

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION
Independent Review Process Panel

Namecheap, Inc.

Claimant,

- and -

Case Number: 01-20-0000-6787

Internet Corporation for Assigned Names
and Numbers (ICANN)

Respondent.

PROCEDURAL ORDER NO. 19

1. The Panel conducted a prehearing conference with the parties on 17 March 2022, at 8:00 a.m. Pacific Time. The following individuals participated:

Flip J. Petillion (Petillion, Huizingen, Belgium), counsel for Namecheap
Jan Janssen (Petillion, Huizingen, Belgium), counsel for Namecheap
Jeffrey A. LeVee (Jones Day, Los Angeles, CA), counsel for ICANN
Eric P. Enson (Jones Day, Los Angeles, CA), counsel for ICANN
Nathan Gencarella (Jones Day, Los Angeles, CA), counsel for ICANN
Casandra Furey (Associate General Counsel, ICANN)
Amy Stathos (Deputy General Counsel, ICANN)
Glenn P. Hendrix, Chairman of the Independent Review Panel (the "Panel")

Grant L. Kim, Panel Member
 Christof Siefarth, Panel Member
 Tom Simotas, International Centre for Dispute Resolution (“ICDR”)¹

2. Prior to the prehearing conference, the parties submitted a chart reflecting their areas of agreement and disagreement on various issues regarding the conduct of the hearing. The first three columns in the chart below reflect the parties’ submissions. The last column indicates the Panel’s rulings on each issue:

ISSUE	ICANN POSITION	NAMECHEAP POSITION	PANEL RULING
Length of Opening Statements			50 minutes per side.
Witness Sequence	Ms. Burr (March 28); Mr. Weinstein (March 28/29); Mr. Botterman (March 29); Mr. Neuman (March 30); and Dr. Langus / Dr. Carlton (March 31).	Mr. Weinstein (March 28); Ms. Burr (March 28/29); Mr. Botterman (March 29); Mr. Klein (March 30); Mr. Neuman (March 30); and Dr. Langus / Dr. Carlton (March 31-April 1)	<p>The witness order will be:</p> <p>Ms. Burr (28 March) Mr. Weinstein (28/29 March) Mr. Botterman (29 March) Mr. Klein (discussed below) (30 March) Mr. Neuman (30 March) Dr. Langus / Dr. Carlton (31 March/1 April)</p> <p>Counsel shall promptly communicate if a witness is not available on the dates designated and the parties shall agree on a revised witness sequence.</p> <p>The Panel understands that all witnesses are available on the indicated dates, except that</p>

¹ Mr. Simotas participated only at the beginning of the hearing.

			<p>Dr. Carlton may have a partial conflict on 1 April 2022. ICANN shall provide notice by 22 March 2022 of the times when Dr. Carlton is available and shall propose a work-around, if needed. The Panel expects to use some of the time on the last hearing day to discuss further proceedings in the arbitration and possibly to provide preliminary views on issues to be addressed during closing argument.</p>
Fact Witness Direct Testimony	<p>Direct testimony will be presented through witness statements. Upon appearing at the hearing, fact witnesses will be introduced to the Panel, asked to confirm and/or correct witness statements, and tendered for cross-examination.</p>	<p>Idem. Mr. Klein should also be allowed to be examined on the new evidence that ICANN submitted on 14 March 2022.</p>	<p>Direct testimony will be presented through witness statements. Upon appearing at the hearing, fact witnesses will be introduced to the Panel, asked to confirm and/or correct witness statements, and tendered for cross-examination.</p> <p>The Panel deems the affidavit previously submitted by Mr. Klein to constitute a witness statement. In addition, Mr. Klein may submit a supplemental witness statement that is narrowly focused on Exhibits R-56, R-57, R-58 and R-59 that were submitted by ICANN on 15 March 2022. Any such witness statement shall be submitted prior to 5 pm Central European Time, 22 March 2022. The Panel understands that this is within the 15-day period set forth in Rule 5A of the Interim Supplementary Procedures for Internet Corporation for Assigned Names and Numbers Independent Review Process;</p>

			<p>however, ICANN’s Exhibits R-56, R-57, R-58 and R-59 were also submitted within that 15-day period.</p> <p>Mr. Klein may be called like any other fact witness to confirm or correct his witness statement(s), but shall not be allowed to offer oral direct testimony beyond the scope of such written statement(s). ICANN shall advise the Panel and Namecheap by no later than noon Pacific Time, 24 March 2022, whether it intends to cross examine Mr. Klein.</p>
Expert Witness Direct Testimony	<p>Direct testimony will be presented primarily through expert reports. Upon appearing at the hearing, expert witnesses will be introduced to the Panel, asked to confirm and/or correct expert reports, asked to briefly summarize the conclusions set forth in their reports (5-10 minutes) and</p>	<p>Upon appearing at the hearing, expert witnesses will be introduced to the Panel, asked to confirm and/or correct expert reports, asked to briefly summarize the conclusions set forth in their reports (5-10 minutes), respond to questions by examining Counsel regarding the other party’s</p>	<p>Direct testimony will be presented primarily through expert reports. Upon appearing at the hearing, Dr. Langus and Dr. Carlton will each be allowed up to 20 minutes to summarize their conclusions. This may be done in a traditional Q&A direct examination format, through a presentation by the expert uninterrupted by questions, or some combination of these approaches. The expert will then be tendered for cross-examination and redirect examination.</p> <p>Following examination by counsel, Dr. Carlton and Dr. Langus shall participate concurrently in a witness conferencing session with, and overseen by, the Panel. Following that session (or at designated</p>

	tendered for cross-examination.	reports (20-30 minutes) and tendered for cross-examination. Following cross-examination, there should be an opportunity for re-direct, Panel questions, and an interactive debate between Dr. Langus and Dr. Carlton led by the Panel	intervals during the session), counsel will be permitted to pose follow-up questions to both experts.
Delivery of exhibits to witnesses	Electronic binders at hearing, and hardcopy binders delivered to witnesses 24 hours in advance of testimony, but only to be opened when witness is seated to testify.	No need for hardcopy binders. The cumulative list of submissions and exhibits must suffice to present the documents at the hearing via screen sharing.	Hardcopy binders of exhibits are not required. The parties will jointly retain a technology support person for the virtual hearing to allow the parties and Panel to focus on the evidence and witnesses, rather than the technical logistics of the hearing. The vendor will be responsible for ensuring that all attorneys, party representatives and Panelists are correctly logged in each day; facilitating the use of virtual breakdown rooms for the parties and the Panel (and waiting rooms for sequestered witnesses); addressing any technical issues; and pulling up exhibits during testimony. Exhibits will ideally be

			<p>presented on a separate screen from the witness (meaning the Panel will be observing the hearing on two screens - one featuring the witness and one featuring the exhibit). Each party shall submit the exhibits they intend to use with each witness to the vendor prior to the hearing and within the time specified by such vendor. The vendor will also be responsible for training counsel, witnesses, and panel members on how to use the system in advance of the hearing. The parties shall advise the Panel of the status of retaining a vendor by Wednesday, 23 March 2022.</p> <p>The parties are requested to confer about ways to possibly enable witnesses to browse exhibits (either electronically or hard copy) beyond the specific page to which they are specifically directed by cross-examining counsel. The Panel expects that each witness will have a hard copy of his or her written witness statement. The parties might also consider providing its own witnesses with a binder of certain exhibits that it anticipates may be used during cross-examination (such as the bylaws). Any such binders shall be strictly limited to exhibits (no witness outlines, etc.).</p>
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			The parties shall jointly retain a court reporter to transcribe the proceedings.
Scope of cross-examination	Limited to topics covered in witness statements / expert reports and all exhibits used during cross-examination must be in the record.	Idem	Unless otherwise permitted by the Panel, cross-examination shall limited to topics covered in witness statements / expert reports. All exhibits used during cross-examination must be in the record.
Scope of re-direct	Limited to cross-cross examination.	Limited to topics addressed during cross-examination	Limited to the scope of cross-examination.
Number of lawyers permitted to examine from each side	1	There should be no pre-imposed limit	One attorney per witness (with breaks allowed for consultation between co-counsel).
Panel questions of witnesses	At the Panel's discretion.	After the cross-examination and re-direct	The Panel will generally ask questions following examination by counsel but may interject from time to time with questions.
Witness communication with counsel during breaks in testimony	Not allowed	Not allowed for fact witnesses Allowed for expert witnesses	Not allowed for fact witnesses. Allowed for expert witnesses.
Sequestration of fact and expert witnesses prior to testimony	Yes, Drs. Langus and Carlton will observe one	Expert witnesses should be allowed	Fact witnesses will be sequestered, including party representatives (until such time as they testify).

	another's testimony and will have an interactive discussion overseen by the Panel at the close of testimony	to attend the entire hearing.	<p>Dr. Langus and Dr. Carlton will observe one another's testimony and will have an interactive discussion overseen by the Panel at the close of testimony.</p> <p>Mr. Neuman may attend the entire hearing.</p> <p>Each party will be allowed two party representatives.</p> <p>The parties shall provide a complete list of all individuals who will attend the hearing (counsel, party representatives, and witnesses) by Friday, 25 March 2022.</p>
Closing argument	Format at the Panel's discretion	It has been previously agreed to have closing arguments and a debate at a further hearing on 13 April 2022	Closing argument is now scheduled to occur on 27 April 2022 at 8 am Pacific Time. The arguments will include Q&A with the Panel. Other details will be addressed during the hearing.

3. The Panel has unanimously agreed upon the terms of this Procedural Order, which is signed by the Chair on behalf of the Panel at the request of his co-panelists.

**As at Los Angeles, California, USA
17 March 2022**

FOR THE PANEL:

A handwritten signature in black ink, appearing to read "Glenn P. Hendrix". The signature is written in a cursive style with a large, prominent initial "G".

**Glenn P. Hendrix
Chair**