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

AFILIAS DOMAINS NO. 3 LIMITED,
Claimant

v.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS,
Respondent

ICDR Case No. 01-18-0004-2702

LIST OF EXHIBITS TO
AFILIAS DOMAINS NO. 3 LIMITED'S SUR-REPLY TO
VERISIGN, INC.'S AND NU DOTCO LLC'S REQUESTS TO PARTICIPATE AS *AMICUS CURIAE* IN INDEPENDENT REVIEW PROCESS

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12 February 2019

LIST OF EXHIBITS
(Proceeding before Procedures Officer)

Exhibit No.	Description
302	ICANN, Independent Review Process – Implementation Oversight Team (IRP-IOT), Plenary Meetings, 2018 Calls
303	June 2018 Archives by Date (IRP-IOT Messages)
304	July 2018 Archives by Date (IRP-IOT Messages)
305	August 2018 Archives by Date (IRP-IOT Messages)
306	September 2018 Archives by Date (IRP-IOT Messages)
307	ICANN DIDP Response to Request No. 20181221-1 (20 Jan. 2019)
308	December 2018 Archives by Date (IRP-IOT Messages)
309	*Tri-State Generation & Transmission Ass'n, Inc. v. New Mexico Public Regulation Com'n*, 787 F.3d 1068 (10th Cir. 2015)
310	IRP IOT Meeting, March 23, 2017 (Joinder Issues)
311	IRP-IOT Meeting #30 (14 Nov. 2017), Transcript
312	Email from D. McAuley (VeriSign) to Members of the IRP-IOT (1 Dec. 2017)
313	IRP-IOT Meeting #36 (22 Feb. 2018), Transcript
314	Adopted Board Resolutions | Regular Meeting of the ICANN Board (25 Oct. 2018)
315	Email from Independent Review (ICANN) to A. Ali and R. Wong (Counsel for Afilias) (14 Nov. 2018)
316	Letter from A. Ali (Counsel for Afilias) to ICANN (20 Nov. 2018)

EXHIBIT 302

Ex. 302

2018 Calls

Created by Brenda Brewer, last modified on Nov 29, 2018

DATE	MEETING	WIKI PAGE
11 Jan 2018	Meeting #34	https //community icann org/x/XAhyB
08 eb 2018	Meeting #35	https //community icann org/x/KwO8B
22 eb 2018	Meeting #36	https //community icann org/x/LQO8B
03 May 2018	Meeting #37	https //community icann org/x/CACvB
10 May 2018	Meeting #38	https //community icann org/x/GA8 BQ
24 May 2018	Meeting #39	https //community icann org/x/LRs BQ
31 May 2018	Meeting #40	https //community icann org/x/Jxs BQ
07 Jun 2018	Meeting #41	https //community icann org/x/dSU BQ
09 Oct 2018	Meeting #42	https //community icann org/x/awtpBQ
11 Oct 2018	Meeting #43	https //community icann org/x/swirBQ
29 Nov 2018	Meeting #44	https //community icann org/x/qQDVBQ
13 Dec 2018	Meeting #45	https //community icann org/x/JwbuBQ

EXHIBIT 303

Ex. 303

June 2018 Archives by date

- **Messages sorted by:** [thread] [subject] [author]
- **More info on this list...**

Starting: *Fri Jun 1 00:36:46 UTC 2018*
Ending: *Wed Jun 20 13:28:26 UTC 2018*
Messages: 15

- [IOT] Recordings, DAIRs, Raw Caption Notes for IRP-IOT Meeting #40 - 31 May 2018 *MSSI Secretariat*
- [IOT] Interim Supplementary Rules of Procedure *Malcolm Hutty*
- [IOT] IRP IOT - remaining tasks *McAuley, David*
- [IOT] IRP IOT call Thursday, June 7, 19:00 UTC - Agenda *McAuley, David*
- [IOT] IOT - Transition proposal for repose issue *Samantha Eisner*
- [IOT] Types of Hearings *McAuley, David*
- [IOT] IOT - Transition proposal for repose issue *Malcolm Hutty*
- [IOT] [Ext] Re: IOT - Transition proposal for repose issue *Samantha Eisner*
- [IOT] Recordings, DAIRs, Raw Caption Notes for IRP-IOT Meeting #41 - 7 June 2018 *MSSI Secretariat*
- [IOT] IOT call Thursday June 14 - cancelation *McAuley, David*
- [IOT] IOT call Thursday June 14 - cancelation *Kavouss Arasteh*
- [IOT] IOT call Thursday June 14 - cancelation *McAuley, David*
- [IOT] IOT call Thursday June 14 - cancelation *Kavouss Arasteh*
- [IOT] IRP-IOT - Edits for clarity to public consultation text *Bernard Turcotte*
- [IOT] IRP-IOT - Edits for clarity to public consultation text *Bernard Turcotte*

Last message date: *Wed Jun 20 13:28:26 UTC 2018*
Archived on: *Wed Jun 20 13:29:00 UTC 2018*

- **Messages sorted by:** [thread] [subject] [author]
- **More info on this list...**

This archive was generated by Pipermail 0.09 (Mailman edition).

EXHIBIT 304

Ex. 304

July 2018 Archives by date

- **Messages sorted by:** [thread] [subject] [author]
- **More info on this list...**

Starting: *Wed Jul 25 12:49:54 UTC 2018*
Ending: *Thu Jul 26 16:33:45 UTC 2018*
Messages: 2

- [IOT] plans for next call *McAuley, David*
- [IOT] FW: plans for next call *McAuley, David*

Last message date: *Thu Jul 26 16:33:45 UTC 2018*
Archived on: *Thu Jul 26 16:34:17 UTC 2018*

- **Messages sorted by:** [thread] [subject] [author]
- **More info on this list...**

This archive was generated by Pipermail 0.09 (Mailman edition).

EXHIBIT 305

Ex. 305

August 2018 Archives by date

- **Messages sorted by:** [thread] [subject] [author]
- **More info on this list...**

Starting: *Tue Aug 14 08:48:06 UTC 2018*
Ending: *Wed Aug 29 19:16:11 UTC 2018*
Messages: 3

- [IOT] Reviewing the consultation responses *Malcolm Hutty*
- [IOT] IOT - Next call scheduled for 1900UTC 6 September - Confirmation of attendance requested. *Bernard Turcotte*
- [IOT] FW: IOT - Next call scheduled for 1900UTC 6 September - Confirmation of attendance requested. *McAuley, David*

Last message date: *Wed Aug 29 19:16:11 UTC 2018*
Archived on: *Wed Aug 29 19:16:33 UTC 2018*

- **Messages sorted by:** [thread] [subject] [author]
- **More info on this list...**

This archive was generated by Pipermail 0.09 (Mailman edition).

EXHIBIT 306

Ex. 306

September 2018 Archives by date

- **Messages sorted by:** [thread] [subject] [author]
- **More info on this list...**

Starting: *Tue Sep 4 16:32:14 UTC 2018*
Ending: *Tue Sep 25 15:33:15 UTC 2018*
Messages: 10

- [IOT] IOT - 6 September meeting 1900 UTC - Cancelled *Bernard Turcotte*
- [IOT] IOT - 6 September meeting 1900 UTC - Cancelled *McAuley, David*
- [IOT] IRP IOT - taking stock and moving forward *McAuley, David*
- [IOT] IRP IOT - taking stock and moving forward *Burr, Becky*
- [IOT] IRP IOT - taking stock and moving forward *McAuley, David*
- [IOT] IRP IOT - taking stock and moving forward *Bernard Turcotte*
- [IOT] IRP IOT - taking stock and moving forward *avri doria*
- [IOT] IRP IOT - taking stock and moving forward *McAuley, David*
- [IOT] IRP IOT - taking stock and moving forward *avri doria*
- [IOT] IRP IOT - taking stock and moving forward *McAuley, David*

Last message date: *Tue Sep 25 15:33:15 UTC 2018*
Archived on: *Tue Sep 25 15:33:19 UTC 2018*

- **Messages sorted by:** [thread] [subject] [author]
- **More info on this list...**

This archive was generated by Pipermail 0.09 (Mailman edition).

EXHIBIT 307

To: Arif Ali on behalf of Afilias Domains No. 3 Limited

Date: 20 January 2019

Re: Request No. 20181221-1

This is in response to your request for documentary information (Request), which was submitted on 21 December 2018 through the Internet Corporation for Assigned Names and Numbers' (ICANN org) Documentary Information Disclosure Policy (DIDP) on behalf of Afilias Domains No. 3 Limited (Afilias). For reference, a copy of your Request is attached to the email forwarding this Response.

Items Requested

Your Request seeks disclosure of the following information related to the .WEB contention set and Interim Supplementary Procedures (Interim Supplementary Procedures) for ICANN's Independent Review Process (IRP):

1. All communications between ICANN and VeriSign, including between and among legal counsels to ICANN and VeriSign, regarding or that reference Afilias' complaints about the .WEB contention set;

2. All communications between ICANN and VeriSign, including between and among legal counsels to ICANN and VeriSign, regarding or that reference the Cooperative Engagement Process ("CEP") between ICANN and Afilias regarding the .WEB generic top-level domain ("gTLD");

3. All communications between ICANN and VeriSign, including between and among legal counsels to ICANN and VeriSign, regarding or that reference the *Afilias Domains No. 3 Limited v. ICANN* Independent Review Process ("IRP");

4. All communications between ICANN representatives on the Independent Review Process-Implementation Oversight Team ("IRP-IOT"), including Samantha Eisner, and any other employee of ICANN regarding any [of] the drafting, text, effect, or interpretation of the final or any prior draft of what is now Section 7 of the Interim Procedures;

5. All communications between Samantha Eisner and David McAuley concerning the development, drafting, text, effect, or interpretation of the Interim Procedures, and/or, the mandate and/or work of the IRP-IOT, including all communications concerning or that reference the modifications to Section 7 that were circulated to the IRP-IOT on 19 October 2018;

6. All communications circulated among members of the IRP-IOT between 19 October 2018 and 21 October 2018 on any subject related to or that references the Interim Procedures;

7. Documents sufficient to show the sum and substance of representations that were made to the ICANN Board concerning the drafting of the Interim Procedures and, in particular, the development of the text of Section 7;

8. Documents sufficient to show the sum and substance of representations that were made to the ICANN Board concerning the changes made to Section 7 of the Interim Procedures as compared with the version of Section 7 that had been posted for public comment on 28 November 2016; and

9. Documents sufficient to show the sum and substance of representations that were made to the ICANN Board concerning the need to seek a further public consultation regarding Section 7 of the Interim Procedures.

Response

I. Background Information

A. The .WEB/.WEBS Contention Set

In 2012, ICANN opened the application window for the New Generic Top-Level Domain (gTLD) Program (Program) and created the new gTLD microsite (https://newgtlds.icann.org/en/), which provides detailed information about the Program. From the Program Status webpage of the new gTLD microsite (https://newgtlds.icann.org/en/program-status), people can access the public portions of each new gTLD application, including all of the .WEB applications, by clicking on "Current Application Status" and accessing the New gTLD Current Application Status webpage at https://gtldresult.icann.org/applicationresult/applicationstatus/viewstatus.

ICANN received seven applications for .WEB, which were placed into a contention set (*see* Applicant Guidebook (Guidebook), §1.1.2.10 (String Contention)). Module 4 of the Guidebook (String Contention Procedures) describes situations in which contention for applied-for new gTLDs occurs, and the methods available to applicants for resolving contention absent private resolution: "It is expected that most cases of contention will be resolved by the community priority evaluation, or through voluntary agreement among the involved applicants. Auction is a tie-breaker method for resolving string contention among the applications within a contention set, if the contention has not been resolved by other means." (Guidebook, § 4.3 (Auction: Mechanisms of Last Resort).)

Should private resolution not occur, the contention set will proceed to an ICANN auction of last resort governed by the Auction Rules that all applicants agreed to by applying. (Guidebook, § 1.1.2.10 (String Contention)). In furtherance of ICANN's commitment to transparency, ICANN org established the New gTLD Program Auctions webpage, which provides extensive detailed information about the auction process. (*See* https://newgtlds.icann.org/en/applicants/auctions.)

Following the procedures set forth in the Guidebook, ICANN org scheduled an auction of last resort for 27 July 2016 to resolve the .WEB/.WEBS contention set (Auction). (*See* https://newgtlds.icann.org/en/applicants/auctions/schedule-13mar18- en.pdf.)

On or about 22 June 2016, Ruby Glen LLC (Ruby Glen) asserted that changes had occurred in Nu Dot Co LLC's (NDC's) application for .WEB, in particular to NDC's management and ownership, and asserted that the Auction should be postponed pending further investigation. (*See* https://www.icann.org/en/system/files/files/litigationruby-glen-icann-memorandum-point-authorities-support-motion-dismiss-first-amendedcomplaint-26oct16-en.pdf.)

ICANN org investigated Ruby Glen's[1] assertions regarding NDC's application. After completing its investigation, ICANN org sent a letter to the members of the contention set stating, among other things, that "in regards to inquiries we have received concerning potential changes of control of [NDC]," "we have investigated the matter, and to date we have found no basis to initiate the application change request process or postpone the auction." (*See* https://www.icann.org/en/system/files/correspondence/willett-to-web-webs-members13jul16-en.pdf.)

On 18 June 2018, Afilias initiated a Cooperative Engagement Process (CEP) regarding .WEB. (*See* https://www.icann.org/en/system/files/files/irp-cep-status-11jan19-en.pdf.) CEP is a process that is part of the IRP that allows parties to participate in non-binding cooperative engagement for the purpose of attempting to resolve and/or narrow the issues in dispute prior to filing an IRP. (*See* Bylaws, Art. 4, § 4.3(e), https://www.icann.org/resources/pages/governance/bylaws-en/#article4.) CEP is a confidential process between ICANN and the requesting party. (*See* https://www.icann.org/en/system/files/files/cep-11apr13-en.pdf.) Following the closure of the CEP, Afilias initiated an IRP against ICANN regarding .WEB (the Afilias IRP). (*See* https://www.icann.org/resources/pages/irp-afilias-v-icann-2018-11-30-en.)

B. IRP Interim Supplementary Procedures

The IRP is an accountability mechanism set out in the ICANN Bylaws that allows for independent third-party review of actions (or inactions) of the ICANN Board or staff that a party or entity claims are in violation of the Bylaws or Articles of Incorporation and that materially and adversely affected them. (*See* ICANN Bylaws, Art. 4, Section 4.3.) The International Centre for Dispute Resolution (ICDR) currently administers

[1] Ruby Glen also invoked ICANN's accountability mechanisms by submitting a reconsideration request. (*See* https://www.icann.org/en/system/files/files/reconsideration-16-9-ruby-glen-radix-requestredacted-17jul16-en.pdf.) When the request was denied, Ruby Glen sued ICANN org. (*See* https://www.icann.org/en/system/files/files/reconsideration-16-9-ruby-glenradix-bgc-determination-21jul16-en.pdf and https://www.icann.org/en/system/files/files/litigation-ruby-glen-complaint-22jul16-en.pdf.) When the Court dismissed Ruby Glen's complaint, Ruby Glen appealed. On 15 October 2018, the Ninth Circuit affirmed the dismissal. (*See* https://www.icann.org/en/system/files/files/litigation-ruby-glen-judgment-28nov16- en.pdf and https://www.icann.org/en/system/files/files/litigation-ruby-glen-notice-appeal-regardingdismissal-20dec16-en.pdf.)

the ICANN IRPs. ICANN IRPs are governed by the ICDR's International Arbitration Rules as modified by the IRP Supplementary Procedures. (*Id.*) The IRP was significantly modified through the Enhancing ICANN Accountability Process, and the Bylaws reflecting the new IRP process were updated on 1 October 2016. (*See* https://www.icann.org/resources/board-material/resolutions-2018-10-25-en#2.e.) The IRP Supplementary Procedures in place before the October 2016 revisions to the Bylaws did not meet all the requirements of the updated Bylaws. (*Id.*) Accordingly, an IRP Implementation Oversight Team (IRP-IOT) was formed to, among other tasks, prepare updates to the Supplementary Procedures (Updated Supplementary Procedures) for Board approval. (*Id.*)

In November 2016, a draft of the Updated Supplementary Procedures was published for public comment. (https://www.icann.org/public-comments/irp-supp-procedures-2016-11-28-en.) Following the close of the public comment period on 1 February 2017, the IRP-IOT considered amending the draft Updated Supplementary Procedures in light of the comments received.[2]

In February 2018, because of the time it was taking the IRP-IOT to finalize a full set of recommended Updated Supplementary Procedures, and recognizing that the IRP had been in place for over a year with Supplementary Procedures that did not align with the updated Bylaws, the IRP-IOT started work towards an interim set of updated Supplementary Procedures (Interim Supplementary Procedures).[3] This would allow for the adoption of a set of Supplementary Procedures that aligns with the current Bylaws while the IRP-IOT completed its work on a final version of Updated Supplementary Procedures. The IRP-IOT could then take the time that it needed to produce the final version of Updated Supplementary Procedures while still providing ICANN org and IRP claimants with a set of interim procedures that align with the new Bylaws if any IRP was initiated before the final version was completed.

The IRP-IOT began consideration of a set of Interim Supplementary Procedures in May 2018. That version included changes that were anticipated as a result of the IRP-IOT's consideration of public comments. The IRP-IOT gave additional direction to ICANN's attorneys and Sidley Austin, the law firm engaged to assist the IRP-IOT, and additional drafting and refinement took place. Ultimately, the version of the Interim Supplementary Procedures that was sent to the Board for consideration had been the subject of intensive focus by the IRP-IOT in two meetings on 9 and 11 October 2018, convened with the intention of delivering a set to the Board for consideration at ICANN63. There were modifications to four sections of the Interim Supplementary Procedures identified through those meetings, and a set reflecting those changes was proposed to the IRP-IOT on 19 October 2018. With no objection raised in the IRP-IOT, on 22 October 2018

[2] The IRP-IOT sought a second public consultation on the proposed revisions to Rule 4 from 22 June 2018 to 10 August 2018. Additional details about the second public consultation are available at https://www.icann.org/public-comments/irp-iot-recs-2018-06-22-en.

[3] The principles followed in drafting the Interim Supplementary Procedures are available at Interim Supplementary Procedures for Internet Corporation for Assigned Names and Numbers (ICANN) Independent Review Process (IRP), adopted 25 October 2018, at pg. 3.

the IRP-IOT sent the proposed set of Interim Supplementary Procedures to the Board for consideration. On 25 October 2018, the ICANN Board adopted the IRP Interim Supplementary Procedures. (*See* https://www.icann.org/resources/board-material/resolutions-2018-10-25-en#2.e.) The IRP-IOT's work towards a final set of Updated Supplementary Procedures is still underway.

II. Your Request

The DIDP is a mechanism, developed through community consultation, to ensure that information contained in documents concerning ICANN organization's operational activities, and within ICANN's possession, custody, or control, is made available to the public unless there is a compelling reason for confidentiality. (*See* https://www.icann.org/resources/pages/didp-2012-02-25-en.)

Consistent with its commitment to operating to the maximum extent feasible in an open and transparent manner, ICANN org has published process guidelines for responding to requests for documents submitted pursuant to the DIDP (DIDP Response Process). (*See* https://www.icann.org/en/system/files/files/didp-response-process-29oct13-en.pdf.) In responding to this DIDP, ICANN org followed the DIDP Response Process. ICANN org has identified the relevant custodians who may have responsive documentary information and has begun to conduct in-depth searches and reviews for all documents that may be responsive to the items requested. Given that the Request seeks the disclosure of documents on nine subject matters and covers a broad time period of more than two years, ICANN org wanted to ensure that all relevant custodians are included in this search. However, due to the timing of when this Request was received, which was the last business day before the ICANN 2018 holiday shutdown, ICANN org was not in a position to begin processing this Request until 11 days later. In an effort to meet its obligations to respond to the DIDP Request within 30 calendar days of receipt of the Request, ICANN org devoted all reasonably available resources to search and review available documents to determine their responsiveness, which included consideration of "whether any of the documents identified as responsive to the Request are subject to any of the Defined Conditions for Nondisclosure identified [on ICANN org's website]" and whether the public interest outweighs the potential harm in disclosure for those documents that are subject to applicable DIDP Defined Conditions of Nondisclosure (Nondisclosure Conditions). Due to number of custodians identified, combined with the number of subject matters and the time span the Request covers, along with the loss of processing time, ICANN org is still searching and reviewing relevant documentary information that may be responsive to this request. ICANN org will supplement this Response once it is done with its document review if it identifies additional responsive documents.

Items 1 through 3

Items 1 through 3 seek, in part, the disclosure of communications "between and amongst legal counsels to ICANN and VeriSign." To the extent that this is intended to include communications between ICANN org's outside counsel and VeriSign, such communications are outside the scope of ICANN org's operational activities. In

addition, the request itself runs contrary to the intent of the DIDP process. The DIDP is an example of ICANN's commitment to supporting transparency and accountability by setting forth a procedure through which documents concerning ICANN org's operations that are not already publicly available are made available unless there is a compelling reason for confidently; it is not a mechanism to make broad information requests or to obtain litigation-style discovery.

It should be noted that neither the DIDP nor ICANN's Commitments and Core Values supporting transparency and accountability obligates ICANN org to make public every document in its possession. Since it is unclear, in the instant case, what operational importance, if any, such communications between outside legal counsels of ICANN and VeriSign provides, such documents are not appropriate for disclosure.

Item 1 seeks, in part, "[a]ll communications between ICANN and VeriSign… regarding or that reference Afilias' complaints about the .WEB contention set."

Based upon ICANN org's extensive review to date, ICANN org has determined there are two letters responsive to this Request. The first is a letter from Christine Willet to Patrick Kane dated 16 September 2016. This letter has already been published on ICANN's website at https://www.icann.org/resources/pages/correspondence-2016. The second is VeriSign's response to this letter. A previous DIDP request for this letter was made on 23 February 2018 (*See* DIDP Request and Response 20180223-1.) ICANN org indicated in its response that the letter was subject to certain DIDP Nondisclosure Conditions. Upon receiving the current request, ICANN org re-evaluated whether this letter is appropriate for disclosure under the current circumstances including reaching out to VeriSign to see if it still wanted to maintain its confidentiality. Verisign again has indicated that its response to ICANN's 16 September 2016 request for information should remain confidential. ICANN org has determined that this letter remains subject to the following Nondisclosure Conditions:

- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.

- Information provided to ICANN by a party that, if disclosed, would or would be likely to materially prejudice the commercial interests, financial interests, and/or competitive position of such party or was provided to ICANN pursuant to a nondisclosure agreement or nondisclosure provision within an agreement.

- Confidential business information and/or internal policies and procedures.

As previously stated, ICANN org is continuing to conduct its due diligence to ensure a comprehensive search across all custodians has been performed. If there are

additional documents identified as appropriate for disclosure pursuant to the DIDP, ICANN org will disclose such documents and will notify you accordingly. If there are additional documents responsive to this request that are not appropriate for disclosure, ICANN org will provide an updated response with the further information about such documents and the applicable Nondisclosure Conditions.

Item 2 seeks, in part, "[a]ll communications between ICANN and VeriSign… regarding or that reference the Cooperative Engagement Process ("CEP") between ICANN and Afilias regarding the .WEB generic top-level domain ("gTLD")."

As discussed above, the CEP is a confidential process between ICANN org and the requesting party. (*See* https://www.icann.org/en/system/files/files/cep-11apr13-en.pdf.) While ICANN identifies the CEPs that are filed (https://www.icann.org/en/system/files/files/irp-cep-status-20jun18-en.pdf), ICANN org does not share or disclose conversations between ICANN and the claimant engaged in a CEP. Consistent with that approach, and based on our search to date, we have not identified any documents where ICANN and VeriSign discuss or reference this CEP, therefore, there are no documents responsive to this request. If there are documents identified as appropriate for disclosure pursuant to the DIDP, ICANN org will disclose such documents and will notify you accordingly. If there are additional documents responsive to this request that are not appropriate for disclosure, ICANN org will provide an updated response with the further information about such documents and the applicable DIDP Defined Conditions of Nondisclosure.

Item 3 seeks, in part, "[a]ll communications between ICANN and VeriSign… regarding or that reference the *Afilias Domains No. 3 Limited v. ICANN* Independent Review Process ("IRP")."

ICANN org makes available all relevant documents submitted in an IRP on the IRP Documents webpage at https://www.icann.org/resources/pages/accountability/irp-en. The relevant documents that have be submitted to date for the Afilias IRP have been published at https://www.icann.org/resources/pages/irp-afilias-v-icann-2018-11-30-en. Based on its search and review to date, ICANN org has determined that there are no documents in its possession or control that are responsive to this request that have not already been published. If there are additional documents identified as appropriate for disclosure pursuant to the DIDP, ICANN org will disclose such documents and will notify you accordingly. If there are additional documents responsive to this request that are not appropriate for disclosure, ICANN org will provide an updated response with the further information about such documents and the applicable DIDP Defined Conditions of Nondisclosure.

Item 4

Item 4 seeks "[a]ll communications between ICANN representatives on the Independent Review Process-Implementation Oversight Team ("IRP-IOT"), including Samantha Eisner, and any other employee of ICANN regarding any [of] the drafting, text, effect, or

interpretation of the final or any prior draft of what is now Section 7 of the Interim Procedures."

In responding to this item, ICANN org has reached out to all ICANN representatives that participated on the IRP-IOT and collected available documentary information, consisting of emails that were exchanged between ICANN representatives. Due to the volume of documents identified, combined with the loss of processing time, ICANN org has conducted an extensive review of a portion of the emails collected and has determined that the emails exchanged between ICANN representatives consisting of internal discussion with ICANN's legal counsel and internal discussions between ICANN representatives about legal counsel's advice are subject to the following DIDP Defined Conditions of Nondisclosure, and are therefore not appropriate for disclosure:

- Information subject to the attorney– client, attorney work product privilege, or any other applicable privilege, or disclosure of which might prejudice any internal, governmental, or legal investigation.

- Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including internal documents, memoranda, and other similar communications to or from ICANN Directors, ICANN Directors' Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.

Item 5

Item 5 seeks "[a]ll communications between Samantha Eisner and David McAuley concerning the development, drafting, text, effect, or interpretation of the Interim Procedures, and/or, the mandate and/or work of the IRP-IOT, including all communications concerning or that reference the modifications to Section 7 that were circulated to the IRP-IOT on 19 October 2018."

The IRP-IOT maintains a page on the ICANN community wiki, at https://community.icann.org/display/IRPIOTI/Independent+Review+Process+-+Implementation+Oversight+Team+%28IRP-IOT%29+Home. ICANN org makes available a comprehensive set of materials pertaining to the IOT's work on this page as a matter of course. (*See* Independent Review Process – Implementation Oversight Team (IRP-IOT) Home.) Amongst other things, the home page contains information about members of the IRP-IOT, provides links to email archives detailing discussions that took place within the IRP-IOT, provides transcripts of all IRP-IOT meetings, as well as all documents exchanged within the IRP-IOT. To the extent that there are communications on the IRP-IOT mailing list that are responsive to this request, such documents have already been made public at http://mm.icann.org/pipermail/iot/. ICANN org has also conducted a search for communications responsive to this request that were exchanged outside of the iot@icann.org listserv. To date, ICANN org has reviewed the majority of the emails collected in response to this request and has begun publishing responsive emails on the IRP-IOT community wiki page under "Off-List Correspondences," at https://community.icann.org/x/TpcWBg. ICANN org will continue

its review of these emails to determine if additional documents should be publicly disclosed and if so, will post these documents on the IRP-IOT community wiki page on a rolling basis.

Item 6
Item 6 seeks "[a]ll communications circulated among members of the IRP-IOT between 19 October 2018 and 21 October 2018 on any subject related to or that references the Interim Procedures."

As discussed above, any communications amongst IRP-IOT members sent through the iot@icnan.org listserv are available on the IRP-IOT community wiki page. (*See* https://mm.icann.org/pipermail/iot/.) Responsive off-list communications between Samantha Eisner and David McAuley are being made available in response to item 5 of this Request. To the extent there are other communications between IRP-IOT members that do not include ICANN representatives and/or the IRP-IOT listserv, such communications would be outside of ICANN org's possession and control, and are subject to the following Nondisclosure Conditions, and are therefore not appropriate for disclosure:

- Information requests: (i) which are not reasonable; (ii) which are excessive or overly burdensome; (iii) complying with which is not feasible; or (iv) are made with an abusive or vexatious purpose or by a vexatious or querulous individual.

Items 7 and 8
Item 7 seeks "[d]ocuments sufficient to show the sum and substance of representations that were made to the ICANN Board concerning the drafting of the Interim Procedures and, in particular, the development of the text of Section 7."

Item 8 seeks "[d]ocuments sufficient to show the sum and substance of representations that were made to the ICANN Board concerning the changes made to Section 7 of the Interim Procedures as compared with the version of Section 7 that had been posted for public comment on 28 November 2016."

Board Resolutions 2018.10.25.20 – 2018.10.25.21 and the Rationale for Resolutions 2018.10.25.20 – 2018.10.25.21, which set forth the basis for the Board's adoption of the Interim Supplementary Procedures, have been published at https://www.icann.org/resources/board-material/resolutions-2018-10-25-en#2.e. The corresponding Preliminary Report for this meeting is available at https://www.icann.org/resources/board-material/prelim-report-2018-10-25-en. Additionally, the transcript and audio recordings for this meeting have been published at https://63.schedule.icann.org/meetings/901535.

The briefing materials that were provided to the ICANN Board for its consideration of the Interim Supplementary Procedures at the 25 October 2018 Board meeting will be published, along with the minutes from the 25 October 2018 meeting, once the minutes are approved by the Board. Once the minutes are approved, the minutes and briefing materials will be published at https://www.icann.org/resources/pages/2018-board-

meetings in accordance with the Bylaws and the Guidelines for the Posting of Board Briefing Materials. We encourage you to check back once the minutes are approved.

Item 9

Item 9 seeks "[d]ocuments sufficient to show the sum and substance of representations that were made to the ICANN Board concerning the need to seek a further public consultation regarding Section 7 of the Interim Procedures."

There are currently no documents responsive to this request.

Public Interest in Disclosure of Information Subject to Nondisclosure Conditions

Notwithstanding the applicable Nondisclosure Conditions identified in this Response, ICANN org has considered whether the public interest in disclosure of the information subject to these conditions at this point in time outweighs the harm that may be caused by such disclosure. ICANN org has determined that there are no current circumstances for which the public interest in disclosing the information outweighs the harm that may be caused by the requested disclosure. ICANN org will continue to search and review potentially responsive materials to determine if additional documentary information is appropriate for disclosure under this DIDP. If it is determined that certain additional documentary information is appropriate for public disclosure, ICANN org will supplement this DIDP Response and notify you of the supplement.

About DIDP

ICANN's DIDP is limited to requests for documentary information already in existence within ICANN that is not publicly available. In addition, the DIDP sets forth Defined Conditions of Nondisclosure. To review a copy of the DIDP, please see http://www.icann.org/en/about/transparency/didp. ICANN makes every effort to be as responsive as possible to the entirety of your Request. As part of its accountability and transparency commitments, ICANN continually strives to provide as much information to the community as is reasonable. We encourage you to sign up for an account at ICANN.org, through which you can receive daily updates regarding postings to the portions of ICANN's website that are of interest. We hope this information is helpful. If you have any further inquiries, please forward them to didp@icann.org.

EXHIBIT 308

Ex. 308

December 2018 Archives by date

- **Messages sorted by:** [thread] [subject] [author]
- **More info on this list...**

Starting: *Tue Dec 4 15:43:54 UTC 2018*
Ending: *Thu Dec 20 16:48:26 UTC 2018*
Messages: 19

- [IOT] Recordings, DAIRs, Raw Caption Notes for IRP-IOT Meeting #44 - 29 November 2018 *MSSI Secretariat*
- [IOT] FW: Reviewing the consultation responses *avri doria*
- [IOT] Status of ICANN staff in IOT *Malcolm Hutty*
- [IOT] Status of ICANN staff in IOT *Arasteh*
- [IOT] Status of ICANN staff in IOT *Mike Rodenbaugh*
- [IOT] Status of ICANN staff in IOT *Burr, Becky*
- [IOT] Status of ICANN staff in IOT *avri doria*
- [IOT] Status of ICANN staff in IOT *Burr, Becky*
- [IOT] Status of ICANN staff in IOT *Mike Rodenbaugh*
- [IOT] Status of ICANN staff in IOT *León Felipe Sánchez Ambía*
- [IOT] Status of ICANN staff in IOT *Malcolm Hutty*
- [IOT] FW: Reviewing the consultation responses *Malcolm Hutty*
- [IOT] Status of ICANN staff in IOT *Arasteh*
- [IOT] Status of ICANN staff in IOT *McAuley, David*
- [IOT] Status of ICANN staff in IOT *Chris Disspain*
- [IOT] Status of ICANN staff in IOT *Burr, Becky*
- [IOT] IRP-IOT call Dec. 13 19:00 UTCF - Agenda *McAuley, David*
- [IOT] IRP-IOT - Excerpts from compiled remarks on ICANN status issue *McAuley, David*
- [IOT] Recordings, DAIRs, Raw Caption Notes for IRP-IOT Meeting #45 - 13 December 2018 *MSSI Secretariat*

Last message date: *Thu Dec 20 16:48:26 UTC 2018*
Archived on: *Thu Dec 20 16:48:51 UTC 2018*

- **Messages sorted by:** [thread] [subject] [author]
- **More info on this list...**

This archive was generated by Pipermail 0.09 (Mailman edition).

EXHIBIT 309

765, 124 S.Ct. 2204. The Corps has been issuing and reissuing NWP 12 for decades, with no party objecting to the deferral practice.

For these reasons, I concur.

TRI–STATE GENERATION AND TRANSMISSION ASSOCIATION, INC., a Colorado nonprofit cooperative corporation, Plaintiff–Appellee,

v.

NEW MEXICO PUBLIC REGULATION COMMISSION, a New Mexico Agency, and its members; Commissioner Patrick H. Lyons; Commissioner Theresa Becenti–Aguilar; Commissioner Ben L. Hall; Commissioner Valerie Espinoza; Commissioner Karen L. Montoya, acting in their official capacities, Defendants.

Kit Carson Electric Cooperative, Inc., Movant–Appellant.

No. 14–2164.

United States Court of Appeals, Tenth Circuit.

June 1, 2015.

Background: Wholesale electric power supplier filed § 1983 action alleging that New Mexico Public Regulation Commission's (NMPRC) exercise of jurisdiction and suspension of its wholesale electric rates in New Mexico violated Commerce Clause. The United States District Court for the District of New Mexico denied electric distribution cooperative's motion to intervene, and it appealed.

Holdings: The Court of Appeals, Kelly, Circuit Judge, held that:

(1) cooperative could not intervene as of right, and

(2) district court did not abuse its discretion in denying cooperative's motion for permissive intervention.

Affirmed.

1. Federal Courts ⚿3585(1)

Court of Appeals reviews de novo denial of motion to intervene as of right. Fed.Rules Civ.Proc.Rule 24(a), 28 U.S.C.A.

2. Federal Civil Procedure ⚿316

Even if applicant satisfies other requirements for intervention as of right, it is not entitled to intervene if its interest is adequately represented by existing parties. Fed.Rules Civ.Proc.Rule 24(a)(2), 28 U.S.C.A.

3. Federal Civil Procedure ⚿316

When objective of applicant for intervention is identical to that of party, court will presume that representation is adequate. Fed.Rules Civ.Proc.Rule 24(a)(2), 28 U.S.C.A.

4. Federal Civil Procedure ⚿331

Electric distribution cooperative and New Mexico Public Regulation Commission (NMPRC) had identical interests in opposing wholesale electric power supplier's action challenging NMPRC's jurisdiction over it, and thus cooperative could not intervene as of right in action; all of cooperative's claimed interests, including its track record of rate advocacy, its direct economic interest in result of litigation, its interest in upholding its contracts with supplier, its interest in preserving its right to regulatory review of rates, and its interest in upholding merger, ineluctably flowed from its objective of preserving NMPRC's jurisdiction over supplier's

wholesale electricity rates, and nothing prevented NMPRC from asserting arguments against supplier's Commerce Clause claim. U.S.C.A. Const. Art. 1, § 8, cl. 3; Fed.Rules Civ.Proc.Rule 24(a)(2), 28 U.S.C.A.; West's NMSA § 62–6–4(D).

5. Federal Courts ⚿3585(1)

Court of Appeals reviews district court's denial of permissive intervention for abuse of discretion. Fed.Rules Civ. Proc.Rule 24(b), 28 U.S.C.A.

6. Federal Civil Procedure ⚿331

District court did not abuse its discretion in denying electric distribution cooperative's motion for permissive intervention in wholesale electric power supplier's action alleging that New Mexico Public Regulation Commission's (NMPRC) exercise of jurisdiction and suspension of its wholesale electric rates in New Mexico violated Commerce Clause, where cooperative and NMPRC had identical interests in matter, and intervention would create possibility of duplicative discovery. U.S.C.A. Const.Art. 1, § 8, cl. 3; Fed.Rules Civ.Proc.Rule 24(b), 28 U.S.C.A.

Charles V. Garcia of Cuddy & McCarthy, L.L.P., Albuquerque, New Mexico (Arturo L. Jaramillo, and Young–Jun Roh of Cuddy & McCarthy, L.L.P., Santa Fe, New Mexico, on the briefs), for Movant–Appellant.

John R. Cooney (Earl E. DeBrine, Jr., and Joan E. Drake of Modrall, Sperling, Roehl, Harris & Sisk, P.A., Albuquerque, NM; Robert E. Youle and Brian G. Eberle of Sherman & Howard, L.L.C., Denver, CO, on the brief), for Plaintiff–Appellee.

Before KELLY, PHILLIPS, and MORITZ, Circuit Judges.

KELLY, Circuit Judge.

Movant–Appellant Kit Carson Electric Cooperative, Inc. (KCEC) appeals from the district court's denial of its motion seeking intervention as of right or permissive intervention in a pending case. *Tri–State Generation & Transmission Ass'n v. N.M. Pub. Regulation Comm'n*, Civ. No. 13–00085 KG/LAM (D.N.M. Aug. 18, 2014). Our jurisdiction arises under 28 U.S.C. § 1291, and we affirm.

Background

Tri–State Generation and Transmission Association, Inc. (Tri–State), a Colorado non-profit regional cooperative that provides wholesale electric power, filed suit against the New Mexico Public Regulation Commission (NMPRC) seeking declaratory and injunctive relief under 42 U.S.C. § 1983. Tri–State argued that the NMPRC's exercise of jurisdiction and suspension of Tri–State's wholesale electric rates in New Mexico violated the Commerce Clause of the United States Constitution.

Briefly, Tri–State is a regional generation and transmission (G & T) cooperative that provides wholesale electric power to its forty-four member systems in four states—Colorado, Nebraska, New Mexico, and Wyoming. Each of the member systems has a representative that sits on Tri–State's Board of Directors and has an equal vote as to Tri–State's annual rates. Tri–State charges a "postage-stamp rate" for electricity to its members—i.e., the members systems are all charged the same amount. Aplt. App. 649 & n.3. Each member system has entered into a requirements contract with Tri–State, pursuant to which each member agrees to purchase and receive from Tri–State all the electric power and energy the member requires. These member systems then sell the electricity provided by Tri–State to their mem-

bers at retail. One of Tri–State's member systems is KCEC, a New Mexico rural electric cooperative that provides services to roughly 28,500 commercial, governmental, and residential member-customers in Northern New Mexico.

Public utilities in New Mexico are regulated by the NMPRC. *See* N.M. Stat. Ann. § 62–6–4(A) (granting the NMPRC the "general and exclusive power and jurisdiction to regulate and supervise every public utility in respect to its rates and service regulations"). In 1999, Tri–State and Plains Electric Generation and Transmission Cooperative, Inc. (Plains) applied to the NMPRC to allow the two to merge. Tri–State, Plains, and others entered into a Stipulation which, among other things: (1) required Tri–State to file an "Advice Notice" with the NMPRC prior to setting rates for New Mexico members; (2) provided member cooperatives with the opportunity to file protests to Tri–State's rates with the NMPRC; and (3) provided procedures for the NMPRC to suspend the rates, conduct a hearing, and "establish reasonable rates." Aplt. App. 541. In 2000, the NMPRC approved the Stipulation and merger on condition that Tri–State would be subject to its jurisdiction "to the extent provided by law." *Id.* at 407. The New Mexico legislature subsequently codified the Stipulation's protest procedures, which provide in relevant part:

> New Mexico rates proposed by a generation and transmission cooperative shall be filed with the commission in the form of an advice notice, a copy of which shall be simultaneously served on all member utilities. Any member utility may file a protest of the proposed rates no later than twenty days after the generation and transmission cooperative files the advice notice. If three or more New Mexico member utilities file protests and the commission determines there is just cause in at least three of the protests for reviewing the proposed rates, the commission shall suspend the rates, conduct a hearing concerning reasonableness of the proposed rates and establish reasonable rates.

N.M. Stat. Ann. § 62–6–4(D). In 2012, Tri–State's Board of Directors voted to approve a 4.9% rate increase for the calendar year 2013. Tri–State appropriately filed Advice Notice No. 15 with the NMPRC to inform it of the increase. KCEC, along with two other New Mexico member systems, filed protests objecting to the rate increase. Over Tri–State's objections, the NMPRC suspended Tri–State's rate increase for 2013.

On January 25, 2013, Tri–State filed the present action against the NMPRC. Later, in September 2013, Tri–State approved a wholesale rate increase for 2014 and filed an Advice Notice with the NMPRC. After rate protests by KCEC and three others, the NMPRC proceeded to suspend Tri–State's 2014 rate increases as well. The NMPRC consolidated the proceedings on both the 2013 and 2014 wholesale rates. These proceedings remain pending before the NMPRC.

In February 2014, Tri–State filed an amended complaint adding factual allegations regarding the NMPRC's suspension of its 2014 wholesale rate. Tri–State's amended complaint asserts Tri–State is entitled to declaratory and injunctive relief because "[t]he Commission's exertion of jurisdiction to suspend and subsequently review and establish Tri–State's rates in New Mexico constitutes economic protectionism and imposes a burden on interstate commerce in violation of the Commerce Clause." Aplt. App. 658–60. Tri–State requested an order declaring that:

> (a) the Commission lacks jurisdiction over Tri–State's rates and interstate wholesale contracts in New Mexico and

any attempt by the Commission to exercise jurisdiction over, suspend and/or determine Tri–State's rates is unconstitutional under the United States Constitution; (b) the Commission's order suspending Tri–State's 2013 and 2014 wholesale rates and setting a rate hearing is unconstitutional under the United States Constitution; (c) the Commission may not take any action with respect to Tri–State's rates or contracts.

Id. at 661; *see also id.* at 662 (requesting injunctive relief under 42 U.S.C. § 1983). In its answer, the NMPRC raised eight affirmative defenses, including the doctrines of waiver and estoppel. It also reserved the right to raise further affirmative defenses that later might become available.

On May 28, 2013, KCEC sought to intervene as of right pursuant to Federal Rule of Civil Procedure 24(a)(2) and permissively pursuant to Rule 24(b). Tri–State opposed intervention, but the NMPRC did not.

Though not a party to the litigation, KCEC filed an answer to Tri–State's complaint in which it asserted essentially the same affirmative defenses to Tri–State's claims as had the NMPRC. Aplt. App. 382. The only unique defense KCEC presented was that Tri–State's complaint failed to state a claim upon which relief could be granted. Prior to the district court's ruling on KCEC's motion, the NMPRC moved for summary judgment, arguing both that: (1) Tri–State was estopped from challenging the NMPRC's rate-making jurisdiction given its agreement to the earlier Stipulation; and (2) the NMPRC's order did not violate either New Mexico law or the Commerce Clause of the United States Constitution. *Id.* at 931–47. Though still not a party to the litigation, KCEC filed a proposed response to the NMPRC's motion for summary judgment, presenting essentially the same arguments as the NMPRC and providing no additional evidence. Aplee. Supp. App. 52–58.

The district court then denied KCEC's motion to intervene, finding that neither intervention as of right nor permissive intervention was appropriate. KCEC timely appealed.

Discussion

KCEC argues that the district court erred in denying intervention as of right under Rule 24(a)(2) and in denying permissive intervention under Rule 24(b).

A. *Intervention as of Right*

[1] We review de novo the denial of a motion to intervene as of right. *Kane Cnty., Utah v. United States*, 597 F.3d 1129, 1133 (10th Cir.2010). Rule 24(a) of the Federal Rules of Civil Procedure provides that, upon timely motion, the court must allow a party to intervene who: "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest."

Tri–State does not dispute that KCEC's motion for intervention was timely. Thus, we address whether KCEC can satisfy the remaining two requirements of intervention as of right. First, KCEC must establish an interest in the property or transaction underlying the action that might be impaired by the action's disposition. *See Natural Res. Def. Council, Inc. v. U.S. Nuclear Regulatory Comm'n*, 578 F.2d 1341, 1345 (10th Cir.1978) ("the question of impairment is not separate from the question of existence of an interest"). KCEC identifies several interests that could be impaired by the case at hand that it contends are sufficient to satisfy Rule 24(a)(2):

(1) its "persistent record of advocacy to obtain reasonable rates from Tri–State"; (2) its "direct economic interest in the determination of whether the NMPRC's exercise of its rate jurisdiction pursuant to Section 62–6–4(D) violates the Commerce Clause"; (3) its interest in upholding its membership agreement and power supply contract with Tri–State; (4) its statutory right to regulatory review of Tri–State's rates; and (5) its interest in upholding the Tri–State/Plains merger and the Stipulation. Aplt. Br. 23–26. We assume, as did the district court, that KCEC has sufficiently shown an interest in the lawsuit that may be impaired by its disposition. *Cf. Kane Cnty.*, 597 F.3d at 1133. Thus, we proceed directly to the inquiry whether KCEC's interest is adequately represented by the NMPRC.

[2] "Even if an applicant satisfies the other requirements of Rule 24(a)(2), it is not entitled to intervene if its 'interest is adequately represented by existing parties.' " *San Juan Cnty., Utah v. United States*, 503 F.3d 1163, 1203 (10th Cir.2007) (en banc) (quoting Fed.R.Civ.P. 24(a)(2)). This requirement is satisfied where the applicant "shows that representation of his interest *may be* inadequate"—a "minimal" showing. *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n. 10, 92 S.Ct. 630, 30 L.Ed.2d 686 (1972) (emphasis added) (internal quotation marks omitted); *see also Utah Ass'n of Counties v. Clinton*, 255 F.3d 1246, 1254 (10th Cir.2001). Thus, the likelihood of a divergence of interest "need not be great" to satisfy the requirement. *Natural Res. Def. Council*, 578 F.2d at 1346.

For instance, where a governmental agency is seeking to represent both the interests of the general public and the interests of a private party seeking intervention, we have repeatedly found representation inadequate for purposes of Rule 24(a)(2). *See, e.g., Utahns for Better Transp. v. U.S. Dep't of Transp.*, 295 F.3d 1111, 1117 (10th Cir.2002) ("[I]n such a situation the government's prospective task of protecting 'not only the interest of the public but also the private interest of the petitioners in intervention' is 'on its face impossible' and creates the kind of conflict that 'satisfies the minimal burden of showing inadequacy of representation.' " (citation omitted)); *Clinton*, 255 F.3d at 1256 (inadequate representation prong satisfied where government was "obligated to consider a broad spectrum of views, many of which may conflict with the particular interest of the would-be intervenor"); *Nat'l Farm Lines v. Interstate Commerce Comm'n*, 564 F.2d 381, 384 (10th Cir.1977) (inadequate representation prong satisfied where Interstate Commerce Commission sought to protect "not only the interest of the public but also the private interest of the petitioners in intervention").

[3] These cases, however, are inapplicable where " 'the objective of the applicant for intervention is identical to that of one of the parties.' " *City of Stilwell, Okla. v. Ozarks Rural Elec. Coop. Corp.*, 79 F.3d 1038, 1042 (10th Cir.1996) (quoting *Bottoms v. Dresser Indus., Inc.*, 797 F.2d 869, 872 (10th Cir.1986)); *see also Coal. of Ariz./N.M. Counties for Stable Econ. Growth v. Dep't of Interior*, 100 F.3d 837, 845 (10th Cir.1996). Under such circumstances, we presume representation is adequate. See *Bottoms*, 797 F.2d at 872–73; *San Juan Cnty.*, 503 F.3d at 1204 (opinion of Hartz, J.); *id.* at 1227 & n. 1 (Ebel, J., dissenting).[1] Thus, even though a party seeking

1. In *San Juan County,* this court addressed en banc whether several conservation groups were entitled to intervene in a federal quiet-title action brought by San Juan County against the United States. 503 F.3d at 1167. Six judges concluded that the conservation

intervention may have different "ultimate motivation[s]" from the governmental agency, where its objectives are the same, we presume representation is adequate. *Ozarks,* 79 F.3d at 1042.

[4] We are presented with precisely such a situation here, where the NMPRC and KCEC have identical litigation objectives: preserving the NMPRC's rate jurisdiction over Tri–State. All of KCEC's claimed interests—its track record of rate advocacy, its direct economic interest in the result of the litigation, its interest in upholding its contracts with Tri–State, its interest in preserving its right to regulatory review of rates, and its interest in upholding the Tri–State/Plains merger and Stipulation—ineluctably flow from its objective of preserving the NMPRC's jurisdiction over Tri–State's wholesale electricity rates. Each of KCEC's claimed interests are part and parcel of its broader interest in maintaining the NMPRC's jurisdiction over these rates.

And of course, the NMPRC's objective in the proceeding is identical—preserving its own jurisdiction over Tri–State's wholesale electric rates. This simply is not a case where the governmental agency must account for a "broad spectrum" of interests that may or may not be coextensive with the intervenor's particular interest. *Clinton,* 255 F.3d at 1256. Tri–State's suit challenges the constitutionality of a New Mexico statute granting the NMPRC power to, under certain circumstances, "suspend" a G & T cooperative's rates, "conduct a hearing" on the reasonableness of the rates, and "establish reasonable rates." N.M. Stat. Ann. § 62–6–4(D). Thus, the suit presents a "binary" issue—whether the New Mexico statute granting the NMPRC this authority accords with the Commerce Clause of the United States Constitution. *San Juan Cnty.,* 503 F.3d at 1228 (Ebel, J., dissenting). The challenge does not require the NMPRC to strike some balance between the interest of electricity wholesalers, retailers, and the general public. Nor does it require the NMPRC to determine the reasonableness of Tri–State's current rates or establish reasonable rates. It simply requires the NMPRC to argue its authority under § 62–6–4(D) does not violate the Commerce Clause.

Given that the NMPRC and KCEC have identical objectives in the dispute, we presume that the NMPRC's representation is adequate. To overcome this presumption, KCEC must make "a concrete showing of circumstances" that the NMPRC's representation is inadequate. *Bottoms,* 797 F.2d at 872 (quoting 7A Charles A. Wright & Arthur R. Miller, Federal Practice & Procedure § 1909, at 529 (1972)). These circumstances include a "showing that there is collusion between the representative and an opposing party, that the representative has an interest adverse to the applicant, or that the representative failed to represent the applicant's interest." *Id.* at 872–73 (citing *Sanguine, Ltd. v. U.S. Dep't of Interior,* 736 F.2d 1416, 1419 (10th Cir.1984)).

KCEC argues that "the NMPRC, as an adjudicatory body in a pending rate case, is limited in its ability to present evidence or advance arguments" regarding how its

groups did not have a sufficient ''interest'' under Rule 24(a), *id.* at 1207 (Kelly, J., concurring), and thus had no occasion to address whether the conservation groups' interests would be adequately represented by the United States. Of the judges to address the adequate representation prong, all seven—Judge Hartz writing for three judges and Judge Ebel writing for four—agreed that a presumption of adequate representation applied where an applicant for intervention had objectives ''identical'' to a party to the suit. *Id.* at 1204 (opinion of Hartz, J.); *id.* at 1227 & n. 1 (Ebel, J., dissenting).

rate-making authority satisfies the Commerce Clause. Aplt. Br. 31. It argues that, under existing Commerce Clause standards, the NMPRC will have to establish that the law's burden on interstate commerce was not "clearly excessive in relation to the putative local benefits." *Id.* at 30 (quoting *Ark. Elec. Coop. Corp. v. Ark. Pub. Serv. Comm'n,* 461 U.S. 375, 395, 103 S.Ct. 1905, 76 L.Ed.2d 1 (1983)). KCEC contends that the NMPRC will be inhibited from effectively making this argument, given its "impartial adjudicatory role" in the pending rate proceedings. *Id.* at 31. But contrary to KCEC's assertion, the pendency of rate proceedings will not prevent the NMPRC from arguing the local benefits furthered by § 62–6–4(D). The NMPRC need not argue for a particular rate or rate structure in order to set forth the intrastate benefits of its jurisdiction over Tri–State's rates.

In addition, there is no reason to think that the NMPRC will not vigorously argue in favor of its statutory authority. The NMPRC is represented by the New Mexico Attorney General, who is obligated by law to defend the constitutionality of the statute. *See* N.M. Stat. Ann. § 8–5–2. Further, through this point in litigation, the NMPRC has "displayed no reluctance" to defend the statute. *San Juan Cnty.,* 503 F.3d at 1206 (opinion of Hartz, J.); *see also Coal. of Ariz./N.M. Counties,* 100 F.3d at 845 (considering DOI's "reluctance in protecting the Owl" in finding that DOI may not adequately represent photographer/biologist's interests). As noted, the NMPRC has raised a number of affirmative defenses to Tri–State's claims and reserved the right to raise additional defenses. KCEC's proposed response to Tri–State's complaint raised nearly identical defenses. The NMPRC raised additional arguments in its motion for summary judgment, including that Tri–State was estopped from challenging the NMPRC's rate-making jurisdiction given its agreement to the earlier Stipulation. The NMPRC's arguments were once again parroted by KCEC in its proposed motion for summary judgment. In short, the NMPRC appears to be representing KCEC's interests precisely as KCEC would.

Finally, we note that, unlike cases where intervention applicants possessed unique knowledge or expertise beyond that of the governmental agency, *see, e.g., Nat'l Farm Lines,* 564 F.2d at 383, KCEC does not argue it possesses particular expertise beyond that of the NMPRC, *cf. Kane Cnty.,* 597 F.3d at 1135.

For the foregoing reasons, we affirm the district court's denial of intervention as of right under Rule 24(a)(2).

B. *Permissive Intervention*

Rule 24(b)(1)(B) governing permissive intervention provides that, on timely motion, the court may permit anyone to intervene who "has a claim or defense that shares with the main action a common question of law or fact." In exercising its discretion to permit a party to intervene, "the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed.R.Civ.P. 24(b)(3). The district court observed that it was clear that KCEC's affirmative defenses had questions of law and fact in common with the NMPRC's defenses. It further rejected Tri–State's argument that allowing intervention would yield a deluge of other intervention applications from similarly situated electricity retailers. Nevertheless, the court found that, on balance, permissive intervention was inappropriate, because: (1) allowing intervention would burden the parties with additional discovery; and (2)

the NMPRC would adequately represent KCEC's interests.

[5] We review the district court's denial of permissive intervention for an abuse of discretion. *Kane Cnty.,* 597 F.3d at 1135; *Alameda Water & Sanitation Dist. v. Browner,* 9 F.3d 88, 89–90 (10th Cir. 1993). In reviewing for abuse of discretion, "we may not . . . substitute our own judgment for that of the trial court." *Nalder v. West Park Hosp.,* 254 F.3d 1168, 1174 (10th Cir.2001) (internal quotation marks omitted). "An abuse of discretion will be found only where the trial court makes 'an arbitrary, capricious, whimsical, or manifestly unreasonable judgement.' " *Fed. Deposit Ins. Corp. v. Oldenburg,* 34 F.3d 1529, 1555 (10th Cir.1994) (quoting *United States v. Hernandez–Herrera,* 952 F.2d 342, 343 (10th Cir.1991)). As KCEC notes, "decisions holding that the district court abused its discretion in denying permissive intervention are predictably rare." Aplt. Br. 35–36. This concession is in fact an understatement—KCEC cites no Tenth Circuit decisions reversing a district court's denial of permissive intervention.

[6] KCEC contends that the district court abused its discretion by relying on the NMPRC's adequate representation of KCEC's interests, both because the NMPRC could not adequately represent KCEC's interests and because Rule 24(b) does not speak to adequate representation as a consideration. Aplt. Br. 40–41. As to the contention that NMPRC may not adequately represent KCEC's rights, we reject this argument for reasons specified above in our Rule 24(a) analysis. As to KCEC's suggestion that Rule 24(b) does not provide for consideration of adequate representation, we have elsewhere affirmed denial of permissive intervention on such grounds. *Ozarks,* 79 F.3d at 1043; *see also Perry v. Proposition 8 Official Proponents,* 587 F.3d 947, 955 (9th Cir. 2009) (in exercising discretion under Rule 24(b), district court may consider "whether the intervenors' interests are adequately represented by other parties" (citation omitted)); *Am. Ass'n of People with Disabilities v. Herrera,* 257 F.R.D. 236, 249 (D.N.M.2008) ("While not a required part of the test for permissive intervention, a court's finding that existing parties adequately protect prospective intervenors' interests will support a denial of permissive intervention.").

KCEC also argues that the district court abused its discretion by finding that the parties would be burdened by discovery propounded by KCEC virtually identical to that sought by the NMPRC. KCEC argues that there was no evidence to support this finding, and that even if there was, the district court always retains the ability to limit and manage discovery pursuant to its authority under Rule 26 of the Federal Rules of Civil Procedure. Aplt. Br. 38 (citing *United States v. Albert Inv. Co.,* 585 F.3d 1386, 1396 (10th Cir.2009)). Given Rule 24(b)(3)'s mandate to the district court to consider whether intervention might unduly delay or prejudice adjudication of the original parties' rights, we think the district court was entitled to consider the potential for burdensome or duplicative discovery in its analysis—even given its ability to manage discovery. In short, KCEC has not shown that the district court's denial of permissive intervention was "arbitrary, capricious, whimsical, or manifestly unreasonable." *Oldenburg,* 34 F.3d at 1555.

AFFIRMED.

EXHIBIT 310

IRP IOT Meeting, March 23, 2017

- Discussion of Public Comments on Supplementary Rules (con't):

- Background Bylaws provisions:

  - 4.3(a): IRP intended for following purposes: … (vii) Secure … just resolution of Disputes.

  - 4.3(n)(iv): The Rules of Procedure are intended to ensure fundamental fairness and due process …

IRP IOT Meeting, March 23rd, 2017

Joinder-related issues (Section 7 of Draft Supplementary Rules):

- From appeals of other panels.
- Joinder - Procedures Officer or IRP panel decision?
- Page limitation for written statements.

Joinder-related issues

- From appeals of other panels (Bylaw 4.3.(b)(iii)(A)(3)):
  - Fletcher, Heald & Hildreth:
    - Actual notice to all original parties to an expert panel under appeal.
    - Mandatory right of intervention to parties to expert panel under appeal.
    - Right for such parties to be heard prior to IRP granting interim relief.
  - GNSO-IPC:
    - Any 3d party directly involved in action below can petition (panel or provider) to intervene as additional claimant or in opposition to claimant.

Joinder-related issues

- Joinder - Procedures Officer or IRP panel decision?
  - Dot Music: Joinder/intervention/consolidation issues should be decided by IRP panel, not by a single Procedures Officer. Panel best positioned to judge.
  - GNSO-IPC: Requests should be determined by the IRP Panel and not by a Procedures Officer.
  - GNSO-RySG: IRP Panel should determine whether panel or PO makes the call.

Joinder-related issues

- Page limitation - written statements (Section 6, Draft …Rules):
  - GNSO-IPC: Multiple claimants should not be limited collectively to the 25-page limit for written statements – individual page limits should apply.

EXHIBIT 311

EN

IRP-IOT SUBGROUP
Tuesday, November 14, 2017 – 19:00-20:00

>> DAVID MCAULEY: Thank you. I would like to say—and welcome everybody to the call. I expect maybe a few more will join in as they realize the call is an hour earlier than typically. Hopefully that'll be the case for many that is. Not for everyone- but for many. And I'd like to press on and at least create a record of this call for the others to look. Typically Aubrey and Greg have joined us a moment or two late so we'll see. But now that we've done that I want to ask those on the call—if anyone has a statement, any change to their statement of interest and at the same time I would like to ask people that may be on the phone who are not in Adobe to please speak up and identify themselves. Is there anyone that is on the phone that's not in Adobe? I'm not hearing any. We can press on. Does anybody have a change in their statement of interest? And the statement of interest was an interesting discussion that's public forum at ICANN60 so it is important then we need to remember to pay attention to it so if there's any change please know that we know. Having none, we can move forward. Before we get to the issues I would like to welcome, as an observer, Cherine Chalaby, who has been on the ICANN board for sometime now and who at the conclusion of ICANN60 took on the role as chair of the board. And I would like to congratulate Cherine again and Cherine- today we have a small group. We typically have a small group and in a few minutes I'll just do a brief summarized history but in the meantime I want to give you a chance to say something if you wish to. Certainly, you don't have to. But if you would like to make a comment please feel free.

>> CHERINE CHALABY: Thank you, David. And thank you everyone. David, thank you for letting me observe this call. Completing the work of new system, establishing – I

consider this to be a major accomplishment of our transbility process. So hence my heightened interest particularly in three areas. One is the supplemental rules. I understand that the IRT is working through issues that were raised at the public comment on supplemental rules. And there's perhaps another space for another round of public comment. And, so, I'm very curious about the issues but also about the time frame of getting those issues on board would be useful to know for getting for it. The second area would be the standing pillow and particularly the process and time scale for doing so and selecting the members for this panel is important. And particularity from my limited experience the choice of a lead person on the panel is very critical. So, I would like to observe also, that process and the time scale and finally the CEP process. My understanding also the IOT took over the CEP issue from the CCSW to work. And post [indiscernible] I don't know where we are on the time scales for that. So those are the three issues. That I would like to observe. The supplemental rules, the sounding panel, and the CEP. Thank you, David.

>> DAVID MCAULEY: Cherine, thank you very much. And I would like to comment on that and again say welcome. We're very glad you are here. And then I will open it to the floor if anyone else would like to comment in the meantime. And you are absolutely correct, the supplemental, the IOT, the team itself, is a small team. It was capped at 25 members by the CCWG on accountability workstream one and we now have 26 members. We took on Anna Loop as an additional member when we took on the CEP process. And it's a small group but it's an active group at times. It's a mix of legal skills and other skills and we've been working on supplemental rules. The initial leader of the IOT was Becky Burr and she's still a member of the team. Becky stepped away from the leadership of the team when she stepped onto the ICANN board last year. Last November I guess it was. And then I took over as lead of the team. And just as Becky was leaving

we had the first draft of the supplemental rules that are basically suppments to the International Center for Dispute Resolution rules to take advantage of ICANN and the supplemental rules to primacy if there's a conflict between the supplemental and ICDR rules. They are put out for public comments. The public had comment closed in February of this year. We started working on the rules, and the staff report came out in May, and we spent a lot of time discussing them.

We are we have moved some through to conclusion, and we are basically very near the end. We've discussed the rules at great length including the timing, retroactivity, all those kinds of things. We are very near the end. So that part of it is very good.

So the supplemental rules, I hope, will be done and presented to the board in the January/February time frame. I'm hoping we get all of the heavy lifting work done by the end of this year (indiscernible), on this and on another call in addition to this one.

Secondly, we expect the standing panel Liz Le is on the call, and she will be talking later about where the preparation is. But the standing panel is something that will be created for this IRP under the bylaws, and it will involve an expression of interest, a document that has been prepared seeking people to apply for the standing panel. But we the ICANN legal and ICANN policy are waiting on people to help, supporting advisory committees to nominate for the standing panel. Under the bylaws, it's the role of the ACs and SAOs to nominate. It's the role of SAs and SEs and ICANN to put them in two qualifications, qualified and unqualified. Once you have a pile of qualifications, it's the SAO's job to nominate to that panel, and ICANN policy is working to get organized doing that. We in the AOT have offered our assistance in that respect because we're developing some facility with the IRP bylaw. That's moving on. And I think Liz can speak to that a little bit later.

And then with respect to the cooperative engagement process, that was a separate subgroup of Workstream 2, and at that time Jill Burke there was a change in the CCWC Accountability Co Chairs asked us if we would take that work on, and we've agreed to do that. And that will probably follow the issuance of the rules.

Our first order of business, I believe, as we see it right now is to get the rules done and then step on to some further work. And I'll speak about that in a little bit. But thank you very much for your interest. That's exciting for us, and that's roughly where we stand right now.

Today's meeting is to discuss and hopefully wrap up issues of joinder of parties to an IRP, work on how parties can do discovery and gather evidence, and also work on translation services, all with a view towards recognizing IRP as an arbitration is meant to be quick, to the point, fair, not prolonged and not necessarily expensive, at least when compared to litigation. And so I hope that we will have some fruitful discussion on that, and I have invited discussion on the list waiting up to this call. So that's roughly where we are, and I will invite others in the group if they wish to make a comment to please, you know, indicate by their hand now. Charene, you're certainly welcome to comment, in light of what I've said, as well.

Hearing hearing nothing right now, let's move on. Liz, let me ask you if I could move you up on the agenda from Number 6 to to right now before we get into the joinder of discussion, inasmuch as the issue about preparations for getting to the standing panel have been have been mentioned.

Are you able to do that now?

>> LIZ: Hi, there. This is Liz. I'm happy to do that. So just to follow up on your recap, as you know, we circulated the we drafted the call for expression of interest. We'll also served related to the group for comment the process flow that we mapped out in terms of the four step process that is establishing the standing panel that the bylaws calls for, and we have identified in there certain points where we needed additional input from the community, and we've received some input from the IOT group, and we've also identified that we should get input and need input from the SNLAC leaders.

Weaving working with ICANN policy team in terms of figuring out, what is the best way to go about that. And I think the goal is leading to do a webinar, as we've discussed with this group here to do.

We are one of the things that we have been working with policy team is to recalculate to AOC leaders to identify for them what issues and probably what we planned to see get some kind of get their input in suggesting a planning call. I don't I think that might be the first step that they find to be appropriate, and then following that, a webinar, or if they feel that the webinar and the planning call can be done at the one step, that would be the next thing that we identify.

So from our standpoint, we are hoping to get that out to the SNLAC leaders this week, and depending on when they feel and identify is the time they are available to do so, we're hoping that we would be able to get this planning call up and going within the next couple weeks.

>> DAVID: Liz, thank you. So and thank you for that. In a moment, I will turn to Aubrey and Becky who joined the call, both members of this group, and see if they have any comment. Let me respond just briefly, Liz, and thanks for the update.

You've heard me speak about this before. I think the webinar is a good idea, the sooner the better. We would be happy to participate. We can find folks. I would be happy to participate and having read the bylaw now, I don't know how many times, I'm certainly gaining some knowledge of it.

The other thing I think we need to do is identify in conjunction with leaders from the SLACs is whether they need time for face to face, because the planning for Puerto Rico is done I don't know and maybe for Panama, I guess, will come up soon. It's amazing the lead time that's needed. While I hoped we could wrap all this up before then, if we need to preserve some time at one of these meetings, it would be nice to identify that fairly early. I'm looking forward to what you want to send out and looking forward to getting this moving.

Having said all that, Aubrey and Charene is a welcome observer today. I have given a recap of what we've done and where we are, and if you have any comments, you're certainly welcome to make them now.

>> AUBREY: Hi, this is Aubrey. I'm not sure I can be heard. Can I be heard?

>> DAVID: You're heard, but very, very faintly.

>> AUBREY: Sorry, this is the first time I'm looking this connectivity. I have no comments to add at this point. Thanks.

>> DAVID: Okay. Thank you. Becky, do you have anything that you want to say at this point?

>> BECKY: Not at this point. Thank you, David.

>> DAVID: Okay. Thank you. So, Liz, unless you have anything in light of what I said, then we can move on to the next agenda item.

>> LIZ: Nothing from me.

>> DAVID: Okay. Thanks. So let's move on to joinder. And as I mentioned in E mails, I have had a little bit of a time challenge. So I didn't send out anything more extensive than the E mails that I sent out following the last meeting to try and move these issues to closure.

We've discussed joinder quite a bit. And what I would like to do is just read the language as to where we are now. It will take two or three minutes, but I think it's good for the record to go ahead and read this now. And this is where we presently are on joinder. And if anybody wishes to say anything different, I have urged them to do some on lists. You can do it on the call, too, but to give specific language as an alternative. Here on joinder, only those entities who participated in the underlying (Indiscernible) of the full notice of IRP and request for IRP, including copies of all related file documents, contemporaneously with claimants serving those documents on ICANN.

2. That subject to the following sentence, all such parties shall have a right to intervene in the IRP. Notwithstanding the foregoing, a person or entity seeking to intervene in an IRP can only be granted party status if; one, that person or entity demonstrates that it meets the standing requirement to be a claimant under IRP Section 4.3 B of the ICANN bylaws, or 2, that person or entity demonstrates it has a material interest at stake directly related to the injury or harm by the claimant to have been directly or causally related to the alleged violation at issue in the dispute. The timing and other aspects of intervention shall be managed pursuant to the applicable rules of arbitration of the ICDR, except as otherwise indicated here.

Subject to the preceding provisions in the this paragraph, the manner in which this limited intervention rights shall be excised shall be up to the procedures officer, who may allow such intervention through granting such IRP party status or by allowing such parties to file amicus briefs as determined in his or her discretion.

An intervening party shall be subject to applicable costs, fees, expenses and deposits, provisions of the IRP as determined by the ICDR. An amicus may be subject to the applicable costs, fees, expenses and deposit provisions of the IRP as deemed reasonable by the procedure's officer.

3. No interim relief that would materially affect an interest of any such amicus to an IRP can be made without allowing such amicus an opportunity to be heard on the requested relief in a manner as determined by the procedures officer.

4. In handling all matters of intervention and without limitation to other obligations under the bylaws, the procedures officer shall adhere to the provisions of bylaw Section 4.3(s) to the extent possible while maintaining fundamental fairness.

That concludes the reading of the suggested language.

Just as background, I believe this addresses some of the concern you had last time. And the notion of fundamental fairness is something that is stated in the bylaws where it says that the rules of procedure are intended to ensure fundamental fairness and due process and shall at a minimum address certain elements. So that's where we are.

And the floor is now open for people to speak to this. Otherwise, we will consider this having reached second reading conclusion.

Liz, you have a comment? You have the floor.

>> LIZ: Thanks, David. One question that ICANN org has his with respect to the second provision second clause in Paragraph 2 where at the end of that it states that it's claimed by the claimant to have been directly and causally connected to the alleged violation at issue in the dispute.

We're not clear what you intended for that clause to mean.

>> DAVID: Thanks, Liz. I'm looking for it. Where is it again?

>> LIZ: So Paragraph 2.

>> DAVID: Okay. It's in Number 2?

>> LIZ: Right.

>> DAVID: So let me just read that out loud. That person or entity demonstrates that it has a material interest at stake directly relating to the injury or harm that's claimed by the claimant to have been directly and causally connected to the alleged violation at issue in the dispute.

I actually think this may have come from somebody else. But it seems to me that what's involved here is that this has to be directly tied to the dispute. It can't be tangential. There may be better language to state that, and if you have a concern with that language, I would urge you to maybe give me something else. But it's basically, you know, this has to be directly stemming or directly tied to the dispute in question.

>> LIZ: Okay. I understand that. I think what we would propose to change that to is that that person or entity demonstrates that it has a material interest at stake directly relating to the injury or harm that is claimed by the claimant that has resulted from the alleged violation.

>> DAVID: Okay. So if that's what you want, then we I don't think I wouldn't sense any objection to that on my part. If there's anyone else, they will have to raise their hand and make a statement about it, but I think that would be fine. And I would ask you to send that to me in the E mail and send it to the list; yeah.

>> LIZ: Absolutely. Happy to do so.

>> DAVID: Okay. Any other questions about joinder or any concern with what Liz just proposed?

Since that involves a bit of a change, what we will do is, I'll get the language from Liz. We will incorporate the language, and before we give this a second reading, we'll have to leave it on the list for several days to give people who are not in the call a chance to respond.

So absent any requests to speak, we'll move on to the issue of discovery. Of course, I have lost my place. We'll move on. Liz, your hand is still up. Is that old or new?

>> LIZ: Sorry, that's old. I'll take it down.

>> DAVID: Okay. So we are at the next agenda item, which has to do with discovery. And at the conclusion of the last meeting, Liz and I had gone through some suggested variances with respect to the paragraph entitled "Written Statements." And so I would like to read now where that is based on Liz's changes and do the same go through the same procedure. If anyone has a concern, then please note it when I finish reading, and otherwise, we'll move this one to a successful conclusion of second reading.

So the paragraph on written statements reads as follows: The initial written submissions of the parties shall not exceed 25 pages each in argument, double spaced

and in 12 point font. All necessary and available evidence in support of the claimant's claims or claim should be part of the initial written submission. Evidence will not be included when calculating the page limit. The parties may submit expert evidence in writing and there shall be one right of reply to that expert evidence. The IRP panel may request additional written submissions from the party seeking review, the board, the supporting organizations or from other parties. In addition, the IRP panel may request for additional risks the IRP panel may grant a request for additional written submissions from the party seeking review, the board, or from other persons or entities that meet the standing requirement to be a claimant under the IRP at Section 4.3 B of the ICANN bylaws and as defined within the supplemental procedures upon the showing of a compelling basis for such request.

In the event the IRP panel grants a request for additional written submissions, any additional such written submission shall not exceed 15 pages. That concludes the reading.

So I open the floor to comments, concerns, otherwise, we will move this one to second reading.

Thank you, Brenda, for putting that up. It looks better in color than my reading did for it.

So, Bernie, your hand is up. Do you have the floor?

>> BERNIE: Thank you. I wrote it in the chat, but it's everyone could speak their name before they start speaking, we're not capturing that right now. It's not our usual captioning team, and it's going to make it difficult to use the captioning record if we don't do that. So, please, everyone, if you can state your name before you start speaking. Thank you.

>> DAVID: Thank you, Bernie. So we can we can move on then to the next issue, which is about the next supplementary procedure that we were addressing is translation and interpretation. And in this E mail that I sent out, it was a summary of the discussions that we had rather than putting something into words, and so the gist of this is that they were going to ask Sidley, and we have budget with Sidley to polish off the rules when we're done with them to basically capture what we have in this E mail. And the principal elements of the E mail are that the claimant would get translation interpretation services based on need, not on preference.

We did have some public comments that asked that these services be provided if they were simply requested by the claimant. And we agreed and, of course, we have to, really, the bylaws say it's a matter of need. I can't I can't remember the specific paragraph, but the bylaws say these services are available if needed. And so we stick with this element, this concept of need, not preference. And we go so far as to say, and that includes if someone is bilingual and has a couple of language skills. If one of those language skills is English, then there would be no need for translation. If one of those language skills is one of the ICANN six languages of Arabic, Chinese, French, Russian or Spanish and the other language is something a little bit more esoteric, the translation can be done in one of the ICANN provided languages. This is principally, then, Caboose, you brought up an issue with respect to other documents that are requested to be translated, other documents than the Complaint or the response to the Complaint. And there we're basically putting those

costs/materiality balancing issues in the hands of the panel.

And so I would like to open the floor to anyone to say if they have any concern with what with what we're doing on language and translation, and I want to offer any other suggestion.

The one thing I forgot to mention is that if a claimant is more than an individual let's say it's a corporation where there are directors and officers then the language skill would be met by a director or an officer; in other words, as long as the claimant has some facility in English or one of the ICANN six languages, then that's going to be determinative.

So I open the floor if anyone has a comment. And if anyone doesn't, we will move this to closure for for the reading, and we're driving to an early conclusion for this call.

The other thing I wanted to handle today was getting towards how to wrap up the supplemental rules that we've already had the update on AOC and SO preparation for nominations to the standing panel. So we've moved to agenda item number 7. And as you heard me in the discussion with Charene at the outset say, it is my hope the supplemental rules will be done, through and to the hands of the board in the January time frame. In order for that to happen, we need to get through them, I hope, by the end of this calendar year.

Brenda, can I ask that you put up the sign up sheet on the screen if you can? And so what that means is, even though the sign up sheet on these rules appears somewhat blank it may be hard to read there the four issues below the second yellow line in the left hand column are things we will do after the supplemental rules. The items above that are the supplemental rules. Despite the fact it appears a little bit blank, we're actually making great progress, and I think we can finish these rules by the end of the year. And to do that, I think, would take one more teleconference, at least, and a lot of work on the list. And I'm happy to tee things up on the list the way we have been moving along. And

many of the rules, basically we have had substantive discussions along the way, so I think we're near the end.

So I would encourage all of us, and I would encourage the people on the list, be sure and throw in comments towards the end of the year so that we can wrap these up. I imagine we give it off to Sidley, it will take them a couple of weeks, and I need to get in touch with Holly to make sure she knows this is coming.

All of that being said, we would then turn our attention to the different items. Charene was asking about the CFP at the beginning of the call. We would turn to the cooperative engagement process and come up with any rules we think are germane for that, and we would also turn to things that the bylaws asked us to do, such as to consider whether there are additional requirements needed for conflict of interest rules for panelists, the bylaws at 4.3(q) set out conflict of interest standard, but give us the role of saying, you know: Take a look and see if more are needed.

We also have to come up with rules for appeal and with rules for claims by customers of the IANA services contract. Those things, we think are secondary right now to getting these rules done, because they follow sequentially in time anyway. So that's the plan, folks. And you'll see some more from me on the list to tee these up and move them along, and we will have to set a meeting between here and the end of the year. We don't have anything scheduled. Bernie is reminding me, we should try and schedule some tentatively, at least, right now. So I may put Bernie on the spot in a minute and ask him if he could suggest maybe something in the first week of December that would be good for us. We're usually Thursday afternoon, 19:00 UTC.

Bernie, can I turn it over to you and ask you to comment in this whole area?

>> BERNIE: Sure, David. We're as it happens, December is wide open. So you get your pick, Thursday, December 7th, 19:00 is your choice, that is open, and more than willing to book it now. I also have Thursday, December 7th.

>> DAVID: Okay.

>> BERNIE: And I also have the last day in November is 30th. I also have that if you prefer.

>> DAVID: So I personally think maybe we should schedule a meeting for Thursday, December 7th. But is there anyone on the call that has other thoughts about this? I think if it goes past the 7th, it's a little bit too late. And if it's on the 30th, I might be able to get things out through the list. Does anybody have any objection to setting things for Thursday, December 7th at 19:00? Let's do that, Bernie.

>> BERNIE: All right. Given things get very quiet towards the end of December, should we try and book something for January right now, at least one meeting, maybe on Thursday or Thursday the 18th?

>> DAVID: What was the first Thursday you mentioned?

>> BERNIE: We have well, they are all open. So we have January 11th, January 18th and January 25th.

>> DAVID: Okay. What's the one let's set one for January 10th. Better to have and not need than to need and not have.

>> BERNIE: Thank you very much. The invitations will be sent out.

>> DAVID: Okay. Any other business? If anyone has any comments, I would welcome them now.

Seeing and hearing none, I will thank everybody for participating. It's a tough time to get on the phone calls around the holidays. Hopefully, December 7th, we'll be able to get our group together. And look for some E mails from me on the list. We'll move these rules to conclusion. We have had great discussions about them, happy about getting near of the end of this process so we can move on to other things.

Aubrey, you have a hand up, so go ahead and take the floor.

>> AUBREY: Thank you. I can be heard slightly better now. This is Aubrey speaking.

>> DAVID: It's better.

>> AUBREY: The one thing I haven't finished, the one thing we didn't get on the agenda today is the subject of the ongoing monitoring. So I just didn't want to let the call slip away without having fessed up for not having gotten much further on it and developed the document further. I did have a lot of discussions about people at the ICANN meeting about whether to continue sort of on the separate view that we have been having, or to sort of accept the notion that you had accepted that a small change to the bylaw, basically saying that the ATRT shall review the as opposed to may review the procedures would be an adequate response. And I guess the desire to not have a complicated solution has been pushing me that way. The only problem I still have with that and wanted to put on the table, and the one that's been sort of working in the back of my mind is, that leaves out the whole notion of including the panelists in that review.

Now, one could assume that the ATRT would indeed review them. But the there would be nothing explicit saying that they would have to be included.

So going back, the simple solution is just a simple bylaws change that changes may review to shall review in the appropriate bylaw. And I don't have the document with me. I'm traveling with less machinery and don't have my laptop with me and the full copy in front of me. But basically, that could be the one change that was needed. Because we did want to make sure that there would be a review. And any other solution that I had been working towards gets more complicated, and I'm not sure it's worth the complication. I didn't want this one meeting to end without having put that back on the table.

Thanks.

>> DAVID: Thank you, Aubrey. As you said, you and I have been discussing this within the meetings. Within our teleconference, it's you and I that have been sort of batting this around. And I am of the view and just to mention for Charene, the current bylaw does, as Aubrey suggested, the ATRT reviews for IRP, but the lead in language is that it may be reviewed. And one of the public comments, I believe it was from ALAC, to our rules was that there should be periodic reviews of IRP. And we all I believe we all agree with that. And I came to the view that, like Aubrey stated, it could be under ATRT if it says shall. But I also was one that believed we should include as least the lead arbitrator or lead panelist, if that's the term, in their review. And so we will work more on that one. I agree with you, we will work more on that one. If it is something that involves a bylaw change, it would be a recommendation to the board, but a bylaw change along this lines would be required. It shouldn't be unleashed without an opportunity for the community to review its performance every five years or so. So more to do.

Aubrey, on that one, that issue, while it came up in public comments to the draft rules, it really doesn't affect the rules. So we can finish the rules before we finish ongoing monitoring, because that's sort of separate.

Now, your hand is still up. Is that an old hand or new hand? Old hand. Is there anyone else that has a comment regarding what we've discussed or anything else on the list? If not, I want to thank Charene very much for attending. It's certainly a very welcome attendance. We're glad you were here, and you're welcome back any time. And I'm going to close the meeting.

Seeing no hands, I want to thank everybody for participating, and enjoy the rest of your day. We were able to wrap up early, and thank you. We can stop the recording.

(Meeting adjourned.)

EXHIBIT 312

Ex. 312

[IOT] IRP IOT call reminder AND Joinder issue text

McAuley, David Contact Information Redacted
Fri Dec 1 19:18:31 UTC 2017

- Next message: [IOT] IRP IOT call reminder AND Joinder issue text
- **Messages sorted by:** [date] [thread] [subject] [author]

Dear members of the IRP IOT:

Reminder - we have next call on Thursday, Dec, 7th, at 19:00 UTC. Please double-check that time in case you are located where a daylight savings time change has taken place.

I will send an agenda by Tuesday and will be sending some issue-specific emails in the interim as well.

In this email I also address the Joinder issue we have been discussing. On our last call on Nov. 14th, Liz le of ICANN Legal suggested a tweak to the language we have been focusing on and she promised to send along drat text in that respect.

Here is what Liz has proposed:

1. If the person or entity participated in the underlying proceeding, (s)he/it/they receive notice.

1.A. If the person or entity satisfies (1.), above, then (s)he/it/they have a right to intervene in the IRP.

1.A.i. BUT, (s)he/it/they may only intervene as a party if they satisfy the standing requirement set forth in the Bylaws.

1.A.ii. If the standing requirement is not satisfied, then (s)he/it/they may intervene as an amicus.

2. For any person or entity that did not participate in the underlying proceeding, (s)he/it/they may intervene as a party if they satisfy the standing requirement set forth in the Bylaws.

2.A. If the standing requirement is not satisfied, the persons described in (2.), above, may intervene as an amicus if the Procedures Officer determines, in her/his discretion, that the entity has a material interest at stake directly relating to the injury or harm that is claimed by the Claimant to have been directly and causally connected to the alleged violation at issue in the Dispute.

I personally (not as IOT lead) find this acceptable and encourage each of you to consider it. If you object, or have comments, please come on list by Dec. 7th or join the call to make your points. This is drawing to a completed second reading at the Dec. 7th call.

For changes to text I ask for specific language proposals, not just observations. We are entering the home stretch on these public comments to the draft supplementary procedures and we need specific text to consider.

Many thanks to all.

David

David McAuley

Sr International Policy & Business Development Manager

Verisign Inc.

Contact Information Redacted

---------- next part ----------
An HTML attachment was scrubbed...
URL:
<http://mm.icann.org/pipermail/iot/attachments/20171201/3dc838d3/attachment.html>

- Next message: [IOT] IRP IOT call reminder AND Joinder issue text
- **Messages sorted by:** [date] [thread] [subject] [author]

More information about the IOT mailing list

EXHIBIT 313

EN

IRP-IOT MEETING
Thursday, February 22, 2018 -- 19:00-20:30

[Captioner standing by]

>> DAVID MCAULEY: Hello, everyone. This is David McAuley speaking. Welcome to the IRP implementation oversight team call. We are probably lacking a quorum, but I'm going to be make can some remarks, so I would ask for the recording to be started.

[This meeting is now being recorded]

>> DAVID MCAULEY: Thank you. I see that we have several participants and some observers, but probably not enough to make a quorum and that's disappointed. I would like to make a few comments and have them recorded and ask people to take a look at the comments and in the meantime we might gather a quorum, but we are so close to being finished that I am going to encourage folks to pay strict attention to the list. I think we can accomplish and perhaps close this out on the list, to look to encouraging our fellow participants when we see them at ICANN 61 to get more deeply involved. Once we finish these rules, and as I said, I think we're within a hair's length of finishing them, we have other things to do, including rules for appeals and things of that nature. So we have quite a bit on the plate.

I see we now have five on the line. So let's proceed and we will proceed with the meeting and do the best we can. I don't think we're going to fill the allotted time, but let's go through the agenda and then we can finish up on list and draw people's attention to this on list.

And as I said a moment ago, I'm going to encourage all of us involved in this, both as observers and participants to encourage our fellows in this group to get more deeply involved. We have we're about to finish one project and launch into some others, all of which I think are quite important. And then in tandem, the SOs and ACs are about to get much more serious about looking to establish a standing panel. So the new IRP is coming very close. We are going to be instrumental in making that happen, so let's encourage each other to redouble our efforts.

Welcome everybody to the call. I would like to ask if there's anybody attending the meeting on the phone only and not showing up in the Adobe meeting.

>> SAM EISNER: Hi, David. This is Sam Eisner, I will be joining the Adobe room soon.

>> DAVID MCAULEY: Thank you, Sam. Anyone else? Not hearing any, I'm going to ask if there is anybody in the call who has a change to their statement of interest that they would like to note. Not seeing any hands or hearing any, let's proceed.

So the next item on the agenda is the time for filing issue and this I put in our agenda as a status discussion and made some notes lower down in the agenda to describe what's been happening recently. And as you heard in the last call, this is the one serious issue, the one that's taken up most of our time or a lot of our time, I should say, the single issue that's had the most discussion, and I went back, as I promised I would in the last call, and looked at the record and came away believing, notwithstanding an inclination for an overall repose period, I came away that the bylaws struck me very clear, that the time for filing issue, in so far as it relates to an overall period of repose was correctly stated by Malcolm Hutty's suggested text. The one concern I came away with was, did we have a consensus? How do we determine consensus? And so in a moment I'm going to ask Bernie to talk about that from the perspective of the CCWG Accountability. So far procedurally we have operated as the CCWG Accountability has and we have not made any decision to do otherwise. So that could be an illuminating remark, so I'll ask Bernie in just a moment. I know Malcolm, Sam and Liz may be interested in making comments on this, too. And so I'm going to open the floor for comments and I'm particularly wondering if Sam, Liz, or Malcolm want to make a comment. And then I will turn to Bernie. So that being said, does anybody want to make any comment about the status of this particular issue?

>> SAM EISNER: David, this is Sam from ICANN. I think in some ways we're back in the conversation we had around June or so of this year on it and so we're at the point where, for those who have been participates in the IRP there's agreement to go forward with language that reflects there's no statute of repose on no outer limit on time for filing and so, you know, as we discussed before, that's a material change from what was posted for public comment. Within ICANN, I think and we've heard some other voices in the IOT as well that have not necessarily been supportive of the no IOT. I don't know the consensus process or how you determine consensus, but I know from ICANN's position, for purposes of the public comment, you know, we would actually like to be able to put in like a minority statement stating out our concerns around it. And then, you know, whatever else would go out with the public comment would be there, but we could develop a minority statement. We would be happy to circulate it among the IOT to see if there's anyone else that's part of the IOT that would like to join us or give statements of their own, but I think that's a way to frame some of the dialogue around public comment, understanding that the view of the group right now is to move forward with the no statute of repose in the next version of the rules.

>> DAVID MCAULEY: Thanks, Sam. David McAuley speaking again. You raised a good point, an interesting point, and that is public comment. This is a material change and so this, while I don't think the rules need to go back out for public comment, I think this particular change would need to go back out for public comment. And I'll ask Bernie to speak after Malcolm in just a minute. But I know in Work Stream II in CCWG Accountability there's been a series of minority statements. I don't expect there would be any problem with having a minority statement. But anyway, having said that, let me ask if Malcolm would make some comments and after Malcolm, I'll turn to Bernie to see if he can shed some light for us where we are consensually.

>> MALCOLM HUTTY: Thank you. Can you hear me?

>> DAVID MCAULEY: Yes, we can hear you. Yes.

>> MALCOLM HUTTY: Thank you. Right, I mean, yes, now I think we're in the stage of just trying to write up our report, having made the decisions. The consensus, you called a consensus on this, I don't know, back in whatever it was, I think May, some time ago anyway, so now we just need to make sure that the report is clear and states the reason clearly as well as the decision clearly. I must say I'm surprised that ICANN would wish to put in a minority statement just from the point of view of the, I mean, has ICANN ever put in a minority statement on a matter in which it is actually, you know, the interested party? It seems strange as to whether that's even a thing for ICANN to do.

If it is decided that ICANN should be considered able to do that, then I think that would mean that we would need to be a little more forthcoming about the reasoning for the decision than we had talked about being. I think we would have if ICANN is going to argue its position that it disagrees with this, we would have to actually state the points that were raised as to why we had done this. We couldn't be silent on that and just simply state what we were doing.

But I must say, I'm I would think it strange and surprising and I would actually wonder about precedent and order as to whether ICANN can put in a minority statement. We are actually talking about, you know, the accountability of ICANN.

>> DAVID MCAULEY: Thank you, Malcolm. Is that are you finished?

>> MALCOLM HUTTY: Yes, I'm finished on that. I don't know how we would go about asking that question as to whether it was appropriate for ICANN to do that and who we would ask. Perhaps I could turn that to you, maybe you could get some advice on that.

>> DAVID MCAULEY: Thank you. This is David McAuley speaking. I'm going to turn to Liz in just a minute, but on the procedural question, I take your point, I hadn't thought that myself. My initial reaction to what you said, ICANN is, as Avri explained in the chat a concerned party, but there are many in the community that would probably like the idea of certainty at some point. I don't know. But I never thought that ICANN could not make such a statement as a participant in the group, I would expect they would. And even if this is a first instance of doing that, that wouldn't strike me all that unusual. But anyway, Bernie is going to comment. Bernie, if I could ask you to just hold on one moment and let Liz comment on this and then we'll go to you Bernie. So, Liz, take the floor.

>> SAM EISNER: This is Sam, I'm with Liz and I had to raise my hand before I was able to get into the room. I think, David, as you mentioned, ICANN is actually listed as a participant in this IOT group. There are many places where ICANN is not actually an active participant and designated and it was in that view of our role as a participant that we were considering making a minority statement. I thought, you know,

so the reason I suggested that is, you know, I think we need to make sure that when this goes for public comment, we're not just posting a redline, there has to be some expression around why the change was made. And so, you know, I wouldn't want to ask the IOT itself to carry the water to agree on reflecting ICANN's concerns that were raised during the discussion and to require the IOT to reflect those in a public comment document. And so the suggestion of making a minority statement was a way to allow that to come into consideration as the community is considering this very major change to the rules that could have very broad impact across the ICANN community, without trying to impose on the IOT the need to reflect ICANN's concerns in a summary that got posted for comment.

>> DAVID MCAULEY: Thanks, Sam. Malcolm, before I go to you, I'm going to ask Bernie to comment on this and then we'll come to you.

>> BERNARD TURCOTTE: Thank you, David. Can you hear me?

>> DAVID MCAULEY: Yes, Bernie, we can hear you. Thanks.

>> BERNARD TURCOTTE: All right. On the minority statement, I don't think there's any limitations and from the historical point of view, from the CCWG Accountability, I don't think we've ever applied any significant limitations. If there was a major divergence of opinion, we've always strived to ensure that that gets presented. So our latest example is the point from Brazil and the jurisdiction discussion. So from that point of view, it's fairly straightforward.

I think as Sam has pointed out, ICANN and council are typically members of this group, but I don't think beyond presenting the views and participating in discussion that they don't get involved in actually establishing quorum on decisions. So if you look at that, then, you know, the sum of our meetings of this group, if we applied the same rule that we would apply to other Work Stream II subgroups, is that technically we need five, if you will, full participants to have a valid reading of a recommendation. The second rule that has permeated through most of the Work Stream II stuff from Work Stream I is there has to be two readings to ensure that people get a chance to join in if they could not for any reason join on one meeting, they should be there upon the second meeting.

And the other point is that in between two readings, there should be a clear presentation of the issue on the list and who should accept comments on the list as also having a weight in expressing consent.

So I think if we go through all of that, I've been going through a bit of the history, you know, there hasn't been beyond ICANN, I think, any significant disagreement with the Malcolm point of view, but we have been rather shy on if we're trying to keep to the quorum rule that we've had. I hope that's sufficient.

>> DAVID MCAULEY: That's helpful, Bernie. David McAuley speaking again. Malcolm oops. Malcolm's hand is down. I see Malcolm's comment in the chat where he says, I share Sam's view that we should not merely post a redline, but should give explanation of why the change was made. I don't quarrel with that.

Based on what Bernie said, my way forward is to confirm the consensus on the list and to do that, I would come up with a statement of the issue and then I would pass it amongst myself, Malcolm, and Sam, I think, to try to make sure we get to crisp and accurate statement that we would put to the list and say we have come to consensus.

Malcolm, your hand is back up. Yes, go ahead.

>> MALCOLM HUTTY: That sounds like you are reopening the question at hand. You had already declared that a consensus had been reached. You did so I'm checking my e mail now, I believe it was the 11th of June, was it not?

>> DAVID MCAULEY: I don't remember the date. I think that you're accurate in what you're saying, but I think I was probably not taking account of the attendance. In other words, I'm not sure that the group has had a chance to weigh in on this. And as I listened to Bernie

>> MALCOLM HUTTY: Well

>> DAVID MCAULEY: as I listened to Bernie's comments, this idea of confirming consensus struck me as consistent with what Bernie was saying.

>> MALCOLM HUTTY: Basically [indiscernible] a meeting that was given proper notice, we held a meeting, we posted to the list several days before the second meeting was held, and in that post we made a very clear statement of what was the issue before us, the language that was scheduled for approval, and invited people's comments and then we held with due and adequate notice a second meeting that was held to be [indiscernible] and at that fact you said we now had second reading.

>> DAVID MCAULEY: Are you done, Malcolm?

>> MALCOLM HUTTY: I'm done.

>> DAVID MCAULEY: Bernie, did I misinterpret anything that you said in well, I guess it's hard for you to know that. To read my mind. Do you have anything to add to this, Bernie?

>> BERNARD TURCOTTE: As I said, you know, I can just give you references as to what is common practice in Work Stream II and it's really for the group. And so what I will say is, you know, if there is a critical this may be useful, if there is a critical timing issue, the CCWG Accountability has gathered the Plenary, you know, where there is usually sufficient attendance and dealt with things quickly. There has been a history of if there is something that is dicey on the quorum side to ask the Plenary's view of that, but the IOT is a bit of a different creature, as we know.

The reason I raised my hand, originally, was to note that if the decision is made to go ahead with the proposal on timing, that this would represent a major change and according to our basic rules would require going back to public comment. Thank you.

>> DAVID MCAULEY: Thanks, Bernie. I don't disagree on the public comment aspect of it.

I think what I'm going to do is yet again go back to the record and examine exactly what Malcolm is saying happened for myself, again, and I'll come back on the list and say what I believe the case is. Malcolm, I'll be at you in just one second. But I feel, I mean, I have done this and this will be another step back into it, I don't mind doing that, but I don't feel comfortable in making a decision on this on the fly right here. And I think what I'll do along the way, as I said, is keep the major proponents of the two sides involved in this rather than the entire list, unless anyone would object to that. That doesn't mean that we would keep anything from the list, it simply means we would be doing some of the background work in the background and then come to the list and explain what happened. So I'm tempted to operate in that manner.

Malcolm's hand was up first and then Sam. I'll turn to Malcolm.

>> MALCOLM HUTTY: Thank you, David. I would like to be clear, I'm not in any way arguing with Bernie about the procedure. I'm simply saying that I believe the procedure was, as Bernie laid out, has been fully complied with. I have just this moment forwarded for your convenience a copy of the message that was sent after the first reading meeting and before the second reading meeting, which you will see sets the issue out clearly and gives a week's notice of the second reading and inviting people to comment on the list or to attend that second reading meeting. That second reading meeting was then held. It was considered [indiscernible] and it went through without further demurral.

If you are to say now that meeting that was in quorum, apart from the fact that I think doing so at this late stage is probably wrong, it would also invalidate anything else that was done at that meeting. I think we have complied with the procedures fully. We are where we are. And the next stage is to complete the write up so we can go to public comment. I'm not disagreeing with any public comment on this issue.

>> DAVID MCAULEY: Thanks, Malcolm. And what I'm saying now is I'm not disagreeing with you, I'm not saying you're misstating anything, I just need to go back and look at this myself, that's all.

>> MALCOLM HUTTY: [Indiscernible].

>> DAVID MCAULEY: I'm sorry?

>> MALCOLM HUTTY: I said, that's fine.

>> DAVID MCAULEY: Liz's hand is up

>> MALCOLM HUTTY: I'm done.

>> DAVID MCAULEY: Okay, thank you. Liz's hand was up, but now down. So what I'm going to do is move on. I will go back and look at that procedural matter again. The last time I went back was looking more at the substance of the timing issue. This time I'll look more at the procedural side.

So what I'd like to do is move on to the third item on the agenda which is the review of the public comments document, our draft, unless anyone has anything else to say on this. Seeing no hands, let's move on to Brenda, if you could bring up on the screen the revised document that deals with our treatment of the public comments. On this document we went through the greater part of it on the last call and I don't recall any specific requests for changes in it.

In this latest draft you'll see that there are, in track changes format, there are some additional language insertions, but they're pretty nominal in a sense. Many of them simply go through sections where we say, no change is recommended, or, see the recommendations regarding [indiscernible]. So you have scroll control, I believe, on this document. Let me just go through briefly at a very high level.

What this has is an introduction. The introduction is basically the way that we've worked. Near the bottom of page 1, prior to the language that is shaded in red, there's red text. Do we need actually revisions drafted by Sidley for this report or can we proceed in this manner? I take it from the way we have been treating this document is the answer is the latter. We can proceed in this manner. We are going to give instructions to Sidley and vet our instructions to make sure they receive the instructions and move forward from that point. So unless anyone thinks that's an incorrect assessment of where we are in dealing with Sidley, please speak up now. Raise your hand or make a comment.

The next thing I would mention is you will see there's some shade I had language at the bottom of page 1 going over to the next page that added a paragraph that says, by the way in the public comment exercise, a number of people commented on things that have nothing to do with the actual rules. One example I'll give is the ALAC's comment that there should be on going monitoring of IRP process overall. And that's an issue that Avri took the lead on for us and it simply happens that whatever we do with that comment doesn't show up in the rules. It won't have language reflected in the rule to deal with it. So this shaded paragraph says, to the reader of this report, with respect to those kinds of comments we will come out with another document telling you what we've done, if anything, with respect to those comments. Does anybody object? I think there may have been concern on some part that this kind of paragraph may get us into trouble or might lead to questions that are not necessarily productive. We don't need to have a paragraph like this, I just thought it would be useful to tell folks, there were comments, we haven't ignored them, if we think they will make a difference, we will come up and say so. And for instance, continuing on with Avri's example, the example rather of on going monitoring, I think we will make a recommendation that there be on going monitoring of the IRP process, consistent with the bylaws. IRP is mentioned in one of the five year reviews.

Avri, your hand is up, why don't you take the floor?

>> AVRI DORIA: Thanks, this is Avri. I just wanted to ask a question about the timing of this separate document. I mean, can this separate I mean, does it come out at the same time? Does it come out much, much later? Can things be attached? Like annexes of other issues discussed or something? So I have no problem with the paragraph, I'm just wondering does the timing require it? Thanks.

>> DAVID MCAULEY: Thank you, Avri. David McAuley speaking again. With respect to timing, it would be following this document on the rules and it would I would come up with a draft, I would pass it around the group and we could see if we could issue it. My expectation is it wouldn't necessarily need to take a lot of time, but you never know. Something might grab somebody's attention and we could get bogged down on it. So it would be subsequent to this document that's in front of us. Hopefully not too much past that. Much, a much briefer document than the one that's in front of us now that we're working on. Those are my thoughts about it.

Any other comments? Okay.

But then you'll see that I've basically filled in the rest of the document, taking out comments like, in process, with the exception for the time for filing issue, and saying where changes are recommendations or where they're not. And so I will, I believe, frankly, that the document that we have in front of us dealing with our report to the community on our treatment of public comments is, with the exception of the time for filing issue, is basically close to down. So what I'm going to do is put this back on the list and say, look, we have finished with this now, you know, this is essentially the first reading and a week later the second reading on this document and asking people if they have any objection or anything like that to please state it with specific language suggested as an alternative, and I'll reserve the time for filing issue consistent with what we do on that as per our prior discussion just a few moments ago.

If anybody has any other approach or concerns, just let me know. Hearing none and seeing none, let me move to the next agenda item. And that is called types of hearing discussion. And I sent a separate e mail about this. And what prompted me to send the separate e mail is among all of the issues on our sign up sheet and public comments, this is the one I think had the least discussion. So I wanted to ask amongst this group, or give us a chance to speak up on the types of hearing. And you've seen my e mail. I'm going to ask Brenda if she could put up the types of hearing e mail and give scroll control on it. But it was basically an e mail that pointed to comments to people like .music that argued for in persons hearing in cases as being fairly standard. And what we did in the draft supplementary procedures, in paragraph five, is we basically said that the panel can conduct proceedings electronically to the extent feasible and if there needed to be telephonic or video conferences they should be limited to where necessary. And we went on to say in person hearing that would be a presumption against them, but they could be overcome, the presumption could be overcome in extraordinary circumstances as described in USP 5. So some of the community said that wasn't a good idea. I put that out in my e mail. You have scroll control on that. And I

made a recommendation as a participant that no change struck me being needed to the rule we had drafted. I said it allows the panel to have video or telephonic conferences where necessary and made in person hearing presumptively not to be held, but they could be in extraordinary circumstances, and it left discretion in the panel, which is going to be in the best position to do this, consistent with the idea of fundamental fairness, due process, and expeditious IP hearing. This is an arbitration system that is designed by ICANN to be expeditious. People have the ability to go to court if they wish for some other venue so that's why I made the recommendation that I did.

I'm going to open this to the floor and see if anybody has other thoughts on it. Malcolm, you have the floor. If you are speaking, Malcolm, we can't hear you.

>> MALCOLM HUTTY: I think I was muted.

>> DAVID MCAULEY: There you go.

>> MALCOLM HUTTY: Thank you, David. You raised this point in an e mail to the list on the 2nd of January and I replied in some detail the following day, the 3rd of January. When you raised it, you said that you thought that if we were if people wanted to make comments for changes they should offer text, not merely commentary. So I did that. I attached a suggestion for what rule 5 could look like in a way that slightly broadened this out, while giving more discretion to the panel to decide when an in person hearing should be allowed, but nonetheless emphasizing the critical importance that matters are decided expeditiously and at low cost. As a standard to apply when exercising its discretion.

Now I'm not going to walk you through the full text of my e mail or the proposal that I made now, it would take too long, but I would like to direct, if you are asking for our comments on this issue, I'd like to direct your attention to that reply.

>> DAVID MCAULEY: Thank you, Malcolm. I'll take that under advisement. I did lose sight of that, my apologies. That's exactly what I'm looking for, so I'll go find it and go through it and come back on the list.

Is there anyone else that would like to comment on the types of hearing subject hearing? Liz your hand is up. Liz or Sam, you have the floor.

>> LIZ: Hi, David, it's Liz. I just wanted to raise the issue that we did discuss this issue during the January call. I don't think Malcolm was present during that call, but we did discuss this and stated ICANN's position, which is that we are in agreement with the position that you set forth as a participant. In that, this is an issue that has been debated and worked through prior to the publication of the draft that went out for public comment. And we agree with your position that it should remain as drafted.

>> DAVID MCAULEY: Thanks, Liz. And, again, I went back on this and went back to the record, obviously I missed that portion of the January hearing where we discussed this. My apologies to this group for doing

that. I'm going to go back and look again, as I said to Malcolm, and come back to the list. I appreciate the points you made and Malcolm list, I appreciate the discussion, I'll go through that and come back to the list. I'm glad to hear it. I'm glad there was discussion.

Does anybody else want to make a point about this? Not seeing any hands or hearing any, let's move on to agenda item number five which talks about next steps. First with respect to the Report on Public Comments, I just mentioned that, but I also wanted to and I also mentioned about the public comments on non rules matters. So we actually discussed those briefly.

I want to just at this time make a point that there's something I would suggest that we address and what it is is under the rule, under the bylaws 4.3N talks about us constructing rules of procedure and 4.3N4C talks about us coming up with description of written statements, including let me see if I can find the language. Bear with me just one second. Including to come up with rules governing written submissions, including required elements of a claim. The one thing I don't believe we have laid out is the required elements of a claim.

Now the I think it would be good if I came out on list and suggested that we do this. And we could perhaps include this in the item for public comment, although it's probably not a major thing. But I only think it's just a point for sort of cleaning up and making sure that it's dressed with respect to the IRP as opposed to arbitration under ICDR rules. ICDR rules do cover what is what's required in a notice of arbitration, as they call it. And basically they ask not only for a copy of the arbitration clause, but a description of the claim, in fact, supporting it. So my question to us is, do we want to just list the elements of a claim as being things like the name of the party, the capacity that they are filing in, are they an individual, a registrant, a Registrar, whatever? To describe the action or inaction by ICANN with some particularity as to what that action was, when it was, describe the effect on the Claimant and specifically call out the Article or bylaw they allege was violated? We haven't discussed this. It's a suggestion that I could come up with some draft language fairly quickly and I was wondering if anybody had any thoughts on this as to the wisdom of doing something like this or simply leaving this unstated and as it's treat under the ICDR rules.

Sam, you had your hand up. Go ahead.

>> SAM EISNER: Thank you, David. I think the concept is stating what does it mean to raise a claim? And what are the points needed to raise a claim? You know, it's definitely worth considering. I think we have to go back to the language that's actually within the bylaws that specifies what a claim is and that might be the biggest guidance. I think some of your suggestions about referencing which section of the bylaws or the articles is alleged to be violated, et cetera, that was missing that and it could make it very difficult for people to actually state their claim. I think, currently I know we have a, I'm not sure how specific the ICDR form is around the filing of an IRP and I'm here with Liz and she is shaking her head going, no, no, it's not really specific anyway, so it's not actually handled within the IRP filing form. So I think you raise a

point, you know, we need to make sure things are there and stated. Is it something we need to reflect in the rules of procedure? I'm not sure. I think it could go either way. I think we should also look at the ICDR procedures themselves because they might tether it to whatever basis is there. I don't know if this is a place we would be recreated work we don't necessarily do, but I wouldn't be opposed to taking an initial to seeing an initial draft on if you want to do as you proposed.

>> DAVID MCAULEY: Thanks, Sam. Excuse me. It's David McAuley speaking again. I think I may come out to the list with a suggestion. It's not a make or break issue, obviously, because the ICDR rules are in the background and the bylaws require what they require. Since that rule 4.3N4C, I think it was, spoke about elements of the claim, I thought I'd mention it. It's something that we have neglected. Probably I should have raised it sooner, but I didn't really notice it until lately.

So I will probably suggest something and we can discuss whether it's the idea is merited or not. I don't think we'll disagree. I mean, the elements are going to be fairly straightforward and factually based. So thank you. Thank you for that.

Excuse me. I had another point under next steps discussion with respect to future non rules work. And simply here I'll just remind this group that the SOs and ACs are embarking on the effort to establish a standing panel. And those of us here, and I'll probably say something about this on list, those in our group are constituents in these groups. And so I would encourage us to offer our services to our constituent bodies, help them, they're going to need help. It's not very well described in the bylaws what they have to do. They have to sort of establish a standing panel and there's not that much guidance. I'm hoping that we as a team, if asked, can help them, and we as individuals in our constituencies can help them, too. Please be attentive, too.

Sam, is that an old hand or new hand?

>> SAM EISNER: It's an old hand, but I'll just call attention to what I just posted in the chat that we have just received confirmation a couple days ago that we have a formal time on the schedule, Wednesday at 17:00 Puerto Rico time local for that community discussion to continue. We'll circulate that more broadly to the IOT list as well.

>> DAVID MCAULEY: Thank you. And then I'd also simply remind our group that in addition to that work, there are other things we need to do. I can't remember all of them, but they involved coming up with process for can cooperative engagement group. That group in CCWG Accountability went away and we have to come up that effort. And in our public comments we got for non appeal, but regular IRP appeal, we got a couple of people saying on appeal, the cost should go to the losing party or an appellant that loses. Excuse me. And things of that nature. And we could be requested by PTI customers to come up with PTI claims. So there's more for us to do before this group is disbanded or whatever. So look for I think we're close. If we can figure out the time for filing where we are on that, I think we're close to getting a report out. And so I encourage us to stay involved and I hope to get a chance to chat with a

number of you in Puerto Rico. All that being said, I'm going to ask if anybody has any comments, thoughts, insights or suggestion for work we have in the future. For the dynamics of the team, we need to encourage more folks to jump on the call and I've been doing that, but probably not all that successfully, and to get more involved on the list. I look forward to continuing those efforts.

And if there are no further comments, I think we can call this to a close. I'll go back to the notes and start work for time for filing issue tomorrow or over the weekend to try to sort out where we are. That said, if no one has any other suggestions or comments, we can wrap this up.

Malcolm, I see you are typing. If you have a comment you want to mention, feel free to go ahead and do so. Okay, thank you. You're welcome. That will be a wrap then. I think we can close the recording and I'll simply say thanks, everybody. Thank you so much for being here. And we shall move forward and we're getting close to getting the rules done, so my thanks to all. And goodbye.

>> Thank you, David. Thank you.

>> DAVID MCAULEY: Thank you.

[Meeting concluded]

EXHIBIT 314

Ex. 314

Adopted Board Resolutions | Regular Meeting of the ICANN (Internet Corporation for Assigned Names and Numbers) Board

25 Oct 2018

1. **Consent Agenda:**
    a. **Security (Security – Security, Stability and Resiliency (SSR)) and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee) (SSAC (Security and Stability Advisory Committee)) Member Appointments**
        Rationale for Resolution 2018.10.25.01

    b. **Appointment of Root Server Operator Organization Representatives to the RSSAC (Root Server System Advisory Committee)**
        Rationale for Resolution 2018.10.25.02

    c. **Appointment of Root Server System Advisory Committee (Advisory Committee) (RSSAC (Root Server System Advisory Committee)) Co-Chair**
        Rationale for Resolution 2018.10.25.03

    d. **Deferral of Transition to Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) Consensus (Consensus) Policy Implementation**
        Rationale for Resolution 2018.10.25.04

    e. **Payment of Legal Invoice Exceeding $500,000**

Rationale for Resolution 2018.10.25.05

f. **Thank You to Community Members**

g. **Thank You to Local Host of ICANN (Internet Corporation for Assigned Names and Numbers) 63 Meeting**

h. **Thank You to Sponsors of ICANN (Internet Corporation for Assigned Names and Numbers) 63 Meeting**

i. **Thank You to Interpreters, Staff, Event and Hotel Teams of ICANN (Internet Corporation for Assigned Names and Numbers) 63 Meeting**

2. **Main Agenda:**

a. **Appointment of Board Designee to the Third Accountability and Transparency Review Team**

Rationale for Resolutions 2018.10.25.14 – 2018.10.25.15

b. **Geographic Regions Review Working Group Final Report**

Rationale for Resolution 2018.10.25.16

c. **Transfer of funds from Operating fund to Reserve fund**

Rationale for Resolution 2018.10.25.17

d. **New gTLD (generic Top Level Domain) Applications for .AMAZON**

Rationale for Resolutions 2018.10.25.18 – 2018.10.25.19

e. **Independent Review Process Interim Supplementary Rules of Procedure**

Rationale for Resolutions 2018.10.25.20 – 2018.10.25.21

f. **Reserve Fund Replenishment Strategy**
Rationale for Resolutions 2018.10.25.22 – 2018.10.25.23

g. **Thank You to Lousewies van der Laan for her service to the ICANN (Internet Corporation for Assigned Names and Numbers) Board**

h. **Thank You to Jonne Soininen for his service to the ICANN (Internet Corporation for Assigned Names and Numbers) Board**

i. **Thank You to Mike Silber for his service to the ICANN (Internet Corporation for Assigned Names and Numbers) Board**

j. **Thank You to Ram Mohan for his service to the ICANN (Internet Corporation for Assigned Names and Numbers) Board**

k. **Thank You to George Sadowsky for his service to the ICANN (Internet Corporation for Assigned Names and Numbers) Board**

1. **Consent Agenda:**

a. **Security (Security – Security, Stability and Resiliency (SSR)) and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee) (SSAC (Security and Stability Advisory**

Committee)) Member Appointments

Whereas, Article 12, Section 12.2(b) of the Bylaws governs the Security (Security – Security, Stability and Resiliency (SSR)) and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee) (SSAC (Security and Stability Advisory Committee)).

Whereas, the Board, at Resolution 2010.08.05.07, approved Bylaws revisions that created three-year terms for SSAC (Security and Stability Advisory Committee) members, required staggering of terms, and obligated the SSAC (Security and Stability Advisory Committee) Chair to recommend the reappointment of all current SSAC (Security and Stability Advisory Committee) members to full or partial terms to implement the Bylaws revisions.

Whereas, the Board, at Resolution 2010.08.05.08 appointed SSAC (Security and Stability Advisory Committee) members to terms of one, two, and three years beginning on 01 January 2011 and ending on 31 December 2011, 31 December 2012, and 31 December 2013.

Whereas, in January 2018 the SSAC (Security and Stability Advisory Committee) Membership Committee initiated an annual review of SSAC (Security and Stability Advisory Committee) members whose terms are ending 31 December 2018 and submitted to the SSAC (Security and Stability Advisory Committee) its

recommendations for reappointments in August 2018.

Whereas, on 22 August 2018, the SSAC (Security and Stability Advisory Committee) members approved the reappointments.

Whereas, the SSAC (Security and Stability Advisory Committee) recommends that the Board reappoint the following SSAC (Security and Stability Advisory Committee) members to three-year terms: Jaap Akkerhuis, Patrik Fältström, Ondrej Filip, Jim Galvin, Robert Guerra, Julie Hammer, Ram Mohan, Doron Shikmoni, and Suzanne Woolf.

Resolved (2018.10.25.01), the Board accepts the recommendation of the SSAC (Security and Stability Advisory Committee) and reappoints the following SSAC (Security and Stability Advisory Committee) members to three-year terms beginning 01 January 2019 and ending 31 December 2021: Jaap Akkerhuis, Patrik Fältström, Ondrej Filip, Jim Galvin, Robert Guerra, Julie Hammer, Ram Mohan, Doron Shikmoni, and Suzanne Woolf.

Rationale for Resolution 2018.10.25.01

The SSAC (Security and Stability Advisory Committee) is a diverse group of individuals whose expertise in specific subject matters enables the SSAC (Security and Stability Advisory Committee) to fulfill its charter and execute its mission. Since its inception, the SSAC (Security and Stability Advisory Committee) has invited individuals with deep knowledge and experience in technical and

security areas that are critical to the security and stability of the Internet's naming and address allocation systems. The above-mentioned individuals provide the SSAC (Security and Stability Advisory Committee) with the expertise and experience required for the Committee to fulfill its charter and execute its mission.

This resolution is an organizational administrative function for which no public comment is required. The appointment of SSAC (Security and Stability Advisory Committee) members is in the public interest and in furtherance of ICANN (Internet Corporation for Assigned Names and Numbers)'s mission as it contributes to the commitment of the ICANN (Internet Corporation for Assigned Names and Numbers) to strengthen the security, stability, and resiliency of the DNS (Domain Name System).

b. **Appointment of Root Server Operator Organization Representatives to the RSSAC (Root Server System Advisory Committee)**

Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws call for the establishment of the Root Server System Advisory Committee (Advisory Committee) (RSSAC (Root Server System Advisory Committee)) with the role to advise the ICANN (Internet Corporation for Assigned Names and Numbers) community and ICANN (Internet Corporation for Assigned Names and

Numbers) Board of Directors on matters relating to the operation, administration, security, and integrity of the Internet's Root Server System.

Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws call for the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors to appoint one RSSAC (Root Server System Advisory Committee) member from each root server operator organization, based on recommendations from the RSSAC (Root Server System Advisory Committee) Co-Chairs.

Whereas, the RSSAC (Root Server System Advisory Committee) Co-Chairs have recommended to the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors the appointment of representatives from Internet Systems Consortium (ISC), Inc.; National Aeronautics and Space Administration (NASA); ICANN (Internet Corporation for Assigned Names and Numbers) organization; Netnod; University of Maryland; and Verisign, Inc. to the RSSAC (Root Server System Advisory Committee).

Resolved (2018.10.25.02), the Board appoints the following persons to serve on the RSSAC (Root Server System Advisory Committee): Keith Bluestein and Karl Reuss through 31 December 2019; and Fred Baker, Matt Larson, Lars-Johan Liman, and Brad Verd through 31 December 2021.

Rationale for Resolution 2018.10.25.02

In May 2013, the root server operator organizations agreed to an initial membership of representatives for the RSSAC (Root Server System Advisory Committee), each nominating an individual. The ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors approved the initial membership of the RSSAC (Root Server System Advisory Committee) in July 2013 with staggered terms.

The current term for the representatives from Internet Systems Consortium (ISC), Inc.; ICANN (Internet Corporation for Assigned Names and Numbers) organization; Netnod; and Verisign, Inc. expires 31 December 2018. In September 2018, the ICANN (Internet Corporation for Assigned Names and Numbers) organization and University of Maryland requested to change their representatives for the remainder of the current term, which expires on 31 December 2019.

The appointment of RSSAC (Root Server System Advisory Committee) members is not anticipated to have any fiscal impact on the ICANN (Internet Corporation for Assigned Names and Numbers) organization that has not already been accounted for in the budgeted resources necessary for ongoing support of the RSSAC (Root Server System Advisory Committee).

This resolution is an organizational administrative function for which no public comment is required. The appointment of

RSSAC (Root Server System Advisory Committee) members is in the public interest and in furtherance of ICANN (Internet Corporation for Assigned Names and Numbers)'s mission as it contributes to the commitment of the ICANN (Internet Corporation for Assigned Names and Numbers) organization to strengthen the security, stability, and resiliency of the DNS (Domain Name System).

c. **Appointment of Root Server System Advisory Committee (Advisory Committee) (RSSAC (Root Server System Advisory Committee)) Co-Chair**

Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws state that the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors shall appoint the co-chairs and members of the RSSAC (Root Server System Advisory Committee).

Whereas, on 24 October 2018, the RSSAC (Root Server System Advisory Committee) conducted an election for one co-chair position and elected Fred Baker to a two-year term as co-chair.

Whereas, the RSSAC (Root Server System Advisory Committee) recommends that the Board take action with respect to the appointment of the RSSAC (Root Server System Advisory Committee) Co-Chair.

Resolved (2018.10.25.03), the Board accepts the recommendation of the RSSAC (Root

Server System Advisory Committee) and appoints Fred Baker as Co-Chair of the RSSAC (Root Server System Advisory Committee) and extends its best wishes on this important role.

Rationale for Resolution 2018.10.25.03

The ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws call for the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors to appoint the RSSAC (Root Server System Advisory Committee) Co-Chairs as selected by the membership of the RSSAC (Root Server System Advisory Committee). The appointment of the RSSAC (Root Server System Advisory Committee) Co-Chairs will allow the RSSAC (Root Server System Advisory Committee) to be properly composed to serve its function as an advisory committee.

The appointment of the RSSAC (Root Server System Advisory Committee) Co-Chairs is not anticipated to have any fiscal impact on the ICANN (Internet Corporation for Assigned Names and Numbers) organization that has not already been accounted for in the budgeted resources necessary for ongoing support of the RSSAC (Root Server System Advisory Committee).

This is an organizational administrative function for which no public comment is required. The appointment of the RSSAC (Root Server System Advisory Committee) Co-Chairs contributes to the commitment of the ICANN (Internet Corporation for Assigned

Names and Numbers) organization to strengthen the security, stability, and resiliency of the DNS (Domain Name System).

d. **Deferral of Transition to Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) Consensus (Consensus) Policy Implementation**

Whereas, the Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) Transition Policy for .COM, .NET and .JOBS (/resources/pages/thick-whois-transition-policy-2017-02-01-en) ("Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) Policy") requires Verisign to begin accepting "Thick" registration data from registrars for .COM and .NET starting 31 May 2019, all new domain name registrations must be submitted to the registry as "Thick" starting on 30 November 2019 at the latest, and all relevant registration data for existing domain names must be migrated from "Thin" to "Thick" by 31 May 2020.

Whereas, in preparation to complete the deployment to accept Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) data, Verisign proposed amendments to the registry-registrar agreements for .COM and .NET.

Whereas, the Registrar Stakeholder Group expressed concerns about agreeing to Verisign's proposed amendments based on issues relating to the European Union's General Data Protection Regulation, the processing of data, and new requirements and

obligations imposed on the registrars. ICANN (Internet Corporation for Assigned Names and Numbers) org has also provided comments to Verisign regarding the proposed amendments.

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) org has been facilitating discussions between Verisign and the Registrar Stakeholder Group to reach agreement on the proposed amendments to the registry-registrar agreements to implement the Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) Transition Policy.

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) org, Verisign and the Registrar Stakeholder Group need additional time to reach agreement on the proposed amendments to the applicable registry-registrar agreements to implement the Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) Transition Policy.

Whereas, the deferred enforcement period will allow the affected contracted parties additional time to assess the progress of the Expedited Policy Development Process Team's work to formulate a Consensus (Consensus) Policy to replace the Temporary Specification for gTLD (generic Top Level Domain) Registration Data.

Resolved (2018.10.25.04), the President and CEO, or his designee(s), is authorized to defer compliance enforcement of the Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) Transition Policy to 31 May 2019, 30 November 2019, and 31 May 2020, respectively, to allow additional time for the registrars and Verisign to reach agreement on

amendments needed to applicable agreements to implement the Policy.

Rationale for Resolution 2018.10.25.04

The Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) Transition Policy (/resources/pages/thick-whois-transition-policy-2017-02-01-en) specifies a phased approach to transition the .COM and .NET registries from "Thin" to "Thick" WHOIS (WHOIS (pronounced "who is"; not an acronym)). The three phases are:

1. Registry operator to begin accepting Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) data from registrars,
2. New .COM and .NET domain name registrations to be created as thick registrations, and
3. The complete migration of all existing domain registration data from "Thin" to "Thick" one year following the date the registry operator begins accepting Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) data from registrars.

The Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) Transition Policy requires Verisign to begin accepting "Thick" registration data from registrars starting 30 November 2018, registrars to submit Thick registration data to the .COM, .NET, and .JOBS registries for all new domain name registrations starting on 30 April 2019, and the migration of all

existing domain registration data from Thin to Thick by 31 January 2020. In preparation for accepting Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) data, Verisign, the registry operator for .COM and .NET and the back-end registry services provider for .JOBS, proposed amendments to the registry-registrar agreements for .COM and .NET to have the legal framework necessary for acceptance of the data. While the Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) Consensus (Consensus) Policy also applies to the .JOBS TLD (Top Level Domain), the registry operator for .JOBS, Employ Media, did not require changes to the Registry-Registrar Agreement to begin accepting Thick registration data and registrars have already started submitting Thick registration data for .JOBS as per the Policy.

Following the Registry-Registrar Agreement Amendment Procedure (/resources/pages/rra-amendment-procedure-2015-04-06-en), ICANN (Internet Corporation for Assigned Names and Numbers) org has been facilitating discussions between Verisign and the Registrar Stakeholder Group to reach agreement on the proposed amendments to the registry-registrar agreements, but the parties have not yet reached agreement. Also, ICANN (Internet Corporation for Assigned Names and Numbers) has provided comments on the proposed amendments to the registry-registrar agreements, which are being discussed with Verisign. Additionally, the community is working to consider the Temporary Specification for gTLD (generic

Top Level Domain) Registration Data as a Consensus (Consensus) Policy.

The Board is taking action at this time to authorize the ICANN (Internet Corporation for Assigned Names and Numbers) President and CEO to defer compliance enforcement of the Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) Policy for an additional six months. The deferral will allow additional time for Verisign, registrars and ICANN (Internet Corporation for Assigned Names and Numbers) to reach agreement on the amendments needed to the registry-registrar agreements to implement the Policy. This deferred enforcement period will also allow the Expedited Polity Development Process Team to determine if the Temporary Specification for gTLD (generic Top Level Domain) Registration Data should become an ICANN (Internet Corporation for Assigned Names and Numbers) Consensus (Consensus) Policy while complying with the GDPR and other relevant privacy and data protection law.

As a result of the Board's action, ICANN (Internet Corporation for Assigned Names and Numbers) org will begin compliance enforcement of the Policy requirement for registrars to submit all new domain name registrations to the registry as Thick starting on 30 November 2019, and all relevant registration data for existing domain names must be migrated from Thin to Thick by 31 May 2020. The optional milestone date for registrars to begin voluntarily submitting Thick data to the registry will be 31 May 2019 presuming there are no additional changes as

a result of the Expedited Policy Development Process Team's recommendations.

During this period of deferred compliance enforcement, ICANN (Internet Corporation for Assigned Names and Numbers) org will continue to work with Verisign and the Registrar Stakeholder Group to facilitate discussions on the proposed amendments.

The Board's deliberations on this matter referenced several significant materials including:

- Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) Transition Policy for .COM, .NET and .JOBS (/resources/pages/thick-whois-transition-policy-2017-02-01-en)
- Registry Registration Data Directory Services Consistent Labeling and Display Policy (/resources/pages/rdds-labeling-policy-2017-02-01-en)
- PDP (Policy Development Process) Documentation (http://gnso.icann.org/en/group-activities/thick-whois.htm)
- PDP (Policy Development Process) WG (Working Group) Final Report (http://gnso.icann.org/en/issues/whois/thick-final-21oct13-en.pdf)
- Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) Implementation (/resources/pages/thick-whois-2016-06-27-en)

- IRT (Implementation Recommendation Team (of new gTLDs)) letter to GNSO (Generic Names Supporting Organization) regarding implications GDPR to implement Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) (https://community.icann.org/display/TWCPI/Documentation?preview=/52889541/63157407/IRT%20to%20GNSO%20Council%20on%20Privacy%2020161215.pdf)

- Public Comment period on Consistent Labeling and Display implementation proposal (/public-comments/rdds-output-2015-12-03-en)

- Public Comment period on Transition from Thin to Thick for .COM, .NET and .JOBS (/public-comments/proposed-implementation-gnso-thick-rdds-whois-transition-2016-10-26-en)

- Letter from Patrick Kane to Akram Atallah re: Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) for .COM and .NET – 20 June 2017 (/en/system/files/correspondence/kane-to-atallah-20jun17-en.pdf)

- Letter from Akram Atallah to Patrick Kane re: Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) for .COM and .NET –29 June 2017 (/en/system/files/correspondence/atallah-to-kane-29jun17-en.pdf)

- Letter from Graeme Bunton to Akram Atallah re: Extension Request for Thick

WHOIS (WHOIS (pronounced "who is"; not an acronym)) Migration – 17 August 2017 (/en/system/files/correspondence/bunton-to-atallah-17aug17-en.pdf)

- 27 October 2017 Board Resolution to Defer Compliance Enforcement of Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) Consensus (Consensus) Policy for 180 Days (https://features.icann.org/request-defer-compliance-enforcement-thick-whois-consensus-policy-180-days)

- Letter from Patrick Kane to Akram Atallah requesting an extension of the implementation deadlines under the Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) Consensus (Consensus) Policy (/en/system/files/correspondence/kane-to-atallah-13apr18-en.pdf)

- 13 May 2018 Board Resolution to Defer Compliance Enforcement of Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) Consensus (Consensus) Policy for 180 Days (https://features.icann.org/deferral-transition-thick-whois-policy-implementation)

- Letter from Patrick Kane to Akram Atallah re: Extension request for Thick WHOIS (WHOIS (pronounced "who is"; not an acronym)) Migration – 21 September 2018

(/en/system/files/correspondence/kane-to-atallah-21sep18-en.pdf)

The Board's action is not anticipated to have a fiscal impact on ICANN (Internet Corporation for Assigned Names and Numbers) that is not already anticipated in the current budget. This resolution is an organizational administrative function for which no public comment is required. This action is in the public interest as it helps to ensure a consistent and coordinated implementation of policies in gTLDs.

e. **Payment of Legal Invoice Exceeding $500,000**

Whereas, one of outside legal counsel's invoices for July 2018 has exceeded $500,000, which pursuant to ICANN (Internet Corporation for Assigned Names and Numbers)'s Contracting and Disbursement Policy requires Board approval to pay.

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) organization and the Board Finance Committee (BFC) has recommended that the Board authorize the payment of the above reference legal invoice.

Resolved (2018.10.25.05), the Board hereby authorizes the President and CEO, or his designee(s), to pay outside legal counsel's July 2018 invoice.

Rationale for Resolution 2018.10.25.05

When required, ICANN (Internet Corporation for Assigned Names and Numbers) must

engage outside legal counsel to help prepare for and defend against all types of disputes that are brought against ICANN (Internet Corporation for Assigned Names and Numbers). When those disputes become highly contentious they often require significant involvement during a certain time period by outside counsel and that significant amount of time also results in significant fees and related expenses.

Per ICANN (Internet Corporation for Assigned Names and Numbers)'s Contracting and Disbursement policy (https://www.icann.org/resources/pages/contracting-disbursement-policy-2015-08-25-en (/resources/pages/contracting-disbursement-policy-2015-08-25-en)), if any invoice calls for disbursement of more than $500,000 Board approval is required to make the payment. In the month of July 2018, during which ICANN (Internet Corporation for Assigned Names and Numbers) was preparing for trial (which ultimately was postponed), one of ICANN (Internet Corporation for Assigned Names and Numbers)'s outside counsel invoices exceeded $500,000. Accordingly, the Board has been asked by the organization to approve payment of that invoice, which the BFC has reviewed and which the Board has done through this resolution.

The Board is comfortable that ICANN (Internet Corporation for Assigned Names and Numbers) organization, including ICANN (Internet Corporation for Assigned Names and Numbers)'s General Counsel's Office, is properly monitoring the work performed and

expenses incurred by outside legal counsel to ensure that all fees and costs are appropriate under the given circumstances at any given time. Therefore, the Board is comfortable taking this decision.

Taking this Board action fits squarely within ICANN (Internet Corporation for Assigned Names and Numbers)'s mission and the public interest in that it ensures that payments of large amounts for one invoice to one entity are reviewed and evaluated by the Board if they exceed a certain amount of delegated authority through ICANN (Internet Corporation for Assigned Names and Numbers)'s Contracting and Disbursement Policy. This ensures that the Board is overseeing large disbursements and acting as proper stewards of the funding ICANN (Internet Corporation for Assigned Names and Numbers) receives from the public.

While this will have a fiscal impact on ICANN (Internet Corporation for Assigned Names and Numbers), it is an impact that was contemplated in the FY19 budget and as part of the New gTLD (generic Top Level Domain) Program Application Fee. This decision will not have an impact on the security, stability or resiliency of the domain name system.

This is an Organizational Administrative Function that does not require public comment.

f. Thank You to Community Members

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) wishes to acknowledge the considerable effort, skills, and time that members of the stakeholder

community contribute to ICANN (Internet Corporation for Assigned Names and Numbers).

Whereas, in recognition of these contributions, ICANN (Internet Corporation for Assigned Names and Numbers) wishes to express appreciation for and thank members of the community when their terms of service end in relation to our Supporting Organizations (Supporting Organizations), Advisory Committees (Advisory Committees), the Customer Standing Committee, the Nominating Committee, and the Public Technical Identifiers Board.

Whereas, the following members of the Address Supporting Organization (Supporting Organization) are concluding their terms of service:

- Tomohiro Fujisaki, Address Supporting Organization (Supporting Organization) Address Councilor
- Wilfried Wöber, Address Supporting Organization (Supporting Organization) Address Councilor

Resolved (2018.10.25.06), Tomohiro Fujisaki and Wilfried Wöber have earned the deep appreciation of the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors for their terms of service, and the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors wishes them well in their future endeavors within the ICANN (Internet

Corporation for Assigned Names and Numbers) community and beyond.

Whereas, the following members of the County Code Names Supporting Organization (Supporting Organization) are concluding their terms of service:

- Ben Fuller, County Code Names Supporting Organization (Supporting Organization) Council Liaison
- Nigel Roberts, County Code Names Supporting Organization (Supporting Organization) Councilor
- Christelle Vaval, County Code Names Supporting Organization (Supporting Organization) Councilor

Resolved (2018.10.25.07), Ben Fuller, Nigel Roberts, and Christelle Vaval have earned the deep appreciation of the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors for their terms of service. The ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors wishes them well in their future endeavors within the ICANN (Internet Corporation for Assigned Names and Numbers) community and beyond, and joins the community in offering our condolences to the family of Ben Fuller on his passing.

Whereas, the following members of the Generic Names Supporting Organization (Supporting Organization) are concluding their terms of service:

- Donna Austin, Generic Names Supporting Organization (Supporting Organization) Council Vice Chair
- Farzaneh Badii, Non-Commercial Stakeholder Group Chair
- Phil Corwin, Generic Names Supporting Organization (Supporting Organization) Councilor
- Samantha Demetriou, Registries Stakeholder Group Vice Chair
- Paul Diaz, Registries Stakeholder Group Chair
- Heather Forrest, Generic Names Supporting Organization (Supporting Organization) Chair
- Susan Kawaguchi, Generic Names Supporting Organization (Supporting Organization) Councilor
- Andrew Mack, Business Constituency Chair
- Stephanie Perrin, Generic Names Supporting Organization (Supporting Organization) Councilor
- Renata Aquino Ribeiro, Non-Commercial Users Constituency Chair
- Lori Schulman, Intellectual Property Constituency Treasurer
- Greg Shatan, Intellectual Property Constituency President

- Stephane Van Gelder, Registries Stakeholder Group Vice Chair

Resolved (2018.10.25.08), Donna Austin, Farzaneh Badii, Phil Corwin, Samantha Demetriou, Paul Diaz, Heather Forrest, Susan Kawaguchi, Andrew Mack, Stephanie Perrin, Renata Aquino Ribeiro, Greg Shatan, Lori Schulman, and Stephane Van Gelder have earned the deep appreciation of the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors for their terms of service. The ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors wishes them well in their future endeavors within the ICANN (Internet Corporation for Assigned Names and Numbers) community and beyond, and joins the community in offering our condolences on the passing of Stephane Van Gelder.

Whereas, the following members of the At-Large community are concluding their terms of service:

- Maritza Aguero, Latin American and Caribbean Islands Regional At-Large Organization Secretary
- Humberto Carrasco, Latin American and Caribbean Islands Regional At-Large Organization Chair
- Alan Greenberg, At-Large Advisory Committee (Advisory Committee) Chair
- Bastiaan Goslings, At-Large Advisory Committee (Advisory Committee) Vice Chair

- Maureen Hilyard, At-Large Advisory Committee (Advisory Committee) Vice Chair
- Andrei Kolesnikov, At-Large Advisory Committee (Advisory Committee) Member
- Bartlett Morgan, At-Large Advisory Committee (Advisory Committee) Leadership Team Member
- Seun Ojedeji, At-Large Advisory Committee (Advisory Committee) Leadership Team Member
- Alberto Soto, At-Large Advisory Committee (Advisory Committee) Member

Resolved (2018.10.25.09), Maritza Aguero, Humberto Carrasco, Alan Greenberg, Bastiaan Goslings, Maureen Hilyard, Bartlett Morgan, Seun Ojedeji, and Alberto Soto have earned the deep appreciation of the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors for their terms of service, and the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors wishes them well in their future endeavors within the ICANN (Internet Corporation for Assigned Names and Numbers) community and beyond.

Whereas, the following member of the Governmental Advisory Committee (Advisory Committee) is concluding her term of service:

- Milagros Castañon, Governmental Advisory Committee (Advisory Committee) Vice Chair

Resolved (2018.10.25.10), Milagros Castañon has earned the deep appreciation of the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors for her term of service, and the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors wishes her well in her future endeavors within the ICANN (Internet Corporation for Assigned Names and Numbers) community and beyond.

Whereas, the following members of the Root Server System Advisory Committee (Advisory Committee) are concluding their terms of service:

- Venkateswara Dasari, Root Server System Advisory Committee (Advisory Committee) Alternate Representative
- Grace De Leon, Root Server System Advisory Committee (Advisory Committee) Alternate Representative
- Ray Gilstrap, Root Server System Advisory Committee (Advisory Committee) Alternate Representative
- Johan Ihrén, Root Server System Advisory Committee (Advisory Committee) Alternate Representative
- Kevin Jones, Root Server System Advisory Committee (Advisory Committee) Representative

- Tripti Sinha, Root Server System Advisory Committee (Advisory Committee) Co-Chair

Resolved (2018.10.25.11), Venkateswara Dasari, Grace De Leon, Ray Gilstrap, Johan Ihrén, Kevin Jones, and Tripti Sinha have earned the deep appreciation of the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors for their terms of service, and the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors wishes them well in their future endeavors within the ICANN (Internet Corporation for Assigned Names and Numbers) community and beyond.

Whereas, the following members of the Customer Standing Committee are concluding their terms of service:

- Jay Delay, Customer Standing Committee Member
- Kal Feher, Customer Standing Committee Member
- Elise Lindeberg, Customer Standing Committee Liaison

Resolved (2018.10.25.12), Jay Delay, Kal Feher, and Elise Lindeberg have earned the deep appreciation of the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors for their terms of service, and the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors wishes them well in their future endeavors within the ICANN (Internet

Corporation for Assigned Names and Numbers) community and beyond.

Whereas, the following members of the Nominating Committee are concluding their terms of service:

- Theo Geurts, Nominating Committee Member
- Sandra Hoferichter, Nominating Committee Member
- Hans Petter Holen, Nominating Committee Associate Chair
- Danny McPherson, Nominating Committee Member
- Jose Ovidio Salguiero, Nominating Committee Member
- Jay Sudowski, Nominating Committee Member

Resolved (2018.10.25.13), Theo Geurts, Sandra Hoferichter, Hans Petter Holen, Danny McPherson, Jose Ovidio Salguiero, and Jay Sudowski have earned the deep appreciation of the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors for their terms of service, and the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors wishes them well in their future endeavors within the ICANN (Internet Corporation for Assigned Names and Numbers) community and beyond.

g. **Thank You to Local Host of ICANN (Internet Corporation for Assigned Names and Numbers) 63 Meeting**

The Board wishes to extend its thanks to Nadia Calviño, the Minister for Economy and Business of Spain, and the local host organizers, Ministry of Economy and Business of Spain and RED.ES.

h. **Thank You to Sponsors of ICANN (Internet Corporation for Assigned Names and Numbers) 63 Meeting**

The Board wishes to thank the following sponsors: Fundació puntCAT, Verisign, Public Interest Registry, CORE Association, Nominet, Knipp Medien und Kommunikation GmbH, The Canadian Internet Registration Authority (CIRA), Afilias plc, Domain Connect, CentralNic, ICU, Data Provider, Denic Eg, Domgate, Neustar, and Radix.

i. **Thank You to Interpreters, Staff, Event and Hotel Teams of ICANN (Internet Corporation for Assigned Names and Numbers) 63 Meeting**

The Board expresses its deepest appreciation to the scribes, interpreters, audiovisual team, technical teams, and the entire ICANN (Internet Corporation for Assigned Names and Numbers) org staff for their efforts in facilitating the smooth operation of the meeting. The Board would also like to thank the management and staff of Centre Convencions Internacional Barcelona (CCIB) for providing a wonderful facility to hold this event. Special thanks are extended to Elisabet Caravaca,

Project Manager; Raquel Jimenez, Project Manager; Laura-Marco Turro, Project Manager F&B; Charlotte d'Indy, Project Manager F&B; Inés Buch Ubach, Satellites Manager; Jordi Gay, IT Supervisor; and Bart Van Campen, Manager of ASP Group.

2. **Main Agenda:**

   a. **Appointment of Board Designee to the Third Accountability and Transparency Review Team**

   Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws specify that the Board shall cause a periodic review of ICANN (Internet Corporation for Assigned Names and Numbers)'s execution of its commitment to maintain and improve robust mechanisms for public input, accountability, and transparency to ensure that the outcomes of its decision-making reflect the public interest and are accountable to the Internet community ("Accountability and Transparency Review").

   Whereas, the third Accountability and Transparency Review process (ATRT3) began with a call for volunteers for review team in January 2017.

   Whereas, the proposed next steps after consultation with the community include community reconfirmation of review team nominees and the appointment of the review team by the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) chairs by 30 November 2018. The third Accountability and Transparency Review Team is proposed to

commence its substantive work in January 2019.

Whereas, under Section 4.6 of the Bylaws, the Board may appoint a Director or Liaison to serve as a member of the Accountability and Transparency Review Team and the Board has considered the skills and experience relevant to the third Accountability and Transparency Review Team.

Whereas, the Board Governance Committee has recommended that the Board designate Maarten Botterman to serve as a member of the third Accountability and Transparency Review Team.

Whereas, the Organizational Effectiveness Committee recommended that the Board request ATRT3 to adopt its Terms of Reference and Work Plan within 60 days of convening its first meeting and submit these documents to the Board and to the leadership of the Supporting Organizations (Supporting Organizations) and the Advisory Committees (Advisory Committees), to confirm compliance with Bylaws provisions and ICANN (Internet Corporation for Assigned Names and Numbers) community expectations.

Whereas, the Bylaws specify that the Accountability and Transparency Review Team should issue its final report within one year of convening its first meeting, which informs the timing requested by the Board.

Resolved (2018.10.25.14), the Board hereby appoints Maarten Botterman to serve as a member of ATRT3.

Resolved (2018.10.25.15), the Board requests that ATRT3 adopt its Terms of Reference and Work Plan within 60 days of convening its first meeting, and submit these documents to the Board and to the leadership of the Supporting Organizations (Supporting Organizations) and the Advisory Committees (Advisory Committees), to confirm that the team's scope and timeline are consistent with the requirements of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws and ICANN (Internet Corporation for Assigned Names and Numbers) community expectations.

Rationale for Resolutions 2018.10.25.14 – 2018.10.25.15

Why is the Board addressing the issue?

On 1 October 2016, new Bylaws became effective following the IANA (Internet Assigned Numbers Authority) Stewardship Transition that introduced new commitments to enhance ICANN (Internet Corporation for Assigned Names and Numbers)'s accountability. These Bylaws incorporated the reviews that previously were found in the Affirmation of Commitments, and specified new selection procedures for convening them, now referred to as "Specific Reviews." This created an opportunity for the Board to designate a representative to participate as a member of each of the Specific Review teams.

ICANN (Internet Corporation for Assigned Names and Numbers) organization launched a Call for Volunteers (/news/announcement-2017-01-31-en) for ATRT3 on 31 January

2017. The community nomination process was still open when ICANN (Internet Corporation for Assigned Names and Numbers) organization posted a public comment proceeding on Short-term Options for Specific Reviews (/public-comments/specific-reviews-short-term-timeline-2018-05-14-en) (May – July 2018) to invite feedback on options on whether and how to adjust the timeline for ATRT3. ICANN (Internet Corporation for Assigned Names and Numbers) organization then posted Next Steps for Reviews (/public-comments/reviews-next-steps-2018-09-05-en) in September 2018, setting the proposed path forward for ATRT3 (community appointment of ATRT3 members by 30 November 2018; first meeting in January 2019).

With the launch of the third Accountability and Transparency Review in January 2017, the Board has chosen to appoint a representative for this important review. Additionally, the Board is requesting that the third Accountability and Transparency Review Team (ATRT3) provide the Board with its adopted Terms of Reference and Work Plan within 60 days of convening its first meeting.

What is the proposal being considered?

The proposal being considered is that Maarten Botterman be appointed by the Board to serve as a member of ATRT3, based on skill and experience relevant to this review. In line with established best practices for all Specific Reviews and because the Bylaws specify that ATRT3 should issue its final report within one year of convening its first meeting, the Board is

requesting ATRT3 to adopt its Terms of Reference and Work Plan on a timely basis and submit these documents to the Board and to the leadership of the Supporting Organizations (Supporting Organizations) and the Advisory Committees (Advisory Committees).

The Terms of Reference should demonstrate at a high level how the objective of the review will be accomplished within the required time frame and with specified resources. It should provide a clear articulation of work to be done and a basis for how the success of the project will be measured. The Work Plan should detail the specific tasks to be performed to effectively complete the scope of work of the review (the topics ATRT3 will address, within the bounds of ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws), with clear deadlines, milestones and task owners. The Board is responsible for confirming that the Bylaws provisions for Specific Reviews are adhered to and that there are adequate resources available for ATRT3 to complete its work on a timely basis.

Which stakeholders or others were consulted?

The Board consulted with the Board Governance Committee (BGC) and the Organizational Effectiveness Committee (OEC). The BGC recommended a suitable Board designee based on the Bylaws-mandated broad scope of this review, and the skills and experience detailed in the Call for Volunteers (/news/announcement-2017-01-31-

en). Based on its oversight of reviews, the OEC recommended good practices for conducting effective reviews on a timely basis. While no consultation with the community was required for this Board action, the Board took into consideration community input on Draft Operating Standards (/en/system/files/files/report-comments-reviews-standards-21feb18-en.pdf) and on Short-term Options for Specific Reviews (/en/system/files/files/report-comments-specific-reviews-short-term-timeline-09aug18-en.pdf).

What concerns, or issues were raised by the community?

The community expressed strong support for all Specific Review Teams (including ATRT3) to set their own scope without prior community consultation but agreed that the Board has a responsibility to ensure adherence to the Bylaws. Additionally, the community has been supportive of ATRT3 providing timely information to the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) leadership to gather community input and confirmation that their needs are addressed by the review team.

What significant materials did the Board review?

The Board reviewed relevant Bylaws sections (/resources/pages/governance/bylaws-en/#article4), Specific Review Process documentation (/en/system/files/files/specific-reviews-process-flowchart-31aug17-en.pdf),

Call for Volunteers (/news/announcement-2017-01-31-en) to serve on ATRT3, public comments on Short-term options for Specific Reviews (/en/system/files/files/report-comments-specific-reviews-short-term-timeline-09aug18-en.pdf), and the proposed Next Steps for Reviews (/en/system/files/files/reviews-next-steps-consultation-paper-05sep18-en.pdf).

What factors did the Board find to be significant?

The Board found several factors to be significant:

- skill and experience required to conduct this review,
- importance of timely and clearly-formulated Terms of Reference and Work Plan, and
- the need for ICANN (Internet Corporation for Assigned Names and Numbers) Community to be informed about the work of the review team on a timely basis.

Are there positive or negative community impacts?

This Board action is expected to have a positive impact on the community by adding useful skills and expertise to this important review and by encouraging timely completion of the third Accountability and Transparency Review, within the bounds of the ICANN

(Internet Corporation for Assigned Names and Numbers) Bylaws.

Are there fiscal impacts or ramifications on ICANN (Internet Corporation for Assigned Names and Numbers) (strategic plan, operating plan, budget); the community; and/or the public?

This Board action is anticipated to have a positive fiscal impact, by encouraging timely and efficient completion of the third Accountability and Transparency Review work within the Bylaws-specified 12-month period. The expenses associated with conducting the third Accountability and Transparency Review are included in the ICANN (Internet Corporation for Assigned Names and Numbers) Budget for Fiscal Year 2019.

Are there any security, stability or resiliency issues relating to the DNS (Domain Name System)?

This Board action is not expected to have a direct effect on security, stability or resiliency issues relating to the DNS (Domain Name System).

How is this action within ICANN (Internet Corporation for Assigned Names and Numbers)'s mission and what is the public interest served in this action?

The Board's action is consistent with ICANN (Internet Corporation for Assigned Names and Numbers)'s commitment pursuant to section 4.6 of the Bylaws to maintain and improve robust mechanisms for public input,

accountability, and transparency so as to ensure that the outcomes of its decision-making reflect the public interest and that ICANN (Internet Corporation for Assigned Names and Numbers) is accountable to all stakeholders.

This action will serve the public interest by fulfilling ICANN (Internet Corporation for Assigned Names and Numbers)'s commitment to maintaining and improving its accountability and transparency.

Is public comment required prior to Board action?

This decision is an Organizational Administrative Function that does not require public comment.

b. ## Geographic Regions Review Working Group Final Report

Whereas, the cross-community Geographic Regions Review Working Group has produced its Final Report in which it proposed a series of findings and recommendations regarding the ongoing application of the ICANN (Internet Corporation for Assigned Names and Numbers) organization's geographic regions framework.

Whereas, in addition to several public comment forums conducted during the Working Group's deliberations, a public comment period of 120 days was provided following submission of the Final Report to give the community an opportunity to thoroughly review the proposals and provide any

additional comments on the Working Group's recommendations.

Whereas, the Board's Organizational Effectiveness Committee has reviewed the process followed and recommends that the Board approves the actions identified in the accompanying "Recommendations Mapping Document".

Whereas, the Board has considered the comments of the community and operational recommendations from ICANN (Internet Corporation for Assigned Names and Numbers) organization.

Resolved (2018.10.25.16), the ICANN (Internet Corporation for Assigned Names and Numbers) Board accepts the Working Group recommendations that are consistent with the accompanying "Recommendations Mapping Document (/en/system/files/files/geo-regions-review-recs-mapping-document-25oct18-en.pdf)" and directs the ICANN (Internet Corporation for Assigned Names and Numbers) organization to implement those recommendations in a manner that aligns with the Board's expectations as outlined in the mapping document.

Rationale for Resolution 2018.10.25.16

Why is the Board addressing this issue now?

The Board-chartered cross-community Geographic Regions Review Working Group submitted its Final Report recommendations to

the Chair of the ICANN (Internet Corporation for Assigned Names and Numbers) Board on 4 November 2015. In accordance with the Working Group's recommendation, the Board sought additional community comment on the Working Group recommendations.

What are the proposals being considered?

The Working Group's Final Report provided an extensive series of conclusions, proposals and recommendations including:

a. The Working Group concludes that the general principle of geographic diversity is valuable and should be preserved.

b. Application of the geographic diversity principles must be more rigorous, clear and consistent.

c. Adjusting the number of ICANN (Internet Corporation for Assigned Names and Numbers) geographic regions is not currently practical.

d. No other International Regional Structures offer useful options for ICANN (Internet Corporation for Assigned Names and Numbers).

e. ICANN (Internet Corporation for Assigned Names and Numbers) must formally adopt and maintain its own unique Geographic Regions Framework.

f. The Community wants to minimize any changes to the current structure.

g. ICANN (Internet Corporation for Assigned Names and Numbers) must acknowledge the sovereignty and right of self-determination of states to let them choose their region of allocation.

h. ICANN (Internet Corporation for Assigned Names and Numbers) communities have flexibly applied geographic diversity principles over the years. While the Board should remain strictly subject to the current framework, flexibility should be preserved for other structures.

i. "Special Interest Groups" or "Cross-Regional Sub-Groups" offer new diversity opportunities.

j. Implementation mechanisms and processes must be developed by Staff.

k. The Board must preserve its oversight and future review opportunities.

What stakeholders or others were consulted?

All ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees) were invited to participate in the Working Group. At various times throughout the effort, the ALAC (At-Large Advisory Committee), ASO (Address Supporting Organization), ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization) had representatives in the Working Group. The GAC

(Governmental Advisory Committee) Chair also participated early in the process. Prior to submission of the Working Group's Final Report, comments were provided by the ALAC (At-Large Advisory Committee), ccNSO (Country Code Names Supporting Organization), GNSO (Generic Names Supporting Organization) and the GAC (Governmental Advisory Committee) Chair. The formal ALAC (At-Large Advisory Committee), ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization) comments accompanied the submission of the Final Report.

What significant materials did the Board review?

The Board reviewed the Working Group's Final Report, including formal written statements from the ALAC (At-Large Advisory Committee), ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization). The Board also received a copy of the Staff Summary Report of Public Comments received and a mapping document that aligned the Working Group's conclusions and recommendations with community comments and suggestions for resolution of each.

What factors did the Board find to be significant?

The Board considered the extensive time frame taken by the Working Group to produce the recommendations, the extensive consultation with various community groups

and opportunities for input, the concurrent developments surrounding the IANA (Internet Assigned Numbers Authority) Stewardship Transition and the creation of the Empowered Community in arriving at its resolution.

Are there positive or negative community impacts?

The community had multiple opportunities to participate in and comment on the work of the Working Group. The final recommendations from the Working Group represent a consensus from across the ICANN (Internet Corporation for Assigned Names and Numbers) community, and will ensure continued certainty in the community's operations in ensuring that there is geographic diversity and representation in its policy and advisory activities.

This decision is in the public interest and within ICANN (Internet Corporation for Assigned Names and Numbers)'s mission, as it supports ICANN (Internet Corporation for Assigned Names and Numbers) org's work to ensure the stable and secure operation of the Internet's unique identifier systems.

Are there fiscal impacts/ramifications on ICANN (Internet Corporation for Assigned Names and Numbers) (Strategic Plan, Operating Plan, Budget); the community; and/or the public?

Implementation of the Working Group's recommendations is not expected to have any immediate fiscal impacts/ramifications on the organization, the community or the public.

Are there any Security (Security – Security, Stability and Resiliency (SSR)), Stability (Security, Stability and Resiliency) or Resiliency (Security Stability & Resiliency (SSR)) issues relating to the DNS (Domain Name System)?

Implementation of the Working Group's recommendations is not expected to have any substantive impact on the security, stability and resiliency of the domain name system.

Is this either a defined policy process within ICANN (Internet Corporation for Assigned Names and Numbers)'s Supporting Organizations (Supporting Organizations) or ICANN (Internet Corporation for Assigned Names and Numbers)'s Organizational Administrative Function decision requiring public comment or not requiring public comment?

While public comment opportunities regarding this matter were numerous and extensive, no further comment opportunities are required. The decision to provide an additional public comment opportunity reflects the Board's interest in receiving additional feedback from the community before it deliberates on the recommendations of the Working Group. The Board anticipates that implementation of certain specific recommendations set forth in the accompanying "mapping" document may require further community review and comment.

c. Transfer of funds from Operating fund to Reserve fund

Whereas, the Operating Fund includes the funds used for ICANN (Internet Corporation for Assigned Names and Numbers)'s day-to-day operations and must contain enough funds to cover at a minimum ICANN (Internet Corporation for Assigned Names and Numbers)'s expected expenditures for three months.

Whereas, periodically, any funds considered to be in excess of the three-month minimum should be transferred to the Reserve Fund.

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) organization has performed an analysis of the required levels of the Operating Funds and has determined that the balance of the Operating Fund as of 30 June 2018, based on the unaudited Financial Statements, contained excess funds.

Resolved (2018.10.25.17), the Board authorizes the President and CEO, or his designee(s), to transfer US$3,000,000 from the Operating Fund to the Reserve Fund.

Rationale for Resolution 2018.10.25.17

Per ICANN (Internet Corporation for Assigned Names and Numbers)'s Investment Policy, the Operating Fund contain funds to cover a minimum of three months of ICANN (Internet Corporation for Assigned Names and Numbers) organization's operating expenses, and that any amount determined to be in excess may be transferred to the Reserve Fund (see

https://www.icann.org/resources/pages/investment-policy-2018-03-12-en (/resources/pages/investment-policy-2018-03-12-en)).

ICANN (Internet Corporation for Assigned Names and Numbers) Organization evaluated the Operating Fund as of the end of FY18 on the basis of its unaudited Financial Statements, and has determined that excess funds of US$3,000,000 should be transferred from the Operating Fund to the Reserve Fund.

This action is in the public interest and is consistent with ICANN (Internet Corporation for Assigned Names and Numbers)'s mission as it is important to ensure stability of ICANN (Internet Corporation for Assigned Names and Numbers) organization in the way of a robust Reserve Fund in case use of a Reserve Fund becomes necessary.

This action will not have a financial impact on ICANN (Internet Corporation for Assigned Names and Numbers), and will not have any impact on the security, stability or resiliency of the domain name system.

This is an Organizational Administrative function that does not require public comment.

d. New gTLD (generic Top Level Domain) Applications for .AMAZON

Whereas, in 2012, Amazon EU S.à r.l. (Amazon corporation) applied for .AMAZON and two Internationalized Domain Name (Domain Name) (IDN) versions of the word

'Amazon' (.AMAZON applications).
The .AMAZON applications were the subject of GAC (Governmental Advisory Committee) Early Warnings submitted by the governments of Brazil and Peru (with the endorsement of Bolivia, Ecuador and Guyana), which put the Amazon corporation on notice that these governments had a public policy concern about the applied-for strings.

Whereas, on 29 October 2017, the Board asked the GAC (Governmental Advisory Committee) for additional information regarding the GAC (Governmental Advisory Committee)'s advice on the .AMAZON applications. In its November 2017 Abu Dhabi Communiqué, the GAC (Governmental Advisory Committee) advised the Board to "[c] ontinue facilitating negotiations between the Amazon Cooperation Treaty Organization's (ACTO) member states and the Amazon corporation with a view to reaching a mutually acceptable solution to allow for the use of .amazon as a top-level domain name."

Whereas, on 4 February 2018, the ICANN (Internet Corporation for Assigned Names and Numbers) Board accepted the GAC (Governmental Advisory Committee) advice and directed the President and CEO "to facilitate negotiations between the Amazon Cooperation Treaty Organization's (ACTO) member states and the Amazon corporation."

Whereas, in October 2017, the Amazon corporation presented the GAC (Governmental Advisory Committee) and ACTO with a new proposal. After the Amazon

corporation submitted a further updated proposal in February 2018, the ACTO member states issued a statement on 5 September 2018, declaring that "…[t]he Amazon countries have concluded that the proposal does not constitute an adequate basis to safeguard their immanent rights relating to the delegation of the '.amazon' TLD (Top Level Domain)." The ACTO member states also stated the delegation of .AMAZON "requires consent of the Amazon countries" and that they "have the right to participate in the governance of the '.amazon' TLD (Top Level Domain)."

Whereas, on 16 September 2018, the ICANN (Internet Corporation for Assigned Names and Numbers) Board directed the President and CEO "to support the development of a solution for delegation of the strings represented in the .AMAZON applications that includes sharing the use of those top-level domains with the ACTO member states to support the cultural heritage of the countries in the Amazonian region" and "if possible, to provide a proposal to the Board, on the .AMAZON applications to allow the Board to take a decision on the delegation of the strings represented in the .AMAZON applications".

Resolved (2018.10.25.18), the Board directs the President and CEO, or his designee(s), to remove the "Will Not Proceed" status and resume processing of the .AMAZON applications according to the policies and procedures governing the 2012 round of the New gTLD (generic Top Level Domain) Program. This includes the publication of the Public Interest Commitments, as proposed by

the Amazon Corporation, according to the established procedures of the New gTLD (generic Top Level Domain) program.

Resolved (2018.10.25.19), the Board directs the President and CEO, or his designee(s), to provide regular updates to the Board on the status of the .AMAZON applications.

Rationale for Resolutions 2018.10.25.18 – 2018.10.25.19

Building from its September 2018 resolution, the ICANN (Internet Corporation for Assigned Names and Numbers) Board is taking this action to further support the Board's consideration of the outcome of the Independent Review Process (IRP) initiated by the Amazon corporation against ICANN (Internet Corporation for Assigned Names and Numbers), as well as consideration of advice from the Governmental Advisory Committee (Advisory Committee) (GAC (Governmental Advisory Committee)) as it relates to the .AMAZON applications.

In light of all that has come before, including the results of the .AMAZON IRP and subsequent GAC (Governmental Advisory Committee) advice, the Board considers that the GAC (Governmental Advisory Committee)'s consensus advice of the Abu Dhabi Communiqué which advises the ICANN (Internet Corporation for Assigned Names and Numbers) Board to "continue facilitating negotiations between the [ACTO] member states and the Amazon corporation"[1] to supersede previous GAC (Governmental Advisory Committee) advice provided in the

Durban Communique that the applications should "not proceed beyond Initial Evaluation".[2] Accordingly, the Board directed the ICANN (Internet Corporation for Assigned Names and Numbers) org to facilitate a dialogue between the Amazon corporation and ACTO member states to reach a mutually agreeable solution.

The Board is taking this action today to move forward with delegation of the .AMAZON applications, as contemplated in the declaration of the IRP Panel, while recognizing the public policy issues raised through GAC (Governmental Advisory Committee) advice on these applications. As the ICANN (Internet Corporation for Assigned Names and Numbers) org has informed the Board that the parties have identified a path forward, the Board takes this action today to allow the .AMAZON applications to move forward in a manner that would align with GAC (Governmental Advisory Committee) advice and inputs on this topic.

Background

Following the resolution by the Board (acting via the New gTLD (generic Top Level Domain) Program Committee) to accept the GAC (Governmental Advisory Committee) Advice that the .AMAZON applications should not move forward, the ICANN (Internet Corporation for Assigned Names and Numbers) org updated the .AMAZON applications to a "Will Not Proceed" status. In October 2015, the Amazon corporation submitted a proposal to the Amazon

Cooperation Treaty Organization (ACTO) member states in an attempt to come to a solution that could benefit both the Amazon Corporation and concerned ACTO member states. However, this proposal was rejected by the ACTO member states. Subsequently, in March 2016, the Amazon corporation began an Independent Review Process (IRP) against ICANN (Internet Corporation for Assigned Names and Numbers). The IRP ended in July 2017 with the IRP Panel finding in favor of the Amazon corporation. Following the outcome of the IRP, and acting on additional GAC (Governmental Advisory Committee) advice, the ICANN (Internet Corporation for Assigned Names and Numbers) Board tasked the ICANN (Internet Corporation for Assigned Names and Numbers) org with supporting the Amazon corporation and ACTO member states in negotiating a solution.

Previous Amazon Corporation Proposals

Since October 2015, the Amazon corporation has submitted various proposals to the ACTO member states in an effort to reach a mutually agreeable solution. The initial October 2015 proposal was rejected by the ACTO member states, which led to the IRP initiated by the Amazon corporation against ICANN (Internet Corporation for Assigned Names and Numbers) in March 2016. Following resolution of the IRP, the Amazon corporation presented to the GAC (Governmental Advisory Committee) a new proposal for a "practical compromise" in October 2017 at ICANN60 in Abu Dhabi. In February 2018, following dialogue facilitated by the ICANN (Internet

Corporation for Assigned Names and Numbers) org between the Amazon corporation and ACTO member states, the Amazon corporation proposed four main courses of action that included: helping with the global visibility of the Amazonia region and its peoples as well as to protect their cultural heritage; helping to prevent the misuse of domain names associated with the Amazonia region and its peoples; creating a Steering Committee to oversee implementation of the agreement; and, engaging in goodwill efforts by providing the ACTO member states credits for use of Amazon corporation services and products up to $5,000,000. Additionally, the Amazon corporation proposed helping the ACTO member states create an informational program to help publicize the benefits of the agreement.

ACTO Concerns and Response to Amazon Proposals

The ACTO member states concerns regarding the use of the .AMAZON TLDs center on the ability for countries and individuals in the Amazon region to use the domain names for public interest purposes. In October 2017, following the IRP Panel Final Declaration on the .AMAZON applications, the ACTO member states issued a statement, reaffirming:

> "…that the name Amazon, in any language, is part of the cultural heritage and identity of the Amazon countries, and that its use as a first level domain name, unless otherwise agreed by the Amazon countries, shall be reserved for

> the promotion of the interests and rights of the Amazon peoples and their inclusion in the information society."

On 5 September 2018, following an updated proposal submitted by the Amazon corporation in February 2018, including after clarifications sought by the ACTO member states in understanding the proposal, the ACTO member states sent a letter to the Board stating that, with regard to the delegation of .AMAZON, that this "requires consent of the Amazon countries" and that they "have the right to participate in the governance of the '.amazon' TLD (Top Level Domain)". Additionally, the ACTO member states declare that "the proposal does not constitute an adequate basis to safeguard their immanent rights relating to the delegation of the '.amazon' TLD (Top Level Domain)." The member states did mention, however, that they were willing "to engage with the ICANN (Internet Corporation for Assigned Names and Numbers) Board…with a view to safeguarding their rights as sovereign states."

On 12 October 2018, the Ministry of Foreign Affairs of Colombia issued a letter to ICANN (Internet Corporation for Assigned Names and Numbers) noting concerns with the Amazon corporation proposal and reiterated the position of the ACTO members states, as noted above.

Current Proposal from the Amazon Corporation

Since the Board's September 2018 resolution, the Amazon corporation, in effort to show its appreciation for the concerns of the ACTO member states regarding the use and governance of the .AMAZON TLDs, has submitted proposed Public Interest Commitments (PICs) that could be inserted into Specification 11 of its Registry Agreement with ICANN (Internet Corporation for Assigned Names and Numbers). As part of the Registry Agreements, these PICs would be enforceable through standard Contractual Compliance mechanisms, as well as through the PIC Dispute Resolution Procedure (PICDRP (Public Interest Commitment Dispute Resolution Procedure)).[3] Should an ACTO member state believe that the Amazon corporation (as Registry Operator) is not complying with one of the PICs in one of its Registry Agreements, the ACTO member state would be able submit a complaint via the Contractual Compliance or the PICDRP (Public Interest Commitment Dispute Resolution Procedure). ICANN (Internet Corporation for Assigned Names and Numbers) would then begin the review process, and, if found to be noncompliant, the Amazon corporation would need to take measures to remediate the issue.[4]

Items considered by the Board

In taking this action, the Board considered:

- The GAC (Governmental Advisory Committee) Early Warning regarding the .AMAZON applications of 20 November 2012.

- The GAC (Governmental Advisory Committee) Advice from the GAC (Governmental Advisory Committee) Durban Communiqué regarding the .AMAZON applications.
- The Amazon corporation's Proposals of 6 October 2015 and 7 February 2018;
- The IRP Panel Declaration in .AMAZON Independent Review Process;
- The Amazon corporation's October 2017 proposal to the GAC (Governmental Advisory Committee) and ACTO member states;
- The NGPC's 14 May 2014 action on the .AMAZON applications and the Board's 29 October 2017 and 4 February 2018 actions on the .AMAZON applications;
- ACTO's 5 September 2018 letter and related annexes.
- The Amazon corporation proposed Public Interest Commitments (PICs) of September 2018
- Colombian Government's Letter of 12 October 2018

Impacts

This action is anticipated to have a small resource impact on the ICANN (Internet Corporation for Assigned Names and Numbers) org based upon the resources needed to meet the Board's direction. This

action is in support of ICANN (Internet Corporation for Assigned Names and Numbers)'s mission, in that it furthers the New gTLD (generic Top Level Domain) Program and anticipated expansion of the DNS (Domain Name System). It is also in the public interest in its balancing the core values of introducing and promoting competition while recognizing governments' provision of public policy advice.

This action will not impact the security, stability and resiliency of the domain name system.

e. **Independent Review Process Interim Supplementary Rules of Procedure**

Whereas, the Independent Review Process (IRP) is an accountability mechanism provided by the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws that allows for third party review of ICANN (Internet Corporation for Assigned Names and Numbers) Board or staff actions (or inactions) alleged by an affected party to be inconsistent with ICANN (Internet Corporation for Assigned Names and Numbers)'s Articles of Incorporation or Bylaws.

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) IRPs are governed by the International Centre for Dispute Resolution's (ICDR) International Arbitration Rules, as modified by the IRP Supplementary Procedures.

Whereas, an IRP Implementation Oversight Team (IOT) was formed under the Bylaws to,

among other tasks, draft the detailed IRP supplementary rules of procedure (Updated Supplementary Procedures) for Board adoption.

Whereas, the IRP IOT has made significant progress in drafting the Updated IRP Supplementary Procedures; however, there are still some areas that need further development and are not yet ready to be finalized for Board approval.

Whereas, in consideration that the current Supplementary Procedures in effect do not correspond to the Bylaws as updated on 1 October 2016, the IRP IOT has developed a set of Interim Supplementary Procedures that align with the current Bylaws, in order to apply to an IRP if one is initiated before all issues are addressed to meet a final set of Updated IRP Supplementary Procedures. As of 21 October 2018, the IOT consented to submitting this set of Interim Supplementary Procedures for Board consideration.

Whereas, the IRP IOT is, among other items, considering potential modifications to Rule 4 regarding time limits for filing an IRP, and there does not yet appear to be community consensus on whether it is appropriate to have an outside time limit on when an IRP can be filed to challenge any action of ICANN (Internet Corporation for Assigned Names and Numbers). Some in the community believe that it is against ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws to have an outside time limit based on the date of ICANN (Internet Corporation for Assigned

Names and Numbers)'s action, but that is disputed and ICANN (Internet Corporation for Assigned Names and Numbers)'s Office of the General Counsel has advised that it disagrees with such an interpretation. ICANN (Internet Corporation for Assigned Names and Numbers)'s General Counsel advises that the Interim Supplementary Procedures are consistent with ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws.

Whereas, the Board remains open to considering any proposed consensus-based resolution of the time for filing issue presented within an Updated Supplementary Procedures draft.

Whereas, the Board Accountability Mechanisms Committee (BAMC), in its oversight role of accountability mechanisms, has considered the Interim Supplementary Procedures and recommended that the Board adopt the Interim Supplementary Procedures until there is a completed set of Updated IRP Supplementary Procedures available.

Resolved (2018.10.25.20), the Board adopts the Independent Review Process Interim Supplementary Procedures (/en/system/files/files/irp-interim-supplementary-procedures-25oct18-en.pdf).

Resolved (2018.10.25.21), the Board thanks the IRP IOT for its work to date, and urges the IRP IOT to deliver a set of Updated Supplementary Procedures to the Board as soon as possible.

Rationale for Resolutions 2018.10.25.20 – 2018.10.25.21

ICANN (Internet Corporation for Assigned Names and Numbers) has a proven commitment to accountability and transparency in all of its practices. ICANN (Internet Corporation for Assigned Names and Numbers) considers these principles to be fundamental safeguards in ensuring that its bottom-up, multistakeholder model remains effective. The mechanisms through which ICANN (Internet Corporation for Assigned Names and Numbers) achieves accountability and transparency are built into every level of its organization and mandate. In order to reinforce its transparency and accountability, ICANN (Internet Corporation for Assigned Names and Numbers) has established, among other accountability mechanisms, the Independent Review Process (IRP), that allows for third party review of ICANN (Internet Corporation for Assigned Names and Numbers) Board or staff actions (or inactions) alleged by an affected party to be inconsistent with ICANN (Internet Corporation for Assigned Names and Numbers)'s Articles of Incorporation or Bylaws.

The International Centre for Dispute Resolution (ICDR) currently administers ICANN (Internet Corporation for Assigned Names and Numbers) IRPs. IRPs are governed by the ICDR's International Arbitration Rules, as modified by Supplementary Procedures for the ICANN (Internet Corporation for Assigned Names and Numbers) IRP. The IRP was significantly modified through the Enhancing ICANN (Internet Corporation for Assigned

Names and Numbers) Accountability Process, and the Bylaws reflecting the new IRP were updated on 1 October 2016. The IRP Supplementary Procedures in place before the Bylaws were revised in 2016 do not meet all the requirements of the new Bylaws. Accordingly, the IRP Implementation Oversight Team (IOT) was charged with preparing updates to those Supplementary Procedures for Board adoption.

The IRP IOT has spent a significant amount of time and effort in updating the Supplementary Procedures. A draft set of Updated Supplementary Procedures were submitted for public comment from 28 November 2016 to 1 February 2017. (*See* https://www.icann.org/public-comments/irp-supp-procedures-2016-11-28-en (/public-comments/irp-supp-procedures-2016-11-28-en).) Following the close of the comment period, the IRP IOT considered the inputs received from the community and revised the draft set of Updated Supplementary Procedures as appropriate. Following its deliberations, the IRP IOT sought public consultation for a second time from 22 June 2018 to 10 August 2018 on proposed revisions to Rule 4: Time for Filing that were material from the original Updated Supplementary Procedure Rule 4 that was published for public comment on 28 November 2016. (*See* https://www.icann.org/public-comments/irp-iot-recs-2018-06-22-en (/public-comments/irp-iot-recs-2018-06-22-en).) The comments received from the second public comment period are currently under review by the IRP IOT along with some other areas that need further

development and are not yet ready to be finalized for Board approval.

Cognizant that the Supplementary Procedures in effect correspond with the old ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, the IRP IOT developed a set of Interim Supplementary Procedures that align with the new Bylaws and which could be put in place in the event that an IRP is filed prior to the time that there is a completed set of Updated IRP Supplementary Procedures available

In drafting these Interim Supplementary Procedures, the IRP IOT applied the following principles: (1) remain as close as possible to the current Supplementary Procedures or the Updated Supplementary Procedures posted for public comment on 28 November 2016;; (2) to the extent public comments received in response to the Updated Supplementary Procedures reflected clear movement away from either the current Supplementary Procedures or the Updated Supplementary Procedures, to reflect that movement unless doing so would require significant drafting that should be properly deferred for broader consideration; and (3) take no action that would materially expand any part of the Supplementary Procedures that the IRP IOT has not clearly agreed upon, or that represent a significant change from what was posted for comment and would therefore require further public consultation prior to changing the supplemental rules to reflect those expansions or changes.

The IOT began consideration of a set of Interim Supplementary Procedures in May 2018. The version considered by the Board today was the subject of intensive focus by the IOT in two meetings on 9 and 11 October 2018, convened with the intention of delivering a set to the Board for our consideration at ICANN63. There were modifications to four sections identified through those meetings, and a set reflecting those changes was proposed to the IOT on 19 October 2018. With no further comment, on 22 October 2018 the IOT process on the Interim Supplementary Procedures concluded and it was sent to the Board for consideration.

The Board understands that among the areas where further consideration is needed is the issue of "time for filing", or Rule 4 of the Procedures. The most recent public comment period referenced above (closing on 10 August 2018) was focused on the issue of if a person/entity was harmed by an act of ICANN (Internet Corporation for Assigned Names and Numbers), how long after that act (or inaction) should the person/entity have to file an IRP. The fundamental issue posed in the public comment is whether it is appropriate to have any outside time limit by when an IRP can be filed. During the IOT's work on the issue, a position was raised that including any external limitation is in violation of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, which at Section 4(n)(iii)(A) requires the IOT to develop a procedure on "[t]he time within which a Claim must be filed after a Claimant becomes aware or reasonably should have become aware of the action or

inaction giving rise to the Dispute." The Board has been advised, and ICANN (Internet Corporation for Assigned Names and Numbers) Legal has publicly stated its position, that this portion of the Bylaws does not preclude an outside time limit on filing disputes.

The set of Interim Supplementary Procedures includes at Rule 4 the same external limit on filing an IRP as was initially proposed by the IOT – 12 months from the date of ICANN (Internet Corporation for Assigned Names and Numbers)'s action. The Board understands that the IOT has not yet considered the public comment on its proposal to remove that 12-month limitation, and that is a key area where the Board understands there may be changes presented in the forthcoming Updated Supplementary Procedures. The Board acknowledges that ICANN (Internet Corporation for Assigned Names and Numbers) organization has committed to ensure that if that time for filing is expanded in the Updated Supplementary Procedures, those Updated Supplementary Procedures "will include transition language that provides potential claimants the benefit of that additional time, so as not to prejudice those potential claimants." The Board agrees that is an appropriate balance that will accommodate potential future changes with minimal impact to those seeking to use ICANN (Internet Corporation for Assigned Names and Numbers)'s accountability mechanisms. While the Board believes that it is allowable under the Bylaws to incorporate an external time limit for the filing of an IRP, the Board understands

that the community might have different reasons for recommending modifications to that time for filing limitation, and today's action does not in any way preclude the IOT's ability to propose different language for this Rule 4 for the Updated Supplementary Procedures.

The Board appreciates the amount of time and effort the IOT has dedicated to deliver procedures to govern the IOT, and we expect that work to continue to completion on all remaining issues the IOT has identified.

This action is within ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission and is in the public interest as it is important to ensure that, in carrying out its Mission, ICANN (Internet Corporation for Assigned Names and Numbers) is accountable to the community for operating within the Articles of Incorporation, Bylaws, and other established procedures, by having a process in place that allows for third party review of ICANN (Internet Corporation for Assigned Names and Numbers) Board or staff actions (or inactions) alleged by any harmed party to be inconsistent with ICANN (Internet Corporation for Assigned Names and Numbers)'s Articles of Incorporation or Bylaws. This action has no financial impact on ICANN (Internet Corporation for Assigned Names and Numbers) and will not negatively impact the security, stability and resiliency of the domain name system.

This decision is an Organizational Administrative Function that has already been

the subject of two public comment processes and does not require further public comment at this stage.

f. Reserve Fund Replenishment Strategy

Whereas, the Board confirmed by previous decision (resolutions 2018.02.04.09 – 2018.02.04.10) that the target level of the ICANN (Internet Corporation for Assigned Names and Numbers) Reserve Fund should be at a minimum equivalent to 12 months of operating expenses.

Whereas, the current level of the Reserve Fund is approximately of US$70 million as of 30 June 2018, reflecting a shortfall compared to the minimum target level of approximately US$68 million.

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) organization posted for public comment a proposed strategy to replenish the Reserve Fund and the Board took all comments submitted into account to determine the final Reserve Fund replenishment strategy.

Whereas, the proposed replenishment strategy entails allocating to the Reserve Fund: (i) annual operational excess of funding over expenses for a total of US$32 million over an eight-year period; and (ii) US$36 million of new gTLD (generic Top Level Domain) auction proceeds.

Resolved (2018.10.25.22), the Board directs the President and CEO, or his designee(s), to

take all actions necessary to increase the Reserve Fund through annual excesses from the operating fund of ICANN (Internet Corporation for Assigned Names and Numbers) organization by a total amount of US$32 million over a period of seven to eight years, starting with FY19.

Resolved (2018.10.25.23), the Board directs the President and CEO, or his designee(s), to take all actions necessary to allocate US$36 million of auction proceeds to the Reserve Fund, as soon as technically feasible.

Rationale for Resolutions 2018.10.25.22 – 2018.10.25.23

Based on its fiduciary duties and considering the significant growth and risk profile that ICANN (Internet Corporation for Assigned Names and Numbers) has seen since the creation of its Reserve Fund, the Board determined that the Reserve Fund required to be reviewed, especially in light of the significant drop in its level.

The Board conducted an evaluation of the Rationale and Target level for the Reserve Fund, which was based on the public comments received on a first consultation paper. As a result, an updated ICANN (Internet Corporation for Assigned Names and Numbers) Investment Policy was approved by the Board to include: (a) an updated Reserve Fund Rationale; and (b) a confirmation that the Reserve Fund Target Level will be set at a minimum of 12 months of Operating Expenses (See resolution https://features.icann.org/confirmation-reserve-

fund-target-level (https://features.icann.org/confirmation-reserve-fund-target-level)).

Once the Target Level was confirmed, the Board outlined a proposed strategy to replenish the Reserve Fund from its current level to its updated minimum Target Level, which was the subject of a second public comment process.

The comments received provided for a wide range of views on the sources of funds and extent of use of such sources for the purpose of replenishment. Relative to the annual excess allocation, most comments received on this aspect suggested a higher allocation than the one proposed. On the allocation of auction proceeds, some comments suggested a lower allocation and others a higher allocation to the Reserve Fund. All comments but one indicated that no increase to ICANN (Internet Corporation for Assigned Names and Numbers) fees should be considered. Also, the use of New gTLD (generic Top Level Domain) Program funds for purpose of replenishment was not retained in the final proposed strategy due to the continued existence of risks associated with the program. Based on comments received, a final proposed replenishment strategy was drafted, which reflects a higher annual excess allocation than proposed, and is now submitted for Board approval and implementation.

The remaining auction proceeds continue to be segregated and are not intended to be used for day-to-day operations. The Board will review

the CCWG recommendations for a disbursement mechanism, as approved by the chartering organizations, and will then make a decision on the mechanism by which available proceeds should be disbursed, for implementation by ICANN (Internet Corporation for Assigned Names and Numbers) org. At all times, the Board will continue to make all decisions in furtherance of ICANN (Internet Corporation for Assigned Names and Numbers)'s mission, under consideration of its duty of care and its fiduciary responsibility.

This action is in the public interest and is consistent with ICANN (Internet Corporation for Assigned Names and Numbers)'s mission as it is important to ensure stability of ICANN (Internet Corporation for Assigned Names and Numbers) organization in the way of an adequately funded Reserve Fund in case use of a Reserve Fund becomes necessary.

This action will have a positive financial impact on ICANN (Internet Corporation for Assigned Names and Numbers) and will enable ICANN (Internet Corporation for Assigned Names and Numbers) to support its financial stability and sustainability. It will not have any impact on the security, stability or resiliency of the domain name system.

This is an Organizational Administrative function that has already been subject to public comment as set forth above.

g. **Thank You to Lousewies van der Laan for her service to the ICANN**

(Internet Corporation for Assigned Names and Numbers) Board

Whereas, Lousewies van der Laan was appointed by the Nominating Committee to serve as a member of the ICANN (Internet Corporation for Assigned Names and Numbers) Board on 22 October 2015.

Whereas, Lousewies van der Laan concludes her term on the ICANN (Internet Corporation for Assigned Names and Numbers) Board on 25 October 2018.

Whereas, Lousewies served as a member of the following Committees and Working Groups:

- Audit Committee (Chair)
- Finance Committee
- Governance Committee
- Organizational Effectiveness Committee
- Board-GAC (Governmental Advisory Committee) Recommendation Implementation Working Group
- Board Working Group on Internet Governance
- Board Trust Working Group (Chair)

Resolved (2018.10.25.24), Lousewies van der Laan has earned the deep appreciation of the Board for her term of service, and the Board wishes her well in her future endeavors within the ICANN (Internet Corporation for Assigned Names and Numbers) community and beyond.

h. **Thank You to Jonne Soininen for his service to the ICANN (Internet Corporation for Assigned Names and Numbers) Board**

Whereas, Jonne Soininen was appointed by IETF (Internet Engineering Task Force) to serve as a liaison to the ICANN (Internet Corporation for Assigned Names and Numbers) Board on 21 November 2013.

Whereas, Jonne Soininen concludes his term on the ICANN (Internet Corporation for Assigned Names and Numbers) Board on 25 October 2018.

Whereas, Jonne has served as a liaison member of the following Committees and Working Groups:

- Compensation Committee
- New gTLD (generic Top Level Domain) Program Committee
- Risk Committee
- Technical Committee
- Board IDN Variants Working Group
- Board Trust Working Group
- Work Stream 2 (WS2) Board Caucus Working Group

Resolved (2018.10.25.25), Jonne has earned the deep appreciation of the Board for his term of service, and the Board wishes him well in his future endeavors within the ICANN

(Internet Corporation for Assigned Names and Numbers) community and beyond.

i. **Thank You to Mike Silber for his service to the ICANN (Internet Corporation for Assigned Names and Numbers) Board**

Whereas, Mike Silber was appointed by the ccNSO (Country Code Names Supporting Organization) to serve as a member of the ICANN (Internet Corporation for Assigned Names and Numbers) Board on 30 October 2009.

Whereas, Mike Silber concludes his term on the ICANN (Internet Corporation for Assigned Names and Numbers) Board on 25 October 2018.

Whereas, Mike served as a member of the following ICANN (Internet Corporation for Assigned Names and Numbers) Board Committees and Working Groups:

- Accountability Mechanisms Committee
- Audit Committee (Chair)
- Finance Committee
- Governance Committee
- IANA (Internet Assigned Numbers Authority) Committee
- New gTLD (generic Top Level Domain) Program Committee
- Public Participation Committee (Chair)

- Risk Committee (Chair and Co-Chair)
- Structural Improvements Committee
- Board-GAC (Governmental Advisory Committee) Recommendation Implementation Working Group
- Work Stream 2 (WS2) Board Caucus Working Group

Resolved (2018.10.25.26), Mike Silber has earned the deep appreciation of the Board for his term of service, and the Board wishes him well in his future endeavors within the ICANN (Internet Corporation for Assigned Names and Numbers) community and beyond.

j. Thank You to Ram Mohan for his service to the ICANN (Internet Corporation for Assigned Names and Numbers) Board

Whereas, Ram Mohan was appointed by the SSAC (Security and Stability Advisory Committee) to serve as a liaison to the ICANN (Internet Corporation for Assigned Names and Numbers) Board on 7 November 2008.

Whereas, Ram Mohan concludes his term on the ICANN (Internet Corporation for Assigned Names and Numbers) Board on 25 October 2018.

Whereas, Ram has served as a liaison member of the following Committees and Working Groups:

- Governance Committee

- Compensation Committee
- CEO Search Committee
- Risk Committee (Co-Chair)
- Technical Committee
- Board-GAC (Governmental Advisory Committee) Recommendation Implementation Working Group
- Board IDN Variants Working Group (Chair)
- Board Trust Working Group
- Board Strategic Planning Working Group (Chair)
- Board Working Group on Nominating Committee
- Work Stream 2 (WS2) Board Caucus Working Group

Resolved (2018.10.25.27), Ram Mohan has earned the deep appreciation of the Board for his term of service, and the Board wishes him well in his future endeavors within the ICANN (Internet Corporation for Assigned Names and Numbers) community and beyond.

k. **Thank You to George Sadowsky for his service to the ICANN (Internet Corporation for Assigned Names and Numbers) Board**

Whereas, George Sadowsky was appointed by the Nominating Committee to serve as a member of the ICANN (Internet Corporation

for Assigned Names and Numbers) Board on 30 October 2009.

Whereas, George Sadowsky concludes his term on the ICANN (Internet Corporation for Assigned Names and Numbers) Board on 25 October 2018.

Whereas, George served as a member of the following Committees:

- Audit Committee
- Compensation Committee (Chair)
- CEO Search Committee (Chair)
- Finance Committee
- Global Relationships Committee
- New gTLD (generic Top Level Domain) Program Committee
- Organizational Effectiveness Committee
- Risk Committee
- Structural Improvements Committee
- Technical Committee
- Board Working Group on Internet Governance
- Board Working Group on Nominating Committee (Chair)
- Board Trust Working Group (Chair)
- Work Stream 2 (WS2) Board Caucus Working Group

Resolved (2018.10.25.28), George Sadowsky has earned the deep appreciation of the Board for his term of service, and the Board wishes him well in his future endeavors within the ICANN (Internet Corporation for Assigned Names and Numbers) community and beyond.

Published on 25 October 2018

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[1] See: https://www.icann.org/en/system/files/correspondence/ismail-to-chalaby-15mar18-en.pdf (/en/system/files/correspondence/ismail-to-chalaby-15mar18-en.pdf).

[2] See: https://gac.icann.org/contentMigrated/icann47-durban-communique (https://gac.icann.org/contentMigrated/icann47-durban-communique).

[3] See: https://www.icann.org/resources/pages/picdrp-2014-01-09-en (/resources/pages/picdrp-2014-01-09-en).

[4] See: http://newgtlds.icann.org/en/applicants/agb/picdrp-19dec13-en.pdf (http://newgtlds.icann.org/en/applicants/agb/picdrp-19dec13-en.pdf).

EXHIBIT 315

Ex. 315

From: Independent Review <independentreview@icann.org>
Sent: Wednesday, November 14, 2018 7:04 PM
To: Ali, Arif; Wong, Rosey
Cc: Litwin, Ethan; Cilingin, Jenn; de Gramont, Alexandre; Scott Hemphill; Independent Review
Subject: Re: [Independent Review] Afilias' Notice Invoking the Cooperative Engagement Process

Dear Arif,
Following up on our email below and the discussion regarding the "on hold" status of the .WEB contention set.

The .WEB contention set status will remain "on hold" until 27 November 2018 (the initial time period provided to Afilias to file its Independent Review Process (IRP) request). We note that Afilias has filed its IRP request with the ICDR today (14 November 2018). If Afilias does not file its request for emergency interim relief with the ICDR on or before 27 November 2018, the .WEB contention set will be taken off the "on hold" status. If Afilias does file its request for emergency interim relief with the ICDR on or before 27 November, the status of the .WEB contention set will remain "on hold" until the parties receive a decision from the IRP panel regarding the interim relief request.

Please let us know if you have any questions.

Best Regards,

ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

From: Independentreview <independentreview-bounces@icann.org> on behalf of Independent Review <independentreview@icann.org>
Date: Tuesday, November 13, 2018 at 3:43 PM
To: "Ali, Arif" <Arif.Ali@dechert.com>, "Wong, Rosey" <Rosey.Wong@dechert.com>
Cc: "Litwin, Ethan" <Ethan.Litwin@dechert.com>, Independent Review <independentreview@icann.org>, "Cilingin, Jenn" <Jenn.Cilingin@dechert.com>, "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>, Scott Hemphill Contact Information Redacted
Subject: Re: [Independent Review] Afilias' Notice Invoking the Cooperative Engagement Process

Dear Arif,

Pursuant to our discussion during the Cooperative Engagement Process (CEP) conference we had today, we are writing to confirm that the CEP for this matter is closed effective today, 13 November 2018.

ICANN will grant Afilias an extension of time to 27 November 2018 (14 days following the close of CEP) to file an IRP regarding the matters raised in the CEP if Afilias chooses to do so, and if Afilias satisfies the standing

requirements, the timing requirements, and the criteria necessary to make a claim that the ICANN Board violated its Articles of Incorporation or Bylaws. Please note that this extension will not alter any deadlines that may have expired before the initiation of the CEP.

With regard to our discussion regarding contention set status and interim relief from the IRP panel, we will revert back to you in the next day or two.

Please let us know if you have any questions.

Best Regards,

ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

From: Independentreview <independentreview-bounces@icann.org> on behalf of Independent Review <independentreview@icann.org>
Date: Wednesday, October 31, 2018 at 1:58 PM
To: "Wong, Rosey" <Rosey.Wong@dechert.com>
Cc: "Ali, Arif" <Arif.Ali@dechert.com>, "Litwin, Ethan" <Ethan.Litwin@dechert.com>, "Cilingin, Jenn" <Jenn.Cilingin@dechert.com>, Scott Hemphill Contact Information Redacted, "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>, Independent Review <independentreview@icann.org>
Subject: Re: [Independent Review] Afilias' Notice Invoking the Cooperative Engagement Process

Dear Rosey –
Given the recent conclusion of ICANN63 in Barcelona and additional scheduling issues, we need to postpone the CEP conference to the 13 November date, which was mentioned as a possibility in our email below. It appears that Arif and Ethan are the only ones who have responded to the calendar invite sent for 13 November 1:00pm-2:00pm Pacific / 4:00pm-5:00pm EST. As a reminder, a representative of Afilias must also participate in the CEP conference.
Thank you for sending the draft IRP Request in your earlier email. ICANN is in the process of reviewing the materials in advance of the 13 November CEP conference.

Best regards,

ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

From: Independentreview <independentreview-bounces@icann.org> on behalf of Independent Review <independentreview@icann.org>
Date: Friday, October 19, 2018 at 3:25 PM
To: "Wong, Rosey" <Rosey.Wong@dechert.com>, Independent Review <independentreview@icann.org>
Cc: "Ali, Arif" <Arif.Ali@dechert.com>, "Litwin, Ethan" <Ethan.Litwin@dechert.com>, Scott Hemphill Contact Information Redacted, "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>, "Cilingin, Jenn"

<Jenn.Cilingin@dechert.com>
Subject: Re: [Independent Review] Afilias' Notice Invoking the Cooperative Engagement Process

Dear Rosey –
Thank you for sending the available dates and times below.

We will be sending two calendar invites for CEP conferences – one for 1 November 12:00pm-1:00pm Pacific / 3:00pm-4:00pm EST and one for 13 November 1:00pm-2:00pm Pacific / 4:00pm-5:00pm EST.
We are setting up two calls so that if there is a scheduling conflict on 1 November or if we need to have a further CEP conference after 1 November, we will already have a second call scheduled.

Best regards,

ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

From: Independentreview <independentreview-bounces@icann.org> on behalf of "Wong, Rosey" <Rosey.Wong@dechert.com>
Date: Monday, October 15, 2018 at 12:36 PM
To: Independent Review <independentreview@icann.org>
Cc: "Ali, Arif" <Arif.Ali@dechert.com>, "Litwin, Ethan" <Ethan.Litwin@dechert.com>, Scott Hemphill Contact Information Redacted "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>, "Cilingin, Jenn" <Jenn.Cilingin@dechert.com>
Subject: Re: [Independent Review] Afilias' Notice Invoking the Cooperative Engagement Process

Dear ICANN,

We are available for a further CEP call during the following times:

01 November 2018: 2pm-7pm EST
12 November 2018: 9am-7pm EST
13 November 2018: 9am-6pm EST
14 November 2018: 11am-12pm; 2pm-7pm EST

We look forward to hearing from you soon.

Thank you,
Rosey

Rose Marie Wong
Associate

Dechert LLP
+1 215 994 2052
rosey.wong@dechert.com
dechert.com [dechert.com]

From: Independent Review [mailto:independentreview@icann.org]
Sent: Thursday, October 11, 2018 3:40 PM
To: Wong, Rosey <Rosey.Wong@dechert.com>; Ali, Arif <Arif.Ali@dechert.com>
Cc: Litwin, Ethan <Ethan.Litwin@dechert.com>; Scott Hemphill Contact Informat on Redacted ; de Gramont, Alexandre <Alexandre.deGramont@dechert.com>; Cilingin, Jenn <Jenn.Cilingin@dechert.com>; Independent Review <independentreview@icann.org>
Subject: Re: [Independent Review] Afilias' Notice Invoking the Cooperative Engagement Process

Dear Arif –
As you may be aware, ICANN63 is scheduled to take place in Barcelona beginning next week.
Therefore, please send us all dates and times that your client is available for a further CEP call between 1-16 November 2018 (please indicate all availability, so we can coordinate schedules).

Best regards,

ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

From: Independentreview <independentreview-bounces@icann.org> on behalf of "Wong, Rosey" <Rosey.Wong@dechert.com>
Date: Wednesday, October 10, 2018 at 9:00 PM
To: Independent Review <independentreview@icann.org>
Cc: "Ali, Arif" <Arif.Ali@dechert.com>, "Litwin, Ethan" <Ethan.Litwin@dechert.com>, Scott Hemphill Contact Information Redacted , "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>, "Cilingin, Jenn" <Jenn.Cilingin@dechert.com>
Subject: Re: [Independent Review] Afilias' Notice Invoking the Cooperative Engagement Process

Dear ICANN,

Unfortunately, none of the dates/times proposed in your email below work for us. We will be back in touch shortly with proposed dates and times for next week.

In our last CEP call, we had discussed a further explanation of our position. Subject to the rules on confidentiality and non-disclosure that apply to CEP, please find attached a draft IRP request, which sets out Afilias' position. We understand that the draft is and will remain confidential as part of the materials exchanged during the CEP, and that ICANN will not assert any waiver of any privilege by virtue of our having provided you with the draft. We look forward to discussing with you on our next CEP call a concrete timeline and proposal regarding the steps that ICANN will take to disqualify NDC's application and/or disqualify NDC's bids in the ICANN auction for .WEB. We remain hopeful that we will be able to resolve this matter amicably.

Sincerely,

Arif Hyder Ali
www.dechert.com/arif_ali [dechert.com]

Dechert LLP
+1 202 261 3307 Washington, D.C.
+44 207 1847372 London
+1 202 261 3441 Assistant (Remy Bracey)
+44 207 1847372 Assistant (Annette Brombley)
Contact nformation Redacted Mobile

arif.ali@dechert.com

From: Independent Review [mailto:independentreview@icann.org]
Sent: Wednesday, October 10, 2018 7:47 PM
To: de Gramont, Alexandre <Alexandre.deGramont@dechert.com>
Cc: Ali, Arif <Arif.Ali@dechert.com>; Litwin, Ethan <Ethan.Litwin@dechert.com>; Wong, Rosey <Rosey.Wong@dechert.com>; Scott Hemphill Contact Informat on Redacted ; independentreview@icann.org
Subject: Re: [Independent Review] Afilias' Notice Invoking the Cooperative Engagement Process

Dear All –
We have received no response to our email below and therefore presume that Afilias was/is not available during the dates/times offered in the email below for a further CEP call.

In an effort to schedule a CEP call prior to ICANN63, we offer the following date and times. Please indicate by tomorrow whether Afilias is available on Monday for a one hour CEP call during the times offered below.

15 October – Monday
10:30am – 12:00pm (Pacific)
2:00pm – 3:30pm (Pacific)

Best regards,

ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

From: Independentreview <independentreview-bounces@icann.org> on behalf of "independentreview@icann.org" <independentreview@icann.org>
Date: Friday, October 5, 2018 at 2:12 PM
To: "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>
Cc: "Ali, Arif" <Arif.Ali@dechert.com>, "Litwin, Ethan" <Ethan.Litwin@dechert.com>, "Wong, Rosey" <Rosey.Wong@dechert.com>, Scott Hemphill Contact Information Redacted
Subject: Re: [Independent Review] Afilias' Notice Invoking the Cooperative Engagement Process

Greetings:

As we have not heard from you since 10 September, we offer you the following dates and times next week for a further CEP call. Please advise which one works for you.

8 Oct, Monday, 11a – noon PST
10 Oct, Wed, 2-3p PST
11 Oct, Thurs, 2-3p PST

We look forward to hearing from you soon.

Best regards,

ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

On Sep 10, 2018, at 11:51 AM, de Gramont, Alexandre <Alexandre.deGramont@dechert.com> wrote:

Dear ICANN:

When we spoke on 28 August, you had indicated that you would be available to continue the CEP today. We are disappointed that you have now cancelled two CEP calls that we had on calendar – and are now proposing a single, two-hour time slot over the next two weeks as an alternative. In any event, we are unavailable on 12 September between 7:00 am and 9:00 am (Pacific time).

We will discuss internally and revert to you soon on our position re moving forward.

Best regards,

Alexandre de Gramont
Partner

Dechert LLP
1900 K Street N.W.
Washington, DC 20006
+1 202 261 3320 Direct
Contact nformation Redacted Mobile
+1 202 261 3082 Fax
alex.degramont@dechert.com
dechert.com [dechert.com]

From: Independent Review [mailto:independentreview@icann.org]
Sent: Monday, September 10, 2018 1:58 PM
To: Ali, Arif <Arif.Ali@dechert.com>; de Gramont, Alexandre <Alexandre.deGramont@dechert.com>
Cc: Litwin, Ethan <Ethan.Litwin@dechert.com>; Wong, Rosey <Rosey.Wong@dechert.com>; Scott Hemphill Contact Informat on Redacted; Independent Review <independentreview@icann.org>
Subject: Re: [Independent Review] Afilias' Notice Invoking the Cooperative Engagement Process

Dear Arif –
We have not received a response to our 6 September email (below).
Could you please let us know as soon as possible if you and your client are available for a one hour call on 12 September between 7:00am – 9:00am (Pacific time) so that we can schedule it accordingly. Also, please let us know if you intend to submit any further documents or information in advance of our next call.

Best Regards,

ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

From: Independentreview <independentreview-bounces@icann.org> on behalf of Independent Review <independentreview@icann.org>
Date: Thursday, September 6, 2018 at 2:25 PM
To: "Ali, Arif" <Arif.Ali@dechert.com>, "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>
Cc: "Litwin, Ethan" <Ethan.Litwin@dechert.com>, "independentreview@icann.org" <independentreview@icann.org>, "Wong, Rosey" <Rosey.Wong@dechert.com>, Scott Hemphill Contact Information Redacted
Subject: Re: [Independent Review] Afilias' Notice Invoking the Cooperative Engagement Process

Dear Arif –
Regarding scheduling the further CEP call that we discussed during our 28 August 2018 CEP conference, unfortunately schedules are very tight over the next two weeks. Please let us know if you and your client are available for a one hour call on 12 September 2018 between 7:00am – 9:00am (Pacific time).

Also, please let us know if you intend to submit any further documents or information in advance of our next call.

Best Regards,

ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

From: Independentreview <independentreview-bounces@icann.org> on behalf of "Ali, Arif" <Arif.Ali@dechert.com>
Date: Tuesday, August 28, 2018 at 3:34 PM
To: Amy Stathos <amy.stathos@icann.org>, "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>
Cc: "Litwin, Ethan" <Ethan.Litwin@dechert.com>, "independentreview@icann.org" <independentreview@icann.org>, "Wong, Rosey" <Rosey.Wong@dechert.com>, Scott Hemphill Contact Information Redacted
Subject: Re: [Independent Review] Afilias' Notice Invoking the Cooperative Engagement Process

Dear Amy:

Further to our call today, I assume that you had an opportunity to review our earlier correspondence on the matter of Afilias' claim. In any event, I am re-sending them so that they are at the top of you In-Box.

Kind regards,

Arif Hyder Ali
www.dechert.com/arif_ali [dechert.com]

Dechert LLP
+1 202 261 3307 Washington, D.C.
+44 207 1847372 London
+1 202 261 3441 Assistant (Remy Bracey)
+44 207 1847372 Assistant (Annette Brombley)
Contact nformation Redacted Mobile
arif.ali@dechert.com

From: Amy Stathos [mailto:amy.stathos@icann.org]
Sent: Monday, July 30, 2018 12:36 PM
To: de Gramont, Alexandre <Alexandre.deGramont@dechert.com>
Cc: Ali, Arif <Arif.Ali@dechert.com>; Litwin, Ethan <Ethan.Litwin@dechert.com>; Wong, Rosey <Rosey.Wong@dechert.com>; Scott Hemphill Contact Informat on Redacted ; independentreview@icann.org
Subject: Re: [Independent Review] Afilias' Notice Invoking the Cooperative Engagement Process
Importance: High

Thank you for the detailed agenda below, we will continue to analyze this in advance of our call, but unfortunately we are going to have to re-schedule the call that is scheduled for today. Sorry for the late notice.

We will work internally to find some times next week for a call, and will ensure that we have the right people to participate.

We will be in touch in next day or two to reschedule. Again, sorry for the late notice. Please confirm your receipt of this note.

Thank you.

Amy Stathos
Deputy General Counsel
Internet Corporation for Assigned Names and Numbers
+1-310-301-3866 (direct)
amy.stathos@icann.org

> On Jul 23, 2018, at 12:40 PM, de Gramont, Alexandre <Alexandre.deGramont@dechert.com> wrote:
>
> Dear ICANN:
>
> Thank you for your email below. I will plan to join Messrs. Hemphill and Ali on the call. Others on our team may also be present.
>
> In the meantime, we believe it would be helpful to propose an agenda around which to organize the call. Afilias has three general goals for the CEP call: (1) to understand ICANN's positions concerning the resolution of the .WEB contention set, and the bases for those positions; (2) to

understand whether ICANN is willing to reconsider its positions, or if there are any avenues toward a resolution of this matter without having to proceed to an IRP; and (3) if not, to see if we can agree on at least certain aspects concerning the schedule and process for the IRP. With those goals in mind, we propose the following agenda:

I. ICANN'S POSITIONS

1. Is it ICANN's intention to enter a .WEB registry agreement with NDC, with the understanding that NDC has contractually committed to assigning the exclusive right to operate the .WEB registry (and/or transferring any other rights obtained through NDC's application) to Verisign? If so, has ICANN informed or otherwise discussed with NDC or Verisign whether ICANN will agree to such assignment and/or transfer?

2. Is it ICANN's position that NDC's application – which made no mention of Verisign's involvement, and specifically stated that its goal was to increase competition among registry operators and diminish "[c]ongestion in the current availability of commercial TLD names [which] fundamentally advantages older incumbent players" – complied with the letter and spirit of the AGB?

3. Is it ICANN's position that NDC was not required to disclose that it had assigned or otherwise transferred any of its rights as an applicant (including, without limitation, the exclusive right to operate the .WEB registry) to Verisign in exchange for Verisign's funding of NDC's bid prior to the commencement of the auction?

4. Is it ICANN's position that it fully investigated the concerns about the conduct of NDC and Verisign raised by Afilias (and other applicants) after the conclusion of the auction? If so, is ICANN willing to tell us what the investigation entailed and uncovered?

5. Did ICANN consider disqualifying NDC's application after ICANN learned that NDC had agreed to assign or otherwise transfer any rights in its application for .WEB to Verisign in exchange for Verisign's funding of NDC's bid? If so, is ICANN willing to tell us the basis of its decision not to disqualify NDC's application?

6. Is it ICANN's position that ICANN complied with its Articles of Incorporation and Bylaws in its handling of NDC's .WEB application and in its decision to enter into a .WEB registry agreement with NDC?

II. WHETHER ICANN IS WILLING TO RECONSIDER ITS POSITIONS

1. Is ICANN willing to reconsider its positions, in particular, its decision to enter a .WEB registry agreement with NDC, without Afilias having to commence an IRP?

2. Does ICANN have other ideas on how this dispute might be amicably resolved absent an IRP?

III. PROCEDURAL AND SCHEDULING ISSUES FOR AN IRP (IF NECESSARY)

1. If the CEP is unsuccessful, will ICANN, consistent with other IRPs, keep the contention set on hold pending the resolution of this IRP? Or will Afilias have to seek an emergency arbitrator to order interim relief? If the latter, will ICANN tell us when it plans to execute the .WEB registry agreement with NDC and/or Verisign?

2. If the CEP is unsuccessful, and Afilias commences an IRP, can we agree on a schedule for the submission of Afilias' IRP request (and if necessary, its request for an emergency arbitrator to order interim relief), as well as for further steps in the procedure?

Please let us know if you have any questions or comments concerning our proposed agenda. We would of course be pleased to consider additional items that ICANN would like to propose. In the meantime, we will look forward to speaking with Mr. Jeffrey next week.

Kind regards,

Alexandre de Gramont
Dechert LLP
Counsel for Afilias

From: Independent Review [mailto:independentreview@icann.org]
Sent: Thursday, July 19, 2018 4:36 PM
To: de Gramont, Alexandre <Alexandre.deGramont@dechert.com>; 'Independent Review' <independentreview@icann.org>
Cc: Ali, Arif <Arif.Ali@dechert.com>; Litwin, Ethan <Ethan.Litwin@dechert.com>; Wong, Rosey <Rosey.Wong@dechert.com>; 'Scott Hemphill' Contact Informat on Redacted
Subject: Re: [Independent Review] Afilias' Notice Invoking the Cooperative Engagement Process

Dear Mr. Gramont –
Thank you for your response.
We will schedule the CEP conference for Monday 30 July 2018 11:00am-12:00pm (Pacific time).
We will send a meeting invite to Mr. Hemphill and Mr. Ali with call-in information to follow.

Best regards,

ICANN
12025 Waterfront Drive, Suite 300

Los Angeles, CA 90094

From: Independentreview <independentreview-bounces@icann.org> on behalf of "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>
Date: Monday, July 16, 2018 at 1:31 PM
To: 'Independent Review' <independentreview@icann.org>
Cc: "Ali, Arif" <Arif.Ali@dechert.com>, "Litwin, Ethan" <Ethan.Litwin@dechert.com>, "Wong, Rosey" <Rosey.Wong@dechert.com>, 'Scott Hemphill' Contact Information Redacted
Subject: Re: [Independent Review] Afilias' Notice Invoking the Cooperative Engagement Process

Thank you for your email below. I have conferred with Messrs. Hemphill and Ali. They are both available on **Monday, 30 July between 10:00 am and 12:00 pm (Pacific time)**. Please let us know when in that time frame you would like to begin and we will plan accordingly.

Alexandre de Gramont
Partner

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alex.degramont@dechert.com
dechert.com [dechert.com]

From: Independent Review [mailto:independentreview@icann.org]
Sent: Monday, July 16, 2018 1:45 PM
To: de Gramont, Alexandre <Alexandre.deGramont@dechert.com>
Cc: Ali, Arif <Arif.Ali@dechert.com>; Litwin, Ethan <Ethan.Litwin@dechert.com>; Wong, Rosey <Rosey.Wong@dechert.com>; 'Scott Hemphill' Contact Information Redacted Independent Review <independentreview@icann.org>
Subject: Re: [Independent Review] Afilias' Notice Invoking the Cooperative Engagement Process

Dear Mr. Gramont,
Following up on my emails below regarding scheduling the CEP conference as set forth in Section 4 of the CEP.

You indicated that Mr. Ali and Mr. Hemphill were not available on 17 July 2018 10-11am (Pacific) or on 19 July 2018 11am-12pm (Pacific) – the dates and times provided below in my 6 July email.

In an effort to accommodate Afilias' schedule and to find a mutually acceptable date and time for the conference, below are additional dates and times when

Mr. Jeffrey is available for a one-hour telephonic CEP conference. Please let us know as soon as possible if Mr. Ali and Mr. Hemphill are available for these dates and times (please indicate all availability, so we can coordinate schedules).

Dates and Times:
Wed. 18 July 2018 3:00pm – 5:00pm (Pacific)
Thurs. 19 July 2018 2:00pm – 4:00pm (Pacific)

Monday 30 July 10:00am – 12:00pm (Pacific) and/or 3:00pm – 5:00pm (Pacific
Tuesday 31 July 3:00pm – 5:00pm (Pacific)
Thursday 3 August 2:00pm – 4:00pm (Pacific)

Best regards,

ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

From: Independentreview <independentreview-bounces@icann.org> on behalf of Independent Review <independentreview@icann.org>
Date: Thursday, July 12, 2018 at 5:11 PM
To: "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>, 'Independent Review' <independentreview@icann.org>
Cc: "Ali, Arif" <Arif.Ali@dechert.com>, "Litwin, Ethan" <Ethan.Litwin@dechert.com>, "Wong, Rosey" <Rosey.Wong@dechert.com>, 'Scott Hemphill' Contact Information Redacted
Subject: Re: [Independent Review] Afilias' Notice Invoking the Cooperative Engagement Process

Dear Mr. Gramont,
Unfortunately, Mr. Jeffrey is not available the week of 23 July.

He is available on the following dates and times the following week:
Monday 30 July 10:00am – 12:00pm (Pacific) and/or 3:00pm – 5:00pm (Pacific
Tuesday 31 July 3:00pm – 5:00pm (Pacific)
Thursday 3 August 2:00pm – 4:00pm (Pacific)

Please let us know if Mr. Hemphill and Mr. Ali are available on the dates and times listed above for a one hour telephonic CEP conference (please indicate all availability, so we can coordinate schedules).

Best regards,

ICANN

12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

From: Independentreview <independentreview-bounces@icann.org> on behalf of "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>
Date: Thursday, July 12, 2018 at 3:10 AM
To: 'Independent Review' <independentreview@icann.org>
Cc: "Ali, Arif" <Arif.Ali@dechert.com>, "Litwin, Ethan" <Ethan.Litwin@dechert.com>, "Wong, Rosey" <Rosey.Wong@dechert.com>, 'Scott Hemphill' Contact Information Redacted
Subject: Re: [Independent Review] Afilias' Notice Invoking the Cooperative Engagement Process

We are having trouble with both those dates and times. Would Mr. Jeffrey be available on Monday, July 23, between 8am and noon Pacific time?

Thanks, Alex

Alexandre de Gramont
Partner

Dechert LLP
1900 K Street N.W.
Washington, DC 20006
+1 202 261 3320 Direct
Contact nformation Redacted Mobile
+1 202 261 3082 Fax
alex.degramont@dechert.com
dechert.com [dechert.com]

From: Independent Review [mailto:independentreview@icann.org]
Sent: Tuesday, July 10, 2018 2:49 PM
To: Independent Review <independentreview@icann.org>; de Gramont, Alexandre <Alexandre.deGramont@dechert.com>
Cc: Ali, Arif <Arif.Ali@dechert.com>; Litwin, Ethan <Ethan.Litwin@dechert.com>; Wong, Rosey <Rosey.Wong@dechert.com>; 'Scott Hemphill' Contact Informat on Redacted
Subject: Re: [Independent Review] Afilias' Notice Invoking the Cooperative Engagement Process

Dear Mr. Gramont,
I am following up on my email below.
Could you please let us know if Mr. Hemphill and Mr. Ali are available on the dates and times listed below for a one hour telephonic CEP conference.

Best regards,

ICANN
12025 Waterfront Drive, Suite 300

Los Angeles, CA 90094

From: Independentreview <independentreview-bounces@icann.org> on behalf of Independent Review <independentreview@icann.org>
Date: Friday, July 6, 2018 at 12:07 PM
To: "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>, "'independentreview@icann.org'" <independentreview@icann.org>
Cc: "Ali, Arif" <Arif.Ali@dechert.com>, "Litwin, Ethan" <Ethan.Litwin@dechert.com>, "Wong, Rosey" <Rosey.Wong@dechert.com>, 'Scott Hemphill' Contact Information Redacted
Subject: Re: [Independent Review] Afilias' Notice Invoking the Cooperative Engagement Process

Dear Mr. Gramont,
Thank you for responding.
Mr. Jeffrey is available for a telephonic CEP conference on the following days and times:
17 July 2018 10:00am – 11:00am (Pacific time)
19 July 2018 11:00am – 12:00pm (Pacific time)

Please let us know if Mr. Hemphill and Mr. Ali are available on either of those two dates.

Best regards,

ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

From: Independentreview <independentreview-bounces@icann.org> on behalf of "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>
Date: Friday, July 6, 2018 at 10:01 AM
To: "'independentreview@icann.org'" <independentreview@icann.org>
Cc: "Ali, Arif" <Arif.Ali@dechert.com>, "Litwin, Ethan" <Ethan.Litwin@dechert.com>, "Wong, Rosey" <Rosey.Wong@dechert.com>, 'Scott Hemphill' Contact Information Redacted
Subject: Re: [Independent Review] Afilias' Notice Invoking the Cooperative Engagement Process

Thank you for your email below and we apologize for not responding sooner. Our team has been in an arbitration hearing in Paris that just finished up today. In any event, neither Mr. Ali nor Mr. Hemphill were able to attend ICANN62. We would be available for a meeting (preferably in Washington, D.C. or elsewhere on the east coast) from July 17-24 or July 30-Aug. 3. If those dates don't work, we will have to look for dates in September. Please let us know.

Kind regards,

Alexandre de Gramont
Partner

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1900 K Street N.W.
Washington, DC 20006
+1 202 261 3320 Direct
Contact nformation Redacted Mobile
+1 202 261 3082 Fax
alex.degramont@dechert.com
dechert.com [dechert.com]

-------- Original Message --------
Subject: Re: [Independent Review] Afilias' Notice Invoking the Cooperative Engagement Process
From: independentreview@icann.org
Date: Jun 20, 2018, 3:08 PM
To: "Ali, Arif" <Arif.Ali@dechert.com>,"Wong, Rosey" <Rosey.Wong@dechert.com>

Dear Mr. Ali,

This will acknowledge receipt of the email, with the attached letter, on behalf of your clients Afilias plc and Afilias Domains No. 3 Limited (collectively, "Afilias") to independentreview@icann.org on 18 June 2018, whereby Afilias initiated the Cooperative Engagement Process (CEP) regarding .WEB in advance of filing a Request for Independent Review (IRP). Pursuant to Section 3 of the CEP, ICANN has designated John Jeffrey as the Executive that will participate in the CEP that Afilias has initiated.

As Mr. Jeffrey is currently traveling to Panama, we will be contacting you in the next few days regarding your client's availability for a conference as set forth in Section 4 of the CEP, perhaps to take place at ICANN62 in Panama (please advise if Mr. Hemphill will be attending ICANN62) or soon thereafter.

Best regards,

ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

From: Independentreview <independentreview-bounces@icann.org> on behalf of "Wong, Rosey" <Rosey.Wong@dechert.com>
Date: Monday, June 18, 2018 at 12:23 PM
To: "independentreview@icann.org" <independentreview@icann.org>
Cc: "Ali, Arif" <Arif.Ali@dechert.com>, "Litwin, Ethan" <Ethan.Litwin@dechert.com>, Scott Hemphill <shemphill@afilias.info>, "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>, "Sancheti, Harsh" <Harsh.Sancheti@dechert.com>
Subject: [Independent Review] Afilias' Notice Invoking the Cooperative Engagement Process

Dear ICANN:

Please find attached a letter on behalf of Afilias plc and Afilias Domains No. 3, initiating the Cooperative Engagement Process with ICANN pursuant to Article 4, Section 4.3(e) of the ICANN Bylaws. The exhibits accompanying the letter can be downloaded at: https://dechert.box.com/s/hguexsi6nj99bvtx4grlq7mw5ex14epq [dechert.box.com].

We would be grateful if you acknowledge receipt.

Sincerely,
Rose Marie Wong

Rose Marie Wong
Associate

Dechert LLP
+1 215 994 2052
rosey.wong@dechert.com
dechert.com [dechert.com]

This e-mail is from Dechert LLP, a law firm, and may contain information that is confidential or privileged. If you are not the intended recipient, do not read, copy or distribute the e-mail or any attachments. Instead, please notify the sender and delete the e-mail and any attachments. Thank you.

This e-mail is from Dechert LLP, a law firm, and may contain information that is confidential or privileged. If you are not the intended recipient, do not read, copy or distribute the e-mail or any attachments. Instead, please notify the sender and delete the e-mail and any attachments. Thank you.

EXHIBIT 316

Dechert LLP

Ex. 316

1900 K Street NW
Washington DC 20006 1110
+1 202 261 3300 Main
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www dechert com

ARIF HYDER ALI

arif ali@dechert com
+1 202 261 3307 Direct
+1 261 261 3079 Fax

November 20, 2018

VIA E-MAIL

ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094
independentreview@icann.org

Re: "On Hold" Status of the .WEB Contention Set

Dear ICANN:

We write with reference to your email of 14 November 2018 in which you set out ICANN's position regarding the "on hold" status of the .WEB contention set. Specifically, in response to Afilias' request that ICANN continue to maintain the hold status on the .WEB contention set, you state: "If Afilias does not file its request for emergency interim relief with the ICDR on or before 27 November 2018, the .WEB contention set will be taken off the "on hold" status. If Afilias does file its request for emergency interim relief with the ICDR on or before 27 November, the status of the .WEB contention set will remain "on hold" until the parties receive a decision from the IRP panel regarding the interim relief request."[1]

First, consistent with ICANN's policy mandate and past practice, given that Afilias has commenced an ICANN accountability process, the .WEB contention set must remain on hold. As the emergency arbitrator noted in the Donuts IRP regarding .SPORTS: "In other words, a deal is a deal. If claimant is entitled to a prompt, efficacious, and thorough independent review process, why has it had to file the present request for emergency relief . . .?"[2] The .AFRICA panel raised similar concerns, agreeing that the claimant in that IRP had a "procedural right" to an IRP conducted "with legitimacy and integrity, with the capacity to provide a meaningful remedy."[3] We note that ICANN voluntarily placed the .SPORTS contention set on hold in light of the concerns of, and issues identified, by the emergency arbitrator in that IRP.

---

[1] Email from ICANN to A. Ali (14 Nov. 2018).

[2] *Donuts Inc. v. ICANN*, ICDR Case No. 01-14-0000-1579, Procedural Order No. 2 (10 Nov. 2014), p. 2.

[3] *See DotConnectAfrica (DCA) Trust v. ICANN*, ICDR Case No. 50-117-T-1083-13, Decision on Interim Measures of Protection (12 May 2014), ¶¶ 19, 27, 47.

Second, ICANN is required by its Bylaws to apply its policies and make decisions consistently, neutrally, objectively, and fairly, and to not single out any particular party for discriminatory treatment. ICANN is also obligated to act transparently. Absent a clear justification by ICANN as to why the contention set's status must be changed, ICANN cannot simply at its whim decide the status of the contention set. Specifically, there is nothing to suggest that the removal of the hold status is either urgent or necessary here. To the contrary, should ICANN seek to delegate .WEB to Afilias' competitor, ICANN would needlessly create an urgent situation making the grant of interim measures necessary under international law, as was the case in the .AFRICA IRP. As that panel reasoned: if a stay was not ordered there, "the chances for [claimant] having its Request for an independent review heard and properly considered will be jeopardized."[4]

If there are, in fact, compelling reasons as to why the contention set must be removed from the on hold status, including circumstances of urgency and necessity (which ICANN must disclose to the contention set, if they in fact exist), then it is for ICANN to seek emergency interim relief and not Afilias. ICANN cannot artificially and opaquely create circumstances of urgency, and place the onus on (i.e., force) an applicant to unnecessarily seek emergency relief.

Third, as ICANN well knows, a panel will be constituted in short order in the IRP commenced by Afilias. This is certainly achievable if ICANN cooperates with Afilias in establishing an efficient procedural framework for the IRP. Once the panel is constituted, ICANN can determine whether to seek an early ruling from the panel as to whether it has the right to change the status of the contention set.

Fourth, instead of proceeding in an objective, fair, transparent, non-discriminatory, and efficient manner, should ICANN decide to change the on hold status of the .WEB gTLD and proceed to conclude a registry agreement with NDC/VeriSign and with the delegation of the gTLD, ICANN will be intentionally causing significant harm to Afilias. Afilias will assert all of its rights and remedies against ICANN in all available forums.

Finally, we request immediate disclosure by ICANN of the documents listed below, all of which must be provided to Afilias by 23 November 2018. Subject to our position above, Afilias considers that there can be no obligation on its part, if one exists at all (which we reject), to seek emergency interim relief until ICANN has disclosed the relevant documents.

- All documents relevant to the status of the delegation of the .WEB gTLD, including internal ICANN communications and communications between (1) ICANN and (2) either or both of NDC and VeriSign, including, but not limited to,

[4] *Id.* at ¶ 45.

(a) negotiation of a registry agreement concerning .WEB, (b) pre-delegation testing for the .WEB registry, and (c) Afilias' invocation of CEP concerning .WEB, the conduct of CEP concerning .WEB, and Afilias' request for IRP concerning .WEB.

- Documents sufficient to show that there are in fact underlying circumstances of urgency and necessity sufficient to justify taking the .WEB contention set off hold and forcing Afilias to file a request for emergency relief.

- All documents, including internal memoranda and policy positions, addressing ICANN's decisions to place a contention set on hold or to take a contention set off the "on hold" status. In this regard, we request that ICANN provide any and all documents, including internal emails and memoranda, relating to the justifications as to why a specific gTLD contention set was put on hold or was taken off the "on hold" status. This request includes all documents related to ICANN's decision to put the .WEB contention set on hold pending the .WEBS IRP concerning Vistaprint's application.

We find it astonishing that we are still in the position of having to make the above requests—notwithstanding our repeated inquiries for the most basic information about the status of the contention set.

Sincerely,

Arif Hyder Ali

Partner