

nameshop

Dear Christine Willett,

Thank you for your letter dated June 14, 2019. While your letter presents a case that .Internet should not be delegated, that case cannot stand due to inaccuracies and omissions regarding several factors and details.

First, you mistakenly do not clearly state that the delegation of .Internet is at issue.

Nameshop submitted the Change Request to change the string from .IDN to .Internet on September 30, 2012. In its response, ICANN ruled that the string .IDN will be not be considered and assured that the request to change the applied-for TLD (to .Internet) would be reviewed carefully. Since September 30, 2012, the string in the process is .Internet and not .IDN. By ICANN starting a Change Request Process, that process legally became a part of the gTLD process and of the Nameshop application.

During meetings and in the Nameshop letter of July 31, 2017, Nameshop pointed out:

While the string .Internet has been revealed and known to the members of the ICANN Community as applied for, this information is hidden from the view of the larger public due to the ICANN's insistence of the ICANN's to refer to the Nameshop application as being for .IDN. Furthermore, the string in question is misleadingly shown as .IDN on the ICANN website.

Nameshop requested that ICANN correct the public record and caption ICANN's responses as communications on .Internet and to also make the necessary changes on the ICANN website so as to correct the error.

Even if these omissions were unintentional, they nevertheless resulted in obstructions. In your letter of June 14, 2019, ICANN is persistent on this obstruction by making an inappropriate, unfair and supercilious assertion that "Nameshop's application was and has always been for .IDN, not .INTERNET". This is misleading and suppresses the stature of Nameshop as the only applicant for the string .Internet in this round.

ICANN contends that it followed the due process, but following "a process" for the sake of

documentation does not mean that “due process” was accorded. Where you state there was, “careful review of the application,” that review was to ensure processes were followed but there was no review of substance. This is made clear in the various reports ICANN submitted where the reviewing parties did not perform a substantive review.

Despite the fact that the evaluation had several process gaps, ICANN staff, Executive and Board repeatedly stated that there is, “no appeals mechanism” or “no appeals process” except the bylaw mandatory reconsideration process. When engaged, that same Reconsideration Process also made the same observation -- that there was no appeal / review process available. Put another way, the Reconsideration Processes and the Ombudsman process are severely limited by design and severely limited in independence. As observed by the Board Governance Committee, “the reconsideration process does not allow for a full-scale review of a new gTLD application.” All of this amounts to a process without accountability.

ICANN recommends we consider applying in a subsequent round for .INTERNET,” The suggestion of a “subsequent round”, on the grounds of process limitations resulting from ICANN’s own evaluation unfairness, ICANN’s own process gaps and reconsideration bottlenecks is most unfair. ICANN’s non-substantive responses over 7 years obstructs and jeopardizes the uncontended application for .Internet to an indefinite future round, which is not a timely solution after all these delays. It is not fair to expect Nameshop to withdraw or seek a refund.

ICANN continues to be discriminatory on the Nameshop string change request, and lacks transparency by omitting the many factors that support the delegation of .Internet to Nameshop, and by omitting factors of gaps encompassing the application, evaluation and review processes. The links to documents shown in your letter are selective, and omits the various communication that outlined the gaps in the process. Your version of summary shows an arbitrary refusal to move forward in the 2012 round of the New gTLD Program, unfairly, without tenable reasons.

Nameshop has repeatedly pointed out that ICANN’s responses were “*not satisfactory in form and substance*” - the meetings did not address the issues, the responses were evasive on process and evaluation gaps and conveniently left several of our questions unanswered. I as an applicant have addressed multiple communication, some of which were acknowledged as received, some partially responded to, and on occasions when ICANN responded, the response did not address any of the concerns/questions that were uncomfortable for ICANN to address and answer. It was also not right to have remarked that “the message being received is not what the person wants to hear”. In truth, when there were partial responses, the messages received, were evasive on the core issues, self-contradictory, mixed and grossly unfair. If a process is seen on record to have been followed, it is only made to appear as followed or recorded as followed for the sake of documentation. There are several instances of this in the treatment of the Nameshop application.

We give below a fair summary, based on documents available with us. Please note that a substantial portion of the record of communication exchanged through cases in the new gTLD support portal and the comments submitted on the cases are not accessible for a more detailed summary of issues:

Gaps in the Applicant Guide Book led to errors even by large Applicants:

The Application Guide Book (AGB) had a section on "Reserved Names and other unavailable strings" and a separate section describing rules associated with Geographic names stated that two-character country codes (e.g., .in) were unavailable, but did not mention three-character country codes. But under a section titled "**Geographic Names Review**" easily mistaken as pertinent only for applications for geographic names, it was indicated that three-character country codes "will not be allowed." Other large applicants, including Google and Donuts (who filed 300 applications) also made the same error. While Google and Donuts were damaged minimally or not at all, the damage to Nameshop, caused by the confusing directions, was total.

Should there be NO remedy for harm suffered by confusing direction, especially when that confusion reasonably led to error as demonstrated by multiple, competent applicants?

The error of choice of alpha3 country code (.IDN) were exacerbated because of an untimely process:

1. The online application process did not have an automated system of returning an error, which ought to have been a process for limiting disallowed strings (as they were on published lists).
2. ICANN, with manual attention reconfirmed that the string applied for was .IDN, and even then did not notice that it was disallowed string.
3. For about 4 months, the application for .IDN went through the initial steps of processing without attention to the string being an alpha3 country code. During the time that elapsed, other applicants applied to have their top-level domain name "string" changed but Nameshop missed this window when other requests were being processed.

On July 18, 2012 Nameshop, by email, requested to be allowed "to change the string to another string of three or more ASCII characters that is not reserved, not a country or territory name, uncontentious but represents the purpose of this TLD"

The Change Request to .Internet was by ICANN's own definition, within the scope of the Change Process and in conformity with the criteria :

The "Change Request process" by which applicants could amend their applications was announced during September 2012. The process did NOT prohibit change of strings. In fact, the Change Request Process did NOT limit or prohibit ANY type of change to a new gTLD application; it is likely that many Applicants sought change of company name, location, change in business plans, change in ownership patterns, which might have legally amounted to changing the essential nature of application.

On 30th September 2012, Nameshop applied to change the string to .Internet (and filed it with significant Public Interest Commitments)

During November 1, 2012, ICANN wrote to Nameshop to say that .IDN will not be allowed, but the Change Request (to .Internet) would be evaluated as per the process criteria.

On February 19, 2013 ICANN denied the Change Request without describing the review criteria or assigning reasons.

On Feb 20, 2013 Nameshop wrote to say that it would appeal, and on Feb 27, 2013 wrote to the new gTLD program Committee, Board and CEO to say the change request is in order, and the requested new string .Internet, which suits the mission of connecting Internationalized Domain Name users to the Global Internet space, in contribution to the community's efforts to keep the Internet as One Internet. The changed string is not reserved, not a country or territory name, uncontentious, represents the purpose of this TLD. The string .Internet fully qualifies to be approved as the new string, the same as other change requests that were approved.

During 2012-2019, the applicant attended every ICANN meeting to follow up on the issues; several email messages and letters were sent to ICANN throughout this period; Nameshop met with new gTLD and ICANN Staff over the period, went through the review process, albeit with demonstrated reluctance on the part of ICANN to be fair. This is as shown in the timeline on the Nameshop website <https://nameshop.in/progress>

ICANN provided mixed messages to the Nameshop questions as to the reasons why the Nameshop change request was denied while others were approved (with discriminatory and unfair results). ICANN first stated that string changes were not permitted (though the Change Request process did not specify such a limitation); then ICANN said some string changes were approved but those string changes were minor; now by your letter of June 14, 2019 states that "such changes [as .IDN to .Internet] are "simply not permitted," which is in fact an Ex-Post facto rule, a rule that was not there in the change request process. There was no rule related to

“types” of string changes in the Change Request process.

Applicant Support Decision:

Nameshop was one of three applicants for financial assistance. In this case, “financial assistance” would result in a significant reduction in ICANN’s \$185,000 application fee.

Only one of the three applicants was awarded this reduction. As it turns out, the party receiving the award already operates a successful domain name registry generating significant revenue, indicating that only well-funded, sophisticated applicants that were already part of the domain name industry had the wherewithal to “pass” the illusory test

Nameshop received no explanatory notes for being rejected for financial aid - just as that the application was turned down. There was no substantive response to questions on why Nameshop’s application was declined. This unexplained unfairness weakened the status of the Nameshop application, and allowed room for ICANN to push the string .Internet out of this round, due to a harsh and arbitrary rule in the so-called “Applicant Support Program,” that stated that “applicants who do not meet the threshold criteria for financial assistance will be excluded from further participation in this round of the new gTLD program” . (In effect, the timing and the unfair denial of Applicant Support amplified the harm done by the Change Request refusal, and compounded the threat to the status of the Nameshop application for the gTLD .Internet.)

The financial aid process excluded those that the process was intended to help: the applicant looking to deliver new internet possibilities to developing regions.

Appeals and Review:

ICANN maintained that there are no “appeals process” in the new gTLD program, declined to pay Executive attention to review the decisions, but directed the applicant to Board Reconsideration process first, and on the suggestion by a Board Member that the Ombudsman process was more appropriate, Nameshop approached the Ombudsman who in turn had expressed doubts concerning his jurisdiction but allowed the representation for a quick response. ICANN, by its own admission and actions, made it clear that its review processes were inadequate, as described below.

Board Reconsideration Process did not review substance in any way:

The Reconsideration Process is a process of the Board Governance Committee (BCG) reviewing requests for reconsideration of the decisions (actions) and inactions of the Board and

Executive for compliance with existing policy. In our case, Board Reconsideration Process refused to consider, on artificial procedural nuances, the Nameshop request for Reconsideration of the Change Request and Applicant Support decisions and the inactions on appeals, rather than substantive analysis.

This is not surprising as Reconsideration is not designed to be a critical review. The Reconsideration process is a Board Governance Committee, peer review process. Due to the 'peer' review nature of the process, Reconsideration is an internal process, or almost a self-evaluation process. The BGC ought to have an unrestrained scope and a total willingness to correct a wrong decision / inaction by all available means. This is not how the Reconsideration process is designed (or this is not how the design of the reconsideration process was interpreted by the BCG).

The Reconsideration did not examine the issues elaborately listed with proper grounds, superficially stating that "Nameshop had not stated proper grounds". The Board Governance Committee Chair observed that the "reconsideration process does not actually allow for a full-scale review of a new gTLD application"

Ombudsman Process was defensive of ICANN's actions:

The Ombudsman was approached on May 07, 2013 based on the recommendation by the Board Governance Committee Chair: "The ICANN Ombudsman has a broader remit, to provide an evaluation of complaints that the ICANN Board, staff or a constituent body has treated the complainant unfairly"

The appeal to the Ombudsman focused on the discriminatory, unsubstantiated and arbitrary denial by ICANN of the Nameshop's Change Request to .Internet, the denial of Applicant Support, and the subsequent denial of due process; the gaps in the Reconsideration process were also raised as issues. Contrary to the observation of the BCG that "the ICANN Ombudsman has a broader remit", the Ombudsman was concerned that his office might not have jurisdiction over the matter, and observed midway into the process that, "my powers are in fact not strictly available where reconsideration has been sought." It was not a surprise then that the Decision of the Ombudsman stated that, just like the ICANN Board, the Ombudsman's jurisdiction is limited and that the role of the Ombudsman is "not to review the reasons [for the arbitrary and discriminatory decisions] but only to see if the process for reaching those reasons was conducted fairly" and, "it is not part of the Ombudsman's role to act as an appellate body, but only to assess the fairness of the process." This echoes the objectionable position taken by the Board Governance Committee that it would not look into the substance of the issue, but would attend to the request only if there is a violation of the process.

The Ombudsman process is defined as an independent process but the independence of the Ombudsman appears to be incomplete. The Ombudsman is to investigate complaints against ICANN at any level, but the office of the Ombudsman is restrained and contained as to obviate any real review.

Your letter states that Nameshop has had access to and used ICANN review process but where is the fair “review” when both processes refuse to examine the substantive issues? In effect there has been no review.

Cooperative Engagement Process:

The summary of CEP as provided in your letter of June 14, 2019 is not accurate. On July 15, 2015, Nameshop issued the written notice as required to invoke the Cooperative Engagement process. Despite the fact that there was never a resolution or conclusion, ICANN moved to unilaterally conclude the CEP, which Nameshop objected.

Nameshop objected to this obstructive action by email e.g. on June 7, 2016 with copies to Akram Atallah, John Jeffrey, Steve Crocker, Christine Willett and Amy Stathos. This letter objected to your email message of May 19 2016 and the hasty manner in which you arbitrarily sought to close the CEP on .Internet. Without any response for two weeks, you sent us an email message on June 4 stating that "this CEP is concluded effective 20 May 2016", which amounts to a predated and arbitrary closure of the CEP. Also, Your email message of June 4, Saturday, stipulated time until 13 June 2016 to file an independent review, which severely limited the time available to do so effectively to five working days. These actions amounted to an attempt to resolve the issue to ICANN's advantage by causing us undue duress.

How is it fair to require Nameshop to make a decision to undertake an IRP in five days? A typical IRP costs \$300,000-\$500,000 or much more and Nameshop was an applicant seeking financial assistance for the \$185,000 application process. Realistically, this is not a review due to many in the ICANN community.

Nameshop filed a second case with the Ombudsman on the matter related to this duress during CEP, the details of which are provided in the addendum on CEP.

Over and above unilaterally and arbitrarily seeking to conclude the CEP on .Internet on a retrospective date, ICANN sought to stymie further negotiation, dialogue or remedies by stipulating that Nameshop had five working days to file an Independent Review petition. As asserted earlier, IRP deadlines are matters for the IRP panel to decide, and that it is inappropriate for ICANN to block Nameshop from seeking a remedy from the Independent

Review Process.

Despite these setbacks, the meetings continued between ICANN and Nameshop during ICANN meetings 56-63 (2016-2019), at Helsinki, Hyderabad, Copenhagen, Johannesburg, Abu Dhabi, San Juan, Panama, and Barcelona. Five of the more recent meetings included ICANN Community participants as neutral observers. A meeting was requested in Kobe as ICANN felt that it could not arrange a meeting at a short notice of 3-4 days. Nameshop did not insist further for a meeting in Kobe, but requested for a meeting at Marrakesh in effect giving ICANN a 3-month advance information to arrange a meeting, but ICANN wrote back to decline the meeting.

Nameshop sent further communications to Board, CEO and the new gTLD staff and also met with the new gTLD staff together with a few Community participants as neutral observers. ICANN's response to the email and in the meeting did not address the gaps in the evaluation and reconsideration processes, nor provide answers to the questions posed.

Nameshop's hesitation in rushing to litigate the issue was by choice, choice of a non-confrontationist path, which is not to be deemed a weakness. Nameshop has always sought, and continues to seek to address the issues cooperatively rather than litigate.

Lack of Ongoing Dialogue

Throughout the course of these issues, it is a situation of ICANN's unwillingness to correct a wrong decision by a subcommittee or External Consultants, the Board's refusal to interfere in Staff decisions, the BGC's unwillingness to acknowledge a gap in Board Governance, the Ombudsman's unwillingness to look at any of the above, and the Cooperative Engagement Process not moving forward to address the actual issues. This pattern of the whole organization standing by the actions of the decisions made, however unfair and wrong, is disappointing at best and possibly a failure of the ICANN model.

Nameshop, during the CEP, met with ICANN together with Community Observers to continue the dialogue for fairness. While Nameshop continues calls on ICANN to "do the right thing," ICANN says it cannot grant the Nameshop application because that might cause other applicants to want their applications revisited. This despite Nameshop's emphasis on the unique features of ICANN's omissions on .Internet (Details of these can be provided.)

Nameshop Communications on the errors and omissions have taken place over a period of **seven years** where ICANN has refused to move from its inadequate review mechanisms and initial positions. In particular, ICANN has not answered a specific question "*Is .Internet reserved? Are you reserving it for anyone? a Registry, a Corporation, an Organization Or, an*

Individual ?” If this is not the case, ICANN would at least have acted on the on Nameshop request of July 31, 2017 to:

“correct the public record and caption your responses as communications on .Internet and to also make the necessary changes on the ICANN website so as to correct the error. These omissions may be unintentional, but they nevertheless manifest as obstructions...”

Lately, ICANN has refused additional meetings, which are required in the interest of fairness. Nameshop requests ICANN to address, rather than evade the issue of this gross unfairness and to act on this application to delegate .Internet without any further delay.

ICANN has suggested that Nameshop applies for a full refund, which we have politely declined to apply for. How does a refund set the record straight? The Nameshop application was years in the making and has been supported for **years** with substantial efforts, emotion, aspiration and commitment- all delayed by adequate review or explanation. An ICANN solution requires fairness and move towards delegation of .Internet, which as assured would be operated by Nameshop in a manner good for the ICANN, the DNS and the Internet.

Thank you.

Sivasubramanian M
Proprietor and Director,
Nameshop.

Erode, India
June 23, 2019.

(Details are attached in the following pages as Addendum)

Addendum I : Nameshop's Application for .IDN before the "Change Request" in September 2012 to .Internet

Nameshop first applied for .idn (the alpha3 country code for Indonesia). Due to the lack of clarity in the TLD process, other large applicants, including Google and Donuts (who filed 300 applications) also made the same error. While Google and Donuts were damaged minimally or not at all, the damage to Nameshop, caused by the confusing directions, was total.

(The application guide book (AGB) was the book of all rules and guidelines in the new gTLD process, under section 'Policy Requirements for Generic Top Level Domains' III 3.1 states that "... Two- character ASCII strings are not permitted." In this section, III.3.1. on what is not permitted, there is no mention of alpha 3 country codes, while this section unambiguously reserves two character ISO standard country codes. This rule was mentioned only in the subsequent section, under the title "Geographic Names Review", what is listed as "will not be approved" includes 2.2.1.4.1.i alpha-3 code listed in the ISO 3166-1 standard. As an applicant applying for a generic ASCII string, that is not a Geographic String or Country Code for country level operations, the title "Geographic Names Review" appeared to be that of a section offering guidelines pertinent only to the applications for geographic names (strings), so the caution on alpha3 ISO codes was completely missed.)

The error of choice of alpha3 country code (IDN) were exacerbated because of an untimely process:

1. The online application process did not have an automated system of returning an error, which ought to have been a process for limiting disallowed strings (as they were on published lists).
2. ICANN, with manual attention reconfirmed that the string applied for was .IDN, and even then did not notice that it was disallowed string.
3. For about 4 months, the application for .IDN went through the initial steps of processing without attention to the string being an alpha3 country code. During the time that elapsed, other applicants applied to have their top-level domain name "string" changed but Nameshop missed this window when other requests were being processed.

On July 18, 2012 Nameshop, by email, requested to be allowed "to change the string to another string of three or more ASCII characters that is not reserved, not a country or territory name, uncontentious but represents the purpose of this TLD"

Nameshop submitted the "Change Request" by due process to change the string from .IDN to .Internet on September 30, 2012. In its response, ICANN ruled that the string .IDN will be not be considered and assured that the request to change the applied-for TLD (to .Internet) would be reviewed carefully. **Since September 30, 2012 the string in the process is .Internet and not .IDN.**

Addendum II Change Request to .Internet

By due process as available by the “Change Request process” which was equitably available to all applicants, Nameshop, out of necessity, as per criteria, applied to change the string .IDN to .Internet, the change request was taken up for processing, the string change request was published which revealed the string. If .INTERNET, were to be unfairly denied, it would amount to an action that is materially unfair to this applicant who has first come up with the idea of this string and applied for it by the available process; Delays in evaluation of .INTERNET [have] affect[ed] the business prospects in augmented proportion to the length of the delay;

By a letter addressed to the ICANN CEO and the Board Chair on Feb 27, 2013 Nameshop appealed to ICANN:

...a Change Request was filed to change the [string] as

“INTERNET” which suits the mission of connecting Internationalized Domain Name users to the Global Internet space and of contribution to the community's efforts to keep the Internet as One Internet. The changed string is not reserved, not a country or territory name, uncontentious, represents the purpose of this TLD. The Change Request was in conformity with the criteria specified for allowing changes:

1. Explanation – Is a reasonable explanation provided?

The Change Request explained the grounds, and has explained that the requested change is fair.

2. Evidence that original submission was in error – Are there indications to support an assertion that the change merely corrects an error?

.IDN is an alpha3 country code, but the Applicant Guide Book mentioned that alpha3 codes will not be approved only under a section titled 'Geographic Names Review' which appeared to be a section that was not pertinent to this string which is not a geographical name. So this error occurred. The applied for change is in order as it corrects the error in the choice of the string.

3. Other third parties affected – Does the change affect other third parties materially?

No other parties are affected, because .INTERNET is NOT a string applied for by any other applicant, the string is uncontested and it is not a Geographic name, so the requested change does not affect any other third party materially.

4. Precedents – Is the change similar to others that have already been approved? Could the change lead others to request similar changes that could affect third parties or result in undesirable effects on the program?

Nameshop is possibly the only applicant who in need of such an alpha3 code to be changed. Any other applicant who originally applied for alpha3 codes did not choose to

apply for a change. As Nameshop is the only applicant making a request to change the alpha3 code to an alternate generic string that is not reserved. So there no other applicant in a similar situation under compulsion to change the string, so there would not be any undesirable effects on the program by allowing this alpha3 code to be changed to .INTERNET.

5. Fairness to applicants – Would allowing the change be construed as fair to the general community? Would disallowing the change be construed as unfair?

The requested change is fair to the general community because Nameshop seeks to replace a string that would otherwise affect a country's privileges with a generic string that represents the purpose of the TLD application. The requested change is fair as it enables the implementation of an ASCII TLD that would bridge IDN communities with other communities and contribute to the community's efforts to preserve the Internet as One Internet.

On the contrary, disallowing the change would indeed be construed as unfair, as it amounts to a breach of process of the change request process as also amounts to subjective judgement by the evaluation team, prejudicial to the overall ICANN process.

6. Materiality – Would the change affect the evaluation score or require re-evaluation of some or all of the application? Would the change affect string contention or community priority consideration?

The requested change does not materially affect the evaluation score or require a reevaluation of any other application. The changed string is uncontested and does not in any way affect community priority consideration.

7. Timing: – Does the timing interfere with the evaluation process in some way? ICANN reserves the right to require a re-evaluation of the application in the event of a material change. This could involve additional fees or evaluation in a subsequent application round. (AGB §1.2.7

On follow up new gTLD first sent a reply on Nov 2 to say that .IDN is not allowed, but the change request was under consideration. There was some administrative change in the new gTLD administration after this point of time. Later on February 19, a file was posted in the CRM which 'rejected' the change request without any reasons assigned.

Nameshop's request for change is treated unfairly in a process with many irregularities and despite the fact that other requests for string change were accepted. ICANN org's attempt to distinguish the Nameshop [change] request from others was unsubstantiated and highly subjective at best. There were mixed messages on the Nameshop questions as to the reasons why the Nameshop change request was discriminatively and unfairly treated. ICANN first stated that string changes were not permitted, though the Change Request process did not specify such a limitation; then said some string changes were allowed though .Internet is still not allowed; Now says "such changes [as .IDN to .Internet] are simply not permitted", which is another Ex-Post facto rule, a rule that was not there in the change request process; There was no rule related to "types" of string changes in the Change Request process.

Addendum III Accountability Mechanisms - Board Reconsideration Request :

The Reconsideration did not [go] into the issues [that were] elaborately listed with proper grounds, superficially stating that "Nameshop had not stated proper grounds". Further the Board Governance Committee Chair, during the April 11, 2013 Board meeting, observed: "The grounds cited make clear that Nameshop is asking for a re-determination of its Change Request, and a decision that the Change Request should be granted. That is not a proper use of the reconsideration process... the reconsideration process does not allow for a full-scale review of a new gTLD application. The focus instead is on the process followed in reaching decisions on New gTLD Applications."

Reconsideration process is a Board Governance Committee process that is a peer review process in matters relating to action / inaction by the Board and it becomes an Executive Review process in matters concerning Staff Action/Inaction. Due to the 'peer' review nature of the process, it is an internal process, or almost a self-evaluation process. When an issue reaches this process, the BGC ought to have an unrestrained scope and a total willingness to correct a wrong decision / inaction by all available means. This is not how the Reconsideration process is designed (or this is not how the design of the reconsideration process was interpreted by the BCG).

1. The Board Governance Committee's dismissal of the Reconsideration Request submitted by Nameshop, with a visible choice of excessive legal parlance (without sound legal basis), is untrue and misleading on several counts:

The BCG argued that the applicant did not provide a detailed explanation of the facts presented to the Staff / material information not considered by Board in accordance with the provisions of Bylaws, Art. IV, § 2.6(g and h) on this Request concerning Board Inaction on the Nameshop appeal against the Change Request as well as Staff Action / Inaction concerning the SARP panel decision. Detailed explanation was indeed provided in the Reconsideration Request. So this observation by the Board Governance Committee is false and misleading. (The Reconsideration Request copied as text in the Addendum and the Reconsideration attachments submitted provided sufficiently detailed explanation of the facts)

2. The Board Governance Committee argues that the portion of the Reconsideration Request related to the Change Request is not timely.

Nameshop reconsideration request was on inaction on the letters of appeal to the Chair and CEO. It was 'on time' as a reconsideration request on 'inaction'. Any time gap can be calculated from a point of action, but an 'inaction' that it by nature inconclusive can not possibly be pinpointed to a particular point of time. For the purpose of a certain rule related to a certain time-line on any inaction, what is relevant is an approximate point of time which can reasonably be considered a point when 'inaction' appears obvious. In this case, Nameshop received the Change Request decision on 19th February 2013. On

27, February, within 8 (eight) days, Nameshop appealed to Chair, CEO and COO and immediately thereafter forwarded to the Board Members of the new gTLD program and the Chair of the At Large Advisory committee. The applicant waited for a response for about a month, and as 'inaction' by the Chair, CEO, COO and the Board Members of the new gTLD program appeared obvious, the reconsideration request was filed on March 29, 2013. The Board Governance Committee has erroneously interpreted the provision as filed 40 days from from the date of the Change Request Decision (action by Staff). The reconsideration request was on 'inaction' on the appeal to Chair, CEO, COO and the Board Members of the new gTLD program, it was very much on time, the request confirmed the norms laid down. If it was convenient for the BCG to claim the reconsideration request as delayed by 10 days, it implies that the BCG was inclined at the outset to find flimsy reasons not to reconsider the request at all.

With the convenient misinterpretation of the provisions of the 30 day time limit, the Board Governance Committee presents an impression of infallible adherence to all timelines of the new gTLD program as if by clock work. This is not the case. Throughout the progress of the new gTLD program implementation, various rules and time lines were laid down, relaxed and compromised as it suited ICANN. The applicant is curious to know if ICANN, for instance, adhered to the \$5000 TAS registration fee deadline, application fee deadline, or even the application deadline in all cases. While the possible relaxations in any of these crucial deadlines are matters of internal records not yet transparent, the applicant is aware that ICANN relaxed application deadline by weeks for every applicant, for instance. This indicates that far more crucial time limits have not been considered sacrosanct, especially when it suited ICANN. In this case of a request to reconsider prejudicial and unexplained decisions related to the Nameshop application, it suits the Board Governance Committee to appear to consider an inadequate time limit sacrosanct and inviolable, and also create the impression of a violation by the applicant by an erroneous interpretation of the rule related to the 30 day limit to wrongly and inappropriately apply that rule on 'inaction' so as to decline the reconsideration request on the fair string change, which when denied makes it convenient to argue that a 'string' does not exist, so the other request for Applicant Support is irrelevant.

If the Board Governance Committee has chosen to take recourse to this rule, invent a violation of this rule where there was none, and cite it as a compelling reason for not considering this request to review the harm done to this applicant, it amounts to a blatant compromise of the high standards expected in ICANN Governance.

3. The Board Governance Committee cites another module of the Bylaws to **argue that The Reconsideration The AGB does not set forth any "appeal" process**, for the convenience of dismissing Nameshop's notice on February 27, which was within 8 days of the Change Decision, to the new gTLD via Customer Service Center on its intent to appeal and the timely appeal by email to ICANN's President and CEO and two other Board members requesting an "appeal" of the ruling on the Change Request. (27 February 2013 email to Fadi Chehadé.) This was also sent to the Chair of the Board new

gTLD program Committee. The Chair of the new gTLD program replied to say that “Your letter will be handled appropriately by ICANN staff.” However there was inaction by Staff and inaction by the Board on this matter, so the reconsideration request was filed after waiting for 30 days. As shown earlier, the Reconsideration Request was on inaction, and was reasonably prompt, not at all delayed, but the Board Governance Committee conveniently cites AGB Module 6 (Terms and Conditions) to attempt to suppress, strike away or erase from record, the applicant's communication to the Chair of the Board, Chair of the new gTLD program Committee and the Board Members of the new gTLD program committee which was filed by the applicant within 8 (eight) days from the date of the Change Request decision, in order to wrongly record the Reconsideration Request as a request on the Change Decision dated February 19, and not a Reconsideration Request on inaction on the communication to the Board on February 27. This again is not in tune with the high standards expected of ICANN Board Governance.

4. The Board Governance Committee takes a legally defensive posture out of excessive caution and fails to acknowledge that the Change Request decision and the SARP panel decisions are unexplained and arbitrary:

The evaluation of the Change Request was not explained, the letter from Christine Willet on February 19, 2013 communicating the prejudicial, discriminatory and unfair Change Request decision did not assign reasons, it was an arbitrary rejection with the vague and false claim for record that the Request was rejected 'after careful evaluation of the criteria'.

The letter from Chrintine Willet on March 11, 2013 to Nameshop notified that Nameshop’s application failed to meet the Public Interest Benefit, Financial Need and Financial Capabilities criteria, in multiple ways. This also amounts to a vague claim that the request was denied because the application did not meet the criteria, but did not assign reasons.

5. The “Analysis of the Request.” in the BCG Recommendation is misleading and grossly inadequate. It points to a determined will to find reasons not to review the prejudicial internal decisions / inactions by ICANN, with an ill-fitting emphasis on non-existent “delays”, and by an argument that “there are no failures [by ICANN] to meet documented process” to recommend that the Request be denied in full. This indicates that the Board Governance Committee was perhaps inclined at the outset to deny the request and thereafter found a way to list flimsy reasons.

6. The Board Governance Goes back to argue that there is **no “appeal mechanism set forth”**. It also observes : “That some members of the Board received communications from Nameshop regarding the appeal does not create Board action or inaction on an item.” The assertion here is that Board could ignore a paramount matter concerning a gap in ICANN governance, even without a response from one of the Staff Assistants of the Board that the Board would not act upon it. More disturbing is the observation by

Chair of the Board Governance Committee, Bruce Tonkin as noted at the 11 April 2013 Board meeting, that the reconsideration process does not allow for a full-scale review of a new gTLD application.

All this is contrary to the principles of natural justice. Throughout the course of these issues, it is a situation of Staff unwillingness to correct a wrong decision by a subcommittee or External Consultants, Board refusal to interfere in Staff decision, BCG's unwillingness to acknowledge a gap in Board Governance or Staff processes (and what if the Ombudsman would not want to look at any of the above?). This pattern of the whole organization standing by the actions of the internal decisions, with a weak, but convenient misinterpretation of the various provisions of the ByLaws and the perceived or purported limitation of the Accountability framework, apparently arguable, but contrary to the spirit of the laid down standards of ICANN Governance and its Accountability and Transparency framework.

7. In its rationale for rejecting a review of the SARP panel decision, the Board Governance Committee selectively cites convenient portions from the Reconsideration Request drafted by the Applicant without legal help or any professional help, drafted in defenseless faith in the ICANN process, omitting the emphatic arguments for reconsideration. The facts were strong, the arguments were emphatic but the BCG argues that "Nameshop failed to identify any process that the SARP or the ICANN failed to follow in the consideration of the financial assistance application." In particular, SARP did not assign specific reasons for rejecting the application for applicant support, except for a vague note that the application did not confirm to the list of criteria. BCG did not take note of the absence of reasons, nor did it take note of or comment on the point by point explanation by the applicant as how the application confirmed to the criteria.

8. BCG also makes a contradictory observation that .IDN was not allowed, the request to change the string to .INTERNET hasn't yet gone through, so the application for support was also "moot".

Together, all this points to the possibly that new gTLD program visibly and blatantly discriminates against the Nameshop application with its request for .INTERNET. The applicant wishes to ask the new gTLD Program Committee pointedly if ICANN has unstated reasons and unwritten rules related to this generic string, which as stated in the Change request, is relevant to the purpose of this new gTLD application, not a reserved or prohibited string, not a geographic string, and not an already applied for or contented string. Within the framework of the new gTLD program and within the stipulated guidelines, there are no provisions to discriminate this application for this string, which is duly applied for by the published Change Request process. While several other change requests have been approved, this request in place is treated unfairly, so a specific response is requested on ICANN's position on this specific string and a specific statement is requested reasons if any, to discriminate (if true) this applicant from being successful with the application for .INTERNET. It requires an assurance that ICANN is not

going beyond the norms established nor creating new norms to suit its arbitrary decision on this string, which would be most unfair.

The business prospects of the Nameshop application arises from the business idea which is that of offering an ASCII domain name for every International Domain Name (Domain name in a local language script) registrant to point to their IDN (local language) web space. The idea is to make the Web Spaces in local language scripts identifiable and accessible by users from other language communities and thereby contribute to the Community's efforts to keep the Internet as One Internet. With this business idea, the string .Internet has the prospects of several million registrations which is under threat. (The 'value' of an applied for string, especially as an uncontested string, is well understood by ICANN, based on its knowledge of the business value of existing strings such as .com. It is ICANN's knowledge of the value of applied for strings that gave rise to a process that led to an application process that was safe-guarded from 'gaming the application system' and to rules such as restriction of eligibility to bid for a contested string to only those who have applied for that specific string. If .INTERNET were to be unfairly denied, it would amount to an action that is materially unfair to this applicant who has first thought of and applied for it by the available process; is not only the Delays in evaluation of .INTERNET affects the business prospects in augmented proportion to the length of the delay.

More importantly, Nameshop's new gTLD application is interlaced with and somewhat centered on a larger purpose of materially and substantially contributing to the Internet Community's good efforts as narrated in the section on the mission and purpose of the applied for string and as committed in the documented Public Interest Commitments. (It is once again emphasized that the Applicant would make legally binding commitments to ICANN on the Public Interest commitments made, whether or not ICANN has a suitable process in place to bind the Public Interest Commitments). These pursuits are threatened.

The new gTLD program decisions, as decisions of the ICANN Board are required to be fair decisions of the highest standard, especially because ICANN Board is visible center-stage on the multi-stakeholder form of Governance that ICANN exemplifies. Beyond an applicant's scope of this request to return the BCG recommendations, this applicant wishes to make a specific request to ICANN to resist any unseen inclinations to go beyond established norms to obstruct this application for .INTERNET by visible violations of its Accountability and Transparency standards of Board Governance.

Despite the arguments presented above, the Board Governance Committee has adopted the BCG recommendations. The BCG recommendations are adopted "as Organizational Administrative Function not requiring public comment." This attempts to preempt a review of this action.

Board Reconsideration request as filed on 29 March 2013

Nameshop Reconsideration Request

1. Requester Information

Name: Sivasubramanian Muthusamy Address: Nameshop, India.

2. Request for Reconsideration of :

Board inaction Staff action/inaction

(on the Appeal against the Change request and on the decision on Applicant Support request of the Nameshop Application No 1 1873 71868)

This submission is drafted by the applicant in plain language, and presented with the request to the Board Governance Committee to view this essentially as a request for reconsideration of Nameshop's Change Request and Applicant Support request, without placing any emphasis on the procedural nuances such as precise compliance to the specified format, which is inadequate to appropriately narrate the situation.

There are two matters presented here for reconsideration together, as both affect the new gTLD application from Nameshop in such a way that the entire application is blocked from making timely progress. One pertains to Staff AND Board Inaction on the Applicant's appeal against the unexplained decision on the Nameshop Change Request; another pertains to the Staff Action/Inaction leading to the SARP panel decision on Applicant Support, also unexplained and nonspecific on the rationale for the ruling, but both are cases where both Staff Action/Inaction could be only a partial cause, with Board Inaction broadly resulting in the adversity suffered.

The applicant has an in-depth understanding of and respect for the ICANN process, has faith in the neutrality of the Chair and the members of the Board as much as the Applicant understands that ICANN has a competent CEO and Staff. While submitting this, the applicant does not wish this request for reconsideration perceived as a complaint against the new gTLD program or the overall ICANN process. ICANN is continuously striving for high standards within its framework of a[n] exemplary model of a continuously evolving MultiStakeholder Governance. The situation of this request for reconsideration arises out of faith in the overall process and not out of discontent. Any comments on the process followed or not followed and any criticism in this document is expressed with the belief that these expressions would contribute to further elevate ICANN's governance standards to even greater heights.

In these instances affecting the Nameshop application (as possibly in another SARP decision and possibly in some other new gTLD decisions/indecisions which are beyond the scope of the Nameshop request for reconsideration) there is an intricate interplay of Staff and Board Action / Inaction contributing to wrong decisions / delays. Such an interplay occurs due to a certain excessive caution on the part of both the CEO / Senior Staff and the Chair and Members of the Board which causes them to be detached from the new gTLD process to the point of being so disconnected that the new gTLD process is neither run by the Board nor by Staff, nor fully reflecting the general will of the

multistakeholder community of ICANN. The Chair and some members of the ICANN Board have declared some form of conflict of interest, which in most cases is possibly indirect and/or narrow. While it indicates high standards on the part of those with a declared conflict of interest to recuse themselves, this also amounts to a 'generic' withdrawal from the entire process, grossly disproportionate to the narrow (small or insignificant) conflict of interest that might actually be.

While there is merit in staying away from deliberations and decisions with perceived legal implications, this also leads to a situation of insufficiently deliberated / unattended decisions, which causes greater harm to the process as in this instance of considerably significant substantial material harm to this applicant with a purposeful and meaningful business concept, a TLD 'position' (a term from the Marketing terminology) of appeal to all International Domain Name registrants, with a memorable, appealing string with the good fortune of being uncontended .Internet – which is purposeful besides being commercially valuable.

The spirit of this request as a reconsideration request on inaction of Staff at the CEO level and on inaction of the Chair and Members of the Board arises from the belief that the CEO and the Board are accountable for any shortfall at any level in the process, whether or not the omission is caused by members internal to the organization or external, of the present time or in the distant past. The applicant believes that at the highest level of ICANN, such degrees of accountability is broadly assumed.

Absence of attention by the Chair and Members of the Board and CEO to the facts made available to them is therefore cited as the primary cause for this situation that affects the applicant. Neither the facts available were fully considered, nor was there any indication of any effort to ask for more information/clarifying information where necessary.

With this reasoning, this request for reconsideration is filed against Staff action/inaction and Board inaction on two decisions that together affect nameshop.

3. Description of specific action you are seeking to have reconsidered.

3. 1. Request to reconsider the Change request decision:

The origin of the Change request was the communication initiated by the applicant on July 11, 2013 requesting the new gTLD staff to allow a change of string as a solution to a problem concerning .IDN, the applied for string, which largely occurred due (a) a certain ambiguity in the applicant guide book (b) complete absence of electronic safeguards within the form to refuse prohibited/reserved strings *during* the process of filling up the e-form or by what might be called 'window oversight systems' (manual) not to accept an application if the string is 'prohibited' or 'reserved' or 'will not be approved' as in the case of .IDN.

The applicant submitted the application for the original string .IDN which was accepted, the application was not 'returned across the counter' in time for the applicant to

become aware of the inadvertent omission as also to make the necessary correction, which the applicant would have made possibly swiftly almost across the counter without time delays, in which case the present issue would have been rendered nonexistent then and there.

Soon after submission new gTLD actually noticed the string applied for, asked the applicant to reconfirm the string applied for (reconfirm the answer to question 13 a) by a communication through the CRM portal, in the process of taking the application on record. The applicant responded by repeating that the applied for string is “.IDN as an ascii string” and this reply was also received without further observations. Despite this specific attention to the applied for string during the process of submission, it was not pointed out that the applied for string 'will not be approved' and the application was retained without comments or further pointers.

There were no problems reported on the string applied for through the CRM or any other means and not even while the applicant was present for a week at the ICANN meeting that followed (Prague). The applicant informally heard from fellow members of the Community about a possible problem and chose to write proactively to draw the attention of new gTLD on this problem with a view to propose a solution.

Against this background the Change request was submitted on September 30, 2012.

New gTLD sent a letter explaining difficulties in allowing .IDN but acknowledged the Change Request on November 1 as a request to be processed.

The decision on the Change Request was communicated after about five months from the date of request

Immediately thereafter Nameshop filed its appeal to the Chair, CEO and COO by email on February 27, 2013, which was forwarded to the Chair and some Board Members of the new gTLD program as also to the Chair of the At Large Advisory Committee.

The change request is in order, and the requested new string .Internet meaningfully fits the overall mission of this application, it is not a geographical string, it is not a reserved or prohibited string, it is not a contended string, so fully qualifies to be approved as the new string, the same way a few other change requests might have been approved.

The decision communicated on the nameshop string change request is arbitrary, discriminatory and surprisingly prejudicial to ICANN's high standards of Governance and Nameshop requests this unexplained decision reconsidered without time delays, and to allow the application to progress in tune with the priority of 150 awarded.

(List of documents attached include copies of these email messages, copies of earlier communication in follow up of the Change Request, Change Request and related commitments)

3. 2. Request to reconsider the SARP panel decision:

Nameshop has sought applicant support as an applicant from a developing economy

with a need for financial support as enshrined in the new gTLD program. The decision communicated seeks to deny the request despite the qualification and merits. Nameshop requests the SARP panel decision reconsidered without time delays, to allow the application to progress in tune with the priority of 150 awarded.

(List of documents attached include private and public portion of the application for financial support)

4. Date of action/inaction:

4. 1. Request to reconsider the Change request decision:

Board / Staff inaction on the Change Request pertains to inaction on the appeal to the Chair, CEO and COO by email on February 27,2013, which was forwarded to the Chair and Members of the new gTLD program as also to the Chair of the AtLarge Advisory Committee.

4. 2. Request to reconsider the SARP panel decision:

Staff action / inaction and Board inaction on the decision of SARP panel pertains to the SARP panel decision notified by a message and file attachment at the CRM portal on March 13, 2013.

5. On what date did you became aware of the action or that action would not be taken?

5. 1. Request to reconsider the Change request decision:

The Chair and CEO of ICANN have not so far acknowledged the message of appeal against the decision on the Change Request, while the Chair of the new gTLD program has acknowledged the communication and conveyed that the matter would be “appropriately handled by ICANN staff”. On this issue it is not assumed that 'action would not be taken' but the indicative delay in the light of previous delays on this matter is sufficient to prompt this applicant to submit this request for reconsideration.

5. 2. Request to reconsider the SARP panel decision:

The SARP panel decision was conveyed on March 13, this appeal is filed because this request for reconsideration is required for further action.

6. Describe how you believe you are materially affected by the action or inaction

6. 1. Request to reconsider the Change request decision:

The applicant applied to change the string to .internet, which is not a geographical name, not a prohibited or reserved string and not a contended string. The string is relevant and descriptive of the mission as explained. The request is in order, but the decision is to arbitrarily decline the request without assigning reasons. So Nameshop appealed to the Chair and CEO of ICANN with copies of the communications to the Chair of the new gTLD program and some Board members of the new gTLD program.

Inaction on the appeal against the string change decision harmfully blocks and delays the processing of this application in tune with the application's priority queued 150 and causes risks of delays in introducing the applied for string together with the delegation of the first batch of new gTLD internationalized domain names.

Any time delay would materially affect the prospects and cause considerably significant substantial material harm to this applicant. As expressed, the application is based a meaningful business concept, a TLD 'position' (a term from the Marketing terminology) of appeal to all

International Domain Name registrants, the requested string is a memorable, appealing string with the good fortune of being uncontested .Internet – which is purposeful besides being commercially valuable.

6. 2. Request to reconsider the SARP panel decision:

The applicant as a needy applicant from a Developing economy qualifies for applicant support for this application with all merits. The SARP panel decision denies the opportunity for this needy applicant to have the necessary initial help as envisioned for the benefit of needy applicants from Developing economies.

As stated in 6.1 above, the time delays caused by the SARP panel decision causes material harm of the same intensity as in the Change request issue.

7. Describe how others may be adversely affected by the action or inaction, if you believe that this is a concern.

7. 1. Request to reconsider the Change request decision:

An error in judgment in evaluation of the Change request and any unfair discrimination, if allowed to happen, would establish a precedent of arbitrariness within the ICANN Board which would result in a precedent of deviation from the ICANN governance standards, which would be widely harmful to other applicants, community, participants and users.

7. 2. Request to reconsider the SARP panel decision:

An arbitrary decision on the financial support would deny opportunities to smaller applicants from Developing Countries and would restrict business opportunities in DNS to the usual or very large corporations.

8. If you are complaining of an action, are you seeking a temporary stay of the action?

Yes

No The applicant is seeking corrective and positive action on the Change Request and the request for applicant support.

8a. If Yes, you are seeking a temporary stay, do you believe any harm(s) will occur if the action is not stayed?

Not Applicable as the applicant is seeking immediate corrective action rather than a stay.

8b. If you answered Yes to 8.a., please describe the harm(s) that you believe will occur if the action is not stayed:

Not Applicable as explained in 8a.

9. Detail of Board or Staff Action – Required Information

9. 1. Request to reconsider the Change request decision:

1. The following facts were presented to Staff (and in communication to some members of the Board)

The Change request was prompted by the ruling that the applied for string .IDN can not be allowed on the representation by the applicant to allow the string applied for. This early representation included the following facts, known to Staff and the Board members of the new gTLD program since July 11 / 18, 2012:

While Internationalized Domain Names enable users to connect within their language communities locally, the proposed gTLD would connect users from different communities to connect globally. This gTLD would be of help in furthering the Internet Community's efforts to preserve the Internet as a unified, Global space, as one Internet.

The string originally applied for was .IDN.

The Applicant Guidebook, under section 'Policy Requirements for Generic Top Level Domains' III 3.1 states that "Applied for gTLD strings in ASCII must be composed of three or more visually distinct characters. Two character ASCII strings are not permitted, to avoid conflicting with current and future country codes based on the ISO 31661 standard." In this section, III.3.1. on what is not permitted, there is no mention of alpha 3 country codes, while this section unambiguously reserves two character ISO standard country codes.

Under the section on 'Geographic Names Review', 2.2.1.4 the guide book states that strings that are country or territory names will not be approved. Here, what is stated as "will not be approved" includes 2.2.1.4.1.i alpha3 code listed in the ISO 31661 standard.

As an applicant applying for a generic ASCII string, that is not a Geographic String or Country Code for country level operations, the title "Geographic Names Review" appeared to be that of a section offering guidelines pertinent only to the applications for geographic names (strings), so the caution on alpha3 ISO codes was completely missed [by this applicant]

As shown above there was a definite ambiguity in the Applicant Guidebook.

[In addition there was a complete absence of electronic safeguards within the form to refuse prohibited/reserved strings *during* the process of filling up the e-form or by what might be called 'window oversight systems' (manual) not to accept an application if the

string is 'prohibited' or 'reserved' or 'will not be approved' as in the case of .IDN.

The applicant submitted the application for the original string .IDN which was accepted, the application was not 'returned across the counter' in time for the applicant to become aware of the inadvertent omission as also to make the necessary correction, which the applicant would have made possibly swiftly almost across the counter without time delays, in which case the present issue would have been rendered nonexistent then and there.]

Soon after submission new gTLD actually noticed the string applied for, asked the applicant to reconfirm the string applied for (reconfirm the answer to question 13 a) by a communication through the CRM portal, in the process of taking the application on record. The applicant responded by repeating that the applied for string is “.IDN as an ascii string” and this reply was also received without further observations.

Despite this specific attention to the applied for string during the process of submission, it was not pointed out that the applied for string 'will not be approved' and the application was retained without comments or further pointers.

There were no problems reported on the string applied for through the CRM or any other means and not even while the applicant was present for a week at the ICANN meeting that followed (Prague).

The applicant informally heard from fellow members of the Community about a possible problem and chose to write proactively to draw the attention of new gTLD on this problem with a view to propose a solution.

In his letter by email, the applicant assured that Nameshop as the applicant for .IDN has no intention of positioning this TLD in any manner as a country level TLD to cause any confusion whatsoever.

ICANN was also requested to take into account the fact that the string + idea + business model makes the application. Viewed together, .IDN is global, with a larger purpose and the idea as conceived to be implemented by a fair business model would indeed add enormous value to ICANN's new gTLD program in the area of IDN implementation.

Against this background the Change request was submitted on September 30, 2012.

New gTLD explained sent a letter explaining difficulties in allowing .IDN but acknowledged the Change Request on November 1 as a request to be processed.

The above and following facts presented in the Change request and by email communication were known to Staff and the Board Members of the new gTLD program:

The proposed gTLD would connect users from different communities to connect globally. This gTLD would be of help in furthering the Internet Community's efforts to preserve the Internet as a unified, Global space.

The proposed TLD has a larger purpose and the idea as conceived to be implemented by

a fair business model would indeed add enormous value to ICANN's new gTLD program in the area of IDN implementation.

The earlier request to the new gTLD team with a copy to the Acting CEO on July 18, was a request to ICANN: 1) To consider .IDN for delegation, if the above details would satisfy the ccNSO and the GAC. 2). If there are difficulties, to allow the applicant to change the string to another string of three or more ASCII characters that is not reserved, not a country or territory name, uncontentious but represents the purpose of this TLD.

The applicant has also noticed objections in the comment process to ICANN allowing the applied for string on the grounds that it is an alpha 3 country code for Indonesia. In deference of these objections, despite the belief that the request (1) stated above is in order on the grounds stated earlier, the applicant [conveyed his] wishes to opt for request (2) stated above, that of changing the string applied for to “ another string of three or more ASCII characters that is not reserved, not a country or territory name, uncontentious but represents the purpose of this TLD”

Nameshop [conveyed the intention] to change the answer to question 13 a as “INTERNET” which suits the mission of connecting Internationalized Domain Name users to the Global Internet space.

The proposed change does not affect countries or geographic regions. The changed string confirms to the purpose of the application by nameshop, that of enabling IDN registrants to connect to the global Internet users from all other language communities.

The applicant had, in the Change Request on September 30, 2012, included Public Interest Commitments later formalized through the Public Interest Commitment process.

Among other commitments, Nameshop to

1. approach and invite three or more Internet Leaders of known commitment to Internet to be active and participative members of the Management Board to set directions for the management of the proposed TLD. This is to ensure that this string is managed responsibly, as benevolently as possible. They would seated [free of legal liabilities] together with other Management Board members with a focused Business perspective.
2. Nameshop would voluntarily set aside, year after year, one quarter of the Post Tax profits (or pretax profits if the Tax Laws allow a full tax exemption of contribution to such a cause) arising from registration of every .INTERNET domain name ... to be utilized for the good of the Internet, where possible ... with the flexibility to allocate and utilize funds for inadequately funded humanitarian causes without any geographic discrimination if sufficient funds for Internet causes are otherwise available.

The present constitution of the company as a Proprietary firm based in India allows room for formalizing these intentions with a new company structure, possibly by including a foundation created for this purpose as a shareholder or partner admitted to

the benefits of business, free of liabilities.

The appeal addressed to Fadi Chehade, CEO of ICANN and to Dr Steve Crocker by email on February 27 included these facts and the following:

Nameshop (<http://nameshop.in> NOT nameshop.com which is misleading) , with the 'company' structure of a Proprietary firm in India, has applied for the string .IDN.

Though not filed as a Community TLD, it is a TLD with a larger Community purpose, as the idea and purpose of the proposed TLD is to offer a bridge for the Internationalized Domain Name Registrants to open up their Web spaces for users beyond their own language communities.

The string was applied for with the idea of a business plan to offer this domain extension to the registrants of various IDN domain names as an additional ASCII domain name that would point to their IDN space, which is otherwise a space with a domain name in a local script, not intelligible, hence out of reach for those outside their language space.

The original string applied for, .IDN was so applied for, with the larger purpose of building global Trust over IDN domains and making web spaces with Internationalized Domain Names accessible across their local scripts thereby contributing to the Internet Community's efforts to keep the Internet as One Internet as a global space.

The Change Request was filed to change the answer to question 13 (a) as "INTERNET" which suits the mission of connecting Internationalized Domain Name users to the Global Internet space and of contribution to the community's efforts to keep the Internet as One Internet.

The changed string is not reserved, not a country or territory name, uncontentious, represents the purpose of this TLD. The Change Request was in conformity with the criteria specified for allowing changes, as reproduced from the Change Request submitted on September 30, 2012:

1. Explanation – Is a reasonable explanation provided?

The Change Request explained the grounds, and has explained that the requested change is fair.

2. Evidence that original submission was in error – Are there indications to support an assertion that the change merely corrects an error?

.IDN is an alpha3 country code, but the Applicant Guide Book mentioned that alpha3 codes will not be approved only under a section titled 'Geographic Names Review' which appeared to be a section that was not pertinent to this string which is not a geographical name. So this error occurred. The applied for change is in order as it corrects the error in the choice of the string.

3. Other third parties affected – Does the change affect other third parties materially?

No other parties are affected, because .INTERNET is NOT a string applied for by any

other applicant, the string is uncontested and it is not a Geographic name, so the requested change does not affect any other third party materially.

4. Precedents – Is the change similar to others that have already been approved? Could the change lead others to request similar changes that could affect third parties or result in undesirable effects on the program?

Nameshop is possibly the only applicant who in need of such an alpha3 code to be changed. Any other applicant who originally applied for alpha3 codes did not choose to apply for a change. As Nameshop is the only applicant making a request to change the alpha3 code to an alternate generic string that is not reserved. So there [are] no other applicants in a similar situation under compulsion to change the string, so there would not be any undesirable effects on the program by allowing this alpha 3 code to be changed to .INTERNET. [Though the Applicant was not aware of other requests for Change of the applied for strings, it is likely that there were other requests for Change of String, which were processed and approved.]

5. Fairness to applicants – Would allowing the change be construed as fair to the general community? Would disallowing the change be construed as unfair?

The requested change is fair to the general community because Nameshop seeks to replace a string that would otherwise affect a country's privileges with a generic string that represents the purpose of the TLD application. The requested change is fair as it enables the implementation of

an ASCII TLD that would bridge IDN communities with other communities and contribute to the community's efforts to preserve the Internet as One Internet.

On the contrary, disallowing the change would indeed be construed as unfair, as it amounts to a breach of process of the change request process as also amounts to subjective judgement by the evaluation team, prejudicial to the overall ICANN process.

6. Materiality – Would the change affect the evaluation score or require reevaluation of some or all of the application? Would the change affect string contention or community priority consideration?

The requested change does not materially affect the evaluation score or require a reevaluation of any other application. The changed string is uncontested and does not in any way affect community priority consideration.

7. Timing – Does the timing interfere with the evaluation process in some way?

This request for change was filed during September 2012, and it is still not late to allow this change and proceed in accordance with the priority drawn for this application priority no 150.

The Change Request is conformity with the criteria specified as shown above. New gTLD has rejected the Request without due consideration of:

a) the merits of the overall purpose of this application b) the gaps in the Applicant Guidebook that are to be attributed to the error of choice of an alpha3 string c) the merits of the Change Request as a fair solution, and d) the conformity of the Change Request to the criteria specified for change.

[These are the reasons why Nameshop] appealed against this decision, for which reasons are not assigned.

Nameshop pointed out that this is an application under an applicant support request, an application from a Developing country and an application of value to the IDN program. The Chair and CEO were requested to reconsider this decision and allow this application to proceed in accordance with the priority of this application (No 150), also considering the fact that this string would serve its purpose better if delegated together with the early IDN strings.

Nameshop also reaffirmed its commitments to implement this string responsibly, with community advice where possible, as also commit to utilize a significant portion of profits on larger causes as specified in the change request, to which effect Nameshop would be executing Public Interest Commitments separately [and so executed and published]

9. 2. Request to reconsider the SARP panel decision:

It is not explained as to why the SARP panel made this decision. The communication stated that the panel weighed the request against the stipulated criteria and appeared to convey that SARP determined that the applicant did not meet the minimum criteria which was listed under 1) Public Interest Benefit, 2) Financial Need and 3) Financial Capabilities that is seemingly contradictory with that of Criteria 2.

ICANN did not design a suitable application for Financial Support, which would probably have provided the required information about the need and capabilities of the applicant in the right perspective, but in the absence of a suitably designed application, SARP appears to have decided based on an inadequate understanding or misunderstanding of the applicant's need for financial support at this specific point of time.

ICANN did not require the applicant to make a strong and forceful argument for financial support, nor did it call for elaborate documentation to 'prove the merits and needs of the applicant. Possibly in view of the public exposure to the applicant in ICANN's multistakeholder process, ICANN, perhaps, chose to be gentle on the applicants in its requirement for information to support the request.

With this understanding it was expected that the merits and the need of the applicant would be thoroughly understood, not only based on the financial support section, but based on the entire application, by additional opinions, research on more information on the applicant as may be accessible and necessarily by additional questions to the applicant where the information available does not provide sufficient understanding. All this appears not to have happened.

The information contained in the private and public components of the application for financial assistance as attached was sufficient to demonstrate the need, qualification and the merits of the application. (The panel did not call for more information, did not call for any explanation on any information that it was not understood and did not raise any clarifying questions. If called for, the applicant would be in a position to pin point clarifications on perceived problem areas)

The following information could be gathered from various sections of the nameshop application:

1. Public Interest Benefit:

A) criteria: Community based project.

Though not designated as a Community based TLD, the proposed TLD results in significant benefits to the broader community of Internationalized Domain Name registrants of every script, and to all Global users who would like to access IDN spaces and to the IDN communities, as listed in the answer to Question 18b and more clearly narrated in the string change application and in related email communication.

Criterion: Public Interest Benefit:

The proposed idea of offering an ASCII layer by way of a corresponding ASCII domain name to make an Internationalized Domain Name readable by users from other language communities, with the idea of bridging language communities which are otherwise confined within their web spaces, was with the larger purpose of contributing to the Internet Community's effort to preserve the Internet as One Internet while also contributing to smoothen IDN adoption. This is a visibly significant Public Interest benefit around which the very concept of the proposed TLD revolves.

Also, Months ahead of ICANN's call for Public Interest Commitments and the formalization of the Public Interest Commitments, Nameshop made public Interest Commitments on Sep 30, voluntarily offered to make these commitments legally binding and formally resubmitted the PICs with greater clarity.

criterion: Service in underserved language:

The TLD .internet would of service to the IDN TLDs that serve the underserved as well as widely spoken languages.

Criterion: Operation by local entrepreneur

The applicant is an entrepreneur based in India, the applicant 'company' is a Proprietary firm.

2. criteria: Financial Need

Criteria: Operational environment, Project Budget and Funding Sources and Outreach for support

Criterion: Operating environment:

The banking environment in India is not progressive enough to fund a new gTLD application in its application phase. The rare bank, if any willing, would require infeasible guarantees (no smaller than a revolving letter of credit good as cash with an ever green provision) and other options such as Private Equity did not fructify for start up.

criterion: project Budget and Funding Sources

Against the background of the banking environment as described above, and due to an overwhelmingly unfair banking challenge that the applicant had escalated to the highest banking authority as also to the Ministry of Finance in India in the past (

<http://duediligenceindia.blogspot.in/>), even after the issue was fully settled five years ago, the sources of funding for this application were limited to funds from the applicant, some more funds from family, which were supplemented by the Service Provider in good faith. [\$15000 was initially brought in by the promoter, \$23,000 by way of a comfortable loan from a family member supplemented by a \$14,000 loan from Afilius which has been repaid already]

The investment strategy [due to these limitations] is conservative. The capital costs are kept at a minimal level with a strategy to purposefully avoid unnecessary preapplication infrastructure or publicity. The applicant company has its own office infrastructure for Nameshop as a domain reseller business which is operated together with InternetStudio, a web hosting business. This infrastructure is more than adequate at the application stage.

Criterion: Outreach

Apart from the reasons of being conservative, this decision to be so was also from out of caution that the string applied for needed to be kept confidential to minimize the chances of contention. (Efforts to raise \$125,000 to fully fund the application without support required wider outreach with a need to disclose the string to be applied for to several investors and contacts, which created the risk of contention, which is not an unreal risk, which would have inevitably multiplied the need for funds several fold instead of fulfilling the original need) With this caution, Namehsop has so far refrained from reaching out to potential investors and would take up that exercise later, for scaling up operations. (post application the situation with the string change request has caused delays in additional funding efforts)

3. Criteria: Financial Capabilities:

Criterion: Basic Financial Capabilities:

As shown above, Nameshop has the basic financial capabilities to come this far. AT THIS START UP PHASE, there are some limitations. The financial projections are shown to be based on conservative estimate of limited operations during the first 3 years, with an

indication that the revenues are expected to grow more than proportionately after the first 3 years. Even with conservatively restricted estimates, the applicant has calculated that US \$ 18000 is required for continuity of operations and this amount is yet to be deposited this amount in an escrow account as specified, at the risk of 2 points in evaluation.

The applicant has clearly hinted, in the write up and workings in the financial section that " ***The conservative projections presented are not to be taken as a sign of short sightedness or lack of understanding of the potential for the TLD string applied for***" The applicant has considered such positive scenarios and with a view to be prepared for volumes of several million registrations, opted to work with Afiliias even as a Start Up. The overall Registry Service functions are fully entrusted to Afiliias, who as a Registry Service Provider has a scalable infrastructure to handle technical requirements for us even in a scenario where the volumes exceed that of the

existing TLDs with top registrations volumes.

Our contract with Afiliias is such that any change in the level of registrations only affects the variable costs per domain paid to Afiliias; there is no escalator clause that would result in this fee being greater than the agreed upon schedule. This fee structure has a minimum cost per financial transaction and this represents the entire fee paid to Afiliias for handling all of the technical operations of the Registry including 4 of the 5 critical registry functions.

The applicant's business plan is to build up this TLD space as a global TLD, with alternate business models that require some discussions with the Registry Service Provider and potential associates. These discussions are to be taken up post application and the applicant wishes to present the details at a later date.

The applicant is in a position to consult with experts from the Domain Industry and from the ICANN Community to ensure that the business of this TLD is not only technically serviced well with significant increases in activity volumes, but also ensure that the activities are commercially ethical and confirm to Internet Community values as the space expands. There would be significant change in the scale of operations post funding.

Previous Projects Executed: The applicant has a background in business, comes from a trading family, has graduated from a Business School in India. The applicant owned and managed Whitefield Cottons Private Limited, which as a Textile manufacturing company during 1997 2001 exported Textiles to the tune of \$ 1.5 million poised for greater results but a gap in progress occurred at this point of time due to the banking situation described earlier.

During the last three years, the applicant as an individual has given shape to a venture to design and manufacture mobile internet devices and posed to progress.

All this information has been provided and easily accessible by SARP.

It takes the peculiar rationale and predetermination of a disinclined banker to misinterpret the information provided on financial need to question financial capabilities and to misinterpret the information provided on financial capabilities to question financial need. This raises questions as to whether the inclinations of ICANN were to look for reasons to offer support or to make all efforts to invent reasons not to.

10. What are you asking ICANN to do now?

10.1. Request to reconsider the Change request decision:

The applicant requests attention of the Chair, CEO and the members of the Board to the circumstances and merits of the Change request, which is order. Swift corrective action is requested to allow the change, in time for this application to progress in tune with the awarded priority of number 150, and along with the first batch of IDN TLDs to be delegated to be of benefit to the Internationalized Domain Name registrants.

10.2 Request to reconsider the SARP panel decision:

The applicant requests attention of the Chair, CEO and the members of the Board to SARP panel decision, which is arbitrary, discriminatory and surprisingly prejudicial to ICANN's high standards of Governance. Swift corrective action is requested to allow the request for Applicant Support, in time for this application to progress in tune with the awarded priority of number 150, and along with the first batch of IDN TLDs to be delegated to be of benefit to the Internationalized Domain Name registrants.

11. What grounds or justification support your request?

11.1. Request to reconsider the Change request decision:

The change request arose from the circumstances of (a) a certain ambiguity in the applicant guide book concerning alpha 3 country names, and (b) a complete absence of electronic safeguards within the form to refuse prohibited/reserved strings *during* the process of filling up the eform or by what might be called 'window oversight systems' (manual) not to accept an application if the string is 'prohibited' or 'reserved' or 'will not be approved' as in the case of .IDN. For months after submission there were no directives on the string originally applied for, so the applicant filed the Change request as a fair solution.

The change request is in order, and the requested new string .Internet meaningfully fits the overall mission of this application, it is not a geographical string, it is not a reserved or prohibited string, it is not a contended string, so fully qualifies to be approved as the new string, the same way a few other change requests might have been approved.

11.2 Request to reconsider the SARP panel decision:

The applicant as a needy applicant from a Developing economy qualifies for applicant support for this application with all merits. The SARP panel decision denies the opportunity for this needy applicant to have the necessary initial help as envisioned for

the benefit of needy applicants from Developing economies.

The nameshop request for Applicant Support qualifies under all the three criteria specified, namely, 1) Public Interest Benefit, 2) Financial Need and 3) Financial Capabilities as elaborately explained in Section 9.2.

12. Do you have any documents you want to provide to ICANN?

Relevant documents are attached.

Addendum IV Accountability Mechanisms - Ombudsman Process:

Nameshop reached the Office of the Ombudsman's Office based on the observations by the Board Governance Committee Chair that “the *reconsideration process does not actually allow for a full-scale review of a new gTLD application...The ICANN Ombudsman has a broader remit, to provide an evaluation of complaints that the ICANN Board, staff or a constituent body has treated the complainant unfairly.*”

The essence of the suggestion is that the issues brought up by Nameshop would rather be dealt with by the Ombudsman's Office. But the Ombudsman was unsure of accepting the case brought before him, unsure of jurisdiction. Then accepted, sent a draft decision within a week, without sufficient hearing or investigation. The draft decision again stated that the Ombudsman's jurisdiction is limited to finding unfairness and/or delay and elsewhere it was mentioned that **the role of the Ombudsman is "not to review the reasons [for the arbitrary and discriminatory decisions] but only to see if the process for reaching those reasons was conducted fairly"** and also, **"it is not part of the Ombudsman's role to act as an appellate body, but only to assess the fairness of the process"**.

This contradicted the Board Governance Committee observation that the “Ombudsman has a broader remit” and at the same time echoed the objectionable position taken by the Board Governance Committee that it would not look into the substance of the issue, but would attend to the request only if there is a violation of the process.

Further, midway in the process, the Ombudsman wrote to say “I am not sure if you are aware that my **jurisdiction has some limits**. My bylaw says The charter of the Ombudsman shall be to act as a neutral dispute resolution practitioner for those matters for which the provisions of the Reconsideration Policy set forth in [Section 2 of Article IV](#) or the Independent Review Policy set forth in [Section 3 of Article IV](#) have not been invoked.” ... **So in this case my powers are in fact not strictly available where reconsideration has been sought**. But there would be no point now in revisiting this, because now there has been a reconsideration, there is nothing further I can do.”

The Ombudsman process is defined as an independent process but the independence of the Ombudsman appears to be incomplete. The Ombudsman is to investigate complaints against ICANN at any level, but the office of the Ombudsman appears so restrained and contained.

The Accountability and Review process deflected the issues presented for Board Reconsideration to the Ombudsman, who felt restrained in his remit. As mentioned earlier, throughout the process of the Nameshop's requests for review, it has been a situation of ICANN's unwillingness to review unfair and prejudicial decisions within ICANN.

The issues presented to the Ombudsman were on the following grounds:

- 1) Refusal by ICANN to acknowledge the ambiguity in the Applicant Guide Book and other short falls in the new gTLD system that caused this and a few other applications for strings that happen to be country codes. ICANN does not admit its role in the Applicant's circumstantial omission.
2. Discriminatory and Arbitrary denial of a fair request to change the string to a new string that is not a reserved string, not a geographic string, not another applied for (contested) string but a string relevant to the purpose of the mission of the Applicant's new gTLD pursuit. No reasons are assigned for this unfair and discriminatory decision which has not been by a transparent process.
- 3) Arbitrary and Discriminatory decision on the Applicant Support Request. This decision was also not made a transparent process, and without assigning specific reasons and without a fair hearing.
- 4) Abuse of the process by both staff and Board Governance Committee, by erroneous interpretation and wrong recourse of the provisions of guidelines related to time limits as published

The issue presented for the Board Reconsideration and to the Ombudsman is this: ICANN tries to suppress the application for a legitimate and valuable gTLD string, .INTERNET, for unstated reasons, in ways and methods unbecoming of its own high standards of Governance. ICANN perhaps has unstated reasons and unwritten rules related to this generic string, and not finding any reasons within the published guidelines or the available process, attempts to find circumlocutory arguments to suppress this application.

Even on its contention that it followed the due process, if a process is seen on record to have been followed, it is only made to appear as followed or recorded as followed for the sake of documentation. For example, "careful review of the application" is not quantifiable, it could mean a scientific, thorough review of the various aspects of the application at length by a body of fair and neutral evaluators without prejudice" or it could also mean the evaluators opened the application packet, flipped through the pages, brushed it aside to announce the premeditated conclusion. (This is not stated here at this portion of this letter to allege the later, but what is attempted here is to draw the Ombudsman's attention to the limitations of a vague statement such as "the process was followed" or "the application was rejected after careful consideration".)

After the Ombudsman presented the "Draft Decision", Nameshop requested the Ombudsman to note, examine and look into the following:

Change Request Decision:

a) No reasons were assigned for the Change request decision; No reasons were assigned for rejecting this specific change request against approval of hundreds of other change requests including some string change requests

b) there was a vague statement that the decision was made after "careful consideration" What was considered and what was not considered and what was wrong with this Change request in particular?

Applicant Support Decision:

a) The published criteria was listed and there was a vague statement that the application for support was rejected because it did not comply with all the criteria as listed. In response, it was shown, point by point, as to how the application confirmed to all the criteria as listed, but was not taken note.

b) The process was not transparent and was cloistered in secrecy.

c) It is not known if there was any member of the SARP panel was negatively prejudiced towards this particular application.

d) An adverse applicant support request carries the implication of a peculiar and unnatural rule of disqualifying the entire application out of the present round apart from denying support. The decision is not a refusal to bridge the gap in application fees, but to remove the application altogether. The timing of the SARP decision was so that the hurdles to the nameshop application by way of the Change Request decision were reinforced and compounded by the SARP decision. It is difficult to rule out the possibility that the SARP decision was another indirect way of suppressing the request for the string .INTERNET.

Pertaining to the Nameshop requests for reconsideration, by email to Staff and Board on various dates, by the formal reconsideration process and even in the Ombudsman process by early indications, several pertinent facts and arguments have been skipped, and several questions were left unanswered. There is a refusal to look into the questions citing flimsy procedural limitations, while in the case of the answered questions, there is a visible attempt to make vague statements such as "process was followed", the matter was "carefully considered" while in reality ICANN grossly ignores the merits of the requests as submitted and the requests submitted for reconsideration. ICANN actually takes advantage of the limitations of this applicant and grossly attempts to suppress this application and its merits in a manner that it would not think of in the case of any large applicant had this been a problem experienced by one of such large applicants.

Throughout the course of these issues, it is a situation of Staff unwillingness to correct a wrong decision by a subcommittee or External Consultants, Board refusal to interfere in Staff decision, BCG's unwillingness to acknowledge a gap in Board Governance or Staff processes. I hope that the Ombudsman looks into these issues thoroughly, examines and goes way beyond the "draft decision" which rightly or wrongly gives me the

impression of a Legal Letter defending ICANN's Actions pertaining to the Nameshop Application from the Office of the ICANN Ombudsman.

The draft decision was termed as one that was conveyed to aid discussion. It has indeed served its purpose well as intended, as it has brought up the points as mentioned in this communication.

The Ombudsman, however, **WITHOUT taking note of any of the above arguments**, merely reconfirmed his "Draft Decision" as final.

Addendum V Review Process: Cooperative Engagement Process as a pre-IRP process:

On 14 July 2015, Nameshop invoked the Cooperative Engagement Process (CEP) with ICANN.¹⁴ On 18 December 2015, ICANN provided a written response to your questions regarding the change request process and historical change requests.¹⁵ Nameshop's CEP concluded effective 20 May 2016, and Nameshop was provided an extension of time to 4 June 2016 to file an Independent Review Process (IRP). Nameshop chose not to initiate an IRP.

- This is not accurate and it is obstructive. Nameshop objected to the unilateral closure of the Cooperative Engagement process and had an elaborate discussion by email during May and June, for e.g. on June 7, on Independent Review with copies to Akram Atallah, John Jeffrey, Steve Crocker, Christine Willett and Amy Stathos stating:

Nameshop sent an email response to your email message of May 19 on the same day, objecting to the hasty manner in which you arbitrarily sought to close the CEP on .Internet. Without responding for two weeks, you sent us an email message on June 4 stating that "this CEP is concluded effective 20 May 2016", which amounts to a predated, high handed and arbitrary closure of the CEP. Also, Your email message of June 4, Saturday, stipulates time until 13 June 2016 to file an independent review, which severely limits the time available to do so effectively to five working days. This is not in good faith and all these actions amount to an attempt to resolve the issue to your advantage by causing us undue duress.

Nameshop waited for a response to the letter sent to the Board and CEO formally through the CEP and has sought a meeting with ICANN during June 25-30 at Helsinki, sought to set aside the predated closure of the CEP and continue in good faith instead.

Nameshop approached the Ombudsman to ensure the fairness and continuity of the Cooperative Engagement Process (CEP). The request is for Ombudsman to look into the issue of arbitrary closure of the Nameshop CEP, specifically:

- the CEP is a bylaw mandated process, one of the stipulated reconsideration processes, as distinct from a conversation between two private parties, and as such, one party can not unilaterally refuse to engage in the process especially when it is underway.

- the ruling by CEP that the parties have reached an impasse is wrong and misleading. This is unilateral.

- the unilateral closure of the CEP is a process violation.

- the manner of the closure is wrong, as explained in my email message, first the intent to unilaterally close the CEP was conveyed by the CEP on May 19 with a one day warning, which was wrong. Even then, within the deadline, Nameshop objected to several points and pointed out that the CEP did not proceed in good faith, and that it should continue. ICANN did not respond to the objections and sent a mail two weeks

later to say that the CEP was closed two weeks ago, which was again a process violation. This amounts to an attempt to conclude the CEP to ICANN's advantage under duress.

- the deadlines specified for filing an IRP is a secondary concern, though the intent of Nameshop is to continue talking through the CEP process. As this secondary concern, ICANN specified a time limit of four working days to file an IRP. The applicant is from India and the IRP is required to be filed, if at all, in the United States, so these deadlines are arbitrary.

- primary ruling from Ombudsman is requested on continuation of the CEP. ICANN needs to be directed to continue the CEP in good faith.

Repeated below are our requests numbered 1-3, as copied from my email message of June 13 to the Ombudsman:

1. Direct ICANN to set aside its message of June 4, 2016 and to proceed to examine the issues in good faith.
2. Direct ICANN to set up a meeting during ICANN Helsinki as requested with due attention by the ICANN Board and Executive, primarily to determine why ICANN refuses to cooperate and engage in a mutual discussions and thereafter to proceed in good faith, without further delays.
3. Examine the issues surrounding the evaluation and reconsideration of the Nameshop new gTLD application for .Internet and issue fair directives to ICANN to proceed in good faith and in a manner that reflects high standards in ICANN governance.

Nameshop met with the Ombudsman, who, after an initial hesitation, he agreed that he has jurisdiction to look into the CEP process violations. The Ombudsman concurred with ICANN and ICANN legal and wrote to rule that "if ICANN staff have decided that there is nothing further which can be discussed or progressed, and tell you they are not prepared to have any further discussions about this, they are entitled to do so. This is not unfair process."

Nameshop wrote back to point out that the CEP did not proceed to fulfil the obligations of ICANN in its mandated review and reconsideration process satisfactorily in form and substance.

It was once again pointed out that Nameshop string change request is well within the framework of the published guidelines for the "Change Request" process and that ICANN violated several processes in arbitrarily delaying the change request, and in arbitrarily denying the applicant support request. We request the Ombudsman to observe the further progress of the CEP as also look into the various aspects of the evaluation and reconsideration of the Nameshop application for .Internet without presuming an outcome of this application. Nameshop hoped that there is no pre-determination on the part of ICANN to be prejudicial to the Nameshop application for the string .Internet, which confirms to all criteria as laid down

We were surprised that ICANN staff have "decided that there is nothing further which can be discussed or progressed" even without looking at the issues in good faith as required by ICANN. This amounts to denying Nameshop the due process of stipulated reconsideration.

It appeared that ICANN maintained that "there was no unfairness". Nameshop wrote to ask the Ombudsman to make available "any explanations or answers that ICANN has provided that establishes that 'there is no unfairness'

The Ombudsman wrote back to say "there is nothing further which you can provide or submit which will assist me in this matter. The underlying problem is that you are never going to have any prospect at all of getting this string. It doesn't matter what accountability processes you use, you are on a completely hopeless and lost cause. I am therefore closing this file."

Nameshop wrote back in response to the Ombudsman's harsh comments which denoted a clear predetermination on the part of ICANN to unfairly and incorrectly review Nameshop's request. Nameshop inferred that ICANN's actions have led to a predetermination in causing the Ombudsman to systematically refuse to look at the case fairly and to deny due process, attention, and fairness.

Despite these setbacks, the meetings continued between ICANN and Nameshop during ICANN meetings 56-63 during 2016-2019, at Helsinki, Hyderabad, Copenhagen, Johannesburg, Abu Dhabi, San Juan, Panama, and Barcelona. Five of the more recent meetings included ICANN Community participants as neutral observers. A meeting did not happen at Kobe as ICANN felt that it could not arrange a meeting at a short notice of 3-4 days. Nameshop did not insist further for a meeting in Kobe, but requested for a meeting at Marrakesh in effect giving ICANN a 3 months advance information to arrange a meeting, but ICANN wrote back to decline the meeting.

Addendum VI: Nameshop Public Interest Commitments as formally filed and subsequently elaborated and reaffirmed:

gTLD String: .IDN with a change request for .INTERNET Applicant Entity Name:
Nameshop Application ID#: 1-1873-71868

SPECIFICATION 11

PUBLIC INTEREST COMMITMENTS

1. Nameshop, the Registry Operator will use only ICANN accredited registrars that are party to the Registrar Accreditation Agreement approved by the ICANN Board of Directors during 2013 (or any subsequent form of Registrar Accreditation Agreement approved by the ICANN Board of Directors) in registering domain names. A list of such registrars shall be maintained by ICANN on ICANN's website.

2. Nameshop, as Registry Operator will operate the registry for the TLD in compliance with all commitments, statements of intent and business plans stated in the following sections of Registry Operator's application to ICANN for the TLD, which commitments, statements of intent and business plans are hereby incorporated by reference into this Agreement. Registry Operator's obligations pursuant to this paragraph shall be enforceable by ICANN and through the Public Interest Commitment Dispute Resolution Process established by ICANN, as it may be amended by ICANN from time to time, the "PICDRP"). Registry Operator shall comply with the PICDRP. Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Registry Agreement) following a determination by any PICDRP panel and to be bound by any such determination.

The string .INTERNET, changed from the originally applied for string .IDN, though not filed as a Community TLD, is a TLD with a larger Community purpose, as the idea and purpose of the proposed TLD is to offer a bridge for the Internationalized Domain Name Registrants to open up their Web spaces for users beyond their own language communities. The string was applied for with the idea of a business plan to offer this domain extension to the registrants of various IDN domain names as an additional ASCII domain name that would point to their IDN space, which is otherwise a space with a domain name in a local script, not intelligible, hence out of reach for those outside their language space. The .INTERNET string is so applied for, with the larger purpose of building global Trust over IDN domains and making web spaces with IDNs accessible across their local scripts thereby contributing to the Internet Community's efforts to keep the Internet as One Internet as a global space. Nameshop hereby commits to operate .INTERNET in a manner that this purpose is central to the operation of this TLD.

Nameshop also wishes to reaffirm its commitments to implement this string responsibly, with Community Advice where possible.

3. Nameshop, as the Registry Operator agrees to perform following specific public interest commitments, which commitments shall be enforceable by ICANN and through the PICDRP. Registry Operator shall comply with the PICDRP. Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Registry Agreement) following a determination by any PICDRP panel and to be bound by any such determination.

1. Management of .INTERNET

The applicant intends to approach and invite three or more Internet Leaders of known commitment to Internet to be active and participative members of the Management Board to set directions for the management of the proposed TLD **(by an arrangement that is free of any legal commitments on their part)**. This is to ensure that this string is managed responsibly, as benevolently as possible. They would seated together with other Management Board members with a focused Business perspective.

2. Contribution to the growth and evolution of Internet and other good causes.

Nameshop voluntarily wishes to set aside, year after year, one quarter of the Post Tax profits (or pre-tax profits if the Tax Laws allow a full tax exemption of contribution to such a cause) arising from registration of every .INTERNET domain name over and above a minimal base volume of registrations. This contribution is to be allocated and utilized largely to the decisions of the Board Members as proposed in (1) above. Name shop would be willing to execute written, legally binding commitments to ICANN to this effect. The funds so set aside are intended to be utilized for the good of the Internet, where possible, in areas where sufficient probono funds are not available. However the fund's management may have the flexibility to allocate and utilize funds for inadequately funded humanitarian causes- without any geographic discrimination - if sufficient funds for Internet causes are otherwise available.

3 The present constitution of the company as a Proprietary firm based in India allows room for formalizing these intentions with a new company structure, possibly by including a foundation created for this purpose as a shareholder or partner admitted to the benefits of business, free of liabilities. Nameshop hereby commits to formalize this commitment by a legally binding agreement with the Public Interest oversight mechanism of ICANN, if one is so created and designated by any name, or confirm to any other process formulated by ICANN for oversight of Public Interest Commitments.

4. Nameshop also commits to modify this commitment suitably to address any possible gaps in the language of this expression.

5. Nameshop would also build in clauses for continuity of these commitments after any minor or major change in the company structure of Nameshop, after any minor or major change in the shareholders of Nameshop by designating the 25% commitment to Global Public Interest as specified above, as an unchangeable commitment, as permanent as

legally possible.

6. Further, the present Proprietor of Nameshop commits to utilize, over and above the 25% of the total already committed, at least one half of his share of income from the operations of .INTERNET on investments / business pursuits in the Internet space, with a similar clause to set aside at least one quarter of the income to the same foundation.

Nameshop's commitments are to foster diversity and choice; to enhance the utility and the reach of the DNS; to operate .Internet by engaging a globally-diverse set of independent, responsible, respected individuals in technical, managerial and policy roles; to operate the string .Internet in accordance with extensive civil society and technical community advice; to establish a Policy Board (including ICANN, ISOC and developing-region community members) to provide input on key appointments, initiatives, and to manage a Trust from out of at least one quarter of Nameshop's revenues that will be established for the benefit of Internet development, perhaps with some emphasis on the developing world; to protect both large and small domain name users in various aspects with fairness; to institute fair policies for the allocation of sensitive domain names with balanced advice; to bridge the Internet divide by encouraging IDN webspaces (websites with local, non-ASCII domain names) to take up a corresponding .Internet name in English, and vice versa; to connect web spaces across languages and develop the Internet as the globally interconnected space it was meant to be; to donate at least one quarter of its yearly gross revenue to further the evolution of the Internet.

In elaboration, Nameshop stated in its letter addressed to the Board Chair and CEO, in a document formally presented as a formal Cooperative Engagement Process document on March 15, 2017 during ICANN Copenhagen the following:

The Domain Name System (DNS) has evolved with its own policies, conventions and business practices over the past 30 years, which has contributed to the evolution of the Internet.

Nameshop as a Registry would broadly respect the established conventions of this business ecosystem and would conduct business by the same ethical best practices. As such, with this rationale in mind, Nameshop would not advocate disruptive industry wide policy changes in a manner that would harm the established and fair conventions.

Nevertheless, where there are opportunities to innovatively establish independent policies to be of greater service to the Internet users and to the DNS, Nameshop would seek to establish such practices for its own TLD operations. Among such policies may be:

1. *Nameshop would manage the string .Internet by employing and engaging globally responsible individuals as Board Members, each of whom would be respected for their known commitment to the Internet.* Nameshop, even as a Proprietary private

sector firm, is to be governed as a highly ethical firm and the string is to be managed responsibly.

2. If the new gTLD process requires Nameshop to name the people to be employed and engaged in the management of the commercial operation and also indicate nominees for the **foundation to manage the 25% given away**, the firm would be happy to do so. Nameshop would be receptively open to objections by ICANN on key appointments, and make suitable changes based on sensitive objections, though the appointments would be made without formal consultation with ICANN in selection.

3. With a view for fairness without regard to the firm's country of origin, **Nameshop would legally commit to adopt a policy of geographical fairness in the registration of Domain Names as well as in all its Registry policies.**

4. If the existing new gTLD/Registry Agreement framework is inadequate to cover these aspects and concerns peculiar to the allocation of the symbolically valuable string .Internet, **Nameshop would agree to execute**, with some attention to the legal nuances by legal consultation, **a special agreement** covering these voluntary aspects by a requested Special Status whereby, in a specialized contractual framework that would not be entirely different, but one which allows these voluntary Public Interest commitments to be legally articulated. Such an agreement could include aspects such as Ownership including succession, limitations and processes to be adopted for Dilution of its holding or clauses related to ICANN's approval of Transfer of Ownership or Control of this 100% Proprietary firm.

5. **Nameshop, by engaging community technical experts would explore ways of paying second level attention to DNSSEC and Registry level attention to abuse with an emphasis on prevention.** This to be elaborated.

6. Without detriment to general business conventions, **Nameshop would institute satisfactory policies concerning the allocation of prohibited/prohibitible Domain Names, Reserved Domain Names and premium domain names, with Commercial and Community advice, largely in the interest of the Internet.**

This includes:

a) *Respect for sacred names: Across the world, across cultures, there are names that are sacred or sensitive, which in some cultures are spoken or written with reverence and in yet other cultures even go unexpressed. Such names of the High and Divine, even if not part of reserved or prohibited names, are to be reserved by Nameshop to be registered to acceptable bodies by a transparent process, if ICANN's guidelines for Registries would permit such a practice or exception.*

b) *Respect for 'institutional' names: Certain names are special to certain institutions, namely institutions of religious pursuits, or that of knowledge, freedom or charity. Some of these names, whether or not registered 'trade' names, may be reserved by Nameshop to ensure that such special names are not openly available for registration by anyone so as to avoid abuse.*

c) *Caution concerning 'vulnerable' names: Whether or not reserved, names such as school, consumer, charity, donate and other names to be identified are to be assigned after due scrutiny, if ICANN's guidelines for Registries would permit such a practice or exception.*

d) *Prohibition of prohibitable names: Names that go against global public interest, whether or not prohibited already, are to be prohibited. Prohibition of Hate Speech and Derogatory Terms: Names that go against global public interest in a hateful manner, induce violence against communities, or disparage communities would be prohibited, in consultation with FoE organizations.*

e) *Caution against malicious or exploitative registration of generic Names: such as news, search, school and other second level strings to be identified. Such names to be transparently registered, after the necessary care to avoid rush registration of such valuable names to a person or organization that could be abusive.*

Etc. (There are certain other larger intentions, that require more detailed and prolonged consultations with Technical and DNS experts.)

The .Internet Foundation

The pursuits of the .Internet Foundation, with 25% of Nameshop's profits every year, would include:

- *Supporting programs to preserve Core Internet Values;*
- *Supporting non-commercial initiatives of value to the Internet;*
- *Supporting an Internet Academy;*

These [were stated on March 15, 2017] as initial intentions to be conveyed to the Trustees of .Internet Foundation, by Nameshop as a non-voting observer of the Trust, with the decision left to the Trustees.

Nameshop commits to operate the string in such a manner that its Registry Operations would be of certain and significant value to ICANN and the Internet.