

Afilias Domains No. 3 Limited v. ICANN

ICDR Case No. 01-18-0004-2702

Memorandum of Conference Call No. 1

January 5, 2019

1. On January 4, 2019, a conference call in this matter was conducted by M. Scott Donahey, the Procedures Officer appointed by the International Centre for Dispute Resolution in the matter of *Afilias Domains No. 3 Limited v. Internet Corporation for Assigned Names and Numbers* (“ICANN”). Present on behalf of the International Centre for Dispute Resolution (“ICDR”) was Tom Simotas, ICDR Finance Manager. Present on behalf of the Claimant Afilias Domains No. 3 Limited (hereinafter “Claimant”) were Arif Ali, Alexander de Gramont, Ethan Litwin, and Rose Marie Wong of the firm of Dechert LLP. Present on behalf of Respondent ICANN were Jeffrey LeVee, Steven Smith, and Eric Enson of the firm of Jones Day, and Amy Stathos of ICANN. Present on behalf of Applicant to act as *amicus curiae* Nu Dotco were Steven Marenberg and Charles Elder of the firm of Irell & Manella LLP. Present on behalf of Applicant to act as *Amicus curiae* Verisign, Inc., were Ronald Johnston, James Blackburn, and Maria Chedid of the firm of Arnold & Porter, and Kirk Salzman and Helen Lee of Verisign, Inc.

2. The parties confirmed that they had reviewed Mr. Donahey’s initial disclosures and his subsequent additional disclosure and had no objection to Mr. Donahey acting as a Procedures Officer in the present matter.

3. The parties and the applicants each stated its position as to acceptance of the two applicants to act as *Amicus curiae*, the pendency of an emergency proceeding and the need to schedule activities in the present case and, if possible, to coordinate the scheduling of matters in the present case with that of the Emergency Proceeding, such that any conference of *Amicus curiae* status to one or both of the applicants would enable one or both to participate in the Emergency Proceeding, subject, of course, to such participation being sanctioned by the Emergency Panelist.

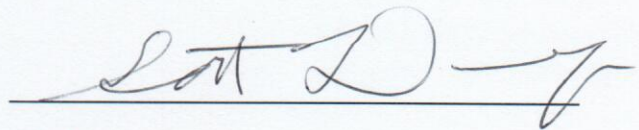
4. The Procedures Officer stated that as he understood that this was the first time that anyone had acted as a Procedures Officer in an Independent Review Process (“IRP”) matter and that as he was unaware of any other legal matter in which a “Procedures Officer” had acted in any capacity, he needed to understand the legislative history of the creation of the position, as well as to the legislative history behind the amendments to the Interim Supplementary Procedures for ICANN Independent Review Process (adopted 25 October 2018 (hereinafter the “Supplementary Procedures”) that discussed the authority of the Procedures Officer generally. The Procedures Officer asked that the parties brief such legislative history, as well as the legislative history of the unusual *amicus curiae*

qualifications and of the underscored language contained in Article 7 of the Supplementary Procedures setting out those qualifications. He asked the parties to brief that legislative history, and the full description of the briefing that would assist the Procedures Officer in this regard is included herewith as Appendix A for the benefit of the parties and the applicants.

5. The Procedures Officer further stated that he recognized the urgency of the applicants' requests and assured the applicants and the parties that he was willing to work closely with the Emergency Panelist to set briefing and hearing schedules that would permit the issues to be presented to the Emergency Panelist for his consideration before any ruling was made on the applicants' desire to participate in the emergency proceeding. The Process Officer notes that the Parties initially submitted the question of whether potential *amicus curiae* may participate in an application for interim measures under the Supplementary Procedures to the Emergency Panelist. The Emergency Panelist requested the parties to file their observations on this issue. See, Emergency Panelist's Scheduling Order No. 1, dated 3 December 2018, ¶¶ 5.1 – 5.5, at 3.

6. Counsel for Claimant and Respondent indicated that they would jointly work to contact the Emergency Panelist, to encourage the Emergency Panelist to coordinate the briefing, the hearing, and the ruling on matters with the Procedures Officer. They further agreed that upon the completion of such discussion they would advise the Procedures Officer as to a timetable for the submission of the briefing of the topics attached hereto.

Dated: 5 January 2019

A handwritten signature in black ink, appearing to read "Scott Donahey", written over a horizontal line.

M. Scott Donahey, Procedures Officer

APPENDIX A

TOPICS FOR BRIEFING

***Affilias Domains No. 3 Limited v. ICANN*, ICDR Independent Review Panel**

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1. Public comments on updated procedures that discuss the *amicus curiae* concept and/or the portion of Article 7 on *amicus curiae* that ultimately became part of the Interim Supplementary Procedures;
2. Public comments on the role of the Procedures Officer;
3. Records of IRP Implementation Oversight Team discussion and specific approval, if any, of the provision(s) discussing *amicus curiae*;
4. Records of IRP Implementation Oversight Team discussion and specific approval, if any, of the provision(s) discussing the Procedures Officer.
5. The reason for the underscoring of parts of the section headed "Participation as an *Amicus Curiae*" in Article 7 of the of the Interim Supplementary procedures.
6. Public comments on the underscored sections of Article 7.
7. Records of IRP Implementation Oversight Team discussion and specific approval, if any, of the underscored sections referenced in Section 5 above.
8. Please attach all documents as exhibits which support your statements regarding the above topics. ICANN, please use exhibit numbers 1 – 199. Afilias, please use exhibit numbers 201-399.