

IN THE MATTER OF AN INDEPENDENT REVIEW PROCESS
BEFORE THE INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

AFILIAS DOMAINS NO. 3 LIMITED,

Claimant

v.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS,

Respondent

ICDR Case No. 01-18-0004-2702

AFILIAS DOMAINS NO. 3 LIMITED'S REPLY COSTS SUBMISSION: METHODOLOGY

23 October 2020

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I. INTRODUCTION

1. Afilias has calculated its total fees, expenses, and costs (for short, “fees and costs”) for the IRP, as well as the separate fees and costs specifically associated with (i) the Panelists and the ICDR, (ii) the participation of the *Amici*, and (iii) the Emergency Interim Measures phase. This Annex explains how we have calculated each of those categories of fees and costs. The schedule includes fees and costs from 16 June 2020 through 22 October 2020.

2. For the purpose of this methodology, “fees” refers to those amounts incurred for legal services in relation to the IRP, “expenses” refers to the amounts related to the provision of those legal services, and “costs” refers to all other amounts in relation to the IRP.

3. To calculate the fees and costs, Dechert LLP and Constantine Cannon LLP each identified their billing records for each timekeeper who billed time or expenses for the IRP. The included records are for fees and expenses as already paid through July 2020, invoiced for September 2020, and as recorded up to 22 October 2020.¹ These records were carefully reviewed to ensure that they contained only billing entries directly related to the IRP.

4. To calculate the costs, we have separately identified invoices in relation to TrialGraphix, and transcription services, as well as those in relation to Afilias’ experts. These include amounts as paid through July 2020 and invoiced through 22 October 2020. They do not include amounts that have not yet been invoiced.²

5. The following sections describe the methodology used to calculate (i) Afilias’ total fees and costs, (ii) Afilias’ costs associated with the Panelists and the ICDR, (iii) Afilias’ fees and costs in relation to

¹ Please note that the Constantine Cannon LLP fees, expenses, and costs for 13-22 October 2020 are not included in these calculations. Afilias reserves its right to amend the fees and costs to reflect this and any other work performed in the future in relation to this IRP.

² Please note that these amounts include amounts from Barkley Court Reporters and TrialGraphix – *Trialanywhere*, which have been invoiced. Afilias has asked the *Amici* to cover one third of the court reporter and TrialGraphix fees. The *Amici* have agreed to cover part of the fees. If the *Amici* reimburse these amounts to Afilias’, Afilias will promptly update the final costs.

the *Amici* participation, and (iv) Afilias' fees and costs in relation to the Emergency Interim Measures phase.

II. TOTAL FEES AND COSTS

6. The total fees and costs set out in the schedule include fees and expenses recorded from **16 June 2018**, when Afilias learned that ICANN had rejected its .WEB application, through **22 October 2020**. The total fees and costs include costs in relation to ICDR services, the Emergency Panelist, the Procedures Officer, the Panel, and Afilias' experts.

III. COSTS FROM THE PANELISTS AND THE ICDR

7. In light of ICANN's concession that it must bear the costs of the Panelists and ICDR pursuant to Section 4.3(r) of the Bylaws,³ the total costs set out in this schedule include costs incurred in relation to ICDR services, the Emergency Panelist, the Procedures Officer, and the Panel. These costs include amounts incurred following the filing of the IRP on **14 November 2018** through the most recent invoice from the ICDR on 11 May 2020.⁴ These cost do not include the ICDR filing fee because ICANN did not concede that it must cover that cost (although ICANN should cover it along with all of the other fees and costs from the IRP).

IV. FEES AND COSTS FROM *AMICI* PARTICIPATION

8. The fees and costs associated with the participation of *Amici* include fees and costs recorded in relation to the Procedures Officer, Phase I, and Afilias' Response to *Amici*. Although Afilias incurred fees and costs during the merits hearing and post-hearing phases due to the participation of the *Amici*, we have conservatively excluded those amounts from this category. No costs associated with Afilias' experts are included in this category.

9. We have provided two calculations of the fees and costs associated with *Amici* participation. The first calculation does not include any costs of the Panelists or the ICDR, on the assumption that the Panel

³ ICANN's Post-Hearing Brief (12 Oct. 2020), ¶ 240.

⁴ Afilias reserves its right to amend the schedule on costs associated with the Panelists and the ICDR in light of any future invoice for the Panel's and/or the ICDR's work.

will separately award all of these costs to Afiliias pursuant to ICANN's concession, per **Section III**. The second calculation includes the costs of the Panelists that are associated specifically with the participation of the *Amici* (specifically the amounts ICDR invoiced on 13 August and on 4 November 2019 for Panel compensation)—it does not include any other costs of the Panelists or the ICDR.

10. We have applied a time-based methodology, whereby fees and expenses from time periods specified below are used to calculate the fees and expenses for each of the three elements, *i.e.*, the Procedures Officer, Phase I, and Afiliias' Response to *Amici*. We have reviewed the individual time entries to verify that the specified time periods effectively cover the relevant fees and expenses.

11. **First**, the fees and costs for the Procedures Officer phase are based on fees and costs recorded from the filing of the Requests by Verisign and Nu Dot Co to Participate on **11 December 2018** through the Procedures Officer's Order on ICANN's Request for Correction on **31 March 2019**.

12. However, this phase overlaps with the Emergency Interim Measures phase, for which fees and costs are separately calculated, as well as with the general IRP (including preparation of the Amended Request for IRP and the constitution of the Panel). To exclude the fees and costs not associated with the Procedures Officer phase, we have evenly allocated fees and costs across work streams active on any given day. Thus, Afiliias' total fees and costs from **11 December 2018** to **21 March 2019** are divided by **three** to calculate the Procedures Officer phase fees and costs—to account for the simultaneous ongoing work on the Emergency Interim Measures phase and the general IRP.

13. **Second**, the fees and costs for Phase I include all fees and costs recorded following the constitution of the Panel on **9 August 2019**⁵ through Afiliias' Rebuttal to ICANN's Time-Bar Defense on Rule 7 on **3 December 2019**.

14. **Third**, the fees and costs for Afiliias' Response to *Amici* include all fees and costs recorded

⁵ Letter from Tom Simotas (ICDR) to Parties (9 Aug. 2019) (appointment of Pierre Bienvenu as Chairperson).

following the *Amici* Briefs on **26 June 2020** through Afilias' Response to *Amici* on **24 July 2020**.

V. FEES AND COSTS FROM EMERGENCY INTERIM MEASURES

15. The fees and costs associated with the Emergency Interim Measures phase are based on fees and costs recorded from **14 November 2018**⁶ to **14 May 2019**.⁷ They do not include any fees and costs in relation to Afilias' experts. We have reviewed the individual time entries to verify that the specified time period effectively covers the relevant fees and costs.

16. We have provided two calculations of the fees and costs associated with the Emergency Interim Measures phase. The first calculation does not include any costs of the Panelists or the ICDR, on the assumption that the Panel will separately award all of these costs to Afilias pursuant to ICANN's concession, per **Section III** above. The second calculation includes the costs of Emergency Panelist (as invoiced by the ICDR) that are associated with the Emergency Interim Measures phase—it does not include any other costs of the Panelists or the ICDR.

17. The Emergency Interim Measures phase overlaps with the Procedures Officer phase from **11 December 2018** to **31 March 2019** as well as with the general IRP (again, including preparation of the Amended Request for IRP and the constitution of the Panel). To exclude the fees and costs not associated with the Emergency Interim Measures phase, we have evenly allocated fees and costs across the work streams active on a given day as follows:

- a. From **14 November 2018** to **10 December 2018**, Afilias' fees and costs are divided by **two** to calculate the Emergency Interim Measures phase fees and costs—to account for the simultaneous work on the general IRP.
- b. From **11 December 2018** to **31 March 2019**, Afilias' fees and costs are divided by **three**

⁶ Email from ICANN Independent Review to Arif Ali and Rosey Wong (Counsel for Afilias) (14 Nov. 2018), [Ex. C-64].

⁷ This final date for substantial activity on the Emergency Interim Measures phase is identified from time entries. However, it conservatively is prior to ICANN's abandonment of its attempt to delegate .WEB during the pendency of the IRP.

to calculate the Emergency Interim Measures phase fees and costs—to account for the simultaneous work on the Procedures Officer phase and the general IRP.

- c. From *1 April 2018* to *14 May 2018*, Afiliats' fees and costs are divided by *two* to calculate the Emergency Interim Measures phase fees and costs—to account for the simultaneous work on the general IRP.