

**INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION**

Independent Review Process Panel

Namecheap, Inc.

Claimant,

Case Number: 01-20-0000-6787

- and -

Internet Corporation for Assigned Names  
and Numbers (ICANN)

Respondent.

**PROCEDURAL ORDER NO. 5**  
**(Ruling on the Parties' Motions to Compel Disclosure)**

Procedural Background

1. As provided in Procedural Order No. 1, the parties timely served their respective disclosure requests and responses and objections. The parties attempted to informally resolve the objections, including through videoconferences between lead counsel, but were unable to reach agreement on a number of issues. As provided in Procedural Order No. 2, the parties thus submitted motions to compel the disclosure of documents that the other party refused to produce (on November 4, 2020), followed by responses to those motions (on November 24, 2020).

2. On December 2, 2020, at 8:00 a.m. Pacific Time, a hearing was conducted via Zoom videoconference on the parties' motions to compel disclosure. The following individuals participated:

Flip J. Petillion (Petillion, Huizingen, Belgium), counsel for Claimant,  
Namecheap, Inc. ("Namecheap" or "Claimant")  
Jan Janssen (Petillion, Huizingen, Belgium), counsel for Claimant  
Jeffrey A. LeVee (Jones Day, Los Angeles, CA), counsel for Respondent, Internet  
Corporation for Assigned Names and Numbers ("ICANN" or "Respondent")  
Kelly Ozurovich (Jones Day, Los Angeles, CA), counsel for Respondent  
Casandra Furey (Associate General Counsel, ICANN)  
Amy A. Stathos (Deputy General Counsel, ICANN)  
Glenn P. Hendrix, Chairman of the Independent Review Panel (the "Panel")  
Grant L. Kim, Panel Member

Christof Siefarth, Panel Member  
Tom Simotas, International Centre for Dispute Resolution (“ICDR”)

The hearing was adjourned at approximately 11:30 am Pacific Time. By agreement of the parties, the hearing was recorded.

3. In addition to legal memoranda supporting their respective motions to compel and opposing the motion to compel submitted by the other party, the parties prepared charts similar to “Redfern Schedules” reflecting, for each document request, a description of the documents requested, the parties’ respective positions on the request, and any resolutions reached during the course of the meet-and-confer process.

4. Prior to the hearing, on December 1, 2020, the Panel submitted the following questions to the parties in connection with the motions to compel:

- i. For Namecheap Request No. 1, ICANN proposes an end date in November 2019, but its proposed beginning date is not indicated. It is our understanding that ICANN is proposing to search ESI for certain email custodians for documents and communications regarding the modification and/or removal of the price control provisions in the 2019 .org, .info, and .biz registry agreements.
  - a. How far back will those ESI searches go?
  - b. What is that date tied to? The date that ICANN staff began considering modification or removal of the price control revisions? The date that the ICANN board began considering modification or removal of the price control revisions? The date that ICANN began discussing the possible modification or removal of the price control revisions with the registry operators? The date that ICANN began negotiating the possible modification or removal of the price control revisions with the registry operators? Some other date?
  - c. As to documents related to the .org, .info, and .biz registry agreements prior to 2019, is there some narrow subset of documents related to the most recent prior agreements, such as final executed agreements and/or external communications between ICANN and the registries, upon which the parties could agree?
- ii. In connection with Namecheap Request No. 3, is Namecheap still asserting a claim for relief regarding the proposed (but now withdrawn) change of control of PIR [Public Interest Registry]? (We understand that Namecheap contends that the proposed

change of control could have motivated the removal of price controls, but this strikes the Panel as different from asserting a claim for relief in connection with the proposed change of control.) If Namecheap is not asserting a claim for relief in connection with the formerly-proposed/withdrawn change of control, why shouldn't the Panel accept ICANN's proposal to produce documents and communications regarding the proposed change in control only to the extent that these documents and communications also refer to the modification and/or removal of the price control provisions in the 2019 .org, .info, and .biz registry agreements?

- iii. Have the parties discussed possible ESI custodians and search terms? Would agreement on custodians and search terms perhaps moot some of the disagreements regarding the scope of ICANN's ESI production?
- iv. In connection with Namecheap's Request No. 2, ICANN states that it "does not maintain *as a matter of course* some of the data Namecheap seeks." Does ICANN maintain *any* of the data? For Namecheap, how would the historical data that it is seeking aid the Panel in assessing whether the removal of price controls for the .org, .info, and .biz registry agreements violated ICANN's Articles of Incorporation or Bylaws?
- v. Does Namecheap have *any* non-privileged documents that it can produce in response to ICANN's Requests 1 and 2 (regarding alleged harm)?
  - a. If ICANN were granted leave to file a motion to dismiss for lack of standing, would Namecheap seek to present any documents (aside from one or more expert reports) opposing that motion?
  - b. We understand that Namecheap stated at the hearing before the Emergency Arbitrator that it was willing to provide an affidavit explaining why the removal of price controls causes harm to Namecheap. Would it be helpful to set a date for Namecheap to produce such a document at this point, so that ICANN could then make a decision as to whether to challenge Namecheap's standing?
- vi. Regarding ICANN's Request No. 3, it is the Panel's understanding that Namecheap is willing to provide the requested price information. Why are *all* notifications and communications associated with price changes also necessary? Could the scope be narrowed?

- vii. How, if at all, does the standard of review to be applied by the Panel in its ultimate decision on the merits impact the scope of disclosure? The Emergency Arbitrator Decision applied the business judgment rule set forth in Section 4.3(i)(iii) of the ICANN Bylaws, which provides that “(f)or Claims arising out of the Board’s exercise of fiduciary duties, the IRP Panel shall not replace the Board’s reasonable judgment with its own so long as the Board’s action or inaction is within the realm of reasonable business judgment.” It appears that the Claimant argued for a different standard, relying at least in part on *ICM Registry v. ICANN*, ICDR Case No. 50,117 T 00224 08 (2010). The Panel does not wish to sidetrack the hearing tomorrow with argument regarding which standard is proper in this case (although we will need to tackle that issue at some point), but is interested in whether the parties’ views on the standard of review affect in any way their views on the scope of disclosure.

#### The Panel’s Rulings

5. Appendix A and Appendix B to this Order set forth the Panel’s rulings on each disputed disclosure request submitted by ICANN and Namecheap, respectively. Both Appendices were issued to the parties in advance of this Order, on December 18, 2020.

6. The starting point for the Appendices was the Redfern Schedules prepared by the parties. The Panel’s rulings were inserted into the final column of each schedule.

7. The following provides further explanation and context for the rulings in the Appendices.

#### General Principles

8. Rule 8 of the ICANN Interim Supplementary Procedures for ICANN Independent Review Process (the “IRP Procedures”) provides:

On the motion of either Party and upon finding by the IRP PANEL that such exchange of information is necessary to further the PURPOSES OF THE IRP, the IRP PANEL may order a Party to produce to the other Party, and to the IRP PANEL if the moving Party requests, documents or electronically stored information in the other Party’s possession, custody, or control that the Panel determines are *reasonably likely to be relevant and material to the resolution of the CLAIMS and/or defenses in the DISPUTE* and

are not subject to the attorney-client privilege, the work product doctrine, or otherwise protected from disclosure by applicable law (including, without limitation, disclosures to competitors of the disclosing person, group or entity, of any competition-sensitive information of any kind).

IRP Procedures, Rule 8 (emphasis added).

9. The ICDR Rules provide that the Panel may “require a party to make available to another party documents in that party’s possession not otherwise available to the party seeking the documents, that are reasonably believed to exist and to be relevant and material to the outcome of the case.” ICDR Arbitration Rules, Art. 21(4). The ICDR Rules provide further that the Panel and the parties “should endeavor to avoid unnecessary delay and expense while at the same time avoiding surprise, assuring equality of treatment, and safeguarding each party’s opportunity to present its claims and defenses fairly.” *Id.*, Art. 21(1).

10. The ICANN Bylaws provide that the independent review process (“IRP”) is intended to “[l]ead to binding, final resolutions consistent with international arbitration norms that are enforceable in any court with proper jurisdiction.” ICANN Bylaws, Section 4.3(a)(viii).

11. The ICANN Bylaws contain numerous references to transparency, including Section 3.1, which provides that “ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner ...” and that “ICANN shall also implement procedures for the documentation and public disclosure of the rationale for decisions made by the Board and ICANN's constituent bodies.”

12. Regarding IRP proceedings, specifically, Section 4.1. of the ICANN Bylaws provides that:

In carrying out its Mission, ICANN shall be accountable to the community for operating in accordance with the Articles of Incorporation and these Bylaws, including the Mission set forth in Article 1 of these Bylaws. This Article 4 creates reconsideration and independent review processes for certain actions as set forth in these Bylaws and procedures for periodic review of ICANN's structure and operations, which are intended to reinforce the various accountability mechanisms otherwise set forth in these Bylaws, *including the transparency provisions of Article 3 and the Board and other selection mechanisms set forth throughout these Bylaws.*

ICANN Bylaws, Section 4.1 (emphasis added).

### 13. Distilling the foregoing:

- Subject to applicable privileges, the Panel may order the disclosure of documents or electronically stored information (ESI) that:
  - are reasonably likely to be relevant and material to the resolution of the claims and/or defenses in the dispute; and
  - are not subject to the attorney-client privilege, the work product doctrine, or otherwise protected from disclosure by applicable law (including disclosures to competitors).
  
- The Panel is charged with endeavoring to avoid unnecessary delay and expense while at the same time avoiding surprise, assuring equality of treatment, and safeguarding each party's opportunity to present its claims and defenses fairly. In doing so, the Panel considered the need for proportionality. This involves balancing the disclosure necessary for a fair search for truth – which may fall short of an idealized notion of perfection (for example, complete and full disclosure of each and every conceivably relevant document) – against the burden and cost of disclosure. The Panel applied this principle in the rulings in the Appendices where it denied all or part of a request on the ground that the requested documents may be only marginally relevant and material relative to the burden of production.
  
- International arbitration “norms” are generally applicable here, although there is no single international arbitration “norm” regarding the scope of disclosure. As stated in one widely-cited treatise, it is “impossible to identify a single ‘standard’ approach to disclosure in international arbitration.” GARY BORN, *INT’L COMM. ARB.* (2<sup>nd</sup> ed.), at 2346 (2014). “Nevertheless, there is an emerging consensus among experienced arbitrators and practitioners that a measure of document disclosure is desirable in most international; disputes. Justice is almost always best served by a degree of transparency, which brings the relevant facts before the arbitrators.” *Id.* Even so, the scope of disclosure in international arbitration is narrower than in U.S. civil litigation, and the Panel has been guided in part by that consideration here. The reference in the Appendices to “GDPR or other privacy laws” also takes into account the international character of this IRP proceeding.
  
- ICANN is obligated to act in an “open and transparent manner” and, indeed, one of the purposes of an IRP proceeding, including this matter, is ensuring that ICANN is accountable to the Internet community, including in connection with “the documentation and public disclosure of the rationale for decisions made by the Board and ICANN's constituent

bodies.” That obligation, together with the fact that the sole issue in this proceeding is whether ICANN complied with its Articles of Incorporation and Bylaws, means that disclosure will necessarily be somewhat asymmetrical, with ICANN sustaining a heavier burden than Namecheap.

#### “Reasonable Search”

14. Certain rulings in the Appendices direct the parties to conduct a “reasonable search” for documents. In conducting a reasonable search for ESI, the parties shall meet and confer regarding ESI protocols addressing at least the following issues:

- The locations that will be searched for relevant ESI;
- The persons (custodians) likely to possess relevant ESI; and
- The methods to be used to collect ESI. For example, will search terms be used, or will the parties use predictive coding or computer assisted review? If search terms are used, what are they? What process will be used to test the search terms to determine whether relevant ESI is likely to be identified by using the proposed search protocol? (At a minimum, the producing party should verify that documents already identified as relevant are included in the search results.)

15. Each party shall provide the other party with the ESI protocols it intends to use by January 8, 2021, with any objections to be filed by January 22, 2021.

#### Relevant Time Periods

16. Except as otherwise specified in Appendix B, the relevant time period for ICANN’s production is generally deemed to be January 1, 2018 through November 18, 2019. ICANN indicated during the December 2, 2020 hearing that discussions with the .ORG, .INFO and .BIZ registry operators began in May 2018. The Panel is establishing a January 1, 2018 beginning date to better capture documents and ESI that may reflect internal deliberations or communications, if any, prior to discussions with the registry operators.

17. For certain requests to ICANN (*e.g.*, Nos. 1.r., 2.1. and 2.t.), the Panel has limited ICANN’s obligation to conduct an ESI search to the period of January 1, 2018 through November 18, 2019, but nonetheless requires that ICANN conduct a reasonable inquiry to identify responsive documents and ESI outside that period. Such inquiry shall, at a minimum, include interviews with relevant ICANN staff. If ICANN prefers to supplement such inquiry through e-searches, it may of course do so.

18. As specified in Appendix A, the relevant time period for Request No. 10 in Namecheap's production is March 18, 2019 through November 18, 2019. The starting date is not symmetrical with the relevant time period for much of ICANN's production because March 18, 2019 is when ICANN first invited public comments on the possibility of removing price controls and thus the first time that Namecheap would have been aware of the proposal.

#### Further Disclosure

19. Namecheap requests 2.n., 2.o., 2.p., and 2.q. seek certain data. These requests presently stand denied, but the Panel is potentially open to requiring production, subject to better understanding: 1) the precise data sought by Namecheap and precisely how that data would be utilized by its expert(s) as evidence regarding whether ICANN violated its Articles of Incorporation or Bylaws; 2) whether that data is reasonably available to ICANN; 3) if so, the burden to ICANN of producing that data; 4) whether equivalent data is reasonably available to Namecheap from sources other than ICANN; and 5) whether the data constitutes confidential commercial information or trade secrets of registries or other registrars (or, indeed, competition-sensitive information of any kind, as protected in the IRP Procedures, Rule 8). In the event Namecheap wishes to continue pursuing these requests, Namecheap shall promptly initiate a meet-and-confer process with ICANN to discuss the foregoing factors. If the parties are unable to reach agreement, Namecheap may apply to the Panel by no later than January 15, 2021 for an order to resolve any disputed issues. To be clear, however, the Panel is not encouraging Namecheap to do so, as any such further disclosure will further delay the proceedings, and it is not at all clear at the present time that the requested data will assist the Panel in deciding this matter.

20. As reflected in Appendix B, the Panel also denied several other Namecheap requests "absent a further particularized showing of relevance, materiality and need." Namecheap may re-propound those requests upon such a particularized showing. Again, the Panel is not encouraging Namecheap to do so, especially in the absence of any new information that was not previously available, as any such further disclosure might further delay the proceedings and, based on the information presently available, the information sought in these requests strikes the Panel as only marginally relevant, if at all.

#### The PIR Change of Control

21. During the hearing, Namecheap's counsel advised in response to the Panel's Question ii. (see Paragraph 4 above) that it was, in fact, still asserting a claim for relief regarding the proposed (but since withdrawn) change of control of the .ORG registry operator (PIR). ICANN then requested leave from the Panel to submit a motion to dismiss the allegations in Namecheap's IRP Request regarding the proposed change



of control of PIR. Such leave was granted (as reflected in Procedural Order No. 3) and a briefing schedule was established.

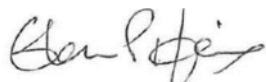
22. Several disclosure requests relate to the PIR change of control. As reflected in the Appendices to this Order, the Panel defers ruling on those requests pending a ruling on the motion to dismiss.

Other

23. The parties shall be precluded from relying on documents in the merits phase of this proceeding that were responsive to disclosure requests, but that they did not produce, except upon a compelling showing of good cause. This ruling does not encompass documents that do not already exist and that are created specifically for the hearing, such as expert reports and demonstrative exhibits.

**As at Los Angeles, California, USA  
December 24, 2020**

**FOR THE PANEL:**

A handwritten signature in black ink, appearing to read "Glenn P. Hendrix".

**Glenn P. Hendrix  
Chair**

## **Appendix A**

## Appendix A

### Panel Rulings on ICANN’s Requests for the Production of Documents (Disputed Requests Only)

**NOTE: Only the “Panel Ruling” in Column 5 (entered in bold type) was drafted by the Panel. The remaining information in the Schedule was prepared by the parties.**

No	Description of Requested Document	ICANN’s Position Regarding Relevance and Materiality to the Outcome of the IRP	Namecheap Response or Objection (Pre-Meet-and-Confer)	ICANN Reply/Panel Ruling
1	All documents or communications referring to or reflecting the alleged harm Namecheap has suffered or will suffer as a result of removal of the price control provisions in the .ORG, .INFO, and .BIZ Registry Agreements.	<p>The documents sought by this request are relevant and material to the Panel’s determination of whether Namecheap constitutes a “Claimant” under ICANN’s Bylaws, specifically whether Namecheap has “suffer[ed] an injury or harm that is directly and causally connected to the alleged violation.” Bylaws, Art. IV, § 4.3(b)(i) (RM-2).</p> <p>In its Request for IRP, Namecheap claims that it “has suffered direct harm as a result of” ICANN’s alleged breaches of its Articles of Incorporation and Bylaws, and that Namecheap “is an ICANN-accredited registrar that is directly impacted by [ICANN’s] decision.” Request for IRP ¶¶ 1, 2. But Namecheap fails to identify what harm it has purportedly suffered (or</p>	<p>Namecheap does not object to the production of documents that are relevant to the assessment of Namecheap’s actual or potential harm as a result of the ICANN’s policy changes concerned (in particular the removal of the price control provisions in the .ORG, .INFO, and .BIZ Registry Agreements). At the same time, Namecheap questions how ICANN’s request is relevant and material to determining whether Namecheap qualifies as a Claimant.</p> <p>Arguments showing Namecheap’s harm have already been exchanged in the framework of Namecheap’s request for emergency relief. Yet, in those proceedings, ICANN objected to the</p>	<p>ICANN Reply:</p> <p>Namecheap has effectively refused to produce any documents in response to this Request. Namecheap objected that responsive documents are protected by the work product doctrine. Namecheap then agreed to produce “qualitative and quantitative data reflecting Namecheap’s harm” but only in connection with “a comprehensive study, that will be commissioned.”<sup>1</sup> Namecheap is presumably referring to an expert report it will submit with its pre-hearing brief, well after 1 April 2021. ICANN is moving to compel all responsive,</p>

<sup>1</sup> Ex. B, at pp. 1–2; Ex. D, at p. 2.

		<p>will suffer). ICANN has therefore argued that Namecheap is not a Claimant under the Bylaws because it has not established that it suffered any harm as a direct result of ICANN's conduct. Response to Request for IRP ¶¶ 40-44. Accordingly, this request seeks documents that are relevant to determining what harm (if any) Namecheap has suffered or likely will suffer, and are material to determining whether Namecheap qualifies as a Claimant.</p> <p>This request also seeks documents that are relevant to whether Namecheap's claims in this IRP are valid. Therefore, this request seeks documents relevant and material to Namecheap's central claims in this IRP and ICANN's defenses.</p> <p>These documents are not in ICANN's possession, custody, or control, but are in Namecheap's possession, custody, or control, as only Namecheap can explain the purported harm it has or will suffer.</p>	<p>production of an affidavit in redacted form, showing monetary and potential monetary harm and which was based on information that was publicly disclosed by the proposed acquirer of Public Interest Registry, the operator of .ORG. It seems that ICANN is now seeking the production of documents that Namecheap offered to produce in the framework of these emergency proceedings.</p> <p>The Emergency Arbitrator already ruled that Namecheap has suffered harm that is directly and causally connected to the alleged violation.</p> <p>Namecheap intends to quantify its harm. However, such quantification can only be done effectively after ICANN has produced the information that Namecheap requested from ICANN in its request for document production.</p> <p>As a result, Namecheap objects to having to respond to ICANN's request before ICANN has provided the information that Namecheap has requested.</p> <p>In addition, Namecheap objects to the request for documents or communications as phrased by ICANN.</p>	<p>non-privileged documents responsive to this Request.</p> <p><b><u>Panel's Ruling:</u></b></p> <p><b>Procedural Order No. 3 requires Namecheap to make an evidentiary submission articulating the harm that supports its claim of standing under the ICANN Bylaws, and sets a schedule for ICANN to file a motion to dismiss for lack of standing, which has been updated by Procedural Order No. 4.</b></p> <p><b>If the motion to dismiss is granted as to the removal of price controls, the Panel expects that this request will be moot, unless ICANN can demonstrate that it is not moot.</b></p> <p><b>If the motion to dismiss is not granted and the harm caused by the removal of price controls remains relevant (as stated by the Panel in its ruling on the motion to dismiss), Namecheap shall produce any other pre-existing, non-privileged documents that Namecheap contends supports its claim of standing as to the removal of price controls in accordance with the schedule in</b></p>
--	--	---	--	---

{01334971}

			<p>Namecheap submits that ICANN’s request is vague and does not describe in sufficient detail a narrow and specific category of documents. It would be overly burdensome for Namecheap having to search for all documents or communications reflecting Namecheap’s harm. There is no plausible benefit that ICANN can expect from Namecheap having to submit all documents or communications that reflect Namecheap’s harm.</p> <p>Finally, Namecheap objects to this request to the extent it seeks documents or communications that are privileged or that contain confidential or commercially sensitive documentation.</p> <p>Namecheap proposes to submit documents showing financial projections and monetary harm in redacted form. Namecheap is amenable to a protective order that allows for the submission of confidential documents in unredacted form, but protecting them from being viewed by anyone else other than the IRP Panel and ICANN’s outside counsel of record.</p>	<p><b>Procedural Order No. 2.</b>  <b>Namecheap shall be precluded from relying on documents that it does not produce, except upon a compelling showing of good cause. This ruling does not encompass documents that do not already exist and are created specifically for the purpose of showing standing, such as expert reports. Any expert reports and other specially created documents shall be submitted in accordance with the schedule in Procedural Order No. 2.</b></p>
--	--	--	--	--

2	<p>All documents or communications referring to or reflecting the alleged harm Namecheap has suffered or will suffer as a result of ICANN’s consideration and/or rejection of the change of control request.</p>	<p>ICANN maintains that Namecheap’s claims regarding ICANN’s consideration and/or rejection of the change of control request are moot, given that ICANN did not consent to the change of control request. ICANN intends to raise this objection in response to Namecheap’s requests for production and/or through a motion to dismiss these claims. To the extent the IRP Panel allows Namecheap to pursue these claims, ICANN propounds this request to preserve its right to seek information pertaining to Namecheap’s claims. If the Panel determines that the issue is moot (and denies Namecheap’s requests for production regarding this claim and dismisses this claim altogether), then ICANN will withdraw this request.</p> <p>The documents sought by this request are relevant and material to the Panel’s determination of whether Namecheap constitutes a “Claimant” under ICANN’s Bylaws, specifically whether Namecheap has “suffer[ed] an injury or harm that is directly and causally connected to the alleged violation.” Bylaws, Art. IV, § 4.3(b)(i) (RM-2).</p> <p>In its Request for IRP, Namecheap claims that it “has suffered direct harm as a</p>	<p>Namecheap incorporates by reference its response to Request No. 1 above.</p>	<p><b>ICANN Reply:</b></p> <p>Namecheap has effectively refused to produce any documents in response to this Request. Namecheap objected that responsive documents are protected by the work product doctrine. Namecheap then agreed to produce “qualitative and quantitative data reflecting Namecheap’s harm” but only in connection with “a comprehensive study, that will be commissioned.”<sup>2</sup> Namecheap is presumably referring to an expert report it will submit with its pre-hearing brief, well after 1 April 2021. ICANN is moving to compel all responsive, non-privileged documents responsive to this Request.</p> <p><b><u>Panel’s Ruling:</u></b></p> <p><b>As noted in Procedural Order No. 3, the Panel has granted ICANN’s request for leave to file a motion to dismiss Namecheap’s allegations regarding change of control. The Panel defers a ruling on this document request until</b></p>
---	--	---	---	---

<sup>2</sup> Ex. B, at pp. 1–2; Ex. D, at p. 2.

	<p>result of” ICANN’s alleged breaches of its Articles of Incorporation and Bylaws, and that Namecheap “is an ICANN-accredited registrar that is directly impacted by [ICANN’s] decision.” Request for IRP ¶¶ 1, 2. But Namecheap fails to identify what harm it has purportedly suffered (or will suffer). ICANN has argued that Namecheap is not a Claimant under the Bylaws because it has not established that it suffered any harm as a direct result of ICANN’s conduct. Response to Request for IRP ¶¶ 40–44. Accordingly, this request seeks documents that are relevant to determining what harm (if any) Namecheap has suffered or likely will suffer and are material to determining whether Namecheap qualifies as a Claimant.</p> <p>This request also seeks documents that are relevant to whether Namecheap’s claims in this IRP are valid. Therefore, this request seeks documents relevant and material to Namecheap’s central claims in this IRP, and ICANN’s defenses.</p> <p>These documents are not in ICANN’s possession, custody, or control, but likely are in Namecheap’s possession, custody, or control, as only Namecheap can explain the purported harm it has or will suffer.</p>		<p><b>after it decides ICANN’s motion to dismiss, since granting that motion would appear to moot this request.</b></p>
--	---	--	---

{01334971}

3	<p>Documents sufficient to show the prices that the .ORG, .BIZ, and .INFO registry operators have charged Namecheap for registrations in the .ORG, .BIZ, and .INFO TLDs from 1 January 2015 to the present, including but not limited to all notifications and communications from the .ORG, .BIZ, and .INFO registry operators regarding registration or renewal pricing.</p>	<p>The documents sought by this request are relevant and material to the Panel’s determination of whether Namecheap constitutes a “Claimant” under ICANN’s Bylaws, specifically whether Namecheap has “suffer[ed] an injury or harm that is directly and causally connected to the alleged violation.” Bylaws, Art. IV, § 4.3(b)(i) (RM-2).</p> <p>In its Request for IRP, Namecheap claims that it “has suffered direct harm as a result of” ICANN’s alleged breaches of its Articles of Incorporation and Bylaws, and that Namecheap “is an ICANN-accredited registrar that is directly impacted by [ICANN’s] decision.” Request for IRP ¶¶ 1, 2. But Namecheap fails to identify what harm it has purportedly suffered (or will suffer). ICANN has argued that Namecheap is not a Claimant under the Bylaws because it has not established that it suffered any harm as a direct result of ICANN’s conduct. Response to Request for IRP ¶¶ 40–44.</p> <p>The documents requested here are relevant to determining whether the .ORG, .BIZ, and .INFO registry operators increased the prices they charge Namecheap for Registry Services after the price control provisions were removed from the Registry Agreements. It also</p>	<p>Namecheap is prepared to collect information that shows the prices that the .ORG, .BIZ and .INFO registry operators have charged Namecheap for registrations in the .ORG, .BIZ and .INFO TLDs from 1 January 2015 to the present.</p> <p>However, this information is commercially sensitive and highly confidential. Therefore, pricing information can only be submitted, subject to protection from being viewed by anyone else than the IRP Panel and ICANN’s outside counsel of record. Without such protection, Namecheap objects to the production of information that shows the prices that the .ORG, .BIZ and .INFO registry operators have charged Namecheap for registrations in the .ORG, .BIZ and .INFO TLDs from 1 January 2015 to the present.</p> <p>Namecheap also objects to collecting and producing <i>all</i> notifications and communications from the .ORG, .BIZ and .INFO registry operators regarding registration or renewal pricing. From ICANN’s Request No. 3 and its explanation as to why the requested documents would be relevant, it is clear that ICANN is looking for the prices registry operators charge and have</p>	<p><b>ICANN Reply:</b></p> <p>ICANN accepts Namecheap’s agreement to produce information that shows the prices that the .ORG, .BIZ and .INFO registry operators have charged Namecheap for registrations in the .ORG, .BIZ, and .INFO TLDs from 1 January 2015 to the present.</p> <p>Namecheap refuses to produce communications from the .ORG, .BIZ, and .INFO registry operators regarding registration or renewal pricing. ICANN is moving to compel all notifications and communications from the .ORG, .BIZ, and .INFO registry operators regarding registration or renewal pricing from 1 January 2015 to the present.</p> <p><b>Panel’s Ruling:</b></p> <p><b>Namecheap has agreed to produce, and is hereby ordered to produce, documents that are sufficient to show the prices that the .ORG, .BIZ and .INFO registry operators have charged Namecheap for registrations in the .ORG, .BIZ and .INFO TLDs</b></p>
---	--	--	--	--

{01334971}



		<p>seeks documents relevant to determining whether the registry operators historically charged the maximum price allowed under the Registry Agreements. Accordingly, this request seeks documents that are relevant to determining what harm (if any) Namecheap has suffered or likely will suffer, and are material to determining whether Namecheap qualifies as a Claimant.</p> <p>This request also seeks documents that are relevant to whether Namecheap’s claims in this IRP are valid. Therefore, this request seeks documents relevant and material to Namecheap’s central claims in this IRP and ICANN’s defenses.</p> <p>These documents are not in ICANN’s possession, custody, or control, but are likely in Namecheap’s possession, custody, or control, as only Namecheap knows the prices that the registry operators charge Namecheap.</p>	<p>charged Namecheap. It is not necessary to have access to all notifications and communications from registry operators to establish the prices registry operators charge and have charged. In this context, it would be unnecessarily burdensome to search for and produce <i>all</i> such notifications and communications.</p>	<p><b>from 1 January 2015 to the present, subject to appropriate protections of confidentiality.</b></p> <p><b>ICANN’s request to produce all notifications and communications from the .ORG, .BIZ, and .INFO registry operators regarding registration or renewal pricing is denied, except to the extent that Namecheap intends to rely on such notifications and communications. If Namecheap intends to rely on any such notifications and communications, then it shall produce all responsive notifications and communications. If Namecheap does not produce any such notifications and communications, it shall be precluded from later relying on such documents, except upon a compelling showing of good cause.</b></p>
5	Documents sufficient to show the prices that registry operators have charged Namecheap for	The documents sought by this request are relevant and material to the Panel’s determination of whether Namecheap constitutes a “Claimant” under ICANN’s Bylaws, specifically whether Namecheap has “suffer[ed] an injury or harm that is directly and causally connected to the	Namecheap questions the relevance of Request No. 5. The new gTLDs identified by ICANN in this request are not the subject-matter of the present dispute. The new gTLDs are also not comparable to the legacy TLDs that are the subject of this dispute.	<p><b>ICANN Reply:</b></p> <p>Namecheap agreed to produce “a complete and accurate overview” of the prices that registry operators have charged Namecheap for the noted TLDs from 1 January 2015 to</p>

{01334971}

<p>the following TLDs from 1 January 2015 to the present, including but not limited to any notifications and communications from the registry operators regarding registration or renewal pricing: .ICU, .XYZ, .TOP, .SITE, .ONLINE, .CLUB, .VIP, .APP, .SHOP, .WORK, .BUZZ, and .LIVE.</p>	<p>alleged violation.” Bylaws, Art. IV, § 4.3(b)(i) (RM-2).</p> <p>In its Request for IRP, Namecheap claims that it “has suffered direct harm as a result of” ICANN’s alleged breaches of its Articles of Incorporation and Bylaws, and that Namecheap “is an ICANN-accredited registrar that is directly impacted by [ICANN’s] decision.” Request for IRP ¶¶ 1, 2. But Namecheap fails to identify what harm it has purportedly suffered (or will suffer). ICANN argues that Namecheap is not a Claimant under the Bylaws because it has not established that it suffered any harm as a direct result of ICANN’s conduct. Response to Request for IRP ¶¶ 40–44.</p> <p>The documents requested here are relevant to determining whether the .ORG, .BIZ, and .INFO registry operators charge Namecheap lower prices for Registry Services compared to registry operators for other TLDs, and relates to whether Namecheap has enjoyed artificially low prices for .ORG, .BIZ, and .INFO Registry Services. ICANN identified the 12 TLDs with the highest domain count that Namecheap offers. Accordingly, this request seeks</p>	<p>As a result, Namecheap objects to Request No. 5, as they lack sufficient relevance to the case or materiality to its outcome.</p> <p>Nevertheless, Namecheap reserves the right to collect the information requested and to produce it at its own volition, provided that the information is protected from being viewed by anyone else than the IRP Panel and ICANN’s outside counsel of record. Without such protection, Namecheap objects to the production of information that shows the prices that the .ORG, .BIZ and .INFO registry operators have charged Namecheap for registrations in the .ORG, .BIZ and .INFO TLDs from 1 January 2015 to the present.</p> <p>In any event, Namecheap objects to collect and produce all notifications and communications from the gTLD registry operators identified under Request No. 5 regarding registration or renewal pricing. From its Request No. 5 and its explanation as to why the requested documents would be relevant, it is clear that ICANN is looking for the prices registry operators charge and have</p>	<p>the present.<sup>3</sup> ICANN accepts Namecheap’s agreement.</p> <p>Namecheap refuses to produce communications from the respective registry operators regarding registration or renewal pricing. ICANN is moving to compel notifications and communications from the registry operators regarding registration or renewal pricing for the noted TLDs from 1 January 2015 to the present.</p> <p><b><u>Panel’s Ruling:</u></b></p> <p><b>Namecheap has agreed to produce, and is hereby ordered to produce, a complete and accurate overview of the prices that registry operators have charged Namecheap for the noted TLDs from 1 January 2015 to the present. ICANN’s request to produce all notifications and communications from the registry operators identified in this request regarding registration or renewal pricing is denied, except to the extent that Namecheap intends to rely on such notifications and</b></p>
---	--	---	--

<sup>3</sup> Ex. D, at p. 2.

		<p>documents that are relevant to determining what harm (if any) Namecheap has suffered or likely will suffer, and are material to determining whether Namecheap qualifies as a Claimant.</p> <p>This request also seeks documents that are relevant to whether Namecheap’s claims in this IRP are valid. Therefore, this request seeks documents relevant and material to Namecheap’s central claims in this IRP and ICANN’s defenses.</p> <p>These documents are not in ICANN’s possession, custody, or control, but likely are in Namecheap’s possession, custody, or control, as only Namecheap knows the prices that registry operators charge Namecheap.</p>	<p>charged Namecheap. This pricing information can be collected without having to search through all notifications and communications from registry operators. In this context, it would be unnecessarily burdensome to search for and produce <i>all</i> such notifications and communications.</p>	<p><b>communications. If Namecheap intends to rely on any such notifications and communications, then it shall produce all responsive notifications and communications. If Namecheap does not produce any such notifications and communications, it shall be precluded from later relying on such documents, except upon a compelling showing of good cause.</b></p>
9	<p>All documents and communications referring to or reflecting any actual or potential changes to Namecheap’s relationships, agreements, or</p>	<p>The documents sought by this request are relevant and material to the Panel’s determination of whether Namecheap constitutes a “Claimant” under ICANN’s Bylaws, specifically whether Namecheap has “suffer[ed] an injury or harm that is directly and causally connected to the alleged violation.” Bylaws, Art. IV, § 4.3(b)(i) (RM-2).</p> <p>In its Request for IRP, Namecheap claims</p>	<p>Namecheap objects that ICANN’s request for ‘<i>[a]ll documents and communications referring to or reflecting any actual or potential changes</i>’ is overbroad. Namecheap has hundreds of thousands of customers. It would be unreasonably burdensome for Namecheap to produce all documents and communications with all of these customers whenever there is a change to the terms of the registration agreement.</p>	<p><b>ICANN Reply:</b></p> <p>ICANN amended this Request as follows: “Communications with registrants of second-level domains in the .ORG, .BIZ, and .INFO TLDs, related to modification and/or removal of the price control provisions in the .ORG, .BIZ, and .INFO Registry Agreements from 1 May 2018 to the present.”<sup>5</sup></p>

<sup>5</sup> Ex. A, at p. 4; Ex. C, at p. 2.

<p>contracts with registrants of second-level domains in the .ORG, .BIZ, and .INFO TLDs, related to modification and/or removal of the price control provisions in the .ORG, .BIZ, and .INFO Registry Agreements.</p>	<p>that it “has suffered direct harm as a result of” ICANN’s alleged breaches of its Articles of Incorporation and Bylaws, and that Namecheap “is an ICANN-accredited registrar that is directly impacted by [ICANN’s] decision.” Request for IRP ¶¶ 1, 2. But Namecheap fails to identify what harm it has purportedly suffered (or will suffer). ICANN argues that Namecheap is not a Claimant under the Bylaws because it has not established that it suffered any harm as a direct result of ICANN’s conduct. Response to Request for IRP ¶¶ 40–44.</p> <p>The documents requested are relevant to determining whether Namecheap has suffered any harm in its relations with registrants of second-level domains as a result of the removal of the price control provisions in the .ORG, .BIZ, and .INFO Registry Agreements. The extent to which the relationships between Namecheap and the relevant registrants has changed, if at all, will demonstrate the impact of the removal of the price control provisions on Namecheap. Accordingly, this request seeks documents that are relevant to determining what harm (if</p>	<p>Moreover, many of these documents and communications includes personal data that is protected under the General Data Protection Regulation<sup>4</sup> or other applicable privacy laws.</p> <p>There is no legal basis for disclosing this information and the redaction of virtually all documents and communications with all of Namecheap’s customers would be unreasonably burdensome. Namecheap further objects to this request to the extent it calls for privileged information.</p> <p>Notwithstanding and without waiving the above objections, Namecheap states that the contracts that Namecheap offers to registrants of second-level domains are made publicly available on Namecheap’s website, available at <a href="https://www.namecheap.com">https://www.namecheap.com</a>. Previous contracts may be available via the Internet Wayback Machine at <a href="https://web.archive.org">https://web.archive.org</a>. This information can thus be collected by ICANN. The information that is thus publicly available is sufficient for</p>	<p>Namecheap’s responses during the meet-and-confer process have been vague, such that ICANN cannot determine what documents Namecheap is agreeing to produce.<sup>6</sup> ICANN is moving to compel documents responsive to this Request as modified.</p> <p><b><u>Panel’s Ruling:</u></b></p> <p><b>Namecheap shall provide a written stipulation on or before January 15, 2021, that identifies links for all versions of the template contracts that Namecheap has offered to registrants of second-level domains in the .ORG, .BIZ, and .INFO TLDs, and certifies that the links are active and include complete and accurate copies of such contracts. In the alternative, Namecheap may, at its option, produce copies of those contracts by the same date.</b></p> <p><b>ICANN’s request for other documents referring to or</b></p>
---	--	---	--

<sup>4</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), *OJL* 119, 4.5.2016, pp. 1–88.

<sup>6</sup> See Ex. B, at p. 3; Ex. D, at p. 3.

	<p>any) Namecheap has suffered or likely will suffer, and are material to determining whether Namecheap qualifies as a Claimant.</p> <p>This request also seeks documents that are relevant to whether Namecheap's claims in this IRP are valid. Therefore, this request seeks documents relevant and material to Namecheap's central claims in this IRP, and ICANN's defenses.</p> <p>These documents are not in ICANN's possession, custody, or control, but likely are in Namecheap's possession, custody, or control, as only Namecheap can explain whether the relationships have changed.</p>	<p>ICANN's stated purpose in requesting this information. Hence, Namecheap objects to produce any information beyond what is publicly available at <a href="https://www.namecheap.com">https://www.namecheap.com</a> and <a href="https://web.archive.org">https://web.archive.org</a>.</p>	<p><b>reflecting any actual or potential changes to Namecheap's relationships, agreements, or contracts with such registrants is denied, except to the extent that Namecheap intends to rely on such actual or potential changes. If Namecheap intends to rely on such actual or potential changes, it shall produce all responsive documents. If Namecheap does not produce any such responsive documents, it shall be precluded from later relying on such documents, except upon a compelling showing of good cause.</b></p>
--	---	---	---

No	Description of Requested Document	ICANN's Position Regarding Relevance and Materiality to the Outcome of the IRP	Namecheap Response or Objection (Pre-Meet-and-Confer)	ICANN Reply/Panel Ruling
10	All documents and communications referring or related to the	Namecheap claims in its Request for IRP that ICANN removed the price control provisions despite public	Namecheap objects to Request No. 10, as it would be unreasonably burdensome to produce all documents and communications referring or	<p><b>ICANN Reply:</b></p> <p>Namecheap's responses during the meet-and-confer process have been vague, such that ICANN cannot determine what documents Namecheap is agreeing to produce.<sup>7</sup> ICANN is moving to compel</p>

<sup>7</sup> See Ex. B, at p. 3; Ex. D, at p. 3.

<p>modification to, and/or removal of, the price control provisions in the .ORG, .INFO, and .BIZ Registry Agreements, including but not limited to communications with registries, registrants, or other registrars referring or related to the modification to, and/or removal of the price control provisions in the .ORG, .BIZ, and .INFO Registry Agreements.</p>	<p>comments raising concerns about removal of the price control provisions. <i>See, e.g.,</i> Request for IRP ¶¶ 25, 41–42. Namecheap also claims that it “strongly opposed removal of the” price control provisions. <i>Id.</i>, Section III.C. This request seeks documents that either support or disprove that Namecheap and the Internet community were opposed to removal of the price control provisions. It also seeks documents relevant to whether Namecheap has suffered or will suffer any harm as a result of removal of the price control provisions. Accordingly, this request seeks documents relevant and material to Namecheap’s central claims in this IRP, ICANN’s defenses, and whether Namecheap</p>	<p>related to the modification to, and/or removal of, the price control provisions.</p> <p>The requested documents and communications risk to include personal data that is protected under the General Data Protection Regulation or other applicable privacy laws. There is no legal basis for disclosing this information and the redaction of virtually all documents would be unreasonably burdensome. Namecheap further objects to Request No. 10 to the extent it calls for the production of privileged information.</p> <p>Nevertheless, Namecheap reserves the right to collect non-privileged information responsive to this request and to produce it at its own volition in redacted form.</p> <p>Namecheap is also willing to share in a further submission its analysis of complaints, public comments, etc., showing concerns and strong opposition about the removal</p>	<p>documents responsive to this Request for the time period from 1 May 2018 to the present.</p> <p><b><u>Panel’s Ruling:</u></b></p> <p><b>Namecheap shall perform a reasonable search and produce non-public, non-privileged communications with registrants and other registrars that relate or refer to comments to ICANN concerning modification to, and/or removal of, the price control provisions in the 2019 .ORG, .INFO, and .BIZ Registry Agreements, including, but not limited to any efforts to encourage, solicit, or lobby for the submission of such comments.</b></p> <p><b>Such communications may be redacted to the extent mandated by the GDPR or other privacy laws.</b></p> <p><b>The time period shall be March 18, 2019 through November 18, 2019. The ending date is the same time limitation imposed with regard to a number of Namecheap’s requests to ICANN, and which ICANN has suggested. The starting date is the date that ICANN first appears to have invited public comments on the possibility of removing price controls.</b></p> <p><b>This request is otherwise denied; provided, however, that in the event Namecheap intends to rely on communications with third parties regarding the modification to, and/or removal of, the price control provisions in the 2019 .ORG, .INFO, and .BIZ Registry Agreements (including, but not limited to, complaints from Namecheap customers), Namecheap shall produce copies of all communications with such third parties that relate or refer to the modification to, and/or removal of, the price control provisions in the 2019 .ORG, .INFO, and .BIZ Registry Agreements.</b></p>
---	--	---	--

{01334971}

		<p>qualifies as a Claimant under the Bylaws.</p> <p>These documents are not in ICANN's possession, custody, or control, but likely are in Namecheap's possession, custody, or control, as Namecheap likely maintains such documents in the ordinary course of business.</p>	of the price cap provisions.	
--	--	---	------------------------------	--

No	Description of Requested Document	ICANN's Position Regarding Relevance and Materiality to the Outcome of the IRP	Namecheap Response or Objection (Pre-Meet-and-Confer)	ICANN Reply/Panel Ruling
11	All documents and communications that reflect complaints (either formal or informal) made by	Namecheap claims in its Request for IRP that ICANN removed the price control provisions despite public comments raising concerns about removal of the price control provisions. <i>See, e.g.,</i> Request for IRP ¶¶ 25, 41-42. Namecheap	Namecheap objects to Request No. 11, as it would be unreasonably burdensome to search for and produce all documents and communications that reflect complaints, be it complaints about the modification to, and/or removal of, the price control provisions or complaints about price increases, resulting from any such modification and/or removal.  Namecheap has hundreds of thousands of customers and a customer support team that	<p><b>ICANN Reply:</b></p> <p>Namecheap's responses during the meet-and-confer process have been vague, such that ICANN cannot determine what documents Namecheap is agreeing to produce.<sup>8</sup> ICANN is moving to compel documents responsive to this Request for the time period from 1 May 2018 to the present.</p> <p><b>Panel's Ruling:</b></p> <p><b>This request is denied; provided, however, that if</b></p>

<sup>8</sup> See Ex. B, at p. 3; Ex. D, at p. 3.

<p>actual or potential second-level domain customers regarding the modification to, and/or removal of, the .ORG, .INFO, and .BIZ price control provisions.</p>	<p>also claims that it “strongly opposed removal of the” price control provisions. <i>Id.</i>, Section III.C. This request seeks documents that either support or disprove that Namecheap and the Internet community were opposed to removal of the price control provisions. It also seeks documents relevant to whether Namecheap has suffered or will suffer any harm as a result of removal of the price control provisions. Accordingly, this request seeks documents relevant and material to Namecheap’s central claims in this IRP, ICANN’s defenses, and whether Namecheap qualifies as a Claimant under the Bylaws.</p> <p>These documents are not in ICANN’s possession, custody, or control, but likely are in Namecheap’s possession, custody, or</p>	<p>is available 24/7. Namecheap’s customer support team handles customer requests constantly. Namecheap’s customer support team is consulted on a wide variety of topics, with actual or potential customers (e.g., why can’t I access my account?, how can I increase my web hosting data limits?, etc.).</p> <p>It would be unreasonably burdensome to search all documents and communications and filter those documents and communications that reflect complaints made by actual or potential second-level domain customers regarding the modification to, and/or removal of, the .ORG, .INFO, and .BIZ price control provisions.</p> <p>Furthermore, the requested documents and communications risk to include personal data that is protected under the General Data Protection Regulation or other applicable privacy laws. There is no legal basis for disclosing this information and the redaction of virtually all documents would be unreasonably burdensome. Namecheap further objects to the request to the extent it calls for the production of privileged information.</p> <p>Nevertheless, and without waiving the foregoing objections, Namecheap reserves the right to collect non-privileged information responsive to this request and to produce it at its own volition in redacted form.</p>	<p><b>Namecheap seeks to rely on communications with third parties regarding the modification to, and/or removal of, the price control provisions in the 2019 .ORG, .INFO, and .BIZ Registry Agreements (including, but not limited to, complaints from Namecheap customers), Namecheap shall produce copies of all communications with such third parties that relate or refer to the modification to, and/or removal of, the price control provisions in the 2019 .ORG, .INFO, and .BIZ Registry Agreements.</b></p>
--	--	--	--

{01334971}



		control, as Namecheap likely maintains such documents in the ordinary course of business.	Namecheap is also willing to share in a further submission its analysis of complaints, public comments, etc., showing concerns and strong opposition about the removal of the price cap provisions.	
--	--	---	---	--

## **Appendix B**

## Appendix B

### Panel Rulings on Namecheap’s Requests for the Production of Documents

This schedule contains the following information:

- Column 1, #: Namecheap’s document request number.
- Column 2, Documents or Category of Documents Requested: Namecheap’s Requests as modified during the meet-and-confer process; the underlining in various requests was done by Namecheap.
- Column 3, Namecheap’s Position Regarding Relevance and Materiality to the Dispute: Namecheap’s position, as reflected in its Request for the Production of Documents served on 18 August 2020.
- Column 4, ICANN’s Responses and Objections (Pre-Meet-and-Confer): ICANN’s responses and objections to Namecheap’s Requests, as reflected in ICANN’s response served on 8 September 2020.
- Column 5, Status/Panel’s Ruling: This column reflects: (1) ICANN’s position (after the meet-and-confer process); (2) Namecheap’s position (per Annex 25), (3) ICANN’s response to Namecheap’s position; and (4) the Panel’s Ruling.

**Only the “Panel Ruling” in Column 5 (entered in bold type) was drafted by the Panel. The remaining information in the Schedule was prepared by the parties.**

#	Documents or Category of Documents Requested	Namecheap’s Position Regarding Relevance and Materiality to the Dispute	ICANN’s Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
1.	All documents directly and indirectly <sup>1</sup> relating to the negotiations pertaining to the reassignment, renewal and amendments of all	Access to those documents is required to understand: <ul style="list-style-type: none"> <li>- the extent of ICANN obligations under the registry agreements,</li> </ul>	ICANN objects that the documents sought by this Request, and each subpart, are not relevant or material to the outcome of this dispute. Namecheap’s claims in this IRP	At issue.  <u>ICANN’s Position:</u> ICANN will conduct a reasonable search and produce non-public, non-privileged documents and communications

---

<sup>1</sup> By ‘indirectly’, Namecheap refers to refer to the narrow and specific requests as detailed in the subsection 1.a to 1.s of Request No. 1.

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
	.ORG, .BIZ, and/or .INFO Registry Agreements (initial or subsequent agreements), including:	<ul style="list-style-type: none"> <li>- the reasons for imposing, modifying or removing price caps via the registry agreements,</li> <li>- the processes ICANN used in negotiating and renegotiating registry agreements,</li> <li>- the potential conflicts of interest of ICANN staff when deciding to remove the price caps, etc.</li> </ul> <p>Access to these documents must help - among other things - to get clarity on whether any changed circumstances could provide an objective justification for the removal or modification of the previously imposed price caps. To answer such question, the Claimant requires a dynamic view of the facts as they have evolved over</p>	<p>relate to the narrow issue of ICANN's removal of the price control provisions in the 2019 .ORG, .BIZ, and .INFO Registry Agreements.<sup>3</sup> Documents regarding any other provisions in the 2019 Registry Agreements, reassignment of the Registry Agreements, or any prior Registry Agreements are not relevant or material to Namecheap's claims. For the same reason, information relating to the "extent of ICANN obligations under" all prior Registry Agreements, or all provisions of the Registry Agreements, is not material to Namecheap's claims.</p> <p>ICANN objects that this Request is vague, ambiguous,</p>	<p>regarding negotiations pertaining to the modification and/or removal of the price control provisions in the 2019 .ORG, .INFO, and .BIZ Registry Agreements through 18 November 2019.</p> <p><u>Namecheap's Position:</u> Relevant period for which documents are sought. ICANN should produce documents from the time when negotiations pertaining to the reassignment, renewal and amendments of the first .org, .biz, and/or .info Registry Agreements between ICANN and the relevant registry operators started (presumably in 1998) until the present.</p> <p><u>ICANN's Response:</u> Documents regarding any prior .ORG, .BIZ, or</p>

<sup>3</sup> The term "price control provisions" refers to Section 7.3 of the 2013 .ORG Registry Agreement (RM-18), Section 7.3 of the 2013 .BIZ Registry Agreement (RM-28), and Section 7.3 of the 2013 .INFO Registry Agreement (RM-27), which specifies the maximum price the registry operator may charge for Registry Services each year. Namecheap often refers to these price control provisions as "price caps." ICANN uses the term "removal" of the price control provisions because that is the term used by Namecheap. In reality, however, ICANN did not remove the price control provisions per se, but instead transitioned the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement that is applicable to the new gTLDs and most other legacy TLDs, which does not include a price control provision.

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
		<p>time, and therefore a complete set of documents.</p> <p>The requested documents under this Section 1 (including Section 1.a to Section 1.s) are not in the Claimant's possession, custody or control, as the Claimant was not part of the negotiations with respect to the Registry Agreements.</p> <p>The documents requested are assumed to be in ICANN's possession, custody or control, as they relate to the Respondent's core obligations towards ICANN's main contracting parties and to ICANN's primary mission to coordinate 'the allocation and assignment of names in the root zone of the Domain Name System'.<sup>2</sup></p>	<p>and overbroad in that it seeks documents "directly and indirectly" relating to negotiations pertaining to all provisions in all .ORG, .BIZ, and .INFO Registry Agreements. The burden on ICANN of searching for documents that may "indirectly relate" to negotiations substantially outweighs any benefit that Namecheap plausibly could expect to obtain.</p> <p>ICANN further objects that this Request is a fishing expedition in that it does not identify any particular persons whose documents or communications Namecheap seeks, but instead seeks to have ICANN search indiscriminately among its officers and staff. The burden of conducting such a search substantially outweighs any legitimate benefit Namecheap</p>	<p>.INFO Registry Agreement are irrelevant, especially given the drastic changes in the DNS since the agreements were negotiated. ICANN agrees to search for and collect documents through 18 November 2019 because that is the day that Namecheap initiated the CEP with ICANN, and documents post-dating the CEP are more likely than not to be protected by the attorney-client privilege or work product doctrine.</p> <p><b>Panel's Ruling:</b></p> <p><b>ICANN shall conduct a reasonable search and produce non-public, non-privileged documents and communications that relate or refer to the modification and/or removal of price control provisions in registry agreements (regardless of whether such documents or communications specifically reference the .ORG, .INFO, and .BIZ Registry Agreements). Except</b></p>

<sup>2</sup> Bylaws, Article I(1)(a)(i) (**RM 2**).

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			<p>plausibly could expect from the results of such a search.</p> <p>ICANN also objects to this Request to the extent it seeks documents protected by the attorney-client privilege, work product doctrine, or any other applicable privilege. ICANN will not produce privileged documents.</p> <p>Subject to these objections, ICANN will conduct a reasonable search and produce non-public, non-privileged documents and communications regarding negotiations pertaining to the modification and/or removal of the price control provisions in the 2019 .ORG, .INFO, and .BIZ Registry Agreements.</p>	<p>as otherwise specified below, the time period shall be January 1, 2018 through November 18, 2019. ICANN indicated during oral argument on December 2, 2020 that discussions with the .ORG, .INFO and .BIZ registry operators began in May 2018. The Panel is establishing a January 1, 2018 beginning date to better capture documents that may reflect internal deliberations or communications, if any, prior to discussions with the registry operators.</p>
1.a	An executed copy of all <u>Registry Agreements</u> (original or subsequent, and amendments thereto) for the original	ICANN submits that all Registry Agreements executed by ICANN are made available through the Registry Agreements page on the ICANN website. While the Registry	ICANN objects that this Request seeks publicly available information, as all Registry Agreements for all gTLDs are located on ICANN's website.	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN will produce the executed copies of the</p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
	<p>gTLDs (.COM, .NET, .ORG) and the gTLDs that were delegated pursuant to ICANN Resolution 00.89 of 16 November 2000 (including .BIZ and .INFO), including those agreements that have been terminated, reassigned or renewed.</p>	<p>Agreements published on this website are not the executed agreements, ICANN submits that these agreements mirror the fully executed Registry Agreements with the exception of the relevant signatures.<sup>4</sup></p> <p>However, a website is a dynamic space. Content on a website can be changed instantaneously. Without access to the executed Registry Agreements, it simply is impossible to verify whether the unexecuted versions of the Registry Agreements published on ICANN's website mirror the Registry Agreements that have been executed with relevant registry operators. Therefore, the Claimant submits that the IRP Panel should have access to a complete and accurate record that includes the original documents rather than unexecuted copies that purportedly mirror the executed versions of the agreements.</p>	<p>Indeed, in response to Namecheap's request for these documents in a separate ICANN process, the Documentary Information Disclosure Policy ("DIDP"), ICANN directed Namecheap to the portion of ICANN's website where the Registry Agreements can be found. <i>See</i> Annex 16, pp. 4-5. Namecheap's allegations that ICANN's website may not contain accurate records is unfounded.</p> <p>ICANN further objects that the documents sought by this Request are not relevant or material to the outcome of this dispute.</p> <p>Namecheap's claims in this IRP relate only to the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Documents regarding any prior Registry Agreements, or Registry</p>	<p>30 June 2019 .ORG, .INFO, and .BIZ Registry Agreements.</p> <p><u>Namecheap's Position:</u> ICANN should produce executed copy of all registry agreements requested. References to non-executed versions on ICANN's website are incomplete and may contain inaccuracies.</p> <p><u>ICANN's Response:</u> Documents regarding any prior .ORG, .BIZ, or .INFO Registry Agreement are irrelevant, especially given the drastic changes in the DNS since the agreements were negotiated. ICANN agrees to provide Namecheap with the underlying documents for any link on ICANN's website that is not operable (to the extent ICANN still maintains those documents).</p> <p><u>Panel's Ruling:</u></p> <p><b>On or before January 15, 2021, Namecheap shall provide a written</b></p>

<sup>4</sup> Annex 16, p. 12.

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
		<p>ICANN also submits that Resolution 00.89 did not delegate any gTLDs. ICANN submits that, instead, the resolution 'selected the proposals for negotiations toward appropriate agreements between ICANN org and the registry operator or sponsoring organization, or both'.<sup>5</sup></p> <p>However, the Claimant never maintained that Resolution 00.89 'delegated' the gTLDs. The Claimant assumed that the gTLDs mentioned in Resolution 00.89 have been delegated subsequently in accordance with (or pursuant to) Resolution 00.89. The fact that ICANN appears to be making a distinction between the resolution and the negotiations that resulted from it only shows the importance of having access to the documents related to those negotiations. Access to those documents will help the IRP Panel understand the</p>	<p>Agreements for other gTLDs are not relevant or material to Namecheap's claims.</p> <p>Subject to these objections, ICANN will produce the executed copies of the 30 June 2019 .ORG, .INFO, and .BIZ Registry Agreements.</p>	<p><b>stipulation that identifies Internet links for the final versions of the registry agreements that were ultimately executed by ICANN and the respective registry operators for the .INFO, .BIZ., ORG, .COM, and .NET domains and that certifies that the links are active and include complete and accurate copies of all those agreements (although it is not necessary that links include signed agreements, so long as the agreements have identical content to those that would have been signed). In the alternative, ICANN may, at its option, produce copies of those agreements by the same date. Namecheap's request is otherwise denied.</b></p>

<sup>5</sup> Annex 16, p. 11.



#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
		extent of ICANN obligations and the reasons for imposing price caps via the registry agreements.		
1.b	<p>All correspondence between ICANN and the registry operators (and their representatives) in relation to the preparation, discussion, redaction, amendments, and execution of the original .ORG, .BIZ and/or .INFO Registry Agreements and of the reassignment, renewal and amendments of the .ORG, .BIZ, and/or .INFO Registry Agreements.</p>	<p>Access to this correspondence is required to understand:</p> <ul style="list-style-type: none"> <li>- the extent of ICANN obligations under the registry agreements,</li> <li>- the reasons for imposing, modifying or removing price caps via the registry agreements,</li> <li>- the processes ICANN used in negotiating and renegotiating registry agreements,</li> <li>- the potential conflicts of interest of ICANN staff when deciding to remove the price caps, etc.</li> </ul> <p>The request for these documents is sufficiently clear and reasonable. Indeed, one may expect that ICANN has this information readily available, as it relates to its core obligations towards ICANN's main contracting parties and to ICANN's primary mission to</p>	<p>ICANN objects that the documents sought by this Request are not relevant or material to the outcome of this dispute.</p> <p>Namecheap's claims in this IRP relate to the narrow issue of ICANN's removal of the price control provisions in the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Documents regarding any other provisions in the 2019 Registry Agreements, redaction or reassignment of the Registry Agreements, or any prior Registry Agreements are not relevant or material to Namecheap's claims.</p> <p>For the same reason, information relating to the "extent of ICANN obligations under" all prior Registry Agreements, or all provisions of</p>	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN will conduct a reasonable search and produce non-public, non-privileged communications between relevant ICANN personnel and the .ORG, .INFO, and .BIZ registry operators regarding modification and/or removal of the price control provisions in the 2019 .ORG, .INFO, and .BIZ Registry Agreements through 18 November 2019.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 1.</p> <p><u>ICANN's Response:</u> Documents regarding any prior .ORG, .BIZ, or .INFO Registry Agreement are irrelevant, especially given the drastic changes in the DNS since the agreements were negotiated. ICANN agrees to search for and collect documents through 18 November 2019 because that is</p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
		<p>coordinate 'the allocation and assignment of names in the root zone of the Domain Name System'.<sup>6</sup></p>	<p>the Registry Agreements, is not material to Namecheap's claims. The burden on ICANN of searching for documents that relate to irrelevant Registry Agreements, or irrelevant provisions in the Registry Agreements substantially outweighs any benefit that Namecheap plausibly could expect to obtain.</p> <p>ICANN further objects that this Request is a fishing expedition in that it does not identify any particular persons whose communications Namecheap seeks, but instead seeks to have ICANN search indiscriminately among its officers and staff. The burden of conducting such a search substantially outweighs any legitimate benefit Namecheap plausibly could expect from the results of such a search.</p>	<p>the day that Namecheap initiated the CEP with ICANN, and documents post-dating the CEP are more likely than not to be protected by the attorney-client privilege or work product doctrine.</p> <p><b><u>Panel's Ruling:</u></b></p> <p><b>ICANN shall conduct a reasonable search and produce non-public, non-privileged communications between relevant ICANN personnel and the .ORG, .INFO, and .BIZ registry operators that relate or refer to modification and/or removal of the price control provisions in the 2019 .ORG, .INFO, and .BIZ Registry Agreements. The time period shall be January 1, 2018 through November 18, 2019. This request is otherwise denied on the ground that the requested documents are only marginally relevant and material relative to the burden of production.</b></p>

<sup>6</sup> Bylaws, Article I(1)(a)(i) (**RM 2**).

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			Subject to these objections, ICANN will conduct a reasonable search and produce non-public, non-privileged communications between relevant ICANN personnel and the .ORG, .INFO, and .BIZ registry operators regarding modification and/or removal of the price control provisions in the 2019 .ORG, .INFO, and .BIZ Registry Agreements.	
1.c	All documents that contain requests by the registry operators (and their representatives) in relation to the <u>reassignment</u> of the .ORG, .BIZ and/or .INFO Registry Agreements.	Access to these documents is required to understand: <ul style="list-style-type: none"> <li>- the extent of ICANN obligations under the registry agreements,</li> <li>- the reasons for imposing, modifying or removing price caps via the registry agreements,</li> <li>- the processes ICANN used in negotiating and renegotiating registry agreements,</li> <li>- the potential conflicts of interest of ICANN staff</li> </ul>	ICANN objects that the documents sought by this Request are not relevant or material to the outcome of this dispute. Namecheap's claims in this IRP relate to the narrow issue of ICANN's removal of the price control provisions in the 2019 .ORG, .BIZ, and .INFO Registry Agreements. None of Namecheap's claims relates to the reassignment of the .ORG, .INFO, and .BIZ Registry Agreements. Even Namecheap's claims regarding the change of control request	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN stands on its objections.</p> <p><u>Namecheap's Position:</u> Full contention.</p> <p><b><u>Panel's Ruling:</u></b></p> <p><b>The Panel defers ruling on this request pending a ruling on ICANN's motion to dismiss Namecheap's change of control claim.</b></p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
		<p>when deciding to remove the price caps, etc.</p> <p>The request for these documents is sufficiently clear and reasonable. Indeed, one may expect that ICANN has this information readily available, as it relates to its core obligations towards ICANN's main contracting parties and to ICANN's primary mission to coordinate 'the allocation and assignment of names in the root zone of the Domain Name System'.<sup>7</sup></p>	<p>(which ICANN maintains are moot) do not relate to reassignment of the .ORG Registry Agreement.</p> <p>Pursuant to Rule 6 of the Interim Supplementary Procedures, a Claimant's Request for IRP "shall include all claims that give rise to a particular dispute," along with "[a]ll necessary and available evidence in support of the CLAIMANT'S claim(s)." Hence, requests for documents that are not based on an existing claim cannot be material to the outcome of the case, as required by Rule 8 of the Interim supplementary Procedures and Article 3 of the IBA Rules.</p> <p>For the same reason, information relating to the "extent of ICANN obligations under" all prior Registry Agreements, or all provisions of</p>	

<sup>7</sup> Bylaws, Article I(1)(a)(i) (**RM 2**).

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			<p>the Registry Agreements, is not material to Namecheap's claims. The burden on ICANN of searching for documents that relate to irrelevant Registry Agreements, or irrelevant provisions in the Registry Agreements substantially outweighs any benefit that Namecheap plausibly could expect to obtain.</p> <p>Based on these objections, ICANN does not agree to produce documents responsive to this Request.</p>	
1.d	<p>All documents that contain requests by the registry operators (and their representatives) in relation to the <u>renewal</u> of the .ORG, .BIZ and/or .INFO Registry Agreements.</p>	<p>Access to these documents is required to understand:</p> <ul style="list-style-type: none"> <li>- the extent of ICANN obligations under the registry agreements,</li> <li>- the reasons for imposing, modifying or removing price caps via the registry agreements,</li> <li>- the processes ICANN used in negotiating and</li> </ul>	<p>ICANN objects that the documents sought by this Request are not relevant or material to the outcome of this dispute. Namecheap's claims in this IRP relate to the narrow issue of ICANN's removal of the price control provisions in the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Documents regarding renewal of any other provisions in the</p>	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN will conduct a reasonable search and produce non-public, non-privileged communications between relevant ICANN personnel and the .ORG, .INFO, and .BIZ registry operators regarding requests from the registry operators related to modification and/or removal of the price control provisions in the 2019 .ORG, .INFO,</p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
		<p>renegotiating registry agreements,</p> <ul style="list-style-type: none"> <li>- the potential conflicts of interest of ICANN staff when deciding to remove the price caps, etc.</li> </ul> <p>The request for these documents is sufficiently clear and reasonable. Indeed, one may expect that ICANN has this information readily available, as it relates to its core obligations towards ICANN's main contracting parties and to ICANN's primary mission to coordinate 'the allocation and assignment of names in the root zone of the Domain Name System'.<sup>8</sup></p>	<p>2019 Registry Agreements, or any prior Registry Agreements are not relevant or material to Namecheap's claims.</p> <p>For the same reason, information relating to the "extent of ICANN obligations under" all prior Registry Agreements, or all provisions of the Registry Agreements, is not material to Namecheap's claims. The burden on ICANN of searching for documents that relate to irrelevant Registry Agreements, or irrelevant provisions in the Registry Agreements substantially outweighs any benefit that Namecheap plausibly could expect to obtain.</p> <p>Subject to these objections, ICANN will conduct a reasonable search and produce non-public, non-privileged communications between</p>	<p>and .BIZ Registry Agreements through 18 November 2019.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 1.</p> <p><u>ICANN's Response:</u> Documents regarding any prior .ORG, .BIZ, or .INFO Registry Agreement are irrelevant, especially given the drastic changes in the DNS since the agreements were negotiated. ICANN agrees to search for and collect documents through 18 November 2019 because that is the day that Namecheap initiated the CEP with ICANN, and documents post-dating the CEP are more likely than not to be protected by the attorney-client privilege or work product doctrine.</p> <p><u>Panel's Ruling:</u></p> <p><b>ICANN shall conduct a reasonable search and produce non-public, non-privileged documents that</b></p>

<sup>8</sup> Bylaws, Article I(1)(a)(i) (**RM 2**).

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			relevant ICANN personnel and the .ORG, .INFO, and .BIZ registry operators regarding requests from the registry operators related to modification and/or removal of the price control provisions in the 2019 .ORG, .INFO, and .BIZ Registry Agreements.	<b>contain requests by the registry operators (and their representatives) in relation to the renewal of the .ORG, .BIZ and/or .INFO Registry Agreements to the extent to the extent that they relate or refer to the modification and/or removal of price control provisions in those Registry Agreements. The time period shall be January 1, 2018 through November 18, 2019. This request is otherwise denied on the ground that the requested documents are only marginally relevant and material relative to the burden of production.</b>
1.e	All requests by the registry operators (and their representatives) in relation to the <u>amendments of the price caps</u> in the .ORG, .BIZ and/or .INFO Registry Agreements.	Access to these documents is required to understand: <ul style="list-style-type: none"> <li>- the extent of ICANN obligations under the registry agreements,</li> <li>- the reasons for imposing, modifying or removing price caps via the registry agreements,</li> <li>- the processes ICANN used in negotiating and</li> </ul>	ICANN objects that the documents sought by this Request are not relevant or material to the outcome of this dispute to the extent they relate to Registry Agreements other than the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Namecheap's claims in this IRP relate to the narrow issue of ICANN's removal of the price	<b>At issue.</b>  <u>ICANN's Position:</u> ICANN will conduct a reasonable search and produce non-public, non-privileged communications between relevant ICANN personnel and the .ORG, .INFO, and .BIZ registry operators regarding requests from the registry operators related to modification and/or removal of the price control



#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
		<p>renegotiating registry agreements,</p> <ul style="list-style-type: none"> <li>- the potential conflicts of interest of ICANN staff when deciding to remove the price caps, etc.</li> </ul> <p>The request for these documents is sufficiently clear and reasonable. Indeed, one may expect that ICANN has this information readily available, as it relates to its core obligations towards ICANN's main contracting parties and to ICANN's primary mission to coordinate 'the allocation and assignment of names in the root zone of the Domain Name System'<sup>9</sup> and to ICANN's commitment of operating 'through open and transparent processes that enable competition and open entry in Internet-related markets'.<sup>10</sup></p>	<p>control provisions in the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Documents regarding any prior Registry Agreements are not relevant or material to Namecheap's claims.</p> <p>For the same reason, information relating to the "extent of ICANN obligations under" any prior Registry Agreements is not material to Namecheap's claims. The burden on ICANN of searching for documents that relate to irrelevant Registry Agreements substantially outweighs any benefit that Namecheap plausibly could expect to obtain.</p> <p>Subject to these objections, ICANN will conduct a reasonable search and produce non-public, non-privileged</p>	<p>provisions in the 2019 .ORG, .INFO, and .BIZ Registry Agreements through 18 November 2019.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 1.</p> <p><u>ICANN's Response:</u> Documents regarding any prior .ORG, .BIZ, or .INFO Registry Agreement are irrelevant, especially given the drastic changes in the DNS since the agreements were negotiated. ICANN agrees to search for and collect documents through 18 November 2019 because that is the day that Namecheap initiated the CEP with ICANN, and documents post-dating the CEP are more likely than not to be protected by the attorney-client privilege or work product doctrine.</p> <p><b><u>Panel's Ruling:</u></b></p>

<sup>9</sup> Bylaws, Article I(1)(a)(i) (**RM 2**).

<sup>10</sup> AoI, Article III (**RM 1**); Bylaws, Article I(2)(a) (**RM 2**).



#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			communications between relevant ICANN personnel and the .ORG, .INFO, and .BIZ registry operators regarding requests from the registry operators related to modification and/or removal of the price control provisions in the 2019 .ORG, .INFO, and .BIZ Registry Agreements.	<b>ICANN shall conduct a reasonable search and produce non-public, non-privileged documents regarding requests by the registry operators (and their representatives) in relation to the amendments of the price caps in the .ORG, .BIZ and/or .INFO Registry Agreements. The time period shall be January 1, 2018 through November 18, 2019. This request is otherwise denied on the ground that the requested documents are only marginally relevant and material relative to the burden of production.</b>
1.f	All requests by the registry operators (and their representatives) in relation to the removal of the price caps in the .ORG, .BIZ and/or .INFO Registry Agreements.	Access to these documents is required to understand: <ul style="list-style-type: none"> <li>- the extent of ICANN obligations under the registry agreements,</li> <li>- the reasons for imposing, modifying or removing price caps via the registry agreements,</li> <li>- the processes ICANN used in negotiating and</li> </ul>	ICANN objects that the documents sought by this Request are not relevant or material to the outcome of this dispute to the extent they relate to Registry Agreements other than the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Namecheap's claims in this IRP relate to the narrow issue of ICANN's removal of the price control provisions in the 2019	<b>At issue.</b>  <u>ICANN's Position:</u> ICANN will conduct a reasonable search and produce non-public, non-privileged communications between relevant ICANN personnel and the .ORG, .INFO, and .BIZ registry operators regarding requests by the registry operators to remove the price control provisions in the 2019 .ORG, .INFO, and .BIZ Registry

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
		<p>renegotiating registry agreements,</p> <ul style="list-style-type: none"> <li>- the potential conflicts of interest of ICANN staff when deciding to remove the price caps, etc.</li> </ul> <p>The request for these documents is sufficiently clear and reasonable. Indeed, one may expect that ICANN has this information readily available, as it relates to its core obligations towards ICANN's main contracting parties and to ICANN's primary mission to coordinate 'the allocation and assignment of names in the root zone of the Domain Name System'<sup>11</sup> and to ICANN's commitment of operating 'through open and transparent processes that enable competition and open entry in Internet-related markets'.<sup>12</sup></p>	<p>.ORG, .BIZ, and .INFO Registry Agreements. Documents regarding any prior Registry Agreements are not relevant or material to Namecheap's claims.</p> <p>For the same reason, information relating to the "extent of ICANN obligations under" any prior Registry Agreements is not material to Namecheap's claims. The burden on ICANN of searching for documents that relate to irrelevant Registry Agreements substantially outweighs any benefit that Namecheap plausibly could expect to obtain.</p> <p>Subject to these objections, ICANN will conduct a reasonable search and produce non-public, non-privileged communications between</p>	<p>Agreements through 18 November 2019.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 1.</p> <p><u>ICANN's Response:</u> Documents regarding any prior .ORG, .BIZ, or .INFO Registry Agreement are irrelevant, especially given the drastic changes in the DNS since the agreements were negotiated. ICANN agrees to search for and collect documents through 18 November 2019 because that is the day that Namecheap initiated the CEP with ICANN, and documents post-dating the CEP are more likely than not to be protected by the attorney-client privilege or work product doctrine.</p> <p><u>Panel's Ruling:</u></p> <p><b>ICANN shall conduct a reasonable search and produce non-public,</b></p>

<sup>11</sup> Bylaws, Article I(1)(a)(i) (**RM 2**).

<sup>12</sup> AoI, Article III (**RM 1**); Bylaws, Article I(2)(a) (**RM 2**).

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			relevant ICANN personnel and the .ORG, .INFO, and .BIZ registry operators regarding requests by the registry operators to remove the price control provisions in the 2019 .ORG, .INFO, and .BIZ Registry Agreements.	<b>non-privileged documents regarding requests by the registry operators (and their representatives) in relation to the removal of the price caps in the .ORG, .BIZ and/or .INFO Registry Agreements. The time period shall be January 1, 2018 through November 18, 2019. This request is otherwise denied on the ground that the requested documents are only marginally relevant and material relative to the burden of production.</b>
1.g	Any document showing the reasons for ICANN <u>to accept to examine requests</u> for (i) renewal of the .ORG, .BIZ and/or .INFO Registry Agreements, and (ii) modification and/or removal of price caps in the .ORG, .BIZ and/or	Access to these documents is required to understand: <ul style="list-style-type: none"> <li>- the extent of ICANN obligations under the registry agreements,</li> <li>- the reasons for imposing, modifying or removing price caps via the registry agreements,</li> <li>- the processes ICANN used in negotiating and renegotiating registry agreements,</li> </ul>	ICANN objects that the phrase "to accept to examine requests" is vague and ambiguous, such that ICANN cannot ascertain what documents Namecheap is requesting here, above and beyond those documents already requested, and that ICANN has agreed to produce.  ICANN further objects that the documents sought by this Request are not relevant or	<b>At issue.</b>  <u>ICANN's Position:</u> ICANN will conduct a reasonable search and produce non-public, non-privileged documents and communications regarding modification and/or removal of the price control provisions in the 2019 .ORG, .INFO, and .BIZ Registry Agreements through 18 November 2019.  <u>Namecheap's Position:</u> Same as with Request No. 1.

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
	.INFO Registry Agreements. <sup>13</sup>	<p>- the potential conflicts of interest of ICANN staff when deciding to remove the price caps, etc.</p> <p>The request for these documents is sufficiently clear and reasonable. Indeed, one may expect that ICANN has this information readily available, as it relates to its core obligations towards ICANN's main contracting parties and to ICANN's primary mission to coordinate 'the allocation and assignment of names in the root zone of the Domain Name System'<sup>14</sup> and to ICANN's commitment of operating 'through open and transparent processes</p>	<p>material to the outcome of this dispute.</p> <p>Namecheap's claims in this IRP relate to the narrow issue of ICANN's removal of the price control provisions in the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Documents regarding renewal of any other provisions in the 2019 Registry Agreements, or any prior Registry Agreements are not relevant or material to Namecheap's claims. For the same reason, information relating to the "extent of ICANN obligations under" all prior Registry Agreements, or all provisions of the Registry</p>	<p><u>ICANN's Response:</u> Documents regarding any prior .ORG, .BIZ, or .INFO Registry Agreement are irrelevant, especially given the drastic changes in the DNS since the agreements were negotiated. ICANN agrees to search for and collect documents through 18 November 2019 because that is the day that Namecheap initiated the CEP with ICANN, and documents post-dating the CEP are more likely than not to be protected by the attorney-client privilege or work product doctrine.</p> <p><b><u>Panel's Ruling:</u></b></p> <p><b>ICANN shall conduct a reasonable search and produce non-public,</b></p>

<sup>13</sup> Under Part 1, No. 7 of its DIDP Request, the Claimant requested access to documents relating to 'such removal, modification and removal', building further on the document request in the bullets above and listing specific items requested under Part 1 (**Annex 15**). ICANN considered that this request was vague and confusing as, according to ICANN, 'it is not clear what TLDs are being referenced' (**Annex 16**, p. 14). The Claimant fails to see how its request was not clear. All items requested under Part 1 of the DIDP Request relate to 'documents directly and indirectly relating to the negotiations pertaining to the reassignment, renewal and amendments of the .ORG, .BIZ and/or .INFO Registry Agreements' (**Annex 15**). As a result, it was clear what TLDs are being referenced. To avoid any misunderstanding, the Claimant has specified in the present request that it is seeking those documents relating to the .ORG, .BIZ and .INFO Registry Agreements.

<sup>14</sup> Bylaws, Article I(1)(a)(i) (**RM 2**).

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
		that enable competition and open entry in Internet-related markets'. <sup>15</sup>	<p>Agreements, is not material to Namecheap's claims.</p> <p>ICANN also objects to this Request to the extent it seeks documents protected by the attorney-client privilege, work product doctrine, or any other applicable privilege. ICANN will not produce privileged documents.</p> <p>Subject to these objections, ICANN will conduct a reasonable search and produce non-public, non-privileged documents and communications regarding modification and/or removal of the price control provisions in the 2019 .ORG, .INFO, and .BIZ Registry Agreements.</p>	<p><b>non-privileged documents and communications that relate or refer to the modification and/or removal of price control provisions in the .ORG, .INFO, and .BIZ Registry Agreements). The time period shall be January 1, 2018 through November 18, 2019. This request is otherwise denied on the ground that the requested documents are only marginally relevant and material relative to the burden of production.</b></p>
1.h	Any document showing the <u>reasons for ICANN to accept requests</u> for (i) renewal of the .ORG,	Access to these documents is required to understand: <ul style="list-style-type: none"> <li>- the reasons for imposing, modifying or removing</li> </ul>	ICANN objects that the documents sought by this Request are not relevant or material to the outcome of this	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN will conduct a reasonable search and</p>

<sup>15</sup> AoI, Article III (**RM 1**); Bylaws, Article I(2)(a) (**RM 2**).

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
	.BIZ and/or .INFO Registry Agreements, and (ii) modification and/or removal of price caps in the .ORG, .BIZ and/or .INFO Registry Agreements. <sup>16</sup>	<p>price caps via the registry agreements,</p> <ul style="list-style-type: none"> <li>- the processes ICANN used in negotiating and renegotiating registry agreements,</li> <li>- the potential conflicts of interest of ICANN staff when deciding to remove the price caps, etc.</li> </ul> <p>The request for these documents is sufficiently clear and reasonable. Indeed, one may expect that ICANN has this information readily available, as it relates to its core obligations towards ICANN's main contracting parties and to ICANN's primary mission to coordinate 'the allocation and assignment of names in the root zone of the Domain Name</p>	<p>dispute. Namecheap's claims in this IRP relate to the narrow issue of ICANN's removal of the price control provisions in the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Documents regarding any other provisions in the 2019 Registry Agreements, or any prior Registry Agreements are not relevant or material to Namecheap's claims. The burden on ICANN of searching for documents that relate to irrelevant Registry Agreements, or irrelevant provisions of the Registry Agreements substantially outweighs any benefit that Namecheap plausibly could expect to obtain.</p>	<p>produce non-public, non-privileged documents and communications regarding modification and/or removal of the price control provisions in the 2019 .ORG, .INFO, and .BIZ Registry Agreements through 18 November 2019.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 1.</p> <p><u>ICANN's Response:</u> Documents regarding any prior .ORG, .BIZ, or .INFO Registry Agreement are irrelevant, especially given the drastic changes in the DNS since the agreements were negotiated. ICANN agrees to search for and collect documents through 18 November 2019 because that is the day that Namecheap initiated the CEP with ICANN, and</p>

<sup>16</sup> Under Part 1, No. 8 of its DIDP Request, the Claimant requested access to documents relating to 'such removal, modification and removal', building further on the document request in the bullets above and listing specific items requested under Part 1 (**Annex 15**). ICANN considered that this request was vague and confusing as, according to ICANN, 'it is not clear what TLDs are being referenced' (**Annex 16**, p. 14). The Claimant fails to see how its request was not clear. All items requested under Part 1 of the DIDP Request relate to 'documents directly and indirectly relating to the negotiations pertaining to the reassignment, renewal and amendments of the .ORG, .BIZ and/or .INFO Registry Agreements' (**Annex 15**). As a result, it was clear what TLDs are being referenced. To avoid any misunderstanding, the Claimant has specified in the present request that it is seeking those documents relating to the .ORG, .BIZ and .INFO Registry Agreements.

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
		System' <sup>17</sup> and to ICANN's commitment of operating 'through open and transparent processes that enable competition and open entry in Internet-related markets'. <sup>18</sup>	<p>ICANN also objects to this Request to the extent it seeks documents protected by the attorney-client privilege, work product doctrine, or any other applicable privilege. ICANN will not produce privileged documents.</p> <p>Subject to these objections, ICANN will conduct a reasonable search and produce non-public, non-privileged documents and communications regarding modification and/or removal of the price control provisions in the 2019 .ORG, .INFO, and .BIZ Registry Agreements.</p>	<p>documents post-dating the CEP are more likely than not to be protected by the attorney-client privilege or work product doctrine.</p> <p><b><u>Panel's Ruling:</u></b></p> <p><b>ICANN shall conduct a reasonable search and produce non-public, non-privileged documents and communications that relate or refer to the modification and/or removal of price control provisions in the .ORG, .INFO, and .BIZ Registry Agreements). The time period shall be January 1, 2018 through November 18, 2019. This request is otherwise denied on the ground that the requested documents are only marginally relevant and material relative to the burden of production.</b></p>
1.i	Any documents showing the reasons for ICANN <u>not to</u> impose	Access to these documents is required to understand:	ICANN objects that the documents sought by this Request are overbroad and	<b>At issue.</b>

<sup>17</sup> Bylaws, Article I(1)(a)(i) (**RM 2**).

<sup>18</sup> AoI, Article III (**RM 1**); Bylaws, Article I(2)(a) (**RM 2**).



#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
	price caps for new gTLDs.	<ul style="list-style-type: none"> <li>- the reasons for imposing, modifying or removing price caps via the registry agreements,</li> <li>- the processes ICANN used in negotiating and renegotiating registry agreements,</li> <li>- the potential conflicts of interest of ICANN staff when deciding to remove the price caps, etc.</li> </ul> <p>The request for these documents is sufficiently clear and reasonable. Indeed, one may expect that ICANN has this information readily available, as it relates to its core obligations towards ICANN's main contracting parties and to ICANN's primary mission to coordinate 'the allocation and assignment of names in the root zone of the Domain Name System'<sup>19</sup> and to ICANN's commitment of operating 'through open and transparent processes</p>	unduly burdensome. After a years-long community-driven process, ICANN implemented the New gTLD Program through which interested applicants could apply to operate new gTLDs that were not already in the root zone. That program launched in 2012, and ICANN has since introduced 1,235 new gTLDs into the root. ICANN developed a Base Registry Agreement in conjunction with the program that most registry operators for those 1,235 new gTLDs have executed with ICANN. The burden on ICANN of searching for documents over a multi-year development process substantially outweighs any benefit that Namecheap plausibly could expect to obtain.	<p><u>ICANN's Position:</u> ICANN stands on its objections.</p> <p><u>Namecheap's Position:</u> Full contention.</p> <p><u>Panel's Ruling:</u></p> <p><b>ICANN shall conduct a reasonable search and produce non-public, non-privileged documents and communications that relate or refer to the modification and/or removal of price control provisions in registry agreements (regardless of whether such documents or communications specifically reference the .ORG, .INFO, and .BIZ Registry Agreements). The time period shall be January 1, 2018 through November 18, 2019. This request is otherwise denied on the ground that the requested documents are only marginally relevant and material relative to the burden of production.</b></p>

<sup>19</sup> Bylaws, Article I(1)(a)(i) (**RM 2**).



#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
		<p>that enable competition and open entry in Internet-related markets'.<sup>20</sup></p>	<p>ICANN further objects that this Request is a fishing expedition in that it does not identify any particular persons whose communications Namecheap seeks, but instead seeks to have ICANN search indiscriminately among its officers and staff. The burden of conducting such a search substantially outweighs any legitimate benefit Namecheap plausibly could expect from the results of such a search.</p> <p>ICANN also objects to this Request to the extent it seeks documents protected by the attorney-client privilege, work product doctrine, or any other applicable privilege. ICANN will not produce privileged documents.</p> <p>ICANN objects to the extent that documents responsive to this Request are in the public</p>	

<sup>20</sup> AoI, Article III (**RM 1**); Bylaws, Article I(2)(a) (**RM 2**).

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			<p>domain, and therefore are equally available to Namecheap.</p> <p>Based on these objections, ICANN does not agree to produce documents responsive to this Request.</p>	
1.j	<p>Any document showing that ICANN has considered, and made a reasoned decision, whether or not the renewal of the .ORG registry agreement that included the removal of the price cap, is in line with the requirement for the .ORG registry fee charged to accredited registrars to be as low as feasible consistent with the maintenance of good quality service, as required in the DNSO policy and in the request for proposals for reassignment of the</p>	<p>Access to these documents is required to understand</p> <ul style="list-style-type: none"> <li>- the reasons for imposing, modifying or removing price caps via the registry agreements,</li> <li>- the processes ICANN used in negotiating and renegotiating registry agreements,</li> <li>- the potential conflicts of interest of ICANN staff when deciding to remove the price caps, etc.</li> </ul> <p>The request for these documents is sufficiently clear and reasonable. Indeed, one may expect that ICANN has this information readily available, as it relates to its</p>	<p>ICANN objects to Namecheap's mischaracterization of the DNSO's recommendation as a "policy" or as imposing any "requirement" on ICANN. ICANN set forth in detail in its Response to Namecheap's Request for IRP that the DNSO made <i>recommendations</i> to the ICANN Board, but did not impose any requirements on ICANN, or otherwise institute any formal policy, as that term is defined in ICANN's Bylaws. Response to Request for IRP ¶¶ 60-63.</p> <p>ICANN also objects to this Request to the extent it seeks documents protected by the</p>	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN stands on its objections.</p> <p><u>Namecheap's Position:</u> Full contention.</p> <p><b><u>Panel's Ruling:</u></b></p> <p><b>The Panel notes ICANN's objection that the DNSO recommendation does not establish "policy." Without ruling on that issue at this point, ICANN shall conduct a reasonable search and produce non-public, non-privileged documents showing that ICANN has considered, and made a reasoned decision, whether or not</b></p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
	.ORG gTLD, as imposed in 2002.	core obligations towards ICANN's main contracting parties and to ICANN's primary mission to coordinate 'the allocation and assignment of names in the root zone of the Domain Name System' <sup>21</sup> and to ICANN's commitment of operating 'through open and transparent processes that enable competition and open entry in Internet-related markets'. <sup>22</sup>	<p>attorney-client privilege, work product doctrine, or any other applicable privilege. ICANN will not produce privileged documents.</p> <p>ICANN objects that this Request is duplicative of prior Requests. To the extent that Namecheap is seeking information regarding "the reasons for . . . modifying or removing price caps" in the .ORG, .BIZ, and .INFO Registry Agreements, that information is encompassed by Namecheap's Requests above, for which ICANN agreed to produce documents.</p> <p>Based on these objections, ICANN does not agree to produce documents responsive to this Request.</p>	<p><b>the renewal of the .ORG registry agreement that included the removal of price control provisions violated ICANN's Articles of Incorporation or Bylaws. The time period shall be January 1, 2018 through November 18, 2019, except that in the event ICANN relies on documents or communications dating prior to that period to affirmatively demonstrate in this IRP that removal of the price control provisions complied with the Articles of Incorporation and Bylaws, Namecheap may seek leave from the Panel to obtain the disclosure of such other documents and communications that are reasonably related to the documents or communications relied upon by ICANN. This request is otherwise denied on the ground that the requested documents are only marginally relevant and material</b></p>

<sup>21</sup> Bylaws, Article I(1)(a)(i) (**RM 2**).

<sup>22</sup> AoI, Article III (**RM 1**); Bylaws, Article I(2)(a) (**RM 2**).

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
				relative to the burden of production.
1.k	<p>All <u>exchanges of communication</u> between ICANN and the registry operators discussing the renewal of the .ORG, .BIZ and/or .INFO Registry Agreements, modification and removal of price caps in the .ORG, .BIZ and/or .INFO Registry Agreements from the time when such discussions were first initiated through the date of ICANN's response to this request.</p> <p><sup>23</sup></p>	<p>Access to these documents is required to understand:</p> <ul style="list-style-type: none"> <li>- the extent of ICANN obligations under the registry agreements,</li> <li>- the reasons for imposing, modifying or removing price caps via the registry agreements,</li> <li>- the processes ICANN used in negotiating and renegotiating registry agreements,</li> <li>- the potential conflicts of interest of ICANN staff when deciding to remove the price caps, etc.</li> </ul> <p>The request for these documents is sufficiently clear and reasonable.</p>	<p>ICANN objects that the documents sought by this Request are not relevant or material to the outcome of this dispute to the extent they relate to Registry Agreements other than the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Namecheap's claims in this IRP relate to the narrow issue of ICANN's removal of the price control provisions in the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Documents regarding any prior Registry Agreements, or renewal of non-price related provisions of the Registry Agreements are not relevant or material to Namecheap's claims.</p>	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN will conduct a reasonable search and produce non-public, non-privileged communications between relevant ICANN personnel and the .ORG, .INFO, and .BIZ registry operators regarding modification and/or removal of the price control provisions in the 2019 .ORG, .INFO, and .BIZ Registry Agreements through 18 November 2019.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 1.</p> <p><u>ICANN's Response:</u> Documents regarding any prior .ORG, .BIZ, or .INFO Registry Agreement are</p>

<sup>23</sup> Under Part 1, No. 10 of its DIDP Request, the Claimant requested access to documents relating to 'such removal, modification and removal', building further on the document request in the bullets above and listing specific items requested under Part 1 (**Annex 15**). ICANN considered that this request was vague (**Annex 16**, p. 17). The Claimant fails to see how its request was not clear. All items requested under Part 1 of the DIDP Request relate to 'documents directly and indirectly relating to the negotiations pertaining to the reassignment, renewal and amendments of the .ORG, .BIZ and/or .INFO Registry Agreements' (**Annex 15**). As a result, it was clear what TLDs are being referenced. To avoid any misunderstanding, the Claimant has specified in the present request that it is seeking those documents relating to the .ORG, .BIZ and .INFO Registry Agreements.

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
		<p>Indeed, one may expect that ICANN has this information readily available, as it relates to its core obligations towards ICANN's main contracting parties and to ICANN's primary mission to coordinate 'the allocation and assignment of names in the root zone of the Domain Name System'<sup>24</sup> and to ICANN's commitment of operating 'through open and transparent processes that enable competition and open entry in Internet-related markets'.<sup>25</sup></p>	<p>For the same reason, information relating to the "extent of ICANN obligations under" any prior Registry Agreements or any other provisions of the Registry Agreements is not material to Namecheap's claims. The burden on ICANN of searching for such documents substantially outweighs any benefit that Namecheap plausibly could expect to obtain.</p> <p>ICANN objects that this Request is duplicative of Request Nos. 1.d through 1.f.</p> <p>ICANN further objects that this Request is a fishing expedition in that it does not identify any particular persons whose communications Namecheap seeks, but instead seeks to have</p>	<p>irrelevant, especially given the drastic changes in the DNS since the agreements were negotiated. ICANN agrees to search for and collect documents through 18 November 2019 because that is the day that Namecheap initiated the CEP with ICANN, and documents post-dating the CEP are more likely than not to be protected by the attorney-client privilege or work product doctrine.</p> <p><b>Panel's Ruling:</b></p> <p><b>ICANN shall conduct a reasonable search and produce non-public, non-privileged communications between relevant ICANN personnel and the .ORG, .INFO, and .BIZ registry operators regarding modification and/or removal of the price control provisions in the 2019 .ORG, .INFO, and .BIZ Registry Agreements during the period</b></p>

<sup>24</sup> Bylaws, Article I(1)(a)(i) (**RM 2**).

<sup>25</sup> AoI, Article III (**RM 1**); Bylaws, Article I(2)(a) (**RM 2**).

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			<p>ICANN search indiscriminately among its officers and staff. The burden of conducting such an expansive search substantially outweighs any legitimate benefit Namecheap plausibly could expect from the results of such a search.</p> <p>ICANN objects to the time period proposed by Namecheap, insofar as it requests documents after 30 June 2019. The .ORG, .BIZ, and .INFO Registry Agreements were renewed on 30 June 2019, and any subsequent communications are irrelevant to Namecheap's claims regarding ICANN's decision to remove the price control provisions. ICANN will not produce any documents after 30 June 2019.</p> <p>Subject to these objections, ICANN will conduct a reasonable search and produce non-public, non-privileged</p>	<p><b>between January 1, 2018 and November 18, 2019. This request is otherwise denied on the ground that the requested documents are only marginally relevant and material relative to the burden of production.</b></p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			communications between relevant ICANN personnel and the .ORG, .INFO, and .BIZ registry operators regarding modification and/or removal of the price control provisions in the 2019 .ORG, .INFO, and .BIZ Registry Agreements.	
1.1	All communications (including emails, recordings of conference calls via Adobe Connect, Zoom or otherwise, transcripts of meetings, meeting agenda's) <u>between ICANN staff and the ICANN Board</u> in relation to the .ORG, .BIZ and/or .INFO Registry Agreements, namely with regard to the renewal of these agreements, the modification and removal of the price caps, the reasons to accept to examine the requests related to the	<p>Access to these documents is required to understand:</p> <ul style="list-style-type: none"> <li>- the reasons for imposing, modifying or removing price caps via the registry agreements,</li> <li>- the processes ICANN used in negotiating and renegotiating registry agreements,</li> <li>- the potential conflicts of interest of ICANN staff when deciding to remove the price caps, etc.</li> </ul> <p>The request for these documents is sufficiently clear and reasonable. Indeed, one may expect that ICANN has this information readily available, as it relates to its core</p>	ICANN objects that the documents sought by this Request are not relevant or material to the outcome of this dispute to the extent they relate to Registry Agreements other than the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Namecheap's claims in this IRP relate to the narrow issue of ICANN's removal of the price control provisions in the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Documents regarding any prior Registry Agreements, or renewal of non-price related provisions of the Registry Agreements are not relevant or material to Namecheap's claims. The	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN will conduct a reasonable search and produce non-public, non-privileged communications between relevant ICANN staff and the ICANN Board regarding the modification and/or removal of the price control provisions in the 2019 .ORG, .INFO, and .BIZ Registry Agreements through 18 November 2019.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 1.</p> <p><u>ICANN's Response:</u> Documents regarding any prior .ORG, .BIZ, or .INFO Registry Agreement are irrelevant, especially given the</p>



#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
	<p>renewal, modification and removal of the registry agreements <i>c.g.</i> the price caps imposed via these agreements, and the reasons to accept these requests, from the time when such discussions were first initiated through the date of ICANN's response to this request.<sup>26</sup></p>	<p>obligations towards ICANN's main contracting parties and to ICANN's primary mission to coordinate 'the allocation and assignment of names in the root zone of the Domain Name System'<sup>27</sup> and to ICANN's commitment of operating 'through open and transparent processes that enable competition and open entry in Internet-related markets'.<sup>28</sup></p> <p>In addition, ICANN claims that its staff conferred with the ICANN Board when deciding to proceed with the 2019 Registry Agreements without price control provisions. As ICANN and its Board are committed to openness and transparency and have a practice of recording meetings and preparing them in advance via email (given</p>	<p>burden on ICANN of searching for such documents substantially outweighs any benefit that Namecheap plausibly could expect to obtain.</p> <p>ICANN objects that the phrase "to accept to examine the requests" is vague and ambiguous, such that ICANN cannot ascertain what documents Namecheap is requesting here, above and beyond those documents already requested, and that ICANN has agreed to produce.</p> <p>ICANN further objects that this Request is a fishing expedition in that it does not identify any</p>	<p>drastic changes in the DNS since the agreements were negotiated. ICANN agrees to search for and collect documents through 18 November 2019 because that is the day that Namecheap initiated the CEP with ICANN, and documents post-dating the CEP are more likely than not to be protected by the attorney-client privilege or work product doctrine.</p> <p><b><u>Panel's Ruling:</u></b></p> <p><b>ICANN shall conduct a reasonable search and produce non-public, non-privileged communications between relevant ICANN staff and the ICANN Board regarding the modification and/or removal of the price control provisions in registry</b></p>

<sup>26</sup> Under Part 1, No. 11 of its DIDP Request, the Claimant requested access to documents relating to 'such removal, modification and removal', building further on the document request in the bullets above and listing specific items requested under Part 1 (**Annex 15**). ICANN considered that this request was vague (**Annex 16**, p. 17). The Claimant fails to see how its request was not clear. All items requested under Part 1 of the DIDP Request relate to 'documents directly and indirectly relating to the negotiations pertaining to the reassignment, renewal and amendments of the .ORG, .BIZ and/or .INFO Registry Agreements' (**Annex 15**). As a result, it was clear what TLDs are being referenced. To avoid any misunderstanding, the Claimant has specified in the present request that it is seeking those documents relating to the .ORG, .BIZ and .INFO Registry Agreements.

<sup>27</sup> Bylaws, Article I(1)(a)(i) (**RM 2**).

<sup>28</sup> AoI, Article III (**RM 1**); Bylaws, Article I(2)(a) (**RM 2**).



#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
		<p>the fact that ICANN's Board members are located in different geographical locations), there must be records of the purported meetings between ICANN Staff and the Board on these topics. The point is all the stronger as the removal of price caps is a major shift in ICANN's existing practice and policy that goes to core of ICANN's mission and purpose.</p>	<p>particular persons whose communications Namecheap seeks, but instead seeks to have ICANN search indiscriminately among its staff and Board. The burden of conducting such an expansive search substantially outweighs any legitimate benefit Namecheap plausibly could expect from the results of such a search.</p> <p>ICANN also objects to this Request to the extent it seeks documents protected by the attorney-client privilege, work product doctrine, or any other applicable privilege. ICANN will not produce privileged documents.</p> <p>ICANN objects to the time period proposed by Namecheap, insofar as it requests documents after 30 June 2019. The .ORG, .BIZ, and .INFO Registry Agreements were renewed on 30 June 2019, and any subsequent</p>	<p><b>agreements (regardless of whether such documents or communications specifically reference the .ORG, .INFO, and .BIZ Registry Agreements). The time period shall be January 1, 2018 through November 18, 2019. This request is otherwise denied on the ground that the requested documents are only marginally relevant and material relative to the burden of production.</b></p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			<p>communications are irrelevant to Namecheap's claims regarding ICANN's decision to remove the price control provisions. ICANN will not produce any communications after 30 June 2019.</p> <p>Subject to these objections, ICANN will conduct a reasonable search and produce non-public, non-privileged communications between relevant ICANN staff and the ICANN Board regarding the modification and/or removal of the price control provisions in the 2019 .ORG, .INFO, and .BIZ Registry Agreements.</p>	
1. m	<p>All communications <u>between ICANN staff and individual ICANN Board members</u> in relation to the .ORG, .BIZ and/or .INFO Registry Agreements, namely with regard to the renewal,</p>	<p>Access to these documents is required to understand:</p> <ul style="list-style-type: none"> <li>- the reasons for imposing, modifying or removing price caps via the registry agreements,</li> <li>- the processes ICANN used in negotiating and</li> </ul>	<p>ICANN objects that the documents sought by this Request are not relevant or material to the outcome of this dispute to the extent they relate to Registry Agreements other than the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Namecheap's claims in this IRP</p>	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN will conduct a reasonable search and produce non-public, non-privileged communications between relevant ICANN staff and the ICANN Board regarding the modification and/or removal of the price control</p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
	<p>modification and removal of these registry agreements <i>c.q.</i> the price caps imposed via those agreements, the reasons to accept to examine the requests for renewal, modification and removal of these registry agreements <i>c.q.</i> the price caps imposed via those agreements, and the reasons to accept these requests, from the date upon which these communications commenced through the date of ICANN's response to this request.<sup>29</sup></p>	<p>renegotiating registry agreements,</p> <ul style="list-style-type: none"> <li>- the potential conflicts of interest of ICANN staff when deciding to remove the price caps, etc.</li> </ul> <p>The request for these documents is sufficiently clear and reasonable. Indeed, one may expect that ICANN has this information readily available, as it relates to its core obligations towards ICANN's main contracting parties and to ICANN's primary mission to coordinate 'the allocation and assignment of names in the root zone of the Domain Name System'<sup>30</sup> and to ICANN's commitment of operating 'through open and transparent processes</p>	<p>relate to the narrow issue of ICANN's removal of the price control provisions in the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Documents regarding any prior Registry Agreements, or renewal of non-price related provisions of the Registry Agreements are not relevant or material to Namecheap's claims. The burden on ICANN of searching for such documents substantially outweighs any benefit that Namecheap plausibly could expect to obtain.</p> <p>ICANN objects that the phrase "to accept to examine the requests" is vague and ambiguous, such that ICANN</p>	<p>provisions in the 2019 .ORG, .INFO, and .BIZ Registry Agreements through 18 November 2019.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 1.</p> <p><u>ICANN's Response:</u> Documents regarding any prior .ORG, .BIZ, or .INFO Registry Agreement are irrelevant, especially given the drastic changes in the DNS since the agreements were negotiated. ICANN agrees to search for and collect documents through 18 November 2019 because that is the day that Namecheap initiated the CEP with ICANN, and documents post-dating the CEP are more likely than not to be protected by the attorney-client privilege or work product doctrine.</p>

<sup>29</sup> Under Part 1, No. 12 of its DIDP Request, the Claimant requested access to documents relating to 'such removal, modification and removal', building further on the document request in the bullets above and listing specific items requested under Part 1 (**Annex 15**). ICANN considered that this request was vague (**Annex 16**, p. 17). The Claimant fails to see how its request was not clear. All items requested under Part 1 of the DIDP Request relate to 'documents directly and indirectly relating to the negotiations pertaining to the reassignment, renewal and amendments of the .ORG, .BIZ and/or .INFO Registry Agreements' (**Annex 15**). As a result, it was clear what TLDs are being referenced. To avoid any misunderstanding, the Claimant has specified in the present request that it is seeking those documents relating to the .ORG, .BIZ and .INFO Registry Agreements.

<sup>30</sup> Bylaws, Article I(1)(a)(i) (**RM 2**).

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
		<p>that enable competition and open entry in Internet-related markets'.<sup>31</sup></p> <p>In addition, ICANN claims that its staff conferred with the ICANN Board when deciding to proceed with the 2019 Registry Agreements without price control provisions. As ICANN and its Board are committed to openness and transparency and have a practice of recording meetings and preparing them in advance via email (given the fact that ICANN's Board members are located in different geographical locations), there must be records of the purported meetings between ICANN Staff and the Board on these topics. The point is all the stronger as the removal of price caps is a major shift in ICANN's existing practice and policy that goes to core of ICANN's mission and purpose.</p>	<p>cannot ascertain what documents Namecheap is requesting here, above and beyond those documents already requested, and that ICANN has agreed to produce.</p> <p>ICANN further objects that this Request is a fishing expedition in that it does not identify any particular persons whose communications Namecheap seeks, but instead seeks to have ICANN search indiscriminately among its staff and Board. The burden of conducting such an expansive search substantially outweighs any legitimate benefit Namecheap plausibly could expect from the results of such a search.</p> <p>ICANN objects that this Request is duplicative of Request No. 1.1 above.</p>	<p><b><u>Panel's Ruling:</u></b></p> <p><b>ICANN shall conduct a reasonable search and produce non-public, non-privileged communications between relevant ICANN staff and ICANN Board members regarding the modification and/or removal of the price control provisions in registry agreements (regardless of whether such documents or communications specifically reference the .ORG, .INFO, and .BIZ Registry Agreements). The time period shall be January 1, 2018 through November 18, 2019.</b></p>

<sup>31</sup> AoI, Article III (**RM 1**); Bylaws, Article I(2)(a) (**RM 2**).

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			<p>ICANN also objects to this Request to the extent it seeks documents protected by the attorney-client privilege, work product doctrine, or any other applicable privilege. ICANN will not produce privileged documents.</p> <p>ICANN objects to the time period proposed by Namecheap, insofar as it requests documents after 30 June 2019. The .ORG, .BIZ, and .INFO Registry Agreements were renewed on 30 June 2019, and any subsequent communications are irrelevant to Namecheap's claims regarding ICANN's decision to remove the price control provisions. ICANN will not produce any communications after 30 June 2019.</p> <p>Subject to these objections, ICANN will conduct a reasonable search and produce non-public, non-privileged</p>	

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			communications between relevant ICANN staff and the ICANN Board regarding the modification and/or removal of the price control provisions in the 2019 .ORG, .INFO, and .BIZ Registry Agreements.	
1.n	All communications <u>between ICANN staff</u> in relation to the .ORG, .BIZ and/or .INFO Registry Agreements, namely with regard to the renewal, modification and removal of these registry agreements <i>c.q.</i> the price caps imposed via those agreements, the reasons to accept to examine the requests for renewal, modification and removal of these registry agreements <i>c.q.</i> the price caps imposed via those agreements, and the reasons to accept these requests, from the date	<p>Access to these documents is required to understand:</p> <ul style="list-style-type: none"> <li>- the reasons for imposing, modifying or removing price caps via the registry agreements,</li> <li>- the processes ICANN used in negotiating and renegotiating registry agreements,</li> <li>- the potential conflicts of interest of ICANN staff when deciding to remove the price caps, etc.</li> </ul> <p>The request for these documents is sufficiently clear and reasonable. Indeed, one may expect that ICANN has this information readily available, as it relates to its core obligations towards ICANN's</p>	ICANN objects that the documents sought by this Request are not relevant or material to the outcome of this dispute to the extent they relate to Registry Agreements other than the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Namecheap's claims in this IRP relate to the narrow issue of ICANN's removal of the price control provisions in the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Documents regarding any prior Registry Agreements, or renewal of non-price related provisions of the Registry Agreements are not relevant or material to Namecheap's claims. The burden on ICANN of searching	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN will conduct a reasonable search and produce non-public, non-privileged communications between relevant ICANN staff regarding the modification and/or removal of the price control provisions in the 2019 .ORG, .INFO, and .BIZ Registry Agreements through 18 November 2019.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 1.</p> <p><u>ICANN's Response:</u> Documents regarding any prior .ORG, .BIZ, or .INFO Registry Agreement are irrelevant, especially given the drastic changes in the DNS since the</p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
	<p>upon which these communications commenced through the date of ICANN's response to this request.<sup>32</sup></p>	<p>main contracting parties and to ICANN's primary mission to coordinate 'the allocation and assignment of names in the root zone of the Domain Name System'<sup>33</sup> and to ICANN's commitment of operating 'through open and transparent processes that enable competition and open entry in Internet-related markets'.<sup>34</sup></p> <p>In addition, ICANN claims that it analyzed the public comments it received from the Internet community with respect to the proposed renewal of the registry agreements without the price caps. If that were true, there must be reports and communications about ICANN's analysis.</p>	<p>for such documents substantially outweighs any benefit that Namecheap plausibly could expect to obtain.</p> <p>ICANN objects that the phrase "to accept to examine the requests" is vague and ambiguous, such that ICANN cannot ascertain what documents Namecheap is requesting here, above and beyond those documents already requested, and that ICANN has agreed to produce.</p> <p>ICANN further objects that this Request is a fishing expedition in that it does not identify any particular persons whose</p>	<p>agreements were negotiated. ICANN agrees to search for and collect documents through 18 November 2019 because that is the day that Namecheap initiated the CEP with ICANN, and documents post-dating the CEP are more likely than not to be protected by the attorney-client privilege or work product doctrine.</p> <p><b><u>Panel's Ruling:</u></b></p> <p><b>ICANN shall conduct a reasonable search and produce non-public, non-privileged communications between relevant ICANN staff regarding the modification and/or removal of the price control provisions in registry agreements (regardless of whether such</b></p>

<sup>32</sup> Under Part 1, No. 13 of its DIDP Request, the Claimant requested access to documents relating to 'such removal, modification and removal', building further on the document request in the bullets above and listing specific items requested under Part 1 (**Annex 15**). ICANN considered that this request was vague (**Annex 16**, p. 17). The Claimant fails to see how its request was not clear. All items requested under Part 1 of the DIDP Request relate to 'documents directly and indirectly relating to the negotiations pertaining to the reassignment, renewal and amendments of the .ORG, .BIZ and/or .INFO Registry Agreements' (**Annex 15**). As a result, it was clear what TLDs are being referenced. To avoid any misunderstanding, the Claimant has specified in the present request that it is seeking those documents relating to the .ORG, .BIZ and .INFO Registry Agreements.

<sup>33</sup> Bylaws, Article I(1)(a)(i) (**RM 2**).

<sup>34</sup> AoI, Article III (**RM 1**); Bylaws, Article I(2)(a) (**RM 2**).



#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			<p>communications Namecheap seeks, but instead seeks to have ICANN search indiscriminately among its staff. The burden of conducting such an expansive search substantially outweighs any legitimate benefit Namecheap plausibly could expect from the results of such a search.</p> <p>ICANN also objects to this Request to the extent it seeks documents protected by the attorney-client privilege, work product doctrine, or any other applicable privilege. ICANN will not produce privileged documents.</p> <p>ICANN objects to the time period proposed by Namecheap, insofar as it requests documents after 30 June 2019. The .ORG, .BIZ, and .INFO Registry Agreements were renewed on 30 June 2019, and any subsequent communications are irrelevant</p>	<p><b>documents or communications specifically reference the .ORG, .INFO, and .BIZ Registry Agreements). The time period shall be January 1, 2018 through November 18, 2019. This request is otherwise denied on the ground that the requested documents are only marginally relevant and material relative to the burden of production.</b></p>



#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			<p>to Namecheap's claims regarding ICANN's decision to remove the price control provisions. ICANN will not produce any communications after 30 June 2019.</p> <p>Subject to these objections, ICANN will conduct a reasonable search and produce non-public, non-privileged communications between relevant ICANN staff regarding the modification and/or removal of the price control provisions in the 2019 .ORG, .INFO, and .BIZ Registry Agreements.</p>	
1.o	<p>All communications <u>between ICANN Board members</u> in relation to the .ORG, .BIZ and/or .INFO Registry Agreements, namely with regard to the renewal, modification and removal of these registry agreements <i>c.g.</i></p>	<p>Access to these documents is required to understand:</p> <ul style="list-style-type: none"> <li>- the reasons for imposing, modifying or removing price caps via the registry agreements,</li> <li>- the processes ICANN used in negotiating and renegotiating registry agreements,</li> </ul>	<p>ICANN objects that the documents sought by this Request are not relevant or material to the outcome of this dispute to the extent they relate to Registry Agreements other than the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Namecheap's claims in this IRP relate to the narrow issue of</p>	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN will conduct a reasonable search and produce non-public, non-privileged communications between relevant ICANN staff regarding the modification and/or removal of the price control provisions in the 2019 .ORG, .INFO, and .BIZ Registry</p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
	<p>the price caps imposed via those agreements, the reasons to accept to examine the requests for renewal, modification and removal of these registry agreements <i>c.q.</i> the price caps imposed via those agreement, and the reasons to accept these requests, from the date upon which these communications commenced through the date of ICANN's response to this request.<sup>35</sup></p>	<p>- the potential conflicts of interest of ICANN staff when deciding to remove the price caps, etc.</p> <p>The request for these documents is sufficiently clear and reasonable. Indeed, one may expect that ICANN has this information readily available, as it relates to its core obligations towards ICANN's main contracting parties and to ICANN's primary mission to coordinate 'the allocation and assignment of names in the root zone of the Domain Name System'<sup>36</sup> and to ICANN's commitment of operating 'through open and transparent processes that enable competition and open entry in Internet-related markets'.<sup>37</sup></p>	<p>ICANN's removal of the price control provisions in the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Documents regarding any prior Registry Agreements, or renewal of non-price related provisions of the Registry Agreements are not relevant or material to Namecheap's claims. The burden on ICANN of searching for such documents substantially outweighs any benefit that Namecheap plausibly could expect to obtain.</p> <p>ICANN objects that the phrase "to accept to examine the requests" is vague and ambiguous, such that ICANN</p>	<p>Agreements through 18 November 2019.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 1.</p> <p><u>ICANN's Response:</u> Documents regarding any prior .ORG, .BIZ, or .INFO Registry Agreement are irrelevant, especially given the drastic changes in the DNS since the agreements were negotiated. ICANN agrees to search for and collect documents through 18 November 2019 because that is the day that Namecheap initiated the CEP with ICANN, and documents post-dating the CEP are more likely than not to be protected by the attorney-client privilege or work product doctrine.</p>

<sup>35</sup> Under Part 1, No. 15 of its DIDP Request, the Claimant requested access to documents relating to 'such removal, modification and removal', building further on the document request in the bullets above and listing specific items requested under Part 1 (**Annex 15**). ICANN considered that this request was vague (**Annex 16**, p. 17). The Claimant fails to see how its request was not clear. All items requested under Part 1 of the DIDP Request relate to 'documents directly and indirectly relating to the negotiations pertaining to the reassignment, renewal and amendments of the .ORG, .BIZ and/or .INFO Registry Agreements' (**Annex 15**). As a result, it was clear what TLDs are being referenced. To avoid any misunderstanding, the Claimant has specified in the present request that it is seeking those documents relating to the .ORG, .BIZ and .INFO Registry Agreements.

<sup>36</sup> Bylaws, Article I(1)(a)(i) (**RM 2**).

<sup>37</sup> AoI, Article III (**RM 1**); Bylaws, Article I(2)(a) (**RM 2**).

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			<p>cannot ascertain what documents Namecheap is requesting here, above and beyond those documents already requested, and that ICANN has agreed to produce.</p> <p>ICANN further objects that this Request is a fishing expedition in that it does not identify any particular persons whose communications Namecheap seeks, but instead seeks to have ICANN search indiscriminately among its Board. The burden of conducting such an expansive search substantially outweighs any legitimate benefit Namecheap plausibly could expect from the results of such a search.</p> <p>ICANN also objects to this Request to the extent it seeks documents protected by the attorney-client privilege, work product doctrine, or any other applicable privilege. ICANN</p>	<p><b><u>Panel's Ruling:</u></b></p> <p><b>ICANN shall conduct a reasonable search and produce non-public, non-privileged communications between ICANN Board members regarding the modification and/or removal of the price control provisions in the 2019 .ORG, .INFO, and .BIZ Registry Agreements. ICANN will not be required to search the Board members' personal (non-ICANN) email accounts. The time period shall be January 1, 2018 through November 18, 2019. This request is otherwise denied on the ground that the requested documents are only marginally relevant and material relative to the burden of production.</b></p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			<p>will not produce privileged documents.</p> <p>ICANN objects to the time period proposed by Namecheap, insofar as it requests documents after 30 June 2019. The .ORG, .BIZ, and .INFO Registry Agreements were renewed on 30 June 2019, and any subsequent communications are irrelevant to Namecheap's claims regarding ICANN's decision to remove the price control provisions. ICANN will not produce any communications after 30 June 2019.</p> <p>Subject to these objections, ICANN will conduct a reasonable search and produce non-public, non-privileged communications between relevant ICANN Board members regarding the modification and/or removal of the price control provisions in</p>	

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			the 2019 .ORG, .INFO, and .BIZ Registry Agreements.	
1.p	<p>All communications between <u>ICANN staff or ICANN Board member and any person or organisation other than ICANN staff or ICANN Board members</u> in relation to the .ORG, .BIZ and/or .INFO Registry Agreements, namely with regard to the renewal, modification and removal of these registry agreements <i>c.q.</i> the price caps imposed via those agreements, the reasons to accept to examine the requests for renewal, modification and removal of these registry agreements <i>c.q.</i> the price caps imposed via those agreement, and the reasons to accept these requests, from the date</p>	<p>Access to these documents is required to understand:</p> <ul style="list-style-type: none"> <li>- the reasons for imposing, modifying or removing price caps via the registry agreements,</li> <li>- the processes ICANN used in negotiating and renegotiating registry agreements,</li> <li>- the potential conflicts of interest of ICANN staff when deciding to remove the price caps, etc.</li> </ul> <p>The request for these documents is sufficiently clear and reasonable. Indeed, one may expect that ICANN has this information readily available, as it relates to its core obligations towards ICANN's main contracting parties and to ICANN's primary mission to coordinate 'the allocation and assignment of names in the root zone of the Domain</p>	<p>ICANN objects that the documents sought by this Request are burdensome and overbroad to the extent they request communications between ICANN and literally every other person or organization regarding a vast array of topics. This request is also a fishing expedition in that it does not identify any particular persons whose communications Namecheap seeks, but instead seeks to have ICANN search indiscriminately among its staff, Board, and officers. The burden of conducting such an expansive search substantially outweighs any legitimate benefit Namecheap plausibly could expect from the results of such a search.</p> <p>ICANN further objects that this Request seeks documents that</p>	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN stands on its objections.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 1. ICANN considers that this request is duplicative. However, ICANN is invited to specify to which individual request(s) the documents they produce are responsive.</p> <p><u>ICANN's Response:</u> ICANN does not agree to identify to which of Namecheap's multiple Requests a document is responsive. There is no such requirement anywhere in the applicable rules, and requiring ICANN to do so would be unduly burdensome.</p> <p><b><u>Panel's Ruling:</u></b></p> <p><b>The Panel sustains ICANN's objections and denies this Request, except to the extent that the Panel</b></p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
	upon which these communications commenced through the date of ICANN's response to this request. <sup>38</sup>	Name System <sup>39</sup> and to ICANN's commitment of operating 'through open and transparent processes that enable competition and open entry in Internet-related markets'. <sup>40</sup>	are not relevant or material to the outcome of this dispute to the extent they relate to Registry Agreements other than the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Namecheap's claims here relate to the narrow issue of ICANN's removal of the price control provisions in the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Documents regarding any prior Registry Agreements, or renewal of non-price related provisions of the Registry Agreements are not relevant or material to Namecheap's claims. The burden on ICANN of searching for such documents substantially outweighs any	<b>has ordered that documents be produced by ICANN in response to other subparts of Namecheap's Request No. 1.</b>

<sup>38</sup> Under Part 1, No. 13 of its DIDP Request, the Claimant requested access to documents relating to 'such removal, modification and removal', building further on the document request in the bullets above and listing specific items requested under Part 1 (**Annex 15**). ICANN considered that this request was vague (**Annex 16**, p. 17). The Claimant fails to see how its request was not clear. All items requested under Part 1 of the DIDP Request relate to 'documents directly and indirectly relating to the negotiations pertaining to the reassignment, renewal and amendments of the .ORG, .BIZ and/or .INFO Registry Agreements' (**Annex 15**). As a result, it was clear what TLDs are being referenced. To avoid any misunderstanding, the Claimant has specified in the present request that it is seeking those documents relating to the .ORG, .BIZ and .INFO Registry Agreements.

<sup>39</sup> Bylaws, Article I(1)(a)(i) (**RM 2**).

<sup>40</sup> AoI, Article III (**RM 1**); Bylaws, Article I(2)(a) (**RM 2**).

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			<p>benefit that Namecheap plausibly could expect to obtain.</p> <p>ICANN objects that the phrase "to accept to examine the requests" is vague and ambiguous, such that ICANN cannot ascertain what documents Namecheap is requesting here, above and beyond those documents already requested, and that ICANN has agreed to produce.</p> <p>ICANN also objects to this Request to the extent it seeks documents protected by the attorney-client privilege, work product doctrine, or any other applicable privilege. ICANN will not produce privileged documents.</p> <p>ICANN objects to the time period proposed by Namecheap, insofar as it requests documents after 30 June 2019. The .ORG, .BIZ, and</p>	

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			<p>.INFO Registry Agreements were renewed on 30 June 2019, and any subsequent communications are irrelevant to Namecheap's claims regarding ICANN's decision to remove the price control provisions. ICANN will not produce any communications after 30 June 2019.</p> <p>ICANN further objects that this Request is duplicative of Requests 1, 1.b, 1.d-1.h, 1.k-1.o, for which ICANN already agreed to produce documents. ICANN does not agree to produce any additional documents in response to this Request.</p>	
1.q	All documents related to the preparation of the <u>Report of Public Comments for Proposed Renewal of .ORG, .BIZ and/or .INFO Registry Agreements</u> , including summaries and	Access to these documents is required to understand: <ul style="list-style-type: none"> <li>- the reasons for imposing, modifying or removing price caps via the registry agreements,</li> <li>- the processes ICANN used in negotiating and</li> </ul>	ICANN objects that the documents sought by this Request are not relevant or material to the outcome of this dispute to the extent they relate to provisions in the 2019 .ORG, .INFO, and .BIZ Registry Agreements other than the price	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN will conduct a reasonable search and produce non-public, non-privileged documents regarding preparation of the Report of Public Comments for Proposed Renewal as it relates to</p>



#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
	<p>analyses, including the documents exchanged between ICANN staff and the ICANN Board, between ICANN staff and individual ICANN Board members, between ICANN staff, between ICANN Board members, and between ICANN staff or ICANN Board members and any person or organisation other than ICANN staff or ICANN Board members.</p>	<p>renegotiating registry agreements,</p> <ul style="list-style-type: none"> <li>- the potential conflicts of interest of ICANN staff when deciding to remove the price caps, etc.</li> </ul> <p>The request for these documents is sufficiently clear and reasonable. Indeed, one may expect that ICANN has this information readily available, as it relates to its core obligations towards ICANN's main contracting parties and to ICANN's primary mission to coordinate 'the allocation and assignment of names in the root zone of the Domain Name System'<sup>41</sup> and to ICANN's commitment of operating 'through open and transparent processes that enable competition and open entry in Internet-related markets'.<sup>42</sup></p>	<p>control provisions. Namecheap's claims in this IRP relate to the narrow issue of ICANN's removal of the price control provisions in the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Documents regarding any non-price related provisions of the Registry Agreements are not relevant or material to Namecheap's claims. The burden on ICANN of searching for such documents substantially outweighs any benefit that Namecheap plausibly could expect to obtain.</p> <p>ICANN objects that the documents sought by this Request are overbroad to the extent they request documents exchanged between ICANN and literally every other person or organization. This Request is also a fishing expedition in that</p>	<p>modification and/or removal of the price control provisions in the 2019 .ORG, .INFO, and .BIZ Registry Agreements through 18 November 2019.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 1.</p> <p><u>ICANN's Response:</u> Documents regarding any prior .ORG, .BIZ, or .INFO Registry Agreement are irrelevant, especially given the drastic changes in the DNS since the agreements were negotiated. ICANN agrees to search for and collect documents through 18 November 2019 because that is the day that Namecheap initiated the CEP with ICANN, and documents post-dating the CEP are more likely than not to be protected by the attorney-client privilege or work product doctrine.</p> <p><b><u>Panel's Ruling:</u></b></p>

<sup>41</sup> Bylaws, Article I(1)(a)(i) (**RM 2**).

<sup>42</sup> AoI, Article III (**RM 1**); Bylaws, Article I(2)(a) (**RM 2**).

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			<p>it does not identify any particular persons whose documents Namecheap seeks, but instead seeks to have ICANN search indiscriminately among its officers, staff, and Board. The burden of conducting such an expansive search substantially outweighs any legitimate benefit Namecheap plausibly could expect from the results of such a search.</p> <p>ICANN also objects to this Request to the extent it seeks documents protected by the attorney-client privilege, work product doctrine, or any other applicable privilege. ICANN will not produce privileged documents.</p> <p>Subject to these objections, ICANN will conduct a reasonable search and produce non-public, non-privileged documents regarding preparation of the Report of</p>	<p><b>ICANN shall conduct a reasonable search and produce non-public, non-privileged documents regarding preparation of the Report of Public Comments for Proposed Renewal as it relates to modification and/or removal of the price control provisions in the 2019 .ORG, .INFO, and .BIZ Registry Agreements. The period shall be January 1, 2018 through 18 November 2019. This request is otherwise denied on the ground that the requested documents are only marginally relevant and material relative to the burden of production.</b></p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			Public Comments for Proposed Renewal as it relates to modification and/or removal of the price control provisions in the 2019 .ORG, .INFO, and .BIZ Registry Agreements.	
1.r	Any and all authorisations granted by, and communications with, <u>government officials</u> in relation to the delegation, reassignment, renewal, amendments and/or operation of the .ORG, .BIZ and/or .INFO Registry Agreements.	<p>Access to these documents is required to understand:</p> <ul style="list-style-type: none"> <li>- the reasons for imposing, modifying or removing price caps via the registry agreements,</li> <li>- the processes ICANN used in negotiating and renegotiating registry agreements,</li> <li>- the potential conflicts of interest of ICANN staff when deciding to remove the price caps, etc.</li> </ul> <p>The request for these documents is sufficiently clear and reasonable. Indeed, one may expect that ICANN has this information readily available, as it relates to its core obligations towards ICANN's main contracting parties and to ICANN's</p>	ICANN objects that the documents sought by this Request are not relevant or material to the outcome of this dispute. Namecheap's claims here relate to the narrow issue of ICANN's removal of the price control provisions in the 2019 .ORG, .BIZ, and .INFO Registry Agreements. None of Namecheap's claims relates to the delegation, reassignment, renewal, amendments and/or operation of the .ORG, .INFO, and .BIZ Registry Agreements. Even Namecheap's claims regarding the change of control request (which ICANN maintains are moot) do not relate to reassignment of the .ORG Registry Agreement.	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN stands on its objections.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 1.</p> <p><b><u>Panel's Ruling:</u></b></p> <p><b>ICANN shall conduct a reasonable search and produce non-public, non-privileged communications between ICANN staff and government officials regarding the modification and/or removal of the price control provisions in registry agreements in gTLDs (regardless of whether such documents or communications specifically reference the .ORG, .INFO, and .BIZ Registry Agreements).</b></p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
		<p>primary mission to coordinate 'the allocation and assignment of names in the root zone of the Domain Name System'<sup>43</sup> and to ICANN's commitment of operating 'through open and transparent processes that enable competition and open entry in Internet-related markets'.<sup>44</sup></p>	<p>Pursuant to Rule 6 of the Interim Supplementary Procedures, a Claimant's Request for IRP "shall include all claims that give rise to a particular dispute," along with "[a]ll necessary and available evidence in support of the CLAIMANT'S claim(s)." Hence, requests for documents that are not based on an existing claim cannot be material to the outcome of the case, as required by Rule 8 of the Interim supplementary Procedures and Article 3 of the IBA Rules.</p> <p>To the extent that Namecheap is seeking information regarding "the reasons for. . . modifying or removing price caps" in the .ORG, .BIZ, and .INFO TLDs, that information is encompassed by Namecheap's Requests above, for which ICANN agreed to produce</p>	<p><b>The time period for the electronically stored information (ESI) protocol shall be January 1, 2018 through November 18, 2019. Beyond an ESI search, ICANN shall conduct a reasonable inquiry through interviews with relevant ICANN staff to identify and produce non-public, non-privileged documents and communications with government officials prior to May 1, 2018, if any, regarding the modification and/or removal of the price control provisions in registry agreements in gTLDs (regardless of whether such documents or communications specifically reference the .ORG, .INFO, and .BIZ Registry Agreements).</b></p> <p><b>The Panel defers ruling on the production of communications with government officials regarding the reassignment of the</b></p>

<sup>43</sup> Bylaws, Article I(1)(a)(i) (**RM 2**).

<sup>44</sup> AoI, Article III (**RM 1**); Bylaws, Article I(2)(a) (**RM 2**).

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			documents. ICANN does not agree to produce any additional documents in response to this Request.	<b>.ORG, .BIZ and/or .INFO Registry Agreements pending a ruling on ICANN's motion to dismiss Namecheap's change of control claim.</b>
1.s	All ICANN <u>Board agendas, minutes and notes</u> relating to the removal of price caps in legacy and new gTLDs.	<p>Access to these documents is required to understand:</p> <ul style="list-style-type: none"> <li>- the reasons for imposing, modifying or removing price caps via the registry agreements,</li> <li>- the processes ICANN used in negotiating and renegotiating registry agreements,</li> <li>- the potential conflicts of interest of ICANN staff when deciding to remove the price caps, etc.</li> </ul> <p>The request for these documents is sufficiently clear and reasonable. Indeed, one may expect that ICANN has this information readily available, as it relates to its core obligations towards ICANN's main contracting parties and to ICANN's primary mission to coordinate 'the allocation and assignment of names</p>	ICANN objects that the documents sought by this Request are overbroad and unduly burdensome. After a years-long community-driven process, ICANN implemented the New gTLD Program through which interested applicants could apply to operate new gTLDs that were not already in the root zone. That program launched in 2012, and ICANN has since introduced 1,235 new gTLDs into the root. ICANN developed a Base Registry Agreement in conjunction with the program that most registry operators for those 1,235 new gTLDs have executed with ICANN. The burden on ICANN of searching for documents over a multi-year development process	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN stands on its objections.</p> <p><u>Namecheap's Position:</u> Full contention.</p> <p><b><u>Panel's Ruling:</u></b></p> <p><b>ICANN shall provide a written stipulation that the complete agendas and minutes for all Board meetings addressing the modification and/or removal of the price control provisions in the 2019 .ORG, .INFO, and .BIZ Registry Agreements) are posted on the ICANN website (<a href="http://www.icann.org">www.icann.org</a>). If not, ICANN shall produce and missing agendas or minutes. Namecheap's request is otherwise denied absent any particularized showing of need with respect to the</b></p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
		<p>in the root zone of the Domain Name System'<sup>45</sup> and to ICANN's commitment of operating 'through open and transparent processes that enable competition and open entry in Internet-related markets'.<sup>46</sup></p>	<p>substantially outweighs any benefit that Namecheap plausibly could expect to obtain.</p> <p>ICANN also objects to this Request to the extent it seeks documents protected by the attorney-client privilege, work product doctrine, or any other applicable privilege.</p> <p>ICANN further objects that non-privileged Board agendas and minutes are publicly available on ICANN's website, and therefore are equally available to Namecheap.</p> <p>Based on these objections, ICANN does not agree to produce documents responsive to this Request.</p>	<p><b>deliberations at any particular Board meetings.</b></p>

<sup>45</sup> Bylaws, Article I(1)(a)(i) (**RM 2**).

<sup>46</sup> AoI, Article III (**RM 1**); Bylaws, Article I(2)(a) (**RM 2**).

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
2.	<p>All documents, and qualitative and quantitative data, directly and indirectly<sup>47</sup> relating to all economic studies, impact studies, and other studies ICANN has commissioned, examined and/or performed with respect to <u>competition and/or pricing</u> of TLDs (in particular original gTLDs (.COM, .NET, .ORG) and gTLDs that were delegated pursuant to ICANN Resolution 00.89 of 16 November 2000 (e.g., .BIZ, .INFO)), and with respect to <u>vertical integration</u> between registries and registrars, including:</p>	<p>Price caps, equal access rules and vertical integration between registries and registrars may interact. As a nonprofit public benefit corporation that must carry out its activities through open and transparent processes that enable competition and open entry in Internet-related markets, ICANN has commissioned economic studies in the past examining the effects to competition of possible changes to ICANN's policies and practices on pricing, equal access rules and vertical integration. The commissioning and consideration of such studies is consistent with ICANN's commitment of promoting 'well-informed decisions based on expert advice.'<sup>48</sup></p> <p>To assess whether ICANN has operated in a manner consistent with its AoI and Bylaws through an open and transparent process that enables competition, it is important</p>	<p>ICANN objects that the documents sought by this Request, and each subpart, are not relevant or material to the outcome of this dispute. Namecheap's claims in this IRP relate to the narrow issue of ICANN's removal of the price control provisions in the 2019 .ORG, .BIZ, and .INFO Registry Agreements. But this request is not tied whatsoever to ICANN's decision to remove the price control provisions; instead, it seeks documents regarding "studies" ICANN "commissioned, examined and/or performed with respect to competition and/or pricing of" TLDs and gTLDs, and "with respect to vertical integration between registries and registrars," which refers to the extent to which registries own registrars and vice-versa. Vertical integration is utterly</p>	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> To the extent that this Request seeks documents related to ICANN's decision to remove the price control provisions in the 2019 .ORG, .BIZ, and .INFO TLDs (including any "studies" ICANN considered in reaching that conclusion), such documents would naturally be encompassed by the documents ICANN agreed to produce in response to Request No. 1, and therefore this Request is duplicative of Request No. 1. ICANN therefore stands on its objections.</p> <p><u>Namecheap's Position:</u> ICANN has refused to perform a specific search for, and produce, any documents responsive to Request No. 2.</p> <p><u>ICANN's Response:</u> The documents Namecheap seeks are not relevant or material to the only issue in this</p>

<sup>47</sup> By 'indirectly', Namecheap refers to the narrow and specific requests as detailed in the subsections 2.a to 2.t of Request No. 2.

<sup>48</sup> Bylaws, Article I(2)(a)(iv) (**RM 2**).



#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
		<p>to analyze the studies that ICANN has commissioned, examined and/or performed and to analyze the documents surrounding such studies and data used to produce the studies or considered by ICANN in its decision-making process.</p> <p>Key questions include:</p> <ul style="list-style-type: none"> <li>- What studies did ICANN consider when it decided to remove the price caps in .ORG, .BIZ and .INFO?</li> <li>- How does the removal of price caps in today's market enable competition and open entry in Internet-related markets?</li> <li>- Has ICANN used open and transparent processes when commissioning, examining and/or performing studies?</li> <li>- The analysis of the requested documents is relevant and material to the question as to whether ICANN has complied with its AoI and Bylaws.</li> </ul>	<p>irrelevant to Namecheap's claims in this IRP.</p> <p>To the extent that this Request does seek documents related to ICANN's decision to remove the price control provisions in the 2019 .ORG, .BIZ, and .INFO TLDs (including any "studies" ICANN considered in reaching that conclusion), such documents would naturally be encompassed by the documents ICANN agreed to produce in response to Request No. 1, and therefore this Request is duplicative of Request No. 1.</p> <p>Namecheap claims that these documents are relevant to understanding whether "removal of the price caps in today's market enable[s] competition and open entry in Internet-related markets." But in its IRP Request, Namecheap does not claim that ICANN violated its Articles or Bylaws by failing to promote</p>	<p>IRP: whether ICANN violated its Articles or Bylaws by deciding not to include a price control provision in the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Namecheap has failed to demonstrate otherwise.</p> <p><b><u>Panel's Ruling:</u></b></p> <p><b>The Panel previously directed in Procedural Order No. 3 that final versions of reports commissioned by ICANN on price controls, competition and vertical integration be produced. Such final studies shall be produced regardless of whether they were published on the ICANN website and regardless of the date of the studies. Draft studies shall not be produced, but the mere fact that a study was not published on the ICANN website shall not render it as a draft. Any final studies not produced based on an assertion of attorney-client privilege, the attorney work product doctrine, or any other applicable privilege shall be identified on a privilege log.</b></p>



#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
		<p>The requested documents under this Section 2 (including Section 2.a to Section 2.t) are not in the Claimant's possession, custody or control, as they relate to studies commissioned by ICANN. It may be possible to retrieve some of the studies and data from ICANN's website. However, in view of the vastness of information available on the ICANN website and its complex structure, it would be unreasonably burdensome for the Claimant to retrieve these documents and data without a view on the website's structure and the totality of the requested information that is available to ICANN.</p> <p>The documents requested are assumed to be in ICANN's possession, custody or control, as they relate to studies that have been commissioned, examined and/or performed by ICANN in the exercise of its core activities.</p>	<p>competition. Nor does it reference any economic studies that ICANN inappropriately considered, except for Dr. Dennis Carlton's 2009 reports, which are publicly available. Pursuant to Rule 6 of the Interim Supplementary Procedures, a Claimant's Request for IRP "shall include all claims that give rise to a particular dispute," along with "[a]ll necessary and available evidence in support of the CLAIMANT'S claim(s)." Hence, requests for documents that are not based on an existing claim cannot be material to the outcome of the case, as required by Rule 8 of the Interim Supplementary Procedures and Article 3 of the IBA Rules.</p> <p>Namecheap also claims that the requested documents are not in its possession, custody, or control. Namecheap is wrong. The non-privileged, final versions of the studies</p>	

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			<p>Namecheap seeks are publicly available, as Namecheap is aware. Indeed, when its counsel submitted a DIDP Request seeking this exact same information, ICANN provided a detailed response, identifying for Namecheap a number of publicly available links to such studies. <i>See Annex 16, pp. 7-10, 21-23.</i></p> <p>ICANN further objects that this Request is vague, ambiguous and overbroad in that it seeks documents "directly and indirectly" relating to "studies" ICANN commissioned, examined and/or performed. The burden on ICANN of searching for documents that may "indirectly relate" to these studies substantially outweighs any benefit that Namecheap plausibly could expect to obtain. This Request is also overbroad and irrelevant to the extent it seeks studies pertaining to "competition" that</p>	

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			<p>have no relevance to ICANN's decision to remove the price control provisions from the 2019 .ORG, .BIZ, and .INFO Registry Agreements.</p> <p>ICANN objects that this Request is a fishing expedition in that it does not identify any particular persons whose documents Namecheap seeks, but instead seeks to have ICANN search indiscriminately among its officers and staff. The burden of conducting such an expansive search substantially outweighs any legitimate benefit Namecheap plausibly could expect from the results of such a search, especially given that ICANN already provided publicly available links to Namecheap in response to the DIDP Request. <i>See Annex 16, pp. 7-10, 21-23.</i></p> <p>ICANN also objects to this Request to the extent it seeks documents protected by the</p>	

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			<p>attorney-client privilege, work product doctrine, or any other applicable privilege. ICANN will not produce privileged documents.</p> <p>Based on these objections, ICANN does not agree to produce documents responsive to this Request.</p> <p>ICANN will not repeat these objections in response to each subpart, but expressly incorporates these objections therein.</p>	
2.a	Documents, and qualitative and quantitative data related to <u>competition and/or pricing</u> of TLDs (in particular original gTLDs (.COM, .NET, .ORG) and gTLDs that were delegated pursuant to ICANN Resolution 00.89 of 16	<p>To assess whether ICANN has operated in a manner consistent with its AoI and Bylaws through open and transparent process that enable competition, it is important to analyze the documents and data that were used in the studies commissioned by ICANN and considered by ICANN in its decision-making process.</p> <p>Key questions include:</p>	ICANN incorporates by reference its objections to Request No. 2 above.	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN stands on its objections.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 2.</p> <p><u>ICANN's Response:</u> The documents Namecheap seeks are not relevant or material to the only issue in this IRP: whether ICANN violated its</p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
	November 2000 (e.g., .BIZ, .INFO)).	<ul style="list-style-type: none"> <li>- How does the removal of price caps in today's market enable competition and open entry in Internet-related markets?</li> <li>- Has ICANN used open and transparent processes when commissioning, examining and/or performing studies?</li> <li>- The analysis of the requested documents is relevant and material to the question as to whether ICANN has complied with its AoI and Bylaws.</li> </ul>		<p>Articles or Bylaws by deciding not to include a price control provision in the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Namecheap has failed to demonstrate otherwise.</p> <p><b><u>Panel's Ruling:</u></b></p> <p><b>As the Panel understands this request, Namecheap is seeking data that were used in studies commissioned by ICANN and considered by ICANN in its decision-making process. The Panel has directed that the studies themselves be produced. The Panel denies this request absent a further particularized showing of relevance, materiality and need with respect to the data used in a specific study.</b></p>
2.b	The <u>requests for proposals and expressions of interest</u> for performing the studies.	Access to these documents is relevant and material to understand the context in which the studies were performed.	<p>ICANN incorporates by reference its objection to Request No. 2 above.</p> <p>ICANN further objects that this Request seeks documents that are not relevant or material to</p>	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN stands on its objections.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 2.</p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			<p>this dispute, and constitutes a fishing expedition. Namecheap has not explained why any such studies are relevant, let alone how requests for proposals or expressions of interests from third parties are relevant to resolving whether ICANN complied with its Articles and Bylaws in removing the price control provisions from the 2019 .ORG, .BIZ, and .INFO Registry Agreements.</p>	<p><u>ICANN's Response:</u> The documents Namecheap seeks are not relevant or material to the only issue in this IRP: whether ICANN violated its Articles or Bylaws by deciding not to include a price control provision in the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Namecheap has failed to demonstrate otherwise.</p> <p><b><u>Panel's Ruling:</u></b></p> <p><b>The Panel denies this request absent a further particularized showing of relevance, materiality and need with respect to the requests for proposals or expressions of interest in connection with a specific study.</b></p>
2.c	<p>The criteria for the <u>selection of the service providers</u> performing the studies.</p>	<p>Access to these documents is relevant and material to understand the context in which the studies were performed.</p>	<p>ICANN incorporates by reference its objections to Request No. 2 above.</p> <p>ICANN further objects that this Request seeks documents that are not relevant or material to this dispute and constitutes a</p>	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN stands on its objections.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 2.</p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			<p>fishing expedition. Namecheap has not explained why any such studies are relevant, let alone how the "criteria for the selection of the service providers" is relevant to resolving whether ICANN complied with its Articles and Bylaws in removing the price control provisions from the 2019 .ORG, .BIZ, and .INFO Registry Agreements.</p>	<p><u>ICANN's Response:</u> The documents Namecheap seeks are not relevant or material to the only issue in this IRP: whether ICANN violated its Articles or Bylaws by deciding not to include a price control provision in the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Namecheap has failed to demonstrate otherwise.</p> <p><b><u>Panel's Ruling:</u></b></p> <p><b>The Panel denies this request absent a further particularized showing of relevance, materiality and need with respect to the selection of service provider for a specific study.</b></p>
2.d	<p>The <u>draft</u> reports of the studies, as exchanged with ICANN, whether completed or not, whether ultimately used by ICANN or not, and published by ICANN or not.</p>	<p>Access to these documents is relevant and material to understand the context in which the studies were performed and to understand ICANN's examination and analysis of the studies.</p>	<p>ICANN incorporates by reference its objections to Request No. 2 above.</p> <p>ICANN further objects that ICANN already directed Namecheap to where it can find the final studies on ICANN's website in Response to</p>	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN stands on its objections.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 2.</p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			Namecheap's DIDP Request ( <i>see</i> Annex 16), and that any draft versions of any study ICANN commissioned would be protected by the attorney-client privilege, work product doctrine, or any other applicable privilege.	<p><u>ICANN's Response:</u> The documents Namecheap seeks are not relevant or material to the only issue in this IRP: whether ICANN violated its Articles or Bylaws by deciding not to include a price control provision in the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Namecheap has failed to demonstrate otherwise.</p> <p><b><u>Panel's Ruling:</u></b></p> <p><b>The Panel denies this request absent a further particularized showing of relevance, materiality and need with respect to the drafts of a specific study.</b></p>
2.e	The <u>final</u> studies.	ICANN has interpreted the request for the final studies as those studies it has publicly posted on its website. <sup>49</sup> However, ICANN's wording seems to suggest that there are other studies that ICANN has commissioned, but elected not to publish.	<p>ICANN incorporates by reference its objections to Request No. 2 above.</p> <p>ICANN already directed Namecheap to where it can find the final studies on ICANN's website in its Response to Namecheap's DIDP Request (<i>see</i></p>	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN stands on its objections.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 2.</p>

<sup>49</sup> Annex 16, p. 22.



#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
		<p>Those unpublished studies are particularly relevant and material to the dispute, as they relate to the subject-matter of the dispute, namely ICANN's decision to remove price caps.</p>	<p>Annex 16), and any unpublished studies or draft of any study ICANN commissioned would be protected by the attorney-client privilege, work product doctrine, or any other applicable privilege.</p>	<p><u>ICANN's Response:</u> The documents Namecheap seeks are not relevant or material to the only issue in this IRP: whether ICANN violated its Articles or Bylaws by deciding not to include a price control provision in the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Namecheap has failed to demonstrate otherwise.</p> <p><u>Panel's Ruling:</u></p> <p><b>The Panel previously directed in Procedural Order No. 3 that final versions of reports commissioned by ICANN on price controls, competition and vertical integration be produced. Such final studies shall be produced regardless of whether they were published on the ICANN website and regardless of the date of the studies. Draft studies shall not be produced, but the mere fact that a study was not published on the ICANN website shall not render it as a draft. Any final studies not produced based on an assertion of attorney-client privilege, the</b></p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
				attorney work product doctrine, or any other applicable privilege shall be identified on a privilege log.
2.f	The reasons given by the authors of the studies to change <u>draft</u> reports before issuing <u>final</u> studies.	Access to these documents is relevant and material to understand the context in which the studies were performed and to understand ICANN's involvement and possible nuances expressed by the authors of the studies. ICANN purportedly relied upon preliminary studies in making decisions. Access to the requested documents is thus critical to understand ICANN's reasons for doing so and the impact ICANN may have had on the authors' opinions.	<p>ICANN incorporates by reference its objections to Request No. 2 above.</p> <p>ICANN further objects that ICANN already directed Namecheap to where it can find the final studies on ICANN's website in Response to Namecheap's DIDP Request (<i>see</i> Annex 16), and that any draft versions of any study ICANN commissioned, or communications about drafts, would be protected by the attorney-client privilege, work product doctrine, or any other applicable privilege.</p>	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN stands on its objections.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 2.</p> <p><u>ICANN's Response:</u> The documents Namecheap seeks are not relevant or material to the only issue in this IRP: whether ICANN violated its Articles or Bylaws by deciding not to include a price control provision in the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Namecheap has failed to demonstrate otherwise.</p> <p><b><u>Panel's Ruling:</u></b></p> <p><b>The Panel denies this request absent a further particularized showing of relevance, materiality and need with respect to</b></p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
				documents relating to drafts of a specific study.
2.g	The names and qualifications of the <u>authors and participants</u> of the studies.	Not all of the studies that ICANN has provided contain the names and qualifications of the authors and participants of the studies (E.g., the report 'Revisiting Vertical Separation of Registries and Registrars by CRA International dated 23 October 2008'). It is quintessential to know who performed and who participated in the study to ascertain that the study was performed by appropriately qualified individuals and to examine potential conflicts of interest.	<p>ICANN incorporates by reference its objections to Request No. 2 above.</p> <p>ICANN further objects that this Request seeks documents that are not relevant or material to this dispute, and constitutes a fishing expedition. Namecheap has not explained why any such studies are relevant, let alone how the authors' or participants' names and qualifications are relevant to resolving whether ICANN complied with its Articles and Bylaws in removing the price control provisions from the 2019 .ORG, .BIZ, and .INFO Registry Agreements.</p> <p>ICANN further objects that ICANN already directed Namecheap to where it can find the final studies on ICANN's website in Response to</p>	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN stands on its objections.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 2.</p> <p><u>ICANN's Response:</u> The documents Namecheap seeks are not relevant or material to the only issue in this IRP: whether ICANN violated its Articles or Bylaws by deciding not to include a price control provision in the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Namecheap has failed to demonstrate otherwise.</p> <p><b><u>Panel's Ruling:</u></b></p> <p><b>The Panel denies this request absent a further particularized showing of relevance, materiality and need with respect to the authors of and participants in a specific study.</b></p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			Namecheap's DIDP Request ( <i>see</i> Annex 16), which identify the author or the entity that authored the study.	
2.h	The data and documentation on which the studies were <u>based</u> .	To evaluate the usefulness of a study that is based on data elements and documentation, it is essential to have access to the underlying data and documentation.	<p>ICANN incorporates by reference its objections to Request No. 2 above.</p> <p>ICANN already directed Namecheap to where it can find the final studies on ICANN's website in its Response to Namecheap's DIDP (<i>see</i> Annex 16), which, where applicable, cite to the data and documentation on which the studies were based.</p>	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN stands on its objections.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 2.</p> <p><u>ICANN's Response:</u> The documents Namecheap seeks are not relevant or material to the only issue in this IRP: whether ICANN violated its Articles or Bylaws by deciding not to include a price control provision in the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Namecheap has failed to demonstrate otherwise.</p> <p><b><u>Panel's Ruling:</u></b></p> <p><b>The Panel denies this request absent a further particularized showing of relevance, materiality and need with respect to the data</b></p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
				and documents upon which a specific study was based.
2.i	Updates to the <u>data and documentation</u> on which the studies were based, including the data that was collected and used by ICANN when it made the decision to renew the .ORG, .BIZ, and .INFO registry agreements without price caps.	Access to this updated information is relevant and material to evaluate the effects of ICANN's decision to remove the price caps on the Internet community as a whole and on competition and open entry in Internet-related markets in particular.	<p>ICANN incorporates by reference its objections to Request No. 2 above.</p> <p>ICANN already directed Namecheap to where it can find the final studies on ICANN's website in its Response to Namecheap's DIDP (<i>see</i> Annex 16), which, where applicable, cite to the data and documentation on which the studies were based.</p> <p>Namecheap's request for "updates" to the data on which studies were based is vague and ambiguous such that ICANN cannot ascertain what information Namecheap is seeking.</p>	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN stands on its objections.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 2.</p> <p><u>ICANN's Response:</u> The documents Namecheap seeks are not relevant or material to the only issue in this IRP: whether ICANN violated its Articles or Bylaws by deciding not to include a price control provision in the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Namecheap has failed to demonstrate otherwise.</p> <p><b><u>Panel's Ruling:</u></b></p> <p><b>The Panel denies this request absent a further particularized showing of relevance, materiality and need with respect to any updates in the data and documents</b></p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
				upon which a specific study was based.
2.j	The <u>contractual arrangements</u> with the authors of the studies.	Access to the contractual arrangements is relevant and material to understand the context in which the studies were made.	<p>ICANN incorporates by reference its objections to Request No. 2 above.</p> <p>ICANN further objects that this Request seeks documents that are not relevant or material to this dispute, and constitutes a fishing expedition. Namecheap has not explained why any such studies are relevant, let alone how the contractual arrangements with the authors are relevant to resolving whether ICANN complied with its Articles and Bylaws in removing the price control provisions from the 2019 .ORG, .BIZ, and .INFO Registry Agreements.</p>	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN stands on its objections.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 2.</p> <p><u>ICANN's Response:</u> The documents Namecheap seeks are not relevant or material to the only issue in this IRP: whether ICANN violated its Articles or Bylaws by deciding not to include a price control provision in the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Namecheap has failed to demonstrate otherwise.</p> <p><b><u>Panel's Ruling:</u></b></p> <p><b>The Panel denies this request absent a further particularized showing of relevance, materiality and need with respect to the</b></p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
				contractual arrangements for a specific study.
2.k	Documents referring or relating to the consideration/compensation paid by ICANN for the studies.	Access to this information is relevant and material to understand the context in which the studies were made.	<p>ICANN incorporates by reference its objections to Request No. 2 above.</p> <p>ICANN further objects that this Request seeks documents that are not relevant or material to this dispute, and constitutes a fishing expedition. Namecheap has not explained why any such studies are relevant, let alone how the consideration/compensation paid by ICANN for the studies is relevant to resolving whether ICANN complied with its Articles and Bylaws in removing the price control provisions from the 2019 .ORG, .BIZ, and .INFO Registry Agreements.</p>	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN stands on its objections.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 2.</p> <p><u>ICANN's Response:</u> The documents Namecheap seeks are not relevant or material to the only issue in this IRP: whether ICANN violated its Articles or Bylaws by deciding not to include a price control provision in the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Namecheap has failed to demonstrate otherwise.</p> <p><b><u>Panel's Ruling:</u></b></p> <p><b>The Panel denies this request absent a further particularized showing of relevance, materiality and need with respect to the consideration or compensation</b></p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
				paid by ICANN for a specific study.
2.1	Any document containing <u>ICANN's analysis</u> and/or summary of the studies identified in Section 2.d and 2.e and of the comments made in response to these studies.	Access to this information is relevant and material to understand whether ICANN has taken reasoned, well-informed decisions based on expert advice and whether ICANN has acted to the benefit of the public.	<p>ICANN incorporates by reference its objections to Request No. 2 above.</p> <p>ICANN further objects that this Request seeks documents that are not relevant or material to this dispute, and constitutes a fishing expedition. Namecheap has not explained why any such studies are relevant, let alone how ICANN's analysis and/or summary of the studies, or the comments made in response to the studies are relevant to resolving whether ICANN complied with its Articles and Bylaws in removing the price control provisions from the 2019 .ORG, .BIZ, and .INFO Registry Agreements.</p> <p>Moreover, ICANN already directed Namecheap to where it can find the final studies on ICANN's website, and</p>	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN stands on its objections.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 2.</p> <p><u>ICANN's Response:</u> The documents Namecheap seeks are not relevant or material to the only issue in this IRP: whether ICANN violated its Articles or Bylaws by deciding not to include a price control provision in the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Namecheap has failed to demonstrate otherwise.</p> <p><b><u>Panel's Ruling:</u></b></p> <p><b>ICANN shall conduct a reasonable search and produce non-public, non-privileged analyses of any studies that specifically relate to the modification or removal of price controls in the .ORG, .BIZ</b></p>



#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			<p>comments made to those studies in its Response to Namecheap's DIDP (see Annex 16).</p>	<p><b>and .INFO Registry Agreements (including Registry Agreements prior to 2019). The time period for the electronically stored information (ESI) protocol shall be January 1, 2018 through November 18, 2019. Beyond an ESI search, ICANN shall conduct a reasonable inquiry through interviews with relevant ICANN staff to identify and produce non-public, non-privileged analyses of any studies that specifically relate to the modification or removal of price controls in the .ORG, .BIZ and .INFO Registry Agreements (including Registry Agreements prior to 2019).</b></p>
2. m	<p>All communications <u>between ICANN and the authors and participants</u> of the studies.</p>	<p>Access to this information is relevant and material to understand the context in which the studies were made, to identify potential conflicts of interest, etc.</p>	<p>ICANN incorporates by reference its objections to Request No. 2 above.</p> <p>ICANN further objects that this Request seeks documents that are not relevant or material to this dispute, and constitutes a fishing expedition. Namecheap has not explained why any such</p>	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN stands on its objections.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 2.</p> <p><u>ICANN's Response:</u> The documents Namecheap seeks are not relevant</p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			<p>studies are relevant, let alone how the communications between ICANN and the authors are relevant to resolving whether ICANN complied with its Articles and Bylaws in removing the price control provisions from the 2019 .ORG, .BIZ, and .INFO Registry Agreements.</p> <p>ICANN objects that communications between ICANN and the authors of the studies would be protected by the attorney-client privilege, work product doctrine, or any other applicable privilege.</p>	<p>or material to the only issue in this IRP: whether ICANN violated its Articles or Bylaws by deciding not to include a price control provision in the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Namecheap has failed to demonstrate otherwise.</p> <p><b><u>Panel's Ruling:</u></b></p> <p><b>The Panel denies this request absent a further particularized showing of relevance, materiality and need with respect to communications between ICANN and the authors and participants of a specific study.</b></p>
2.n	All quantitative and qualitative data relating to <u>registry prices</u> (wholesale level), including actual prices and price caps, to the extent available to ICANN, for the period 2000-2020, and at the highest frequency (e.g.	Access to this data is relevant and material to evaluate the effects of ICANN's decision to remove the price caps on the Internet community as a whole, and on Namecheap in particular, and on competition and open entry in Internet-related markets in particular.	<p>ICANN incorporates by reference its objections to Request No. 2 above.</p> <p>ICANN objects that this Request does not seek documents relevant or material to the narrow issue of whether ICANN complied with its Articles and Bylaws in</p>	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN stands on its objections.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 2.</p> <p><u>ICANN's Response:</u> The documents Namecheap seeks are not relevant</p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
	monthly) and most detailed level available to ICANN (e.g transaction level data).		<p>removing the price control provisions in the 2019 .ORG, .BIZ, and .INFO Registry Agreements.</p> <p>ICANN further objects that this Request is overbroad and constitutes a fishing expedition. Indeed, this Request seeks information pertaining to registry prices for a 20-year period, and for over 1,200 gTLDs. The burden on ICANN of conducting such an expansive search substantially outweighs any benefit that Namecheap plausibly could expect to obtain.</p> <p>ICANN objects to the extent that this information is publicly available, and therefore is equally accessible to Namecheap. Additionally, this information likely is in Namecheap's possession, custody, or control, as Namecheap is aware of the registry prices that registry</p>	<p>or material to the only issue in this IRP: whether ICANN violated its Articles or Bylaws by deciding not to include a price control provision in the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Namecheap has failed to demonstrate otherwise.</p> <p>Additionally, ICANN does not maintain this data as a matter of course.</p> <p><b><u>Panel's Ruling:</u></b></p> <p><b>The Panel is potentially open to requiring the production of some data relating to registry prices (wholesale level), including actual prices and price caps for a limited period (certainly not the entire 20-year period of 2010-2020), but would require further information to make such a ruling. Specifically, the Panel needs to better understand: 1) the precise data sought by Namecheap and precisely how that data would be utilized by its expert(s) as evidence regarding whether ICANN violated its Articles of</b></p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			operators charge it for registry services.	<b>Incorporation or Bylaws; 2) whether that data is reasonably available to ICANN; 3) if so, the burden to ICANN of producing that data; 4) whether equivalent data is reasonably available to Namecheap from sources other than ICANN; and 5) whether the data constitutes confidential commercial information or trade secrets of registries or other registrars. In the event Namecheap wishes to continue pursuing this request, Namecheap shall promptly initiate a meet-and-confer process with ICANN to discuss the foregoing factors. If the parties are unable to reach agreement, Namecheap may apply to the Panel by no later than January 15, 2021 for an order to resolve any disputed issues.</b>
2.o	All quantitative and qualitative data, to the extent available to ICANN, relating to retail prices (charged by registrars to registrants), for the period 2000-2020, at the highest frequency	Access to this data is relevant and material to evaluate the effects of ICANN's decision to remove the price caps on the Internet community as a whole, and on Namecheap in particular, and on competition and open entry in	ICANN incorporates by reference its objections to Request No. 2 above.  ICANN objects that this Request does not seek documents relevant or material to the narrow issue of whether	<b>At issue.</b>  <u>ICANN's Position:</u> ICANN stands on its objections.  <u>Namecheap's Position:</u> Same as with Request No. 2.

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
	(e.g. monthly) and most detailed level available to ICANN (e.g. transaction level data). This includes any data on add-on prices.	Internet-related markets in particular.	<p>ICANN complied with its Articles and Bylaws in removing the price control provisions in the 2019 .ORG, .BIZ, and .INFO Registry Agreements.</p> <p>ICANN further objects that this Request is overbroad and constitutes a fishing expedition. Indeed, there are over 2,000 ICANN-accredited registrars across the world. The burden on ICANN of conducting such an expansive search for a 20-year period substantially outweighs any benefit that Namecheap plausibly could expect to obtain.</p> <p>ICANN objects to the extent that this information is publicly available, and therefore is equally accessible to Namecheap.</p>	<p><u>ICANN's Response:</u> The documents Namecheap seeks are not relevant or material to the only issue in this IRP: whether ICANN violated its Articles or Bylaws by deciding not to include a price control provision in the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Namecheap has failed to demonstrate otherwise.</p> <p>Additionally, ICANN does not maintain this data as a matter of course.</p> <p><b><u>Panel's Ruling:</u></b></p> <p><b>The Panel is potentially open to requiring the production of some data relating to retail prices (charged by registrars to registrants), registry prices (wholesale level), including actual prices and price caps, for a limited period (certainly not the entire 20-year period of 2010-2020), but would require further information to make such a ruling. Specifically, the Panel needs to better understand: 1) the precise data sought by Namecheap</b></p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
				<p>and precisely how that data would be utilized by its expert(s) as evidence regarding whether ICANN violated its Articles of Incorporation or Bylaws; 2) whether that data is reasonably available to ICANN; 3) if so, the burden to ICANN of producing that data; 4) whether equivalent data is reasonably available to Namecheap from sources other than ICANN; and 5) whether the data constitutes confidential commercial information or trade secrets of registries or other registrars. In the event Namecheap wishes to continue pursuing this request, Namecheap shall promptly initiate a meet-and-confer process with ICANN to discuss the foregoing factors. If the parties are unable to reach agreement, Namecheap may apply to the Panel by no later than January 15, 2021 for an order to resolve any disputed issues.</p>
2.p	All quantitative and qualitative data relating to <u>registration volumes</u> ,	Access to this data is relevant and material to evaluate the effects of ICANN's decision to remove the	ICANN incorporates by reference its objections to Request No. 2 above.	<b>At issue.</b>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
	<p>by registry, TLD, and registrar, for the period 2000-2020, at the highest frequency (e.g. monthly) and most detailed level available to ICANN (e.g. transaction level data).</p>	<p>price caps on the Internet community as a whole, and on Namecheap in particular, and on competition and open entry in Internet-related markets in particular.</p>	<p>ICANN further objects that this Request does not seek documents relevant or material to the narrow issue of whether ICANN complied with its Articles and Bylaws in removing the price control provisions in the 2019 .ORG, .BIZ, and .INFO Registry Agreements.</p> <p>ICANN further objects that this Request is overbroad and constitutes a fishing expedition. Indeed, this Request seeks information pertaining to registration volumes for a 20-year period, and for over 1,200 gTLDs. The burden on ICANN of conducting such an expansive search substantially outweighs any benefit that Namecheap plausibly could expect to obtain.</p>	<p><u>ICANN's Position:</u> ICANN stands on its objections.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 2.</p> <p><u>ICANN's Response:</u> The documents Namecheap seeks are not relevant or material to the only issue in this IRP: whether ICANN violated its Articles or Bylaws by deciding not to include a price control provision in the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Namecheap has failed to demonstrate otherwise.</p> <p><u>Panel's Ruling:</u></p> <p><b>The Panel is potentially open to requiring the production of some data relating to registration volumes for a limited period (certainly not the entire 20-year period of 2010-2020), but would require further information to make such a ruling. Specifically, the Panel needs to better understand: 1) the precise data sought by Namecheap and precisely how that data would</b></p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
				<p>be utilized by its expert(s) as evidence regarding whether ICANN violated its Articles of Incorporation or Bylaws; 2) whether that data is reasonably available to ICANN; 3) if so, the burden to ICANN of producing that data; 4) whether equivalent data is reasonably available to Namecheap from sources other than ICANN; and 5) whether the data constitutes confidential commercial information or trade secrets of registries or other registrars. In the event Namecheap wishes to continue pursuing this request, Namecheap shall promptly initiate a meet-and-confer process with ICANN to discuss the foregoing factors. If the parties are unable to reach agreement, Namecheap may apply to the Panel by no later than January 15, 2021 for an order to resolve any disputed issues.</p>
2.q	To the extent available to ICANN, all quantitative and qualitative data relating to (incremental) costs	Access to this data is relevant and material to evaluate the effects of ICANN's decision to remove the price caps on the Internet community as a whole, and on	ICANN incorporates by reference its objections to Request No. 2 above.	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN stands on its objections.</p>



#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
	and margins of registries (the wholesale level) and registrars (the retail level) for the period 2000-2020, at the highest frequency (e.g. monthly) and most detailed level available to ICANN.	Namecheap in particular, and on competition and open entry in Internet-related markets in particular.	<p>ICANN objects that this Request does not seek documents relevant or material to the narrow issue of whether ICANN complied with its Articles and Bylaws in removing the price control provisions in the 2019 .ORG, .BIZ, and .INFO Registry Agreements.</p> <p>ICANN further objects that this Request is overbroad and constitutes a fishing expedition. Indeed, there are over 1,200 gTLDs and over 2,000 accredited registrars. The burden on ICANN of conducting such an expansive search for a 20-year period substantially outweighs any benefit that Namecheap plausibly could expect to obtain.</p>	<p><u>Namecheap's Position:</u> Same as with Request No. 2.</p> <p><u>ICANN's Response:</u> The documents Namecheap seeks are not relevant or material to the only issue in this IRP: whether ICANN violated its Articles or Bylaws by deciding not to include a price control provision in the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Namecheap has failed to demonstrate otherwise.</p> <p>Additionally, ICANN does not maintain this data as a matter of course.</p> <p><b><u>Panel's Ruling:</u></b></p> <p><b>The Panel is potentially open to requiring the production of some data relating to incremental costs and margins of registries and registrars for a limited period (certainly not the entire 20-year period of 2010-2020), but would require further information to make such a ruling. Specifically, the Panel needs to better understand: 1) the</b></p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
				<p>precise data sought by Namecheap and precisely how that data would be utilized by its expert(s) as evidence regarding whether ICANN violated its Articles of Incorporation or Bylaws; 2) whether that data is reasonably available to ICANN; 3) if so, the burden to ICANN of producing that data; 4) whether equivalent data is reasonably available to Namecheap from sources other than ICANN; and 5) whether the data constitutes confidential commercial information or trade secrets of registries or other registrars. In the event Namecheap wishes to continue pursuing this request, Namecheap shall promptly initiate a meet-and-confer process with ICANN to discuss the foregoing factors. If the parties are unable to reach agreement, Namecheap may apply to the Panel by no later than January 15, 2021 for an order to resolve any disputed issues.</p>
2.r	All qualitative and quantitative data that ICANN collected for the	Access to this data is relevant and material to evaluate the effects of ICANN's decision to remove the	ICANN incorporates by reference its objections to Request No. 2 above.	At issue.

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
	purpose of producing the report "Competition, Consumer Trust, and Consumer Choice Review" (8 September 2018) in particular the data underlying the tables in that report.	price caps on the Internet community as a whole, and on Namecheap in particular, and on competition and open entry in Internet-related markets in particular.	ICANN already directed Namecheap to where it can find the final Competition, Consumer Trust, and Consumer Choice Review on ICANN's website in its Response to Namecheap's DIDP (see Annex 16), which cites to the data and documentation on which the review was based, where applicable.	<p><u>ICANN's Position:</u> ICANN stands on its objections.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 2.</p> <p><u>ICANN's Response:</u> The documents Namecheap seeks are not relevant or material to the only issue in this IRP: whether ICANN violated its Articles or Bylaws by deciding not to include a price control provision in the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Namecheap has failed to demonstrate otherwise.</p> <p><b><u>Panel's Ruling:</u></b></p> <p><b>It appears that ICANN previously directed Namecheap to the final Competition, Consumer Trust, and Consumer Choice Review on ICANN's website in its Response to Namecheap's DIDP (see ICANN's Annex 16), which cites to the data and documentation on which the review was based, where</b></p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
				applicable. Accordingly, this request is denied.
2.s	All other documents, qualitative data and quantitative data which relate to competition, pricing of TLDs and/or vertical integration between registries and registrars for the period 2000-2020, at the most detailed level available to ICANN. Data related to competition includes but is not limited to: (i) substitutability between TLDs, (ii) competition between registries, (iii) competition between registrars, (iv) competition between TLDs, (v) the degree of market power for TLDs and (vi) the definition of the relevant markets.	Access to this data is relevant and material to evaluate the effects of ICANN's decision to remove the price caps on the Internet community as a whole, and on Namecheap in particular, and on competition and open entry in Internet-related markets in particular.	<p>ICANN incorporates by reference its objections to Request No. 2 above.</p> <p>ICANN objects that this Request does not seek documents relevant or material to the narrow issue of whether ICANN complied with its Articles and Bylaws in removing the price control provisions in the 2019 .ORG, .BIZ, and .INFO Registry Agreements.</p> <p>Additionally, none of Namecheap's claims relate to the "competition," or "vertical integration between registries and registrars." Pursuant to Rule 6 of the Interim Supplementary Procedures, a Claimant's Request for IRP "shall include all claims that give rise to a particular dispute," along with "[a]ll</p>	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN stands on its objections.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 2.</p> <p><u>ICANN's Response:</u> The documents Namecheap seeks are not relevant or material to the only issue in this IRP: whether ICANN violated its Articles or Bylaws by deciding not to include a price control provision in the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Namecheap has failed to demonstrate otherwise.</p> <p><b><u>Panel's Ruling:</u></b></p> <p><b>This request is denied as vague, ambiguous and overbroad in that it seeks "all other documents, qualitative data and quantitative data" broadly relating to "competition, pricing of TLDs</b></p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			<p>necessary and available evidence in support of the CLAIMANT'S claim(s).” Hence, requests for documents that are not based on an existing claim cannot be material to the outcome of the case, as required by Rule 8 of the Interim Supplementary Procedures and Article 3 of the IBA Rules.</p> <p>ICANN objects that this Request is overbroad to the extent it seeks “all” qualitative and quantitative data for a 20-year period. The burden on ICANN of conducting such an expansive search for a 20-year period substantially outweighs any benefit that Namecheap plausibly could expect to obtain.</p>	<p><b>and/or vertical integration between registries and registrars” for a 20-year period and is not sufficiently targeted to the claims giving rise to this particular dispute.</b></p>
2.t	All documents addressed to ICANN containing any expressions of concerns in relation to the introduction of new	Access to this data is relevant and material to evaluate whether ICANN, when deciding to remove and/or modify price caps, duly took into account the public policy advice of governments and public	<p>ICANN incorporates by reference its objections to Request No. 2 above.</p> <p>ICANN objects that this Request seeks documents that</p>	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN stands on its objections.</p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
	gTLDs, removals of price caps, the general state of competition in the domain name system, etc. by the US (Federal or State) or other relevant authorities.	authorities <sup>50</sup> and whether it acted in the public interest.	are not relevant or material to Namecheap's claims. "Expressions of concern" regarding ICANN's implementation of a program to introduce new gTLDs into the root zone is irrelevant to whether ICANN complied with its Articles and Bylaws in deciding to remove the price control provisions in the 2019 .ORG, .INFO, and .BIZ Registry Agreements. These three TLDs are <u>not</u> new gTLDs, and were introduced into the root zone years before the New gTLD Program launched. To the extent that this Request seeks information regarding removal and/or modification of the price control provisions in the 2019 Registry Agreements, responsive documents would naturally be encompassed by Request No. 1 above.	<p><u>Namecheap's Position:</u> Same as with Request No. 2.</p> <p><u>ICANN's Response:</u> The documents Namecheap seeks are not relevant or material to the only issue in this IRP: whether ICANN violated its Articles or Bylaws by deciding not to include a price control provision in the 2019 .ORG, .BIZ, and .INFO Registry Agreements. Namecheap has failed to demonstrate otherwise.</p> <p><b><u>Panel's Ruling:</u></b></p> <p><b>ICANN shall conduct a reasonable search and produce non-public, non-privileged documents reflecting the public policy advice of governments and public authorities regarding the modification or removal of price controls in registry agreements for gTLDs (regardless of whether such documents or communications specifically reference the .ORG, .INFO, and .BIZ Registry</b></p>

<sup>50</sup> In accordance with Article I(2)(a)(iv) Bylaws (**RM 2**), ICANN must duly take into account the public policy advice of governments and public authorities.

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			<p>ICANN further objects that this Request is vague, ambiguous, and overbroad to the extent it seeks information regarding "the general state of competition in the domain name system." Additionally, none of Namecheap's claims relate to the "general state of competition." Pursuant to Rule 6 of the Interim Supplementary Procedures, a Claimant's Request for IRP "shall include all claims that give rise to a particular dispute," along with "[a]ll necessary and available evidence in support of the CLAIMANT'S claim(s)." Hence, requests for documents that are not based on an existing claim cannot be material to the outcome of the case, as required by Rule 8 of the Interim Supplementary Procedures and Article 3 of the IBA Rules.</p>	<p>Agreements). The time period for the electronically stored information (ESI) protocol shall be January 1, 2018 through November 18, 2019. Beyond an ESI search, ICANN shall conduct a reasonable inquiry through interviews with relevant ICANN staff to identify and produce non-public, non-privileged documents reflecting the public policy advice of governments and public authorities regarding the modification or removal of price controls in registry agreements for gTLDs (regardless of whether such documents or communications specifically reference the .ORG, .INFO, and .BIZ Registry Agreements).</p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
3	<p>All documents directly and indirectly<sup>51</sup> relating to the <u>proposed change of control of Public Interest Registry</u>, including:</p>	<p>Access to these documents is relevant and material to understand how ICANN's decision to remove the price caps may have been impacted by Public Interest Registry's intended change of control and to understand whether ICANN has taken sufficient measures to avoid capture by a self-interested party or forces with narrow interests.</p> <p>Moreover, access to these documents is relevant and material to understand the relevance of .ORG (and other domains with price caps) in constraining the exercise of market power by other TLD registry operators and therefore the impact of removal or modification of price caps on competition, registrars, and registrants / consumers.</p> <p>The request for these documents is sufficiently clear and reasonable.</p>	<p>ICANN objects to this Request, and each subpart, because they relate to the now moot change of control request. In its IRP Request, Namecheap argues that ICANN violated its Articles of Incorporation and Bylaws by evaluating PIR's change of control request, and advocated that ICANN should not consent to the request. <i>See</i> Request for IRP ¶¶ 51-54. ICANN responded that it was fully complying with its Articles of Incorporation and Bylaws in evaluating the change of control request. <i>See</i> Response to Request for IRP ¶¶ 53-59. After ICANN filed its Response to Request for IRP, ICANN did exactly what Namecheap argued it should – it did not consent to the change of control request. Accordingly, there are no longer any ripe claims related to the change of control request. Despite this, and</p>	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN stands on its objections.</p> <p><u>Namecheap's Position:</u> Relevant period for which documents are sought. ICANN should search for and produce all non-privileged documents responsive to these Requests, dating back to the date upon which these communications commenced until the date of production. ICANN should communicate openly about any new developments that relate to the dispute and immediately disclose any new documents relating to the acquisition or proposed acquisition of a registry operator for .org, .biz and/or .info, as they become available.</p> <p><u>ICANN's Response:</u> Contrary to what Namecheap stated in Annex 25, ICANN <i>did not</i> "agree[]" to the production for those documents</p>

<sup>51</sup> By 'indirectly', Namecheap refers to the narrow and specific requests as detailed in the subsections 3.a to 3.f of Request No. 3.



#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
		<p>Indeed, one may expect that ICANN has this information readily available, as it relates to its core obligations towards ICANN's main contracting parties and to ICANN's primary mission to coordinate 'the allocation and assignment of names in the root zone of the Domain Name System'.<sup>52</sup> The documents requested under this Section 3 (including Section 3.a to Section 3.f) are thus assumed to be in ICANN's possession, custody or control. In addition, ICANN has made public selected documents regarding the proposed change of control of Public Interest Registry, albeit in redacted form.</p> <p>The requested documents under this Section 3 (including Section 3.a to Section 3.f) are not in the Claimant's possession, custody or control, as the Claimant was not part of the discussions related to the</p>	<p>without any logical rationale, Namecheap has refused to drop these claims. ICANN therefore requests that this Panel deny each of Namecheap's Requests that seek documents pertaining to the change of control request, as they are no longer relevant or material to the issues in this IRP. ICANN further requests that the Panel dismiss Namecheap's claims regarding the change of control request, and strike paragraphs 12 through 15, 27 through 29, 32 through 38, and 51 through 54 of its Request for IRP. To the extent that the Panel does not have sufficient information to consider ICANN's request for partial dismissal, ICANN requests that the Panel permit ICANN to file a motion to dismiss the claims related to the proposed change of control.</p>	<p>between (i) the start of negotiations to the 2019 Registry Agreements for .org, .info and .biz and (ii) 18 November 2019."<sup>53</sup> Instead, ICANN explained that it "will produce documents regarding the transition of the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019, within the parameters set forth in ICANN's Response [to Namecheap's Request for Production]. To the extent that ICANN considered any 'actual or potential changes of control' in reaching the decision to transition the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019, those documents should be encompassed by ICANN's proposed collection."<sup>54</sup> ICANN, therefore, stands on its objections.</p> <p><b><u>Panel's Ruling:</u></b></p>

<sup>52</sup> Bylaws, Article I(1)(a)(i) (**RM 2**).

<sup>53</sup> See Annex 25, at Request No. 3.

<sup>54</sup> Annex 27, at p. 6.

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
		<p>proposed change of control. At most, the Claimant can retrieve part of the information in redacted form on ICANN's website. Such retrieval is (i) unreasonably burdensome in view of the complex structure of ICANN's website, and (ii) inefficient in view of likely relevant information being redacted and/or unavailable on ICANN's website.</p>	<p>ICANN objects that this Request is vague, ambiguous, and overbroad in that it seeks documents "directly and indirectly" relating to the change of control request. The burden on ICANN of searching for documents that may "indirectly relate" to the change of control request substantially outweighs any benefit that Namecheap plausibly could expect to obtain.</p> <p>ICANN further objects that this Request is a fishing expedition in that it does not identify any particular persons whose documents Namecheap seeks, but instead seeks to have ICANN search indiscriminately among its officers and staff for any document regarding the change of control request. The burden of conducting such a search substantially outweighs any legitimate benefit Namecheap plausibly could</p>	<p><b>The Panel defers ruling on this request pending a ruling on ICANN's motion to dismiss Namecheap's change of control claim.</b></p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			<p>expect from the results of such a search.</p> <p>ICANN objects to the extent the Request seeks documents after 30 April 2020, the date on which the ICANN Board withheld consent for the change of control request. Any subsequent communications are irrelevant to Namecheap's claims regarding ICANN's consideration of the change of control request.</p> <p>ICANN also objects to this Request to the extent it seeks documents protected by the attorney-client privilege, work product doctrine, or any other applicable privilege. ICANN will not produce privileged documents.</p> <p>Namecheap claims that "[a]ccess to these documents is relevant and material to understand how ICANN's decision to remove the price</p>	

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			<p>caps may have been impacted by Public Interest Registry's intended change of control and to understand whether ICANN has taken sufficient measures to avoid capture by a self-interested party or forces with narrow interests." Documents regarding the overlap (if any) between ICANN's decision to remove the price control provisions and the consideration of the change of control request, would naturally be encompassed by the documents ICANN agreed to produce in response to Request No. 1, and therefore this Request is duplicative of Request No. 1.</p> <p>Namecheap also claims that these documents are relevant to understanding the relevance of .ORG "in constraining the exercise of market power by other TLD registry operators." But none of Namecheap's claims relates to market power</p>	

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			<p>by any TLD registry operator, or the necessity of price control provisions to constrain market power. Pursuant to Rule 6 of the Interim Supplementary Procedures, a Claimant's Request for IRP "shall include all claims that give rise to a particular dispute," along with "[a]ll necessary and available evidence in support of the CLAIMANT'S claim(s)."</p> <p>Hence, requests for documents that are not based on an existing claim cannot be material to the outcome of the case, as required by Rule 8 of the Interim Supplementary Procedures and Article 3 of the IBA Rules.</p> <p>Based on these objections, ICANN does not agree to produce documents responsive to this Request.</p> <p>ICANN will not repeat these objections in response to each subpart, but expressly</p>	

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			incorporates these objections therein.	
3.a	All <u>correspondence</u> between ICANN and Public Interest Registry, their representatives, their related companies and organisations relating to the proposed change of control of Public Interest Registry.	<p>Access to these documents is relevant and material to understand how ICANN's decision to remove the price caps may have been impacted by Public Interest Registry's intended change of control and to understand whether ICANN has taken sufficient measures to avoid capture by a self-interested party or forces with narrow interests.</p> <p>Moreover, access to these documents is relevant and material to understand the relevance of .ORG (and other domains with price caps) in constraining the exercise of market power by other TLD registry operators and therefore the impact of removal or modification of price caps on competition, registrars, and registrants / consumers.</p>	ICANN incorporates by reference its objections to Request No. 3 above.	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN stands on its objections.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 3.</p> <p><u>ICANN's Response:</u> Contrary to what Namecheap stated in Annex 25, ICANN <i>did not</i> "agree[]" to the production for those documents between (i) the start of negotiations to the 2019 Registry Agreements for .org, .info and .biz and (ii) 18 November 2019."<sup>56</sup> Instead, ICANN explained that it "will produce documents regarding the transition of the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019, within the parameters set forth in ICANN's Response [to Namecheap's Request for</p>

<sup>56</sup> See Annex 25, at Request No. 3.

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
		<p>The request for these documents is sufficiently clear and reasonable. Indeed, one may expect that ICANN has this information readily available, as it relates to its core obligations towards ICANN's main contracting parties and to ICANN's primary mission to coordinate 'the allocation and assignment of names in the root zone of the Domain Name System'.<sup>55</sup></p>		<p>Production]. To the extent that ICANN considered any 'actual or potential changes of control' in reaching the decision to transition the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019, those documents should be encompassed by ICANN's proposed collection."<sup>57</sup> ICANN, therefore, stands on its objections.</p> <p><b><u>Panel's Ruling:</u></b></p> <p><b>The Panel defers ruling on this request pending a ruling on ICANN's motion to dismiss Namecheap's change of control claim.</b></p>
3.b	<p>All communications <u>between ICANN staff and the ICANN Board</u> in relation to the</p>	<p>Access to these documents is relevant and material to understand how ICANN's decision to remove the price caps may have</p>	<p>ICANN incorporates by reference its objections to Request No. 3 above.</p>	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN stands on its objections.</p>

<sup>55</sup> Bylaws, Article I(1)(a)(i) (**RM 2**).

<sup>57</sup> Annex 27, at p. 6.

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
	<p>proposed change of control of Public Interest Registry.</p>	<p>been impacted by Public Interest Registry's intended change of control and to understand whether ICANN has taken sufficient measures to avoid capture by a self-interested party or forces with narrow interests.</p> <p>Moreover, access to these documents is relevant and material to understand the relevance of .ORG (and other domains with price caps) in constraining the exercise of market power by other TLD registry operators and therefore the impact of removal or modification of price caps on competition, registrars, and registrants / consumers.</p> <p>The request for these documents is sufficiently clear and reasonable. Indeed, one may expect that ICANN has this information readily available, as it relates to its core obligations towards ICANN's main contracting parties and to</p>		<p><u>Namecheap's Position:</u> Same as with Request No. 3.</p> <p><u>ICANN's Response:</u> Contrary to what Namecheap stated in Annex 25, ICANN <i>did not</i> "agree[]" to the production for those documents between (i) the start of negotiations to the 2019 Registry Agreements for .org, .info and .biz and (ii) 18 November 2019."<sup>59</sup> Instead, ICANN explained that it "will produce documents regarding the transition of the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019, within the parameters set forth in ICANN's Response [to Namecheap's Request for Production]. To the extent that ICANN considered any 'actual or potential changes of control' in reaching the decision to transition the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019, those</p>

<sup>59</sup> See Annex 25, at Request No. 3.



#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
		ICANN's primary mission to coordinate 'the allocation and assignment of names in the root zone of the Domain Name System'. <sup>58</sup>		documents should be encompassed by ICANN's proposed collection." <sup>60</sup> ICANN, therefore, stands on its objections.  <b><u>Panel's Ruling:</u></b>  <b>The Panel defers ruling on this request pending a ruling on ICANN's motion to dismiss Namecheap's change of control claim.</b>
3.c	All communications <u>between ICANN staff and individual ICANN Board members</u> in relation to the proposed change of control of Public Interest Registry, from the date upon which these communications commenced through the	Access to these documents is relevant and material to understand how ICANN's decision to remove the price caps may have been impacted by Public Interest Registry's intended change of control and to understand whether ICANN has taken sufficient measures to avoid capture by a self-interested party or forces with narrow interests.	ICANN incorporates by reference its objections to Request No. 3 above.	<b>At issue.</b>  <u>ICANN's Position:</u> ICANN stands on its objections.  <u>Namecheap's Position:</u> Same as with Request No. 3.  <u>ICANN's Response:</u> Contrary to what Namecheap stated in Annex 25, ICANN <i>did not</i> "agree[]" to the

<sup>58</sup> Bylaws, Article I(1)(a)(i) (**RM 2**).

<sup>60</sup> Annex 27, at p. 6.

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
	date of ICANN's response to this Request.	<p>Moreover, access to these documents is relevant and material to understand the relevance of .ORG (and other domains with price caps) in constraining the exercise of market power by other TLD registry operators and therefore the impact of removal or modification of price caps on competition, registrars, and registrants / consumers.</p> <p>The request for these documents is sufficiently clear and reasonable. Indeed, one may expect that ICANN has this information readily available, as it relates to its core obligations towards ICANN's main contracting parties and to ICANN's primary mission to coordinate 'the allocation and assignment of names in the root zone of the Domain Name System'.<sup>61</sup></p>		<p>production for those documents between (i) the start of negotiations to the 2019 Registry Agreements for .org, .info and .biz and (ii) 18 November 2019."<sup>62</sup> Instead, ICANN explained that it "will produce documents regarding the transition of the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019, within the parameters set forth in ICANN's Response [to Namecheap's Request for Production]. To the extent that ICANN considered any 'actual or potential changes of control' in reaching the decision to transition the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019, those documents should be encompassed by ICANN's proposed collection."<sup>63</sup> ICANN, therefore, stands on its objections.</p>

<sup>61</sup> Bylaws, Article I(1)(a)(i) (**RM 2**).

<sup>62</sup> See Annex 25, at Request No. 3.

<sup>63</sup> Annex 27, at p. 6.

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
				<p><b>Panel's Ruling:</b></p> <p>The Panel defers ruling on this request pending a ruling on ICANN's motion to dismiss Namecheap's change of control claim.</p>
3.d	<p>All communications <u>between ICANN staff</u> in relation to the proposed change of control of Public Interest Registry, from the date upon which these communications commenced through the date of ICANN's response to this Request.</p>	<p>Access to these documents is relevant and material to understand how ICANN's decision to remove the price caps may have been impacted by Public Interest Registry's intended change of control and to understand whether ICANN has taken sufficient measures to avoid capture by a self-interested party or forces with narrow interests.</p> <p>Moreover, access to these documents is relevant and material to understand the relevance of .ORG (and other domains with price caps) in constraining the exercise of market power by other TLD registry operators and</p>	<p>ICANN incorporates by reference its objections to Request No. 3 above.</p>	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN stands on its objections.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 3.</p> <p><u>ICANN's Response:</u> Contrary to what Namecheap stated in Annex 25, ICANN <i>did not</i> "agree[]" to the production for those documents between (i) the start of negotiations to the 2019 Registry Agreements for .org, .info and .biz and (ii) 18 November 2019."<sup>65</sup> Instead, ICANN explained that it "will produce documents regarding the transition of the .ORG, .BIZ, and .INFO</p>

<sup>65</sup> See Annex 25, at Request No. 3.

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
		<p>therefore the impact of removal or modification of price caps on competition, registrars, and registrants / consumers.</p> <p>The request for these documents is sufficiently clear and reasonable. Indeed, one may expect that ICANN has this information readily available, as it relates to its core obligations towards ICANN's main contracting parties and to ICANN's primary mission to coordinate 'the allocation and assignment of names in the root zone of the Domain Name System'.<sup>64</sup></p>		<p>Registry Agreements to the Base Registry Agreement in June 2019, within the parameters set forth in ICANN's Response [to Namecheap's Request for Production]. To the extent that ICANN considered any 'actual or potential changes of control' in reaching the decision to transition the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019, those documents should be encompassed by ICANN's proposed collection."<sup>66</sup> ICANN, therefore, stands on its objections.</p> <p><b><u>Panel's Ruling:</u></b></p> <p><b>The Panel defers ruling on this request pending a ruling on ICANN's motion to dismiss Namecheap's change of control claim.</b></p>

<sup>64</sup> Bylaws, Article I(1)(a)(i) (**RM 2**).

<sup>66</sup> Annex 27, at p. 6.

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
3.e	All communications <u>between ICANN Board members</u> in relation to the proposed change of control of Public Interest Registry, from the date upon which these communications commenced through the date of ICANN's response to this Request.	<p>Access to these documents is relevant and material to understand how ICANN's decision to remove the price caps may have been impacted by Public Interest Registry's intended change of control and to understand whether ICANN has taken sufficient measures to avoid capture by a self-interested party or forces with narrow interests.</p> <p>Moreover, access to these documents is relevant and material to understand the relevance of .ORG (and other domains with price caps) in constraining the exercise of market power by other TLD registry operators and therefore the impact of removal or modification of price caps on competition, registrars, and registrants / consumers.</p>	ICANN incorporates by reference its objections to Request No. 3 above.	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN stands on its objections.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 3.</p> <p><u>ICANN's Response:</u> Contrary to what Namecheap stated in Annex 25, ICANN <i>did not</i> "agree[]" to the production for those documents between (i) the start of negotiations to the 2019 Registry Agreements for .org, .info and .biz and (ii) 18 November 2019."<sup>68</sup> Instead, ICANN explained that it "will produce documents regarding the transition of the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019, within the parameters set forth in ICANN's Response [to Namecheap's Request for</p>

<sup>68</sup> See Annex 25, at Request No. 3.

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
		<p>The request for these documents is sufficiently clear and reasonable. Indeed, one may expect that ICANN has this information readily available, as it relates to its core obligations towards ICANN's main contracting parties and to ICANN's primary mission to coordinate 'the allocation and assignment of names in the root zone of the Domain Name System'.<sup>67</sup></p>		<p>Production]. To the extent that ICANN considered any 'actual or potential changes of control' in reaching the decision to transition the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019, those documents should be encompassed by ICANN's proposed collection."<sup>69</sup> ICANN, therefore, stands on its objections.</p> <p><b><u>Panel's Ruling:</u></b></p> <p><b>The Panel defers ruling on this request pending a ruling on ICANN's motion to dismiss Namecheap's change of control claim.</b></p>
3.f	<p>All communications <u>between ICANN staff or ICANN Board members and any other person or</u></p>	<p>Access to these documents is relevant and material to understand how ICANN's decision to remove the price caps may have</p>	<p>ICANN incorporates by reference its objections to Request No. 3 above.</p>	<p><b>At issue.</b></p> <p><b><u>ICANN's Position:</u></b> ICANN stands on its objections.</p>

<sup>67</sup> Bylaws, Article I(1)(a)(i) (**RM 2**).

<sup>69</sup> Annex 27, at p. 6.

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
	<p><u>organisation other than ICANN staff or ICANN Board member in relation to the proposed change of control of Public Interest Registry, from the date upon which these communications commenced through the date of ICANN's response to this Request.</u></p>	<p>been impacted by Public Interest Registry's intended change of control and to understand whether ICANN has taken sufficient measures to avoid capture by a self-interested party or forces with narrow interests.</p> <p>Moreover, access to these documents is relevant and material to understand the relevance of .ORG (and other domains with price caps) in constraining the exercise of market power by other TLD registry operators and therefore the impact of removal or modification of price caps on competition, registrars, and registrants / consumers.</p> <p>The request for these documents is sufficiently clear and reasonable. Indeed, one may expect that ICANN has this information readily available, as it relates to its core obligations towards ICANN's main contracting parties and to</p>	<p>ICANN further objects that the documents sought by this Request are overbroad to the extent they request communications between ICANN and literally every other person or organization regarding the change of control request. This request is a fishing expedition, and the burden of conducting such an expansive search substantially outweighs any legitimate benefit Namecheap plausibly could expect from the results of such a search.</p>	<p><u>Namecheap's Position:</u> Same as with Request No. 3.</p> <p><u>ICANN's Response:</u> Contrary to what Namecheap stated in Annex 25, ICANN <i>did not</i> "agree[]" to the production for those documents between (i) the start of negotiations to the 2019 Registry Agreements for .org, .info and .biz and (ii) 18 November 2019."<sup>71</sup> Instead, ICANN explained that it "will produce documents regarding the transition of the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019, within the parameters set forth in ICANN's Response [to Namecheap's Request for Production]. To the extent that ICANN considered any 'actual or potential changes of control' in reaching the decision to transition the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019, those</p>

<sup>71</sup> See Annex 25, at Request No. 3.

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
		ICANN's primary mission to coordinate 'the allocation and assignment of names in the root zone of the Domain Name System'. <sup>70</sup>		documents should be encompassed by ICANN's proposed collection." <sup>72</sup> ICANN, therefore, stands on its objections.  <b><u>Panel's Ruling:</u></b>  <b>The Panel defers ruling on this request pending a ruling on ICANN's motion to dismiss Namecheap's change of control claim.</b>
4	All documents directly and indirectly <sup>73</sup> relating to the <u>acquisition or proposed acquisition of Neustar by GoDaddy</u> , including:	Access to these documents is relevant and material to understand how ICANN's decision to remove the price caps may have been impacted by GoDaddy's intended acquisition and to understand whether ICANN has taken sufficient measures to avoid capture by a self-interested party or forces with narrow interests.	ICANN objects that the documents sought by this Request, and each subpart, are not relevant or material to the outcome of this dispute. Namecheap's claims in this IRP relate to the narrow issue of ICANN's removal of the price control provisions in the 2019 .ORG, .BIZ, and .INFO Registry Agreements. This request does	<b>At issue.</b>  <u>ICANN's Position:</u> ICANN stands on its objections.  <u>Namecheap's Position:</u> Same as with Request No. 3.  <u>ICANN's Response:</u> Contrary to what Namecheap stated in Annex 25, ICANN <i>did not</i> "agree[]" to the

<sup>70</sup> Bylaws, Article I(1)(a)(i) (**RM 2**).

<sup>72</sup> Annex 27, at p. 6.

<sup>73</sup> By 'indirectly', Namecheap refers to the narrow and specific requests as detailed in the subsections 4.a to 4.f of Request No. 4.



#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
		<p>Access to these documents is also relevant to understand ICANN's views of the competitive implications of vertical integration between wholesalers and retailers in the DNS registration markets. In turn, this is relevant to the competitive implications of a removal of price caps for the concerned TLD.</p> <p>The request for these documents is sufficiently clear and reasonable. Indeed, one may expect that ICANN has this information readily available, as it relates to its core obligations towards ICANN's main contracting parties and to ICANN's primary mission to coordinate 'the allocation and assignment of names in the root zone of the Domain Name System'.<sup>74</sup> The documents requested under this Section 4 (including Section 4.a to Section 4.f)</p>	<p>not seek any documents related to ICANN's decision to remove the price control provisions; instead, it seeks documents regarding a proposed transaction between two unrelated third parties that occurred in 2020, long after the removal of the price control provisions in the 2019 .ORG, .BIZ, and .INFO Registry Agreements, and Namecheap makes no serious effort to connect the facts related to that proposed transaction to the issues in this IRP. Indeed, it would appear that Namecheap's primary motivation is to obtain information about one of Namecheap's principal competitors – GoDaddy – and that motivation is completely inappropriate in terms of</p>	<p>production for those documents between (i) the start of negotiations to the 2019 Registry Agreements for .org, .info and .biz and (ii) 18 November 2019."<sup>75</sup> Instead, ICANN explained that it "will produce documents regarding the transition of the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019, within the parameters set forth in ICANN's Response [to Namecheap's Request for Production]. To the extent that ICANN considered any 'actual or potential changes of control' in reaching the decision to transition the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019, those documents should be encompassed by ICANN's proposed collection."<sup>76</sup> Namecheap has failed to demonstrate the relevance of the additional documents it has</p>

<sup>74</sup> Bylaws, Article I(1)(a)(i) (**RM 2**).

<sup>75</sup> See Annex 25, at Request Nos. 3, 4.

<sup>76</sup> Annex 27, at p. 6.

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
		<p>are thus assumed to be in ICANN's possession, custody or control.</p> <p>The requested documents under this Section 4 (including Section 4.a to Section 4.f) are not in the Claimant's possession, custody or control, as the Claimant was not part of the discussions related to the acquisition or proposed acquisition of Neustar by GoDaddy.</p>	<p>requesting documents in this IRP.</p> <p>Namecheap claims that "[a]ccess to these documents is relevant and material to understand how ICANN's decision to remove the price caps may have been impacted by GoDaddy's intended acquisition and to understand whether ICANN has taken sufficient measures to avoid capture by a self-interested party or forces with narrow interests." Documents regarding the overlap (if any) between ICANN's decision to remove the price control provisions and this third-party proposed acquisition would naturally be encompassed by the documents ICANN agreed to produce in response to Request No. 1, and therefore this Request is duplicative of Request No. 1.</p>	<p>requested and, thus, ICANN stands on its objections.</p> <p><b>Panel's Ruling:</b></p> <p><b>As noted by ICANN, documents regarding the overlap (if any) between ICANN's decision to remove the price control provisions and the proposed acquisition of Neustar by GoDaddy should be encompassed by the documents to be produced in response to Request No. 1. The ESI search protocol shall be designed to reasonably assure that such documents, if any exist, are within the scope of the search. This request is otherwise denied.</b></p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			<p>Namecheap also claims that these documents are relevant to understanding "ICANN's views of the competitive implications of vertical integration between wholesalers and retailers in the DNS registration markets. In turn, this is relevant to the competitive implications of a removal of price caps for the concerned TLD." But none of Namecheap's claims relate to the competitive implications of vertical integration, or even the competitive implications of removal of the price control provisions. Pursuant to Rule 6 of the Interim Supplementary Procedures, a Claimant's Request for IRP "shall include all claims that give rise to a particular dispute," along with "[a]ll necessary and available evidence in support of the CLAIMANT'S claim(s)." Hence, requests for documents that are not based on an existing claim cannot be material to the</p>	

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			<p>outcome of the case, as required by Rule 8 of the Interim Supplementary Procedures and Article 3 of the IBA Rules.</p> <p>ICANN objects that this Request is vague, ambiguous, and overbroad in that it seeks documents "directly and indirectly" relating to the acquisition or proposed acquisition of Neustar by GoDaddy. The burden on ICANN of searching for documents that may "indirectly relate" to the acquisition substantially outweighs any benefit that Namecheap plausibly could expect to obtain.</p> <p>ICANN further objects that this Request is a fishing expedition in that it does not identify any particular persons whose documents Namecheap seeks, but instead seeks to have ICANN search indiscriminately among its officers and staff.</p>	

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			<p>The burden of conducting such a search substantially outweighs any legitimate benefit Namecheap plausibly could expect from the results of such a search.</p> <p>ICANN also objects to this Request to the extent it seeks documents protected by the attorney-client privilege, work product doctrine, or any other applicable privilege. ICANN will not produce privileged documents.</p> <p>ICANN objects to the extent the Request seeks documents after 30 June 2019, the date that the .ORG, .BIZ, and .INFO Registry Agreements were renewed. Any subsequent communications are irrelevant to Namecheap's claims regarding ICANN's decision to remove the price control provisions.</p>	

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			<p>Based on these objections, ICANN does not agree to produce documents responsive to this Request.</p> <p>ICANN will not repeat these objections in response to each subpart, but expressly incorporates these objections therein.</p>	
4.a	<p>All <u>correspondence</u> between ICANN and Neustar and/or GoDaddy, their representatives, their related companies and organisations relating to the acquisition or proposed acquisition of Neustar, from the date upon which these communications commenced through the date of ICANN's response to this Request.</p>	<p>Access to these documents is relevant and material to understand how ICANN's decision to remove the price caps may have been impacted by GoDaddy's intended acquisition and to understand whether ICANN has taken sufficient measures to avoid capture by a self-interested party or forces with narrow interests.</p> <p>Access to these documents is also relevant to understand ICANN's views on the competitive implications of vertical integration between wholesalers and retailers</p>	<p>ICANN incorporates by reference its objections to Request No. 4 above.</p>	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN stands on its objections.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 3.</p> <p><u>ICANN's Response:</u> Contrary to what Namecheap stated in Annex 25, ICANN <i>did not</i> "agree[]" to the production for those documents between (i) the start of negotiations to the 2019 Registry Agreements for .org, .info and .biz and (ii) 18 November 2019."<sup>78</sup> Instead, ICANN</p>

<sup>78</sup> See Annex 25, at Request Nos. 3, 4.

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
		<p>in the DNS registration markets. In turn, this is relevant to the competitive implications of a removal of price caps for the concerned TLD.</p> <p>The request for these documents is sufficiently clear and reasonable. Indeed, one may expect that ICANN has this information readily available, as it relates to its core obligations towards ICANN's main contracting parties and to ICANN's primary mission to coordinate 'the allocation and assignment of names in the root zone of the Domain Name System'.<sup>77</sup></p>		<p>explained that it "will produce documents regarding the transition of the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019, within the parameters set forth in ICANN's Response [to Namecheap's Request for Production]. To the extent that ICANN considered any 'actual or potential changes of control' in reaching the decision to transition the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019, those documents should be encompassed by ICANN's proposed collection."<sup>79</sup> Namecheap has failed to demonstrate the relevance of the additional documents it has requested and, thus, ICANN stands on its objections.</p> <p><b><u>Panel's Ruling:</u></b></p>

<sup>77</sup> Bylaws, Article I(1)(a)(i) (**RM 2**).

<sup>79</sup> Annex 27, at p. 6.

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
				As noted by ICANN, documents regarding the overlap (if any) between ICANN's decision to remove the price control provisions and the proposed acquisition of Neustar by GoDaddy should be encompassed by the documents to be produced in response to Request No. 1. The ESI search protocol shall be designed to reasonably assure that such documents, if any exist, are within the scope of the search. This request is otherwise denied.
4.b	All communications <u>between ICANN staff and the Board</u> in relation to the acquisition or proposed acquisition of Neustar, from the date upon which these communications commenced through the date of ICANN's response to this Request.	Access to these documents is relevant and material to understand how ICANN's decision to remove the price caps may have been impacted by GoDaddy's intended acquisition and to understand whether ICANN has taken sufficient measures to avoid capture by a self-interested party or forces with narrow interests.  Access to these documents is also relevant to understand ICANN's	ICANN incorporates by reference its objections to Request No. 4 above.	<b>At issue.</b>  <u>ICANN's Position:</u> ICANN stands on its objections.  <u>Namecheap's Position:</u> Same as with Request No. 3.  <u>ICANN's Response:</u> Contrary to what Namecheap stated in Annex 25, ICANN <i>did not</i> "agree[]" to the production for those documents between (i) the start of negotiations



#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
		<p>views on the competitive implications of vertical integration between wholesalers and retailers in the DNS registration markets. In turn, this is relevant to the competitive implications of a removal of price caps for the concerned TLD.</p> <p>The request for these documents is sufficiently clear and reasonable. Indeed, one may expect that ICANN has this information readily available, as it relates to its core obligations towards ICANN's main contracting parties and to ICANN's primary mission to coordinate 'the allocation and assignment of names in the root zone of the Domain Name System'.<sup>80</sup></p>		<p>to the 2019 Registry Agreements for .org, .info and .biz and (ii) 18 November 2019."<sup>81</sup> Instead, ICANN explained that it "will produce documents regarding the transition of the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019, within the parameters set forth in ICANN's Response [to Namecheap's Request for Production]. To the extent that ICANN considered any 'actual or potential changes of control' in reaching the decision to transition the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019, those documents should be encompassed by ICANN's proposed collection."<sup>82</sup> Namecheap has failed to demonstrate the relevance of the additional documents it has requested and, thus, ICANN stands on its objections.</p>

<sup>80</sup> Bylaws, Article I(1)(a)(i) (**RM 2**).

<sup>81</sup> See Annex 25, at Request Nos. 3, 4.

<sup>82</sup> Annex 27, at p. 6.

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
				<p>As noted by ICANN, documents regarding the overlap (if any) between ICANN's decision to remove the price control provisions and the proposed acquisition of Neustar by GoDaddy should be encompassed by the documents to be produced in response to Request No. 1. The ESI search protocol shall be designed to reasonably assure that such documents, if any exist, are within the scope of the search. This request is otherwise denied.</p>
4.c	<p>All communications <u>between ICANN staff and individual ICANN Board members</u> in relation to the acquisition or proposed acquisition of Neustar, from the date upon which these communications commenced through the date of ICANN's response to this Request.</p>	<p>Access to these documents is relevant and material to understand how ICANN's decision to remove the price caps may have been impacted by GoDaddy's intended acquisition and to understand whether ICANN has taken sufficient measures to avoid capture by a self-interested party or forces with narrow interests.</p> <p>Access to these documents is also relevant to understand ICANN's</p>	<p>ICANN incorporates by reference its objections to Request No. 4 above.</p>	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN stands on its objections.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 3.</p> <p><u>ICANN's Response:</u> Contrary to what Namecheap stated in Annex 25, ICANN <i>did not</i> "agree[]" to the production for those documents between (i) the start of negotiations</p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
		<p>views on the competitive implications of vertical integration between wholesalers and retailers in the DNS registration markets. In turn, this is relevant to the competitive implications of a removal of price caps for the concerned TLD.</p> <p>The request for these documents is sufficiently clear and reasonable. Indeed, one may expect that ICANN has this information readily available, as it relates to its core obligations towards ICANN's main contracting parties and to ICANN's primary mission to coordinate 'the allocation and assignment of names in the root zone of the Domain Name System'.<sup>83</sup></p>		<p>to the 2019 Registry Agreements for .org, .info and .biz and (ii) 18 November 2019."<sup>84</sup> Instead, ICANN explained that it "will produce documents regarding the transition of the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019, within the parameters set forth in ICANN's Response [to Namecheap's Request for Production]. To the extent that ICANN considered any 'actual or potential changes of control' in reaching the decision to transition the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019, those documents should be encompassed by ICANN's proposed collection."<sup>85</sup> Namecheap has failed to demonstrate the relevance of the additional documents it has requested and, thus, ICANN stands on its objections.</p>

<sup>83</sup> Bylaws, Article I(1)(a)(i) (**RM 2**).

<sup>84</sup> See Annex 25, at Request Nos. 3, 4.

<sup>85</sup> Annex 27, at p. 6.

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
				<p><b><u>Panel's Ruling:</u></b></p> <p>As noted by ICANN, documents regarding the overlap (if any) between ICANN's decision to remove the price control provisions and the proposed acquisition of Neustar by GoDaddy should be encompassed by the documents to be produced in response to Request No. 1. The ESI search protocol shall be designed to reasonably assure that such documents, if any exist, are within the scope of the search. This request is otherwise denied.</p>
4.d	All communications <u>between ICANN staff</u> in relation to the acquisition or proposed acquisition of Neustar, from the date upon which these communications commenced through the date of ICANN's response to this Request.	Access to these documents is relevant and material to understand how ICANN's decision to remove the price caps may have been impacted by GoDaddy's intended acquisition and to understand whether ICANN has taken sufficient measures to avoid capture by a self-interested party or forces with narrow interests.	ICANN incorporates by reference its objections to Request No. 4 above.	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN stands on its objections.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 3.</p> <p><u>ICANN's Response:</u> Contrary to what Namecheap stated in Annex 25, ICANN <i>did not</i> "agree[]" to the</p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
		<p>Access to these documents is also relevant to understand ICANN's views on the competitive implications of vertical integration between wholesalers and retailers in the DNS registration markets. In turn, this is relevant to the competitive implications of a removal of price caps for the concerned TLD.</p> <p>The request for these documents is sufficiently clear and reasonable. Indeed, one may expect that ICANN has this information readily available, as it relates to its core obligations towards ICANN's main contracting parties and to ICANN's primary mission to coordinate 'the allocation and assignment of names in the root zone of the Domain Name System'.<sup>86</sup></p>		<p>production for those documents between (i) the start of negotiations to the 2019 Registry Agreements for .org, .info and .biz and (ii) 18 November 2019."<sup>87</sup> Instead, ICANN explained that it "will produce documents regarding the transition of the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019, within the parameters set forth in ICANN's Response [to Namecheap's Request for Production]. To the extent that ICANN considered any 'actual or potential changes of control' in reaching the decision to transition the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019, those documents should be encompassed by ICANN's proposed collection."<sup>88</sup> Namecheap has failed to demonstrate the relevance of the additional documents it has</p>

<sup>86</sup> Bylaws, Article I(1)(a)(i) (**RM 2**).

<sup>87</sup> See Annex 25, at Request Nos. 3, 4.

<sup>88</sup> Annex 27, at p. 6.

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
				<p>requested and, thus, ICANN stands on its objections.</p> <p><b>Panel's Ruling:</b></p> <p><b>As noted by ICANN, documents regarding the overlap (if any) between ICANN's decision to remove the price control provisions and the proposed acquisition of Neustar by GoDaddy should be encompassed by the documents to be produced in response to Request No. 1. The ESI search protocol shall be designed to reasonably assure that such documents, if any exist, are within the scope of the search. This request is otherwise denied.</b></p>
4.e	<p>All communications <u>between ICANN Board members</u> in relation to the acquisition or proposed acquisition of Neustar, from the date upon which these communications commenced through the</p>	<p>Access to these documents is relevant and material to understand how ICANN's decision to remove the price caps may have been impacted by GoDaddy's intended acquisition and to understand whether ICANN has taken sufficient measures to avoid</p>	<p>ICANN incorporates by reference its objections to Request No. 4 above.</p>	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN stands on its objections.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 3.</p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
	date of ICANN's response to this Request.	<p>capture by a self-interested party or forces with narrow interests.</p> <p>Access to these documents is also relevant to understand ICANN's views on the competitive implications of vertical integration between wholesalers and retailers in the DNS registration markets. In turn, this is relevant to the competitive implications of a removal of price caps for the concerned TLD.</p> <p>The request for these documents is sufficiently clear and reasonable. Indeed, one may expect that ICANN has this information readily available, as it relates to its core obligations towards ICANN's main contracting parties and to ICANN's primary mission to coordinate 'the allocation and assignment of names in the root</p>		<p><u>ICANN's Response:</u> Contrary to what Namecheap stated in Annex 25, ICANN <i>did not</i> "agree[]" to the production for those documents between (i) the start of negotiations to the 2019 Registry Agreements for .org, .info and .biz and (ii) 18 November 2019."<sup>90</sup> Instead, ICANN explained that it "will produce documents regarding the transition of the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019, within the parameters set forth in ICANN's Response [to Namecheap's Request for Production]. To the extent that ICANN considered any 'actual or potential changes of control' in reaching the decision to transition the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019, those documents should be encompassed by ICANN's proposed collection."<sup>91</sup> Namecheap has failed to</p>

<sup>90</sup> See Annex 25, at Request Nos. 3, 4.

<sup>91</sup> Annex 27, at p. 6.

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
		zone of the Domain Name System'. <sup>89</sup>		<p>demonstrate the relevance of the additional documents it has requested and, thus, ICANN stands on its objections.</p> <p><b><u>Panel's Ruling:</u></b></p> <p><b>As noted by ICANN, documents regarding the overlap (if any) between ICANN's decision to remove the price control provisions and the proposed acquisition of Neustar by GoDaddy should be encompassed by the documents to be produced in response to Request No. 1. The ESI search protocol shall be designed to reasonably assure that such documents, if any exist, are within the scope of the search. This request is otherwise denied.</b></p>

---

<sup>89</sup> Bylaws, Article I(1)(a)(i) (**RM 2**).



#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
4.f	<p>All communications <u>between ICANN staff or ICANN Board members and any person or organisation other than ICANN staff or ICANN Board member</u> in relation to the acquisition or proposed acquisition of Neustar, from the date upon which these communications commenced through the date of ICANN's response to this Request.</p>	<p>Access to these documents is relevant and material to understand how ICANN's decision to remove the price caps may have been impacted by GoDaddy's intended acquisition and to understand whether ICANN has taken sufficient measures to avoid capture by a self-interested party or forces with narrow interests.</p> <p>Access to these documents is also relevant to understand ICANN's views on the competitive implications of vertical integration between wholesalers and retailers in the DNS registration markets. In turn, this is relevant to the competitive implications of a removal of price caps for the concerned TLD.</p> <p>The request for these documents is sufficiently clear and reasonable. Indeed, one may expect that ICANN has this information readily available, as it relates to its</p>	<p>ICANN incorporates by reference its objections to Request No. 4 above.</p>	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN stands on its objections.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 3.</p> <p><u>ICANN's Response:</u> Contrary to what Namecheap stated in Annex 25, ICANN <i>did not</i> "agree[]" to the production for those documents between (i) the start of negotiations to the 2019 Registry Agreements for .org, .info and .biz and (ii) 18 November 2019."<sup>93</sup> Instead, ICANN explained that it "will produce documents regarding the transition of the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019, within the parameters set forth in ICANN's Response [to Namecheap's Request for Production]. To the extent that ICANN considered any 'actual or potential changes of control' in</p>

<sup>93</sup> See Annex 25, at Request Nos. 3, 4.

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
		<p>core obligations towards ICANN's main contracting parties and to ICANN's primary mission to coordinate 'the allocation and assignment of names in the root zone of the Domain Name System'.<sup>92</sup></p>		<p>reaching the decision to transition the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019, those documents should be encompassed by ICANN's proposed collection."<sup>94</sup> Namecheap has failed to demonstrate the relevance of the additional documents it has requested and, thus, ICANN stands on its objections.</p> <p><b><u>Panel's Ruling:</u></b></p> <p><b>As noted by ICANN, documents regarding the overlap (if any) between ICANN's decision to remove the price control provisions and the proposed acquisition of Neustar by GoDaddy should be encompassed by the documents to be produced in response to Request No. 1. The ESI search protocol shall be designed to reasonably assure that such documents, if any exist, are within</b></p>

<sup>92</sup> Bylaws, Article I(1)(a)(i) (**RM 2**).

<sup>94</sup> Annex 27, at p. 6.

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
				the scope of the search. This request is otherwise denied.
5	All documents directly and indirectly <sup>95</sup> relating to the <u>acquisition or proposed acquisition of a registry operator for .ORG, .BIZ and/or .INFO</u> , including:	<p>Access to these documents is relevant and material to understand how ICANN's decision to remove the price caps may have been impacted by a party's intended acquisition of a legacy registry operator and to understand whether ICANN has taken sufficient measures to avoid capture by a self-interested party or forces with narrow interests.</p> <p>Access to these documents is also relevant and material to understand ICANN's views on competitive implications of such acquisitions.</p> <p>The request for these documents is sufficiently clear and reasonable.</p>	ICANN objects that the documents sought by this Request, and each subpart, are not relevant or material to the outcome of this dispute. Namecheap's claims relate to the narrow issue of ICANN's removal of the price control provisions in the 2019 .ORG, .BIZ, and .INFO Registry Agreements. This request does not seek any documents related to ICANN's decision to remove the price control provisions; instead, it seeks documents regarding proposed acquisitions of the .ORG, .BIZ, and .INFO registry operators, which are transactions between third parties.	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN stands on its objections.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 3.</p> <p><u>ICANN's Response:</u> Contrary to what Namecheap stated in Annex 25, ICANN <i>did not</i> "agree[]" to the production for those documents between (i) the start of negotiations to the 2019 Registry Agreements for .org, .info and .biz and (ii) 18 November 2019."<sup>97</sup> Instead, ICANN explained that it "will produce documents regarding the transition of the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019,</p>

<sup>95</sup> By 'indirectly', Namecheap refers to the narrow and specific requests as detailed in the subsections 5.a to 5.f of Request No. 5.

<sup>97</sup> See Annex 25, at Request Nos. 3, 5.

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
		<p>Indeed, one may expect that ICANN has this information readily available, as it relates to its core obligations towards ICANN's main contracting parties and to ICANN's primary mission to coordinate 'the allocation and assignment of names in the root zone of the Domain Name System'.<sup>96</sup> The documents requested under this Section 5 (including Section 5.a to Section 5.f) are thus assumed to be in ICANN's possession, custody or control.</p> <p>The requested documents under this Section 4 (including Section 5.a to Section 5.f) are not in the Claimant's possession, custody or control, as the Claimant was not part of discussions related to the acquisition or proposed acquisition of a registry operator for .ORG, .BIZ and/or .INFO.</p>	<p>To the extent this Request seeks documents regarding the change of control request, ICANN incorporates by reference its objections to Request No. 3 and each subpart.</p> <p>Namecheap claims that "[a]ccess to these documents is relevant and material to understand how ICANN's decision to remove the price caps may have been impacted by a party's intended acquisition of a legacy registry operator and to understand whether ICANN has taken sufficient measures to avoid capture by a self-interested party or forces with narrow interests." Documents regarding the overlap (if any) between ICANN's decision to remove the price control provisions and any proposed acquisition, would naturally be</p>	<p>within the parameters set forth in ICANN's Response [to Namecheap's Request for Production]. To the extent that ICANN considered any 'actual or potential changes of control' in reaching the decision to transition the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019, those documents should be encompassed by ICANN's proposed collection."<sup>98</sup> Namecheap has failed to demonstrate the relevance of the additional documents it has requested and, thus, ICANN stands on its objections.</p> <p><b><u>Panel's Ruling:</u></b></p> <p><b>As noted by ICANN, documents regarding the overlap (if any) between ICANN's decision to remove the price control provisions and any proposed acquisition should be encompassed by the</b></p>

<sup>96</sup> Bylaws, Article I(1)(a)(i) (**RM 2**).

<sup>98</sup> Annex 27, at p. 6.

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			<p>encompassed by the documents ICANN agreed to produce in response to Request No. 1, and therefore this Request is duplicative of Request No. 1.</p> <p>Namecheap also claims that these documents are relevant to understanding "ICANN's views of the competitive implications of such acquisitions." But none of Namecheap's claims relate to the competitive implications of any such acquisitions, or even the competitive implications of removal of the price control provisions. Pursuant to Rule 6 of the Interim Supplementary Procedures, a Claimant's Request for IRP "shall include all claims that give rise to a particular dispute," along with "[a]ll necessary and available evidence in support of the CLAIMANT'S claim(s)." Hence, requests for documents that are not based on an existing claim cannot be material to the</p>	<p><b>documents ICANN produced in response to Request No. 1. The ESI search protocol shall be designed to reasonably assure that such documents, if any exist, are within the scope of the search. This request is otherwise denied.</b></p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			<p>outcome of the case, as required by Rule 8 of the Interim Supplementary Procedures and Article 3 of the IBA Rules.</p> <p>ICANN objects that this Request is vague, ambiguous, and overbroad in that it seeks documents "directly and indirectly" relating to the acquisition or proposed acquisition of the .ORG, .BIZ, and .INFO registry operators. The burden on ICANN of searching for documents that may "indirectly relate" to the proposed acquisitions substantially outweighs any benefit that Namecheap plausibly could expect to obtain.</p> <p>ICANN further objects that this Request is a fishing expedition in that it does not identify any particular persons whose documents Namecheap seeks, but instead seeks to have ICANN search indiscriminately</p>	

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			<p>among its officers and staff for any document regarding the proposed acquisitions. The burden of conducting such a search substantially outweighs any legitimate benefit Namecheap plausibly could expect from the results of such a search.</p> <p>ICANN objects to the extent the Request seeks documents after 30 June 2019, the date that the .ORG, .BIZ, and .INFO Registry Agreements were renewed. Any subsequent communications are irrelevant to Namecheap's claims regarding ICANN's decision to remove the price control provisions.</p> <p>ICANN also objects to this Request to the extent it seeks documents protected by the attorney-client privilege, work product doctrine, or any other applicable privilege. ICANN</p>	

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
			<p>will not produce privileged documents.</p> <p>Based on these objections, ICANN does not agree to produce documents responsive to this Request.</p> <p>ICANN will not repeat these objections in response to each subpart, but expressly incorporates these objections therein.</p>	
5.a	<p>All correspondence <u>between ICANN and a registry operator</u> for .ORG, .BIZ and/or .INFO <i>c.g.</i> a proposed acquirer, their representatives, their related companies and organisations relating to the acquisition or proposed acquisition the registry operator, from the date upon which these communications commenced through the</p>	<p>Access to these documents is relevant and material to understand how ICANN's decision to remove the price caps may have been impacted by a party's intended acquisition of a legacy registry operator and to understand whether ICANN has taken sufficient measures to avoid capture by a self-interested party or forces with narrow interests.</p> <p>Access to these documents is also relevant and material to understand ICANN's views on</p>	<p>ICANN incorporates by reference its objections to Request No. 5 above.</p>	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN stands on its objections.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 3.</p> <p><u>ICANN's Response:</u> Contrary to what Namecheap stated in Annex 25, ICANN <i>did not</i> "agree[]" to the production for those documents between (i) the start of negotiations to the 2019 Registry Agreements for .org, .info and .biz and (ii) 18</p>



#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
	date of ICANN's response to this Request.	<p>competitive implications of such acquisitions.</p> <p>The request for these documents is sufficiently clear and reasonable. Indeed, one may expect that ICANN has this information readily available, as it relates to its core obligations towards ICANN's main contracting parties and to ICANN's primary mission to coordinate 'the allocation and assignment of names in the root zone of the Domain Name System'.<sup>99</sup></p>		<p>November 2019."<sup>100</sup> Instead, ICANN explained that it "will produce documents regarding the transition of the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019, within the parameters set forth in ICANN's Response [to Namecheap's Request for Production]. To the extent that ICANN considered any 'actual or potential changes of control' in reaching the decision to transition the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019, those documents should be encompassed by ICANN's proposed collection."<sup>101</sup> Namecheap has failed to demonstrate the relevance of the additional documents it has requested and, thus, ICANN stands on its objections.</p> <p><b><u>Panel's Ruling:</u></b></p>

<sup>99</sup> Bylaws, Article I(1)(a)(i) (**RM 2**).

<sup>100</sup> See Annex 25, at Request Nos. 3, 5.

<sup>101</sup> Annex 27, at p. 6.

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
				<p>As noted by ICANN, documents regarding the overlap (if any) between ICANN's decision to remove the price control provisions and any proposed acquisition should be encompassed by the documents ICANN produced in response to Request No. 1. The ESI search protocol shall be designed to reasonably assure that such documents, if any exist, are within the scope of the search. This request is otherwise denied.</p>
5.b	<p>All communications <u>between ICANN staff and the Board</u> in relation to the acquisition or proposed acquisition of a registry operator for .ORG, .BIZ and/or .INFO, from the date upon which these communications commenced through the date of ICANN's response to this Request.</p>	<p>Access to these documents is relevant and material to understand how ICANN's decision to remove the price caps may have been impacted by a party's intended acquisition of a legacy registry operator and to understand whether ICANN has taken sufficient measures to avoid capture by a self-interested party or forces with narrow interests.</p> <p>Access to these documents is also relevant and material to</p>	<p>ICANN incorporates by reference its objections to Request No. 5 above.</p>	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN stands on its objections.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 3.</p> <p><u>ICANN's Response:</u> Contrary to what Namecheap stated in Annex 25, ICANN <i>did not</i> "agree[]" to the production for those documents between (i) the start of negotiations to the 2019 Registry Agreements for</p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
		<p>understand ICANN's views on competitive implications of such acquisitions.</p> <p>The request for these documents is sufficiently clear and reasonable. Indeed, one may expect that ICANN has this information readily available, as it relates to its core obligations towards ICANN's main contracting parties and to ICANN's primary mission to coordinate 'the allocation and assignment of names in the root zone of the Domain Name System'.<sup>102</sup></p>		<p>.org, .info and .biz and (ii) 18 November 2019."<sup>103</sup> Instead, ICANN explained that it "will produce documents regarding the transition of the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019, within the parameters set forth in ICANN's Response [to Namecheap's Request for Production]. To the extent that ICANN considered any 'actual or potential changes of control' in reaching the decision to transition the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019, those documents should be encompassed by ICANN's proposed collection."<sup>104</sup> Namecheap has failed to demonstrate the relevance of the additional documents it has requested and, thus, ICANN stands on its objections.</p>

<sup>102</sup> Bylaws, Article I(1)(a)(i) (**RM 2**).

<sup>103</sup> See Annex 25, at Request Nos. 3, 5.

<sup>104</sup> Annex 27, at p. 6.

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
				<p><b>Panel's Ruling:</b></p> <p>As noted by ICANN, documents regarding the overlap (if any) between ICANN's decision to remove the price control provisions and any proposed acquisition should be encompassed by the documents ICANN produced in response to Request No. 1. The ESI search protocol shall be designed to reasonably assure that such documents, if any exist, are within the scope of the search. This request is otherwise denied.</p>
5.c	<p>All communications <u>between ICANN staff and individual ICANN Board members</u> in relation to the acquisition or proposed acquisition of a registry operator for .ORG, .BIZ and/or .INFO, from the date upon which these communications commenced through the</p>	<p>Access to these documents is relevant and material to understand how ICANN's decision to remove the price caps may have been impacted by a party's intended acquisition of a legacy registry operator and to understand whether ICANN has taken sufficient measures to avoid capture by a self-interested party or forces with narrow interests.</p>	<p>ICANN incorporates by reference its objections to Request No. 5 above.</p>	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN stands on its objections.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 3.</p> <p><u>ICANN's Response:</u> Contrary to what Namecheap stated in Annex 25, ICANN <i>did not</i> "agree[]" to the production for those documents between (i) the start of negotiations</p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
	date of ICANN's response to this Request.	<p>Access to these documents is also relevant and material to understand ICANN's views on competitive implications of such acquisitions.</p> <p>The request for these documents is sufficiently clear and reasonable. Indeed, one may expect that ICANN has this information readily available, as it relates to its core obligations towards ICANN's main contracting parties and to ICANN's primary mission to coordinate 'the allocation and assignment of names in the root zone of the Domain Name System'.<sup>105</sup></p>		<p>to the 2019 Registry Agreements for .org, .info and .biz and (ii) 18 November 2019."<sup>106</sup> Instead, ICANN explained that it "will produce documents regarding the transition of the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019, within the parameters set forth in ICANN's Response [to Namecheap's Request for Production]. To the extent that ICANN considered any 'actual or potential changes of control' in reaching the decision to transition the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019, those documents should be encompassed by ICANN's proposed collection."<sup>107</sup> Namecheap has failed to demonstrate the relevance of the additional documents it has requested and, thus, ICANN stands on its objections.</p>

<sup>105</sup> Bylaws, Article I(1)(a)(i) (**RM 2**).

<sup>106</sup> See Annex 25, at Request Nos. 3, 5.

<sup>107</sup> Annex 27, at p. 6.

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
				<p><b><u>Panel's Ruling:</u></b></p> <p>As noted by ICANN, documents regarding the overlap (if any) between ICANN's decision to remove the price control provisions and any proposed acquisition should be encompassed by the documents ICANN produced in response to Request No. 1. The ESI search protocol shall be designed to reasonably assure that such documents, if any exist, are within the scope of the search. This request is otherwise denied.</p>
5.d	<p>All communications <u>between ICANN staff</u> in relation to the acquisition or proposed acquisition of a registry operator for .ORG, .BIZ and/or .INFO, from the date upon which these communications commenced through the date of ICANN's response to this Request.</p>	<p>Access to these documents is relevant and material to understand how ICANN's decision to remove the price caps may have been impacted by a party's intended acquisition of a legacy registry operator and to understand whether ICANN has taken sufficient measures to avoid capture by a self-interested party or forces with narrow interests.</p>	<p>ICANN incorporates by reference its objections to Request No. 5 above.</p>	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN stands on its objections.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 3.</p> <p><u>ICANN's Response:</u> Contrary to what Namecheap stated in Annex 25, ICANN <i>did not</i> "agree[]" to the production for those documents</p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
		<p>Access to these documents is also relevant and material to understand ICANN's views on competitive implications of such acquisitions.</p> <p>The request for these documents is sufficiently clear and reasonable. Indeed, one may expect that ICANN has this information readily available, as it relates to its core obligations towards ICANN's main contracting parties and to ICANN's primary mission to coordinate 'the allocation and assignment of names in the root zone of the Domain Name System'.<sup>108</sup></p>		<p>between (i) the start of negotiations to the 2019 Registry Agreements for .org, .info and .biz and (ii) 18 November 2019."<sup>109</sup> Instead, ICANN explained that it "will produce documents regarding the transition of the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019, within the parameters set forth in ICANN's Response [to Namecheap's Request for Production]. To the extent that ICANN considered any 'actual or potential changes of control' in reaching the decision to transition the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019, those documents should be encompassed by ICANN's proposed collection."<sup>110</sup> Namecheap has failed to demonstrate the relevance of the additional documents it has</p>

<sup>108</sup> Bylaws, Article I(1)(a)(i) (**RM 2**).

<sup>109</sup> See Annex 25, at Request Nos. 3, 5.

<sup>110</sup> Annex 27, at p. 6.

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
				<p>requested and, thus, ICANN stands on its objections.</p> <p><b>Panel's Ruling:</b></p> <p><b>As noted by ICANN, documents regarding the overlap (if any) between ICANN's decision to remove the price control provisions and any proposed acquisition should be encompassed by the documents ICANN produced in response to Request No. 1. The ESI search protocol shall be designed to reasonably assure that such documents, if any exist, are within the scope of the search. This request is otherwise denied.</b></p>
5.e	<p>All communications <u>between ICANN Board members</u> in relation to the acquisition or proposed acquisition of a registry operator for .ORG, .BIZ and/or .INFO, from the date upon which these communications</p>	<p>Access to these documents is relevant and material to understand how ICANN's decision to remove the price caps may have been impacted by a party's intended acquisition of a legacy registry operator and to understand whether ICANN has taken sufficient measures to avoid</p>	<p>ICANN incorporates by reference its objections to Request No. 5 above.</p>	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN stands on its objections.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 3.</p> <p><u>ICANN's Response:</u> Contrary to what Namecheap stated in Annex</p>



#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
	<p>commenced through the date of ICANN's response to this Request.</p>	<p>capture by a self-interested party or forces with narrow interests.</p> <p>Access to these documents is also relevant and material to understand ICANN's views on competitive implications of such acquisitions.</p> <p>The request for these documents is sufficiently clear and reasonable. Indeed, one may expect that ICANN has this information readily available, as it relates to its core obligations towards ICANN's main contracting parties and to ICANN's primary mission to coordinate 'the allocation and assignment of names in the root zone of the Domain Name System'.<sup>111</sup></p>		<p>25, ICANN <i>did not</i> "agree[]" to the production for those documents between (i) the start of negotiations to the 2019 Registry Agreements for .org, .info and .biz and (ii) 18 November 2019."<sup>112</sup> Instead, ICANN explained that it "will produce documents regarding the transition of the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019, within the parameters set forth in ICANN's Response [to Namecheap's Request for Production]. To the extent that ICANN considered any 'actual or potential changes of control' in reaching the decision to transition the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019, those documents should be encompassed by ICANN's proposed collection."<sup>113</sup> Namecheap has failed to demonstrate the relevance of the</p>

<sup>111</sup> Bylaws, Article I(1)(a)(i) (**RM 2**).

<sup>112</sup> See Annex 25, at Request Nos. 3, 5.

<sup>113</sup> Annex 27, at p. 6.

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
				<p>additional documents it has requested and, thus, ICANN stands on its objections.</p> <p><b><u>Panel's Ruling:</u></b></p> <p><b>As noted by ICANN, documents regarding the overlap (if any) between ICANN's decision to remove the price control provisions and any proposed acquisition should be encompassed by the documents ICANN produced in response to Request No. 1. The ESI search protocol shall be designed to reasonably assure that such documents, if any exist, are within the scope of the search. This request is otherwise denied.</b></p>
5.f	<p>All communications <u>between ICANN staff or ICANN Board members and any person or organisation other than ICANN staff or ICANN Board member</u> in relation to the acquisition or proposed</p>	<p>Access to these documents is relevant and material to understand how ICANN's decision to remove the price caps may have been impacted by a party's intended acquisition of a legacy registry operator and to understand whether ICANN has taken sufficient measures to avoid</p>	<p>ICANN incorporates by reference its objections to Request No. 5 above.</p>	<p><b>At issue.</b></p> <p><u>ICANN's Position:</u> ICANN stands on its objections.</p> <p><u>Namecheap's Position:</u> Same as with Request No. 3.</p>

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
	<p>acquisition of a registry operator for .ORG, .BIZ and/or .INFO, from the date upon which these communications commenced through the date of ICANN's response to this Request.</p>	<p>capture by a self-interested party or forces with narrow interests.</p> <p>Access to these documents is also relevant and material to understand ICANN's views on competitive implications of such acquisitions.</p> <p>The request for these documents is sufficiently clear and reasonable. Indeed, one may expect that ICANN has this information readily available, as it relates to its core obligations towards ICANN's main contracting parties and to ICANN's primary mission to coordinate 'the allocation and assignment of names in the root zone of the Domain Name System'.<sup>114</sup></p>		<p><u>ICANN's Response:</u> Contrary to what Namecheap stated in Annex 25, ICANN <i>did not</i> "agree[]" to the production for those documents between (i) the start of negotiations to the 2019 Registry Agreements for .org, .info and .biz and (ii) 18 November 2019."<sup>115</sup> Instead, ICANN explained that it "will produce documents regarding the transition of the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019, within the parameters set forth in ICANN's Response [to Namecheap's Request for Production]. To the extent that ICANN considered any 'actual or potential changes of control' in reaching the decision to transition the .ORG, .BIZ, and .INFO Registry Agreements to the Base Registry Agreement in June 2019, those documents should be encompassed</p>

<sup>114</sup> Bylaws, Article I(1)(a)(i) (**RM 2**).

<sup>115</sup> See Annex 25, at Request Nos. 3, 5.

#	Documents or Category of Documents Requested	Namecheap's Position Regarding Relevance and Materiality to the Dispute	ICANN's Responses and Objections (Pre-Meet-and-Confer)	Status/Panel Ruling
				<p>by ICANN's proposed collection."<sup>116</sup> Namecheap has failed to demonstrate the relevance of the additional documents it has requested and, thus, ICANN stands on its objections.</p> <p><b><u>Panel's Ruling:</u></b></p> <p><b>As noted by ICANN, documents regarding the overlap (if any) between ICANN's decision to remove the price control provisions and any proposed acquisition should be encompassed by the documents ICANN produced in response to Request No. 1. The ESI search protocol shall be designed to reasonably assure that such documents, if any exist, are within the scope of the search. This request is otherwise denied.</b></p>

---

<sup>116</sup> Annex 27, at p. 6.