

INDEPENDENT REVIEW PROCESS

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

Namecheap, Inc.,) ICDR CASE NO. 01-20-0000-6787
)
 Claimant,)
)
 and)
)
 INTERNET CORPORATION FOR ASSIGNED)
 NAMES AND NUMBERS,)
)
 Respondent.)
_____)

**ICANN'S RESPONSE TO NAMECHEAP'S
REQUEST FOR INDEPENDENT REVIEW PROCESS**

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10 April 2020

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INTRODUCTION

The Internet Corporation for Assigned Names and Numbers (“ICANN”) hereby responds to and opposes the Request for Independent Review Process (“IRP Request”) submitted on 25 February 2020 by Namecheap, Inc. (“Namecheap”).

1. This IRP should be denied for two separate and independent reasons. First, Namecheap has not established that it has suffered *any* harm as a result of ICANN’s conduct; accordingly, Namecheap is not a proper “Claimant” under ICANN’s Bylaws, and it has no standing to pursue this IRP Request. Second, Namecheap has not demonstrated that ICANN violated its Articles of Incorporation (“Articles”) or its Bylaws in any of the respects identified in Namecheap’s Request for IRP. Namecheap plainly has not carried its burden.

2. ICANN is a California not-for-profit public benefit corporation formed in 1998 and is responsible for overseeing the technical coordination of the Internet’s domain name system (“DNS”) on behalf of the Internet community. In this role, ICANN contracts with entities that operate top-level domains (“TLDs”), which represent the portion of a domain name to the right of the final dot, such as “.ORG” or “.COM.” These entities are known as registry operators, and the contracts are known as registry agreements.

3. This dispute concerns .ORG, .BIZ, and .INFO, and ICANN’s registry agreements with the registry operators that operate those TLDs. Namecheap (which is not a registry operator) challenges ICANN’s decision in June 2019, following an extensive public comment process and consultation with the ICANN Board, not to include a price control provision in the most recent version of the registry agreements for .ORG, .INFO, and .BIZ. Of critical importance, Namecheap is not a party to, nor a third-party beneficiary of, these agreements.

4. Until 2012, there were approximately twenty TLDs in the DNS, including .ORG, .BIZ, and .INFO. These early TLDs are often referred to as legacy TLDs.

Some of the registry agreements between ICANN and the registry operators for these legacy TLDs initially included a provision setting the maximum price increase the registry operator could impose on registrars for registry services.

5. In 2012, ICANN significantly expanded the DNS via its New gTLD Program, through which interested entities were able to apply to create and operate new generic TLDs (“gTLDs”). As a result of the New gTLD Program, ICANN has introduced over 1,200 new gTLDs into the DNS. All registry operators for these new gTLDs executed a Base Registry Agreement with ICANN that did not include any price control provisions.

6. To ensure consistency across all TLD registry operators, and to promote competition in the significantly expanded DNS marketplace, ICANN began negotiating with many of the legacy TLD registry operators to transition them to the Base Registry Agreement when their prior registry agreement was set to expire. When their existing registry agreements were about to expire, ICANN engaged in negotiations with the .ORG, .INFO, and .BIZ registry operators and, after consulting with the ICANN Board and inviting public comments, the parties to each registry agreement agreed to transition to the Base Registry Agreement.

7. ICANN entered into the newest versions of these agreements on 30 June 2019, over nine months ago. Yet, Namecheap does not identify any actual harm it has suffered as a result. Namecheap also fails to establish that ICANN violated its Articles or Bylaws in transitioning these TLDs to the registry agreement that applies to more than 1,200 gTLDs.

8. In late 2019, the registry operator for .ORG, Public Interest Registry (“PIR”), submitted to ICANN a request for indirect change of control of PIR (“Change of Control Request”). PIR informed ICANN that PIR’s parent entity, Internet Society (“ISOC”), had entered into an equity purchase agreement with Ethos Capital, LLC (“Ethos”). Under the registry agreement, ICANN must either consent to, or withhold its consent from, the Change of

Control Request. ICANN has not yet made a decision on the Change of Control Request, and has been conducting robust, transparent due diligence evaluating the request. Accordingly, there is no ICANN conduct for Namecheap to challenge. Nor is there any evidence or even a hint that, once ICANN makes a decision—either by consenting to or withholding consent from the Change of Control Request—ICANN will violate its Articles, Bylaws, or other policies and procedures.

9. Accordingly, not only does Namecheap lack standing to assert its claims, Namecheap also cannot identify any violation of ICANN’s Articles or Bylaws from either ICANN’s decision not to include the price control provisions in the .ORG, .BIZ, and .INFO registry agreements, or its consideration of the Change of Control Request.

SUMMARY OF RELEVANT FACTS

I. ICANN AND ITS ACCOUNTABILITY MECHANISMS.

10. ICANN is a California not-for-profit public benefit corporation formed in 1998. ICANN’s mission “is to ensure the stable and secure operation of the Internet’s unique identifier systems.”¹ ICANN is responsible for overseeing the technical coordination of the Internet’s DNS on behalf of the Internet community.² ICANN is not a price regulator.³

11. ICANN contracts with registry operators to operate gTLDs. Registry operators separately contract with registrars—entities through which individuals and entities (registrants) register domain names—and that contract is known as a “Registry-Registrar Agreement.”

¹ Bylaws, Art. 1, § 1.1(a), RM 2.

² *Id.*

³ *See id.*, Art. 1, § 1.1(c) (“ICANN shall not regulate (i.e., impose rules and restrictions on) services that use the Internet’s unique identifiers or the content that such services carry or provide, outside the express scope of Section 1.1(a). For the avoidance of doubt, ICANN does not hold any governmentally authorized regulatory authority.”); *see also* ICANN Decides on .COM Amendment and Proposed Binding Letter of Intent between ICANN and Verisign, R-1 (“I also want to take this opportunity to clarify ICANN’s role with respect to wholesale pricing of top-level domains. Let me be clear, ICANN org is not a competition authority or price regulator.”).

Registrars, such as Namecheap, are the intermediary between registrants and the registry operators. There are over 2,000 accredited registrars across the world.⁴

12. ICANN’s Bylaws contain a number of “Core Values” that ICANN strives to achieve in carrying out its Mission on behalf of the Internet community. Among other things, the Core Values state that ICANN should: (i) “[w]here feasible and appropriate, depending on market mechanisms [] promote and sustain a competitive environment in the DNS market”; and (ii) “[i]ntroduc[e] and promot[e] competition in the registration of domain names where practicable and beneficial to the public interest as identified through the bottom-up, multistakeholder policy development process.”⁵

13. To ensure that ICANN remains accountable, ICANN’s Bylaws establish accountability mechanisms for review of ICANN actions. One such mechanism is the IRP, through which aggrieved parties can seek review of ICANN actions to determine if those actions are consistent with ICANN’s Articles, Bylaws, and other internal policies and procedures; only a “Claimant” can institute an IRP: the Bylaws define a Claimant as an entity “that has been materially affected by a Dispute. To be materially affected by a Dispute, the Claimant must suffer an injury or harm that is *directly and causally* connected to the alleged violation.”⁶

II. THE .ORG, .BIZ, AND .INFO TLDS AND REGISTRY AGREEMENTS.

14. Since 2002, the registry operator for .ORG has been the Public Interest Registry, also known as PIR. On 2 December 2002, ICANN entered into a registry agreement with PIR; that agreement was renewed in 2006 and 2013 (the “.ORG Registry Agreement”).⁷

⁴ <https://www.icann.org/registrar-reports/accreditation-qualified-list.html>.

⁵ Bylaws, Art. 1, § 1.2(b)(iii) & (iv), RM 2.

⁶ *Id.*, Art. 4, § 4.3(b)(i) (emphasis added).

⁷ 2002 .ORG Registry Agreement, RM 16. The .ORG Registry Agreement refers to the registry agreement as amended in 2013, RM 18.

15. Since 2001, the registry operator for .INFO has been Afilias Limited; the registry agreement was renewed in 2006, 2010, and 2013.⁸ And since 2001, the registry operator for .BIZ has been NeuStar, Inc. (originally, NeuLevel); the registry agreement was renewed in 2003, 2006, 2010, and 2013.⁹ These three sets of registry agreements (collectively, the “TLD Registry Agreements”) contained price control provisions “specif[ying] the maximum price” the registry operators may charge for Registry Services each year.¹⁰

16. At the time ICANN entered into the TLD Registry Agreements, there were only fifteen TLDs in the DNS, including .COM, .EDU, and .GOV.¹¹ In 2004 and 2005, ICANN added seven additional TLDs to the DNS, including .JOBS, .POST, and .TRAVEL.¹² As noted above, these early TLDs are often referred to as “legacy TLDs.” Some of the initial registry agreements between ICANN and the registry operators for these legacy TLDs contained price control provisions.¹³

III. ICANN’S NEW GTLD PROGRAM.

17. As part of its Mission “to promote and sustain a competitive environment in the DNS market,”¹⁴ ICANN and its Generic Names Supporting Organization (“GNSO”) sought to introduce new competition into the DNS through the introduction of new gTLDs.¹⁵ ICANN developed what it referred to as the New gTLD Program, through which any interested entity

⁸.info Unsponsored Registry Agreement | Archive (11 May 2001), R-2.

⁹.biz Unsponsored Registry Agreement | Archive (11 May 2001), R-3.

¹⁰ RM 16, Appendix G, at p. 1. For the .INFO and .BIZ TLDs, ICANN originally entered into an unsponsored TLD agreement, which provides that the prices charged to registrars “shall not exceed those set forth in Appendix G.” See Proposed Unsponsored TLD Agreement (11 May 2001), §3.4.3, R-4.

¹¹ New gTLD Fact Sheet, RE-2.

¹² *Id.*

¹³ See, e.g., .BIZ Registry Agreement (22 Aug. 2013), § 7.3, RM 28.

¹⁴ Bylaws, Art. 1, § 1.2(b)(iii), RM 2.

¹⁵ GNSO Final Report on Introduction of New Generic Top-Level Domains (8 Aug. 2007), RE-4; ICANN Adopted Board Resolutions (26 June 2008), RE-5.

could apply for the opportunity to create and operate one or more new gTLDs. The Program was designed to enhance diversity, creativity, and consumer choice in gTLDs, and to provide the benefits of innovation to consumers.¹⁶

18. Simultaneously, ICANN developed a Base Registry Agreement that would apply to all registry operators that secured the right to operate a new gTLD. A critical difference between the relevant legacy TLD Registry Agreements and the Base Registry Agreement is that the Base Registry Agreement has never contained any price control provision.¹⁷ The Base Registry Agreement, however, “does contain requirements designed to protect registrants from a price perspective.”¹⁸ Section 2.10 requires registry operators to provide registrars with thirty days’ advance notice of any price increase for initial registrations, and six months’ advance notice of price increases for “renewals of domain name registrations.”¹⁹ Registry operators must also provide “uniform pricing for renewals of domain name registrations,” and allow initial domain registrants to renew for up to ten years prior to any price changes.²⁰

19. The application window for the New gTLD Program officially launched in 2012.²¹ ICANN received 1,930 applications for new gTLDs, most of which proceeded through (or are proceeding through) the evaluation process set forth in ICANN’s Applicant Guidebook.²² Applications that successfully passed the evaluation process and contention set resolution (if

¹⁶ Applicant Guidebook, Preamble, RE-6.

¹⁷ *See, e.g.*, Base Registry Agreement (31 July 2017), § 2.10, RE-7. The Base Registry Agreement has been amended several times, but the pricing provision has remained unchanged since the first version.

¹⁸ 26 July 2019 Letter from Cyrus Namazi to Zak Muscovitch, at p. 1, RE-8.

¹⁹ RE-8, at p. 1; RE-7, § 2.10.

²⁰ RE-7, § 2.10.

²¹ ICANN New gTLD Program Timeline, RE-9.

²² ICANN New gTLD Program Statistics, RE-10.

applicable) proceeded to contracting with ICANN, during which the parties executed the Base Registry Agreement.²³

20. After contracting, ICANN took the necessary steps to delegate the gTLD into the DNS. ICANN delegated its first new gTLD into the DNS in October 2013 and, since then, has introduced over 1,200 new gTLDs into the DNS.²⁴ Just a few examples of new gTLDs that are now operational include .PHONE, .HBO, .INTEL, .MAP, .FOOD, and .NYC.²⁵

IV. ICANN REMOVES THE PRICE CONTROL PROVISIONS FOR SEVERAL LEGACY TLDS.

21. After finalizing the Base Registry Agreement, ICANN began working with legacy TLD registry operators to transition them to the Base Registry Agreement for consistency across all registry operators.²⁶ Pursuant to those negotiations, several legacy TLDs, including .PRO, .TEL, .TRAVEL, and .JOBS (among others) have adopted the Base Registry Agreement, which has no price control provision.²⁷

22. The .ORG, .BIZ, and .INFO Registry Agreements were due to expire in June 2019. In anticipation of the expiration of these agreements, ICANN entered into bilateral negotiations with the respective registry operators to renew the agreements (collectively, the “2019 Registry Agreements”). ICANN staff consulted with the ICANN Board and concluded that, following the trend of other legacy TLDs and the negotiations between ICANN and the respective registry operators, the 2019 Registry Agreements should substantially mirror the Base Registry Agreement.²⁸ But before executing the 2019 Registry Agreements, ICANN opened a

²³ RE-7. There were some registry operators that requested and received minor modifications to the Base Registry Agreement, but the majority of operators executed the Base Registry Agreement in its original form.

²⁴ RE-9; RE-10.

²⁵ ICANN New gTLDs, Delegated Strings, RE-11.

²⁶ RE-8, at p. 1.

²⁷ *Id.*

²⁸ *Id.*, at p. 2.

public comment period, seeking input from the Internet community on the proposed 2019

Registry Agreements. As to the price control provisions, ICANN explained:

In alignment with the base registry agreement, the price cap provisions in the current .org [.info, and .biz] agreement[s], which limited the price of registrations and allowable price increases for registrations, are removed from the .org [.info and .biz] renewal agreement[s]. Protections for existing registrants will remain in place, in line with the base registry agreement. This change will not only allow the .org [.info and .biz] renewal agreement[s] to better conform with the base registry agreement, but also takes into consideration the maturation of the domain name market and the goal of treating the Registry Operator equitably with registry operators of new gTLDs and other legacy gTLDs utilizing the base registry agreement.²⁹

23. ICANN received numerous public comments from the Internet community.

ICANN analyzed the public comments and published a Report of Public Comments for each

TLD (collectively, the “Reports”).³⁰ In the Reports, ICANN explained:

Removing the price cap provisions in the .org [.info, and .biz] Registry Agreement[s] is consistent with the Core Values of ICANN org as enumerated in the Bylaws approved by the ICANN community. These values guide ICANN org to introduce and promote competition in the registration of domain names and, where feasible and appropriate, depend upon market mechanisms to promote and sustain a competitive environment in the DNS market.³¹

24. As always, ICANN committed to “consider the feedback from the community on this issue” and, “in consultation with the ICANN Board of Directors, [to] make a decision regarding the proposed registry agreement.”³²

²⁹ Proposed Renewal of .org Registry Agreement, RE-12; Claimant’s Annex 3; Claimant’s Annex 4.

³⁰ RE-12, at p. 1; Claimant’s Annex 3, at p. 1; Claimant’s Annex 4, at p. 1.

³¹ Claimant’s Annex 5, at p. 8; Claimant’s Annex 7, at pp. 6-7; Claimant’s Annex 6, at p. 7.

³² Claimant’s Annex 5, at pp. 1, 8; Claimant’s Annex 7, at pp. 1, 7; Claimant’s Annex 6, at pp. 1, 7.

25. In June 2019, ICANN staff conferred again with the ICANN Board and decided to proceed with the 2019 Registry Agreements as proposed, without price control provisions.³³ Executed on 30 June 2019, the 2019 Registry Agreements did not include price control provisions but included the same pricing protections afforded by the Base Registry Agreement: thirty days' advance notice for price increases for initial domain name registrations; six months' advance notice of price increases for renewal domain name registrations; and the option for initial domain name registrations to renew for up to ten years, among others.³⁴

26. Like the Base Registry Agreement, the 2019 Registry Agreements require the registry operators to adhere to "Public Interest Commitments," or "PICs," including that they "will operate the TLD in a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing and adhering to clear registration policies."³⁵

V. BACKGROUND ON THE 2002 TRANSITION OF THE OPERATION OF THE .ORG TLD TO PIR.

27. The original registry operator of .ORG was Verisign, Inc., which also was the registry operator for .COM and .NET; however, the registry agreement between ICANN and Verisign provided that Verisign would no longer be the registry operator as of 31 December 2002.³⁶ In preparation for the termination of the registry agreement, in June 2001, the ICANN Board tasked ICANN's Domain Name Supporting Organization ("DNSO")³⁷ with developing a recommendation to the Board regarding the transition of the .ORG TLD to a new registry

³³ RE-8, at p. 2.

³⁴ 2019 .ORG Registry Agreement, § 2.10, RM 29; 2019 .INFO Registry Agreement, § 2.10, RM 30; 2019 .BIZ Registry Agreement, § 2.10, RM 31.

³⁵ RM 29, Specification 11; RM 30, Specification 11; RM 31, Specification 11.

³⁶ RM 10.

³⁷ The DNSO is the precursor to the Generic Names Supporting Organization ("GNSO").

operator.³⁸ The DNSO created a task force (the “Dot ORG Task Force”) to “prepare[] a report” and “make[] several recommendations” to the ICANN Board regarding selection of a new .ORG registry operator.³⁹ After reviewing the report, the ICANN Board was to “consider how to proceed with selecting an entity to succeed VeriSign in operating the .org TLD” at its regularly-convened meeting in March.⁴⁰ Notably, this report *never* became an ICANN “policy”; it was the DNSO’s recommendation to the ICANN Board, which was the ultimate decision-maker.⁴¹

28. The Dot ORG Task Force issued its report in January 2002, making a number of recommendations to the ICANN Board.⁴² The Board considered the Dot ORG Task Force’s recommendations, adopting some and rejecting others.⁴³ Most notably, the Board explicitly did not adopt the Task Force’s recommendation that .ORG be operated by a non-profit entity.⁴⁴

29. Through the request for proposals (“RFP”) process, ICANN selected PIR to operate .ORG. ICANN executed a registry agreement with PIR in December 2002. The newest version of that agreement was entered in June 2019 (the “2019 .ORG Registry Agreement”).

VI. PROPOSED CHANGE OF INDIRECT CONTROL OF PIR.

30. On 14 November 2019, PIR submitted a request for indirect change of control of PIR and informed ICANN that PIR’s parent entity ISOC had entered into an equity purchase agreement with Ethos, pursuant to which Ethos would “acquire 100% of the equity interests of

³⁸ RM 10.

³⁹ RM 10.

⁴⁰ *Id.*

⁴¹ *See, e.g., id.* at p. 69 (“Advice is advice, and the Board is making the decisions.”).

⁴² *See generally id.*

⁴³ *Id.* at pp. 43-44.

⁴⁴ *Id.* at p. 44.

PIR.”⁴⁵ PIR would remain the registry operator, and PIR affirmed that Ethos remains committed to maintaining PIR’s dedication to the Internet community and strong ethical standards:

Ethos Capital is committed to furthering PIR’s mission and values that have long distinguished it from other registries, including its ***deep commitment to community support*** and activities, high ethical standards, leadership in anti-abuse activities, and quality domain registrations. Ethos Capital also intends to create a PIR Stewardship Council, on which it will invite prominent and respected community members to serve, dedicated to upholding PIR’s core founding values and providing continued support through a variety of community programs.”⁴⁶

31. Pursuant to the terms of the 2019 .ORG Registry Agreement, PIR was required to give ICANN the opportunity to consent or withhold consent to the Change of Control Request, and ICANN’s original deadline to do so was 14 December 2019.

32. In the course of its consideration of the Change of Control Request, ICANN has sought additional information from PIR.⁴⁷ In addition, on 23 January 2020, ICANN received a letter from the California Attorney General seeking information regarding the proposed change in control of PIR in “order for the Attorney General to analyze the impact to the nonprofit community, including to ICANN.”⁴⁸ ICANN is cooperating fully with the Attorney General’s investigation.⁴⁹ In light of the Attorney General’s investigation, as well as ICANN’s evaluation of the Change of Control Request, ICANN sought extensions from PIR regarding the deadline to respond to the request.⁵⁰ To date, PIR has granted ICANN an extension until 20 April 2020.⁵¹

⁴⁵ 14 November 2019 Letter from Brian Cimbolc to ICANN, RE-14.

⁴⁶ RE-14, at p. 2 (emphasis added).

⁴⁷ 9 December 2019 Letter from John Jeffrey to Andrew Sullivan and Jon Nevett, RE-15.

⁴⁸ 23 January 2020 Letter from Sandra I. Barrientos to ICANN, at p. 1, Claimant’s Annex 17.

⁴⁹ ICANN Receives Letter from California Attorney General Regarding .ORG Change of Control, at p. 1, Claimant’s Annex 18 (ICANN publicly announces the investigation and that it “is fully cooperating with the Attorney General’s request for information.”).

⁵⁰ Claimant’s Annex 19.

⁵¹ Originally, PIR granted ICANN an extension to 29 February 2020, which was later extended to 20 April 2020.

33. Most importantly for purposes of this IRP, irrespective of whether Ethos becomes the owner of PIR, the 2019 .ORG Registry Agreement will remain in effect. That agreement does not have price controls, and should Ethos become the owner of PIR, PIR will continue to be obligated to comply with all of the covenants⁵² in the 2019 .ORG Registry Agreement.⁵³

VII. NAMECHEAP’S RECONSIDERATION REQUESTS, COOPERATIVE ENGAGEMENT PROCESS, AND EMERGENCY REQUEST.

34. On 12 July 2019, Namecheap submitted a Reconsideration Request seeking review of ICANN’s decision not to include price controls in the 2019 .ORG and .INFO Registry Agreements.⁵⁴ A Reconsideration Request is an accountability mechanism established by ICANN’s Bylaws by which “any person or entity materially affected by an action or inaction” of the ICANN Board or ICANN staff may request reconsideration of that action or inaction.⁵⁵

35. On 21 November 2019, the ICANN Board denied Namecheap’s Reconsideration Request 19-2 because Namecheap failed to establish that ICANN violated its Articles or Bylaws when it decided not to include price controls in the 2019 .ORG and .INFO Registry Agreements.⁵⁶

36. Namecheap then initiated a Cooperative Engagement Process (“CEP”), which is provided for in the Bylaws. The CEP is a non-binding, voluntary process in which “*prior to* the

⁵² RM 29, at § 7.5 (“[A]ny agreement to assign or subcontract any portion of the operations of the TLD . . . must mandate compliance with all covenants, obligations and agreements by Registry Operator hereunder, and Registry Operator shall continue to be bound by such covenants, obligations and agreements.”).

⁵³ PIR has also recently proposed to its community that PIR add a Public Interest Commitment amendment to the 2019 .ORG Registry Agreement limiting its ability to increase registration and renewal prices. *See* .ORG Registry Agreement Proposal, Specification 11 - Public Interest Commitments (6 April 2020), R-8. The proposal is still under consideration.

⁵⁴ Namecheap filed another Reconsideration Request on 8 January 2020, challenging ICANN’s consideration of the Change of Control Request; the Board has not yet taken action on that Reconsideration Request. *See* Reconsideration Request 20-1, Claimant’s Annex 9. Namecheap never raised any claims regarding the .BIZ Registry Agreement in either Reconsideration Request, rendering Namecheap’s claims regarding .BIZ untimely.

⁵⁵ Bylaws, Art. 4, § 4.2, RM 2.

⁵⁶ Final Determination of the ICANN Board of Directors Reconsideration Request 19-2 (21 Nov. 2019), Claimant’s Annex 11.

filing of a Claim,” the parties “attempt[] to resolve and/or narrow the Dispute.”⁵⁷ The Bylaws “strongly encourage[]” parties to participate in the CEP before resorting to an IRP.⁵⁸

Namecheap initiated the CEP on 18 November 2019 and, while the parties were still engaging, Namecheap filed its IRP Request, and a Request for Emergency Arbitrator and Interim Measures of Protection as to the 2019 .ORG Registry Agreement only (“Emergency Request”).⁵⁹

37. In the Emergency Request, Namecheap sought a stay preventing ICANN from approving the Change of Control Request, and an order requiring ICANN to impose price control provisions in the 2019 .ORG Registry Agreement.⁶⁰ On 20 March 2020, the Emergency Panelist denied Namecheap’s Emergency Request.⁶¹

STANDARD OF REVIEW⁶²

38. An IRP Panel is asked solely to evaluate whether an ICANN action or inaction was consistent with ICANN’s Articles, Bylaws, and internal policies and procedures.⁶³ However, with respect to IRPs challenging the ICANN Board’s exercise of its fiduciary duties, an IRP Panel is not empowered to substitute its judgment for that of ICANN.⁶⁴ Rather, the core

⁵⁷ Bylaws, Art. 4, § 4.3(e)(i), RM 2 (emphasis added).

⁵⁸ *Id.*

⁵⁹ *See generally*, Namecheap’s Request for IRP.

⁶⁰ Namecheap’s Request for Emergency Arbitrator and Interim Measures of Protection, at p. 2.

⁶¹ Decision on Request for Emergency Relief, at p. 42.

⁶² Namecheap claims that violation of ICANN’s “secondary rules created by ICANN, such as the DNSO and GNSO policies and commitments ICANN made to the benefit of the Internet community as a whole” can form the basis of an IRP. IRP Request, at p. 14. Namecheap is wrong. The GNSO’s (and its precursor, the DNSO) recommendations are not ICANN “policies and procedures” within the scope of an IRP. Instead, the scope of an IRP determines whether ICANN has complied with its Articles and Bylaws, not whether ICANN complied with recommendations of its supporting organizations.

⁶³ Bylaws, Art. 4, § 4.3(b), RM 2.

⁶⁴ *Id.*, § 4.3(h)(i)(iii); *see also* Final Declaration, *Booking.com v. ICANN*, ICDR Case. No. 50-20-1400-0247 ¶ 115 (3 Mar. 2015), R-5.

task of an IRP Panel is to determine whether ICANN has exceeded the scope of its Mission or otherwise failed to comply with its foundational documents and procedures.⁶⁵

39. Only a Claimant can institute an IRP.⁶⁶ As noted above, a Claimant is an entity “that has been materially affected by a Dispute,” meaning that it “must suffer an injury or harm that is directly and causally connected to the alleged violation.”⁶⁷ A Dispute is defined as a claim that ICANN action or inaction “violated the Articles of Incorporation or Bylaws, including but not limited to any action or inaction that . . . exceeded the scope of the Mission.”⁶⁸ The IRP Panel is authorized to “[s]ummarily dismiss Disputes that are brought without standing[.]”⁶⁹

ARGUMENT

I. NAMECHEAP IS NOT A CLAIMANT UNDER THE BYLAWS AND THEREFORE HAS NO STANDING TO PURSUE ITS IRP REQUEST.

40. In order to be a Claimant, Namecheap must demonstrate that it “has been materially affected by a Dispute,” meaning that it “must suffer an injury or harm that is directly and causally connected to the alleged violation.” Namecheap’s only allegation regarding the alleged harm it has suffered is a conclusory statement that it is an “ICANN-accredited registrar that is directly impacted by” ICANN’s actions.⁷⁰ But Namecheap does not offer a *single piece of evidence* to support that assertion or to explain how that “impact” equates to harm. Nor does Namecheap explain how it has been harmed at all, much less how it has been harmed “directly and causally” by ICANN’s conduct. Simply being a registrar that sells .ORG, .BIZ, and .INFO domain names does not establish that Namecheap has been “materially affected” by ICANN’s

⁶⁵ Bylaws, Art. 4, § 4.3(b), RM 2.

⁶⁶ *Id.*, Art. 4, § 4.3(b).

⁶⁷ *Id.*, Art. 4, § 4.3(b)(i).

⁶⁸ *Id.*, Art. 4, § 4.3(b)(iii)(A).

⁶⁹ *Id.*, Art. 4, § 4.3(o)(i).

⁷⁰ IRP Request, at p. 1.

actions with respect to specific TLDs. Indeed, Namecheap sells domain names for hundreds of TLDs in addition to .ORG, .BIZ, and .INFO.

41. Conclusory allegations that Namecheap might potentially be harmed in the future is not sufficient to demonstrate “harm.”⁷¹ Rather, the Bylaws are clear that a party qualifies as a Claimant only where it “*has been* materially affected by a Dispute.”⁷² For this reason, ICANN disagrees with the Emergency Panelist’s conclusion that Namecheap had standing to pursue its Emergency Request. The basis for the Emergency Panelist’s conclusion, which the Panelist acknowledged “does not bind the IRP Panel,”⁷³ improperly is predicated entirely on potential *future* harm: “Namecheap is exposed to the risk of increased pricing for registry services,” and “Namecheap is at risk of being exposed to decision-making by Ethos and PIR that potentially harms Namecheap’s financial and other business interests.”⁷⁴

42. In regards to Namecheap’s argument regarding the lack of price control provisions in the 2019 Registry Agreements, Namecheap is not a party to those agreements and is not a third-party beneficiary of those agreements. Section 7.8 provides that the agreements “will not be construed to create any obligation by either ICANN or Registry Operator to any non-party to this Agreement, *including any registrar* or registered name holder.”⁷⁵ Further, the prior registry agreements permitted the parties to amend or modify the agreement, as ICANN and the registry operators have done here.⁷⁶

⁷¹ See Bylaws, Art. 4, § 4.3(b)(i).

⁷² *Id.* (emphasis added).

⁷³ Decision on Request for Emergency Relief, at ¶ 94.

⁷⁴ Decision on Request for Emergency Relief, at ¶¶ 92-93.

⁷⁵ RM 29, § 7.8; RM 30, § 7.8; RM 31, § 7.8 (emphasis added). Nor was Namecheap a third-party beneficiary of the 2013 RAs. See RM 18, § 8.7; RM 28, § 8.7; 2013 .INFO Registry Agreement (22 Aug. 2013), § 8.7, RM 27.

⁷⁶ RM 18, § 8.6; RM 28, § 8.6; RM 27 § 8.6.

43. With regard to Namecheap’s argument regarding the Change of Control Request, there is plainly no Dispute, as defined by the Bylaws.⁷⁷ ICANN has not yet consented to (or withheld consent from) the Change of Control Request; thus, there is no ICANN action or inaction for Namecheap to challenge. It goes without saying that there can be no harm to Namecheap from a decision ICANN has not even made.

44. Thus, for several separate and independent reasons, Namecheap does not meet the definition of a Claimant under the Bylaws. Namecheap has no standing to pursue this IRP, and its IRP Request should be summarily denied on this basis.

II. ICANN HAS COMPLIED WITH ITS ARTICLES AND BYLAWS IN RENEWING THE .ORG, .BIZ, AND .INFO REGISTRY AGREEMENTS.

45. Namecheap has not demonstrated (because it cannot) that ICANN did anything other than comply fully with its Articles and Bylaws in deciding not to include the price control provisions in the 2019 Registry Agreements.

A. ICANN was open and transparent in its decision not to include a price control provision in the 2019 Registry Agreements.

46. Namecheap describes ICANN’s decision to remove the price control provisions as “opaque” and claims that the decision was made “without granting the Internet community and those entities most affected with a useful and meaningful opportunity to assist in the policy development process,” and without responding to concerns raised by the public comment process.⁷⁸ Namecheap’s argument is false.

47. ICANN staff involved “the Internet community and those most affected” and was fully transparent in its processes when it posted the proposed registry agreements for public

⁷⁷ Bylaws, Art. 4, § 4.3(b)(iii)(A), RM 2.

⁷⁸ IRP Request, at p. 15.

comment. ICANN then analyzed all public comments (some of which favored removal of the price controls)⁷⁹ and published a Report summarizing the comments and addressing the concerns of those who opposed the changes.⁸⁰ ICANN staff explained that lack of inclusion of a price control provision furthered its core value of “promot[ing] competition in the registration of domain names[.]”⁸¹ ICANN also explained that the Base Registry Agreement “lays the framework for consistency for registries, registrars, and registrants,” and “afford[s] protections to existing registrants.”⁸² In that Report, ICANN also committed to consider “the public comments received and, in consultation with the ICANN Board of Directors, make a decision regarding the proposed registry agreement,”⁸³ which it did.⁸⁴ ICANN’s decision was therefore consistent with its Articles and Bylaws, and consistent with the fact that ICANN is not a price regulator.

48. To be clear, ICANN is not under a duty to yield to the public comments, opinions, or arguments of any one entity or person, or to side with any one position (whether or not that position might appear to be the “majority” position of the ICANN community). Instead, the Articles and Bylaws require ICANN to make “decisions by applying documented policies consistently, neutrally, objectively, and fairly, without singling out any particular party for

⁷⁹ Claimant’s Annex 5, at p. 6 (moving to “market-based pricing makes sense with today’s healthy TLD market, which is populated with many choices for consumers to choose from”).

⁸⁰ Namecheap claims that ICANN received “an unprecedented number of public comments coming from an entire cross-section of the Internet community.” IRP Request, at p. 16. Upon review, however, the ICANN Ombudsman concluded that, as to .ORG, many of the comments “seem clearly to be computer generated,” and equated them to “spam.” See RE-13, at p. 3.

⁸¹ Claimant’s Annex 5, at p. 8; Claimant’s Annex 6, at p. 7; Claimant’s Annex 7, at p. 7.

⁸² Claimant’s Annex 5, at p. 8; Claimant’s Annex 6, at p. 7; Claimant’s Annex 7, at pp. 6, 7.

⁸³ Claimant’s Annex 5, at pp. 1, 9; Claimant’s Annex 6, at pp. 1, 8; Claimant’s Annex 7, at pp. 1, 8.

⁸⁴ Namecheap’s argument that “[n]o analysis whatsoever preceded” ICANN’s decision to remove the price control provisions (IRP Request, at p. 15) is therefore false. As is Namecheap’s claim that the ICANN Board “rubber-stamped this decision without any analysis of its own” in denying Namecheap’s Reconsideration Request. *Id.* Indeed, with regard to Namecheap’s Reconsideration Request 19-2, the Board issued a twenty-eight page Final Determination setting forth each of the many reasons why Namecheap’s request did not warrant reconsideration. See Claimant’s Annex 11.

discriminatory treatment.”⁸⁵ That is *exactly* what ICANN did here. That Namecheap disagrees with ICANN’s decision is not a basis for an IRP.

B. ICANN applied its policies equitably and did not single out any party for disparate treatment.

49. Namecheap’s argument that ICANN should unilaterally reinsert a price control provision into the 2019 Registry Agreements because it “must treat like cases alike and unlike cases differently” is nonsensical: it is the *absence* of a price control provision—not the preservation of it—that has resulted in ensuring consistency across nearly all registry operators (and “treating like cases alike”). Indeed, this was a clear motivation for aligning the 2019 Registry Agreements with the Base Registry Agreement that applies to 1,200 other gTLDs. Further, numerous legacy TLDs have already made the transition to the Base Registry Agreement.⁸⁶ As a result of the changes to the 2019 Registry Agreements, ICANN is now *ensuring* consistency because ICANN is treating .ORG, .INFO, and .BIZ no differently from other legacy TLDs and all other new gTLDs. In short, ICANN’s conduct has furthered—not violated—the Bylaws provision requiring ICANN to apply its policies equitably.⁸⁷

50. Namecheap also argues that ICANN failed to analyze “the particularities of the .org, .info and .biz legacy TLDs” and that ICANN’s only justification for removal of the price controls is its “after-the-fact justification” based on Dennis Carlton’s 2009 report.⁸⁸ Presumably, Namecheap is referring to the Board’s denial of Namecheap’s Reconsideration Request 19-2.

⁸⁵ Bylaws Art. 1, §§ 1.1, 1.2(v), RM 2.

⁸⁶ RE-8, at p. 1.

⁸⁷ Namecheap also claims that ICANN is treating .ORG, .BIZ, and .INFO differently from .NET and .COM. IRP Request, at pp. 16-17. But Namecheap overlooks that, at least for .COM, ICANN engaged in a similar public comment process to adjust the pricing model for .COM registry services. *See* Proposed Amendment 3 to the .COM Registry Agreement (3 Jan. 2020), R-6; R-1. And, other than the number of domain names under management, Namecheap offers no explanation for why .ORG, .BIZ, and .INFO cannot be treated the same as all other legacy TLDs (and new gTLDs).

⁸⁸ IRP Request, at pp. 16-17.

But the Board, in a twenty-eight page Final Determination, found that ICANN had numerous justifications for not including the price control provisions, only one of which related to Dr. Carlton's analysis.⁸⁹

C. **The 2013 Registry Agreements are no longer in effect, and ICANN did not violate them in any event.**

51. Namecheap argues that the absence of the price control provisions in the 2019 Registry Agreements violates the renewal clause in Section 4.2 of the 2013 versions of the .ORG, .BIZ, and .INFO Registry Agreements. Notably, Namecheap is not a party to those contracts and thus has no standing to argue over provisions within those contracts.⁹⁰ In any event, Namecheap is wrong. First, the 2019 Registry Agreements supersede the prior registry agreements; accordingly, Section 4.2 of the 2013 registry agreements has no force or effect. Second, even if the prior registry agreements were still in effect, Section 8.6 specified that the parties can mutually agree to modify the agreement, and the 2019 Registry Agreements reflect the parties' intent to do so.⁹¹

52. In short, Namecheap has not demonstrated that ICANN violated its Articles, Bylaws, or other policies by not including price control provisions in the 2019 Registry Agreements.

⁸⁹ Claimant's Annex 11.

⁹⁰ Section 8.7 of the Registry Agreements provides that the agreement "shall not be construed to create any obligation by either ICANN or Registry Operator to any non-party to this Agreement, including any registrar or registered name holder." RM 18, § 8.7; RM 28, § 8.7; RM, § 8.7.

⁹¹ See RM 18, § 8.6 (Amendments and Waivers); RM 28, 8.6; RM 27, § 8.6. Additionally, Section 4.3 of the prior registry agreements required ICANN and the registry operators to "engage in good faith negotiations at regular intervals . . . regarding possible changes to the terms of the Agreement[.]" RM 18, at § 4.3 (Changes); RM 28, § 4.3; RM 27, § 4.3. That is exactly what ICANN and the respective registry operators have done here.

III. ICANN IS COMPLYING WITH ITS ARTICLES AND BYLAWS IN EVALUATING THE CHANGE OF CONTROL REQUEST.

53. Namecheap has not met its burden regarding the Change of Control Request because ICANN has not yet made any decision, and because Namecheap cannot identify any violations of ICANN's Articles or Bylaws in any event.⁹²

A. ICANN is not violating any governing policy in evaluating the Change of Control Request.

54. Namecheap argues that PIR made commitments to the public interest when it secured the right to operate .ORG that are incompatible with operation by a private investment firm like Ethos. But Namecheap does not provide a single piece of evidence to support its claim. Rather, PIR has made clear that Ethos remains committed to maintaining PIR's dedication to the Internet community and strong ethical standards, including its "deep commitment to community support and activities, high ethical standards, leadership in anti-abuse activities, and quality domain registrations."⁹³

55. Contrary to Namecheap's argument, the ICANN Board rejected the notion that .ORG must be operated by a non-profit entity eighteen years ago. In 2002, the Dot ORG Task Force recommended that the registry operator for .ORG be a not-for-profit entity, but the Board concluded that the not-for-profit status of the entity was *not* necessary; what was paramount was the entity's technical ability to operate a TLD with a significant number of domain name registrations.⁹⁴ To the extent Namecheap is arguing that the ICANN Board should have adopted

⁹² Not only has there been no decision yet on the Change of Control Request, before instituting this IRP, Namecheap raised this exact claim in Reconsideration Request 20-1, which has not yet been decided. Namecheap is thus wasting resources by instituting this IRP before ICANN has made a decision on the Change of Control Request, and before the Board resolves Namecheap's Reconsideration Request 20-1.

⁹³ RE 14, at p. 2.

⁹⁴ RM 10, at p. 43; *see also id.* at p. 62 ("[T]he nature of the organization that undertakes to run dot ORG does not have to be a not for profit or for profit. I think we should be neutral on this point.").

the Dot ORG Task Force’s recommendation that only not-for-profit entities can operate .ORG, the statute of limitations has long passed (by about eighteen years).⁹⁵

56. Namecheap’s only claim regarding ICANN’s conduct in this respect is that the “mere fact that ICANN is even considering a possible transition of .org’s registry operations to a for-profit entity without involving the community breaches ICANN’s obligations to apply documented policies neutrally, objectively and fairly.”⁹⁶ But Namecheap does not explain how ICANN’s conduct amounts to a violation of its Articles or Bylaws, and Namecheap provides no evidence to support its claim. To the extent Namecheap is challenging the ICANN Board’s exercise of its fiduciary duties, an IRP Panel is not empowered to substitute its judgment for that of ICANN.⁹⁷

57. Further, regardless of what entity controls PIR, the 2019 .ORG Registry Agreement is clear that an agreement to assign any portion of TLD operation to a third party “must mandate compliance with all covenants, obligations, and agreements” by PIR under the 2019 .ORG Registry Agreement.⁹⁸ Thus, the provisions in the 2019 .ORG Registry

⁹⁴ RM 10, at pp. 43-44; *see also id.* at p. 59 (“Whoever is going to run dot ORG in the near future inherits an existing user base of about 3 million people and organizations, some of them individual persons, some of them large organizations that are really dependent upon the proper operation of dot ORG.”); *id.* at p. 64 (“[A] well functioning dot ORG is paramount, and that . . . should be a major criterion for the selection, since we have 3 million users who will be affected by any poor-quality performance[.]”).

⁹⁵ Namecheap also suggested that operation by a for-profit entity and removal of the price control provisions violate ICANN’s policy that the registry fees charged to accredited registrars should be “as low as feasible consistent with the maintenance of good quality service.” IRP Request, at p. 19 (quoting RM 10). But price control provisions are not necessary to constrain pricing in a market saturated with 1,200 other gTLDs that are not subject to price control provisions. Further, this statement was a recommendation made by the Dot ORG Task Force that was never adopted by the ICANN Board; it is therefore *not* an ICANN policy or procedure that can form the basis of an IRP.

⁹⁶ IRP Request, at p. 19.

⁹⁷ Bylaws, Art. 4, § 4.3(h)(i)(iii), RM 2; R-5 ¶ 115.

⁹⁸ RM 29, § 7.5.

Agreement—including the PICs in Specification 11 and the absence of a price control provision—will remain in effect whether or not Ethos winds up controlling PIR.⁹⁹

B. ICANN has been open and transparent in its evaluation of the Change of Control Request.

58. Namecheap argues that ICANN “is not as open and transparent as it should be about its evaluation of PIR’s request for change of control.”¹⁰⁰ But Namecheap fails to offer *any* facts as to how ICANN has not been “as transparent as it should be,” or how any such conduct amounts to a violation of ICANN’s Articles or Bylaws. To the contrary, even a cursory review of ICANN’s website shows that ICANN has been extremely transparent, posting updates and numerous correspondence between the entities on an ongoing basis.¹⁰¹

59. In short, Namecheap has not established that ICANN violated its Articles or Bylaws in its consideration of the Change of Control Request.

IV. ICANN WAS NOT REQUIRED TO INSTITUTE A POLICY DEVELOPMENT PROCESS.

60. Namecheap insinuates in its IRP Request that ICANN should have instituted a Policy Development Process (“PDP”) prior to removing the price control provisions and evaluating the Change of Control Request. Namecheap also referenced this argument during the hearing before the Emergency Panelist. Namecheap is wrong.

61. Namecheap’s argument here is predicated on its claim that the Dot ORG Task Force constituted a PDP, and that its recommendations amounted to “policies.” But as previously discussed, the Dot ORG Task Force was commissioned to make *recommendations* to

⁹⁹ PIR has also recently proposed to its community that PIR add a Public Interest Commitment amendment to the 2019 .ORG Registry Agreement limiting its ability to increase registration and renewal prices. *See* R-8. The proposal is still under consideration.

¹⁰⁰ IRP Request, at p. 19.

¹⁰¹ *See, e.g.*, Claimant’s Annex 18; 31 January 2020 Letter from Jeffrey Rabkin to Sandra I. Barrientos, RE-18.

the ICANN Board about how to proceed with selecting a new registry operator of .ORG. The Board was clear on this point: it repeatedly referred to the report as “recommendations.”¹⁰² As one ICANN Board member said: “Advice is advice, and the Board is making the decisions.”¹⁰³ And, ultimately, in providing direction to the ICANN President regarding the RFP process, the Board specifically did not adopt certain of the Dot ORG Task Force’s recommendations.¹⁰⁴ The Dot ORG Task Force’s recommendations never amounted to ICANN policies; the process decidedly was *not* a PDP; and the Board’s resolutions regarding the RFP process were not policies either.

62. Furthermore, in regards to the price control provisions, a PDP is not even permitted. The 2019 Registry Agreements (and the prior registry agreements) explicitly provide that issues related to prices of registry services are not subject to a PDP.¹⁰⁵ In fact, ICANN has transitioned many legacy TLDs to the Base Registry Agreement, none of which were subject of a PDP. And, as the name suggests, a PDP is only used where there is a *policy* at issue. Namecheap has not identified any ICANN policy at issue that would require a PDP. The only “policy” Namecheap references (that .ORG “prices must be as low as feasible”)¹⁰⁶ stems from a recommendation from the Dot ORG Task Force, which was not, and is not, an ICANN policy.

63. Nor has Namecheap identified any policy issue associated with the Change of Control Request. There is no policy that .ORG be operated by a non-profit entity (indeed, the ICANN Board specifically rejected that DNSO recommendation approximately 18 years ago).

¹⁰² See, e.g., RM 10, at pp. 63, 64, 66, and 68.

¹⁰³ *Id.* at p. 69.

¹⁰⁴ Notably, the Dot ORG Task Force made recommendations regarding .ORG only, not .INFO and .BIZ, so even if it were relevant (it is not), it is not applicable whatsoever to .INFO and .BIZ.

¹⁰⁵ See RM 29, Specification 1 (Consensus Polices shall not “prescribe or limit the price of Registry Services.”); RM 30, Specification 1; RM 31, Specification 1. The 2013 RAs contained a similar provision. RM 18, § 3.1(b)(v)(A); RM 27, § 3.1(b)(v)(A); RM 28, § 3.1(b)(v)(A).

¹⁰⁶ IRP Request, at p. 11.

Additionally, the Change of Control Request relates to .ORG and only .ORG—there is no indication that issues pertaining to a single TLD rise to the level of requiring a PDP. In fact, ICANN has received (and approved) hundreds of requests for change of control, none of which were subject to a PDP.¹⁰⁷

V. NAMECHEAP’S CLAIMS REGARDING THE .BIZ TLD ARE UNTIMELY.

64. ICANN’s Interim Supplementary Procedures provide that a Claimant must institute an IRP “no more than 120 days after a CLAIMANT becomes aware of the material effect of the action or inaction giving rise to the DISPUTE.”¹⁰⁸ Namecheap became aware of the “material effect of the action or inaction” on 30 June 2019, when ICANN renewed the .ORG, .INFO, and .BIZ registry agreements. Shortly thereafter, Namecheap filed a Reconsideration Request relating to the .ORG and .INFO renewals, which tolled the 120-day statute of limitations as to those TLDs. But Namecheap did not include .BIZ in the Reconsideration Request.¹⁰⁹ Accordingly, Namecheap was required to institute this IRP as to .BIZ within 120 days of 30 June 2019, which it failed to do. Each of Namecheap’s claims regarding the .BIZ TLD are thus time-barred.

VI. NAMECHEAP’S REQUESTED RELIEF EXCEEDS THE SCOPE OF THE IRP AND THIS PANEL’S AUTHORITY.

65. To the extent that the IRP Panel finds that ICANN somehow acted inconsistently with its Articles and Bylaws (which ICANN disputes), the IRP Panel cannot award Namecheap much of the relief it seeks. ICANN’s Bylaws provide that the IRP Panel has the authority only to “[d]eclare whether a Covered Action constituted an action or inaction that violated the Articles

¹⁰⁷ Registry Agreement Assignment, Direct Changes of Control (1 Jan. 2017), R-7.

¹⁰⁸ Interim Supp. Proc., § 4.

¹⁰⁹ See *generally*, Reconsideration Request 19-2, Claimant’s Annex 8.

of Incorporation or Bylaws,” and “[r]ecommend that ICANN stay any action or decision, or take necessary interim action, until such time as the opinion of the IRP Panel is considered.”¹¹⁰ The relief Namecheap seeks (although disguised as a “declaration”) is tantamount to an order that ICANN take certain actions, specifically to: (i) “annul the decision that removed price caps in the .org, .info and .biz registry agreements”; (ii) “ensure that .ORG remains dedicated to the non-profit sector by adopting measures such as requiring that .org be operated by a non-profit entity that charges registry fees that remain as low as feasible consistent with the maintenance of good quality service”; and (iii) “ensure that price caps from legacy gTLDs can only be removed following policy development process that takes due account of the interests of the Internet user and with involvement of the different stakeholders.”¹¹¹ These requests far exceed the scope of the IRP Panel’s authority and therefore should be denied.

CONCLUSION

66. Namecheap has not demonstrated that it is a “Claimant” under the Bylaws and therefore has no standing to pursue this IRP. Further, Namecheap has not established that ICANN acted inconsistently with its Articles or Bylaws in deciding not to include a price control provision in the 2019 Registry Agreements, or in its consideration of the Change of Control Request. Accordingly, ICANN respectfully requests that Namecheap’s IRP Request be denied.

Respectfully submitted,

JONES DAY

Dated: April 10, 2020

By: /s/ Jeffrey A. LeVee
Jeffrey A. LeVee

Counsel for Respondent ICANN

¹¹⁰ Bylaws, Art. 4, § 4.3(o)(iii), (iv), RM 2.

¹¹¹ IRP Request, at p. 21.