention to cost control are not, in the Panel’s view, negative factors in the balance.

132. Dotsecure challenges IBFed’s showing of “substantial opposition by the community” by, among other efforts, totaling up the number of opposing comments and comparing that total to the aggregate number of banks in the world. Dotsecure also criticizes several of the comments as coming from non-bank organizations. Those critiques are hyper-technical and constitute an

unpersuasive measurement of opposition, especially in light of the votes by the national associations themselves to approve the IBFed Objection.

133. Dotsecure does not acknowledge in its Response the representative nature of IBFed itself (an “association of associations”), the representative nature of the IBFed members themselves and the extremely large number banking organizations that are members of those representative associations opposing the Application, the stature, reputation and diversity of those members and the organizations contributing the officers and Board of IBFed as discussed above, or the representative nature of IBFed itself, its members, and the Spanish and Nordic banking associations stating their opposition to the Application.

134. The representative nature of the banking trade organizations stating their opposition to the Application does weigh heavily in the balance towards determining the presence of “substantial opposition.”

135. Dotsecure raises the American Bankers Association’s role as co-sponsor of the competing application for “.bank,” fTLD Registry Services, as a criticism in connection with the determination of “substantial opposition.” The ICANN Guidebook reminds us, although in connection with a different balancing factor, that “an allegation of detriment that consists only of the applicant being delegated a string instead of the objector will not be sufficient for a finding of material detriment.”

136. That is true. However, it is unsurprising that a prominent trade association in the global banking community will co-sponsor an industry-related organization to manage top-level domain operations for the community and at the same time object to granting operation of the same string to a provider with no ties to that target community.

137. Indeed, one prominent bank regulator, the FDIC, has expressly recommended that gTLDs like “.bank” be “managed within an industry and regulatory framework.” Further, the FDIC recommended that “any applications include explicit endorsement of the financial industry community including regulatory bodies.”

138. The FDIC’s recommendations are not binding on ICANN or this Panel. They nevertheless demonstrate that important bank regulatory authorities encourage sensitive financial services strings like “.bank” to be managed by organizations deeply embedded in the relevant community. Overlapping relationships are virtually inevitable in those circumstances, and do not weigh negatively in the balance for testing either “substantial opposition” or, as discussed further below, “material detriment”.

139. For these reasons, the Panel concludes that IBFed has proven the existence of substantial opposition in the global banking community to the Application.

b. Strong Association

140. The Panel turns now to the evidence regarding the strong association between “.bank” and the global banking community that is explicitly or implicitly targeted by that string. Here too, the Panel is persuaded that IBFed has proven the existence of this element.

141. The ICANN Guidebook points us to three non-exhaustive factors that may be of importance in the balance: statements in the Application; other public statements by the Applicant; and assertions by the public.

142. Much of Dotsecure’s argument with respect to the alleged lack of a “strong association” is predicated on their position that no global banking community exists. The Panel has rejected that position elsewhere in this Expert Determination.

143. Dotsecure also argues that the word “bank” may have many dictionary meanings, such as a piggy bank, the bank held by a card dealer, or a blood bank. Accordingly, says Dotsecure, there is no strong association of the term “bank” with the global banking community. That argument is frivolous.

144. Dotsecure is well aware of the strong association. In its own Application for the string, Dotsecure stated “our area specialty will be the global banking industry.” Dotsecure further explains that its mission and purpose will be “to build a unique and trusted Internet space for banking institutions.” Moreover, says Dotsecure, “the mission/purpose for .bank is to be the Global Banking TLD.”

145. Dotsecure is not alone in *de facto* closely associating “.bank” with a specific banking community. Bank regulators, bank clients and the consumer public clearly associate the word “bank” with the banking community. The use of the word “bank” in a business name is strictly regulated by national bank regulatory authorities to, as the Canadian regulator OSFI stated, “protect the ... public from incorrectly assuming they are dealing with a ... bank that is subject to the Bank Act and [the bank regulatory body’s] oversight.”

146. Further, OSFI pointed out that such a regulatory measure “contributes to the public confidence in a [country’s] financial system by protecting the integrity of the word “bank” as a word that is generally reserved for entities that are regulated and supervised as a bank in [the relevant country.]”

147. In Annex C to its Objection, IBFed listed five major jurisdictions in which the term “bank” is restricted by law to banks regulated and supervised by the national bank regulatory authorities; Hong Kong, Australia, Canada, India and New York. Other similar regulatory restrictions on the use of the term “bank” in commerce can be found elsewhere.

148. In the Panel’s view, there is no doubt that the string “.bank” is strongly associated with the global banking community.

c. Material Detriment

149. The final element to be considered in connection with the merits of IBFed’s objection is “material detriment.” 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 “.bank” may be explicitly or implicitly targeted (the global banking community).

150. In light of Dotsecure’s express statements in its Application that “our area specialty will be the global banking industry,” that it will build a “unique and trusted space” for “banking institutions,” and that its mission is to be “the Global Banking TLD,” it is manifest that Dotsecure explicitly intends to target the “.bank” gTLD at participants in the global banking community and their clients. The purported technical distinction put forward by Dotsecure between the phrase “global banking community” and similar terms as used by IBFed and the phrases “global banking industry” and “global banking” as used by Dotsecure in its own Application is unpersuasive.

151. In assessing whether or not “material detriment to a significant portion of the community” exists, ICANN directs our attention to several non-exhaustive factors “that could be used by a panel in making this determination.” Those factors include but are not limited to the nature and extent of damage to the reputation of the global banking community that would result from Dotsecure’s operation of the “.bank” string, evidence that Dotsecure will not be acting in accordance with the interests of the global banking community or of users more widely including concerns over the institution of effective security protection for user interests, interference with the core activities of the global banking community that would result from Dotsecure’s operation of the “.bank” name, dependence of the global banking community on the DNS for its core activities, the nature and extent of any concrete or economic damage to the global banking community that would result from Dotsecure’s operation of “.bank”, and the level of certainty that alleged detrimental outcomes would occur.

152. The Guidebook draws the Applicant’s attention to the ICANN Final Report for further discussion of factors that may be relevant to this determination. In connection with the earlier discussion of standards, the Panel has quoted from the Final Report a summary chart of factors for consideration.

153. The ICANN Guidebook reminds us that an allegation of detriment that consists only of Dotsecure being delegated the string instead of IBFed (or here, fTLD Registry Services, an organization sponsored by one of the members of IBFed) will not be sufficient for a finding of material detriment.

154. As previously explained, IBFed asserts that Dotsecure’s Application is deficient in a number of respects. Moreover, IBFed argues that Dotsecure’s lack of any apparent connection to or engagement with the global banking community and the asserted superiority of fTLD Registry Services’ application for “.bank” are decisive factors in determining “material detriment”.

155. IBFed draws the attention of the Panel to the ICANN Governmental Advisory Committee (GAC) advocacy of heightened safeguards in connection with “sensitive strings,” including specifically “.bank.” The GAC justifies that requirement of heightened safeguards on the basis that the sensitive string is “targeted to a population or industry that is vulnerable to online fraud or abuse.” Similarly, the EBF, the FDIC and OSFI, among other public authorities, have all raised

concerns over financial industry strings such as “.bank” and the potential for consumer fraud, cybersquatting and confusion in the mind of the public with respect to this highly regulated industry.

156. For these reasons, bank regulatory authorities have urged that financial services strings be managed only by institutions within the financial services regulatory framework and endorsed by financial services community and financial services regulators.

157. Dotsecure counters that IBFed has misconstrued the role of the GAC and failed to note the responses by ICANN to the GAC comments. As discussed in the preceding Section of this Expert Determination, the Panel has concluded that IBFed accurately characterized the GAC’s concerns. Moreover, ICANN’s responses to the GAC comments direct interested parties to, among other matters, this very type of dispute resolution process to address those concerns.

158. Neither Dotsecure nor any of its affiliates (including Directi, Radix and PDF) have any demonstrated connection or engagements with the broader financial system services community or the more specific global banking community. Indeed, Dotsecure acknowledges this fact in its Response.

IBFed has repeatedly emphasized the fact that Dotsecure “lacks any relationship of the global banking community”. Dotsecure does not deny this, and like to stress the fact that it is not broken any rules or flouted any AGB requirements by applying for .bank. In fact, we submit that the lack of an existing relationship with the banking industry makes Dotsecure a more unbiased candidate to run the .bank registry.

159. While Dotsecure may not have broken any rules or requirements in applying for the “.bank” gTLD, Dotsecure’s admitted lack of an existing relationship with the banking industry is sufficient by itself to create a likelihood of material detriment to the rights or legitimate interests of a significant portion of the global banking community and users of banking services worldwide for the following reasons.

160. Dotsecure has in effect admitted that it has no real familiarity with the highly complex world of national and international banking regulation (“Dotsecure does not deny ... the lack of an existing relationship”). It is extraordinarily difficult to have familiarity with that banking and bank regulatory environment when one has no relationship with the community of banks and their manifold regulatory bodies. Each country regulates its own domestic banking community heavily. Each country further regulates *inter alia* cross-border deposit-taking, finance, payments and collections and other services and products involving banking organizations located in other countries.

161. Within each country there may be several regulators of the banking community: central banking and monetary authorities such as the Bank of England and the Federal Reserve Board; general financial institution regulators (illustratively, the Prudential Regulation Authority in the United Kingdom); regulators focused specifically on commercial banks themselves (for example, the Office of the Comptroller of the Currency, the Federal Reserve Board and the FDIC regulate, respectively, national banks, state member banks and state non-member banks in the United States and the Prudential Regulation Authority regulating banks and other financial institutions in the United Kingdom; regulators with authority over the largest financial institutions giving rise to

concerns over systemic risk (the Financial Stability Oversight Council in the United States); regulators serving as receivers or liquidators for distressed banks (for example, the FDIC in the United States and the Bank of England's Special Resolution Unit in the United Kingdom); regulators focused on holding companies that may offer a variety of different financial products and services through subsidiaries, including banking (for example, bank holding company regulation by the Federal Reserve Board in the United States); consumer protection agencies such as the new Consumer Finance Protection Bureau in the United States; and regulators focused on particular transactions or activities in which banks are heavily engaged (for example, securities activities regulated by the Securities and Exchange Commission and derivatives and commodities trading activities regulated by the Commodities Futures Trading Commission in the United States and "conduct" regulation generally by the Financial Conduct Authority in the United Kingdom); and numerous law enforcement agencies concerned with financial crimes.

162. Such a complex overlapping regulatory environment exists not only in the United States and the United Kingdom, but also in every other major financial center in the world too. Additionally, for many parts of the world, such as in the European Union, national bank regulation in its many forms must co-exist with supranational bank regulation as well. Nor is supranational regulation of banks found in a unified authority either; illustratively, several constituent bodies of the European Union regulate banks and banking services.

163. Lack of experience and lack of existing relationships in that complex regulatory environment are highly likely to result in inadvertent non-compliance with bank regulatory measures, in delays in obtaining regulatory consents, in difficulties resolving overlapping requirements imposed by a multiplicity of regulators and policymakers, and in significant concerns on the part of regulatory authorities over the possibility of fraud, consumer abuse, tax evasion and money laundering, other financial crimes and improper avoidance of regulatory measures by means of the Internet. Those concerns were highlighted by bank regulatory authorities in their comments to ICANN with respect to sensitive financial services strings such as ".bank."

164. The prospects for delays, non-compliance and confusion are, in the view of the Panel, likely directly and adversely to affect the reputation of the banks that comprise the global banking community. Moreover, those prospects are most definitely not in the interest of users of the global banking system on the Internet or regulators seeking to maintain systemic stability.

165. To the extent the delays and regulatory approvals materialize, financial payments and transfers effected online through the top-level domain will necessarily be adversely affected. Those consequences will at a minimum interfere with funds transfers and settlements, a core activity of the global banking community, and thus create a substantial likelihood of material systemic risk as well as material risk to individual banks and their customers.

166. Dotsecure's admitted lack of relationships and familiarity with banking or the global community raises the level of certainty with respect to the likelihood of these injuries materializing to a high level, far too high to sustain the Application.

167. In addition to the demonstrable likelihood of material detriment resulting from Dotsecure's inadequate engagement with the banking community and regulatory bodies, IBFed criticizes the

reputation and reliability of Dotsecure and other members of the Directi family of companies, including Radix and PDR.

168. IBFed notes that, according to the October 2012 report from the Anti-Phishing Working Group, “Directi accounted for the largest percentage of malicious domain name registrations of any named registrar.”

169. IBFed also asserts there are “numerous documented instances” in which financial services enterprises have filed an ICANN Uniform Domain-Name Dispute-Resolution Policy proceeding “to combat abusive domain name registrations sponsored by PDR.” IBFed additionally claims that Directi and its affiliates do not “proactively address cybersquatting and other abusive registration practices directed at the banking and financial services sector.”

170. Dotsecure and Directi vigorously reject these allegations. Dotsecure calls them “irrelevant allegations against legal entities separate from Dotsecure in an attempt to smear Dotsecure,” “numerous baseless assumptions” and “factually incorrect statements.”

171. Directi itself also challenges IBFed’s claims in a letter annexed to the Response. In particular, Directi replies that the Anti-Phishing Working Group did not provide timeliness data that leads to a contrary conclusion. Further, Directi argues that those anti-phishing statistics are based on domains that lack any significant restrictions on domain name registrations (.net, .com, .org and .in). Consequently, says Directi, the purported lack of quality control lies in the structure of the domains themselves rather than in failures by Directi and its affiliated companies.

172. Directi also objects to IBFed’s criticism of PDR for failing promptly to suspend abusive domain registrations. Directi states that Directi /PDR was not notified of abuse before the filing of a UDRP proceeding in any of the 70 instances identified by IBFed.

173. IBFed in addition challenges the credibility of Dotsecure’s security protections, noting both the record of abusive domain practices at Directi-related registries and the absence in Dotsecure’s initial Application of legally enforceable security safeguards.

174. Dotsecure again rejects these objections in its Response and Additional Written Submission. Moreover, Dotsecure filed a Public Interest Commitment (“PIC”) statement on 13 May 2013 making their commitments in the Application legally enforceable. In that PIC statement, Dotsecure elected to make five specific commitments, rather than committing to the general obligation in paragraph 2 for “all commitments, statements of intent and business plans” in the Application. Response, Annex 6.2. Accordingly, only those five specific commitments are legally enforceable.

175. Finally, IBFed challenges the financial resources of Dotsecure, basing that attack on the absence of information about the financial circumstances of Dotsecure and the other members of the Directi family of companies (“it is unclear whether Dotsecure is adequately resourced and whether funds are properly segregated for its 31 applications”).

176. Dotsecure responds that these allegations are unsupported and inaccurate. In addition, Dotsecure notes that ICANN itself will undertake a financial review before deciding on the

Application. Dotsecure does not offer, however, any financial information to address IBFed's allegations.

177. These are very serious allegations. If the material detriment to the community arising out of Dotsecure's lack of experience with banking was not so obvious, the Panel would have ordered a hearing to more fully develop the evidence with respect to these other claims by IBFed and Dotsecure's responses. In the circumstances, however, a hearing was not an appropriate use of time and resources of the parties and the Panel. The material detriment arising out of Dotsecure's lack of relationship and familiarity with the global banking community, banking and bank regulators is too clear.

178. IBFed further argues that the Panel should take into account the presence of the competing application by fTLD Registry Services for ".bank" as part of the balancing in which the Panel must engage. IBFed contrasts fTLD Registry Services, an organization "created and governed by members of the global banking community," with the for-profit Dotsecure.

179. The Panel notes, though, that fTLD Registry Services is also a for-profit company. Thus, the crucial difference comes back to a string manager embedded inside the global banking community as contrasted with a string manager having no ties to this highly regulated and tightly interwoven community.

180. IBFed argues that members of the global banking community will be less concerned about cybersquatting and abusive registrations if an organization sponsored by the banking community manages the string, a point that is consistent with the comments of the FDIC to ICANN. If the top-level domain is managed by a non-profit member of the global banking community rather than a for-profit outsider, says IBFed, banks will save considerable money by making fewer defensive registrations.

181. In this regard, IBFed recalls the concerns stated by U.S. bank regulator FDIC that inadequate management of the ".bank" gTLD "could force trade name protection costs onto the financial industry during a period of economic stress."

182. In contrast, Dotsecure asserts that the ABA's participation in fTLD Registry Services, while also serving as an active member of IBFed and its Board, is a "classic conflict of interest." Dotsecure further argues that its lack of relationship with the banking community is an advantage because that absence reduces the prospect for bias in operation of the top-level domain.

183. As the Panel has previously explained, the business of banking necessarily results in interwoven relationships, whether in syndicate financing, underwriting and placement activities, inter-bank deposit markets, payments and collections, or engagement with regulatory bodies through trade associations. Accordingly, the overlapping roles of the ABA, a major trade association representing the many thousands of banks in the United States banking community, do not weigh negatively in the balance.

184. However, this Panel has not been established by the ICC and ICANN to assess the merits of the fTLD Registry Services application. That is a matter outside this Panel's purview. Accordingly,

it is not appropriate for the Panel to consider whether the granting of the competing application by fTLD Registry Services would result in greater community confidence and fewer defensive registrations. The Panel leaves that question to the competent authorities at ICANN and any dispute resolution panel that may be established to consider the fTLD Registry Services application.

d. Conclusion as to Merits of Objection

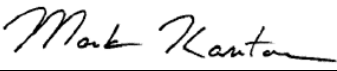
185. For the foregoing reasons, the Panel determines that granting Dotsecure's application for ".bank" would create a likelihood of material detriment to the rights and legitimate interests of a significant portion of the global banking community, the community to which Dotsecure expressly and implicitly targets ".bank."

IV. Decision

186. For all the foregoing reasons and according to Article 21(d) of the Procedure, the Expert renders the following Expert Determination.

1. The Objection is successful.
2. IBFed is the prevailing party.
3. IBFed's advance payment of Costs shall be refunded by the Centre to IBFed.

Date: November 26, 2013

Signature: 
Mark Kantor, Expert