



February 25, 2010

Mr. Peter Dengate-Thrush
Chairman of the Board of Directors
Internet Corporation for Assigned Names and Numbers
4676 Admiralty Way, Suite 330
Marina del Rey, California 90292

Re: Declaration of the Independent Review Panel in ICM Registry, LLC vs. ICANN

Dear Peter,

I sincerely hope you share my view – and the view expressed by so many others in the past week – that the completion of the first ever Independent Review Process following the issuance of the Panel’s recent ruling is a defining moment for ICANN. The decision of the panel that ICANN, in light of its founding history and global responsibilities, must operate in conformity with relevant principles of international law, in addition to the laws of the State of California, and that its actions are to subject to objective review under the Independent Review has significance for ICANN that reaches well beyond the facts of the dispute between ICM and ICANN. I am hopeful, as are others in the community, that ICANN will embrace the conclusions of the Panel and use them to improve its processes and restore confidence in ICANN as an institution.

You will no doubt recall the views you expressed in Lisbon nearly three years ago when the Board voted to reject ICM’s application. Similarly, the Panel has (1) ruled that the ICANN Board conclusively determined on June 1, 2005 that the ICM application met the criteria that were established for the 2004 sTLD round and that the Board’s later reconsideration of that decision was “not consistent with the application of neutral, objective and fair documented policy;” (2) identified “grounds for questioning the neutral and objective performance of the Board” during registry agreement negotiations with ICM; (3) concluded that the Board had breached “its obligation not to single out ICM Registry for disparate treatment” in violation of ICANN’s Bylaws, international law, and the law of the State of California. I am writing to express ICM Registry’s sincere interest in working cooperatively with the Board to decisively act at the earliest opportunity on the findings of the Independent Review Panel and to put this dispute, which has consumed so much time and resources of both parties, well behind us.

Assuming, as I do, that the Board takes its obligations under the accountability provisions of the Bylaws seriously and will respect the conclusions of this Panel of preeminent international jurists, we believe that it is now incumbent on ICANN to move expeditiously to execute a registry agreement with ICM for operation of the .xxx top level domain. Further discussion about the merits of the proposal or questions regarding satisfaction of the eligibility criteria established for the 2004 sTLD round would be fundamentally inconsistent with the conclusions of the Panel. Specifically, in light of the fact that the Panel declared that the ICM application met the eligibility criteria (paras. 147, 152), held that the

reconsideration of the sponsorship criteria was not consistent with the Bylaws (paras. 149 and 152), and stated its view that after the 1 June 2005 vote, ICANN should have “proceeded to conclude an agreement with ICM on commercial and technical terms, without reopening whether ICM’s application met the sponsorship criteria” (para. 149), any attempt to “reconsider” ICM’s application would be yet another violation of ICANN’s Bylaws in clear contradiction of the findings of the Panel. Nothing in the declaration would justify a decision to reconsider the ICM application in connection with the upcoming new gTLD round, nor is there any principled reason to apply new rules or requirements to a proposal that was already determined to comply with the rules and procedures governing the 2004 sTLD round.

ICM Registry stands ready to execute the registry agreement that was the product of extensive negotiation between ICM Registry and ICANN staff in early 2007, that fully reflected the public policy advice of the Government Advisory Committee, and that was publicly posted for approximately 6 weeks before the ICANN meeting in Lisbon. I am available to meet with you at your earliest convenience and will be attending the ICANN meeting in Nairobi, Kenya, and look forward to meeting with you then, if not before.

ICM has been and remains a strong supporter of ICANN’s private sector led, self regulation of a global resource. We have attempted always to work collaboratively with ICANN for our mutual benefit and shared interests, and we will continue to do so in the future. Accordingly, ICM is not only willing, but eager to close the book on this dispute and turn our energies to the launch of the long delayed .xxx sTLD. ICM is mindful that our patience has not always been rewarded in the past and can see no purpose (other than the expenditure of yet more time, money and effort by both parties) that would be served by delay. Accordingly, and with respect, I hope you will understand that we must protect our rights if it appears that our efforts to work in partnership with ICANN are failing, once again, to bear fruit.

I look forward to meeting with you and working together to implement the plans that have been pending for so many years. And again, I remain eager to discuss the future of .xxx with you at your earliest convenience.

Sincerely,

A handwritten signature in blue ink, appearing to be 'SL' or similar initials, written in a cursive style.

Stuart Lawley
Chairman