

INDEPENDENT REVIEW PROCESS

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

GCCIX, W.L.L.,) ICDR CASE NO. 01-21-0004-1048
)
 Claimant,)
)
 and)
)
 THE INTERNET CORPORATION FOR)
 ASSIGNED NAMES AND NUMBERS,)
)
 Respondent.)
_____)

ICANN'S REPLY IN SUPPORT OF APPLICATION TO STAY THE IRP

Eric P. Enson
Kelly M. Watne
Irma Kroneman
JONES DAY
555 South Flower Street, 50th Fl.
Los Angeles, CA 90071
Tel: +1.213.489.3939

Counsel to Respondent
The Internet Corporation for
Assigned Names and Numbers

10 March 2022

TABLE OF CONTENTS

	Page
INTRODUCTION	1
ARGUMENT	2
I. THE ICDR RULES PROVIDE THE LEGAL AUTHORITY FOR A STAY, WHICH WILL AID IN THE ULTIMATE RESOLUTION OF THIS IRP AND IS THE MOST EFFICIENT WAY TO PROCEED.....	2
II. A STAY WILL GIVE ICANN ADDITIONAL TIME TO COMPLETE THE GAC DIALOGUE AND EVALUATE NEXT STEPS, AS CLAIMANT CONCEDES IN ITS OPPOSITION.....	4
CONCLUSION.....	5

INTRODUCTION

Respondent the Internet Corporation for Assigned Names and Numbers (“ICANN”) submits this reply in response to Claimant’s Opposition (“Opposition”) to ICANN’s Application to Stay the IRP (“Stay Application”).

1. ICANN’s Stay Application seeks interim relief in the form of a six-month stay of this IRP in order to allow time for ICANN to complete its dialogue with ICANN’s Governmental Advisory Committee (“GAC”) regarding the GAC’s consensus advice on Claimant’s .GCC application (“GAC Advice”), and to take any potential further action as a result of that dialogue. In its Opposition, Claimant argues that there is no legal authority for such a stay. But as ICANN established in its Stay Application, Article 27(1) of the ICDR Rules, which supplement the IRP Interim Supplementary Procedures and ICANN’s Bylaws, provides the Panel with the legal authority to “order or award any interim or conservatory measures it deems necessary.”¹

2. Claimant also argues in its Opposition that there is no equitable justification for a stay. But the equitable justification for a stay is clearly set forth in ICANN’s Stay Application. A stay of this IRP is necessary to accomplish one of the purposes of the IRP – for ICANN to be informed and guided by IRP precedent in order to reduce disputes – by allowing the time needed for ICANN to complete its dialogue with the GAC, which is directly in line with the relief sought by Claimant in this IRP. A stay is further necessary because ICANN’s dialogue with the GAC may obviate the need for this IRP or, if it does not, the dialogue will almost certainly change the facts, claims, and arguments in this action, making a stay of this IRP during the pendency of the dialogue the most efficient way to proceed.

¹ Internal Dispute Resolution Procedures (Including Mediation and Arbitration Rules) (1 March 2021), Arbitration Rules, Art. 27(1), Ex. R-40.

3. ICANN's Stay Application is not an attempt to "re-write history," as Claimant argues. It is, instead, an effort to potentially address Claimant's concerns, to be guided and informed by applicable IRP precedent, and to provide additional critical information to the parties and to the Panel that will assist in resolving the claims and defenses in this IRP.

4. In fact, in its Opposition, Claimant argues that there are several different approaches ICANN could take with respect to the .GCC application that would resolve this matter to Claimant's satisfaction. But at the same time, Claimant is refusing to give ICANN the time necessary to evaluate these approaches, and all others, and reach a decision on how to proceed with the .GCC application. It is not certain what approach ICANN will take in response to the GAC dialogue, but it is clear that ICANN's evaluation of the matter could significantly alter the landscape of this IRP and the most efficient way forward is to allow ICANN the time to conduct the dialogue and evaluate the matter.

5. ICANN respectfully requests that the IRP Panel grant ICANN's Stay Application.

ARGUMENT

I. THE ICDR RULES PROVIDE THE LEGAL AUTHORITY FOR A STAY, WHICH WILL AID IN THE ULTIMATE RESOLUTION OF THIS IRP AND IS THE MOST EFFICIENT WAY TO PROCEED.

6. Claimant first argues that ICANN has not provided any legal authority for a stay of this IRP. That is incorrect. Article 27(1) of the ICDR Rules, which supplement the IRP Interim Supplementary Procedures and ICANN's Bylaws, provides this Panel with the legal authority to "order or award any interim or conservatory measures it deems necessary."² As

² Arbitration Rules, Art. 27(1), Ex. R-40.

such, the IRP Panel has the legal authority, under the ICDR Rules, to grant ICANN the requested interim relief in the form of a six-month stay.

7. Claimant next argues that there is no equitable justification for a stay. But the equitable justification for a stay was clearly set forth in ICANN's Stay Application.³ A stay of this IRP (i.e., giving ICANN the time needed to complete its dialogue with the GAC) aligns with the relief sought by Claimant and is necessary to accomplish one of the purposes of the IRP, which is for ICANN to be informed and guided by IRP precedent in order to reduce disputes. A stay is further necessary because the dialogue between ICANN and the GAC is, at a minimum, likely to materially change the factual landscape of this action, making a stay of this IRP during the pendency of the dialogue process the most efficient way to proceed.

8. Claimant argues that this stay is not necessary because the GAC Advice only relates to a small portion of the IRP Request. But it is irrefutable that almost all of the claims in this IRP, while they may or may not mention the GAC Advice by name, stem from ICANN's acceptance of the GAC Advice. Indeed, Claimant's core allegations in this IRP relate to ICANN's acceptance of the GAC Advice and the decision to halt the processing of Claimant's application.

9. Claimant argues that it is too late for ICANN to take this action and that a stay is, therefore, not appropriate. ICANN, however, decided to take the proactive step of entering a dialogue with the GAC at the beginning of this IRP in an attempt to address Claimant's core allegations and in consideration of previous IRP precedent. Indeed, ICANN's dialogue with the GAC regarding the GAC Advice is very similar to the steps ICANN took in response to the final

³ Stay Application ¶¶ 26-31.

declarations in the .AFRICA and .AMAZON IRPs. To be clear, ICANN is not seeking a “do-over,” as Claimant argues; instead, ICANN is making an effort to potentially address Claimant’s concerns, to be guided and informed by applicable IRP precedent, and to provide additional critical information to the parties and to the Panel that will assist in clarifying and/or resolving the claims and defenses in this IRP.

II. A STAY WILL GIVE ICANN ADDITIONAL TIME TO COMPLETE THE GAC DIALOGUE AND EVALUATE NEXT STEPS, AS CLAIMANT CONCEDES IN ITS OPPOSITION.

10. In its Opposition, Claimant argues that there are several actions ICANN could take that would resolve this matter to its satisfaction.⁴ For instance, Claimant argues that ICANN should reject the GAC Advice as insufficient.⁵ Claimant argues that ICANN should return the .GCC application to processing.⁶ And Claimant argues that ICANN should approve Claimants “application in principle, and facilitat[e] dialogue between Claimant and the government objectors.”⁷

11. While it is not certain what approach ICANN will take as a result of the GAC dialogue, and whether such approach would satisfy Claimant, the fact remains that additional time is needed in order to permit ICANN to complete the GAC dialogue, evaluate the GAC Advice, and determine next steps regarding Claimant’s .GCC application. Without that time, the parties will waste resources proceeding in an IRP that may not be necessary or may look very different at the end of the GAC dialogue process. A six-month stay at this early stage of the IRP

⁴ Claimant’s Opp’n to Stay Appl., pp. 10-12.

⁵ *Id.*, p. 10.

⁶ *Id.*

⁷ *Id.*

could ultimately save the parties and the Panel countless hours of discovery, months of litigation, and the costs associated with the same.

12. Finally, Claimant again argues that the IRP relates to ICANN's past conduct and thus is not remediated by ICANN's recent decision to open a dialogue with the GAC. This argument, however, contradicts Claimant's express claims and requests in this IRP and the arguments in Claimant's Opposition that ICANN should take certain actions in response to the GAC dialogue. Claimant's argument also ignores the fact that, irrespective of the claims in this IRP, the Board has an independent duty to be guided by the Articles and Bylaws, as well as applicable IRP precedent, which the Board has clearly attempted to do with its September 2021 resolution. Proceeding in this IRP, when ICANN is in the process of addressing Claimant's main complaints, would be inconsistent with the purpose of the IRP and hinder the ICANN Board's independent decision making, as guided by applicable IRP precedent, not to mention increasing the parties' costs in resolving this IRP.

CONCLUSION

13. Because the ongoing GAC dialogue and any potential ICANN actions resulting therefrom may resolve some or all of the claims and defenses in this IRP or, at the very least, materially change the factual landscape of this IRP, ICANN's request for six-month stay should be granted.

Respectfully submitted,
JONES DAY

Dated: 10 March 2022

By: /s/ Eric P. Enson
Eric P. Enson

Counsel for Respondent ICANN