

**INTERNATIONAL CHAMBER OF COMMERCE
INTERNATIONAL COURT OF ARBITRATION**

EMPLOY MEDIA LLC,)	
)	
Claimant,)	
)	
v.)	Case No. 17917/VRO
)	
INTERNET CORPORATION FOR)	
ASSIGNED NAMES AND NUMBERS)	
)	
Respondent.)	
)	

WITNESS STATEMENT OF MR. GARY RUBIN

I. Professional Background

1. My name is Gary Rubin. I am a citizen of the United States, and I live in the Commonwealth of Virginia. I am the Senior Vice President of Publishing and E-Media for the Society for Human Resource Management (“SHRM”). My business address is 1800 Duke Street, Alexandria, Virginia 22314. This statement is based on my personal knowledge and understanding, unless otherwise stated.

2. I received my bachelor’s degree from The State University of New York at Buffalo in 1983. After graduating, I worked in various industries, largely focusing on media, for a number of years. In May of 2002, I accepted the position of SHRM’s Vice President of Publishing.

3. I came to SHRM, in part, because I was excited about working for an organization with a mission that could positively impact millions of employees around the world. My job responsibilities have included overseeing SHRM’s publishing operations, sales, and some external relationships. SHRM’s publishing operations include the monthly publication of HR Magazine, as well as twelve or more books a year relating to human resources (“HR”).

Additionally, I oversee the editorial content of SHRM's website, including the job board SHRM operates for the recruitment of human resource personnel. I also supervise SHRM's retail sales, SHRM's use of social media (such as "HR Talk" and "SHRM Content"), and the content of SHRM's webcasts and e-learning products.

4. From 2002 until the present, I have also been a Chief or Senior Vice President and part of the team that is responsible for the overall operation of SHRM. In addition, from 2003 to 2005, I served on SHRM's Special Expertise Panel on Consultants and Outsourcing, a panel that advised and assisted SHRM on trends and developments in those human resource areas.

Although I was not an expert in that field when I began serving on that panel, I helped facilitate the work of the experts, and I had to learn and understand the issues in order to do this work effectively. I have also been responsible for, at various times in accordance with SHRM's needs, building an affinity program for SHRM, which leverages our membership to provide our members with discounts for goods and services sold by other entities; selling and licensing SHRM content to allow re-publication and other uses; and pursuing potential merger and acquisition opportunities for the company.

5. As part of my regular duties within my role as Senior Vice President, I have also been tasked with coordinating SHRM's role as the sponsoring organization for the .JOBS sponsored Top-Level Domain ("sTLD"). It is that role that is the focus of my testimony presented below.

II. SHRM Background

6. SHRM is a not-for-profit corporation under the laws of Ohio with its headquarters in Virginia. It is the world's largest organization representing the interests of human resource professionals, with nearly 600 chapters around the world and more than 260,000 individual members. We help our members connect with colleagues around the country and around the

world. We also provide them with content—updating them on research, trends, best practices, and other information that helps them do their jobs in the human resource profession.¹ In total, we have approximately 350 employees, located primarily in Alexandria, Virginia, but SHRM also has offices, through subsidiaries, in India (Mumbai, Bangalore, and Delhi) and Beijing, China. SHRM’s breadth and size is also demonstrated by its annual revenue, which exceeds \$100 million. That revenue comes primarily from membership dues, publications, advertising, royalties, conferences and seminars. As a not-for-profit corporation, all of the revenues we receive are devoted to SHRM and SHRM activities (including the activities I have briefly described above, as well as, for example, the awarding of grants and scholarships).

7. SHRM is an individual membership organization. This means that a company, like Apple, is not a member of SHRM. However, employees of Apple can become SHRM members. SHRM’s membership is diverse. It includes individuals who have “HR” in their title, consultants to the human resource industry, students, professors, and individuals from companies that create products that the human resource industry buys or uses. Approximately fifty percent of SHRM’s members work in organizations with more than 500 employees, and approximately thirty-five percent of SHRM’s members are in manufacturing or service industries.²

8. SHRM’s mission includes in pertinent part (1) building and sustaining partnerships with human resource professionals, media, governments, non-governmental organizations, businesses and academic institutions to address people management challenges; (2) providing a community for human resource professionals to share expertise and innovative solutions to people management issues; (3) proactively providing thought leadership, education

¹ Society for Human Resource Management, *available at* <http://www.shrm.org/about/Pages/default.aspx> (last visited 26 June 2012), C-139.

² *Id.*

and research to the human resource field; and (4) serving as an advocate to ensure that policy makers, law makers, and regulators are aware of key people concerns facing organizations.³

9. SHRM also identifies emerging issues of importance in the human resource field and drafts public policy statements addressing these issues. Often, these statements are supported by survey research gathered from SHRM members by the SHRM research team or by insights gained from “public policy focus groups” convened at SHRM national conferences or regional gatherings. SHRM has issued public policy statements on employment verification, health care benefits, and workplace safety, among other issues.⁴

III. SHRM’s Decision to Serve as the .JOBS Sponsoring Organization

10. In late 2002, I was approached by Ray Fassett about his idea for a sponsored top-level domain for the human resource and employment field. He believed that an internet space for human resource professionals could be created using a “sponsored TLD.” He explained generally that a sponsored top-level domain was a specialized TLD that had a sponsoring organization and was organized to benefit a specific community. We discussed his idea in general terms. The proposed sTLD would be a specific place on the internet for employers and job seekers to find each other and interact. As the sponsoring organization, SHRM would be the entity that sets the policies for the .JOBS sTLD. I felt SHRM would be well-suited for such a role, given its vast national and international human resource expertise and experience, knowledge of the human resource community, and diverse membership. I was interested in Mr. Fassett’s idea because I thought it would give the human resource professional community

³ Society for Human Resource Management, History and Mission, *available at* <http://www.shrm.org/about/history/Pages/default.aspx> (last visited 26 June 2012), C-137.

⁴ Society for Human Resource Management, Public Policy Position Statements, *available at* <http://www.shrm.org/Advocacy/PublicPolicyStatusReports/Federal/Pages/default.aspx> (last visited 26 June 2012), C-138.

another method to reach job seekers. I also thought that .JOBS could help job seekers and employers using the Internet find one another more efficiently.

11. Following our first discussion in late 2002, Mr. Fassett and I had a number of further conversations about the project. Among other things, Mr. Fassett told me he had the financial support of Mr. Tom Embrescia, the chairman of Second Generation, Ltd. After conducting research, I was convinced that Mr. Embrescia and Second Generation Ltd. had the experience and financial means to make the proposed .JOBS sTLD successful. I discussed the .JOBS sTLD idea with SHRM's then-CEO, who eventually approved SHRM's involvement as the sponsor and policy delegate for .JOBS.

IV. SHRM's Role as the Sponsor and Policy Delegate for .JOBS

12. Mr. Fassett and his team prepared and submitted the application to ICANN to be the registry operator for .JOBS. As part of that process, I directly communicated with Mr. Fassett regarding, and SHRM ultimately accepted as a basis for going forward, the wording of the .JOBS Charter that was submitted with the application. It is our understanding that the application and review process lasted a little over a year. On May 5, 2005, ICANN and Employ Media signed the .JOBS registry agreement, which allowed Employ Media to operate the .JOBS domain. That agreement included a section in which ICANN delegated "the following areas of responsibility for development of policies for the Sponsored TLD . . . to the Registry Operator [Employ Media], who has engaged The Society for Human Resource Management as policy delegate. . . ."⁵ There were nineteen delegated powers on the list, including but not limited to:

- Establishment of naming conventions to be used in the Sponsored TLD.

⁵ .JOBS Registry Agreement, Appendix S, Part II, 5 May 2005, *available at* <http://www.icann.org/en/tlds/agreements/jobs/appendix-S-05may05.htm#Part4>, C-19 (" .JOBS Registry Agreement").

- Restrictions on what types of people or entities may register Registered Names (which need not be uniform for all names within the Sponsored TLD), provided the scope of the Charter (Attachment 1) is not exceeded.
- Restrictions on how Registered Names may be used (which need not be uniform for all names within the Sponsored TLD), provided the scope of the Charter (Attachment 1) is not exceeded.
- Terms of agreement between Registry Operator, registrars and registrants under which Registered Names are registered.
- Uses and practices by registrants with respect to Registered Names.
- Terms of agreement between or among Registry Operator, registrars, and registrants necessary to give effect to the above.
- Authorization to initiate the .jobs Policy Development Process (PDP) in place between the Registry Operator and the policy delegate, currently the Society for Human Resource Management, and to enact such policies produced by the PDP.⁶

13. The registry agreement also contained the .JOBS Charter. As I noted already, I had directly communicated with Mr. Fassett regarding, and SHRM ultimately accepted as a basis for going forward, the wording of the .JOBS Charter.

14. The Charter describes the purpose of the TLD, namely, “to serve the needs of the international human resource community (the ‘Community’).” The “Community” consists of “those persons who deal with the human element in an organization—people as individuals and groups, their recruitment, selection, assignment, motivation, compensation,” and so on.⁷ The Charter provides that Employ Media would manage the .JOBS TLD and that SHRM would act as the policy delegate “responsible for establishing registration requirements for second-level domains in the .JOBS TLD, consistent with this Charter and in the interests of the Community.”⁸ At the outset of this venture, SHRM did not know with any precision how effective the .JOBS

⁶ *Id.*

⁷ *Id.* at Appendix S, Part III.

⁸ *Id.* at Appendix S, Part I.

TLD would become as an additional tool for the Community. From SHRM's perspective, the Charter was intended to act as a "fence" of sorts, circumscribing and limiting the use and management of the TLD solely for the benefit of the Community, while at the same time allowing for later changes in approach, if appropriate, within the "fence." As discussed below, SHRM believed that the expansion of name categories in the TLD at issue in this arbitration falls well within the fence.

15. As stated in the Charter, SHRM's role is to act as the policy delegate.⁹ In doing so, SHRM is obligated to act independently of Employ Media and at all times to act in the interest of the Community defined in the .JOBS Charter. As part of its role as policy delegate, SHRM is responsible for the Policy Development Process, the process through which new policies, changes to existing policies, or changes to the .JOBS Charter are evaluated.¹⁰

V. SHRM'S Policy Development Process

A. Circumstances Leading to the 2010 Policy Development Process

16. In late June 2005, .JOBS launched, selling registrations for company names followed by ".JOBS" (*e.g.* ATT.JOBS). SHRM and Employ Media decided to begin with company names because we thought it was the best way for .JOBS to facilitate early adoption by employers, to reach a wide audience, and to gain recognition. We were, in effect, building a planned community, that is, another location in which HR professionals and their companies could reach consumers in search of jobs, while at the same time creating a useful and recognizable method for those consumers to search for and seek employment at a specific company. The <companyname.jobs> approach seemed like the most appropriate way to

⁹ *Id.* at Appendix S, Part I; *id.* at Appendix S, Part VII.3.

¹⁰ *Id.* at Appendix S, Part II; *id.* at Appendix S, Part VII.3.

accomplish these initial goals and to build a critical mass. We worked with Employ Media to incorporate the rules into the registration process to support this initial approach.

17. As .JOBS developed, Employ Media expressed its desire on several occasions to expand the types of names available within the .JOBS domain. It suggested use of non-company names as websites on the Internet as an additional if not better way to serve the needs of the Community. In 2009, I felt that this evolution in approach made sense, particularly given the changes in social media, such as the increased use of Craig's List, LinkedIn and other similar vehicles for HR interaction, and our desire for the .JOBS sTLD to gain more traction.

18. Employ Media then began working with DirectEmployers Association, a non-profit association also serving the needs of employers, to launch a series of websites. For example, a user could search for accounting jobs at www.accounting.jobs or jobs in a particular city, New York, for example, by going to www.newyork.jobs. I was not involved in this initiative by Employ Media, because I did not consider the day-to-day management of the TLD to be within the scope of SHRM's responsibility or obligations. Nevertheless, I learned that DirectEmployers constructed websites which provided organized listings of job vacancies, and that Employ Media viewed this as a beta test for the concept of noncompanynames.JOBS.

19. Toward the end of 2009, ICANN conducted a "contractual compliance review" of the .JOBS domain. I was informed that ICANN took the position that .JOBS could not use non-company names without first following the Policy Development Process ("PDP") outlined in the Employ Media registry agreement. Although SHRM did not necessarily agree with ICANN's analysis, we cooperated with Employ Media's request, based upon ICANN's instruction, to begin a Policy Development Process.¹¹

¹¹ See Email from Gary Rubin to Kurt Pritz, 24 Feb. 2010, C-53.

B. SHRM's 2010 Policy Development Process for the .JOBS Expansion

20. SHRM has authority to create a Policy Development Council (“Council”). The Council members are chosen to represent the varied interests and perspectives of the Community, as defined in the Charter, including small and large employers, union employers, non-union employers, government employers, private employers, international employers, academic employers, service employers, manufacturing employers, high technology employers, and recruitment and staffing companies. Each Council also has a Staff Manager, who handles administrative duties relating to the Council, but does not vote on the proposal.¹²

21. Any member of the Community, SHRM, or Employ Media may submit a policy proposal. When proposals go to the Council, the Staff Manager prepares an Issue Report for the Council to consider. The Issue Report describes the proposal, the party submitting the proposal, and how the party will be affected by the proposal. Within forty-five days of receiving the Issue Report, the Council meets to approve, reject, or appoint a task force to gather additional information regarding the proposal. Approved proposals must also be accepted by the SHRM Executive Committee and by Employ Media. Rejected proposals may be revised and resubmitted. Or, if the proposal is accepted by the Council but rejected by either SHRM or Employ Media, the submitter may seek reconsideration.¹³

C. First 2010 PDP

22. Based on ICANN's instructions and Employ Media's request, SHRM began a PDP in February 2010. The PDP Council received four Proposed Amendments and four Issue

¹² .JOBS Registry Agreement, Appendix S, Part VII, C-19.

¹³ *Id.*

Reports,¹⁴ corresponding to each of Employ Media's proposals. Employ Media sought approval for:

- 1) the registration and use of two-character domain names;
- 2) the registration and use of geographic domain names;
- 3) the registration and use of industry and occupational identifiers; and
- 4) the registration of dictionary and non-company domains names.

The Issue Reports and Proposed Amendments noted that such names had been used in the beta, and that, if approved, it was likely that a third party would be providing similar content throughout similar sites. We understood that these proposals were intended to permit other proposals similar to uses employed by DirectEmployers Association – including, specifically, the registration of non-company names within the .JOBS domain that in my expectation would likely be used to list multiple employers' jobs on one site or a variety of sites.

23. On March 4, 2010, the PDP Council met. This particular Council was made up of nine members representing the interests of large, small, government, education, and union employers, as well as employment firms—all members of SHRM. Bill Warren, the CEO of DirectEmployers, and also a member of SHRM, served as the Staff Manager. As Staff Manager, Mr. Warren served an administrative role and distributed Issue Reports, prepared a responsive report, and organized and directed discussions. Mr. Warren did not vote on the proposed amendments. At the conclusion of the discussion on March 4th, the PDP Council, with one member abstaining, voted unanimously to approve the amendments.

24. After the first PDP concluded, I spoke with Peter Weddle, a member of the PDP Council who opposed the .JOBS expansion and abstained on the vote. Although he informed me

¹⁴ Bill Warren, .JOBS Issues Report, 15 Feb. 2010, *available at* <http://www.goto.jobs/4%20Issues%20Reports.pdf>, C- 51.

that he thought that the Council's process had been fair, as did others on the PDP with whom I consulted, Mr. Weddle also believed that the first PDP had the appearance of lacking impartiality. He noted that Mr. Warren, the CEO of DirectEmployers, was Staff Manager and that other members of the Council were already supportive of the beta test that Mr. Warren's company had previously implemented. After carefully considering Mr. Weddle's comments, I concluded that we needed to avoid even the appearance of a lack of impartiality. Accordingly, I decided that it would be best to have a second PDP, without Mr. Warren being involved, and with several new members to the Council. I informed Employ Media that we would be conducting a second PDP under these new conditions. Employ Media was not enthusiastic about my decision, but, nonetheless, understood that this was SHRM's call to make.

D. Second PDP

25. The SHRM Issue Report of March 2010¹⁵ described the proposed amendment for non-company names. The proposed amendment sought to amend any "policies, practices or business rules" that would prevent Employ Media from provisioning, allocating, registering (to third parties or itself), or using non-company domain names, including industry, occupational, geographic, dictionary terms and two-character names.¹⁶ Again, I understood this proposal, if approved, would permit for the possibility of a continuation of the use of the TLD that DirectEmployers had commenced, or something similar: the registration of non-company names (occupational, industry, dictionary, and geographic terms) to be used to list multiple employers' jobs on a single TLD.

¹⁵ Society for Human Resource Management, .JOBS Issue Report, Mar. 2005, *available at* http://www.policy.jobs/files/All_Issues_Reports2.pdf, C-55 ("SHRM Issue Report"). The Issue Reports from the first and second PDPs are substantively very similar. The primary difference is the Issue Report SHRM distributed in the second PDP consolidated the four Issue Reports Bill Warren distributed in the first PDP.

¹⁶ Notice of Decision on Employ Media Proposed Amendment Concerning .JOBS TLD at 2, 3 June 2010, *available at* <http://www.policy.jobs/>, C-116("Notice of Decision").

26. Meanwhile, I began putting together a new PDP Council. I decided that I would serve as the Staff Manager. It was also important to me that this PDP Council reflect a wide variety of views and viewpoints. I made sure to involve Peter Weddle in the selection of Council members, in order to ensure that the PDP included a member that would represent the interests of job board operators. As before, the Council also included various representatives of the Community, including government, private industry, and educational employers. All Council members were members of SHRM.

27. On March 30, I provided the PDP Council with the materials they would need to consider the amendments.¹⁷ The first of those documents explained the Council's role: "evaluating the substance of each proposed amendment and providing a recommendation (Approval or Disapproval) to SHRM and Employ Media."¹⁸ The document also provided a copy of the .JOBS Charter and the PDP rules. The SHRM .JOBS Issue Report explained that Employ Media was seeking to introduce the registration and use of non-company names and specifically noted that Employ Media likely intended to reinstate the beta, that is, the network of websites providing multiple employer job postings (*i.e.*, job boards) that DirectEmployers had managed and launched earlier in the year:

Employ Media desires, among other things, to use non-"companyname" .jobs domain names. Non-"companyname" domains are domains which are not allocated under Employ Media's "companyname" naming convention, *i.e.* Ford.jobs or Sony.jobs. The domains that Employ Media would like to make available include industry, occupational, geographic, dictionary, and two-character domains. 1) **industry names:** these are domains which identify or describe an industry or occupation, such as nursing.jobs or accountant.jobs; 2) **geographic names:** are

¹⁷ Society for Human Resource Management, Your Role and SHRM's Role Governing .JOBS Top Level Domain Policy, 30 Mar. 2010, C-140("SHRM Your Role Paper"); SHRM .JOBS Issue Report, C-55; Brian Johnson, Employ Media Proposed Amendment, 16 Mar. 2010, C-59(Employ Media Proposed Amendment").

¹⁸ SHRM Your Role Paper at 1, C-140.

domains which identify a geographic area, such as Cleveland.jobs, ohio.jobs or unitedstates.jobs; 3) **dictionary term domains:** are domains which are words or phrases which are contained in a dictionary, such as best.jobs; and 4) **two-character names:** these are domains with only two characters, such as A1.jobs, or UK.jobs. Permission to use combination names such as clevelandnursing.jobs is also sought. . .

. . .

In the immediate sense, it appears that Employ Media would potentially accept (but would not be required to accept) requests for proposals for allocating/using non-“companyname” domains, and would likely continue a previously launched, and recently ceased, shared domain beta test in some form or fashion consistent with the terms of this proposed amendment and the .jobs Charter.¹⁹

28. Also included in the package to the PDP Council was Employ Media’s Proposed Amendment,²⁰ which included the proposal to facilitate the use of non-companyname domain names. The proposal specifically noted that:

Approval of the proposed amendment confirms that Employ Media has the authorities identified above. Such authority is broad enough to cover the workings of the shared domain beta test, and Employ Media would likely restart the shared domain beta.²¹

There was no ambiguity or confusion within SHRM or the PDP Council: Employ Media was asking for a policy that would allow non-company names (industry, geographic, dictionary, and two-character) that could potentially, and would likely, be used as job boards on which multiple employers would be able to list jobs in accordance with the type of second level domain names being requested for approval.

29. In the initial meeting of the PDP Council on April 9, 2010, the members were reminded that they were not to make decisions based on individual business interests, but rather

¹⁹ SHRM .JOBS Issue Report at 1-2, C-55. (Bold in original).

²⁰ The term “Proposed Amendment” refers to “new policies and/or changes to current policies and/or the Charter.” See Society for Human Resource Management, Policy Development Process for .JOBS, available at <https://www.shrm.org/about/copyrightpermissions/Pages/default.aspx> (last visited 2 Aug. 2012), C-132.

²¹ Employ Media Proposed Amendment at 2, C-132.

each person was to consider the interests of the Community as a whole.²² The discussion that day was far-ranging: the Council discussed the .JOBS Charter and general purpose of the .JOBS sTLD; Employ Media's and ICANN's history; and the merits of the proposal itself.²³ From the first day, the Council understood that the requested change could result in job boards.²⁴ Ultimately, the PDP Council decided that it needed to gather additional information and discuss the issue further.²⁵

30. The PDP Council met for a second time on April 15, 2010.²⁶ The main goal of the meeting was to discuss methods of obtaining input from the Community regarding the proposed amendment. Accordingly, the PDP Council decided to solicit formal research from the Community regarding the proposed amendment using SHRM's research team.²⁷ After this meeting, I accepted questions from the PDP Council to be sent to SHRM's research team. Additionally, I forwarded a number of additional questions from the PDP Council to Employ Media.²⁸ The questions mostly sought general information about how TLDs and sTLDs work and operate, how domain names are registered, and how other sTLDs were managed. The PDP Council also asked for additional information regarding Employ Media's intent for the .JOBS TLD.²⁹ Employ Media's responses, which SHRM's Research Team verified, answered these general questions.

²² .JOBS PDP Council Conference Call Meeting Minutes at 2, 9 Apr. 2010, C-70 ("9 Apr. 2010 Meeting Minutes").

²³ 9 Apr. 2010 Meeting Minutes, C-70.

²⁴ *See id.* at 6. Council Member asks "would another one [job board site] dilute the board sites?"

²⁵ *Id.* at 8.

²⁶ .JOBS PDP Council Conference Call Meeting Minutes, 15 Apr. 2010, C-73.

²⁷ *Id.*

²⁸ Email from Gary Rubin to Tom Embrescia and Ray Fassett, 18 Apr. 2010, C-74.

²⁹ *Id.*

31. The next meeting of the PDP Council was April 28, 2010.³⁰ I began the meeting by summarizing the research by SHRM's research team in response to the general questions about TLDs and sTLDs in particular.³¹ The discussion then turned to Employ Media's proposed amendment. I explained my belief that, in the short term, Employ Media intended to create job boards of specialized categories of jobs, but it was unreasonable to know how the business would grow in future.³² Then, the Council discussed companies that might object to the use of non-company names (as job boards) in the .JOBS domain. No resolution on the issue was reached at this meeting.

32. The PDP Council next met on April 30, 2010. The meeting focused on the best way to elicit feedback about the proposed amendment from the Community—via focus-groups, publicly visible boards on the internet for posting comments, or an external research study among human resource professionals.³³ The Council ultimately decided to get Community input in two ways: via seeking comments³⁴ and through a field study.³⁵ Ultimately the Council decided that questions would be posted on the SHRM website, but that responses to the questions would remain confidential (to encourage participation). I agreed to serve as a liaison between the PDP Council and the SHRM research team to help facilitate the design and implementation of the field study.³⁶

³⁰ .JOBS PDP Council Conference Call Meeting Minutes at 1, 28 Apr. 2010, C-75 (“28 Apr. 2010 Meeting Minutes”).

³¹ *Id.* at 1.

³² *Id.* at 3.

³³ .JOBS PDP Council Conference Call Meeting Minutes, 30 Apr. 2010, C-76.

³⁴ The questions for public comment were posted on May 11, 2010. The page gave examples of each of the new kinds of names (orlando.jobs, nurses.jobs, bilingual.jobs, etc.) then asked the following questions: “How might this be helpful for HR professionals?” and “How might this be problematic for HR professionals?” Public Comment Page, 11 May 2010, C-79.

³⁵ 28 Apr. 2010 Meeting Minutes at 3-4, C-75.

³⁶ *Id.* at 4.

33. The purpose of the field study was to receive direct feedback from the Community about Employ Media’s proposal to allow the use of non-company names (including geographic, occupational, industry, and dictionary terms). Using a research-based method, the PDP Council wanted to learn whether the proposal was perceived as serving the Community.

34. The survey was e-mailed to 2,908 SHRM members who identified themselves in SHRM membership data as “HR Generalists” or “Employment/Recruitment” professionals.³⁷

The survey explained that:

. . . .jobs is considering some additions to the current companyname.jobs business model. These changes would allow the creation of new URLs designed to target specific professions, geographic areas, using dictionary words, e.g., Diversity, Spanish-Speaking etc., two character names, or combinations of all these.³⁸

35. It then asked respondents to rate the usefulness of the new .JOBS proposal for recruitment needs. I provided the results of the field study to the PDP Council in late May 2010, providing both SHRM’s summary report and the verbatim responses.³⁹ Sixty-seven percent (67%) of respondents rated it “more useful” or “significantly more useful” than the existing .JOBS structure.⁴⁰ When comparing the new .JOBS proposal to other available recruiting tools, 40% of respondents said the proposed .JOBS approach was “useful,” 28% rated it “very useful” and 8% rated it “extremely useful.”⁴¹ Slightly more than 60% of respondents thought the

³⁷ .JOBS – SHRM/PDP Council Survey, Final Report at 2, 3 June 2010, *available at* [http://www.shrm.org/about/news/Documents/Dot%20Jobs%20Survey%20Report%20t%205_28_10%20\(2\).pdf](http://www.shrm.org/about/news/Documents/Dot%20Jobs%20Survey%20Report%20t%205_28_10%20(2).pdf), C-80 (“Council Survey Final Report”).

³⁸ *Id.* at 5.

³⁹ Council Survey Final Report, C-80.

⁴⁰ *Id.* at 7.

⁴¹ *Id.* at 8.

availability of non-companyname .JOBS addresses would benefit job seekers or job recruiters, compared to 16% that thought it might create confusion in the market.⁴²

36. In late May 2010, I also provided the Council with the comments we received in response to the two questions we had posted publicly on the SHRM website.⁴³ We received approximately 160 unique comments from at least 100 unique individuals.⁴⁴ We recognized that these public comments were not research-based; but they did in large part validate the final SHRM research findings.

37. In response to the question “How might this be helpful for HR professionals?”, the response was clearly positive. The comments pointed to the benefits of a dedicated web space for job postings, the value of registrations combining location and occupation (*i.e.*, clevelandnurses.jobs), the ability to reach a targeted set of job seekers, adding needed legitimacy to job postings, reducing costs to employers, and providing employer control over job postings.⁴⁵

38. Some selected comments that were in favor of the change are listed below:

- “Providing the consolidated ability to review all of a company’s jobs by location or all of an industry’s jobs in one search will speed up the job seeker’s searches. This in turn should result in more speed and accuracy in responses to employer postings.”⁴⁶
- “Interested candidates are linked directly to the company’s landing page, careersite or ATS (not stuck on the job board’s site) (The company owns the contact, not the job board).”⁴⁷

⁴² *Id.* at 10.

⁴³ Email from Gary Rubin to Aaron Matos, et. al., 31 May 2010, C-77; Public Comment Page, C-79; PDP Open Community Survey Results, 31 May 2010, C-79 (“PDP Open Community Survey Results”).

⁴⁴ PDP Open Community Survey Results, C-79.

⁴⁵ *Id.*

⁴⁶ *Id.* at 3.

⁴⁷ *Id.* at 4.

- “Opens job postings up to a bigger community at a much lower cost than the proprietary job boards. The .jobs URLs will become memorable and has the potential to be the first stop for job seekers.”⁴⁸
- “It helps to simplify the entire concept of recruiting. Our goal as HR professionals is to get our business needs and career opportunities out in front of prospective candidates and currently this is a very time consuming, inefficient and expensive process. The .jobs universe would help to bring employers and job seekers together in one place to find each other.”⁴⁹
- “Provides a powerful jobs platform where job seekers can reach all jobs across employer career sites which [sic] results guaranteed to be real jobs from real employers, free of duplicate job listings and expired jobs.”⁵⁰
- “. . . this could be a HUGE cost-savings for companies (especially smaller co’s) to help their jobs become more viral and easily searchable without having to spend the SEO/SEM dollars. To create one, top-level domain so that job seekers can essentially do a wildcard search of ‘anything.jobs’ and likely come up with a relevant search is [sic] and potentially minimize their efforts to have to go to multiple job boards to find different jobs could be game-changing.”⁵¹
- “The job boards just keeping get [sic] more expensive, tougher to navigate, and less effective. Here’s a solution!”⁵²
- “The .jobs approach will be [sic] recruiting simpler, easier and less expensive. For small companies, the pricing models of the commercial job boards makes recruiting for a single position often too expensive particularly for efforts that require outreach to more than one city or where the job fits into multiple categories.”⁵³

39. To be sure, there were some negative responses, but the majority of responders who were negative overall were “vendors” to SHRM’s professional members, such as

⁴⁸ *Id.* at 7.

⁴⁹ *Id.* at 11.

⁵⁰ *Id.* at 13.

⁵¹ *Id.* at 20.

⁵² *Id.* at 21.

⁵³ *Id.* at 29.

higheredjobs.com, beyond.com, and CareerBuilder, whose business models could be challenged by the .JOBS expansion.⁵⁴

40. In response to the question “How might this be problematic for HR professionals?” the most frequent comment was that it would complicate the job search process by providing more places where job seekers must look for job postings.⁵⁵ Fear of Employ Media having too much power to allocate premium names, providing competition to existing fee-based job boards, and concerns about how dictionary names would be allocated were also mentioned.⁵⁶

41. On June 3, 2010, the PDP Council met to vote on the Employ Media proposal.⁵⁷ Before the vote, the Council discussed the results of the field study and the comments that were received in response to the publicly-posted questions. The Council then voted on whether Employ Media’s proposed amendment would “serve the needs of the international human resource management community.”⁵⁸ By a vote of seven to one, the amendment was approved.⁵⁹

42. As required by the PDP rules, Employ Media and the SHRM Executive Committee reviewed the amendment again after it was passed. Both approved it.⁶⁰ I provided briefing documents to the Executive Committee, and I gave them an in-person briefing on the survey and the public forum. I also explained supporting and dissenting views. After this discussion, the SHRM Executive Committee approved the PDP Council motion approving the proposed amendment, thereby allowing registration of non-company names (occupational,

⁵⁴ PDP Open Community Survey Results, C-79.

⁵⁵ Answers to the question about how the expansion might be problematic are contained in the third column. *Id.* at 40-51.

⁵⁶ *Id.*

⁵⁷ .JOBS PDP Council Conference Call Meeting Minutes, 3 June 2010, C-81.

⁵⁸ *Id.* at 4.

⁵⁹ *Id.* One Council Member resigned before the meeting and therefore did not cast a vote.

⁶⁰ Notice of Decision, C-116.

industry, geographic, and dictionary terms) for the purpose of listing jobs from multiple employers. This outcome was the result of a balanced, fair, transparent and rigorous process.

43. It is my understanding that subsequent to the approval by the PDP Council and SHRM, Employ Media sought permission from ICANN to allocate non-company domain names and that ICANN approved that request. Thereafter, I understand that Employ Media announced a Request for Proposals and ultimately accepted a proposal from DirectEmployers to implement an expanded version of the beta, creating a network of domain names grouped by geography and industry called the “.JOBS Universe.” The “.JOBS Universe” provides a central point for employers to list jobs without an accompanying listing fee. The .JOBS Universe is clearly within the type of implementation that the PDP Council considered and determined to be in the interest of the Community, and that SHRM’s Executive Team thereafter approved.

VI. SHRM’s Participation in Board Governance Committee

44. Although ICANN had approved Employ Media’s request to use non-company names, at some time after that decision, ICANN received a request to reconsider its decision. As part of that investigation, the ICANN Board Governance Committee sent SHRM a set of questions regarding the recently-approved proposal from Employ Media.⁶¹ In response to those questions, SHRM confirmed our understanding that the .JOBS Charter had not changed, the definition of the Community had not changed, and that the PDP Council had approved the proposal because, based on its research, it had determined that the proposal serves the interests of the Community.⁶² SHRM’s answers also emphasized that the Charter did not require registrants to restrict job postings to those affiliated with its own organization, that there are no content restrictions for .JOBS sTLDs—except that the content must serve the needs of the Community—

⁶¹ Email from Gary Rubin to Samantha Eisner, 12 Nov. 2010, C-110.

⁶² *Id.*

and that the PDP Council was aware of and approved the proposals with the knowledge that registrants could use the .JOBS domains to post jobs from organizations other than their own.⁶³ Ultimately, I learned that the ICANN Board Governance Committee recommended that the Board not reconsider its decision.

45. In February 2011, as part of assessing Employ Media's contractual compliance, ICANN requested additional information from SHRM. ICANN was now focused on a much narrower question: whether registrants of the domain names universe.jobs, nativeamerican.jobs, and usa.jobs were "persons engaged in human resource management practices."⁶⁴ ICANN's request contained additional pages of questions, primarily seeking definitions for various terms used in the .JOBS Charter, and seeking answers about who could register a domain name in .JOBS.⁶⁵ SHRM continued to cooperate with ICANN and provided answers to its questions. Our response confirmed again that persons, as well as corporate entities, could register .JOBS addresses, and that .JOBS addresses could be used to operate job board sites as long as the person met the registration criteria contained in the .JOBS Charter.⁶⁶ That letter also explained that the expansion had the Community's support, and that the only opposition we had heard of came from job board owners and/or operators and their associations:

We have heard from our SHRM members and from the rest of the members of the international human resource management community that they find benefit in the .JOBS TLD expansion because, inter alia, they would like to have additional resources to those currently in existence to help them recruit talent.

*

⁶³ *Id.*

⁶⁴ Letter from Stacy Burnette to Brian Johnson and Ray Fassett, 1 Feb. 2011, C-119.

⁶⁵ *Id.*

⁶⁶ Letter from Gary Rubin and Henry Hart to Stacy Burnette, 11 Feb. 2011, C-123.

We believe that it is not insignificant that the only opposition we have heard to the .JOBS TLD expansion is from a Coalition of existing job board owners and/or operators and associations thereof who would interpret the charter of the .JOBS TLD in a manner which would allow them to successfully deny their customers the benefit of additional competitive sources.⁶⁷

46. At about the same time, a prominent fee-based job board operator specifically contacted SHRM regarding the .JOBS Universe, asserting that the .JOBS Universe violated the .JOBS Charter and informed SHRM that it would no longer support SHRM as a result of its decision to support the expansion. We were not surprised by this expression of opinion. On the contrary, since the discussion of the possible expansion of the .JOBS domain to include non-company names in 2007, existing job board operators had consistently voiced their disapproval to SHRM of any new entrant into “their industry” (*i.e.*, job boards). And, as a result of this opposition, as I mentioned above, I specifically included such a voice in the PDP Council to make sure that that point of view would be advanced and considered by others.

VII. Availability and Certification

47. I am available for cross-examination on the following dates: February 5 & 6, 2013.

⁶⁷ *Id.* at 4.

48. My identification photograph is reproduced below:



49. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


(Signature)

SVP, SHRM Search for Human Resource Management
(Title and Relationship to the Parties)

1100 Duke St Alexandria, VA
(Address)

8/02/12
(Date)

STATE OF Virginia)
) ss.:
COUNTY OF Alexandria)

On Aug. 2, 2012, before me, Susan M. Reyes, a Notary Public, personally appeared Gary Rubin, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature .
VAID# 309599

(Seal) My Commission Expires: May 31, 2013