



April 28, 2017

VIA EMAIL TO ICANN BOARD OF DIRECTORS

Internet Corporation for Assigned Names and Numbers (“ICANN”)
Attn: Dr. Stephen Crocker, Chairman, and ICANN Board of Directors
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Re: CPE Audit (ICANN Board Resolution 2016.09.17.01) and Dot Registry LLC v. ICANN IRP International Centre for Dispute Resolution Panel (“ICDR”) Panel Declaration of 29 July 2016 (ICDR Case No. 01-14-0001-5004)

Dear Dr. Crocker and ICANN Board of Directors,

On September 17, 2016, the ICANN Board passed Resolution 2016.09.17.01¹ which directed ICANN’s CEO, Göran Marby, or his designee(s), to undertake an independent review of the process by which ICANN staff interacted with the Community Priority Evaluation (“CPE”) provider, both generally and specifically with respect to the CPE reports issued by the CPE Provider (the Economist Intelligence Unit or “EIU”). It is Dot Registry LLC (“Dot Registry”) understanding that their community applications for .INC, .LLC, and .LLP were to be included in this CPE audit review, among other applications.

During the Community Forum on Thursday, March 16, 2017, at the ICANN 58 meeting in Copenhagen, Denmark, there were several exchanges between the ICANN Board and stakeholders related to the Community Priority Evaluation (“CPE”) Audit and Dot Registry, as follows:

²**BECKY BURR:** Mr. Palage.

MICHAEL PALAGE: Thank you, Ms. Burr. Mike Palage, Pharos Global. My question is to the board. On September 17th, 2016, you passed a board resolution which directed the president and CEO to undertake an independent review of the process by which staff interacted with the CPE providers. Can you provide any update on the status of that independent review?

BECKY BURR: Chris?

CHRIS DISSPAIN: Thank you. Hi, Mike. Yes. It's ongoing. They are -- the independent people are -- have been in the -- have visited the offices and are working through what needs to be worked through. I can't give you a time because I don't know, but I'm told it's not that long before it's going to be -- it's going to come back to us, having been completed. So it is underway.

MICHAEL PALAGE: What is the exact -- could you provide what the scope of the review was and who oversaw that?

¹ <https://www.icann.org/resources/board-material/resolutions-2016-09-17-en>

² Page 9 – 15 of transcript, ICANN 58 Copenhagen, Community Forum, March 16, 2017. <https://schedule.icann.org/event/9oMw/public-forum-2>



CHRIS DISSPAIN: It would probably be best if that was done by -- by Goran or John. Whoever. Goran, probably.

GORAN MARBY: J.J.?

CHRIS DISSPAIN: Okay. Apparently J.J., so thanks.

JOHN JEFFREY: This is John Jeffrey. I'm way back at the secretary's table behind the camera man. The scope of the review is consistent with the board's suggestion in the resolution that it be a review of the community priority evaluations, and so they're looking at both staff involvement that came from the IRP question and looking -- because there were other complaints from reconsideration requests, we're looking more deeply at all of the community evaluations. So we instructed the firm that is conducting the investigation to look thoroughly at the involvement of staff with the outside evaluators and outside evaluators' approach to it, and they're digging in very deeply and, as you can imagine, trying to understand the complex process of the new gTLD program and the community priority evaluation process.

MICHAEL PALAGE: So thank you. So just to clarify, it is broader than the resolution because the original resolution was just interaction between staff and CPE providers? You're suggesting that there's a broader scope?

JOHN JEFFREY: Yes. I think that when the Board Governance Committee and the board's discussions on it occurred, the request was that there be a full look at the community priority evaluation, as opposed to just a very limited approach of how staff was involved.

MICHAEL PALAGE: And since I have 45 seconds left, just a quick follow-up. Perhaps, John, you could answer this as well. Has this review impacted any of the applicants? Has the ICANN taken any action?

JOHN JEFFREY: We've certainly heard from a number of the applicants that they're unhappy with the delay, and so with some of the reconsideration requests -- and I don't have them at the top of my head, but a few of the reconsideration requests have also been delayed in light of that evaluation.

MICHAEL PALAGE: So with 10 -- 15 seconds left, question to Becky from a governance standpoint. I guess my concern here is the bylaws provide some specific guidelines on when reconsideration requests, independent reviews, need to be processed, and I guess I just have a governance concern -- [Timer sounds] -- that a board resolution on an independent evaluation would somehow stay or impact other time lines set forth in the bylaws, so --

CHRIS DISSPAIN: Mike --

MICHAEL PALAGE: -- just a point.

CHRIS DISSPAIN: Mike, just stay there. It's Chris. Yes, I understand. I was actually -- I have -- we have actually drafted a blog about this but it -- I think it's all got caught up in the rush of an ICANN meeting but I had hoped to get it out before we started. There are a number of reconsideration requests, et cetera, that have been delayed and are, in essence, outside of our time frame, but I think our time frame is described as, you know, where -- "unless necessary," and I think the board's strong view is that any of the reconsideration requests or IRP results that could -- that could -- where there might be an impact from the results of the independent review should await the results of that before making a decision. So we've taken that view. I accept that it's inconvenient, but I think it's the right way forward.

MICHAEL PALAGE: Thank you. The only thing I would have to say is: If you could just communicate, that would help.

CHRIS DISSPAIN: I agree. And hopefully we'll get the blog out shortly.

³**REMOTE INTERVENTION:** We have a query from Desiree Boxberger with gTLD Help, LLC.
"The .REGISTRY LLC versus ICANN IRP declaration was issued July 29, 2016. ICANN has passed five board resolutions without any further action since the IRP declaration. When will the Board address the harms caused to



.REGISTRY, LLC, relating to the .INC, .LLC, and .LLP community applications? Why such a long delay, eight months, in addressing this matter? And do you intend to take any further actions in this matter? Thank you."

RINALIA ABDUL RAHIM: Thank you. This one goes to the chair of the Board Governance Committee, Chris Disspain.

CHRIS DISSPAIN: That will be me again. Thank you very much for the question. I don't know if you were listening earlier when we talked about the current independent review in respect to various aspects of the panel decisions. But this particular matter in respect to these strings is caught up in that and delayed because of that. There are a number of strings that either have reconsideration requests pending or decisions following IRP recommendations pending. And the BGC and the Board has decided that it would be not appropriate to deal with those particular reconsideration requests or IRP recommendations until such time as the independent review has been completed. That review is under way. It has been happening for a little while. We don't have an actual date for completion yet. As soon as it's completed, we will consider the findings. And we will then get on with dealing with the outstanding reconsideration requests and IRP recommendations. Thanks.

RINALIA ABDUL RAHIM: Thank you, Chris.

To date, Dot Registry has not been contacted by anyone regarding this CPE audit. As such, Dot Registry seeks the following clarification from the ICANN Board:

- (1) What is the name of the auditor or audit firm performing the CPE audit;
- (2) What is the auditor's scope of CPE audit;
- (3) Is the CPE audit scope and findings "independent" of ICANN Board, staff, and EIU influence;
- (4) What is the auditor's due date for the CPE audit findings;
- (5) Will all CPE applicants included in the audit be interviewed as part of the CPE audit (*As assured to me by a Board member, if an applicant is not contacted by the CPE auditor then the CPE audit cannot be assured to be unbiased and "independent" of ICANN*);
- (6) Which CPE applications were included within the scope of the CPE audit;
- (7) Is ICANN going to post a blog about the CPE audit on www.icann.org;
- (8) Will ICANN publish the final CPE audit report (in whole) to meet transparency obligations?

Consistent with ICANN's transparency obligations under its Bylaws, Dot Registry requests ICANN and its auditor to provide any and all such information referencing or relating to Dot Registry's community applications for .INC, .LLC, and/or .LLP contained in the CPE audit.

In addition, Dot Registry seeks to understand the timeline on when ICANN will reach a final decision in the *Dot Registry LLC v. ICANN* Independent Review Process ("IRP") matter⁴, as well. Dot Registry reminds the ICANN Board that the AGB vests full power and authority in the ICANN Board to deviate from provisions within the AGB, under exceptional circumstances, granted by stakeholders. The *Dot Registry LLC v. ICANN* IRP Declaration is an exceptional circumstance, as an accountability mechanism, which warrants an exception by the ICANN Board. Under the AGB Section 5.1, it states:

"ICANN's Board of Directors has ultimate responsibility for the New gTLD Program. The Board reserves the right to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community. Under exceptional

⁴ <https://www.icann.org/resources/pages/dot-registry-v-icann-2014-09-25-en>



*circumstances, the Board may individually consider a gTLD application. For example, the Board might individually consider an application as a result of GAC Advice on New gTLDs or of the use of an ICANN accountability mechanism.*⁵”

In closing, ICANN has had ten (10) months since the *Dot Registry LLC v. ICANN* IRP Declaration to address and provide a meaningful remedy for the harms Dot Registry has suffered at the hands of the ICANN Board, ICANN Staff, and the EIU in the handling and treatment of Dot Registry’s community applications for .INC, .LLC, and .LLP. ICANN has managed to pass five (5) fruitless Board resolutions without further action (including a “smoke and mirrors” CPE audit process that has gone on for seven months without an end date in sight), ignored key policy provisions in the AGB that allow the Board to apply a remedy, and caused undue delay after undue delay. ICANN’s actions and inactions are not indicative, represent, or amount to anything close to representing good faith and fair dealings in the handling, treatment, and timeliness of bringing closure to this matter.

Dot Registry reserves any and all of its rights at law or in equity before any court, tribunal, or forum of competent jurisdictions to seek satisfaction for the harms ICANN and has inflicted upon Dot Registry.

DOT REGISTRY LLC

Sincerely,

A handwritten signature in black ink, appearing to read "S. Jolles".

Shaul Jolles
CEO

⁵ ICANN’s Applicant Guidebook, Section 5.1, <https://newgtlds.icann.org/en/applicants/agb>