

INDEPENDENT REVIEW PROCESS
INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

ICDR Case No. 01-14-0001-5004

In the matter of an Independent Review

DOT REGISTRY, LLC,

Claimant

And

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS,

Respondent

PROCEDURAL ORDER NO. 3

Independent Review Panel:

May 4, 2015

The Honorable Charles N. Brower

Mark Kantor

M. Scott Donahey, Chair

1. Subject to the execution of the Confidentiality and Non-Disclosure Undertaking described in Paragraph 8 below and set out in Annex A, attached hereto, no later than May 18, 2015, the Internet Corporation for Assigned Names and Numbers ("ICANN") shall produce to the Panel and Dot Registry, LLC ("Dot Registry") all documents responsive to the Panel's directive as set out in Section 2 of Amended Procedural Order No. 2. The documents produced to Dot Registry may be redacted only as to exclude pricing information or information pertaining to the geographic names review, and ICANN shall label the redacted information accordingly (e.g., "confidential pricing information redacted"). The documents that ICANN produces to the Panel shall be unredacted and shall indicate the portions of the documents that have been redacted in the production made to Dot Registry and the reasons given for such redactions.
2. The Panel notes that the Panel sought *inter alia* all non-privileged communications and other documents within ICANN's possession, custody or control referring or describing:
 - (a) The engagement by ICANN of the EIU to perform Community Priority Evaluations. That request covers internal ICANN documents and communications, not just communications with the EIU, referring to or describing the subject of the Panel's request (the engagement to perform Community Priority Evaluations).
 - (b) The work done and to be done by the EIU with respect to the Determination of the ICANN Board of Governance Committee on Dot Registry's Reconsideration Request. That request again covers internal ICANN documents and communications, not solely communications with EIU, referring to or describing the subject of the Panel's request (the work done and to be done by the EIU with respect to the Determination), as well as the work-product itself in its various draft and final iterations.
 - (c) Consideration by ICANN of the work performed by the EIU in connection with Dot Registry's applications. That request again covers internal ICANN documents and communications, not solely communications with the EIU, referring to or describing the subject of the Panel's request (consideration by ICANN of the work performed by the EIU).

- (d) Acts done and decisions taken by ICANN with respect to the work performed by the EIU in connection with Dot Registry's applications. That request again covers internal ICANN documents and communications, not solely communications with the EIU, referring to or describing the subject of the Panel's request (both acts done and decisions taken by ICANN with respect to the EIU work.).

The Panel notes that in Section 2 of its Amended Procedural Order No. 2 material provided by ICANN to the Panel, but not yet to Dot Registry, appears not to include, among other matters, internal ICANN documents and communications referring to or describing the above subject matters that the Panel would have expected to be created in the ordinary course of ICANN in connection with these matters. It may be that the Panel was less than clear in its requests. The Panel requests that ICANN consider again whether the production was fully responsive to the foregoing requests.

3. The production shall include names of EIU personnel involved in the work contemplated and the work performed by the EIU in connection with Dot Registry's applications for .INC, .LLC, and/or .LLP with respect to Dot Registry's Reconsideration Requests Nos. 14-30 (.LLC), 14-32 (.INC), and 14-33 (.LLP), dated July 24, 2014, in that such information may be relevant to the requirements of Sections 2.4.2, 2.4.3, 2.4.3.1, and 2.4.3.2 of Module 2 of the Applicant Guidebook. The Panel expects strict compliance by Dot Registry and its counsel with Paragraph 8 of this Order and the Confidentiality and Non-Disclosure Undertaking procedure set forth therein and in Annex 1 attached hereto.
4. Not later than June 8, 2015, Dot Registry shall be entitled to make an additional written submission, to which shall be appended the witness statements, expert reports and other relevant and material evidence on which Dot Registry relies. Without limiting such matter as Dot Registry may choose to address therein, that written submission shall (a) identify with specificity the material disputed matters of fact, if any, at issue in this proceeding, (b) identify with specificity its allegations under ICANN Bylaws Art. IV, Sections 3.1 and 3.2, if any, that ICANN has failed to comply with its obligations under paragraph 4 of the ICANN Articles of Incorporation, and (c) discuss the standard to be applied by this Panel in resolving any such allegations to the extent the allegation does not fall within the scope of the standards of review mentioned in ICANN Bylaws Art. IV, Section 4 or Supplementary Procedures Paragraph 8.
5. Not later than June 29, 2015, ICANN shall be entitled to make an additional written submission, to which shall be appended the witness statements, expert

reports and other relevant and material evidence on which ICANN relies, replying to Dot Registry's additional submission referred to in paragraph 3, above. Without limiting such matters as ICANN may choose to address therein, that written submission shall (a) identify with specificity the material disputed matters of fact, if any, at issue in this proceeding, (b) address any specific allegations made by Dot Registry under ICANN Bylaws Art. IV, Sections 3.1 and 3.2, if any, that ICANN has failed to comply with its obligations under Paragraph 4 of the ICANN Articles of Incorporation, and (c) discuss the standard to be applied by this Panel in resolving any such allegation by Dot Registry to the extent such allegation does not fall within the scope of the standards of review mentioned in ICANN Bylaws Art. IV, Section 4 or Supplementary Procedures Paragraph 8.

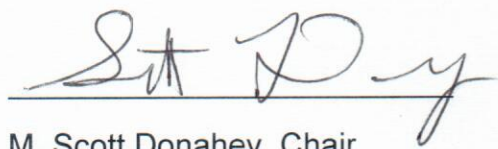
6. The Panel shall advise the parties (a) promptly after receipt of the documents referred to in Paragraphs 1, 2, and 3, above, as to page limits, if any, for the written submissions referred to in Paragraphs 4 and 5, above, and (b) promptly after receipt of ICANN's written submission referred to in Paragraph 5, above, as to whether the Panel would find an additional round of written submissions useful.
7. The Panel defers ruling on Dot Registry's request for authorization to make document production requests and Dot Registry's request for an in-person hearing until after completion of the steps specified in Paragraphs 1 through 5, above and of any further step ordered by the Panel as provided in Paragraph 6(b), above.
8. CONFIDENTIALITY
 - a. Documents exchanged by the parties or produced to the Panel at the Panel's directive which contain confidential information:
 - i. May not be used for any purpose other than participating in ICDR Case No. 01-14-0001-5004, and;
 - ii. May not be referenced in any, and any information contained therein must be redacted from any, written submissions prior to public posting.
 - b. All counsel, paralegals, and employees engaged by the law firm representing a party who is the recipient of confidential information as set out in subparagraph a, above, and who as part of their work handle or otherwise work with such confidential information, and the principals of the party who is

the recipient of such confidential information shall each execute a Confidentiality and Non-Disclosure Undertaking in the form attached hereto as Annex 1.

9. The parties are directed to meet and confer and attempt to agree on the meaning of the term "local law," as contained in Article 4 of ICANN's Articles of Incorporation and to advise the Panel of the nature of any such agreement. If by May 15, 2015, the parties have been unable to agree on the meaning of "local law," then, no later than May 20, 2015, each party shall submit to the Panel a letter brief of no more than five pages presenting its position as to the meaning of "local law" and the authorities therefor.

10. The parties are directed to meet and confer and attempt to agree that in circumstances where a provision of the ICANN By-Laws may be found to be inconsistent with a provision of the ICANN Articles of Incorporation, whether the provision of the ICANN By-Laws or that of the ICANN Articles of Incorporation is to prevail, and to advise the Panel of the nature of any such agreement. If by May 15, 2015, the parties have been unable to agree on which provision is to prevail, then, no later than May 20, 2015, each party shall submit to the Panel a letter brief of no more than three pages presenting its position as to the provision that should prevail and the authorities therefor.

On behalf of the Panel

A handwritten signature in cursive script, appearing to read "M. Scott Donahey", written over a horizontal line.

M. Scott Donahey, Chair

ANNEX 1

CONFIDENTIALITY AND NON-DISCLOSURE UNDERTAKING

This Confidentiality and Non-Disclosure Undertaking is given to the Independent Review Panel in the matter of an Independent Review Proceeding between Dot Registry, LLC and the Internet Corporation for Assigned Names and Numbers, ICDR Case No. 01-14-0001-5004. I acknowledge that as part of my work on or participation in this proceeding I will be given access to information that is of a personal, confidential, and/or proprietary nature which has been designated as "CONFIDENTIAL."

I therefore agree:

1. To hold all CONFIDENTIAL information in trust and strict confidence and agree that shall be used only for the purposes of this IRP Proceeding and shall not be used for any other purpose, or disclosed to any third party.
2. To keep any CONFIDENTIAL information in my control or possession in a physically secure location to which only I and other persons who have signed a Confidentiality and Non-Disclosure Undertaking have access.
3. To take all necessary steps to keep such CONFIDENTIAL information secure and to protect such CONFIDENTIAL information from unauthorized use, reproduction or disclosure.
4. To maintain the absolute confidentiality of personal, confidential and proprietary information in recognition of the privacy and proprietary rights of others at all times, and in both professional and personal situations.
5. To comply with all privacy laws and regulations which apply to the collection, use, and disclosure of personal information.
6. At the conclusion of the IRP Proceedings or upon order, to return all confidential information, including code, written notes, photographs, sketches, memoranda, or notes taken in any format to whomever gave me access to such CONFIDENTIAL information, who in turn will see that it is returned to the party who provided such information.
7. Not to disclose CONFIDENTIAL information to any employee, consultant, or third party, unless he or she is authorized to, has agreed to, and has executed this Confidentiality and Non-Disclosure Undertaking and has been approved by the IRP Panel in its official capacity to possess such CONFIDENTIAL information.

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I understand that this Confidentiality and Non-Disclosure Undertaking survives the termination of ICDR Case No. 01-14-0001-5004.

The laws of the State of California shall govern this Agreement and its validity, construction and effect.

I fully understand and accept the responsibilities set out above relating to CONFIDENTIAL information.

Name: _____

Email Address: _____

Signature: _____ Date: _____

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