

THE IP AND TECHNOLOGY LEGAL GROUP, P.C.
A PROFESSIONAL LAW CORPORATION
Contact Information Redacted

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JOHN M. GENGA
DIRECT DIAL Contact Information Redacted
EMAIL: Contact Information Redacted

August 10, 2015

VIA EMAIL

Donuts v. ICANN IRP Panel
Jack J. Coe, Jr, Chair
Philip W. Boesch, Jr.
Rayner M. Hamilton

RE: *Donuts v. ICANN*, ICDR Case No. 01-14-0001-6263
Letter Brief Regarding Document Requests

Members of the Panel:

Claimant Donuts respectfully submits this letter brief as directed by the Tribunal in its Procedural Order No. 2, issued August 8, 2015. This letter addresses the propriety of document requests propounded upon ICANN by Donuts, a copy of which Donuts has previously provided to the Tribunal but which it also includes herewith as Exhibit D for ease of reference.

As demonstrated more fully below, Donuts seeks the documents identified in its requests to give it a fair “opportunity to present its claims” while “maintaining efficiency and economy” of these proceedings as contemplated by ICDR Int’l Arb. R. 21(1). Donuts believes that the documents exist; if they do, their content – and if they do not, that fact – is “relevant and material to the outcome of the case.” *Id.* 21(4). To the extent the requested documents implicate issues of commercial or technical confidentiality, Donuts understands that may be required to, and would, adhere to an appropriate order preserving any such confidentiality. *Id.* 21(5).

Background Regarding the Requests

At the July 14, 2015 preliminary hearing in this case, the parties and the Panel discussed scheduling, among other matters. During that particular discussion, counsel for Donuts stated its position that a document exchange pursuant to ICDR Int’l Arb. R. 21 should occur to provide Donuts with information not otherwise available to it but needed to present its case fully on the merits.

The Panel issued its Procedural Order No. 1 on July 17, 2015. On July 22, counsel for Donuts sent an email to the Panel and to counsel for ICANN indicating, among other things, that a narrow set of document requests would issue to ICANN by the end of that week, and

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suggesting potential revisions to the schedule in light thereof. Ex. A hereto.¹ The Panel stated its “expect[ation] that Mr. LeVee will communicate his views regarding what you propose, and that the Tribunal will offer some guidance soon thereafter,” and counsel for ICANN replied that it would provide its position after receiving and reviewing the document requests. Exs. B, C.

Donuts emailed ICANN a letter on July 24, 2015 seeking five categories of documents. Ex. D. By an email dated July 28, ICANN raised questions concerning request nos. 1, 2 and 5, to which Donuts responded the next day. Exs. E and F, respectively. Counsel for the parties met and conferred telephonically about the requests on July 30, 2015, with Donuts reaffirming its position and counsel for ICANN undertaking to respond shortly with ICANN’s final position.

On August 3, ICANN communicated to Donuts that it would produce documents responsive to request nos. 3 and 4, but that it would not do so in response to request nos. 1, 2 and 5. Ex. G. A series of communications ensued between the parties and with this Tribunal concerning the logistics of resolving the parties’ differences regarding the document exchange and other matters. As a result, the Panel issued its Procedural Order No. 2 on August 8, 2015. Pursuant thereto, Donuts now submits this letter brief by which it respectfully urges the Panel to direct ICANN to produce the documents called for by Donuts’ request nos. 1, 2 and 5.

Necessity for the Documents Called for by the Disputed Requests

Donuts asserts in this IRP that the ICANN Board violated ICANN Bylaws and Articles of Incorporation by actions and omissions concerning community objections raised by third parties against applications made by Donuts’ subsidiaries for the new gTLD strings .SPORTS and .RUGBY.² That is the function of the IRP – to “review ... Board actions alleged by an affected party to be inconsistent with the Articles of Incorporation or Bylaws.” Bylaws Art. IV § 3.1.

Donuts contends in this IRP that the ICANN Board acted and failed to act in ways that transgress a number of Bylaws, including those that require “applying documented policies neutrally and objectively, with integrity and fairness” (*id.* Art. I § 2.8), prohibiting discrimination (*id.* Art. II § 3) and avoiding conflicts of interest (*id.* Art. IV § 3.4.a). More specifically, Donuts alleges that the ICANN Board failed to assure neutral and consistent application of the standards for ruling upon community objections, as documented in the New gTLD Applicant Guidebook (“Guidebook” or “AGB”) – both on the “front end,” by not sufficiently informing and training the experts responsible for employing those standards in ruling upon community objections, and on the “back end,” by refusing numerous written requests by ICANN stakeholders, including

¹ Donuts has no desire to burden this Tribunal with documents it already has, but includes them so the Panel may easily reference them in one place rather than having to search the record.

² Donuts’ IRP request describes ICANN’s new gTLD program, its application and objection process, and the specific applications, objections and rulings at issue regarding the .SPORTS and .RUGBY domains. See <https://www.icann.org/en/system/files/files/donuts-irp-request-13oct14-en.pdf> (“IRP Req.”) ¶¶ 31-42, 51-54. The IRP request initially also sought review of a community objection determination regarding Donuts’ application for .SKI, *id.* ¶¶ 43-50, but Donuts has settled that dispute and so informed the Panel.

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Donuts, to employ a mechanism to review aberrant rulings on community objection (even though the Board has provided a means for review of inconsistent rulings on objections brought on other grounds). IRP Req. ¶¶ 71-77.

The Bylaws call for “open and transparent policy development mechanisms that promote well-informed decisions based on expert advice.” App. A Art. I § 2.7. The Board does not appear to have “informed” panels adequately regarding the standards that the AGB impels them to employ. Omitting to train experts sufficiently resulted in failure of the panels to apply the Guidebook’s “documented policies . . . objectively . . . and fair[ly].” *Id.* § 2.8.

IRP Req. ¶ 71. Donuts further claims that the acts and omissions by ICANN’s Board breach the covenant of good faith and fair dealing in the contract created by Donuts’ applications by which it agreed to bind itself to the terms of the Guidebook. *Id.* ¶ 80. That breach contravenes the Articles of Incorporation that require ICANN to act in accordance with local and international law, establishing a further basis for independent review. *Id.* ¶¶ 78, 80; ICANN Arts. Incorpor. § 4; Bylaws Art. IV

The requests at issue seek documents directly “relevant and material” to establishing these core claims of this IRP proceeding. Int’l Arb. R. 21(4). Comparing the requests to Donuts’ charging allegations readily so demonstrates.

Request No. 1:

Donuts’ first document request seeks “[a]ll communications, training materials and other documents between ICANN, including its staff, Board or any part thereof, on the one hand, and the ICC, Jonathan Peter Taylor and/or Mark Kantor, on the other hand,” pertaining to the rules and standards controlling the objection panels’ conduct and rulings under the Guidebook and other governing documents.³ The IRP claims that the Board failed to ensure neutral and fair application of these “documented policies” as an express basis for review. IRP Req. ¶¶ 71-75.

Each subpart of this request seeks communications, training materials and other documents pertaining to specific standards in the Guidebook or other governing documents, and Specifically, this document request seeks communications and training materials pertaining to: (a) the four standards for evaluating community objections, AGB § 3.5.4; (b) the objector’s burden to prove all four elements, *id.* § 3.5, 3.5.4 at 3-25; (c) the right of an applicant to submit a standard or a community application, *id.* § 1.2.3.1; (d) that an objector cannot establish the fourth, “material detriment” element of a community objection simply by contending that it rather than the applicant should be awarded the objected-to string, *id.* § 3.5.4 at 3-24; and (e) that expert panels should consider no criteria other than those set forth in the Guidebook, as set forth in the final GNSO Report adopted by ICANN’s Board for the new gTLD program. Subparts (f)

³ ICANN selected the International Chamber of Commerce (ICC) as the “dispute resolution service provider” (“DRSP”) for community objections. The ICC appointed Mr. Taylor as the expert to rule upon the .SPORTS objection, and Mr. Kantor for the .RUGBY objection.

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and (g) request communications, training materials and documents concerning not singling out any particular party for disparate treatment (Bylaws Art. II § 3), and the handling and avoiding of conflicts of interest (*id.* Art. IV § 3.4.a), respectively.

The ICANN Board has the *sole* authority to authorize the appointment of experts, such as the ICC and its panelists, to assist it in decision-making. “On its own initiative or at the suggestion of any ICANN body, the Board may appoint, or authorize the President to appoint, Expert Advisory Panels consisting of public or private sector individuals or entities.” Bylaws Art. XI-A § 1.2.a. The Bylaws also provide that “[a]ny reference of issues not concerning public policy to an Expert Advisory Panel by the Board or President in accordance with Section 1(2)(a) of this Article shall be made pursuant to terms of reference *describing the issues on which input and advice is sought and the procedures and schedule to be followed.*” *Id.* Art. XI-A § 1.4 (emphasis added).

The Guidebook describes the issues and sets forth the procedures and schedule applicable to community objections. Donuts’ request no. 1 seeks other materials that ICANN used to instruct experts in the adequate execution of their duties. Such materials, or their absence, are necessary and appropriate to support Donuts’ claim that the Board, as the only entity with the power to appoint experts, failed its obligation to train the ICC and its panelists to apply “documented policies” – those in the Guidebook and other new gTLD governing documents – “neutrally and objectively, with integrity and fairness” in violation of Bylaws Art. I § 2.8.

ICANN would have Donuts limit this request only to communications which specifically reference the applicable standard articulated under Bylaws Art. I § 2.8. However, the request articulates that standard solely to establish that each subpart unequivocally and directly relates to whether ICANN acted in accordance with its Bylaws, not to limit the documents that ICANN should produce. Indeed, if communications and training materials of the type requested exist, it is doubtful that they would refer specifically to the Bylaw that Donuts claims the Board violated. Documents reflecting the extent to which, if at all, the ICANN Board saw to the training of the experts that only the Board had the authority to appoint, bear directly on Donuts’ claim that the Board failed to assure compliance with the “documented policies” set forth in the Guidebook for resolving community objections. Should ICANN have no responsive documents, it should so certify under oath, as that fact would speak loudly in support of Donuts’ central IRP claim.

Request No. 2:

Donuts’ document request no. 2 seeks the same documents as in request no. 1, except to the extent such documents may not have gone between ICANN and the ICC or its panelists. In other words, if ICANN now has in its possession training materials that the ICC provided to its experts, including Messrs. Taylor and Kantor, ICANN should produce those documents to Donuts for the same reasons ICANN should produce documents responsive to request no. 1.

Request No. 5:

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This request pertains directly to Donuts' allegation that the Board failed to assure neutral application of "documented policies" pertaining to community objections by refusing to employ a mechanism to review inconsistent community objection results. IRP Req. ¶¶ 76-77. Donuts alleges that it and others specifically urged the Board to implement such a procedure (IRP Exs. 51, 52), and that the Board's failure to do so violates the cited Bylaw, among others. *Id.* Indeed, since the date Donuts filed this IRP, the ICANN Board has provided for review of certain objection rulings that came out inconsistent with each other – and, as such, the Guidebook – but not community objections such as those at issue here. *See* Resolutions 2014.10.12.NG02 – 2014.10.12.NG03 (October 12-14, 2014), available at <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-10-12-en>.

Donuts has asked that ICANN produce documents relating to the Board's decision to implement a review mechanism for certain objection rulings but not others. It will limit the request to the Board's consideration of the specific issue that resulted in the cited resolutions, or which relate specifically to the correspondence from Donuts and others in IRP Exs. 51 and 52 on that subject. Responsive documents, if ICANN has any, will shed light on the Board's decision to treat Donuts differently from victims of other inconsistent new gTLD objection rulings, and will thus bear on one of the ultimate issues of this IRP – *i.e.*, the Board's violation of its own non-discrimination edict. Bylaws Art. II § 3.

Timing of the Document Request:

Donuts finally wishes to address ICANN's repeated suggestion that Donuts has somehow delay in issuing its document request. On several occasions, ICANN has suggested to Donuts and to this Panel that Donuts could have requested documents months ago. However, the ICDR Arbitration Rules provide for panel supervision of document exchanges, and do not contemplate that document exchange requests can issue prior to the panel's appointment. ICDR Int'l Arb. R. 21(1). Accordingly, Donuts has acted consistently with the rules governing this proceeding and its request for documents in particular.

Respectfully submitted,

/jmg/

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

cc: Tom Simotas
Jeffrey A. LeVee, Esq.
Charlotte Wasserstein, Esq.

EXHIBIT A

Re: DONUTS IRP PROCEDURAL ORDER No. 1

John M. Genga

Wed 7/22/2015 1:31 PM

To: Coe, Jack Contact Information Redacted >; Jeffrey LeVee Contact Information Redacted

Cc: Contact Information Redacted Contact Information Redacted Don Moody Contact Information Redacted; Philip Boesch Contact Information Redacted Contact Information Redacted; Hamilton, Rayner Contact Information Redacted Contact Information Redacted; Tom Simotas Contact Information Redacted Contact Information Redacted

Bcc: Jon Nevett Contact Information Redacted Crystal Ondo Contact Information Redacted

Dear Panel, ICDR and Counsel,

We have received the Panel's Procedural Order No. 1, dated 17 July 2015, which sets dates for additional written submissions and proposed dates for oral argument, and recommends that the parties work cooperatively to exchange documents.

Regarding the hearing on the merits, I will be arguing as lead counsel for Donuts. However, I have a 7-10 day jury trial set to commence on September 14, 2015 in Los Angeles Superior Court, Case No. BC 487 454. This unfortunately falls directly within the range of dates the Panel has suggested for oral argument. Therefore, I on behalf of Donuts would appreciate, and respectfully request the Panel to propose, a range of potential hearing dates in mid-October.

Also, as mentioned during the preliminary hearing, Donuts does wish to engage in some form of document exchange with ICANN, pursuant to Article 21 of the ICDR Rules and in accordance with the Panel's Procedural Order No. 1. We are working on a narrow request for documents keyed specifically to the grounds upon which Donuts has brought this IRP, and should have it to Mr. LeVee before the end of the week.

We believe that the documents Donuts will seek are necessary to enable it to respond adequately to ICANN's opposition to the IRP request. While conceivably Mr. LeVee may not contest this, and will produce all responsive documents sufficiently in advance of the briefing dates the Panel has set, those dates may not prove realistic if ICANN takes issue with any of the requests or requires more time to produce responsive documents than the recently-set schedule realistically permits. However, we remain committed to an expeditious resolution of this proceeding, as I and Mr. LeVee both emphasized at last week's preliminary hearing.

In light of the foregoing, we respectfully request that the Panel consider the following proposed arrangements, which we of course send to Mr. LeVee's office concurrently for his input:

(i) Donuts and ICANN will work cooperatively with one another to arrange a document exchange within a specified timeframe. For its part, Donuts can commit to serving ICANN's counsel with a short set of document requests by no later than 5:00pm on Friday, July 24, 2015. ICANN, of course, could

Exhibit A

likewise serve such a request on Donuts, and if it cannot do so by the date Donuts proposes, Mr. LeVee and I ought to be able to agree on a mutually acceptable date.

(ii) Donuts and ICANN will work cooperatively with one another to determine a reasonable time to produce responsive documents or written certification under oath if and to the extent certain documents do not exist. Based on what Donuts expects to serve, I would expect 15 days to suffice, although if Mr. LeVee does not agree, perhaps we default to a 30-day response period as under the Code of Civil Procedure, which would put us at Monday, August 24 for written responses and production assuming the July 24 service date.

(iii) If the document exchange proceeds without issue, Donuts would file its Supplemental Memorandum by September 14, 2015 assuming the August 24 response date, or within 21 days such other earlier date as the parties may agree upon for the document exchange.

(iv) ICANN would have until October 5, or 21 days after such earlier date as Donuts may submit its supplemental memorandum, to file its own supplemental memorandum.

(v) The foregoing would accommodate a mid-October hearing as requested above.

Thanks to the Panel for its consideration of the foregoing. We look forward to hearing from Mr. LeVee regarding these suggestions, and to presenting the Panel with such matters as we can agree upon and proposals as to those, if any, about which we may disagree.

Respectfully,

John M. Genga

Genga & Associates, P.C.

Contact Information Redacted

From: Coe, Jack Contact Information Redacted

Sent: Monday, July 20, 2015 2:44 PM

To: Jeffrey LeVee

Cc: Contact Information Redacted; Don Moody; John M. Genga; Philip Boesch Contact Information Redacted
Hamilton, Rayner Contact Information Redacted Tom Simotas Contact Information Redacted

Subject: RE: DONUTS IRP PROCEDURAL ORDER No. 1

Received, with my thanks. jjc

Exhibit A

From: Jeffrey LeVee Contact Information Redacted

Sent: Monday, July 20, 2015 2:43 PM

To: Coe, Jack

Cc: Contact Information Redacted ; Contact Information Redacted ; Contact Information Redacted ; Philip Boesch
Contact Information Redacted ; Hamilton, Rayner Contact Information Redacted Tom Simotas Contact Information Redacted

Subject: Re: DONUTS IRP PROCEDURAL ORDER No. 1

Professor Coe:

In response to the request in the procedural order, ICANN is available for the argument on the following days:
September 14, 15, 21-24.

Jeff LeVee

[JONES DAY® - One Firm Worldwide](#)

Telephone: Contact Information Redacted

From: "Coe, Jack" Contact Information Redacted

To: Contact Information Redacted

Cc: "Tom Simotas" Contact Information Redacted "Philip Boesch" Contact Information Redacted "Hamilton,
Rayner" Contact Information Redacted

Date: 07/17/2015 08:53 PM

Subject: DONUTS IRP PROCEDURAL ORDER No. 1

Dear Counsel:

Attached please find Procedural Order Number 1 for the Donuts IRP. You will note that Item 9 invites you to confirm your availability for a range of dates, in order that we might fix a hearing date soon after hearing from both sides. Thank you for your continued cooperation.

J.J. Coe, Jr, for the Tribunal [attachment "(DONUTS IRP) PROCEDURAL ORDER No. 1.docx" deleted by Jeffrey LeVee/JonesDay]

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This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.

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Exhibit A

EXHIBIT B

RE: DONUTS IRP PROCEDURAL ORDER No. 1

Coe, Jack Contact Information Redacted

Wed 7/22/2015 2:17 PM

To: John M. Genga Contact Information Redacted Jeffrey LeVee Contact Information Redacted

Cc: Contact Information Redacted Don Moody Contact Information Redacted Philip Boesch
Contact Information Redacted ; Hamilton, Rayner Contact Information Redacted
Contact Information Redacted Tom Simotas Contact Information Redacted

Dear Mr. Genga:

This has been received by me, with appreciation. The Tribunal expects that Mr. LeVee will communicate his views regarding what you propose, and that the Tribunal will offer some guidance soon thereafter. Sincerely, J. J. Coe, Jr

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Sent: Wednesday, July 22, 2015 1:31 PM

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Respectfully,

John M. Genga

Genga & Associates, P.C.

Contact Information Redacted

Exhibit B

From: Coe, Jack Contact Information Redacted
Sent: Monday, July 20, 2015 2:44 PM
To: Jeffrey LeVee
Cc: Contact Information Redacted ; Don Moody; John M. Genga; Philip Boesch Contact Information Redacted
 Hamilton, Rayner Contact Information Redacted Tom Simotas Contact Information Redacted
Subject: RE: DONUTS IRP PROCEDURAL ORDER No. 1

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 Contact Information Redacted ; Hamilton, Rayner Contact Information Redacted ; Tom Simotas Contact Information Redacted
Subject: Re: DONUTS IRP PROCEDURAL ORDER No. 1

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September 14, 15, 21-24.

Jeff LeVee
[JONES DAY® - One Firm Worldwide](#)
 Telephone: Contact Information Redacted

From: "Coe, Jack" Contact Information Redacted
 To: Contact Information Redacted
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Exhibit B

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=====

Exhibit B

EXHIBIT C

Re: DONUTS IRP PROCEDURAL ORDER No. 1

Jeffrey LeVee **Contact Information Redacted**

Wed 7/22/2015 2:21 PM

To: Coe, Jack **Contact Information Redacted**; Philip Boesch **Contact Information Redacted** Hamilton,
Rayner **Contact Information Redacted**

Contact Information Redacted John M. Genga **Contact Information Redacted**; Don Moody
Contact Information Redacted; Tom Simotas **Contact Information Redacted**

Members of the Panel:

It is extremely difficult for ICANN to respond to Mr. Genga's proposal without seeing the document requests. Our telephonic hearing was on July 14, and I had assumed that Donuts would have served its requests by now (requests that, candidly, should have been served months ago). Further, I am skeptical that any documents that Donuts might request are truly relevant to this matter, but I will reserve judgment until I see the actual requests. When the requests arrive on Friday, I will evaluate them with ICANN and respond early next week with thoughts regarding Mr. Genga's proposal.

Regards,

Jeff LeVee
JONES DAY® - One Firm Worldwide
Telephone: **Contact Information Redacted**

From: "John M. Genga" **Contact Information Redacted**
To: "Coe, Jack" **Contact Information Redacted** Jeffrey LeVee
Contact Information Redacted
Cc: **Contact Information Redacted** Don
Moody **Contact Information Redacted**, "Philip Boesch
Contact Information Redacted "Hamilton, Rayner
Contact Information Redacted, "Tom
Simotas **Contact Information Redacted**
Date: 07/22/2015 01:31 PM
Subject: Re: DONUTS IRP PROCEDURAL ORDER No. 1

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Exhibit C

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Exhibit C

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John M. Genga
Genga & Associates, P.C.
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Telephone: Contact Information Redacted

From: "Coe, Jack" Contact Information Redacted
To: **Contact Information Redacted**

Cc: "Tom Simotas" Contact Information Redacted "Philip Boesch" Contact Information Redacted "Hamilton, Rayner ("Contact Information Redacted")
Date: 07/17/2015 08:53 PM
Subject: DONUTS IRP PROCEDURAL ORDER No. 1

Dear Counsel:

Attached please find Procedural Order Number 1 for the Donuts IRP. You will note that Item 9 invites you to confirm your availability for a range of dates, in order that we might fix a hearing date soon after hearing from both sides. Thank you for your continued cooperation.

J.J. Coe, Jr, for the Tribunal [attachment "(DONUTS IRP) PROCEDURAL ORDER No. 1.docx" deleted by Jeffrey LeVee/JonesDay]

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Exhibit C

can be corrected.

=====

EXHIBIT D

THE IP AND TECHNOLOGY LEGAL GROUP, P.C.
A PROFESSIONAL LAW CORPORATION
Contact Information Redacted

JOHN M. GENGA
DIRECT DIAL: Contact Information Redacted
Contact Information Redacted

July 24, 2015

BY E-MAIL

Jeffrey A. LeVee, Esq.
JONES DAY
Contact Information Redacted

Re: *Donuts v. ICANN*, ICDR Case No. 01-14-0001-6263

Dear Jeff:

Pursuant to Article 21 of the International Arbitration Rules of the ICDR, Donuts asks that ICANN produce the documents identified below in furtherance of the above-captioned Independent Review Process. We have tailored these requests narrowly to the specific issues raised by this IRP, and believe them necessary to accomplish meaningful review. As you know from your own experience (and as the public record reveals), such requests certainly are not unusual – and panels have viewed them as helpful – in IRP matters. And, assuming ICANN provides responsive documents within a reasonable period of time, they will keep the case on schedule for a mid-October hearing.

We do not wish to weigh these requests down with lengthy definitions of terms whose meanings you already know. We do wish to make clear, however, that “documents” and “communications” include those in electronic form such as email, text and “instant message” services such as Skype. Moreover, aware of other IRPs in which ICANN has taken an extremely narrow position as to what constitutes its “Board,” our references to the “Board” anywhere below includes its members, committees (including the BGC) and other configurations of less than the full Board. With these understandings, kindly produce the following:

1. All communications, training materials and other documents between ICANN, including its staff, Board or any part thereof, on the one hand, and the ICC, Jonathan Peter Taylor and/or Mark Kantor, on the other hand, in furtherance of “applying documented

Exhibit D

Jeffrey A. LeVee, Esq.

July 24, 2015

Page 2

policies neutrally and objectively, with integrity and fairness,” pursuant to Bylaws Art. I § 2.8, with respect to any of the following:

- a. The four standards, or any of them, applicable to community objections as set forth in Guidebook section 3.5.4;
 - b. The burden of proof on the objector for all new gTLD objections, pursuant to Guidebook section 3.5;
 - c. The right of an applicant to submit a standard or a community application pursuant to Guidebook section 1.2.3.1;
 - d. That “An allegation of detriment that consists only of the applicant being delegated the string instead of the objector will not be sufficient for a finding of material detriment,” as set forth in Guidebook section 3.5.4 at 3-24;
 - e. That “[a]ll applicants for a new gTLD registry should ... be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process,” and/or that “no subsequent additional ... criteria should be used,” as set forth in the final GNSO Report adopted by ICANN’s Board for the new gTLD program;
 - f. Applying Guidebook new gTLD objection standards, policies and procedures so as not to “single out any particular party for disparate treatment;” or
 - g. The handling and/or avoidance of conflicts of interest.
2. All documents in the possession, custody or control of ICANN reflecting communications of any person with, and/or training by any person of, the ICC, Jonathan Peter Taylor or Mark Kantor, concerning:
- a. The four standards, or any of them, applicable to community objections as set forth in Guidebook section 3.5.4;
 - b. The burden of proof on the objector for all new gTLD objections, pursuant to Guidebook section 3.5;
 - c. The right of an applicant to submit a standard or a community application pursuant to Guidebook section 1.2.3.1;

Jeffrey A. LeVee, Esq.

July 24, 2015

Page 3

- d. That “An allegation of detriment that consists only of the applicant being delegated the string instead of the objector will not be sufficient for a finding of material detriment,” as set forth in Guidebook section 3.5.4 at 3-24;
 - e. That “[a]ll applicants for a new gTLD registry should ... be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process,” and/or that “no subsequent additional ... criteria should be used,” as set forth in the final GNSO Report adopted by ICANN’s Board for the new gTLD program;
 - f. Applying Guidebook new gTLD objection standards, policies and procedures so as not to “single out any particular party for disparate treatment;” or
 - g. The handling and/or avoidance of conflicts of interest.
3. All communications between ICANN, including its Board or any part thereof, on the one hand, and the ICC, Jonathan Peter Taylor or either of them, on the other hand, concerning:
 - a. The community objections against Application ID 1-1174-59954 by dot Sport Limited for .SPORT and/or Application ID 1-1614-27785 by Donuts (Steel Edge LLC) for .SPORTS; or
 - b. The service of Mr. Taylor on a panel hearing either of the foregoing objections.
 4. All communications between ICANN, including its Board or any part thereof, on the one hand, and the ICC, Mark Kantor or either of them, on the other hand, concerning the community objections against Application ID 1-1206-66762 by dot Rugby Limited, and/or Application ID 1-1612-2805 by Donuts (Atomic Cross LLC), for .RUGBY.
 5. All documents, including staff briefings to the Board, reflecting consideration of or communications concerning any of the following by the ICANN staff, Board or any committee(s) or designee(s) thereof:
 - a. Subsequent to March 15, 2013, implementation of a means for review of or appeal from contested community objection rulings;
 - b. Subsequent to March 15, 2013, implementation of a means for review of or appeal from contested rulings on any new gTLD objection other than for string confusion, including in connection with the recently-formed review procedure for addressing “perceived inconsistent and unreasonable Expert Determinations”

Jeffrey A. LeVee, Esq.

July 24, 2015

Page 4

as described in ICANN Board Resolutions 2014.10.12.NG02 – 2014.10.12.NG03 (October 12-14, 2014);

- c. Exhibits 51 and/or 52 to Donuts' IRP Request; or
- d. Any oversight mechanisms or procedures for ensuring new gTLD objection panels arrive at consistent results based upon standards provided in the Guidebook.

I am happy to discuss any questions you may have concerning any of the foregoing, in an effort to get the requested documents promptly and to resolve any issues you may perceive with respect to any of them. Thanks.

Sincerely,

/jmg/

John M. Genga
of The IP and Technology Legal Group, P.C.

cc: Don C. Moody, Esq.
Crystal Ondo, Esq.

EXHIBIT E

Re: DONUTS IRP PROCEDURAL ORDER No. 1

Jeffrey LeVee Contact Information Redacted

Tue 7/28/2015 12:21 PM

To: John M. Genga Contact Information Redacted

Cc: Crystal Ondo Contact Information Redacted
Contact Information Redacted

Don Moody

John:

I am working with ICANN to try to get a sense of what ICANN might have, but I have some questions that will assist in that regard:

On Request 1: We interpret this request as referring to communications that either refer to the concept of "applying documented policies neutrally and objectively, with integrity and fairness" or that refer to the specific Bylaws provision that is referenced. If you intend something different, please clarify.

Request 2: This request is broadly worded, and it appears that you are asking for all documents reflecting communications between ICANN and the ICC, Taylor or Kantor on any of the subjects a-g, irrespective of whether the communications related to the strings in issue in this IRP. Please confirm.

Request 3: I believe we understand this one.

Request 4: I believe we understand this one.

Request 5: This request seems incredibly broad and includes Board resolutions that are on different strings from the strings at issue. Please clarify the relevance of this Request.

Thanks. Depending on when you respond and the nature of your response, I may communicate with the Panel that we have concerns regarding the scope of the requests.

Regards,

Jeff LeVee

[JONES DAY® - One Firm Worldwide](#)

Telephone: Contact Information Redacted

From: "John M. Genga" Contact Information Redacted

To: Jeffrey LeVee Contact Information Redacted ,

Cc: Contact Information Redacted

Don Moody Contact Information Redacted , Crystal Ondo

Contact Information Redacted , "John M. Genga" Contact Information Redacted

Date: 07/24/2015 03:48 PM

Subject: Re: DONUTS IRP PROCEDURAL ORDER No. 1

Exhibit E

Jeff,

Our request is attached. Feel free to call if you have questions or wish to discuss. Have a good weekend.

Best,
John

From: Jeffrey LeVee Contact Information Redacted
 Sent: Wednesday, July 22, 2015 2:21 PM
 To: Coe, Jack; Philip Boesch Contact Information Redacted ; Hamilton, Rayner
 Contact Information Redacted
 Cc: Contact Information Redacted ; John M. Genga; Don Moody; Tom Simotas
 Contact Information Redacted
 Subject: Re: DONUTS IRP PROCEDURAL ORDER No. 1

Members of the Panel:

It is extremely difficult for ICANN to respond to Mr. Genga's proposal without seeing the document requests. Our telephonic hearing was on July 14, and I had assumed that Donuts would have served its requests by now (requests that, candidly, should have been served months ago). Further, I am skeptical that any documents that Donuts might request are truly relevant to this matter, but I will reserve judgment until I see the actual requests. When the requests arrive on Friday, I will evaluate them with ICANN and respond early next week with thoughts regarding Mr. Genga's proposal.

Regards,

Jeff LeVee
 JONES DAY® - One Firm Worldwide
 Telephone: Contact Information Redacted

From: "John M. Genga" Contact Information Redacted
 To: "Coe, Jack" Contact Information Redacted , Jeffrey LeVee
 Contact Information Redacted
 Cc: "Contact Information Redacted Don
 Moody Contact Information Redacted , "Philip Boesch
 Contact Information Redacted "Hamilton, Rayner
 Contact Information Redacted "Tom
 Simotas Contact Information Redacted
 Date: 07/22/2015 01:31 PM
 Subject: Re: DONUTS IRP PROCEDURAL ORDER No. 1

Exhibit E

Dear Panel, ICDR and Counsel,

We have received the Panel's Procedural Order No. 1, dated 17 July 2015, which sets dates for additional written submissions and proposed dates for oral argument, and recommends that the parties work cooperatively to exchange documents.

Regarding the hearing on the merits, I will be arguing as lead counsel for Donuts. However, I have a 7-10 day jury trial set to commence on September 14, 2015 in Los Angeles Superior Court, Case No. BC 487 454. This unfortunately falls directly within the range of dates the Panel has suggested for oral argument. Therefore, I on behalf of Donuts would appreciate, and respectfully request the Panel to propose, a range of potential hearing dates in mid-October.

Also, as mentioned during the preliminary hearing, Donuts does wish to engage in some form of document exchange with ICANN, pursuant to Article 21 of the ICDR Rules and in accordance with the Panel's Procedural Order No. 1. We are working on a narrow request for documents keyed specifically to the grounds upon which Donuts has brought this IRP, and should have it to Mr. LeVee before the end of the week.

We believe that the documents Donuts will seek are necessary to enable it to respond adequately to ICANN's opposition to the IRP request. While conceivably Mr. LeVee may not contest this, and will produce all responsive documents sufficiently in advance of the briefing dates the Panel has set, those dates may not prove realistic if ICANN takes issue with any of the requests or requires more time to produce responsive documents than the recently-set schedule realistically permits. However, we remain committed to an expeditious resolution of this proceeding, as I and Mr. LeVee both emphasized at last week's preliminary hearing.

In light of the foregoing, we respectfully request that the Panel consider the following proposed arrangements, which we of course send to Mr. LeVee's office concurrently for his input:

(i) Donuts and ICANN will work cooperatively with one another to arrange a document exchange within a specified timeframe. For its part, Donuts can commit to serving ICANN's counsel with a short set of document requests by no later than 5:00pm on Friday, July 24, 2015. ICANN, of course, could likewise serve such a request on Donuts, and if it cannot do so by the date Donuts proposes, Mr. LeVee and I ought to be able to agree on a mutually acceptable date.

(ii) Donuts and ICANN will work cooperatively with one another to determine a reasonable time to produce responsive documents or written certification under oath if and to the extent certain documents do not exist. Based on what Donuts expects to serve, I would expect 15 days to suffice, although if Mr. LeVee does not agree, perhaps we default to a 30-day response period as under the Code of Civil Procedure, which would put us at Monday, August 24 for written responses and production assuming the July 24 service date.

(iii) If the document exchange proceeds without issue, Donuts would file

Exhibit E

its Supplemental Memorandum by September 14, 2015 assuming the August 24 response date, or within 21 days such other earlier date as the parties may agree upon for the document exchange.

(iv) ICANN would have until October 5, or 21 days after such earlier date as Donuts may submits its supplemental memorandum, to file its own supplemental memorandum.

(v) The foregoing would accommodate a mid-October hearing as requested above.

Thanks to the Panel for its consideration of the foregoing. We look forward to hearing from Mr. LeVee regarding these suggestions, and to presenting the Panel with such matters as we can agree upon and proposals as to those, if any, about which we may disagree.

Respectfully,

John M. Genga
Genga & Associates, P.C.
Contact Information Redacted

From: Coe, Jack Contact Information Redacted
Sent: Monday, July 20, 2015 2:44 PM
To: Jeffrey LeVee
Cc: Contact Information Redacted ; Don Moody; John M. Genga; Philip Boesch
Contact Information Redacted ; Hamilton, Rayner Contact Information Redacted ; Tom
Simotas Contact Information Redacted
Subject: RE: DONUTS IRP PROCEDURAL ORDER No. 1

Received, with my thanks. jjc

From: Jeffrey LeVee Contact Information Redacted
Sent: Monday, July 20, 2015 2:43 PM
To: Coe, Jack
Cc: Contact Information Redacted
Philip Boesch Contact Information Redacted ; Hamilton, Rayner
Contact Information Redacted ; Tom Simotas Contact Information Redacted
Subject: Re: DONUTS IRP PROCEDURAL ORDER No. 1

Professor Coe:

In response to the request in the procedural order, ICANN is available for the argument on the following days:

Exhibit E

September 14, 15, 21-24.

Jeff LeVee
JONES DAY® - One Firm Worldwide
Telephone: Contact Information Redacted

From: "Coe, Jack" Contact Information Redacted >
To: Contact Information Redacted

Cc: "Tom Simotas Contact Information Redacted" "Philip Boesch Contact Information Redacted" "Hamilton, Rayner (Contact Information Redacted)"
Date: 07/17/2015 08:53 PM
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J.J. Coe, Jr, for the Tribunal [attachment "(DONUTS IRP) PROCEDURAL ORDER No. 1.docx" deleted by Jeffrey LeVee/JonesDay]

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[attachment "20150724_Doc_Req_Ltr.pdf" deleted by Jeffrey LeVee/JonesDay]

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Exhibit E

EXHIBIT F

Re: DONUTS IRP PROCEDURAL ORDER No. 1

John M. Genga

Wed 7/29/2015 3:48 PM

To: Jeffrey LeVee [Contact Information Redacted](#)

Cc: Crystal Ondo [Contact Information Redacted](#)
[Contact Information Redacted](#); John M. Genga [Contact Information Redacted](#)

Don Moody

Jeff, I have copied your points and followed them with my responses in blue below. If you have any issues, let's please set aside a time to discuss on Thursday so we can figure out what we need to present to the panel, if anything. Also, since I am in trial during the period proposed for the hearing on the merits, I would appreciate your agreement in all events to a mid-October hearing date and a comparable -- and, of course, mutual -- extension of the briefing dates, subject to panel approval. Thanks.

John:

I am working with ICANN to try to get a sense of what ICANN might have, but I have some questions that will assist in that regard:

On Request 1: We interpret this request as referring to communications that either refer to the concept of "applying documented policies neutrally and objectively, with integrity and fairness" or that refer to the specific Bylaws provision that is referenced. If you intend something different, please clarify.

We do not intend to so restrict this request. The request seeks directly relevant information because the categories identified all fall under the umbrella of "applying documented policies ...," and it properly requests communications and training materials that pertain specifically to the "documented policies" that the Board has the responsibility of "applying ... neutrally and objectively, with integrity and fairness," whether or not the materials specifically mention that standard or the Bylaw prescribing it. If you have questions about any of the subcategories, we would be happy to discuss.

Request 2: This request is broadly worded, and it appears that you are asking for all documents reflecting communications between ICANN and the ICC, Taylor or Kantor on any of the subjects a-g, irrespective of whether the communications related to the strings in issue in this IRP. Please confirm.

Confirmed.

Request 3: I believe we understand this one.

Request 4: I believe we understand this one.

Exhibit F

Request 5: This request seems incredibly broad and includes Board resolutions that are on different strings from the strings at issue. Please clarify the relevance of this Request.

I think the relevance of this request to the IRP is obvious, as we expressly reference at least three of the subcategories in our main IRP pleading. I am happy to discuss and clarify, and to consider restating some of the subcategories as part of an overall resolution that would make resort to the panel unnecessary, if we can achieve that.

Thanks. Depending on when you respond and the nature of your response, I may communicate with the Panel that we have concerns regarding the scope of the requests.

Again, let's discuss, and if we cannot resolve certain items, we will know what to present, which we can do jointly if we can agree on a way to do that, or separately if not. Thanks.

Best,
John

John M. Genga
Genga & Associates, P.C.
Contact Information Redacted

From: Jeffrey LeVee Contact Information Redacted
Sent: Tuesday, July 28, 2015 12:21 PM
To: John M. Genga
Cc: Crystal Ondo; Contact Information Redacted ; Don Moody
Subject: Re: DONUTS IRP PROCEDURAL ORDER No. 1

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Regards,

Jeff LeVee

[JONES DAY® - One Firm Worldwide](#)

Telephone: Contact Information Redacted

From: "John M. Genga"Contact Information Redacted
To: Jeffrey LeVeeContact Information Redacted
Cc: Contact Information Redacted Don MoodyContact Information Redacted Crystal Ondo
Contact Information Redacted, "John M. Genga"Contact Information Redacted
Date: 07/24/2015 03:48 PM
Subject: Re: DONUTS IRP PROCEDURAL ORDER No. 1

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From: Jeffrey LeVee Contact Information Redacted
Sent: Wednesday, July 22, 2015 2:21 PM
To: Coe, Jack; Philip Boesch Contact Information Redacted; Hamilton, Rayner
Contact Information Redacted
Cc: Contact Information Redacted John M. Genga; Don Moody; Tom Simotas
Contact Information Redacted
Subject: Re: DONUTS IRP PROCEDURAL ORDER No. 1

Exhibit F

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Jeff LeVee

JONES DAY® - One Firm Worldwide

Telephone: Contact Information Redacted

From: "John M. Genga" Contact Information Redacted
To: "Coe, Jack" Contact Information Redacted, Jeffrey LeVee
Contact Information Redacted,
Cc: Contact Information Redacted Don
Moody Contact Information Redacted, "Philip Boesch
Contact Information Redacted, "Hamilton, Rayner
Contact Information Redacted, "Tom
Simotas Contact Information Redacted
Date: 07/22/2015 01:31 PM
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(iii) If the document exchange proceeds without issue, Donuts would file its Supplemental Memorandum by September 14, 2015 assuming the August 24

Exhibit F

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Respectfully,

John M. Genga
Genga & Associates, P.C.
Contact Information Redacted

From: Coe, Jack Contact Information Redacted
Sent: Monday, July 20, 2015 2:44 PM
To: Jeffrey LeVee
Cc: Contact Information Redacted ; Don Moody; John M. Genga; Philip Boesch
Contact Information Redacted ; Hamilton, Rayner Contact Information Redacted ; Tom
Simotas Contact Information Redacted
Subject: RE: DONUTS IRP PROCEDURAL ORDER No. 1

Received, with my thanks. jjc

From: Jeffrey LeVee Contact Information Redacted
Sent: Monday, July 20, 2015 2:43 PM
To: Coe, Jack
Cc: Contact Information Redacted
Philip Boesch Contact Information Redacted Hamilton, Rayner

Exhibit F

Contact Information Redacted Tom Simotas Contact Information Redacted
Subject: Re: DONUTS IRP PROCEDURAL ORDER No. 1

Professor Coe:

In response to the request in the procedural order, ICANN is available for the argument on the following days:
September 14, 15, 21-24.

Jeff LeVee
JONES DAY® - One Firm Worldwide
Telephone: Contact Information Redacted

From: "Coe, Jack" Contact Information Redacted
To: Contact Information Redacted

Cc: "Tom Simotas Contact Information Redacted", "Philip Boesch Contact Information Redacted" Hamilton, Rayner (Contact Information Redacted)
Date: 07/17/2015 08:53 PM
Subject: DONUTS IRP PROCEDURAL ORDER No. 1

Dear Counsel:

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J.J. Coe, Jr, for the Tribunal [attachment "(DONUTS IRP) PROCEDURAL ORDER No. 1.docx" deleted by Jeffrey LeVee/JonesDay]

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=====

EXHIBIT G

Re: DONUTS IRP PROCEDURAL ORDER No. 1

Jeffrey LeVee Contact Information Redacted

Mon 8/3/2015 10:30 AM

To: John M. Genga Contact Information Redacted

Cc: Crystal Onda Contact Information Redacted
Contact Information Redacted

>; Don Moody

John:

I have conferred with ICANN, and ICANN is prepared to produce documents responsive to Requests 3 and 4. Requests 1, 2 and 5, however, are incredibly broad, and I view them as asking for materials that are well beyond the issues raised in the IRP; indeed, I cannot really articulate the relevance.

Requests 1 and 2 seek documents related to the development of the Guidebook and the ICC's role in the Guidebook, and searching for such documents would be incredibly burdensome and would shed absolutely no light on the issues in this IRP because the Guidebook says what it says, and there is no indication at all that the development of the multiple drafts of the Guidebook matter to the outcome.

Request likewise seeks utterly irrelevant documents. The Board considered whether to permit a means for review of contested expert rulings, and the Board elected not to permit such a review. Documents related to any proposal would have no bearing on this IRP since no review mechanism ever was adopted.

If Donuts insists on going forward with Requests 1, 2 and 5, I propose that the parties submit simultaneous letter briefs to the Panel of no more than 5 pages, to be submitted by Monday, August 10. I will alert the Panel once we have agreed on the briefing schedule and procedure.

Let me know how you wish to proceed.

Jeff LeVee
JONES DAY® - One Firm Worldwide
Telephone: Contact Information Redacted

From: "John M. Genga" Contact Information Redacted

To: Jeffrey LeVee Contact Information Redacted

Exhibit G

Cc: Crystal Ondo **Contact Information Redacted**

Don Moody

Contact Information Redacted "John M. Genga"

Contact Information Redacted

Date: 07/29/2015 03:49 PM

Subject: Re: DONUTS IRP PROCEDURAL ORDER No. 1

Jeff, I have copied your points and followed them with my responses in blue below. If you have any issues, let's please set aside a time to discuss on Thursday so we can figure out what we need to present to the panel, if anything. Also, since I am in trial during the period proposed for the hearing on the merits, I would appreciate your agreement in all events to a mid-October hearing date and a comparable -- and, of course, mutual -- extension of the briefing dates, subject to panel approval. Thanks.

John:

I am working with ICANN to try to get a sense of what ICANN might have, but I have some questions that will assist in that regard:

On Request 1: We interpret this request as referring to communications that either refer to the concept of "applying documented policies neutrally and objectively, with integrity and fairness" or that refer to the specific Bylaws provision that is referenced. If you intend something different, please clarify.

We do not intend to so restrict this request. The request seeks directly relevant information because the categories identified all fall under the umbrella of "applying documented policies ...," and it properly requests communications and training materials that pertain specifically to the "documented policies" that the Board has the responsibility of "applying ... neutrally and objectively, with integrity and fairness," whether or not the materials specifically mention that standard or the Bylaw prescribing it. If you have questions about any of the subcategories, we would be happy to discuss.

Request 2: This request is broadly worded, and it appears that you are asking for all documents reflecting communications between ICANN and the ICC, Taylor or Kantor on any of the subjects a-g, irrespective of whether the communications related to the strings in issue in this IRP. Please confirm.

Confirmed.

Request 3: I believe we understand this one.

Request 4: I believe we understand this one.

Request 5: This request seems incredibly broad and includes Board

Exhibit G

resolutions that are on different strings from the strings at issue.
Please clarify the relevance of this Request.

I think the relevance of this request to the IRP is obvious, as we expressly reference at least three of the subcategories in our main IRP pleading. I am happy to discuss and clarify, and to consider restating some of the subcategories as part of an overall resolution that would make resort to the panel unnecessary, if we can achieve that.

Thanks. Depending on when you respond and the nature of your response, I may communicate with the Panel that we have concerns regarding the scope of the requests.

Again, let's discuss, and if we cannot resolve certain items, we will know what to present, which we can do jointly if we can agree on a way to do that, or separately if not. Thanks.

Best,
John

John M. Genga
Genga & Associates, P.C.
Contact Information Redacted

From: Jeffrey LeVee **Contact Information Redacted**
Sent: Tuesday, July 28, 2015 12:21 PM
To: John M. Genga
Cc: Crystal Ondo; **Contact Information Redacted**; Don Moody
Subject: Re: DONUTS IRP PROCEDURAL ORDER No. 1

John:

I am working with ICANN to try to get a sense of what ICANN might have, but I have some questions that will assist in that regard:

On Request 1: We interpret this request as referring to communications that either refer to the concept of "applying documented policies neutrally and objectively, with integrity and fairness" or that refer to the specific Bylaws provision that is referenced. If you intend something different, please clarify.

Exhibit G

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Request 3: I believe we understand this one.

Request 4: I believe we understand this one.

Request 5: This request seems incredibly broad and includes Board resolutions that are on different strings from the strings at issue. Please clarify the relevance of this Request.

Thanks. Depending on when you respond and the nature of your response, I may communicate with the Panel that we have concerns regarding the scope of the requests.

Regards,

Jeff LeVee
JONES DAY® - One Firm Worldwide
Telephone: Contact Information Redacted

From: "John M. Genga" Contact Information Redacted
To: Jeffrey LeVee Contact Information Redacted
Cc: **Contact Information Redacted** Don
Moody Contact Information Redacted, Crystal Ondo Contact Information Redacted "John M.
Genga" Contact Information Redacted
Date: 07/24/2015 03:48 PM
Subject: Re: DONUTS IRP PROCEDURAL ORDER No. 1

Jeff,

Our request is attached. Feel free to call if you have questions or wish to discuss. Have a good weekend.

Best,
John

From: Jeffrey LeVee Contact Information Redacted
Sent: Wednesday, July 22, 2015 2:21 PM
To: Coe, Jack; Philip Boesch Contact Information Redacted; Hamilton, Rayner

Exhibit G

Contact Information Redacted

Cc: **Contact Information Redacted**; John M. Genga; Don Moody; Tom Simotas

Contact Information Redacted

Subject: Re: DONUTS IRP PROCEDURAL ORDER No. 1

Members of the Panel:

It is extremely difficult for ICANN to respond to Mr. Genga's proposal without seeing the document requests. Our telephonic hearing was on July 14, and I had assumed that Donuts would have served its requests by now (requests that, candidly, should have been served months ago). Further, I am skeptical that any documents that Donuts might request are truly relevant to this matter, but I will reserve judgment until I see the actual requests. When the requests arrive on Friday, I will evaluate them with ICANN and respond early next week with thoughts regarding Mr. Genga's proposal.

Regards,

Jeff LeVee

JONES DAY® - One Firm Worldwide

Telephone: **Contact Information Redacted**

From: "John M. Genga" **Contact Information Redacted**

To: "Coe, Jack" **Contact Information Redacted**, Jeffrey LeVee
Contact Information Redacted

Cc: **Contact Information Redacted** Don
Moody **Contact Information Redacted**, "Philip Boesch"
Contact Information Redacted "Hamilton, Rayner"
Contact Information Redacted "Tom"
Simotas **Contact Information Redacted**

Date: 07/22/2015 01:31 PM

Subject: Re: DONUTS IRP PROCEDURAL ORDER No. 1

Dear Panel, ICDR and Counsel,

We have received the Panel's Procedural Order No. 1, dated 17 July 2015, which sets dates for additional written submissions and proposed dates for oral argument, and recommends that the parties work cooperatively to exchange documents.

Regarding the hearing on the merits, I will be arguing as lead counsel for Donuts. However, I have a 7-10 day jury trial set to commence on September 14, 2015 in Los Angeles Superior Court, Case No. BC 487 454. This unfortunately falls directly within the range of dates the Panel has

Exhibit G

suggested for oral argument. Therefore, I on behalf of Donuts would appreciate, and respectfully request the Panel to propose, a range of potential hearing dates in mid-October.

Also, as mentioned during the preliminary hearing, Donuts does wish to engage in some form of document exchange with ICANN, pursuant to Article 21 of the ICDR Rules and in accordance with the Panel's Procedural Order No.

1. We are working on a narrow request for documents keyed specifically to the grounds upon which Donuts has brought this IRP, and should have it to Mr. LeVee before the end of the week.

We believe that the documents Donuts will seek are necessary to enable it to respond adequately to ICANN's opposition to the IRP request. While conceivably Mr. LeVee may not contest this, and will produce all responsive documents sufficiently in advance of the briefing dates the Panel has set, those dates may not prove realistic if ICANN takes issue with any of the requests or requires more time to produce responsive documents than the recently-set schedule realistically permits. However, we remain committed to an expeditious resolution of this proceeding, as I and Mr. LeVee both emphasized at last week's preliminary hearing.

In light of the foregoing, we respectfully request that the Panel consider the following proposed arrangements, which we of course send to Mr. LeVee's office concurrently for his input:

(i) Donuts and ICANN will work cooperatively with one another to arrange a document exchange within a specified timeframe. For its part, Donuts can commit to serving ICANN's counsel with a short set of document requests by no later than 5:00pm on Friday, July 24, 2015. ICANN, of course, could likewise serve such a request on Donuts, and if it cannot do so by the date Donuts proposes, Mr. LeVee and I ought to be able to agree on a mutually acceptable date.

(ii) Donuts and ICANN will work cooperatively with one another to determine a reasonable time to produce responsive documents or written certification under oath if and to the extent certain documents do not exist. Based on what Donuts expects to serve, I would expect 15 days to suffice, although if Mr. LeVee does not agree, perhaps we default to a 30-day response period as under the Code of Civil Procedure, which would put us at Monday, August 24 for written responses and production assuming the July 24 service date.

(iii) If the document exchange proceeds without issue, Donuts would file its Supplemental Memorandum by September 14, 2015 assuming the August 24 response date, or within 21 days such other earlier date as the parties may agree upon for the document exchange.

(iv) ICANN would have until October 5, or 21 days after such earlier date as Donuts may submit its supplemental memorandum, to file its own supplemental memorandum.

(v) The foregoing would accommodate a mid-October hearing as requested

Exhibit G

above.

Thanks to the Panel for its consideration of the foregoing. We look forward to hearing from Mr. LeVee regarding these suggestions, and to presenting the Panel with such matters as we can agree upon and proposals as to those, if any, about which we may disagree.

Respectfully,

John M. Genga
Genga & Associates, P.C.
Contact Information Redacted

From: Coe, Jack **Contact Information Redacted**
Sent: Monday, July 20, 2015 2:44 PM
To: Jeffrey LeVee
Cc: **Contact Information Redacted**; Don Moody; John M. Genga; Philip Boesch
Contact Information Redacted Hamilton, Rayner **Contact Information Redacted** Tom
Simotas **Contact Information Redacted**
Subject: RE: DONUTS IRP PROCEDURAL ORDER No. 1

Received, with my thanks. jjc

From: Jeffrey LeVee **Contact Information Redacted**
Sent: Monday, July 20, 2015 2:43 PM
To: Coe, Jack
Cc **Contact Information Redacted**
Philip Boesch **Contact Information Redacted**; Hamilton, Rayner
Contact Information Redacted; Tom Simotas **Contact Information Redacted**
Subject: Re: DONUTS IRP PROCEDURAL ORDER No. 1

Professor Coe:

In response to the request in the procedural order, ICANN is available for the argument on the following days:
September 14, 15, 21-24.

Jeff LeVee
JONES DAY® - One Firm Worldwide
Telephone: **Contact Information Redacted**

Exhibit G

From: "Coe, Jack" Contact Information Redacted
To: Contact Information Redacted

Cc: "Tom Simotas" Contact Information Redacted, "Philip Boesch" Contact Information Redacted, "Hamilton, Rayner (Contact Information Redacted)
Date: 07/17/2015 08:53 PM
Subject: DONUTS IRP PROCEDURAL ORDER No. 1

Dear Counsel:

Attached please find Procedural Order Number 1 for the Donuts IRP. You will note that Item 9 invites you to confirm your availability for a range of dates, in order that we might fix a hearing date soon after hearing from both sides. Thank you for your continued cooperation.

J.J. Coe, Jr, for the Tribunal [attachment "(DONUTS IRP) PROCEDURAL ORDER No. 1.docx" deleted by Jeffrey LeVee/JonesDay]

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[attachment "20150724_Doc_Req_Ltr.pdf" deleted by Jeffrey LeVee/JonesDay]

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