

----- Message from "Peter L. Michaelson" Contact Information Redacted on Tue, 21 Jul 2015 16:24:06 GMT -----

From : "Peter L. Michaelson" Contact Information Redacted
To: Contact Information Redacted, Contact Information Redacted
CC: Contact Information Redacted, Contact Information Redacted, "Tom Simotas"
Subject: 0115 0004 1379 (OpenTLD B.V. vs ICANN); Procedural Order 1

Counsel--

Further to our preliminary hearing session held last Thursday (July 16, 2015), this e-mail order (Procedural Order 1) memorializes the schedule going forward in this arbitration, as agreed to by the parties and the Arbitrator, and various additional, though related, points of agreement and statements made during that hearing.

1. This is an emergency arbitration proceeding being conducted under the current International Arbitration Rules of the International Centre for Dispute Resolution (ICDR) (the international division of the American Arbitration Association).
2. Neither party nor its counsel has made any further disclosures. The Arbitrator has made no further disclosures either.
3. The Respondent (ICANN) acknowledged that the suspension, pursuant to ICANN's letter of June 23, 2015 and specifically under section 5.7 of the Registrar Accreditation Agreement (RAA) presently in effect between the parties, of the Claimant's (OpenTLD's) ability to create new registered domain names for any generic top level domain (gTLD) or initiate inbound name transfers of any registered name for any gTLD (the "Suspension Order") is currently stayed. That stay was put in place by ICANN on July 8, 2015 as a result of ICANN then having received notice of the OpenTLD's filing of its Request for Arbitration ("Arbitration Demand"), under provision 5.8 of the RAA, with the ICDR. ICANN, upon OpenTLD's inquiry, stated during this hearing, that

this stay will remain in effect until this arbitration is concluded with issuance of the Arbitrator's final ruling/order (award). The Arbitrator accepts this representation. Thus, the Arbitrator sees no need at this time to issue any stay or provide other interim relief to preserve the status quo pending the issuance of his award.

4. The briefing and hearing schedule is as follows:

- a) By July 23, 2015, OpenTLD will file its Opening Brief.
- b) By August 4, 2015, ICANN will file its Responding Brief.
- c) By August 10, 2015, OpenTLD will file its Reply brief, if any.
- d) The merits hearing will occur by telephone on August 14, 2015. All witness testimony will be by written declaration.

The ICDR case manager will arrange a suitable teleconference connection for the hearing and accordingly notify all sides and the Arbitrator. The hearing will start at 1 PM EDT (10 AM PDT) and conclude at approximately 8 PM EDT (5PM PDT). Each side will be allotted an equal amount of time to use at that side sees fit. Should the parties desire an earlier start time, a longer or shorter duration than 7 hours or a different allocation of time between the sides, they are to advise the Arbitrator accordingly who will make his best efforts to accommodate their request. In order to focus on the arguments being made during the hearing, the Arbitrator will not keep track of the time used by each side. Each side, should it desire to do so, may maintain a running total of the time consumed by the other side and so notify the Arbitrator and the other side of that total when queried during the hearing.

5. To eliminate duplication and thereby effectuate cost and time savings, ICANN is not required to submit any answer to OpenTLD's July 7th Arbitration Demand. ICANN informed the Arbitrator that it will include all its arguments or other responses that it would have presented in any such answer to the Arbitration Demand in its Responding Brief and very likely in greater detail than in that answer.

6. At this time, the sole issue presently pending before the Arbitrator

for determination in the award is whether the Suspension Order should be vacated.

7. The Arbitrator has not imposed a page limit on any of the briefs so as to afford counsel suitable flexibility in presenting their arguments. Nevertheless, the Arbitrator requests that counsel keep their respective briefs as succinct as reasonably possible.

8. The award is to be reasoned and approximately 5-10 pages in length. The Arbitrator will issue the award by August 24, 2015.

9. Unless the parties subsequently agree otherwise, no stenographic transcript will be made of the merits hearing. However, as set forth in the Arbitrator's Procedural Checklist (attached and described below), the Arbitrator will make an audio recording of the hearing for his own use. Upon request and as soon as practical after conclusion of the hearing, the Arbitrator will gladly provide each side, probably through DropBox or a similar cloud-based storage modality, with access to the ensuing audio files for download.

10. All submissions are to be in electronic form. Counsel are to send their submissions directly by e-mail and simultaneously to the Arbitrator and to the ICDR Case Manager, Tom Simotas Contact Information Redacted. Alternatively, as set forth in the Procedural Checklist, either party may use any cloud-based storage modality from which the Arbitrator can download that party's submission. Should either party use a remote storage modality, that party is to notify the Arbitrator and the Case Manager by e-mail that its submission is then available on that modality and provide a download link or other access instructions sufficient to access that submission for download.

11. The Arbitrator has attached his Procedural Checklist which, to the extent applicable and consistent with the above, is to govern submissions and other procedural aspects. The Checklist, which is generally applicable to all significant arbitrations which the Arbitrator

handles, merely specifies the Arbitrator's preferences. In that regard, the parties should ignore sections IB and IIA and IIB of the Checklist as being inapplicable here. Consequently, the Arbitrator invites either party to the present proceeding to suggest to the Arbitrator any improvement, it may have to any pertinent aspect set forth in the Checklist, that is likely to provide additional efficiency and time/cost savings for this proceeding.

SO ORDERED.

The above points are based on my notes of the preliminary hearing. If either of you believe that any of the above is incorrect or have any questions or comments for me, please advise me accordingly as soon as possible.

Given the exigency of this proceeding, I will be available and at the parties' disposal throughout this entire proceeding to urgently consider and resolve any procedural or other issue that may arise. Should such an issue occur which necessitates my intervention, then the parties should contact me as soon as possible thereafter to notify me of that issue and expeditiously schedule a teleconference to discuss and resolve it.

Kindly confirm, by return e-mail, your receipt of this message and its attachment.

Best regards,

Peter Michaelson
Attorney, Arbitrator and Mediator
(IP, IT, technical and technology-related causes)
Fellow, Chartered Arbitrator, Chair -- New York Branch, and Former
Trustee
Chartered Institute of Arbitrators (UK)
Fellow, College of Commercial Arbitrators (US)

Member: National Academy of Distinguished Neutrals (NADN)
Member: ICDR, AAA, CPR, WIPO, LCIA, SIAC, BCICAC and other panels
CEDR (UK) accredited mediator
Member: NJ, NY, PA and AK bars
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