Dechert LLP

1900 K Street, NW
Washington, DC 20006-1110
+1 202 261 3300 Main
+1 202 261 3333 Fax
www.dechert.com

ARIF HYDER ALI

Contact Information
Redacted

February 23, 2018

VIA E-MAIL

ICANN Board
c/o Steve Crocker, Chairman
Goran Marby, President and CEO
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

Re: Request for Update on ICANN's Investigation of .WEB Contention Set and Request for Documents under ICANN's Documentary Information Disclosure Policy

Dear ICANN:

We write on behalf of our client, Afilias Domains No. 3 Ltd. ("Afilias"), regarding the .WEB contention set. As stated in past correspondence, Afilias has several concerns with the 27-28 July 2016 auction for .WEB, including (1) Nu Dot Co LLC's ("NDC") apparent change in financial position, ownership, or control after submitting its application to ICANN but prior to the auction for .WEB; (2) NDC's assignment of rights in its application for .WEB to Verisign, Inc. ("Verisign") prior to the auction in breach of the gTLD Applicant Guidebook ("AGB"); and (3) the serious competition issues raised by Verisign's acquisition of .WEB in violation of ICANN's Bylaws and the AGB.[1] As discussed below, we are writing to: (1) request an update on ICANN's investigation of the .WEB contention set; and (2) request documents under ICANN's Documentary Information Disclosure Policy ("DIDP").

[1] *See* Letter from M. Scott Hemphill to Akram Atallah (8 Aug. 2016), https://www.icann.org/en/system/files/correspondence/hemphill-to-atallah-08aug16-en.pdf; Letter from M. Scott Hemphill to Akram Atallah (9 Sep. 2016), https://www.icann.org/en/system/files/correspondence/hemphill-to-atallah-09sep16-en.pdf; Letter from John Kane to Christine A. Willett (7 Oct. 2016).

I. Request for Update on ICANN's Investigation of .WEB Contention Set

Pursuant to Afilias' concerns in late 2016, ICANN requested "additional information"[2] regarding the .WEB auction from Afilias, Ruby Glen LLC ("Ruby Glen"), NDC, and Verisign on 16 September 2016.[3] Afilias promptly responded to ICANN's request on 7 October 2016.[4] Since Afilias submitted its response to ICANN over sixteen months ago, it has received no further communications from ICANN in regards to the .WEB contention set. ICANN has failed to update Afilias regarding its investigations relating to .WEB.

ICANN is obligated by its Bylaws to maintain "open and transparent processes."[5] The principle of "[t]ransparency is one of the essential principles in ICANN's creation documents, and its name reverberates through its Articles [of Incorporation] and Bylaws."[6] Pursuant to its Bylaws, ICANN is required to (1) "[e]mploy open, transparent and bottom-up, multistakeholder transparent public development processes" [7] and (2) to "operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness."[8]

Therefore, pursuant to ICANN's transparency obligations,[9] we respectfully request that ICANN provide an update on the status of ICANN's investigation of the .WEB contention set, including: (1) the steps (if any) taken by ICANN to disqualify NDC's bid on the basis that NDC violated the rules applicable to its application; and (2) the steps (if any) taken by ICANN to assess competition issues arising out of delegation of .WEB to Verisign.

We further request that ICANN take no action in regards to .WEB until Afilias can review and respond to the documents provided as a result of the below DIDP request; and that ICANN confirm that it has not, and will not, enter into a registry agreement for .WEB with

---

2 Letter from Christine A. Willett to John Kane (16 Sep. 2016), p.1.
3 *See* Letter from Christine A. Willett to John Kane (16 Sep. 2016).
4 *See* Letter from John Kane to Christine A. Willett (7 Oct. 2016).
5 ICANN Bylaws, Article 1, Section1.2(a).
6 *Dot Registry, LLC v. ICANN*, ICDR Case No. 01-14-0001-5004, Declaration of the Independent Review Panel (29 Jul. 2016), ¶ 101, https://www.icann.org/en/system/files/files/irp-dot-registry-final-declaration-redacted-29jul16-en.pdf.
7 ICANN Bylaws, Article 1, Section1.2(a)(iv).
8 ICANN Bylaws, Article 3, Section 3.1.
9 *See* ICANN Articles of Incorporation, Art. 2(III); ICANN Bylaws (22 Jul. 2017), Art. 1(1.2)(a), Art. 3(3.1), Art. 4(4.1).

NDC until, to the extent Afilias seeks review of any decisions relating to .WEB through ICANN's accountability mechanisms, such mechanisms are completed. We nonetheless emphasize that Afilias reserves all of its rights to pursue any and all rights or remedies available to it in any forum against ICANN, NDC, or Verisign in connection with the delegation of the .WEB gTLD.

II. Request for Documents Pursuant to the DIDP

Afilias further submits this letter to request documents from ICANN, pursuant to ICANN's DIDP, related to (1) ICANN's 30 September 2016 request for additional information sent to Ruby Glen, Afilias, NDC, and Verisign; and (2) any investigation by ICANN of NDC and Verisign in relation to .WEB.[10] The DIDP is "intended to ensure that information contained in documents concerning ICANN's operational activities, and within ICANN's possession, custody, or control, is made available to the public unless there is a compelling reason for confidentiality."[11] Pursuant to the DIDP, Afilias requests that ICANN provide the following documents:

1. All documents received from Ruby Glen, NDC, and Verisign in response to ICANN's 16 September 2016 request for additional information;[12]

2. Ruby Glen's Notice of Independent Review, filed on 22 July 2016;[13]

3. All documents filed in relation to the Independent Review Process between ICANN and Ruby Glen, initiated on 22 July 2016;[14]

4. All applications, and all documents submitted with the applications, for the rights to .WEB;

---

10 *See* Letter from Christine A. Willett to John Kane (16 Sep. 2016).

11 *See* ICANN DIDP, https://icann.org/resources/pages/didp-2012-02-25-en. In responding to a request submitted pursuant to the DIDP, ICANN adheres to its *Process for Responding to ICANN's Documentary Information Disclosure Policy (DIDP) Requests*.

12 Letter from Christine A. Willett to John Kane (16 Sep. 2016), p.1.

13 Complaint, *Ruby Glen, LLC v. ICANN*, 2:16-cv-05505, ¶ 53 (C.D. Ca. July 22, 2016).

14 Complaint, *Ruby Glen, LLC v. ICANN*, 2:16-cv-05505, ¶ 53 (C.D. Ca. July 22, 2016).

5. All documents discussing the importance of .WEB to bringing competition to the provision of registry services;

6. All documents concerning any investigation or discussion related to

    a. the .WEB contention set,

    b. NDC's application for the .WEB gTLD,

    c. Verisign's agreement with NDC to assign the rights to .WEB to Verisign, and

    d. Verisign's involvement in the .WEB contention set, including all communications with NDC or Verisign;

7. Documents sufficient to show the current status of NDC's request to assign .WEB to Verisign;

8. Documents sufficient to show the current status of the delegation of .WEB;

9. All documents relating to the Department of Justice, Antitrust Division's ("DOJ") investigation into Verisign becoming the registry operator for .WEB ("DOJ Investigation"), including:

    a. document productions to the DOJ;

    b. communications with the DOJ;

    c. submissions to DOJ, including letters, presentations, interrogatory responses, or other submissions;

    d. communications with Verisign or NDC relating to the investigation; and

    e. internal communications relating to the investigation, including all discussions by ICANN Staff and the ICANN Board; and

10. All joint defense or common interest agreements between ICANN and Verisign and/or NDC relating to the DOJ Investigation.

We reserve the right to request additional documents based on the provision of the above documents. Please promptly disclose the requested documents pursuant to the DIDP.

Sincerely,

Arif Hyder Ali

Partner