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29 March 2019

**VIA E-MAIL**

Tom Simotas  
International Centre for Dispute Resolution  
American Arbitration Association  
120 Broadway, 21st Floor  
New York, NY 10271  
SimotasAT@adr.org

**Re: *Afilias Domains No. 3 Limited v. ICANN*, ICDR Case No. 01-18-0004-2702,  
Letter from Jeffrey A. LeVee on behalf of ICANN Requesting the  
Appointment of a New Procedures Officer**

Dear Mr. Simotas:

We write on behalf of Afilias Domains No. 3 Limited (“**Afilias**”) in response to the letter from Jeffrey A. LeVee on behalf of the Internet Corporation of Assigned Names and Numbers (“**ICANN**”), dated 26 March 2019. In addition to the points made in our prior correspondence, we offer the following observations:

1. Based on the extensive briefing and argument submitted by the parties and the proposed *amici* to Mr. Donahey, as well as Mr. Donahey’s 38-page Declaration, the grounds for his referral to the IRP Panel are sound and well-reasoned. ICANN and the proposed *amici* rely on language that was added at the 11<sup>th</sup> hour under highly irregular circumstances; the Procedures Officer properly declined to exercise jurisdiction based on the language in question. He instead referred the issue of *amicus* participation to the full IRP Panel.<sup>1</sup>

2. For the avoidance of doubt, and to provide greater clarity to the IRP Panel when it addresses Mr. Donahey’s referral of this matter, Afilias in its 25 March 2019 letter asked only that Mr. Donahey elaborate on (*i.e.*, clarify) the basis for (a) his decision to refer the issue of the enforceability of Rule 7 to the IRP Panel and (b) his decision not to address the effectiveness and enforceability of Rule 7 himself. (As you will recall, Afilias asked the Procedures Officer to determine that the new language in Rule 7 was ineffective and

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<sup>1</sup> To be clear, Afilias’ position is that ICANN and VeriSign, Inc. conspired to rig the rules specifically to benefit the proposed *amici* in this IRP—and that the ICANN Board’s adoption of Rule 7 violated ICANN’s Bylaws and Articles of Incorporation. But that is an issue that will be decided by the full IRP Panel.

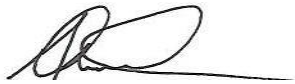
unenforceable; Mr. Donahey declined to do so.) There is nothing to prevent ICANN from similarly asking Mr. Donahey for clarification or correction of his Declaration. (As discussed below, ICANN has already done so with respect to other issues.) By contrast, there is no basis—and ICANN has cited none—for ICANN’s request that the ICDR summarily dismiss Mr. Donahey and appoint another Procedures Officer. As we have previously stated, for the ICDR to accede to ICANN’s demands would create a disastrous precedent, in which any party that disagrees with a ruling could insist on a new panelist or officer to re-hear the same matter.

3. ICANN seeks to have it both ways. On the same day it submitted its 26 March 2019 letter to the ICDR demanding Mr. Donahey’s dismissal, ICANN also submitted a “Request for Corrections” to Mr. Donahey, improperly asking him to make several substantive changes to his Declaration. Those positions are irreconcilable. To the extent that Mr. Donahey is addressing ICANN’s Request for Corrections without knowing that ICANN is simultaneously asking that the ICDR remove him and appoint a new Procedures Officer, Mr. Donahey should be advised of that fact immediately. Afilias reiterates its request that the ICDR provide Mr. Donahey with all of the parties’ correspondence on this matter, if it has not already done so.

4. Furthermore, ICANN’s argument that the IRP Panel has no jurisdiction to decide *amicus curiae* applications undercuts rather than advances its cause. Even if the IRP Panel were to agree with ICANN on this point—and were to agree with ICANN concerning the validity and proper interpretation of the newly added language in Rule 7—the IRP Panel could then refer the *amicus curiae* applications back to the Procedures Officer with guidance in that regard. By comparison, ICANN proposes that Nu Dotco LLC and VeriSign, Inc. be allowed to participate in an IRP that challenges the validity of the very rule that ICANN submits compels their participation. Such a result would compound the injuries that Afilias has already suffered as a result of the improper adoption of Rule 7, a result that is neither fair nor just.

5. Finally, we respectfully submit that ICANN’s request for Mr. Donahey to be replaced with a new Procedures Officer is not only baseless, but that it also asks the ICDR to go far beyond its authority to decide matters of administration. Mr. Donahey’s Declaration rests on serious questions as to whether the language invoked by ICANN and the proposed *amici* was added to Rule 7 in a manner that violates ICANN’s Articles of Incorporation and Bylaws—and, if so, whether and how that language should be interpreted and enforced. That is plainly a question that only the IRP Panel can answer.

Sincerely,



Arif Hyder Ali  
*Counsel for Claimant*

cc: Counsel for ICANN  
Counsel for VeriSign  
Counsel for NDC