THE IP AND TECHNOLOGY LEGAL GROUP, P.C.
A PROFESSIONAL LAW CORPORATION
15260 VENTURA BOULEVARD, SUITE 1810
SHERMAN OAKS, CALIFORNIA 91403
+1-818-444-4580 | FAX +1-818-444-4585

JOHN M. GENGA
DIRECT DIAL: Contact Information Redacted

June 21, 2016

VIA EMAIL

ICANN Board of Directors
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536
correspondence@icann.org

RE: Community Objection Rehearing re .SPORTS, per Panel Recommendation in *Donuts v. ICANN*, IRP Case No. 01-14-0001-6263

Members of the Board:

We write to request that the Board formally adopt the recommendations of the IRP Panel in its May 5, 2016 decision in the above-captioned case (copy available at: https://www.icann.org/en/system/files/files/irp-donuts-final-declaration-05may16-en.pdf) calling for a rehearing of the original community objection to the application by Steel Edge, LLC for .SPORTS. While the applicant was unable to meet the high burden in the IRP of showing that the Board had violated its Bylaws, the Panel did hold that the Board should "provide for a rehearing of that objection."[1] The IRP Panel rightly acknowledged that the objection panelist's lack of disclosure and potential conflict of interest raised the specter of bias and a material issue with the integrity of the new gTLD objection process to justify such a rehearing.

By way of background, the Board may recall that this case challenged the validity of a "community" objection heard at the International Chamber of Commerce ("ICC") Centre for Expertise. In the underlying proceeding, objector SportAccord sought to protect the interests of a purported sports "community," as well as its own interests as applicant for the .SPORT domain. The ICC panelist, Jonathan Peter Taylor, ruled in favor of SportAccord. However, it was later discovered that Mr. Taylor had failed to disclose certain prior – and, in one case, concurrent – professional relationships with SportAccord member organizations, most notably the International Tennis Federation ("ITF"). In the IRP, Donuts contended, among other things,

[1] Maj. Op. ¶ 230. The Dissent likewise supported a rehearing. Dissent at 3.

that the objection determination was not made without conflict of interest, and that the Board violated Bylaws Art. IV § 3.4.a by allowing that potentially tainted result to stand.

The Majority agreed and, although it did not find sufficient evidence to attribute a violation to the Board, invoked its authority under the Bylaws Art. IV § 3.11.d, and with reference to ICANN governing principles generally, to "recommend" that the Board take certain actions regarding the original ICC objection,[2] including:

> Concerning the community objection proceeding brought by SportAccord in connection with .SPORTS, the majority believes it would not be inconsistent with ICANN's values and principles to provide for a rehearing of that objection, by a different expert (or three experts).[3]

The Majority based this recommendation on its finding that Panelist Taylor "erred too heavily on the side of non-disclosure" of his potential conflicts of interest, which it felt "may create the impression of bias and thus undercut a party's confidence in the system."[4] Earlier in its opinion, the Majority had elaborated:

> [T]he Panel would have expected Mr. Taylor to have been more specific in making disclosures based on the … ICC disclosure formula. He should have identified the members of SA for whom he had recently acted. That would have included listing his advocacy on behalf of the International Tennis Federation (ITF), the conflict which Donuts' expert found to be most troubling. In this respect, the Panel notes that the ICC disclosure statement he signed advises, in underscored text, that "any doubt must be resolved in favour of disclosure."[5]

The Majority also noted that a rehearing of the underlying community objection would likely not involve an inordinate expenditure of additional resources, as "the applicant and objector would presumably be highly efficient in presenting their respective cases, having already prepared them fully once."[6] Indeed, unless a new panel requests anything further, it

---

[2] Maj. Op. ¶ 226, https://www.icann.org/en/system/files/files/irp-donuts-final-declaration-05may16-en.pdf.
[3] *Id.* ¶ 230.
[4] *Id.* ¶ 228.
[5] *Id.* ¶ 197.
[6] *Id.* ¶ 230.

could reconsider the case on the existing record. We do believe, as the Majority also felt, that the panel should consist of three experts instead of one.[7]

Kindly advise the undersigned at your first opportunity that a rehearing of the SportAccord community objection to Steel Edge's application for .SPORTS shall take place promptly before a 3-member panel as unanimously recommended in the IRP proceeding for .SPORTS.

Sincerely,

John Genga

John M. Genga
of THE IP and TECHNOLOGY LEGAL GROUP, P.C.

cc: Akram Atallah
Jeffrey A. LeVee, Esq., Jones Day
Jonathon Nevett, Donuts Inc.

[7] *Id.* ¶ 229. The Majority reasoned that having three panelists would act as a check on possible partisanship among experts hearing community objections. *Id.*