

**IN THE MATTER OF AN INDEPENDENT
REVIEW PROCESS BEFORE THE
INTERNATIONAL CENTRE FOR DISPUTE
RESOLUTION**

GCCIX, W.L.L.,)

)

Claimant,)

)

vs.)

)

INTERNET CORPORATION for)

ASSIGNED NAMES AND NUMBERS,)

)

Respondent.)

)

_____)

ICDR CASE NO. 01-21-0004-1048

**CLAIMANT’S OPPOSITION TO
ICANN’S MOTION FOR FEES AND COSTS**

July 28, 2025

1. Claimant hereby timely opposes ICANN's Motion for Costs and Fees, submitted June 23, 2025.
2. Claimant maintains that any award of fees and costs is premature, since the Claimant has appealed the decision of the Independent Review Panel to dismiss this case. In the event that Claimant's appeal is upheld by ICANN's Standing Panel, ICANN would not be a prevailing party, and so would have no potential basis for any of its requested award of fees or costs.
3. Claimant additionally maintains that any award of fees and costs would be inappropriate under the ICANN Bylaws, because there has been no finding whether any aspect of Claimant's case is "frivolous or abusive." Indeed, ICANN has never even argued that, despite that it was one of just three specific bases on which ICANN could have brought its underlying Motion to Dismiss this case. It is too late for it to try to make that argument now.
4. Furthermore, Claimant's IRP case has not been evaluated by the Panel as to its merits, and so Claimant's case cannot conceivably be deemed frivolous or abusive as a whole. Yet, ICANN apparently seeks an award covering all of its fees and costs for the entire case, which it has said will amount to "hundreds of thousands of dollars." In the event the Panel somehow finds strong reason for a fee shift, it should only apply narrowly to very specific, allegedly "frivolous or abusive" conduct.

BACKGROUND

5. Claimant's IRP case was filed June 9, 2021. A revised complaint was filed December 10, 2021. A second amended complaint was filed December 22, 2023. ICANN's response was filed February 5, 2024. Only then, via its Motion to Dismiss, did ICANN first seek

dismissal of this case due to Claimant's corporate status in Bahrain having been "Deleted by Law." ICANN did not request any sort of sanctions at that time, and thus presumably did not believe it had any basis therefor.

6. In Procedural Order No. 8, dated July 10, 2024, the Panel ordered Claimant to "submit, ... with respect to any court case(s) in Bahrain addressed to Claimant's standing as an entity, English translations of key pleadings and documents filed with the court(s) and any calendar or schedule issued by the court(s)." That Order further invited ICANN to "supplement the submission or make its own submission of such material if it so chooses." Relying on advice of its Bahraini lawyer, Claimant maintains that it was not able to provide "pleadings and documents filed with the court" because it would run afoul of Bahraini law as lawyers are officers of the Bahraini courts and bound by the same confidentiality rules as court employees. Claimant invited the Panel to make the request directly to the Bahraini court, and offered to convey same to the court. The Panel declined that invitation. Notably, ICANN did not provide any such documents, either, despite the Panel's invitation for it to do so.
7. Regardless, an October 2024 change in MOIC regulation to clarify relevant Bahraini law was promptly communicated to the Panel, which made clear that Claimant could be revived despite its status having been Deleted by Law for more than three years. This was the sole basis for ICANN's Motion to Dismiss, and so should have been dispositive of that Motion.
8. Instead, on February 13, 2025, the Panel issued Procedural Order No. 10, dismissing the case "because GCCIX has not had the legal capacity to operate a gTLD since 2018, and it has not revived its legal capacity after being provided opportunity to do so, this IRP

‘lacks substance’ as required by the Bylaws.” (PO10, #129.) Claimant maintains that the Panel was and is wrong about the effect of Claimant’s Bahraini corporate status, insofar as the Panel maintains that Claimant’s corporate status precluded it from “operating a gTLD” or otherwise conducting any commercial activity. The Panel had opportunity to seek independent Bahraini legal advice, as specifically authorized in ICANN Bylaws, but did not do so. As for the intervening change of regulation, the Panel refused to consider it because it found that GCCIX had already had a “reasonable amount of time” to do so. However, the Panel had never ordered GCCIX to do so, nor until this Order had the Panel even suggested the case would be dismissed on that basis. The Panel never had cited any authority, nor any guidance to Claimant, as to what a “reasonable time” would have been for Claimant to change its corporate status. Indeed, until this Order issued, the Panel had never even opined that this would be required of Claimant.

9. Regardless, Claimant was working diligently to change its corporate status, and on April 27, 2025, Claimant provided a Certificate of Good Standing to the Panel which proved that Claimant’s status had been updated.
10. Nevertheless, on May 19, 2025, the Panel majority denied Claimant’s Motion to Reconsider Procedural Order #10. Again the Panel found, without any supporting authority, that Claimant had already had a “reasonable time” to update the corporate status. Indeed, Claimant worked feverishly to make that happen within just three months of Procedural Order #10. That was clearly a new and material fact, but the Panel majority refused to acknowledge it, or otherwise to reconsider.
11. The dissenting Panelist would have accepted this evidence, found ICANN’s motion moot, and allowed Claimant’s case to proceed on the merits. She found that “the very reason on

which Order n°10 was based was removed, rendering moot Order n°10 and the Motion to Dismiss.”

ICANN’S MOTION FOR COSTS AND FEES

12. ICANN’s argument for an award of “hundreds of thousands of dollars” in costs and fees consists of just over two pages of argument, beyond its biased and misleading factual representation of prior proceedings.
13. Primarily, ICANN argues that GCCIX “has not had the legal authority to operate a gTLD since 2018, and it has not revived its legal capacity after being provided opportunity to do so.” On that basis, ICANN argued and the Panel agreed in PO #10 that the IRP “lacks substance”. (Mot., #12).
14. Second, ICANN argues that Claimant “engaged in evasive, misleading, and abusive behavior throughout this IRP, which unnecessarily increased ICANN’s costs.” ICANN cites six purported examples, each only relating to ICANN’s Motion to Dismiss. Each allegation will be analyzed by Claimant below. (Mot., #13).
15. ICANN’s third purported argument simply rehashes its first, except to add that Claimant “apparently” did not take “any real action to rectify the [corporate status] issue seemingly until *after* the Panel granted ICANN’s Motion to Dismiss.” (Mot., #14 (emphasis in original)).
16. Claimant addresses each of these allegations, in turn, *infra*.

LEGAL STANDARD

17. ICANN Bylaws, Section 4.3(r) provides:

the IRP Panel may shift and provide for the losing party to pay administrative costs and/or fees of the prevailing party in the event it identifies the losing party's Claim or defense as frivolous or abusive.

18. There have been more than twenty Independent Review cases filed since its inception in ICANN Bylaws. ICANN cites just one case that has discussed fee shifting. (Mot., #11). In that case, the claimant was deemed prevailing party as to only a limited part of the case, and fees shifted only in an amount representing administrative panel fees (and not legal fees) for just that portion of the claim. (*See Afiliat Domains v. ICANN*, Final Decision (Redacted) (May 20, 2021), #382 *et seq.*) ICANN has not made any such distinction in its instant Motion, instead arguing that Claimant's entire case is frivolous or abusive, so presumably ICANN is entitled to all of its legal fees and administrative costs incurred throughout the entire case.
19. Claimant disagrees, and maintains on the basis of that authority that the Panel could only conceivably award administrative costs related to the Motion to Dismiss, if it were to award any costs or fees at all.

CLAIMANT'S ARGUMENTS IN OPPOSITION

ICANN's Motion is Premature

20. First, ICANN's Motion is premature because it may not ultimately be found to be a prevailing party in this case. The ICANN Bylaws provide Claimant with the unfettered right to appeal the IRP panel's final decision to a Standing Panel sitting *en banc*. Claimant provided notice of such appeal to ICANN shortly after the panel majority's decision was made final. ICANN accepts Claimant's right to appeal the decision, and recently asked for a more formal Notice of Appeal document also to be provided to the Panel and placed on the ICANN website. So, that Notice of Appeal is submitted herewith. Claimant further requested ICANN to withhold its instant Motion until such time as the appeal was decided, but it refused.

21. Claimant's case has not been adjudicated on its merits, but instead it has been summarily dismissed due solely to a Bahraini corporate formality which indisputably was completely rectified just three months after the Panel majority lost patience with the process and ordered the case dismissed. In the event that Claimant's appeal is upheld, the case will proceed on the merits and ICANN's motion will be moot as there will not have been any prevailing party as of now.
22. Therefore, in the interest of judicial economy, the Panel should exercise its discretion to 1) either hold the motion in abeyance until such time as the appeal is resolved, or 2) dismiss the motion without prejudice to later resubmission if it becomes ripe.

ICANN's Motion Is Unfounded

23. ICANN moved to dismiss the case under a Section 4.3(o)(i) of its Bylaws allowing summary dismissal if one of only three things is found. The panel may only dismiss "Disputes that are brought without standing, lack substance, or are frivolous or vexatious."
24. However, in its Motion to Dismiss, ICANN moved the panel to dismiss only under the first two theories. ICANN argued that the IRP was brought without Claimant having standing, and that it lacks substance due to Claimant's corporate status at that time. ICANN never argued that the IRP was frivolous or vexatious until now. So, the Panel has not considered the issue and has not made any finding in that regard. Instead, the Panel found that Claimant does indeed have standing, yet agreed that the IRP lacked substance due to Claimant's corporate status – which was rectified just three months later.

25. Insofar as ICANN did not argue this basis in its Motion to Dismiss, it must not have believed the case was in any way frivolous or vexatious until sometime thereafter. Thus, ICANN certainly has no basis for any award of costs or fees up to that date.
26. In its instant Motion for Fees and Costs, ICANN nevertheless appears to argue that it should be awarded the entirety of its legal fees and of its administrative costs (including panelists' fees) since inception of the IRP case. But it offers no authority for that proposition, and indeed the only IRP case that it cites held specifically otherwise. In the *Afilias* case, contrary to ICANN's argument in that case, the Panel found that a party could only be awarded fees as to any specific claims on which they prevailed, and the panel awarded an amount representing administrative costs (and not legal fees) for just that portion of the claims. (*See Afilias Domains v. ICANN*, Final Decision (Redacted) (May 20, 2021), #382 *et seq.*)
27. There is no precedent for the Panel to do any differently in this case. The vast majority of the work in this case thus far happened in the years prior to ICANN's Motion to Dismiss, and ICANN prevailed only on its claim that the IRP "lacks substance" due to Claimant's prior corporate status. ICANN further lost on its other adjudicated claim that Claimant lacks standing, and so cannot be awarded costs or fees on that claim. Nor can ICANN be awarded costs or fees on any of its other responsive claims or defenses which have not been adjudicated at all, such that there is no prevailing party.
28. Turning to the alleged frivolity and/or abusiveness of the sole claim that ICANN has prevailed on, it apparently was a close decision since one Panelist dissented from the final ruling, and| would have allowed Claimant's case to be decided on the merits. Furthermore, the unanimous Panel agreed in PO #10 that Claimant had standing to bring

and maintain the IRP since still it existed as a company even though it had been “Deleted by Law” for years. The Panel dismissed the case solely on the basis that the IRP “lacked substance” because the Panel was led to believe that a Deleted by Law company could not conduct commercial operations, at least not so far as to “operate a gTLD.” Claimant continues to vigorously contest that finding, which will be resolved on appeal. But in any event, Claimant provided ample Bahraini legal advice that it was able to enter into contracts and otherwise operate, and indeed it remained duty-bound to operate for the full benefit of its shareholders even when in such status. Claimant also provided evidence that it had entered into contract with its auditor, and that the issue of Claimant’s corporate status was before a Bahraini court to decide. And of course, just three months after PO #10, Claimant was able to prove that it had updated its corporate status to “Active”, thus alleviating all of ICANN’s concerns alleged in its Motion to Dismiss.

29. It would be unreasonable to hold that Claimant’s defense to that claim was frivolous since it was supported by evidence from several Bahraini legal experts who also provided statutory, regulatory and case law authorities in support of their well-reasoned and detailed opinions. ICANN’s claim only involved a very narrow and technical regulation as to corporate status, upon which reasonable minds clearly differed. The Panel found ICANN’s dueling interpretation dispositive, but this does not mean that Claimant’s defense was frivolous or abusive such as to support an award of fees or costs.
30. Furthermore, Claimant’s arguments proved to prevail in Bahraini court. The MOIC regulation at issue was clarified at Claimant’s behest and in Claimant’s favor. Claimant was able to update its corporate status to Active just six months later. But in the meanwhile the Panel found that update was three months too late, as it did not come until

April whereas the Panel dismissed the case in February. That does not mean Claimant's defense was frivolous or abusive; in fact, it proves the contrary.

31. Moreover, one of the three distinguished Panelists would have found that fact dispositive of ICANN's Motion to Dismiss, and would allow this IRP to proceed on its merits. Given that one Panelist would have denied that motion in light of Claimant's ultimate success in updating its corporate status, it can hardly be said that Claimant defended that claim frivolously or abusively.

32. ICANN states six allegations that it claims to constitute frivolous or abusive defense to the Motion to Dismiss. (Mot., #13.). Claimant addresses each, in turn:

1. *informing ICANN and this Panel in January 2023 that its commercial registration would be changed to active in 45 days.*

This turned out to be wishful thinking, based on Bahraini counsel's best estimate at that time. It is supported by sworn declarations of that lawyer and other legal authorities, that indeed Claimant should always have been able to fix its status, even after three years. But the MOIC took a different position, necessitating resort to Bahraini courts. Ultimately, Claimant and its counsel proved correct, as the MOIC regulation was clarified, and its corporate status was changed.

2. *repeatedly evading ICANN's document requests and follow-up questions regarding GCCIX's commercial registration status.*

ICANN provides no specificity, and no evidence or authority, so support this allegation. Claimant timely met and conferred with ICANN, and timely and fully responded to all of ICANN's document requests.

3. *during the hearing on ICANN's Motion to Dismiss, belatedly disclosing the existence of a Bahraini lawsuit (never once mentioned in GCCIX's papers opposing the motion) that had "been going on for two years," when in reality it appears the lawsuit was filed shortly before the hearing.*

The existence of the Bahraini lawsuit was only tangential to the issues in ICANN's Motion to Dismiss. The dispositive issue for the IRP Panel was whether a Deleted by Law company could enter into contract and otherwise operate commercially. But that issue was not before the Bahraini court. The "three-year" rule was before the court, and was then clarified by MOIC in Claimant's favor in October, 2024. Claimant was confident that its legal position in Bahrain was clear and sound, and supported by ample legal authority which was presented to the Panel, such that the IRP Panel would agree. Unfortunately, the Panel did not agree, but more information from the Bahraini court, even if Claimant were allowed to disclose it, would not have had any impact on the claim or defense as ultimately adjudicated by the Panel. Undersigned counsel's representation as to when the suit was brought had no relevance, but anyway has been supported by Bahraini counsel in a sworn and unrefuted Declaration. (See, Sayyar Declaration ISO Claimant's Reply to PO#9 (Sept. 11, 2024), at #9: "Mr. Rodenbaugh was generally correct to say that these proceedings against the Ministry of Industry have been going on for two years, as the procedural and administrative precursors to filing of the Complaint had to be restarted after Covid and have been going on that long.").

4. *refusing to disclose to the Panel or ICANN any substantive information about the supposed lawsuit or about any outreach with the MOIC.*

Claimant promptly disclosed both a letter from the Ministry which provided the case caption details, and the current case schedule pursuant to the Panel's Procedural Order. Claimant was barred from sharing case pleadings by Bahraini

law, including its law that attorneys are officers of the court and thus bound by the same rules. It was undisputed that court personnel could not make any such disclosure, per the Penal Code statute relied upon by both parties. Once Claimant provided the additional law about attorneys as court officers (see *id.*, at #3 to #6), ICANN did not provide any contrary evidence or opinion in its next response or thereafter, presumably because it accepts Claimant's position. Furthermore, the Panel invited ICANN to present such documents in its PO#8, and Claimant encouraged the Panel to request such documents, but neither ICANN nor the Panel did so. Claimant could not violate Bahraini law, and ICANN conceded the point until now. Insofar as it is supported by clear statutes and legal opinion provided to the Panel, there is no indication that Claimant's position is frivolous or abusive.

5. *submitting misleading declarations that necessitated ICANN retaining its own Bahraini counsel to inform and correct the record.*

ICANN offers no specificity as to this allegation. Both parties submitted a number of legal opinions, starting indeed with one from Bahraini counsel hired by ICANN. Claimant did not "necessitate ICANN retaining its own Bahraini counsel" as ICANN had already done so prior to filing its Motion to Dismiss.

This allegation is frivolous.

6. *submitting contradictory declarations claiming that GCCIX could have reinstated its commercial registration status at any point over the past six years.*

Claimant has consistently maintained that it could have reinstated its commercial registration status at any time, despite the purported "three-year" rule cited by MOIC and ICANN. It had no need to do so until the Panel found that the fact of

Claimant's corporate status, alone, meant that this entire IRP case "lacks substance" and must be dismissed. Claimant vigorously disputes that finding and it will be resolved on appeal. Nevertheless, Claimant was able to reinstate its status to Active just three months after the Panel's order of dismissal. That indicates that Claimant's position was not frivolous or abusive, as ICANN and its counsel were proved wrong.

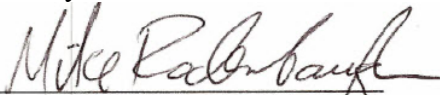
33. Finally, ICANN maintains that Claimant "apparently" did not take "any real action to rectify the [corporate status] issue seemingly until *after* the Panel granted ICANN's Motion to Dismiss." (Mot., #14 (emphasis in original)). This is obviously false. While Claimant saw no business need to do so until that ruling, Claimant had been trying to remedy the situation with the MOIC since 2019. Claimant presented evidence of that verified by Mr. Sayyar. Furthermore, Claimant made clear that the Bahraini court action was at least in part in effort to overturn the MOIC's regulatory imposition of the "three-year rule" as inconsistent with fundamental Bahraini corporate statutes and high court opinion. Ultimately, Claimant was proved correct when the regulation was clarified at Claimant's behest and in Claimant's favor. All of that took place well before issuance of PO#10, in good faith effort to defend against ICANN's Motion to Dismiss.
34. In the end, Claimant was able to restore its corporate status to Active, even though it had no reason or deadline under Bahraini law to do so. It got that ruling from MOIC just three months after the Panel order the case to be dismissed, and before the Claimant's reconsideration request was resolved. Meanwhile, the Panel majority ruled otherwise, but made no finding that any claim was frivolous or abusive, and only after 17 pages of analysis. Upon reconsideration, in light of the corporate status change, the dissenting

Panelist would have changed her opinion and denied ICANN's Motion to Dismiss. On these facts, the Panel cannot reasonably find that Claimant defended against the motion frivolously or abusively such as to support an award of fees or costs.

CONCLUSION

35. For all of the foregoing reasons, Claimant urges that ICANN's Motion for Fees and Costs be denied or stayed as premature, or otherwise that it be denied for lack of proper foundation, evidence, or any determination of Claimant's frivolous or abusive defense against ICANN's claims for summary dismissal as stated in its Motion to Dismiss. ICANN could only possibly be awarded costs or fees on the one of those two claims that was adjudicated in its favor, if at all. Ultimately, Claimant was proved correct as to that claim insofar as it was able to restore its corporate status to Active and thus restore "substance" to the IRP, even though that did not happen definitively until three months after the Panel's dismissal order. That proves that Claimant's defense to that Motion could not have been frivolous or abusive.

Respectfully submitted,

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