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Via email: jlevee@jonesday.com
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Mr. Jeffrey A. LeVee
Mr. Eric P. Enson
Jones Day
555 South Flower Street, 50th Floor
Los Angeles, CA 90071-2300

Re: Altanovo's Letter dated February 11, 2022 and ICANN Board Resolutions 2022.01.16.12 - 2022.01.16.15

Dear Messrs. LeVee and Enson:

This letter is submitted on behalf of Nu Dotco, LLC (“NDC”), Awardee of the new .WEB gTLD, and VeriSign, Inc. (“Verisign”) with regard to the .WEB Independent Review Proceeding (“IRP”) initiated by Afilias Domains No. 3 Ltd., now named Altanovo, and the latter’s February 11, 2022 letter to the ICANN Board (“February 11 Letter”). NDC and Verisign address this letter to ICANN’s outside counsel in accordance with Mr. Enson’s February 18, 2022 email to Altanovo requesting that correspondence in this matter not be sent directly to ICANN. But NDC and Verisign request, in the interest of fairness and to counter repeated false and misleading statements by Altanovo, that this letter be made available to ICANN’s Board and the BAMC to the same extent as Altanovo’s correspondence. NDC and Verisign also request that ICANN’s Board and the BAMC be notified of Altanovo’s wrongful disclosure of confidential and trade secret information to them, as described below, and that appropriate precautions be taken to protect the information, including from any further disclosure.

By its Resolution (2022.01.16.15), “the Board asks the Board Accountability Mechanisms Committee (BAMC) to review, consider, and evaluate the IRP Panel’s Final Declaration and recommendation, and to provide the Board with its findings to consider and act upon before the organization takes any further action toward the processing of the .WEB application(s).” The Board directed the BAMC to undertake a thorough consideration of next steps in recognition of the importance of further proceedings on the Panel Order and as “within ICANN’s Mission and ... in the public interest.”

Altanovo’s letter is incompatible with the ICANN Board’s delegation to the BAMC of the task of fairly considering the IRP Panel’s Final Decision and making appropriate recommendations to the Board. Altanovo’s February 11 Letter expressly and preemptively attacks the integrity of the ICANN Board, BAMC, staff and counsel, in addition to NDC and Verisign, in an effort to undermine further proceedings by the Board and the BAMC. Fairly read, Altanovo’s February 11 Letter is plainly intended to prejudice the BAMC’s consideration of the issues delegated to it. It also is designed to intimidate the ICANN Board from ultimately rejecting Altanovo’s objections to the delegation of .WEB to NDC, containing, as it does, an explicit threat by Altanovo to commence yet another IRP against ICANN with respect to .WEB if

Mr. Jeffrey A. LeVee
Mr. Eric P. Enson
February 23, 2022
Page 2

decisions do not go its way. The thinly veiled message of Altanovo's letter: decide for us or face additional years of IRP's and other proceedings designed to delay the introduction of .WEB, which Altanovo has already delayed by almost 6 years. It is thus important to the parties to this proceeding, and to the ICANN community at large, that Altanovo's strategy be rejected and the proper process of the Board and BAMC, as set forth in the above-referenced Resolutions, move forward in a fair and orderly manner.

Independently, NDC and Verisign object to the February 11 Letter because it is replete with false statements regarding both ICANN's processes and conduct and the testimony and evidentiary record in the IRP; and because the letter wrongfully discloses confidential and trade secret information, in violation of the express provisions of a Protective Order, as explained in more detail below.

For all of the foregoing reasons, NDC and Verisign request that the February 11 Letter should be disregarded for all purposes and precautions taken so that its confidentiality is preserved.

I. Altanovo's Letter Improperly Contends that the Board is Guilty of "Misstatements to the Internet Community" and "Pre-Judging" the Issues -- Thereby Attempting to Prejudice the Community Against Further Proceedings of the BAMC and the Board

Rather than wait for or respect the BAMC's adoption of a fair process for considering these important issues as provided for in the Board's Resolution (2022.01.16.15), Altanovo seeks to preempt the BAMC's process by attacking ICANN, the Board, the BAMC, NDC and Verisign. Altanovo's unbridled and misleading attack spares no one. The pretext for its Letter, and its threats and demands, is a strained interpretation of a parenthetical reference in the Resolution to the Domain Acquisition Agreement between NDC and Verisign ("DAA"), a reference obviously not meant by the Board (as Altanovo contends) to "prejudge" the issues. Indeed, the Board specifically delegated to the BAMC the task of evaluating the IRP Panel's determinations and recommendations.

Nonetheless, predicated solely on its misrepresentation of the Board Resolutions and the IRP record, Altanovo attacks the integrity of ICANN and its Board, staff, and lawyers, as well as the BAMC process itself. For example, the February 11 Letter accuses the Board of making a "critical misstatement" and having "effectively pre-judged" the issues, questions whether the Board or BAMC "will be able properly to consider and evaluate the IRP Panel's Final Decision" or otherwise act with "impartiality and independence," and claims that the Board has "misstated to the Internet Community" the facts and, in so doing, has exacerbated "the inherent unfairness" already created by ICANN, including ICANN's supposed "blatant lack of evenhandedness."¹

¹ Altanovo further attempts to affect the internal processes of the BAMC by gratuitously objecting to the "involvement of *any member of ICANN's Staff, in-house counsel or outside counsel* in the independent assessment that the BAMC and Board must undertake pursuant to the IRP Panel's Final Decision." It also threatens ICANN with endless proceedings and their attendant expense by signaling, even prior to the beginning of the BAMC's consideration, that it intends to file another IRP in any event to further delay the launch of .WEB.

Mr. Jeffrey A. LeVee
Mr. Eric P. Enson
February 23, 2022
Page 3

Altanovo's attack on the very role of ICANN and its accountability mechanisms is an apparent attempt to cause the Board to overcompensate in favor of Altanovo and refuse to make a decision that would reject Altanovo's attempts to unwind the .WEB auction award or otherwise proceed with the delegation of .WEB to NDC. In so doing, Altanovo attempts to seed the record with misstatements to support future attacks on ICANN, as its letter openly threatens (fn. 1).

NDC and Verisign strongly object to Altanovo's improper efforts to prejudice the BAMC process and the Internet community against ICANN, NDC, and Verisign. Although we reserve a detailed response to the false assertions in the February 11 Letter pending further proceedings by the BAMC, the immediate point is that the BAMC must be allowed to establish and follow its process without unsolicited and incendiary rhetoric from Altanovo. If the BAMC's process includes submissions from the interested parties, as we anticipate, Altanovo, NDC, and Verisign will all have the opportunity to advocate in an orderly and judicious manner.

II. NDC and Verisign Object to the Publication of Altanovo's Letter -- Including Because It Contains Confidential and Trade Secret Information of NDC and Verisign

Altanovo compounds the impropriety of its submission by asking ICANN to publish its letter to the Internet community and thereby publicly disclose confidential and trade secret information of NDC and Verisign. NDC and Verisign request that ICANN reject Altanovo's request for the following reasons: (1) the letter is not publishable under ICANN's Document Information Disclosure Policy ("DIDP"), (2) the letter is a clear attempt to bias public opinion even before consideration of the Final Decision by the Board and BAMC has begun, and (3) critically, the information in the letter, as well as the Annex, is confidential and subject to a Protective Order entered by the IRP Panel and enforceable in a court of law. Altanovo stipulated to this order, which makes its failure even to advise the ICANN Board of these facts and its request that the letter be published all the more egregious.

First, under ICANN's established processes, correspondence from third parties such as Altanovo should not be published if the correspondence meets any of the "Other Defined Conditions for Nondisclosure" the DIDP. The February 11 Letter meets several of these and related conditions:

- Under the DIDP, it is well established that ICANN will not publish either confidential information of a party or information that "would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates." See <https://www.icann.org/resources/pages/didp-2012-02-25-en>. Altanovo's letter is an obvious attempt to do just that, as it makes repeated misrepresentations regarding ICANN, NDC and Verisign.
- ICANN's Correspondence Handbook additionally provides that ICANN can choose not to publish correspondence that is not "within scope," See Handbook, Section 2 (<https://www.icann.org/en/system/files/files/icann-correspondence-process-handbook->

Mr. Jeffrey A. LeVee
Mr. Eric P. Enson
February 23, 2022
Page 4

[06mar18-en.pdf](#)). Altanovo's letter is "out of scope" under the DIDP, as it relates to a defined ICANN process (Board consideration of an IRP decision) and is part of that record and limited by that record. It should not separately be published here.

Second, the February 11 Letter is an explicit attack on the integrity of the Board and BAMC processes and seeks to bias the Internet community's perception of further ICANN proceedings in a manner prejudicial to ICANN, NDC and Verisign. The letter expressly and falsely attacks ICANN as having made misrepresentations to the community, having prejudged issues, and as lacking impartiality.² Similarly, Altanovo's letter falsely asserts that NDC admitted to lying to conceal the existence of the DAA. There is no place for such misstatements in this discourse. If Altanovo wishes to tell lies and pollute the public consciousness with its misrepresentations, it must do so at its own risk without using and sheltering behind ICANN's publication mechanisms.

Third, the February 11 Letter constitutes an improper disclosure of NDC and Verisign's Confidential Information, including information protected under the Protective Order entered in the IRP. In particular, information regarding the DAA disclosed in Altanovo's letter was clearly designated "*Highly Confidential -- For Attorneys Eyes Only*" under the Protective Order (Sections 6.2, 6.3). Nonetheless, Altanovo discloses and urges further publication of information regarding the DAA, including making factual assertions and repeated arguments regarding the meaning of the DAA, disclosing the substance of the agreement in the process.³ (*See, e.g.*, p. 3, second full paragraph). Further, Annex A to Altanovo's

² Altanovo also falsely asserts that Verisign has secret access to ICANN denied to Altanovo. Altanovo bases the latter on a selective quote from an earnings call in which Verisign's CEO stated that the company would continue "monitoring [ICANN's] process." (Letter at p. 8.) Altanovo attempts to mislead the ICANN Board by failing to quote the answer to a follow-up question as to how Verisign would "monitor" ICANN's process -- in response to that question, Verisign's CEO explicitly states that Verisign would be reviewing "publicly available information. So what we'll be monitoring, you can certainly monitor yourself on ICANN's website as the Board proceeds." Similarly, on February 18, **2022**, Altanovo sent a second letter quoting a Verisign public filing from February 19, **2021** as a pretext to demand yet more information about .WEB's purported "award to Verisign" outside of the proper channels. Altanovo's February 18, 2022 letter adds to Altanovo's prior accusations of a secret agreement between ICANN and Verisign with regard to .WEB, in furtherance of its efforts to undermine and preempt the BAMC's processes. The reference in the **2021** filing was part of a standard litigation risk assessment of claims against the company. No honest reading of the statement in the litigation risk assessment would interpret it as saying that .WEB had been awarded to Verisign. Indeed, had Altanovo acted in good faith and read Verisign's February 18, 2022, 10-K -- filed the same day Altanovo sent its second, incendiary letter -- it would have seen that the risk factor for Verisign was removed, as the IRP was decided. Altanovo's assertion in its February 18 letter is yet another complete fabrication as part of its ongoing effort to falsify a record for further attacks on ICANN and Verisign.

³ Section 2 of the Protective Order provides: "The protections conferred by this Order cover not only Protected Material (as defined above) but also (1) any information copied or extracted from Protected

Mr. Jeffrey A. LeVee
Mr. Eric P. Enson
February 23, 2022
Page 5

letter quotes extensively from the DAA, also an unauthorized disclosure of information designated “Highly Confidential -- Attorneys-Eyes Only” under the Protective Order.⁴ That unauthorized and improper disclosure must not be exacerbated by the general publication of the February 11 Letter.

* * *

For these reasons, NDC and Verisign respectfully request that (i) ICANN disregard for all purposes Altanovo’s February 11 Letter and (ii) refrain from publishing the letter on its website as requested by Altanovo or further disclosing NDC and Verisign’s confidential information. NDC and Verisign reserve the right to address the substance of the February 11 Letter pending advice by the BAMC.

Sincerely,



Steven A. Marenberg
of PAUL HASTINGS LLP

SAM:kbj

cc: Arif Hyder Ali (by email: arif.ali@dechert.com)
Alexandre de Gramont (by email: alex.degramont@dechert.com)
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Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that reveal Protected Material.”

⁴ Under the Protective Order, ICANN’s Board is not an authorized recipient of Highly Confidential material. Section 6.3 of the Protective Order provides that disclosure of Highly Confidential Information may only be made to outside counsel, experts, the IRP Panel, or authors or recipients of the designated material. The ICANN Board obviously does not fall within any of these categories, notwithstanding Altanovo’s unilateral decision to disclose the information to the Board. We wish to be clear, however, that neither NDC nor Verisign object to the disclosure of the DAA to the ICANN Board or the BAMC (a) by ICANN’s counsel, (b) with advice to the Board of the confidentiality of the information, and (c) with proper protections in place. But we do object to the unilateral disclosure of our proprietary information by Altanovo and its counsel in violation of the Protective Order and our rights.