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Contact Information
Redacted

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VIA E-MAIL

ICANN Board of Directors
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

Re: Request for Updates on the .WEB Contention Set

Dear Members of the ICANN Board:

We write on behalf of our clients, Afilias Plc and Afilias Domains No. 3 Limited (together, “**Afilias**”), regarding the .WEB contention set. As we have explained in our prior correspondence, Afilias is deeply concerned by (1) the stated intention of Nu Dot Co LLC (“**NDC**”) to assign the .WEB gTLD to Verisign, Inc. (“**Verisign**”); (2) ICANN’s lack of transparency regarding its investigation of NDC, Verisign, and their agreement; (3) NDC and Verisign’s subterfuge in the context of the .WEB auction; and (4) the present status of the .WEB contention set.¹ We therefore write to request that ICANN update Afilias on the status of the issues that we have raised in prior correspondence.

We understand that the .WEB contention set is currently “On Hold.”² To the extent that this is not the case, we request that you inform us immediately and advise us of the actual status. In either case, we ask that ICANN provide Afilias with at least 60 days’ notice before taking any further steps to change the “On Hold” status that is currently stated on the ICANN website, so that, if necessary, Afilias can take appropriate legal action to protect its rights and preserve the status quo while those rights are decided.

¹ See DIDP Request 20180223-1 (23 Feb. 2018), <https://www.icann.org/resources/pages/didp-20180223-1-ali-request-2018-03-26-en>; see also Letter from S. Hemphill to A. Atallah (8 Aug. 2016), <https://www.icann.org/en/system/files/correspondence/hemphill-to-atallah-08aug16-en.pdf>; Letter from S. Hemphill to A. Atallah (9 Sep. 2016), <https://www.icann.org/en/system/files/correspondence/hemphill-to-atallah-09sep16-en.pdf>; Letter from J. Kane to C. Willett (7 Oct. 2016).

² See “Application Details,” ICANN (last visited 5 Apr. 2018), <https://gtdresult.icann.org/applicationstatus/applicationdetails/1053>.

01. Request for Update on the Current Status of the .WEB Contention Set

ICANN is not acting with transparency regarding the .WEB contention set. The principle of “[t]ransparency is one of the essential principles in ICANN’s creation documents, and its name reverberates through its Articles [of Incorporation] and Bylaws.”³ Pursuant to its Bylaws, ICANN must “operate to the maximum extent feasible in an open and transparent manner.”⁴ Despite this obligation, Afilias believes that ICANN has failed to update Afilias on changes to the .WEB contention set and the related accountability mechanisms.

ICANN pledged to notify Afilias of any changes to the .WEB contention set and the related accountability mechanisms. On 19 August 2016, Afilias was told that ICANN had “placed the .WEB contention set on-hold.”⁵ ICANN later explained that this status “was to reflect a pending ICANN Accountability Mechanism initiated by another member in the contention set”⁶—the cooperative engagement process (“CEP”) initiated by Donuts Inc. (“Donuts”) and Ruby Glen, LLC (“Ruby Glen”).⁷ ICANN also assured Afilias that its primary contact “*will be notified of future changes to the contention set status or updates regarding the status of relevant Accountability Mechanisms.*”⁸ Afilias has received no such notification from ICANN since ICANN made that assurance on 30 September 2016.

However, recent information from ICANN indicates that there may have been a change in the status of the accountability mechanisms relevant to the .WEB contention set. ICANN specifically changed the status of Donuts and Ruby Glen’s CEP to “recently closed” on 31 January 2018, and further indicated that their deadline to file an IRP was 14 February

³ *Dot Registry, LLC v. ICANN*, ICDR Case No. 01-14-0001-5004, Declaration of the Independent Review Panel (29 Jul. 2016), ¶ 101, <https://www.icann.org/en/system/files/files/irp-dot-registry-final-declaration-redacted-29jul16-en.pdf>. <https://www.icann.org/resources/pages/governance/bylaws-en>.

⁴ ICANN Bylaws (22 July 2017), Art. 3, Sec. 3.1, <https://www.icann.org/resources/pages/governance/bylaws-en>.

⁵ Letter from A. Atallah to S. Hemphill (30 Sep. 2016), <https://www.icann.org/en/system/files/correspondence/atallah-to-hemphill-30sep16-en.pdf>.

⁶ *Id.*

⁷ The 30 September 2016 letter cites to the 22 August 2016 Cooperative Engagement and Independent Review Processes Status Update when describing the “pending ICANN Accountability Mechanism.” Letter from A. Atallah to S. Hemphill (30 Sep. 2016), <https://www.icann.org/en/system/files/correspondence/atallah-to-hemphill-30sep16-en.pdf>. The 22 August 2016 update states that Donuts and Ruby Glen initiated a CEP regarding .WEB on 2 August 2016. Cooperative Engagement and Independent Review Processes Status Update – 22 August 2016 (22 Aug. 2016), p. 1, <https://www.icann.org/en/system/files/files/irp-cep-status-22aug16-en.pdf>.

⁸ Letter from A. Atallah to S. Hemphill (30 Sep. 2016), <https://www.icann.org/en/system/files/correspondence/atallah-to-hemphill-30sep16-en.pdf> (emphasis added).

2018.⁹ Clearly, the status of the “relevant Accountability Mechanisms”¹⁰ changed, but Afilias still has not received any information from ICANN regarding these changes. Afilias therefore remains uncertain about the status of the accountability mechanisms related to .WEB.

These developments raise the possibility of changes to the status of the .WEB contention set as well as to the status of the accountability mechanisms. ICANN told Afilias that the .WEB contention set was placed “On Hold” because of Donuts and Ruby Glen’s CEP. However, ICANN recently published documents stating that Donuts and Ruby Glen’s CEP concluded and that there are no active Independent Review Processes.¹¹ As a result, Afilias has reason to believe that the status of the .WEB contention set has or will soon be changed.

Afilias’ belief is further supported by the recent response it received to DIDP Request No. 201802223-1.¹² In the response, ICANN informed Afilias that the “current status” for the .WEB gTLD is “in contracting.”¹³ While both the “Application Status” and the “Application Details” pages for NDC’s .WEB application state that the “Application Status” is “In Contracting,”¹⁴ the “Application Details” page still states that the “Contention Resolution Status” is “On Hold.”¹⁵ This inherent conflict remains unexplained. Furthermore, Afilias has received no communication from ICANN regarding any change to the contention set.

⁹ Cooperative Engagement and Independent Review Processes Status Update – 18 January 2018 (18 Jan. 2018), p. 2, <https://www.icann.org/en/system/files/files/irp-cep-status-31jan18-en.pdf>. The 29 March 2018 Cooperative Engagement and Independent Review Processes Status Update contains the same information, even though the 14 February 2018 deadline expired. *See* Cooperative Engagement and Independent Review Processes Status Update – 29 March 2018 (29 Mar. 2018), p. 2, <https://www.icann.org/en/system/files/files/irp-cep-status-29mar18-en.pdf>.

¹⁰ Letter from A. Atallah to S. Hemphill (30 Sep. 2016), <https://www.icann.org/en/system/files/correspondence/atallah-to-hemphill-30sep16-en.pdf>.

¹¹ Cooperative Engagement and Independent Review Processes Status Update – 29 March 2018 (29 Mar. 2018), pp. 2-3, <https://www.icann.org/en/system/files/files/irp-cep-status-29mar18-en.pdf> (stating that Donuts and Ruby Glen’s CEP concluded and that there are no active Independent Review Processes).

¹² *See* Response to DIDP Request 20180223-1 (24 Mar. 2018), <https://www.icann.org/resources/pages/didp-20180223-1-ali-request-2018-03-26-en>.

¹³ *Id.* at p. 11.

¹⁴ *See* “New gTLD Application Status” (last visited 6 Apr. 2018), <https://gtldresult.icann.org/applicationstatus/viewstatus> (stating that NDC’s application for .WEB is “In Contracting”); *see also* “Application Details,” ICANN (last visited 5 Apr. 2018), <https://gtldresult.icann.org/applicationstatus/applicationdetails/1053> (same).

¹⁵ *See* “Application Details,” ICANN (last visited 5 Apr. 2018), <https://gtldresult.icann.org/applicationstatus/applicationdetails/1053>. The “Application Status” page does not contain a field for the “Contention Resolution Status.” *See* “New gTLD Application Status” (last visited 6 Apr. 2018), <https://gtldresult.icann.org/applicationstatus/viewstatus>.

Given the above-described situation, Afilias requests that ICANN immediately inform Afilias of (1) the current status of the .WEB contention set, and, specifically, whether it remains “On Hold,” and (2) details regarding its current discussions or negotiations with NDC and/or Verisign related to the .WEB gTLD. And again, Afilias requests that ICANN provide Afilias with at least 60 days’ notice before taking any further steps to change the “On Hold” status that is currently stated on the ICANN website. Afilias further requests that ICANN take no steps regarding the delegation of the .WEB gTLD to NDC or Verisign unless and until Afilias’ rights to the domain are fully and finally determined by an independent decision-maker.

02. Request for Update on the Current Status of ICANN’s Investigation

In addition, Afilias further requests information on the current status of ICANN’s investigation of the .WEB contention set. In response to Afilias’ letters of 8 August 2016 and 9 September 2016, ICANN requested “additional information” regarding the .WEB auction from Afilias, Ruby Glen, NDC, and Verisign on 16 September 2016.¹⁶ Afilias promptly responded to ICANN’s request on 7 October 2016.¹⁷ Yet Afilias has received no information from ICANN regarding the investigation.

Indeed, ICANN has since refused to disclose information regarding its investigation. On 23 February 2018, Afilias asked ICANN to provide an “update on ICANN’s investigation of the .WEB contention set.”¹⁸ As indicated in the letter, Afilias made this request independent of the Documentary Information Disclosure Policy (“**DIDP**”) requests contained in the same correspondence.¹⁹ ICANN, however, mistakenly interpreted Afilias’ request as part of its DIDP request and refused to provide a status update.²⁰

Thus, Afilias renews its request for a status update on ICANN’s investigation of the .WEB contention set, and NDC’s agreement with Verisign, independent of ICANN’s DIDP.

¹⁶ See Letter from C. Willett to J. Kane (16 Sep. 2016), p.1.

¹⁷ See Letter from J. Kane to C. Willett (7 Oct. 2016).

¹⁸ DIDP Request 20180223-1 (23 Feb. 2018), p. 1, <https://www.icann.org/resources/pages/didp-20180223-1-ali-request-2018-03-26-en>

¹⁹ See *id.*

²⁰ Response to DIDP Request 20180223-1 (24 Mar. 2018), p. 1, <https://www.icann.org/resources/pages/didp-20180223-1-ali-request-2018-03-26-en> (“As such, your request for ‘an update on ICANN’s investigation of the .WEB contention set’ is beyond the scope of the DIDP and will not be addressed in this Response.”).

03. Afilias' Request for Prior Notification

Afilias requests the aforementioned updates because it intends to initiate a CEP and a subsequent IRP against ICANN, if ICANN proceeds toward delegation of .WEB to NDC. Afilias also reserves the right to pursue claims against ICANN in a court of law. As Afilias has previously informed ICANN, it has numerous objections to ICANN's conduct with respect to NDC's actions during the .WEB auction and its agreement to assign Verisign the .WEB gTLD, including but not limited to the antitrust and competition issues raised by Verisign's acquisition of the .WEB gTLD.²¹

Therefore, in the interests of transparency and to prevent unnecessary procedural disputes regarding a potential future IRP to be commenced by Afilias, Afilias reiterates its request that ICANN provide it with at least 60 days' notice of any change to the .WEB contention set's status.

Afilias reserves all of its rights and remedies in all available fora whether within or outside of the United States of America.

Sincerely,



Arif Hyder Ali
Partner

²¹ See Letter from S. Hemphill to A. Atallah (8 Aug. 2016), <https://www.icann.org/en/system/files/correspondence/hemphill-to-atallah-08aug16-en.pdf>; Letter from S. Hemphill to A. Atallah (9 Sep. 2016), <https://www.icann.org/en/system/files/correspondence/hemphill-to-atallah-09sep16-en.pdf>; Letter from J. Kane to C. Willett (7 Oct. 2016).