

# JONES DAY

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## VIA E-MAIL

Flip Petillion  
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**Re: *Namecheap, Inc. v. ICANN*, ICDR Case No. 01-20-0000-6787**

Dear Mr. Petillion and Mr. Janssen:

As counsel to the Internet Corporation for Assigned Names and Numbers (“ICANN”), we write in response to your letter of 18 January 2023 to Ms. Tripti Sinha and the ICANN Board sent on behalf of Namecheap, Inc. (“Namecheap”) relating to the above-referenced Independent Review Process (“IRP”) and ICANN’s 5 January 2023 announcement regarding the IRP Panel’s Final Declaration (the “Announcement”).

At the outset, I must point out that nothing in the Announcement states or in any way implies that the ICANN Board will do anything less than fully comply with its obligations under the Articles and Bylaws. Your accusations that, if the Board fails to comply with the Panel’s recommendations, as opposed to the Panel’s orders, the Board will “deliberately elect[] to violate the Articles of Incorporation and Bylaws,”<sup>1</sup> are offensive.

As clearly stated in the Announcement, ICANN is in the process of reviewing and evaluating the Panel’s findings and recommendations. And as you can see from the Board’s agenda for the first Board meeting since receipt of the Final Declaration in this IRP (<https://www.icann.org/en/board-activities-and-meetings/materials/agenda-regular-meeting-of-the-icann-board-21-01-2023-en>), the ICANN Board will be considering this matter on 21 January 2023. ICANN and its Board have always taken very seriously the final declarations in every IRP, and will do so in this IRP as well.

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<sup>1</sup> Letter from F. Petillion and J. Janssen to the ICANN Board (18 Jan. 2023), p. 4.

Flip Petillion  
Jan Janssen  
January 20, 2023  
Page 2

Further, your letter contains a number of additional inaccuracies. First, Namecheap's claim that the Announcement "reads as one-sided and downplays the many violations that the Panel has found" is unsupported.<sup>2</sup> Indeed, Namecheap did not identify a single misstatement in the Announcement (because there are none). Putting aside Namecheap's unsupported aspersions, the Announcement provides a neutral and accurate summary of the Panel's Final Declaration and includes a link to the publicly available Final Declaration for those who wish to review it in its entirety.

Second, Namecheap's statement that the IRP Panel's recommendations are mandatory is false. The IRP Panel expressly rejected this argument in the IRP and found that its authority was limited "to recommending (not ordering) remedial action to the extent a violation is found."<sup>3</sup> Namecheap itself acknowledges that "the Panel limited itself to recommending, not ordering, remedial action," but then proceeds to argue, without support or logic, that the recommendations are mandatory, "not permissive."<sup>4</sup> Even so, the Board takes IRP Panel final declarations very seriously, including any recommendations contained therein, and as always, the Board will consider them in good faith.

Finally, Namecheap's insinuation that the ICANN Board will do anything less than fully comply with its obligations under the Bylaws in reviewing the Final Declaration is baseless. That ICANN organization may also review and evaluate the Final Declaration does not somehow mean that the Board will "rubberstamp staff recommendations" (if any), as your letter suggests.<sup>5</sup> In fact, the IRP Panel acknowledged that ICANN organization may of course assist with the decisionmaking process . . . ." I repeat what I said at the outset: nothing in the Announcement states or in any way implies that the ICANN Board will do anything less than fully comply with its obligations under the Articles and Bylaws.

Very truly yours,

*Jeffrey A. LeVee*

Jeffrey A. LeVee

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<sup>2</sup> *Id.*, p. 1.

<sup>3</sup> *Namecheap, Inc. v. ICANN*, ICDR Case No. 01-20-0000-6787, Final Declaration (23 Dec. 2022) ¶ 482.

<sup>4</sup> Letter from F. Petillion and J. Janssen to the ICANN Board (18 Jan. 2023), p. 2.

<sup>5</sup> *Id.*, p. 2.