

INDEPENDENT REVIEW PROCESS

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

Afilias Domains No. 3 Ltd.,)	ICDR CASE NO. 01-18-0004-2702
)	
Claimant,)	
)	
and)	
)	
INTERNET CORPORATION FOR ASSIGNED)	
NAMES AND NUMBERS,)	
)	
Respondent.)	
_____)	

DECLARATION OF SAMANTHA EISNER

I, Samantha Sara Eisner, declare as follows:

1. I am employed as Deputy General Counsel of the Internet Corporation for Assigned Names and Numbers (“ICANN”), the respondent in this Independent Review Process (“IRP”). I am an attorney in good standing licensed to practice in California. I have personal knowledge of matters set forth herein and am competent to testify as to those matters.

2. From November 2015 to the present, I have served as an ICANN staff liaison to the Independent Review Process – Implementation Oversight Team (“IRP-IOT”). The IRP-IOT is charged with drafting updated Supplementary Procedures for the Independent Review Process (“Updated Supplementary Procedures”) for adoption by the Board in accordance with the revised Bylaws effective 1 October 2016 and further amended on 18 June 2018.

3. In developing the Updated Supplementary Procedures, the concept of participation by persons, groups, or entities with a material interest in an IRP was raised as early as 2016. The draft Updated Supplementary Procedures circulated among the IRP-IOT in February 2018 included a draft Rule 7 permitting a person, group, or entity with a “material interest” who does not qualify as a claimant to participate as an *amicus curiae* in an IRP. In addition, further revised versions of Rule 7 were subsequently circulated among the IRP-IOT and publicly available on ICANN’s website.

4. The IRP-IOT had remaining areas where additional work needed to be done in order to complete a set of Updated Supplementary Procedures that could be considered “final”, such as how the time for filing would be resolved. Therefore, in May 2018, the IRP-IOT agreed to consider a set of interim Updated Supplementary Procedures (“Interim Supplementary Procedures”) that could be adopted by the Board in order to provide procedures consistent with the revised Bylaws for use in any IRPs that may occur before the IRP-IOT completed its work on final Updated Supplementary Procedures. Between May 2018 and September 2018, the IRP-

IOT continued to discuss the Interim Supplementary Procedures, and ICANN and Sidley Austin (counsel hired to assist the IRP-IOT) drafted revisions to the draft Interim Supplementary Procedures.

5. In an 11 October 2018 meeting of the IRP-IOT, there was discussion about David McAuley's proposal regarding granting claimant status to those with a "significant interest" in an IRP. Another of the IRP-IOT members (Malcolm Hutton) suggested that the Interim Supplementary Procedures should specify the categories of persons, groups, or entities who are entitled as a matter of right to participate as *amicus curiae* in an IRP. The IRP-IOT then tasked me with the action item to consider the discussion in the meeting and provide proposed language on the topic. I then drafted further revisions to Rule 7 in order to provide additional definition to the "material interest" requirement by specifying that a member of the contention set for a new gTLD that is the subject of an IRP and/or a person, group, or entity whose actions are significantly referred to in the IRP briefing shall be deemed to have a material interest sufficient to participate in an IRP as an *amicus*. On 16 October 2018, I sent an email with these proposed revisions to David McAuley and Bernard Turcotte; and Mr. McAuley and I exchanged additional emails refining these revisions over the course of the next three days. Exhibits 2-7 are true and correct copies of those emails.

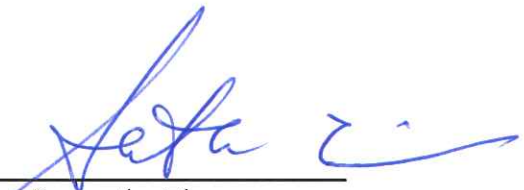
6. I understand that Afilias Domains No. 3 Ltd. ("Afilias") has suggested in letters to the ICDR and the ICANN Board dated 8 December 2018 and 21 December 2018 (respectively) that the provisions of Rule 7 stating that a member of the contention set for a new gTLD that is the subject of an IRP and/or a person, group, or entity whose actions are significantly referred to in the IRP briefing have material interests sufficient to participate as *amici* were added by David McAuley in response to a draft IRP Request that Afilias provided to ICANN's in-house counsel on 10 October 2018 in conjunction with the confidential Cooperative Engagement Process. That

is incorrect. Those Rule 7 provisions were drafted by me; and I was not aware of Afilias' draft IRP Request when I drafted them and proposed them to the IRP-IOT.

7. ICANN's Bylaws require that certain documents, including the Updated Supplementary Procedures, be posted for public comment before they are adopted by the Board. However, this requirement does not mean that after public comments are received, every subsequent iteration of the document, or portions thereof, must be posted for further public comment prior to Board adoption. There are times when a further public comment period may be considered necessary prior to the completion of a document, such as the IRP-IOT's proposal to eliminate any outer limit on when an IRP could be filed (Rule 4). However, the IOT did not resolve to subject Rule 7 to further public comment prior to submitting the draft Interim Supplementary Procedures to the ICANN Board for consideration.

I affirm that the foregoing statements are true and correct to the best of my knowledge and belief.

Dated: January 16, 2019

By: 
Samantha Eisner