

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.)
_____)

**ICANN'S REQUEST FOR CORRECTIONS TO THE DECLARATION OF THE
PROCEDURES OFFICER**

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The Internet Corporation for
Assigned Names and Number

The Internet Corporation for Assigned Names and Numbers (“ICANN”) requests that the Procedures Officer make the following three corrections to the Declaration of the Procedures Officer, dated 28 February 2019.

1. Requested Correction No. 1

Change ¶ 2 from:

Afilias Domains No. 3 Ltd. (hereinafter, “Afilias”) was one of the bidders that made up the contention set for the operation of the new gTLD .web. It initiated the Independent Review Process (“IRP”), asserting that ICANN violated its Bylaws in preparing to award the registry operating rights to Verisign, Inc. (hereinafter “Verisign”). Verisign had acquired the rights to operate as the registry for .web pursuant to a pre-award contract that it had entered into with the winning bidder, Nu DotCo LLC (hereinafter “NDC”).

To:

Afilias Domains No. 3 Ltd. (hereinafter, “Afilias”) was one of the bidders that made up the contention set for the operation of the new gTLD .web. It initiated the Independent Review Process (“IRP”), asserting that ICANN violated its Bylaws in preparing to award the registry operating rights to **Nu DotCo, LLC** (hereinafter “**NDC**”). **Verisign, Inc. (“Verisign”)** had acquired the rights to **assignment of NDC’s rights to** operate as the registry for .web, **if ICANN approves of the assignment,** pursuant to a pre-award contract that it had entered into with **NDC**.

Statement of Reasons for Requested Correction No. 1

Afilias does not assert (nor is there evidence in the record to suggest) that ICANN is preparing to award registry operating rights to Verisign, Inc. (“Verisign”). Rather, Afilias asserts that ICANN is preparing to award registry operating rights to Nu DotCo LLC (“NDC”), and that NDC is contractually bound to assign those rights to Verisign if ICANN approves of such an assignment. For example, Afilias states at paragraph 3 of its Request for Emergency Panelist and Interim Measures:

ICANN now intends to conclude a “Registry Agreement” for .WEB with NDC, which is contractually obligated to assign that Registry Agreement to VeriSign.

Similarly, in its IRP Request, at paragraphs 32 and 57, Afiliias describes Verisign’s plan to seek ICANN’s approval to assign the Registry Agreement to Verisign after ICANN enters the Registry Agreement with NDC, quoting Verisign’s public announcement (brackets and ellipses in original):

Verisign stated that it had “entered into an agreement with [NDC] wherein [Verisign] provided funds for [NDC’s] bid for the .web TLD . . . We anticipate that [NDC] will execute the .web Registry Agreement with [ICANN] and will then seek to assign the Registry Agreement to Verisign upon consent from ICANN.”

2. Requested Correction No. 2

Change ¶ 9 from:

NDC had entered into a pre-award Domain Acquisition Agreement with Verisign, Third Party Designated Confidential Information Redacted

Ultimately, NDC was the successful bidder in the auction process.

To:

NDC had entered into a pre-award Domain Acquisition Agreement with Verisign, Third Party Designated Confidential Information Redacted

Ultimately, NDC was the successful bidder in the auction process.

Statement of Reasons for Requested Correction No. 2

The evidence demonstrates that it is incorrect to state that the only condition that must be satisfied to trigger NDC's obligation to transfer its right to operate .WEB is for its application to be successful. In addition to succeeding as an applicant, NDC is also required to obtain ICANN's approval for the transfer. This is expressly stated in the Domain Acquisition Agreement between Verisign and NDC, Third Party Designated Confidential Information Redacted

See Ex. 218, Ex. A § 3(d).

3. Requested Correction No. 3

Change ¶ 63 from:

The fact that David McAuley, the Oversight Committee chair and Verisign's employee, had "knowledge of Afilias's CEP or IRP prior to the ICANN Board unanimously approving the Interim Supplementary Procedures is inapposite and should make no difference to the enforceability of the amici rule.

To:

Whether David McAuley, the Oversight Committee chair and Verisign's employee, had "knowledge of Afilias's CEP or IRP prior to the ICANN Board unanimously approving the Interim Supplementary Procedures is inapposite and should make no difference to the enforceability of the *amici* rule."

Statements of Reasons for Requested Correction No. 3.

Paragraph 63 is part of the section of the Procedures Officer's Declaration summarizing Verisign's position, and we believe that the Procedures Officer simply made an error in describing Mr. McAuley's alleged knowledge of Afilias' CEP and IRP as a "fact" recognized or acknowledged by Verisign. On the contrary, Verisign's position is that David McAuley did not

have knowledge of Afilias's CEP or IRP prior to the ICANN Board unanimously approving the Interim Supplementary Procedures. For example, at paragraph 2 of its Reply in Support of its Request to Participate as *Amicus Curiae* in Independent Review Process—the same paragraph from which the Procedures Officer quotes in paragraph 63 of his Declaration—Verisign states: “Mr. McAuley had no personal knowledge of the CEP and he could not have acted with an ulterior motive somehow to ‘manipulate’ the rule-making process.” Similarly, Mr. McAuley states at paragraph 32 of his declaration: “I was not aware that Afilias had filed a Cooperative Engagement Process (‘CEP’) on any subject, including with respect to the .web gTLD while any of the proceedings described in this declaration were ongoing.”

Respectfully submitted,

JONES DAY

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Dated: March 26, 2019