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25 March 2019

VIA E-MAIL

Tom Simotas
International Centre for Dispute Resolution
American Arbitration Association
120 Broadway, 21st Floor
New York, NY 10271
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**Re: *Afilias Domains No. 3 Limited v. ICANN*, ICDR Case No. 01-18-0004-2702,
Letter from Jeffrey A. LeVeé 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. LeVeé on behalf of the Internet Corporation of Assigned Names and Numbers (“**ICANN**”), dated 20 March 2019.

ICANN argues that the October 2018 revisions to Rule 7 deprives the Procedures Officer of the discretion to do anything other than grant the proposed *amicus* applications – and that it is not within the jurisdiction of the Procedures Officer to question the basis on which the new language in Rule 7 was added. For the reasons stated in our prior letter, ICANN is wrong.

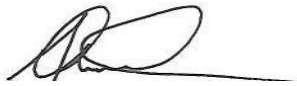
In Afilias’ view, it is the obligation of any arbitrator (or other “officer” appointed to decide issues in an international arbitration) to consider carefully the purported basis of his or her jurisdiction to resolve a particular question. Here, there are serious questions about the manner in which Rule 7 was revised in the 11th hour by VeriSign’s representative in the IRP-IOT, working one-on-one with ICANN’s legal counsel, and without any public disclosure of how the text of Rule 7 had fundamentally changed from the November 2016 public comment version. As the Procedures Officer correctly observed in his Declaration, this issue is of great importance to the parties and the global Internet community.

Afilias has now amended its request for IRP to include a claim challenging ICANN’s improper adoption of Rule 7. It should not be controversial that if only the full IRP Panel has jurisdiction to decide whether the new language of the Rule was properly added and is enforceable – since the parties are agreed that that question should be presented to the IRP

Panel – then the question of whether the *amici* can participate under Rule 7 can only be decided after the IRP Panel has determined these other threshold issues. Such a ruling is consistent with the discretionary authority afforded to the Procedures Officer by Rule 7.

Afilias therefore requests that the Procedures Officer clarify (a) the basis for his determination that he had jurisdiction to refer the issue of the enforceability of Rule 7 to the IRP Panel and (b) provide further detail as to why he chose not to address the effectiveness and enforceability of Rule 7 himself. We further ask that all of the parties' correspondence with the ICDR following the Procedures Officer's Declaration be provided to Mr. Donahey. This will assist the Procedures Officer in understanding the scope and extent of the concerns raised by ICANN and disputed by Afilias. In this regard, we note that all of the correspondence will in any event be made public under ICANN's transparency obligations. Finally, we do not believe it would be prudent from a policy standpoint for the ICDR to appoint a new procedures officer until it has allowed Mr. Donahey to clarify the issues being debated by the Parties regarding the scope and effect of his Declaration. Once Mr. Donahey has provided the requested clarifications, we ask that the ICDR provide the Parties an opportunity to comment.

Sincerely,



Arif Hyder Ali
Counsel for Claimant

cc: Counsel for ICANN
Counsel for VeriSign
Counsel for NDC