

**INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION**

**ICDR Case Number 01-16-0000-2315**

**Commercial Connect, LLC**

Contact  
Information  
Redacted

**(Claimant)**

- v -

**Internet Corporation for Assigned Names and Numbers**

12025 Waterfront Drive, Suite 300  
Los Angeles, California, 90094-2536  
USA

**(Respondent)**

**REQUEST FOR INDEPENDENT REVIEW**

## **I. INTRODUCTION**

1. Pursuant to ICDR Rules 21 and 37, Complainant hereby requests the appointment of an Emergency Arbitrator to decide Complainant's request for interim measures of protection preventing the Internet Corporation for Assigned Names and Numbers ("ICANN") from completing the process for resolving the contention set for the .SHOP gTLD through an ICANN administered auction process, the award of the Registry Agreement to the prevailing party in such auction, and the delegation of the .SHOP gTLD to such party pending the outcome of an ICANN-created accountability procedure known as an Independent Review Process ("IRP"), which Claimant invoked on November 17, 2015.

## **II. PARTIES**

### **A. Claimant**

2. Claimant in these proceedings is Commercial Connect, LLC, incorporated in Louisville, the Commonwealth of Kentucky, USA.
3. Claimant is an applicant for the .SHOP gTLD, having submitted a so-called community-based application for this new gTLD in the context of ICANN's New gTLD Program. Reference is made to Application ID: 1-1830-1672 with Prioritization Number: 649.<sup>1</sup>
4. Claimant's preferred method of communication in these Proceedings is both via email and, if and when hardcopies need to be exchanged, by regular mail on the above address.

### **B. Respondent**

5. The Respondent is the Internet Corporation for Assigned Names and Numbers. ICANN's contact details are:

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<sup>1</sup> See <https://gtdresult.icann.org/application-result/applicationstatus/applicationdetails/307>; <https://gtdresult.icann.org/application-result/applicationstatus/applicationdetails/downloadapplication/307?t:ac=307>; **Annex 1a** and **1b**.

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12025 Waterfront Drive, Suite 300  
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### III. BACKGROUND OF THE INTERESTED PARTIES

#### A. Claimant

6. Claimant has submitted an application for the .SHOP gTLD in in the context of ICANN's New gTLD Program, which has been made available on ICANN's website at <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadapplication/307?t:ac=307>.

<sup>2</sup> In addition, Claimant points out that it was an original applicant for .shop in the first round of new gTLD applications, organized by ICANN in 2000.<sup>3</sup>

7. This Request is submitted pursuant to Article IV, Section 3 of the Bylaws for the Internet Corporation for Assigned Names and Numbers ("ICANN"),<sup>4</sup> the International Arbitration Rules of the International Centre for Dispute Resolution ("ICDR Rules")<sup>5</sup> and the Supplementary Procedures for Internet Corporation for Assigned Names and Numbers Independent Review Process (the "Supplementary Procedures").<sup>6</sup> By way of this Request, Claimant seeks relief from the harm it has suffered as a result of the actions, inaction and decisions of the ICANN Board of Directors, and more in particular the Recommendation of ICANN's Board Governance Committee ("BGC") dated August 24, 2015 <sup>7</sup> and the Determination by the New gTLD Program Committee ("NGPC") regarding Claimant's Reconsideration Request 15-13 <sup>8</sup> in violation of ICANN's Articles of

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<sup>2</sup> See **Annex 1a** and **1b**.

<sup>3</sup> See <http://archive.icann.org/en/tlds/tld-applications-logged-02oct00.htm>; **Annex 2**.

<sup>4</sup> See **Annex 3**; <https://www.icann.org/resources/pages/governance/bylaws-en>.

<sup>5</sup> See **Annex 4**.

<sup>6</sup> See **Annex 5**.

<sup>7</sup> See **Annex 6** (<https://www.icann.org/en/system/files/files/determination-15-13-commercial-connect-24aug15-en.pdf>).

<sup>8</sup> See **Annex 7** (<https://www.icann.org/resources/board-material/resolutions-new-gtld-2015-09-28-en#2.a>).

Incorporation,<sup>9</sup> Bylaws,<sup>10</sup> New gTLD Applicant Guidebook (“AGB”),<sup>11</sup> ICANN’s Top-Level Domain Application Terms and Conditions,<sup>12</sup> and principles of international law.

8. Following publication of all applied-for new gTLD strings in the fall of 2012, it appears that various entities have applied for the .SHOP gTLD, including Claimant.

9. In 2014, Claimant was invited by ICANN to and did participate in community priority evaluation (“CPE”), which is one of the ways offered by ICANN to community-based applicants like Claimant to resolve the situation whereby various parties have applied for the same or confusingly similar extension.

10. On May 21, 2015, Claimant was informed of the fact that it did not prevail in CPE. Reference is made to the determination of said date by the Economist Intelligence Unit, which is the organization that has been appointed by ICANN to perform CPE. This determination has been published on the ICANN website at <https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-1830-1672-en.pdf>.<sup>13</sup> (hereinafter: the “EIU Determination”).

11. Upon information and belief, this EIU Determination was subsequently accepted by ICANN, apparently without ICANN further reviewing the contents of this EIU Determination, the information on which it was based and/or the process used by the EIU in this respect.

12. Claimant subsequently filed, in accordance with ICANN’s accountability mechanisms a Request for Reconsideration (the “Reconsideration Request”), which has subsequently been submitted to ICANN’s Board Governance Committee.<sup>14</sup>

13. As indicated in its Reconsideration Request, Claimant is of the opinion that:

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<sup>9</sup> See **Annex 8**; (<https://www.icann.org/resources/pages/governance/articles-en>).

<sup>10</sup> See **Annex 3**.

<sup>11</sup> See **Annex 9**; <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>.

<sup>12</sup> See **Annex 10** <https://newgtlds.icann.org/en/applicants/agb/terms>.

<sup>13</sup> See **Annex 10**.

<sup>14</sup> See **Annex 11**; <https://www.icann.org/resources/pages/reconsideration-16-1-commercial-connect-request-2016-01-27-en>.

- a. the EIU and ICANN have not followed the rules and criteria that have been laid down in the Applicant Guidebook, by relying on incorrect or even false and misleading information;
- b. the EIU and ICANN have, by developing additional guidelines in connection with the CPE process, not followed established policies, considering the fact that these guidelines have been developed
  - i. not taking into account ICANN's policy-making processes; and
  - ii. more than two years after the application round for new gTLDs were closed, and without providing community-based applicants like Claimant with the opportunity to modify the contents of their applications accordingly.

14. According to Claimant, ICANN committed numerous breaches of its Articles of Incorporation, its Bylaws, the AGB, the Top-Level Domain Application Terms and Conditions, as well as principles of international and local law in its handling and treatment of the Community Priority Evaluation of the Application.

15. Under its Articles of Incorporation, ICANN is required to “operate for the benefit of the community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law.”<sup>15</sup>

16. Furthermore, ICANN's Bylaws require it to act in an open, transparent and non-discriminatory manner, remaining accountable to the Internet community and parties that are affected by ICANN's actions, and consistent with procedures designed to ensure fairness.

17. Furthermore, the ICANN Board failed to ensure that adequate safeguards were put in place in order to implement policies (such as the AGB) accurately, transparently and in an unbiased manner, and that established processes have been followed by the EIU in performing the CPE.

18. Specifically, Claimant seeks review of (i) ICANN's decision not to accept the findings contained in the EIU Determination; and resulting therefrom (ii) ICANN's decision not to award community-based status to Claimant's

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<sup>15</sup> Articles of Incorporation, Section 4.

Application, which should have ultimately lead to resolving the .SHOP contention set in favor of Claimant.

## **B. ICANN**

19. The Internet Corporation for Assigned Names and Numbers, founded in 1998, has as its mission to ensure a stable and unified global Internet. One of its key responsibilities is introducing and promoting competition in the registration of domain names, while ensuring the security and stability of the domain name system (DNS).

## **IV. PROCEDURAL ASPECTS**

20. In relation to the proceedings on the merits, Claimant requests that the IRP be considered by a three-member panel, composed of one arbitrator selected by each party and a presiding arbitrator selected by the parties either by mutual agreement or, in the event the parties are unable to reach an agreement, selected by the parties from a list of five potential presiding arbitrators chosen by the two party-appointed arbitrators.

21. On January 22, 2016, Claimant submitted a Notice of Independent Review, supplemented afterwards with a Request for Emergency Arbitration.

22. Following the withdrawal of the Request for Emergency Arbitration on February 5, 2016, Claimant requested the ICDR to submit this amended brief in the context of the Request for Independent Review. This request which was granted by the ICDR on February 5, 2016.

23. Claimant notes that he submitted on February 10, 2016 a Reconsideration Request, attached to this Request for Independent Review as **Annex 13**, requesting ICANN to suspend and reconsider the award of the .SHOP gTLD to the prevailing applicant in the New gTLD Program Auction.

24. In any case, Claimant requests for the opportunity to supplement its arguments in the context of these IRP proceedings if further steps are taken by ICANN in order to enter into such Registry Agreement and/or delegate the .SHOP gTLD to such party and/or following the outcome of Claimant's Reconsideration Requests attached hereto as **Annexes 11** and **13**.

## **V. SUMMARY OF RELEVANT FACTS**

### **A. ICANN's New gTLD Program**

25. For over a decade, ICANN has been developing its so-called New gTLD Program in order to increase competition in domain name registrations, and increase consumer choice.

26. In 2005, ICANN's Generic Names Supporting Organization (GNSO) began a policy development process to consider the introduction of new gTLDs, based on the results of trial rounds conducted in 2000 and 2003. The GNSO is the main policy-making body for generic top-level domains, and encourages global participation in the technical management of the Internet.

27. As stated above, Claimant is an applicant for the .SHOP generic top-level domain (gTLD), and this by way of:

- a. An application that has been submitted to ICANN in 2000 during the first round of applications for new gTLDs;<sup>16</sup>
- b. An application for a so-called community-based gTLD, submitted to ICANN in the context of the New gTLD Program on April of 2012.

28. During the first round of applications for new gTLDs, ICANN received three (3) applications for the .SHOP gTLD, of which Claimant's application is the only one that is still active; in the context of the New gTLD Program ("2012", or "3rd round"), ICANN received 9 applications in total for this string.

29. However, ICANN has never taken any decision with respect to Claimant's application submitted in the context of the 2000 round: this application has never been approved by ICANN nor denied. Furthermore, Claimant's application was not in contention at that time, which implies that due to the fact that ICANN organized a new round in 2012, inviting and allowing other applicants for the same and similar strings without giving any preference to previous applicants, Claimant was clearly put at a disadvantage.

### **B. Development and Finalization of the Applicant Guidebook**

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<sup>16</sup> <http://archive.icann.org/en/tlds/mall1/>.

30. The policy development process for the 2012 round included detailed and lengthy consultations with the many constituencies of ICANN's global Internet community, including governments, civil society, business and intellectual property stakeholders, and technologists.

31. In 2008, the ICANN Board adopted 19 specific policy principles, recommendations and implementation guidelines developed by ICANN's Generic Names Supporting Organization (GNSO) for implementing new gTLDs, with certain allocation criteria and contractual conditions.<sup>17</sup>

32. After approval of the GNSO's policy principles, recommendations and implementation guidelines, ICANN undertook an open, inclusive, and transparent implementation process to address stakeholder concerns, such as the protection of intellectual property and community interests, consumer protection, and DNS stability. This work included public consultations, review, and input on multiple draft versions of the Applicant Guidebook, as provided for in ICANN's operating principles.

33. In June 2011, ICANN's Board of Directors approved the Guidebook and authorized the launch of the New gTLD Program. The program's goals include enhancing competition and consumer choice, and enabling the benefits of innovation via the introduction of new gTLDs, including both new ASCII and internationalized domain name (IDN) top-level domains.

34. The application window opened on January 12, 2012, and ICANN received 1,930 applications for new gTLDs.

35. On 17 December 2012, ICANN held a prioritization draw to determine the order in which applications would be processed during Initial Evaluation and subsequent phases of the program. These applications were processed by ICANN staff and evaluated by expert, independent third-party evaluators according to priority numbers.

36. ICANN published the final version of the Applicant Guidebook on June 4, 2012, which is almost two months after the closing of the application round for new gTLDs (which was officially set for April 12, 2012).<sup>18</sup>

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<sup>17</sup> See <http://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-part08aug07.htm>; **Annex 6**.

<sup>18</sup> See <https://newgtlds.icann.org/en/applicants/agb>.

### **C. About Community Priority Evaluation**

37. Community Priority Evaluation (“CPE”) is a method to resolve string contention, described in full detail in section 4.2 of the Applicant Guidebook (AGB). According to the AGB, Community Priority Evaluation will only occur if a so-called “community-based application” is both in contention and elects to pursue CPE.

38. In order to qualify as a community-based application, the applicant must (i) have answered specific questions in the application form put at the disposal by ICANN during the application round, and (ii) have indicated to ICANN that the application should be subject to CPE. Additional fees of up to USD 22,000 are due for participating in CPE.

39. According to the AGB, a community-based application must receive a score of at least 14 out of 16 points in order to be confirmed by ICANN as being community-based. The direct effect of such acknowledgement is that such application prevails over any standard application for the same or confusingly similar gTLD application.

40. The evaluation itself, which includes the scoring of the application as explained above, is an independent analysis conducted by a panel selected by ICANN.

### **D. The EIU Was Selected As The Sole Community Priority Evaluator For Community-Based Applications**

41. On July 31, 2009, ICANN published on its website a “Call for Expressions of Interest (EOIs) for a New gTLD Community Priority Evaluation Panel formerly Comparative Evaluation Panel”, inviting providers to submit their proposals on how to “conduct the comparative evaluation of applications in contention”.<sup>19</sup>

42. The selection criteria for independent evaluators have been published included, amongst other criteria, the following:

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<sup>19</sup> See <https://archive.icann.org/en/topics/new-gtlds/eoi-commun-priority-31jul09-en.pdf>; **Annex 8.**

Criterion 4: *“Considering the comparative evaluation criteria defined in Module 4 of the Applicant Guidebook and described in Section 3 of this document, the provider must propose a panel that is capable of:*

- a. exercising consistent and somewhat subjective judgment in making its evaluations, (the Guidebook criteria seeks to make the judgment as objective as possible)*
- b. reaching conclusions that are compelling and defensible, and documenting the way in which it has done so in each case.”*

Criterion 7: *“The evaluation process for selection of new gTLDs will respect the principles of fairness, transparency, avoiding potential conflicts of interest, and non-discrimination.”*<sup>20</sup>

43. Furthermore, in its response to the requirements set out in the EOI, the applicant had to provide *“A statement of the candidate’s plan for ensuring fairness, nondiscrimination and transparency.”*<sup>21</sup>

44. Later on, ICANN awarded the contract for performing Community Priority Evaluations to the Economist Intelligence Unit (“EIU”). The EIU was selected for this role because it offers premier business intelligence services, providing political, economic, and public policy analysis to businesses, governments, and organizations across the globe.<sup>22</sup>

45. On August 16, 2013, the EIU published a set of draft Guidelines that panelists will use to score Community-based applicants.<sup>23</sup>

#### **E. ICANN / The EIU Did Not Perform Due Diligence In Evaluating Claimant’s Application**

46. On the basis of the information contained in the EIU Determination, the Community Priority Evaluation Panel demonstrates that it has taken into account certain information that is either in the public domain or has been communicated to the EIU in the context of the Community Priority Evaluation

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<sup>20</sup> <https://archive.icann.org/en/topics/new-gtlds/eoi-commun-priority-31jul09-en.pdf>, page 5; **ibid.**

<sup>21</sup> <https://archive.icann.org/en/topics/new-gtlds/eoi-commun-priority-31jul09-en.pdf>, page 6, Requirement 5; **ibid.**

<sup>22</sup> See <https://newgtlds.icann.org/en/applicants/cpe>.

<sup>23</sup> See <http://newgtlds.icann.org/en/applicants/cpe/panel-process-07aug14-en.pdf>; **Annex 7.**

process. The AGB indeed authorizes CEP panels to “*perform independent research, if deemed necessary to reach informed scoring decisions*”.<sup>24</sup>

47. Upon information and belief, based upon the contents of the EIU Determination, it is clear that the information relied upon by the EIU were false, incomplete or materially incorrect. Claimant therefore believes that, if the EIU would have taken into account accurate and up-to-date information, it would have come to a different conclusion, as stated in the Reconsideration Request and the submissions made by Claimant in this context.

#### **F. The EIU Was Not Authorized To Follow The CPE Guidelines**

48. In its Determination, the BGC refers to the fact that the CPE Panel has published “*supplementary guidelines (“CPE Guidelines”) that provide more detailed scoring guidance, including scoring rubrics, definitions of key terms, and specific questions to be scored*”. (BGC Determination, page 6). In the Determination, the BGC refers on various occasions that the CPE Panel has “*applied the Guidebook scoring guidelines*” apparently as opposed to the “*standards governing CPE*” that are “*set forth in Section 4.2 of the Guidebook*” (BGC Determination, pages 6, 10, 12, 14, 15 and 18) (emphasis added).

49. Claimant is of the opinion that the CPE Panel did not have the authority under ICANN Policy and in particular under the Applicant Guidebook to publish such additional “CPE Guidelines”. Furthermore, the rules and processes for developing “ICANN Policy” have not been followed in defining these “CPE Guidelines”.

50. For these two reasons alone, the CPE Guidelines cannot be considered “ICANN Policy”, and should therefore have been disregarded by the EIU in developing the CPE Report and by ICANN in making the Determinations.

51. In Claimant’s view, the only reference point to be used by the CPE Panel is the Applicant Guidebook.

52. In this respect, Claimant also points out to the fact that these CPE Guidelines have been published about one year and a half after the closing of the

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<sup>24</sup> AGB, §4.2.3.

application window in April / May of 2012.<sup>25</sup> Claimant hereby refers to Recommendation 9 contained in the GNSO's Principles, Recommendations & Implementation Guidelines, according to which ICANN had to implement "[...] a clear and pre-published application process using objective and measurable criteria" for new gTLDs.<sup>26</sup> According to Resolution 2008.06.26.02 of the ICANN Board, dated June 26, 2008, "[...] the Board [adopted] the GNSO policy recommendations for the introduction of new gTLDs <<http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>>." <sup>27</sup>

53. In conclusion: by expressly referring to the fact that the CPE Panel has utilized its own CPE Guidelines, which do not form part of the Applicant Guidebook, nor are to be considered ICANN Policy, the CPE Panel has not applied ICANN's policies and procedures in accordance with its Bylaws. Since the BGC has expressly confirmed in the Determination that the CPE Panel has applied "*the (Applicant) Guidebook scoring guidelines and the CPE Guidelines*", the BGC has in fact acknowledged that guidelines other than what has to be considered ICANN Policy have been followed ...

54. Given the obscurity of the evaluation and scoring process, and in the absence of further insights in which information has been used and considered by the EIU in the context of CPE, Claimant is unable to determine or demonstrate that the scoring provided by the CPE Panel would have been different if these CPE Guidelines would not have been applied. In order to do this, additional factual information and documentation would be required, which ICANN refused to disclose within the context of Claimant's DIDP and Reconsideration Requests.

## **VI. STANDING, SUMMARY OF BREACHES BY ICANN OF ITS BY-LAWS, THE TERMS AND CONDITIONS, AND APPLICABLE LAW**

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<sup>25</sup> Reference is made to <http://newgtlds.icann.org/en/applicants/cpe> - CPE Resources.

<sup>26</sup> <http://gns0.icann.org/en/issues/new-gtlds/summary-principles-recommendations-implementation-guidelines-22oct08.doc.pdf> and <http://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>.

<sup>27</sup> See ICANN Board Resolution 2008.06.26.02, available at [https://www.icann.org/resources/board-material/resolutions-2008-06-26-en#\\_Toc76113171](https://www.icann.org/resources/board-material/resolutions-2008-06-26-en#_Toc76113171), which expressly refers to the GNSO's Principles, Recommendations and Implementation Guidelines.

55. Claimant has standing to initiate these Proceedings in accordance with Section 6 of ICANN's Top-Level Domain Application Terms and Conditions, which state:

*"[...] APPLICANT MAY UTILIZE ANY ACCOUNTABILITY MECHANISM SET FORTH IN ICANN'S BYLAWS FOR PURPOSES OF CHALLENGING ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION. [...]"*.<sup>28</sup>

56. The breaches committed by ICANN in accepting the EIU Determination are manifold.

57. It is therefore clear that the EIU Determination, ICANN's acceptance thereof materially affects Claimant's Application and causes irreparable harm, considering the fact that they have invested more than USD 185,000 in application fees to be paid to ICANN, USD 22,000 in CPE fees, as well as significant consulting and attorney fees in the context of developing, submitting and managing each of their respective applications. In addition, as stated above, Claimant has made significant investments in its first application for the .SHOP gTLD that has been submitted to ICANN during the first gTLD round.

58. Given the fact that ICANN decided, on the basis of the EIU Determination, that Claimant's Application for the .SHOP gTLD did not prevail in CPE, this resulted in ICANN putting Claimant's Application in contention with various other applicants for the .SHOP gTLD.

59. On January 27, 2016, ICANN organized a so-called New gTLD Program Auction in order to resolve the contention set for all applicants for the .SHOP gTLD in the context of ICANN's New gTLD Program (i.e. the 3<sup>rd</sup> round), hereby ignoring Claimant's application for the .SHOP extension that was still outstanding from the 2000 round. Furthermore, ICANN ignored the fact that Claimant has submitted prior to the New gTLD Program Auction a Reconsideration Request and a Notice of Independent Review. Both actions are considered Accountability Mechanisms and, if ICANN would have followed its own processes for organizing New gTLD Program Auctions, should have suspended such auction process.

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## **VII. CONCLUSIONS AND RELIEF REQUESTED**

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<sup>28</sup> <https://newgtlds.icann.org/en/applicants/agb/terms>.

61. For all of the reasons set out above, Claimant respectfully requests the appointment of a Panel by the ICDR to:

- (1) determine that, in light of the above facts and circumstances, which may be further elaborated and supplemented in the context of this Independent Review Proceedings, the ICANN Board, and more in particular the BGC and the NGPC, have breached ICANN's Articles of Association, its Bylaws, the criteria and procedures set forth in the AGB, ICANN's Top-Level Domain Application Terms and Conditions, and principles of international law in
  - a. not awarding Claimant's application for the .SHOP gTLD in the context of the 2000 round, which is a clear violation of ICANN's Core Values (in particular ##7, 8, 9 and 10);
  - b. ignoring the fact that Claimant had a compliant application outstanding from the 2000 round, which was disregarded by ICANN in both the 2000 and the 2012 round, which is a clear violation of ICANN's Core Values (in particular ##7, 8, and 9);
  - c. performing the CPE for Claimant's Application in violation of ICANN's Core Values ## 7, 8 and 10;
- (2) determine that Claimant should have been given preference in the context of the new gTLD application process, considering the fact that ICANN did not take any decision with respect to Claimant's application that was submitted to ICANN in 2000, which is a clear violation of ICANN's Core Values ##8, 9 and 10;
- (3) determine that the CPE Guidelines have been developed outside of the policy context provided for by the GNSO in 2007, which has been adopted by the ICANN Board in 2008, and should hence be disregarded in the context of Community Priority Evaluation, which is a clear violation of ICANN's Core Values ##7 and 8;
- (4) determine that the review and scoring of Claimant's Application was done on the basis of false or inaccurate material information as is proven by the submissions made by the Claimant to ICANN and in the context of these Independent Review Proceedings, and that they have

not performed due diligence by independently verifying the information available to them, which is a clear violation of ICANN's Core Values ##8 and 10, as well as ICANN's Accountability and Review obligations;

- (5) determine that, based upon the above, the EIU erred in reviewing and scoring Claimant's Application;
- (6) temporarily restore the "Application Status" of Claimant's application to "In CPE" until Claimant's Application has been re-evaluated against the Community Priority criteria set out in the Applicant Guidebook;
- (7) in the meantime, also revise ICANN's decision whereby Claimant's Application for the .SHOP gTLD has been put "In Contention" with remaining active applications for the .SHOP gTLD, submitted by third parties;
- (8) determine that Claimant's Application meets the Community Priority Evaluation Criteria set forth in the AGB;
- (9) if the Panel would determine that it would not be qualified to perform such a Community Priority Evaluation, appoint (or instruct ICANN to appoint) a third party other than the Economist Intelligence Unit to perform such Community Priority Evaluation, taking only into account the criteria and standards set out in the AGB;
- (10) instruct ICANN to refund to Claimant all fees paid in order for the EIU to perform CPE.

## **VIII. RESERVATION OF RIGHTS**

62. Claimant reserves all of its rights to seek additional emergency relief or interim measures of protection, request the ICDR to supplement or amend its arguments, claims and requested relief during these and the Independent Review proceedings, including but not limited to its rights to further elaborate upon, substantiate and supplement the factual and legal positions and arguments set out herein within the context of the ICDR Rules, bearing in mind that Claimant has not been offered the opportunity to initiate and conduct the Cooperative Engagement Process that has been initiated on at least two

occasions with ICANN, and that ICANN has acted contrary to its own processes and policies by allowing the New gTLD Program Auction process for the .SHOP gTLD to take place notwithstanding the fact that Accountability Mechanisms (in particular a Reconsideration Request and the present IRP) were pending.

Respectfully submitted,

A handwritten signature in black ink that reads "Jeffrey Smith". The signature is written in a cursive style with a large, stylized initial "J".

*Jeffrey Smith*  
*President*  
*Commercial Connect, LLC*

*February 10, 2016*