

JONES DAY

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April 26, 2011

VIA E-MAIL

Arif H. Ali
Crowell & Mooring
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004-2595

Re: Notice of Breach of .JOBS Registry Agreement

Dear Arif:

I write in response to your 22 April 2011 letter objecting to ICANN's public posting of certain communications between ICANN and Employ Media regarding ICANN's 27 February 2011 Notice of Breach letter. Herein, ICANN addresses the points you raise with respect to ICANN's 19 April 2011 posting in the hope that we can return to focusing on the resolution of the issues detailed in ICANN's Notice of Breach letter in a manner that serves all interested parties and stakeholders.

First, ICANN cannot assure Employ Media that ICANN will refrain from publicly posting future communications, as you request in your 22 April letter. You and Employ Media know quite well that, pursuant to ICANN's Bylaws and embodied in its Accountability and Transparency Framework and Documentary Information Disclosure Policy ("DIDP"), ICANN endeavors to operate to the maximum extent feasible in an open and transparent manner in accordance with procedures designed to ensure fairness and protect confidential materials. These policies and objectives require that, from time to time, ICANN publicly post relevant materials in order to apprise interested parties of developments and happenings within the Domain Name System. Without this level of transparency, ICANN's multi-stakeholder model does not operate as effectively or efficiently.

Contrary to the claims in your letter, the 19 April posting – which consisted solely of communications regarding extensions to the opportunity-to-cure period set forth in ICANN's Notice of Breach letter – complied with both the letter and spirit of these policies. The three documents publicly posted by ICANN are of the type posted as a matter of due course. In particular, the documents did not contain the proprietary or confidential business information of either ICANN or Employ Media. Furthermore, the cooperative engagement provisions contained in the .JOBS Registry Agreement do not bar the public posting of correspondence created during the process, as Employ Media concedes in its 22 April letter. Finally, the 19 April posting was intended to, and did, inform the .JOBS Community that the opportunity-to-cure period established in the Notice of Breach letter has been extended once again by ICANN.

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Perhaps more importantly, ICANN's 19 April posting does not evidence "bad faith" on ICANN's part, as your 22 April letter claims. Quite the opposite, ICANN provided Employ Media with advance notice of the posting and a list of the three documents that would be posted. ICANN restricted the posting to those documents relevant to the matter at hand – ICANN's extensions to the opportunity-to-cure period – and ensured that proprietary and confidential information was not disclosed. And although your 22 April letter fails to mention this point, Employ Media specifically requested that ICANN publicly inform the .JOBS Community that the opportunity-to-cure period had been extended, which is precisely what ICANN set out to achieve through the 19 April posting.

Second, ICANN cannot agree to consult Employ Media on future postings, as you request in your 22 April letter. Indeed, one of the main issues raised in the Notice of Breach letter is the concern that the .JOBS Community was not fully apprised of changes taking place within the .JOBS domain. ICANN will not compound these concerns by negotiating with Employ Media which documents will, or will not, be disclosed to the Community. Rather, ICANN's public posting of materials will be guided by the neutral application of its principles and policies.

Third, ICANN disagrees with your claim that the cooperative engagement process cannot be productive if ICANN publicly posts communications made pursuant to that process. To the contrary, ICANN believes that the cooperative engagement process is fostered by forthcoming disclosures to stakeholders and Community members, as called for by ICANN's Bylaws, Accountability and Transparency Framework and the DIDP.

On the other hand, it is not productive for Employ Media to continually claim that it was surprised by ICANN's public issuance of the Notice of Breach letter. The issue of Employ Media's Charter compliance has been front and center – and public – since, at least, the time ICANN's Board Governance Committee began its analysis of Reconsideration Request 10-2 in late summer of 2010. Nor is it productive for Employ Media to repeatedly claim that it was unaware of ICANN's belief that a Charter amendment was necessary to cure the breaches identified in the Notice of Breach letter. Without risk of overstatement, ICANN has consistently taken this position, and has had specific discussions with Employ Media on this point, from the outset of the cooperative engagement process. Finally, the cooperative engagement process is undercut by correspondence, such as your 22 April letter, seemingly geared solely towards use in future litigation. Cooperative engagement with respect to the issues identified in the Notice of Breach letter is far more likely to succeed if litigation posturing is placed to the side.

It should be clear from our previous communications and discussions, as well as ICANN's willingness to extend Employ Media's opportunity to cure the issues raised in the Notice of Breach letter, that ICANN remains dedicated to the cooperative engagement process and attempting to resolve the issues ICANN sees with Employ Media's Phased Allocation

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Program. ICANN looks forward to proceeding in this fashion, and hopes that Employ Media is dedicated to the same end.

Should you have any questions, please do not hesitate to call me. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric P. Enson". The signature is stylized with a large, circular flourish at the beginning and a long, wavy horizontal line extending to the right.

Eric P. Enson

cc: John O. Jeffery
Amy A. Stathos
Samantha Eisner
Jeffrey A. LeVee
Brian Johnson
John Murino