

## LIST OF EXHIBITS

| Exhibit No. | Description  |
|-------------|--|
| C-59        | ICANN, Interim Supplementary Procedures for ICANN Independent Review Process (25 Oct. 2018)  |
| C-60        | VeriSign Inc. (VRSN) - Q3 2018 Earnings Conference Call Transcript (25 Oct. 2018)  |
| C-61        | Letter from A. Atallah (President, ICANN's Global Domains Division) to S. Hemphill (General Counsel, Afilias) (30 Sep. 2016)   |
| C-62        | Email from ICANN Global Support to J. Kane (7 June 2018)   |
| C-63        | ICANN, <i>Vistaprint Limited v. ICANN (.WEBS)</i> : Case Information, available at <a href="https://www.icann.org/resources/pages/vistaprint-v-icann-2014-06-19-en">https://www.icann.org/resources/pages/vistaprint-v-icann-2014-06-19-en</a> (last accessed at 25 Nov. 2018) |
| C-64        | Email from Independent Review (ICANN) to A. Ali and R. Wong (Counsel for Afilias) (14 Nov. 2018)   |
| C-65        | Letter from A. Ali (Counsel for Afilias) to Independent Review (ICANN) (20 Nov. 2018)  |
| C-66        | Letter from J. LeVee (Jones Day) to A. Ali (Counsel for Afilias) (26 Nov. 2018)  |
| C-67        | United Nations General Assembly, Resolution 811, <i>Universal Declaration of Human Rights</i> (16 Dec. 1948)   |
| C-68        | United Nations Commission on International Trade Law, <i>UNCITRAL Arbitration Rules</i> (2010)   |

## LIST OF LEGAL AUTHORITIES

| Authority No. | Description  |
|---------------|--|
| <b>CA-4</b>   | <i>Dot Registry, LLC v. ICANN</i> , ICDR Case No. 01-14-0001-5004, Emergency Independent Review Panelist’s Order on Request for Emergency Measures of Protection (23 Dec. 2014)  |
| <b>CA-5</b>   | <i>DotConnectAfrica (DCA) Trust v. ICANN</i> , ICDR Case No. 50-117-T-1083-13, Decision on Interim Measures of Protection (12 May 2014)  |
| <b>CA-6</b>   | <i>Gulf Cooperation Council (GCC) v. ICANN</i> , ICDR Case No. 01-14-0002-1065, Interim Declaration on Emergency Request for Interim Measures of Protection (15 Feb. 2015)   |
| <b>CA-7</b>   | <i>Burlington Resources Inc. and Others v. Republic of Ecuador and Empresa Estatal Petróleos del Ecuador</i> , ICSID Case No. ARB/08/5, Procedural Order No. 1 on Burlington Oriente’s Request for Provisional Measures (29 June 2009) |
| <b>CA-8</b>   | <i>Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)</i> , <i>Provisional Measures</i> , Order, 2011 I.C.J. Reports 6 (8 Mar.)  |
| <b>CA-9</b>   | <i>Emilio Agustín Maffezini v. Kingdom of Spain</i> , ICSID Case No. ARB/97/7, Procedural Order No. 2 (28 Oct. 1999) <i>reprinted in</i> 16 ICSID Rev.—FILJ 207 (2001)   |
| <b>CA-10</b>  | <i>Citigroup Global Mkts., Inc. v. VCG Special Opportunities Master Fund Ltd.</i> , 598 F.3d 30 (2d Cir. 2010)   |

**EXHIBIT C-59**

## Interim Supplementary Procedures for Internet Corporation for Assigned Names and Numbers (ICANN) Independent Review Process (IRP)<sup>1</sup>

Adopted 25 October 2018

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These interim procedures (Interim Supplementary Procedures) supplement the International Centre for Dispute Resolution’s international arbitration rules in accordance with the independent review process set forth in Article 4, Section 4.3 of ICANN’s Bylaws. These procedures apply to all independent review process proceedings filed after 1 May 2018.

In drafting these Interim Supplementary Procedures, the IRP Implementation Oversight Team (IOT) applied the following principles: (1) remain as close as possible to the current Supplementary Procedures or the Updated Supplementary Procedures (USP) posted for public comment on 28 November 2016<sup>2</sup>; (2) to the extent public comments received in response to the USP reflected clear movement away from either the current Supplementary Procedures or the

<sup>1</sup> CONTEXTUAL NOTE: These Interim Supplementary Procedures are intended to supplement the ICDR RULES. Therefore, when the ICDR RULES appropriately address an item, there is no need to re-state that Rule within the Supplemental Procedures. The IOT, through its work, may identify additional places where variance from the ICDR RULES is recommended, and that would result in addition or modification to the Supplemental Procedures.

<sup>2</sup> See <https://www.icann.org/public-comments/irp-supp-procedures-2016-11-28-en>.

USP, to reflect that movement unless doing so would require significant drafting that should be properly deferred for broader consideration; (3) take no action that would materially expand any part of the Supplementary Procedures that the IOT has not clearly agreed upon, or that represent a significant change from what was posted for comment and would therefore require further public consultation prior to changing the supplemental rules to reflect those expansions or changes.

## **1. Definitions**

In these Interim Supplementary Procedures:

A CLAIMANT is any legal or natural person, group, or entity including, but not limited to the Empowered Community, a Supporting Organization, or an Advisory Committee, that has been materially affected by a Dispute. To be materially affected by a Dispute, the Claimant must suffer an injury or harm that is directly and causally connected to the alleged violation.

COVERED ACTIONS are any actions or failures to act by or within ICANN committed by the Board, individual Directors, Officers, or Staff members that give rise to a DISPUTE.

DISPUTES are defined as:

(A) Claims that COVERED ACTIONS violated ICANN's Articles of Incorporation or Bylaws, including, but not limited to, any action or inaction that:

- 1) exceeded the scope of the Mission;
- 2) resulted from action taken in response to advice or input from any Advisory Committee or Supporting Organization that are claimed to be inconsistent with the Articles of Incorporation or Bylaws;
- 3) resulted from decisions of process-specific expert panels that are claimed to be inconsistent with the Articles of Incorporation or Bylaws;
- 4) resulted from a response to a DIDP (as defined in Section 22.7(d)) request that is claimed to be inconsistent with the Articles of Incorporation or Bylaws; or
- 5) arose from claims involving rights of the EC as set forth in the Articles of Incorporation or Bylaws;

(B) Claims that ICANN, the Board, individual Directors, Officers or Staff members have not enforced ICANN's contractual rights with respect to the IANA Naming Function Contract; and

(C) Claims regarding the Post-Transition IANA entity service complaints by direct customers of the IANA naming functions that are not resolved through mediation.

EMERGENCY PANELIST refers to a single member of the STANDING PANEL designated to adjudicate requests for interim relief or, if a STANDING PANEL is not in place at the time the relevant IRP is initiated, it shall refer to the panelist appointed by the ICDR pursuant to ICDR RULES relating to appointment of panelists for emergency relief (ICDR RULES Article 6).

IANA refers to the Internet Assigned Numbers Authority.

ICDR refers to the International Centre for Dispute Resolution, which has been designated and approved by ICANN's Board of Directors as the IRP Provider (IRPP) under Article 4, Section 4.3 of ICANN's Bylaws.

ICANN refers to the Internet Corporation for Assigned Names and Numbers.

INDEPENDENT REVIEW PROCESS or IRP refers to the procedure that takes place upon the Claimant's filing of a written statement of a DISPUTE with the ICDR.

IRP PANEL refers to the panel of three neutral members appointed to decide the relevant DISPUTE.

IRP PANEL DECISION refers to the final written decision of the IRP PANEL that reflects the reasoned analysis of how the DISPUTE was resolved in compliance with ICANN's Articles and Bylaws.

ICDR RULES refers to the ICDR's International Arbitration rules in effect at the time the relevant request for independent review is submitted.

PROCEDURES OFFICER refers to a single member of the STANDING PANEL designated to adjudicate requests for consolidation, intervention, and/or participation as an *amicus*, or, if a STANDING PANEL is not in place at the time the relevant IRP is initiated, it shall refer to the panelist appointed by the ICDR pursuant to its International Arbitration Rules relating to appointment of panelists for consolidation (ICDR Rules Article 8)

PURPOSES OF THE IRP are to hear and resolve Disputes for the reasons specified in the ICANN Bylaws, Article 4, Section 4.3(a).

STANDING PANEL refers to an omnibus standing panel of at least seven members from which three-member IRP PANELS are selected to hear and resolve DISPUTES consistent with the purposes of the IRP.

## **2. Scope**

The ICDR will apply these Interim Supplementary Procedures, in addition to the ICDR RULES, in all cases submitted to the ICDR in connection with Article 4, Section 4.3 of the ICANN Bylaws after the date these Interim Supplementary Procedures go into effect. In the event there is any inconsistency between these Interim Supplementary Procedures and the ICDR RULES, these Interim Supplementary Procedures will govern. These Interim Supplementary Procedures and any amendment of them shall apply in the form in effect at the time the request for an INDEPENDENT REVIEW is commenced. IRPs commenced prior to the adoption of these Interim Supplementary Procedures shall be governed by the Supplementary Procedures in effect at the time such IRPs were commenced.

In the event that any of these Interim Supplementary Procedures are subsequently amended, the rules surrounding the application of those amendments will be defined therein.

## **3. Composition of Independent Review Panel**

The IRP PANEL will comprise three panelists selected from the STANDING PANEL, unless a STANDING PANEL is not in place when the IRP is initiated. The CLAIMANT and ICANN shall each select one panelist from the STANDING PANEL, and the two panelists selected by the parties will select the third panelist from the STANDING PANEL. A STANDING PANEL member's appointment will not take effect unless and until the STANDING PANEL member signs a Notice of STANDING PANEL Appointment affirming that the member is available to serve and is Independent and Impartial pursuant to the ICDR RULES. In addition to disclosing relationships with parties to the DISPUTE, IRP PANEL members must also disclose the existence of any material relationships with ICANN, and/or an ICANN Supporting Organization or Advisory Committee. In the event that a STANDING PANEL is not in place when the relevant IRP is initiated or is in place but does not have capacity due to other IRP commitments, the CLAIMANT and ICANN shall each select a qualified panelist from outside the STANDING PANEL, and the two panelists selected by the parties shall select the third panelist. In the event that the two party-selected panelists cannot agree on the third panelist, the ICDR RULES shall apply to selection of the third panelist. In the event that a panelist resigns, is incapable of performing the duties of a panelist, or is removed and the position becomes vacant, a substitute arbitrator shall be appointed pursuant to the provisions of this Section [3] of these Interim Supplementary Procedures.

#### **4. Time for Filing<sup>3</sup>**

An INDEPENDENT REVIEW is commenced when CLAIMANT files a written statement of a DISPUTE. A CLAIMANT shall file a written statement of a DISPUTE with the ICDR no more than 120 days after a CLAIMANT becomes aware of the material effect of the action or inaction giving rise to the DISPUTE; provided, however, that a statement of a DISPUTE may not be filed more than twelve (12) months from the date of such action or inaction.

In order for an IRP to be deemed to have been timely filed, all fees must be paid to the ICDR within three business days (as measured by the ICDR) of the filing of the request with the ICDR.

#### **5. Conduct of the Independent Review**

It is in the best interests of ICANN and of the ICANN community for IRP matters to be resolved expeditiously and at a reasonably low cost while ensuring fundamental fairness and due process consistent with the PURPOSES OF THE IRP. The IRP PANEL shall consider accessibility, fairness, and efficiency (both as to time and cost) in its conduct of the IRP.

In the event that an EMERGENCY PANELIST has been designated to adjudicate a request for interim relief pursuant to the Bylaws, Article 4, Section 4.3(p), the EMERGENCY PANELIST shall comply with the rules applicable to an IRP PANEL, with such modifications as appropriate.

##### **5A. Nature of IRP Proceedings**

The IRP PANEL should conduct its proceedings by electronic means to the extent feasible.

Hearings shall be permitted as set forth in these Interim Supplementary Procedures. Where necessary, the IRP PANEL may conduct hearings via telephone, video conference or similar technologies). The IRP PANEL should conduct its proceedings with the presumption that in-person hearings shall not be permitted. For purposes of these Interim Supplementary Procedures, an “in-person hearing” refers to any IRP proceeding held face-to-face, with participants physically present in the same location. The presumption against in-person hearings may be rebutted only under extraordinary circumstances, where, upon motion by a Party, the IRP PANEL determines that the party seeking an in-person hearing has demonstrated that: (1) an in-

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<sup>3</sup> The IOT recently sought additional public comment to consider the Time for Filing rule that will be recommended for inclusion in the final set of Supplementary Procedures. In the event that the final Time for Filing procedure allows additional time to file than this interim Supplementary Procedure allows, ICANN committed to the IOT that the final Supplementary Procedures will include transition language that provides potential claimants the benefit of that additional time, so as not to prejudice those potential claimants.



person hearing is necessary for a fair resolution of the claim; (2) an in-person hearing is necessary to further the PURPOSES OF THE IRP; *and* (3) considerations of fairness and furtherance of the PURPOSES OF THE IRP outweigh the time and financial expense of an in-person hearing. In no circumstances shall in-person hearings be permitted for the purpose of introducing new arguments or evidence that could have been previously presented, but were not previously presented, to the IRP PANEL.

All hearings shall be limited to argument only unless the IRP Panel determines that a the party seeking to present witness testimony has demonstrated that such testimony is: (1) necessary for a fair resolution of the claim; (2) necessary to further the PURPOSES OF THE IRP; *and* (3) considerations of fairness and furtherance of the PURPOSES OF THE IRP outweigh the time and financial expense of witness testimony and cross examination.

All evidence, including witness statements, must be submitted in writing 15 days in advance of any hearing.

With due regard to ICANN Bylaws, Article 4, Section 4.3(s), the IRP PANEL retains responsibility for determining the timetable for the IRP proceeding. Any violation of the IRP PANEL's timetable may result in the assessment of costs pursuant to Section 10 of these Interim Supplementary Procedures.

## **5B. Translation**

As required by ICANN Bylaws, Article 4, Section 4.3(l), "All IRP proceedings shall be administered in English as the primary working language, with provision of translation services for CLAIMANTS if needed." Translation may include both translation of written documents/transcripts as well as interpretation of oral proceedings.

The IRP PANEL shall have discretion to determine (i) whether the CLAIMANT has a need for translation services, (ii) what documents and/or hearing that need relates to, and (iii) what language the document, hearing or other matter or event shall be translated into. A CLAIMANT not determined to have a need for translation services must submit all materials in English (with the exception of the request for translation services if the request includes CLAIMANT's certification to the IRP PANEL that submitting the request in English would be unduly burdensome).

In determining whether a CLAIMANT needs translation, the IRP PANEL shall consider the CLAIMANT's proficiency in spoken and written English and, to the extent that the CLAIMANT is represented in the proceedings by an attorney or other agent, that representative's proficiency

in spoken and written English. The IRP PANEL shall only consider requests for translations from/to English and the other five official languages of the United Nations (i.e., Arabic, Chinese, French, Russian, or Spanish).

In determining whether translation of a document, hearing or other matter or event shall be ordered, the IRP PANEL shall consider the CLAIMANT's proficiency in English as well as in the requested other language (from among Arabic, Chinese, French, Russian or Spanish). The IRP PANEL shall confirm that all material portions of the record of the proceeding are available in English.

In considering requests for translation, the IRP PANEL shall consider the materiality of the particular document, hearing or other matter or event requested to be translated, as well as the cost and delay incurred by translation, pursuant to ICDR Article 18 on Translation, and the need to ensure fundamental fairness and due process under ICANN Bylaws, Article 4, Section 4.3(n)(iv).

Unless otherwise ordered by the IRP PANEL, costs of need-based translation (as determined by the IRP PANEL) shall be covered by ICANN as administrative costs and shall be coordinated through ICANN's language services providers. Even with a determination of need-based translation, if ICANN or the CLAIMANT coordinates the translation of any document through its legal representative, such translation shall be considered part of the legal costs and not an administrative cost to be born by ICANN. Additionally, in the event that either the CLAIMANT or ICANN retains a translator for the purpose of translating any document, hearing or other matter or event, and such retention is not pursuant to a determination of need-based translation by the IRP PANEL, the costs of such translation shall not be charged as administrative costs to be covered by ICANN.

## **6. Written Statements**

A CLAIMANT'S written statement of a DISPUTE shall include all claims that give rise to a particular DISPUTE, but such claims may be asserted as independent or alternative claims.

The initial written submissions of the parties shall not exceed 25 pages each in argument, double-spaced and in 12-point font. All necessary and available evidence in support of the CLAIMANT'S claim(s) should be part of the initial written submission. Evidence will not be included when calculating the page limit. The parties may submit expert evidence in writing, and there shall be one right of reply to that expert evidence. The IRP PANEL may request additional written submissions from the party seeking review, the Board, the Supporting Organizations, or from other parties.

In addition, the IRP PANEL may grant a request for additional written submissions from any person or entity who is intervening as a CLAIMANT or who is participating as an amicus upon the showing of a compelling basis for such request. In the event the IRP PANEL grants a request for additional written submissions, any such additional written submission shall not exceed 15 pages, double-spaced and in 12-point font.

For any DISPUTE resulting from a decision of a process-specific expert panel that is claimed to be inconsistent with ICANN's Articles of Incorporation or Bylaws, as specified at Bylaw Section 4.3(b)(iii)(A)(3), any person, group or entity that was previously identified as within a contention set with the CLAIMANT regarding the issue under consideration within such expert panel proceeding shall reasonably receive notice from ICANN that the INDEPENDENT REVIEW PROCESS has commenced. ICANN shall undertake reasonable efforts to provide notice by electronic message within two business days (calculated at ICANN's principal place of business) of receiving notification from the ICDR that the IRP has commenced.

#### **7. Consolidation, Intervention and Participation as an *Amicus***

A PROCEDURES OFFICER shall be appointed from the STANDING PANEL to consider any request for consolidation, intervention, and/or participation as an *amicus*. Except as otherwise expressly stated herein, requests for consolidation, intervention, and/or participation as an *amicus* are committed to the reasonable discretion of the PROCEDURES OFFICER. In the event that no STANDING PANEL is in place when a PROCEDURES OFFICER must be selected, a panelist may be appointed by the ICDR pursuant to its INTERNATIONAL ARBITRATION RULES relating to appointment of panelists for consolidation.

In the event that requests for consolidation or intervention are granted, the restrictions on Written Statements set forth in Section 6 shall apply to all CLAIMANTS collectively (for a total of 25 pages exclusive of evidence) and not individually unless otherwise modified by the IRP PANEL in its discretion consistent with the PURPOSES OF THE IRP.

#### **Consolidation**

Consolidation of DISPUTES may be appropriate when the PROCEDURES OFFICER concludes that there is a sufficient common nucleus of operative fact among multiple IRPs such that the joint resolution of the DISPUTES would foster a more just and efficient resolution of the DISPUTES than addressing each DISPUTE individually. If DISPUTES are consolidated, each existing DISPUTE shall no longer be subject to further separate consideration. The PROCEDURES OFFICER may in its discretion order briefing to consider the propriety of consolidation of DISPUTES.

## **Intervention**

Any person or entity qualified to be a CLAIMANT pursuant to the standing requirement set forth in the Bylaws may intervene in an IRP with the permission of the PROCEDURES OFFICER, as provided below. This applies whether or not the person, group or entity participated in an underlying proceeding (a process-specific expert panel per ICANN Bylaws, Article 4, Section 4.3(b)(iii)(A)(3)).

Intervention is appropriate to be sought when the prospective participant does not already have a pending related DISPUTE, and the potential claims of the prospective participant stem from a common nucleus of operative facts based on such briefing as the PROCEDURES OFFICER may order in its discretion.

In addition, the Supporting Organization(s) which developed a Consensus Policy involved when a DISPUTE challenges a material provision(s) of an existing Consensus Policy in whole or in part shall have a right to intervene as a CLAIMANT to the extent of such challenge. Supporting Organization rights in this respect shall be exercisable through the chair of the Supporting Organization.

Any person, group or entity who intervenes as a CLAIMANT pursuant to this section will become a CLAIMANT in the existing INDEPENDENT REVIEW PROCESS and have all of the rights and responsibilities of other CLAIMANTS in that matter and be bound by the outcome to the same extent as any other CLAIMANT. All motions to intervene or for consolidation shall be directed to the IRP PANEL within 15 days of the initiation of the INDEPENDENT REVIEW PROCESS. All requests to intervene or for consolidation must contain the same information as a written statement of a DISPUTE and must be accompanied by the appropriate filing fee. The IRP PANEL may accept for review by the PROCEDURES OFFICER any motion to intervene or for consolidation after 15 days in cases where it deems that the PURPOSES OF THE IRP are furthered by accepting such a motion.

Excluding materials exempted from production under Rule 8 (Exchange of Information) below, the IRP PANEL shall direct that all materials related to the DISPUTE be made available to entities that have intervened or had their claim consolidated unless a CLAIMANT or ICANN objects that such disclosure will harm commercial confidentiality, personal data, or trade secrets; in which case the IRP PANEL shall rule on objection and provide such information as is consistent with the PURPOSES OF THE IRP and the appropriate preservation of confidentiality as recognized in Article 4 of the Bylaws.

## Participation as an *Amicus Curiae*

Any person, group, or entity that has a material interest relevant to the DISPUTE but does not satisfy the standing requirements for a CLAIMANT set forth in the Bylaws may participate as an *amicus curiae* before an IRP PANEL, subject to the limitations set forth below. Without limitation to the persons, groups, or entities that may have such a material interest, the following persons, groups, or entities shall be deemed to have a material interest relevant to the DISPUTE and, upon request of person, group, or entity seeking to so participate, shall be permitted to participate as an *amicus* before the IRP PANEL:

- i. A person, group or entity that participated in an underlying proceeding (a process-specific expert panel per ICANN Bylaws, Article 4, Section 4.3(b)(iii)(A)(3));
- ii. If the IRP relates to an application arising out of ICANN's New gTLD Program, a person, group or entity that was part of a contention set for the string at issue in the IRP; and
- iii. If the briefings before the IRP PANEL significantly refer to actions taken by a person, group or entity that is external to the DISPUTE, such external person, group or entity.

All requests to participate as an *amicus* must contain the same information as the Written Statement (set out at Section 6), specify the interest of the *amicus curiae*, and must be accompanied by the appropriate filing fee.

If the PROCEDURES OFFICER determines, in his or her discretion, subject to the conditions set forth above, that the proposed *amicus curiae* has a material interest relevant to the DISPUTE, he or she shall allow participation by the *amicus curiae*. Any person participating as an *amicus curiae* may submit to the IRP Panel written briefing(s) on the DISPUTE or on such discrete questions as the IRP PANEL may request briefing, in the discretion of the IRP PANEL and subject to such deadlines, page limits, and other procedural rules as the IRP PANEL may specify in its discretion.<sup>4</sup> The IRP PANEL shall determine in its discretion what materials related to the DISPUTE to make available to a person participating as an *amicus curiae*.

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<sup>4</sup> During the pendency of these Interim Supplementary Rules, in exercising its discretion in allowing the participation of *amicus curiae* and in then considering the scope of participation from *amicus curiae*, the IRP PANEL shall lean in favor of allowing broad participation of an *amicus curiae* as needed to further the purposes of the IRP set forth at Section 4.3 of the ICANN Bylaws.

## **8. Exchange of Information**

The IRP PANEL shall be guided by considerations of accessibility, fairness, and efficiency (both as to time and cost) in its consideration of requests for exchange of information.

On the motion of either Party and upon finding by the IRP PANEL that such exchange of information is necessary to further the PURPOSES OF THE IRP, the IRP PANEL may order a Party to produce to the other Party, and to the IRP PANEL if the moving Party requests, documents or electronically stored information in the other Party's possession, custody, or control that the Panel determines are reasonably likely to be relevant and material to the resolution of the CLAIMS and/or defenses in the DISPUTE and are not subject to the attorney-client privilege, the work product doctrine or otherwise protected from disclosure by applicable law (including, without limitation, disclosures to competitors of the disclosing person, group or entity, of any competition-sensitive information of any kind). Where such method(s) for exchange of information are allowed, all Parties shall be granted the equivalent rights for exchange of information.

A motion for exchange of documents shall contain a description of the specific documents, classes of documents or other information sought that relate to the subject matter of the Dispute along with an explanation of why such documents or other information are likely to be relevant and material to resolution of the Dispute.

Depositions, interrogatories, and requests for admission will not be permitted.

In the event that a Party submits what the IRP PANEL deems to be an expert opinion, such opinion must be provided in writing and the other Party must have a right of reply to such an opinion with an expert opinion of its own.

## **9. Summary Dismissal**

An IRP PANEL may summarily dismiss any request for INDEPENDENT REVIEW where the Claimant has not demonstrated that it has been materially affected by a DISPUTE. To be materially affected by a DISPUTE, a Claimant must suffer an injury or harm that is directly and causally connected to the alleged violation.

An IRP PANEL may also summarily dismiss a request for INDEPENDENT REVIEW that lacks substance or is frivolous or vexatious.

## **10. Interim Measures of Protection**

A Claimant may request interim relief from the IRP PANEL, or if an IRP PANEL is not yet in place, from the STANDING PANEL. Interim relief may include prospective relief, interlocutory relief, or declaratory or injunctive relief, and specifically may include a stay of the challenged ICANN action or decision in order to maintain the status quo until such time as the opinion of the IRP PANEL is considered by ICANN as described in ICANN Bylaws, Article 4, Section 4.3(o)(iv).

An EMERGENCY PANELIST shall be selected from the STANDING PANEL to adjudicate requests for interim relief. In the event that no STANDING PANEL is in place when an EMERGENCY PANELIST must be selected, a panelist may be appointed by the ICDR pursuant to ICDR RULES relating to appointment of panelists for emergency relief. Interim relief may only be provided if the EMERGENCY PANELIST determines that the Claimant has established all of the following factors:

- (i) A harm for which there will be no adequate remedy in the absence of such relief;
- (ii) Either: (A) likelihood of success on the merits; or (B) sufficiently serious questions related to the merits; and
- (iii) A balance of hardships tipping decidedly toward the party seeking relief.

Interim relief may be granted on an ex parte basis in circumstances that the EMERGENCY PANELIST deems exigent, but any Party whose arguments were not considered prior to the granting of such interim relief may submit any opposition to such interim relief, and the EMERGENCY PANELIST must consider such arguments, as soon as reasonably possible. The EMERGENCY PANELIST may modify or terminate the interim relief if the EMERGENCY PANELIST deems it appropriate to do so in light of such further arguments.

## **11. Standard of Review**

Each IRP PANEL shall conduct an objective, de novo examination of the DISPUTE.

- a. With respect to COVERED ACTIONS, the IRP PANEL shall make findings of fact to determine whether the COVERED ACTION constituted an action or inaction that violated ICANN'S Articles or Bylaws.

- b. All DISPUTES shall be decided in compliance with ICANN's Articles and Bylaws, as understood in the context of the norms of applicable law and prior relevant IRP decisions.
- c. For Claims arising out of the Board's exercise of its fiduciary duties, the IRP PANEL shall not replace the Board's reasonable judgment with its own so long as the Board's action or inaction is within the realm of reasonable business judgment.
- d. With respect to claims that ICANN has not enforced its contractual rights with respect to the IANA Naming Function Contract, the standard of review shall be whether there was a material breach of ICANN's obligations under the IANA Naming Function Contract, where the alleged breach has resulted in material harm to the Claimant.
- e. IRPs initiated through the mechanism contemplated at Article 4, Section 4.3(a)(iv) of ICANN's Bylaws shall be subject to a separate standard of review as defined in the IANA Naming Function Contract.

## **12. IRP PANEL Decisions**

IRP PANEL DECISIONS shall be made by a simple majority of the IRP PANEL. If any IRP PANEL member fails to sign the IRP PANEL DECISION, the IRP PANEL member shall endeavor to provide a written statement of the reason for the absence of such signature.

## **13. Form and Effect of an IRP PANEL DECISION**

- a. IRP PANEL DECISIONS shall be made in writing, promptly by the IRP PANEL, based on the documentation, supporting materials and arguments submitted by the parties. IRP PANEL DECISIONS shall be issued in English, and the English version will be authoritative over any translations.
- b. The IRP PANEL DECISION shall specifically designate the prevailing party as to each Claim.
- c. Subject to Article 4, Section 4.3 of ICANN's Bylaws, all IRP PANEL DECISIONS shall be made public, and shall reflect a well-reasoned application of how the DISPUTE was resolved in compliance with ICANN's Articles and Bylaws, as understood in light of prior IRP PANEL DECISIONS decided under



the same (or an equivalent prior) version of the provision of the Articles and Bylaws at issue, and norms of applicable law.

#### **14. Appeal of IRP PANEL Decisions**

An IRP PANEL DECISION may be appealed to the full STANDING PANEL sitting en banc within 60 days of the issuance of such decision. The en banc STANDING PANEL will review such appealed IRP PANEL DECISION based on a clear error of judgment or the application of an incorrect legal standard. The en banc STANDING PANEL may also resolve any disputes between panelists on an IRP PANEL or the PROCEDURES OFFICER with respect to consolidation of CLAIMS or intervention.

#### **15. Costs**

The IRP PANEL shall fix costs in its IRP PANEL DECISION. Except as otherwise provided in Article 4, Section 4.3(e)(ii) of ICANN's Bylaws, each party to an IRP proceeding shall bear its own legal expenses, except that ICANN shall bear all costs associated with a Community IRP, as defined in Article 4, Section 4.3(d) of ICANN's Bylaws, including the costs of all legal counsel and technical experts.

Except with respect to a Community IRP, the IRP PANEL may shift and provide for the losing party to pay administrative costs and/or fees of the prevailing party in the event it identifies the losing party's Claim or defense as frivolous or abusive.

**EXHIBIT C-60**

**Verisign Inc** ([NASDAQ:VRSN](https://www.nasdaq.com/symbol/vrsn))

Q3 2018 Earnings Conference Call

Oct. 25, 2018, 4:30 p.m. ET

**Contents:**

- Prepared Remarks
- Questions and Answers
- Call Participants

**Prepared Remarks:****Operator**

Good day, everyone, and welcome to VeriSign's Third Quarter 2018 Earnings Call. (Operator Instructions)

At this time, I would like to turn the conference over to Mr. David Atchley, Vice President of Investor Relations and Corporate Treasurer. Please go ahead, sir.

**David Atchley** -- *Vice President of Investor Relations and Corporate Treasurer*

Thank you, operator, and good afternoon, everyone. Welcome to VeriSign's Third Quarter 2018 Earnings Call.

With me are Jim Bidzos, Executive Chairman, President and CEO; Todd Strubbe, Executive Vice President and COO; and George Kilguss, Executive Vice President and CFO.

This call and our presentation are being webcast from our Investor Relations website, which is available under About VeriSign on [verisign.com](http://verisign.com). There, you will also find our third quarter 2018 earnings release. At the end of this call, the presentation will be available on that site. And within a few hours, the replay of the call will be posted.

Financial results in our earnings release are unaudited, and our remarks include forward-looking statements that are subject to the risks and uncertainties that we discuss in detail in our documents filed with the SEC, specifically the most recent reports on Forms 10-K and 10-Q, which identify risk factors that could cause actual results to differ materially from those contained in the forward-looking statements. VeriSign retains its long-standing policy not to comment on financial performance or guidance during the quarter unless it is done through a public disclosure.

The financial results in today's call and the matters we will be discussing today include GAAP and non-GAAP measures used by VeriSign. GAAP to non-GAAP reconciliation information is appended to our earnings release and slide

presentation as applicable, each of which can be found in the Investor Relations section of our website. In a moment, Jim and George will provide some prepared remarks. And afterward, we will open the call for your questions.

With that, I would like to turn the call over to Jim.

**D. James Bidzos** -- *President, Chief Executive Officer and Executive Chairman of the Board*

Thanks, David, and good afternoon, everyone.

I'm pleased to report another solid quarter for VeriSign. Third quarter results were in line with our objectives of offering security and stability to our customers while generating profitable growth and providing long-term value to our shareholders.

We reported revenue of \$306 million, up 4.6% year-over-year, and delivered solid financial performance, including non-GAAP EPS of \$1.23, up 23% year-over-year. During the third quarter, we continued our share repurchase program by repurchasing 1.1 million shares for \$175 million.

Our financial position remains strong with \$1.2 billion in cash, cash equivalents and marketable securities at the end of the quarter. We continually evaluate the overall cash and investing needs of the business and consider the best uses for our cash, including potential share repurchases.

At the end of September, the domain name base in .com and .net totaled 151.7 million, consisting of 137.6 million names for .com and 14.1 million names for .net. During the third quarter, we processed 9.5 million new registrations and the domain name base increased by 2 million names.

Although renewal rates are not fully measurable until 45 days after the end of the quarter, we believe that the renewal rate for the third quarter of 2018 will be 75%. This preliminary rate compares to 74.4% achieved in the year-ago quarter.

We now expect full-year 2018 domain name base growth of between 4.2% and 4.6%, with an increase to the domain name base for the fourth quarter of 2018 of between 0.9 million to 1.4 million net additions.

Beginning with 2019 guidance, on our next earnings call, we plan to focus our guidance related to changes in the domain name base on annual changes. Starting next year, we no longer intend to provide guidance on quarterly net additions. This change reflects our commitment to managing the business for long-term growth and stability while aligning all of our guidance to be focused on key annual business and financial metrics.

The daily transparency into net additions to the domain name base, which is updated twice per day, will continue to be available on our website.

As indicated in our earnings release today, we have entered into an agreement with NeuStar to sell the rights, economic benefits, and obligations, in all customer contracts related to our Security Services business.

Transaction includes the sale of customer agreements related to our DDoS Protection, Managed DNS, DNS Firewall, and Recursive DNS services. We will retain our proprietary technology, network assets, critical infrastructure, software and public DNS service to focus solely on supporting our core mission, which is ensuring the security, stability and resiliency of our core infrastructure.

As part of the transaction, we will continue to support the Security Services customers during the transition to NeuStar, pursuant to a Transition Services Agreement that is expected to be executed at closing.

The transaction is subject to customary regulatory approval and is expected to close shortly following receipt of such approval.

We are committed to focusing on our core mission of providing critical Internet infrastructure, including Root Zone management, operation of two of the 13 global Internet root servers, operation of .gov and .edu, and authoritative resolution for the .com and .net top-level domains, which support the majority of global e-commerce. For this reason, we're transitioning our Security Services customers to NeuStar.

To update you on our discussion about the Cooperative Agreement, we are mindful of the upcoming expiration and are progressing with the NTIA to amend the Cooperative Agreement by mutual agreement. When we are able to provide more information, we will do so.

I will tell you that we are confident that an amended agreement can be executed before the expiration of the current term, which is the end of November. However, until that process is complete, there is nothing more that we can disclose at this time.

And now, I'd like to turn the call over to George.

**George Kilguss** -- *Executive Vice President and Chief Financial Officer*

Thanks, Jim, and good afternoon, everyone.

Revenue for the third quarter totaled \$306 million, up 4.6% year-over-year and up by 1.1% sequentially. Operating income for the period totaled \$195 million compared with \$181 million in the third quarter of 2017. The operating margin in the

quarter came to 63.8% compared to 61.9% in the same quarter a year ago.

Net income totaled \$138 million compared to \$115 million a year earlier, which produced diluted earnings per share of \$1.13 in the third quarter this year compared to \$0.93 for the same quarter last year.

As of September 30, 2018, the Company maintained total assets of \$1.9 billion and total liabilities of \$3.3 billion. Assets included \$1.2 billion of cash, cash equivalents and marketable securities, of which \$508 million were held domestically with the remainder held abroad.

I'll now review some additional third quarter financial metrics, which include non-GAAP operating margin, non-GAAP earnings per share, operating cash flow and free cash flow. I will then provide updates on our 2018 full year guidance.

As it relates to non-GAAP metrics, third quarter operating expense, which excludes \$15 million of stock-based compensation, totaled \$96 million, the same as last quarter and compared to \$97 million in the third quarter a year ago. Non-GAAP operating margin for the third quarter was 68.7% compared to 68.2% last quarter and 66.7% in the same quarter of 2017. Non-GAAP net income for the third quarter was \$151 million, resulting in non-GAAP diluted earnings per share of \$1.23 based on a weighted average diluted share count of 122.3 million shares. This compares to \$1.18 last quarter and \$1 in the third quarter of 2017.

Operating cash flow for the third quarter was \$187 million, and free cash flow was \$177 million compared with \$175 million and \$153 million, respectively, for the third quarter last year.

Now, I'd like to provide updates to our full-year 2018 guidance. Revenue is now expected to be in the range of \$1.211 billion to \$1.216 billion, increased and narrowed from the \$1.205 billion to \$1.215 billion range provided on our last call.

Non-GAAP operating margin is now expected to be between 67% and 67.5%, increased and narrowed from the 66% to 67% range provided on the last call. Our non-GAAP interest expense and non-GAAP non-operating income net is now expected to be an expense of between \$80 million to \$84 million, decreased and narrowed from the \$82 million to \$89 million range provided on our last call.

Capital expenditures are now expected to be between \$40 million to \$50 million, decreased from the \$45 million to \$55 million range provided on our last call. Cash taxes are still expected to be between \$80 million and \$90 million, unchanged from our last call.

In summary, the Company continued to demonstrate sound financial performance

during the third quarter.

Now, I'll turn the call back to Jim for his closing remarks.

**D. James Bidzos** -- *President, Chief Executive Officer and Executive Chairman of the Board*

Thank you, George.

The third quarter was another solid quarter for VeriSign. There was further expansion of the domain name base and revenues. We generated and efficiently returned value to our shareholders.

We continue to work to protect, grow and manage the business while continuing our focus on providing long-term value to our shareholders. We'll now take your questions. Operator, we're ready for the first question.

#### **Questions and Answers:**

##### **Operator**

Thank you. (Operator Instructions) And we will go first to Sterling Auty at JPMorgan.

**Ugam Kamat** -- *JP Morgan Chase & Co -- Analyst*

Hey, guys. This is actually Ugam Kamat on for Sterling. So, you mentioned about your agreement with NeuStar to actually sell your Security Service. Just so that we can model the out years perfectly, how much revenue were you getting from that other business? And how much margins did that particular business have?

**George Kilguss** -- *Executive Vice President and Chief Financial Officer*

Ugam, this is George. Thanks for the question. As I'm sure you're aware, VSS is not a material contributor to our overall business. If the transaction closes before year-end, we do not expect a material impact to our 2018 guidance and we will provide 2019 full year guidance on our Q4 call, which will include any impacts from the transaction once it closes.

**Ugam Kamat** -- *JP Morgan Chase & Co -- Analyst*

Okay, cool. And on the Cooperative Agreement, you mentioned that it can be amended before the expiration date, but given -- if suppose, say, the process continues, is there a provision where the -- like Cooperative Agreement can be extended for six months until which you are in the negotiation period?

**D. James Bidzos** -- *President, Chief Executive Officer and Executive Chairman of*

*the Board*

I don't have any comments beyond my prepared remarks, so I'll just reiterate that we're progressing with the NTIA to amend the Cooperative Agreement by mutual agreement and that we're confident that an amended agreement can be executed before the expiration of the current term at the end of the -- of November. So, more when we can.

**Ugam Kamat** -- *JP Morgan Chase & Co -- Analyst*

All right. And if I could squeeze one last one in. If you see the operating margins for the current quarter, you see that much of the leverage came from sales and marketing expense. Is it something where it is -- it will be the normal course of business that we see such kind of margins? I know you provided 2018 guidance, but just from a qualitative perspective, was there a shift of timing of expenses in the quarter, or is it like more that the focus of the business in terms of the investments has changed?

**George Kilguss** -- *Executive Vice President and Chief Financial Officer*

So, with regard to our Q3 expenses, as you can see out (ph) from a non-GAAP basis, our total expenses were about \$96 million and we're relatively flat both year-over-year and sequentially. However, as you point out, we did see some movements between the categories. Sequentially, we did have a slight decrease in sales and marketing which was offset by small increases in G&A and cost of goods sold. Now, specifically with sales and marketing, sequentially we were down about \$2.5 million quarter-to-quarter, and that primarily was a result of lower direct marketing activities in the quarter.

As you may recall, we increased our direct marketing activities late in 2017, with the intent to do more in 2018. However, as we pursue more direct marketing activities outside of the US, we found it (ph), took and it is taking frankly us longer to execute on those direct marketing activities abroad. So, really no change. Just, I would say, the normal ebb and flow of how marketing expenses get deployed into the marketplace.

**Ugam Kamat** -- *JP Morgan Chase & Co -- Analyst*

Awesome. Thank you so much, guys.

**Operator**

And we'll go next to Matthew Wells at Citi.

**Matthew Wells** -- *Citi -- Analyst*



Hi. This is Matt Wells and I'm on for Walter Pritchard. I was just curious, what was the catalyst for transitioning your Security Services business to NeuStar? Is there anything that read into the timing here relative to the Coop (ph)?

**D. James Bidzos** -- *President, Chief Executive Officer and Executive Chairman of the Board*

No, this is completely independent. It's a decision we made to focus exclusively on our core mission. As you know, we operate a great deal of critical infrastructure, where we do resolution, of course not only for .com and .net but for .gov and .edu. We do Root Zone management, we operate two of the 13 Internet root service, and that we just decided that that focus wasn't consistent with continued pursuit of that business, and transitioning into NeuStar made sense for that reason, timing independent of anything else that's going on.

**Matthew Wells** -- *Citi -- Analyst*

Thanks, that's helpful. And I know -- I think last time we spoke, the .web process was still hung up with ICANN and timing sounded like it was a little uncertain. Do you have any more clarity on that process, or where it stands?

**D. James Bidzos** -- *President, Chief Executive Officer and Executive Chairman of the Board*

No, no, no updates at this time. I hope to have some in the near future, but nothing to say at this time.

**Matthew Wells** -- *Citi -- Analyst*

Okay, thanks. And that's it for me.

**D. James Bidzos** -- *President, Chief Executive Officer and Executive Chairman of the Board*

Okay, Matt, thank you.

**Operator**

And moving next to Rob Oliver at Robert W. Baird.

**Matt Lemenager** -- *Robert W. Baird Equity Research -- Analyst*

Great, good afternoon. It's Matt Lemenager on for Rob. So, my question was on the sales and marketing expense as well. George, you mentioned that it was taking a little longer to execute, is that something -- should we expect that to kind of tick back up? Is it still a priority to get that level deployed -- those marketing expenses deployed? So is that something we should expect to tick back up going forward and

maybe into 2019?

**George Kilguss** -- *Executive Vice President and Chief Financial Officer*

We'll -- as I said earlier, we'll provide 2019 guidance on our next call. But -- look, we are constantly trying to invest in marketing activities. I think the goal there is for domain name sales to increase with marketing activities, and we fully pursue activities that we think will drive those results. We have switched year-over-year. We've done more direct marketing this year than we've done in prior years, and I just think we're -- we've executed some great campaigns in a variety of markets. But as I said, sometimes the international markets are taking a little bit longer to get that work (ph) through. So, I don't think anything is really different there. We continue to focus and make investments in marketing, and hopefully, that produces increases in domain name sales.

**Matt Lemenager** -- *Robert W. Baird Equity Research -- Analyst*

Okay, thanks. And then, my second question was on, Jim, the number of new names process has ticked up nicely this year and been kind of 9.5 million or above each quarter. What's been driving you think? Was there any trends or any higher level comments that you could say driving the increase in the number of domains this year?

**D. James Bidzos** -- *President, Chief Executive Officer and Executive Chairman of the Board*

I'll ask George to comment. I will just say that .com is an incredibly strong brand, you hear me say this all the time and I can't emphasize it enough quite frankly. It's a brand that gets a tremendous amount of exposure, it's the brand that gives you credibility worldwide for your online presence, and I think that has a great deal to do with the continued strength that .com is showing. But George, if you'd like to add some color, please feel free.

**George Kilguss** -- *Executive Vice President and Chief Financial Officer*

Yeah. Sure. Matt, as you've observed, Q3 was a good quarter for us, we delivered 2 million net adds (ph) in the quarter, which was up from 1.5 million net adds in the third quarter of 2017, and that improvement is primarily result of gross adds. As you point out, gross adds totaled 9.5 million in the quarter. They were up from 8.9 million a year ago. And this is really the same trend that we've witnessed and reported on pretty much all year. We've had continued gross adds performance from both North American and China registrars. They seem to be performing better this year than they did previously, and that's been a trend that we've seen in previous quarters and it's continued here into the third quarter. So, again, I think it's

the strong brand in both those markets and we'll continue to execute on marketing activities to accentuate that brand message into the marketplace.

**Matt Lemenager** -- *Robert W. Baird Equity Research -- Analyst*

Got it. Thanks, guys.

**Operator**

And with no additional questions at this time, Mr. Atchley, I'll turn things back over to you for any final comments.

**David Atchley** -- *Vice President of Investor Relations and Corporate Treasurer*

Thank you, operator. Please call the Investor Relations department with any follow-up questions from this call. Thank you for your participation. This concludes our call. Have a good evening.

**Operator**

And once again that does conclude today's conference. I'd like to thank everyone for joining us today.

**Duration: 20 minutes**

**Call participants:**

**David Atchley** -- *Vice President of Investor Relations and Corporate Treasurer*

**D. James Bidzos** -- *President, Chief Executive Officer and Executive Chairman of the Board*

**George Kilguss** -- *Executive Vice President and Chief Financial Officer*

**Ugam Kamat** -- *JP Morgan Chase & Co -- Analyst*

**Matthew Wells** -- *Citi -- Analyst*

**Matt Lemenager** -- *Robert W. Baird Equity Research -- Analyst*

[More VRSN analysis](#)

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**EXHIBIT C-61**



The Internet Corporation for Assigned Names and Numbers

Mr. Scott Hemphill  
Vice President & General Counsel  
Afilias Plc  
4<sup>th</sup> Floor, International House  
3 Harbourmaster Place  
IFSC, Dublin 1, D01 K8F1  
Ireland

30 September 2016

Re: .WEB Auction

Dear Mr. Scott Hemphill:

Thank you for your letters of 8 August 2016 and 9 September 2016. We note your comments regarding the Nu Dot Co LLC application for .WEB and the ICANN Auction of 27 July 2016. We have posted your letters to the ICANN Correspondence page (<https://www.icann.org/en/system/files/correspondence/hemphill-to-atallah-08aug16-en.pdf>) and <https://www.icann.org/en/system/files/correspondence/hemphill-to-atallah-09sep16-en.pdf>).

As you were notified via the Customer Portal on 19 August 2016, we placed the .WEB/.WEBS contention set on-hold on 19 August 2016. This was to reflect a pending ICANN Accountability Mechanism initiated by another member in the contention set (see the *Cooperative Engagement and Independent Review Processes Status Update dated 22 August 2016*: <https://www.icann.org/en/system/files/files/irp-cep-status-22aug16-en.pdf>). For more information on statuses of contention sets and the effect that they may have on application processing, please see the Applicant Advisory on application and contention set statuses (<https://newgtlds.icann.org/en/applicants/advisories/application-contention-set-14mar14-en>).

As an applicant in the contention set, the primary contact for Afilias's application will be notified of future changes to the contention set status or updates regarding the status of relevant Accountability Mechanisms. We will continue to take Afilias's comments, and other inputs that we have sought, into consideration as we consider this matter.

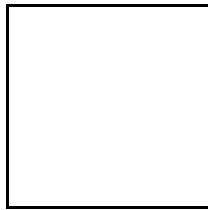
Thank you for your letters and your continued participation in the New gTLD Program. Please do not hesitate to contact our Global Support Center at [globalsupport@icann.org](mailto:globalsupport@icann.org) with any further questions.

Sincerely,

Akram Atallah  
President, Global Domains Division

**EXHIBIT C-62**

**From:** Global Support Center <[newgtld@icann.org](mailto:newgtld@icann.org)>  
**Date:** June 7, 2018 at 6:58:11 AM GMT+10  
**To:** Contact Information Redacted  
**Subject:** Case 00892769 Has Been Closed



Dear John,

Thank you for contacting the ICANN Team. Case 00892769 has been closed.

**Case Information**

Subject: Update Regarding Contention Set Status for Application ID 1-1013-6638

Date Closed: 6/6/2018

Please contact us if you have any additional questions.

Kind regards,

ICANN Global Support Center

[globalsupport@icann.org](mailto:globalsupport@icann.org)

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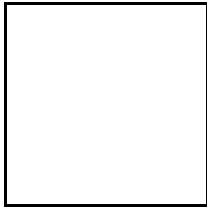
Thread ID: ref:\_00D616tJk.\_50061MZt36:ref



Include the text above in replies to this email. Thank you.

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**EXHIBIT C-63**

## Vistaprint Limited v. ICANN (Internet Corporation for Assigned Names and Numbers) (.WEBS)

This page collects documents from the Independent Review Proceeding filed in accordance with Article IV, section 3 of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws. They are arranged by initial filing date in descending order.

|   |                      |
|---|----------------------|
| <a href="/en/system/files/files/vistaprint-v-icann-final-declaration-09oct15-en.pdf">Final Declaration (/en/system/files/files/vistaprint-v-icann-final-declaration-09oct15-en.pdf)</a> [PDF, 920 KB]   | 9<br>October<br>2015 |
| <a href="/en/system/files/files/icann-response-additional-submission-redacted-01may15-en.pdf">ICANN (Internet Corporation for Assigned Names and Numbers)'s Response to Claimant's Second Additional Submission (/en/system/files/files/icann-response-additional-submission-redacted-01may15-en.pdf)</a> [PDF, 1.93 MB]  | 1 May<br>2015        |
| <a href="/en/system/files/files/vistaprint-response-petition-new-hearing-30apr15-en.pdf">ICANN (Internet Corporation for Assigned Names and Numbers)'s Response to Claimant's Petition to Determine a New Hearing Date (/en/system/files/files/vistaprint-response-petition-new-hearing-30apr15-en.pdf)</a> [PDF, 588 KB] | 30 April<br>2015     |
| <a href="/en/system/files/files/vistaprint-petition-new-hearing-30apr15-en.pdf">Claimant's Petition to Determine a New Hearing Date (/en/system/files/files/vistaprint-petition-new-hearing-30apr15-en.pdf)</a> [PDF, 660 KB]   | 30 April<br>2015     |
| <a href="/en/system/files/files/vistaprint-additional-submission-procedural-order-2-redacted-24apr15-en.pdf">Vistaprint's Second Additional Submission in Accordance with Procedural Order No. 2 (/en/system/files/files/vistaprint-additional-submission-procedural-order-2-redacted-24apr15-en.pdf)</a> [PDF, 2.98 MB]  | 24 April<br>2015     |
| <ul style="list-style-type: none"> <li>• <a href="/en/system/files/files/vistaprint-additional-submission-reference-material-redacted-24apr15-en.pdf">Reference Materials 34 - 39 (/en/system/files/files/vistaprint-additional-submission-reference-material-redacted-24apr15-en.pdf)</a> [PDF, 10.4 MB]</li> </ul>      |                      |
|   |                      |

|  |                        |
|--|------------------------|
| <p><u>Procedural Order No. 2</u><br/> <a href="/en/system/files/files/procedural-order-2-19apr15-en.pdf">(/en/system/files/files/procedural-order-2-19apr15-en.pdf)</a> [PDF, 68 KB]</p>   | <p>19 April 2015</p>   |
| <p><u>ICANN (Internet Corporation for Assigned Names and Numbers)'s Response to Vistaprint's Additional Submission in Support of Vistaprint's Request for Independent Review Process</u><br/> <a href="/en/system/files/files/icann-irp-support-response-redacted-02apr15-en.pdf">(/en/system/files/files/icann-irp-support-response-redacted-02apr15-en.pdf)</a> [PDF, 2.14 MB]</p> <ul style="list-style-type: none"> <li>• <u>Exhibits</u> <a href="/en/system/files/files/icann-irp-response-exhibits-02apr15-en.pdf">(/en/system/files/files/icann-irp-response-exhibits-02apr15-en.pdf)</a> [PDF, 5.30 MB]</li> </ul>  | <p>2 April 2015</p>    |
| <p><u>Vistaprint's Additional Submission in Support of Its Request for Independent Review Process</u><br/> <a href="/en/system/files/files/vistaprint-irp-support-request-redacted-02mar15-en.pdf">(/en/system/files/files/vistaprint-irp-support-request-redacted-02mar15-en.pdf)</a> [PDF, 3.21 MB]</p> <ul style="list-style-type: none"> <li>• <u>Annex 32</u> <a href="/en/system/files/files/vistaprint-irp-support-annex-redacted-02mar15-en.pdf">(/en/system/files/files/vistaprint-irp-support-annex-redacted-02mar15-en.pdf)</a> [PDF, 3 MB]</li> <li>• <u>Reference Material 31</u><br/> <a href="/en/system/files/files/vistaprint-irp-support-reference-material-redacted-02mar15-en.pdf">(/en/system/files/files/vistaprint-irp-support-reference-material-redacted-02mar15-en.pdf)</a> [PDF, 739 KB]</li> </ul> | <p>2 March 2015</p>    |
| <p><u>Procedural Order No. 1</u><br/> <a href="/en/system/files/files/procedural-order-1-30jan15-en.pdf">(/en/system/files/files/procedural-order-1-30jan15-en.pdf)</a> [PDF, 59 KB]</p>   | <p>30 January 2015</p> |
| <p><u>ICANN (Internet Corporation for Assigned Names and Numbers)'s Response to Vistaprint's Request for Independent Review</u> <a href="/en/system/files/files/icann-response-irp-21jul14-en.pdf">(/en/system/files/files/icann-response-irp-21jul14-en.pdf)</a> [PDF, 218 KB]</p>  | <p>21 July 2014</p>    |
| <p><u>Vistaprint Limited's Notice of Independent Review</u><br/> <a href="/en/system/files/files/vistaprint-irp-notice-11jun14-en.pdf">(/en/system/files/files/vistaprint-irp-notice-11jun14-en.pdf)</a> [PDF, 447 KB]</p>   | <p>11 June 2014</p>    |
|  | <p>11 June 2014</p>    |

[Vistaprint Limited's Request for Independent Review Process \(/en/system/files/files/vistaprint-irp-request-11jun14-en.pdf\)](#) [PDF, 4.41 MB]

- [Annex 01 – Annex 10-c to Vistaprint Limited's Request for Independent Review Process \(/en/system/files/files/vistaprint-irp-request-annex-1-11jun14-en.pdf\)](#) [PDF, 5.73 MB]
- [Annex 11 – Annex 31-c to Vistaprint Limited's Request for Independent Review Process \(/en/system/files/files/vistaprint-irp-request-annex-11-11jun14-en.pdf\)](#) [PDF, 12.92 MB]
- [Reading Material 01 – Reading Material 05 to Vistaprint Limited's Request for Independent Review Process \(/en/system/files/files/vistaprint-irp-reference-material-1-11jun14-en.pdf\)](#) [PDF, 9.62 MB]
- [Reading Material 06 – Reading Material 21 to Vistaprint Limited's Request for Independent Review Process \(/en/system/files/files/vistaprint-irp-reference-material-6-11jun14-en.pdf\)](#) [PDF, 4.76 MB]

**EXHIBIT C-64**

**From:** Independent Review <independentreview@icann.org>  
**Sent:** Wednesday, November 14, 2018 7:04 PM  
**To:** Ali, Arif; Wong, Rosey  
**Cc:** Litwin, Ethan; Cilingin, Jenn; de Gramont, Alexandre; Scott Hemphill; Independent Review  
**Subject:** Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear Arif,

Following up on our email below and the discussion regarding the "on hold" status of the .WEB contention set.

The .WEB contention set status will remain "on hold" until 27 November 2018 (the initial time period provided to Afiliias to file its Independent Review Process (IRP) request). We note that Afiliias has filed its IRP request with the ICDR today (14 November 2018). If Afiliias does not file its request for emergency interim relief with the ICDR on or before 27 November 2018, the .WEB contention set will be taken off the "on hold" status. If Afiliias does file its request for emergency interim relief with the ICDR on or before 27 November, the status of the .WEB contention set will remain "on hold" until the parties receive a decision from the IRP panel regarding the interim relief request.

Please let us know if you have any questions.

Best Regards,

ICANN  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094

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**From:** Independentreview <independentreview-bounces@icann.org> on behalf of Independent Review <independentreview@icann.org>  
**Date:** Tuesday, November 13, 2018 at 3:43 PM  
**To:** "Ali, Arif" <Arif.Ali@dechert.com>, "Wong, Rosey" <Rosey.Wong@dechert.com>  
**Cc:** "Litwin, Ethan" <Ethan.Litwin@dechert.com>, Independent Review <independentreview@icann.org>, "Cilingin, Jenn" <Jenn.Cilingin@dechert.com>, "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>, Scott Hemphill Contact Information Redacted  
**Subject:** Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear Arif,

Pursuant to our discussion during the Cooperative Engagement Process (CEP) conference we had today, we are writing to confirm that the CEP for this matter is closed effective today, 13 November 2018.

ICANN will grant Afiliias an extension of time to 27 November 2018 (14 days following the close of CEP) to file an IRP regarding the matters raised in the CEP if Afiliias chooses to do so, and if Afiliias satisfies the standing

requirements, the timing requirements, and the criteria necessary to make a claim that the ICANN Board violated its Articles of Incorporation or Bylaws. Please note that this extension will not alter any deadlines that may have expired before the initiation of the CEP.

With regard to our discussion regarding contention set status and interim relief from the IRP panel, we will revert back to you in the next day or two.

Please let us know if you have any questions.

Best Regards,

ICANN  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094

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**From:** Independentreview <independentreview-bounces@icann.org> on behalf of Independent Review <independentreview@icann.org>

**Date:** Wednesday, October 31, 2018 at 1:58 PM

**To:** "Wong, Rosey" <Rosey.Wong@dechert.com>

**Cc:** "Ali, Arif" <Arif.Ali@dechert.com>, "Litwin, Ethan" <Ethan.Litwin@dechert.com>, "Cilingin, Jenn" <Jenn.Cilingin@dechert.com>, Scott Hemphill Contact Information Redacted, "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>, Independent Review <independentreview@icann.org>

**Subject:** Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear Rosey –

Given the recent conclusion of ICANN63 in Barcelona and additional scheduling issues, we need to postpone the CEP conference to the 13 November date, which was mentioned as a possibility in our email below. It appears that Arif and Ethan are the only ones who have responded to the calendar invite sent for 13 November 1:00pm-2:00pm Pacific / 4:00pm-5:00pm EST. As a reminder, a representative of Afiliias must also participate in the CEP conference.

Thank you for sending the draft IRP Request in your earlier email. ICANN is in the process of reviewing the materials in advance of the 13 November CEP conference.

Best regards,

ICANN  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094

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**From:** Independentreview <independentreview-bounces@icann.org> on behalf of Independent Review <independentreview@icann.org>

**Date:** Friday, October 19, 2018 at 3:25 PM

**To:** "Wong, Rosey" <Rosey.Wong@dechert.com>, Independent Review <independentreview@icann.org>

**Cc:** "Ali, Arif" <Arif.Ali@dechert.com>, "Litwin, Ethan" <Ethan.Litwin@dechert.com>, Scott Hemphill Contact Information Redacted, "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>, "Cilingin, Jenn"



<Jenn.Cilingin@dechert.com>

**Subject:** Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear Rosey –

Thank you for sending the available dates and times below.

We will be sending two calendar invites for CEP conferences – one for 1 November 12:00pm-1:00pm Pacific / 3:00pm-4:00pm EST and one for 13 November 1:00pm-2:00pm Pacific / 4:00pm-5:00pm EST.

We are setting up two calls so that if there is a scheduling conflict on 1 November or if we need to have a further CEP conference after 1 November, we will already have a second call scheduled.

Best regards,

ICANN

12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094

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**From:** Independentreview <independentreview-bounces@icann.org> on behalf of "Wong, Rosey" <Rosey.Wong@dechert.com>

**Date:** Monday, October 15, 2018 at 12:36 PM

**To:** Independent Review <independentreview@icann.org>

**Cc:** "Ali, Arif" <Arif.Ali@dechert.com>, "Litwin, Ethan" <Ethan.Litwin@dechert.com>, Scott Hemphill Contact Information Redacted, "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>, "Cilingin, Jenn" <Jenn.Cilingin@dechert.com>

**Subject:** Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear ICANN,

We are available for a further CEP call during the following times:

01 November 2018: 2pm-7pm EST  
12 November 2018: 9am-7pm EST  
13 November 2018: 9am-6pm EST  
14 November 2018: 11am-12pm; 2pm-7pm EST

We look forward to hearing from you soon.

Thank you,  
Rosey

**Rose Marie Wong**  
Associate

**Dechert LLP**

+1 215 994 2052

[rosey.wong@dechert.com](mailto:rosey.wong@dechert.com)

[dechert.com](http://dechert.com) [[dechert.com](http://dechert.com)]

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**From:** Independent Review [mailto:independentreview@icann.org]  
**Sent:** Thursday, October 11, 2018 3:40 PM  
**To:** Wong, Rosey <Rosey.Wong@dechert.com>; Ali, Arif <Arif.Ali@dechert.com>  
**Cc:** Litwin, Ethan <Ethan.Litwin@dechert.com>; Scott Hemphill Contact Information Redacted; de Gramont, Alexandre <Alexandre.deGramont@dechert.com>; Cilingin, Jenn <Jenn.Cilingin@dechert.com>; Independent Review <independentreview@icann.org>  
**Subject:** Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear Arif –

As you may be aware, ICANN63 is scheduled to take place in Barcelona beginning next week. Therefore, please send us all dates and times that your client is available for a further CEP call between 1-16 November 2018 (please indicate all availability, so we can coordinate schedules).

Best regards,

ICANN  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094

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**From:** Independentreview <[independentreview-bounces@icann.org](mailto:independentreview-bounces@icann.org)> on behalf of "Wong, Rosey" <[Rosey.Wong@dechert.com](mailto:Rosey.Wong@dechert.com)>  
**Date:** Wednesday, October 10, 2018 at 9:00 PM  
**To:** Independent Review <[independentreview@icann.org](mailto:independentreview@icann.org)>  
**Cc:** "Ali, Arif" <[Arif.Ali@dechert.com](mailto:Arif.Ali@dechert.com)>, "Litwin, Ethan" <[Ethan.Litwin@dechert.com](mailto:Ethan.Litwin@dechert.com)>, Scott Hemphill Contact Information Redacted "de Gramont, Alexandre" <[Alexandre.deGramont@dechert.com](mailto:Alexandre.deGramont@dechert.com)>, "Cilingin, Jenn" <[Jenn.Cilingin@dechert.com](mailto:Jenn.Cilingin@dechert.com)>  
**Subject:** Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear ICANN,

Unfortunately, none of the dates/times proposed in your email below work for us. We will be back in touch shortly with proposed dates and times for next week.

In our last CEP call, we had discussed a further explanation of our position. Subject to the rules on confidentiality and non-disclosure that apply to CEP, please find attached a draft IRP request, which sets out Afiliias' position. We understand that the draft is and will remain confidential as part of the materials exchanged during the CEP, and that ICANN will not assert any waiver of any privilege by virtue of our having provided you with the draft. We look forward to discussing with you on our next CEP call a concrete timeline and proposal regarding the steps that ICANN will take to disqualify NDC's application and/or disqualify NDC's bids in the ICANN auction for .WEB. We remain hopeful that we will be able to resolve this matter amicably.

Sincerely,

**Arif Hyder Ali**  
[www.dechert.com/arif\\_ali](http://www.dechert.com/arif_ali) [dechert.com]

**Dechert LLP**  
+1 202 261 3307 Washington, D.C.  
+44 207 1847372 London  
+1 202 261 3441 Assistant (Remy Bracey)  
+44 207 1847372 Assistant (Annette Brombley)  
Contact Information Redacted Mobile

[arif.ali@dechert.com](mailto:arif.ali@dechert.com)

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**From:** Independent Review [<mailto:independentreview@icann.org>]  
**Sent:** Wednesday, October 10, 2018 7:47 PM  
**To:** de Gramont, Alexandre <[Alexandre.deGramont@dechert.com](mailto:Alexandre.deGramont@dechert.com)>  
**Cc:** Ali, Arif <[Arif.Ali@dechert.com](mailto:Arif.Ali@dechert.com)>; Litwin, Ethan <[Ethan.Litwin@dechert.com](mailto:Ethan.Litwin@dechert.com)>; Wong, Rosey <[Rosey.Wong@dechert.com](mailto:Rosey.Wong@dechert.com)>; Scott Hemphill Contact Information Redacted; [independentreview@icann.org](mailto:independentreview@icann.org)  
**Subject:** Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear All –

We have received no response to our email below and therefore presume that Afiliias was/is not available during the dates/times offered in the email below for a further CEP call.

In an effort to schedule a CEP call prior to ICANN63, we offer the following date and times. Please indicate by tomorrow whether Afiliias is available on Monday for a one hour CEP call during the times offered below.

15 October – Monday  
10:30am – 12:00pm (Pacific)  
2:00pm – 3:30pm (Pacific)

Best regards,

ICANN  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094

---

**From:** Independentreview <[independentreview-bounces@icann.org](mailto:independentreview-bounces@icann.org)> on behalf of "[independentreview@icann.org](mailto:independentreview@icann.org)" <[independentreview@icann.org](mailto:independentreview@icann.org)>  
**Date:** Friday, October 5, 2018 at 2:12 PM  
**To:** "de Gramont, Alexandre" <[Alexandre.deGramont@dechert.com](mailto:Alexandre.deGramont@dechert.com)>  
**Cc:** "Ali, Arif" <[Arif.Ali@dechert.com](mailto:Arif.Ali@dechert.com)>, "Litwin, Ethan" <[Ethan.Litwin@dechert.com](mailto:Ethan.Litwin@dechert.com)>, "Wong, Rosey" <[Rosey.Wong@dechert.com](mailto:Rosey.Wong@dechert.com)>, Scott Hemphill Contact Information Redacted  
**Subject:** Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Greetings:

As we have not heard from you since 10 September, we offer you the following dates and times next week for a further CEP call. Please advise which one works for you.

8 Oct, Monday, 11a – noon PST  
10 Oct, Wed, 2-3p PST  
11 Oct, Thurs, 2-3p PST

We look forward to hearing from you soon.

Best regards,

ICANN  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094

On Sep 10, 2018, at 11:51 AM, de Gramont, Alexandre <[Alexandre.deGramont@dechert.com](mailto:Alexandre.deGramont@dechert.com)> wrote:

Dear ICANN:

When we spoke on 28 August, you had indicated that you would be available to continue the CEP today. We are disappointed that you have now cancelled two CEP calls that we had on calendar – and are now proposing a single, two-hour time slot over the next two weeks as an alternative. In any event, we are unavailable on 12 September between 7:00 am and 9:00 am (Pacific time).

We will discuss internally and revert to you soon on our position re moving forward.

Best regards,

**Alexandre de Gramont**  
Partner

**Dechert LLP**

1900 K Street N.W.  
Washington, DC 20006  
+1 202 261 3320 Direct

Contact Information Redacted Mobile

+1 202 261 3082 Fax

[alex.degramont@dechert.com](mailto:alex.degramont@dechert.com)

[dechert.com](http://dechert.com) [[dechert.com](http://dechert.com)]

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**From:** Independent Review [<mailto:independentreview@icann.org>]

**Sent:** Monday, September 10, 2018 1:58 PM

**To:** Ali, Arif <[Arif.Ali@dechert.com](mailto:Arif.Ali@dechert.com)>; de Gramont, Alexandre <[Alexandre.deGramont@dechert.com](mailto:Alexandre.deGramont@dechert.com)>

**Cc:** Litwin, Ethan <[Ethan.Litwin@dechert.com](mailto:Ethan.Litwin@dechert.com)>; Wong, Rosey <[Rosey.Wong@dechert.com](mailto:Rosey.Wong@dechert.com)>; Scott Hemphill Contact Information Redacted; Independent Review <[independentreview@icann.org](mailto:independentreview@icann.org)>

**Subject:** Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear Arif –

We have not received a response to our 6 September email (below).

Could you please let us know as soon as possible if you and your client are available for a one hour call on 12 September between 7:00am – 9:00am (Pacific time) so that we can schedule it accordingly. Also, please let us know if you intend to submit any further documents or information in advance of our next call.

Best Regards,

ICANN  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094

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**From:** Independentreview <[independentreview-bounces@icann.org](mailto:independentreview-bounces@icann.org)> on behalf of Independent Review <[independentreview@icann.org](mailto:independentreview@icann.org)>

**Date:** Thursday, September 6, 2018 at 2:25 PM

**To:** "Ali, Arif" <[Arif.Ali@dechert.com](mailto:Arif.Ali@dechert.com)>, "de Gramont, Alexandre" <[Alexandre.deGramont@dechert.com](mailto:Alexandre.deGramont@dechert.com)>

**Cc:** "Litwin, Ethan" <[Ethan.Litwin@dechert.com](mailto:Ethan.Litwin@dechert.com)>, "[independentreview@icann.org](mailto:independentreview@icann.org)" <[independentreview@icann.org](mailto:independentreview@icann.org)>, "Wong, Rosey" <[Rosey.Wong@dechert.com](mailto:Rosey.Wong@dechert.com)>, Scott Hemphill Contact Information Redacted

**Subject:** Re: [Independent Review] Afilias' Notice Invoking the Cooperative Engagement Process

Dear Arif –

Regarding scheduling the further CEP call that we discussed during our 28 August 2018 CEP conference, unfortunately schedules are very tight over the next two weeks. Please let us know if you and your client are available for a one hour call on 12 September 2018 between 7:00am – 9:00am (Pacific time).

Also, please let us know if you intend to submit any further documents or information in advance of our next call.

Best Regards,

ICANN  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094

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**From:** Independentreview <[independentreview-bounces@icann.org](mailto:independentreview-bounces@icann.org)> on behalf of "Ali, Arif" <[Arif.Ali@dechert.com](mailto:Arif.Ali@dechert.com)>

**Date:** Tuesday, August 28, 2018 at 3:34 PM

**To:** Amy Stathos <[amy.stathos@icann.org](mailto:amy.stathos@icann.org)>, "de Gramont, Alexandre" <[Alexandre.deGramont@dechert.com](mailto:Alexandre.deGramont@dechert.com)>

**Cc:** "Litwin, Ethan" <[Ethan.Litwin@dechert.com](mailto:Ethan.Litwin@dechert.com)>, "[independentreview@icann.org](mailto:independentreview@icann.org)" <[independentreview@icann.org](mailto:independentreview@icann.org)>, "Wong, Rosey" <[Rosey.Wong@dechert.com](mailto:Rosey.Wong@dechert.com)>, Scott Hemphill Contact Information Redacted

**Subject:** Re: [Independent Review] Afilias' Notice Invoking the Cooperative Engagement Process

Dear Amy:

Further to our call today, I assume that you had an opportunity to review our earlier correspondence on the matter of Afilias' claim. In any event, I am re-sending them so that they are at the top of you In-Box.

Kind regards,

**Arif Hyder Ali**

[www.dechert.com/arif\\_ali](http://www.dechert.com/arif_ali) [[dechert.com](http://dechert.com)]

**Dechert LLP**

+1 202 261 3307 Washington, D.C.

+44 207 1847372 London

+1 202 261 3441 Assistant (Remy Bracey)

+44 207 1847372 Assistant (Annette Brombley)

Contact Information Redacted Mobile

[arif.ali@dechert.com](mailto:arif.ali@dechert.com)

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**From:** Amy Stathos [<mailto:amy.stathos@icann.org>]

**Sent:** Monday, July 30, 2018 12:36 PM

**To:** de Gramont, Alexandre <[Alexandre.deGramont@dechert.com](mailto:Alexandre.deGramont@dechert.com)>

**Cc:** Ali, Arif <[Arif.Ali@dechert.com](mailto:Arif.Ali@dechert.com)>; Litwin, Ethan <[Ethan.Litwin@dechert.com](mailto:Ethan.Litwin@dechert.com)>; Wong, Rosey <[Rosey.Wong@dechert.com](mailto:Rosey.Wong@dechert.com)>; Scott Hemphill Contact Information Redacted; [independentreview@icann.org](mailto:independentreview@icann.org)

**Subject:** Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

**Importance:** High

Thank you for the detailed agenda below, we will continue to analyze this in advance of our call, but unfortunately we are going to have to re-schedule the call that is scheduled for today. Sorry for the late notice.

We will work internally to find some times next week for a call, and will ensure that we have the right people to participate.

We will be in touch in next day or two to reschedule. Again, sorry for the late notice. Please confirm your receipt of this note.

Thank you.

Amy Stathos

Deputy General Counsel

Internet Corporation for Assigned Names and Numbers

+1-310-301-3866 (direct)

[amy.stathos@icann.org](mailto:amy.stathos@icann.org)

On Jul 23, 2018, at 12:40 PM, de Gramont, Alexandre <[Alexandre.deGramont@dechert.com](mailto:Alexandre.deGramont@dechert.com)> wrote:

Dear ICANN:

Thank you for your email below. I will plan to join Messrs. Hemphill and Ali on the call. Others on our team may also be present.

In the meantime, we believe it would be helpful to propose an agenda around which to organize the call. Afiliias has three general goals for the CEP call: (1) to understand ICANN's positions concerning the resolution of the .WEB contention set, and the bases for those positions; (2) to

understand whether ICANN is willing to reconsider its positions, or if there are any avenues toward a resolution of this matter without having to proceed to an IRP; and (3) if not, to see if we can agree on at least certain aspects concerning the schedule and process for the IRP. With those goals in mind, we propose the following agenda:

## **I. ICANN'S POSITIONS**

1. Is it ICANN's intention to enter a .WEB registry agreement with NDC, with the understanding that NDC has contractually committed to assigning the exclusive right to operate the .WEB registry (and/or transferring any other rights obtained through NDC's application) to Verisign? If so, has ICANN informed or otherwise discussed with NDC or Verisign whether ICANN will agree to such assignment and/or transfer?
2. Is it ICANN's position that NDC's application – which made no mention of Verisign's involvement, and specifically stated that its goal was to increase competition among registry operators and diminish “[c]ongestion in the current availability of commercial TLD names [which] fundamentally advantages older incumbent players” – complied with the letter and spirit of the AGB?
3. Is it ICANN's position that NDC was not required to disclose that it had assigned or otherwise transferred any of its rights as an applicant (including, without limitation, the exclusive right to operate the .WEB registry) to Verisign in exchange for Verisign's funding of NDC's bid prior to the commencement of the auction?
4. Is it ICANN's position that it fully investigated the concerns about the conduct of NDC and Verisign raised by Afiliias (and other applicants) after the conclusion of the auction? If so, is ICANN willing to tell us what the investigation entailed and uncovered?
5. Did ICANN consider disqualifying NDC's application after ICANN learned that NDC had agreed to assign or otherwise transfer any rights in its application for .WEB to Verisign in exchange for Verisign's funding of NDC's bid? If so, is ICANN willing to tell us the basis of its decision not to disqualify NDC's application?
6. Is it ICANN's position that ICANN complied with its Articles of Incorporation and Bylaws in its handling of NDC's .WEB application and in its decision to enter into a .WEB registry agreement with NDC?

## **II. WHETHER ICANN IS WILLING TO RECONSIDER ITS POSITIONS**

1. Is ICANN willing to reconsider its positions, in particular, its decision to enter a .WEB registry agreement with NDC, without Afiliias having to commence an IRP?

2. Does ICANN have other ideas on how this dispute might be amicably resolved absent an IRP?

### III. PROCEDURAL AND SCHEDULING ISSUES FOR AN IRP (IF NECESSARY)

1. If the CEP is unsuccessful, will ICANN, consistent with other IRPs, keep the contention set on hold pending the resolution of this IRP? Or will Afiliias have to seek an emergency arbitrator to order interim relief? If the latter, will ICANN tell us when it plans to execute the .WEB registry agreement with NDC and/or Verisign?

2. If the CEP is unsuccessful, and Afiliias commences an IRP, can we agree on a schedule for the submission of Afiliias' IRP request (and if necessary, its request for an emergency arbitrator to order interim relief), as well as for further steps in the procedure?

Please let us know if you have any questions or comments concerning our proposed agenda. We would of course be pleased to consider additional items that ICANN would like to propose. In the meantime, we will look forward to speaking with Mr. Jeffrey next week.

Kind regards,

Alexandre de Gramont  
Dechert LLP  
Counsel for Afiliias

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**From:** Independent Review [<mailto:independentreview@icann.org>]  
**Sent:** Thursday, July 19, 2018 4:36 PM  
**To:** de Gramont, Alexandre <[Alexandre.deGramont@dechert.com](mailto:Alexandre.deGramont@dechert.com)>; 'Independent Review' <[independentreview@icann.org](mailto:independentreview@icann.org)>  
**Cc:** Ali, Arif <[Arif.Ali@dechert.com](mailto:Arif.Ali@dechert.com)>; Litwin, Ethan <[Ethan.Litwin@dechert.com](mailto:Ethan.Litwin@dechert.com)>; Wong, Rosey <[Rosey.Wong@dechert.com](mailto:Rosey.Wong@dechert.com)>; 'Scott Hemphill' Contact Informat on Redacted  
**Subject:** Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear Mr. Gramont –

Thank you for your response.

We will schedule the CEP conference for Monday 30 July 2018 11:00am-12:00pm (Pacific time).

We will send a meeting invite to Mr. Hemphill and Mr. Ali with call-in information to follow.

Best regards,

ICANN  
12025 Waterfront Drive, Suite 300



Los Angeles, CA 90094

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**From:** Independentreview <[independentreview-bounces@icann.org](mailto:independentreview-bounces@icann.org)> on behalf of "de Gramont, Alexandre" <[Alexandre.deGramont@dechert.com](mailto:Alexandre.deGramont@dechert.com)>  
**Date:** Monday, July 16, 2018 at 1:31 PM  
**To:** 'Independent Review' <[independentreview@icann.org](mailto:independentreview@icann.org)>  
**Cc:** "Ali, Arif" <[Arif.Ali@dechert.com](mailto:Arif.Ali@dechert.com)>, "Litwin, Ethan" <[Ethan.Litwin@dechert.com](mailto:Ethan.Litwin@dechert.com)>, "Wong, Rosey" <[Rosey.Wong@dechert.com](mailto:Rosey.Wong@dechert.com)>, 'Scott Hemphill' Contact Information Redacted  
**Subject:** Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Thank you for your email below. I have conferred with Messrs. Hemphill and Ali. They are both available on **Monday, 30 July between 10:00 am and 12:00 pm (Pacific time)**. Please let us know when in that time frame you would like to begin and we will plan accordingly.

**Alexandre de Gramont**  
Partner

**Dechert LLP**  
1900 K Street N.W.  
Washington, DC 20006  
+1 202 261 3320 Direct  
Contact Information Redacted Mobile  
+1 202 261 3082 Fax  
[alex.degramont@dechert.com](mailto:alex.degramont@dechert.com)  
[dechert.com](http://dechert.com) [[dechert.com](http://dechert.com)]

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**From:** Independent Review [<mailto:independentreview@icann.org>]  
**Sent:** Monday, July 16, 2018 1:45 PM  
**To:** de Gramont, Alexandre <[Alexandre.deGramont@dechert.com](mailto:Alexandre.deGramont@dechert.com)>  
**Cc:** Ali, Arif <[Arif.Ali@dechert.com](mailto:Arif.Ali@dechert.com)>; Litwin, Ethan <[Ethan.Litwin@dechert.com](mailto:Ethan.Litwin@dechert.com)>; Wong, Rosey <[Rosey.Wong@dechert.com](mailto:Rosey.Wong@dechert.com)>; 'Scott Hemphill' Contact Information Redacted;  
Independent Review <[independentreview@icann.org](mailto:independentreview@icann.org)>  
**Subject:** Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear Mr. Gramont,  
Following up on my emails below regarding scheduling the CEP conference as set forth in Section 4 of the CEP.

You indicated that Mr. Ali and Mr. Hemphill were not available on 17 July 2018 10-11am (Pacific) or on 19 July 2018 11am-12pm (Pacific) – the dates and times provided below in my 6 July email.

In an effort to accommodate Afiliias' schedule and to find a mutually acceptable date and time for the conference, below are additional dates and times when

Mr. Jeffrey is available for a one-hour telephonic CEP conference. Please let us know as soon as possible if Mr. Ali and Mr. Hemphill are available for these dates and times (please indicate all availability, so we can coordinate schedules).

Dates and Times:

Wed. 18 July 2018 3:00pm – 5:00pm (Pacific)

Thurs. 19 July 2018 2:00pm – 4:00pm (Pacific)

Monday 30 July 10:00am – 12:00pm (Pacific) and/or 3:00pm – 5:00pm (Pacific)

Tuesday 31 July 3:00pm – 5:00pm (Pacific)

Thursday 3 August 2:00pm – 4:00pm (Pacific)

Best regards,

ICANN

12025 Waterfront Drive, Suite 300

Los Angeles, CA 90094

---

**From:** Independentreview <[independentreview-bounces@icann.org](mailto:independentreview-bounces@icann.org)> on behalf of Independent Review <[independentreview@icann.org](mailto:independentreview@icann.org)>

**Date:** Thursday, July 12, 2018 at 5:11 PM

**To:** "de Gramont, Alexandre" <[Alexandre.deGramont@dechert.com](mailto:Alexandre.deGramont@dechert.com)>, 'Independent Review' <[independentreview@icann.org](mailto:independentreview@icann.org)>

**Cc:** "Ali, Arif" <[Arif.Ali@dechert.com](mailto:Arif.Ali@dechert.com)>, "Litwin, Ethan" <[Ethan.Litwin@dechert.com](mailto:Ethan.Litwin@dechert.com)>, "Wong, Rosey" <[Rosey.Wong@dechert.com](mailto:Rosey.Wong@dechert.com)>, 'Scott Hemphill' Contact Information Redacted

**Subject:** Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear Mr. Gramont,

Unfortunately, Mr. Jeffrey is not available the week of 23 July.

He is available on the following dates and times the following week:

Monday 30 July 10:00am – 12:00pm (Pacific) and/or 3:00pm – 5:00pm (Pacific)

Tuesday 31 July 3:00pm – 5:00pm (Pacific)

Thursday 3 August 2:00pm – 4:00pm (Pacific)

Please let us know if Mr. Hemphill and Mr. Ali are available on the dates and times listed above for a one hour telephonic CEP conference (please indicate all availability, so we can coordinate schedules).

Best regards,

ICANN

12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094

---

**From:** Independentreview <[independentreview-bounces@icann.org](mailto:independentreview-bounces@icann.org)> on behalf of "de Gramont, Alexandre" <[Alexandre.deGramont@dechert.com](mailto:Alexandre.deGramont@dechert.com)>  
**Date:** Thursday, July 12, 2018 at 3:10 AM  
**To:** 'Independent Review' <[independentreview@icann.org](mailto:independentreview@icann.org)>  
**Cc:** "Ali, Arif" <[Arif.Ali@dechert.com](mailto:Arif.Ali@dechert.com)>, "Litwin, Ethan" <[Ethan.Litwin@dechert.com](mailto:Ethan.Litwin@dechert.com)>, "Wong, Rosey" <[Rosey.Wong@dechert.com](mailto:Rosey.Wong@dechert.com)>, 'Scott Hemphill' Contact Information Redacted  
**Subject:** Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

We are having trouble with both those dates and times. Would Mr. Jeffrey be available on Monday, July 23, between 8am and noon Pacific time?

Thanks, Alex

**Alexandre de Gramont**  
Partner

**Dechert LLP**  
1900 K Street N.W.  
Washington, DC 20006  
+1 202 261 3320 Direct  
Contact Information Redacted Mobile  
+1 202 261 3082 Fax  
[alex.degramont@dechert.com](mailto:alex.degramont@dechert.com)  
[dechert.com](http://dechert.com) [[dechert.com](http://dechert.com)]

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**From:** Independent Review [<mailto:independentreview@icann.org>]  
**Sent:** Tuesday, July 10, 2018 2:49 PM  
**To:** Independent Review <[independentreview@icann.org](mailto:independentreview@icann.org)>; de Gramont, Alexandre <[Alexandre.deGramont@dechert.com](mailto:Alexandre.deGramont@dechert.com)>  
**Cc:** Ali, Arif <[Arif.Ali@dechert.com](mailto:Arif.Ali@dechert.com)>; Litwin, Ethan <[Ethan.Litwin@dechert.com](mailto:Ethan.Litwin@dechert.com)>; Wong, Rosey <[Rosey.Wong@dechert.com](mailto:Rosey.Wong@dechert.com)>; 'Scott Hemphill' Contact Information Redacted  
**Subject:** Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear Mr. Gramont,  
I am following up on my email below.  
Could you please let us know if Mr. Hemphill and Mr. Ali are available on the dates and times listed below for a one hour telephonic CEP conference.

Best regards,

ICANN  
12025 Waterfront Drive, Suite 300

Los Angeles, CA 90094

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**From:** Independentreview <[independentreview-bounces@icann.org](mailto:independentreview-bounces@icann.org)> on behalf of Independent Review <[independentreview@icann.org](mailto:independentreview@icann.org)>

**Date:** Friday, July 6, 2018 at 12:07 PM

**To:** "de Gramont, Alexandre" <[Alexandre.deGramont@dechert.com](mailto:Alexandre.deGramont@dechert.com)>, "[independentreview@icann.org](mailto:independentreview@icann.org)" <[independentreview@icann.org](mailto:independentreview@icann.org)>

**Cc:** "Ali, Arif" <[Arif.Ali@dechert.com](mailto:Arif.Ali@dechert.com)>, "Litwin, Ethan" <[Ethan.Litwin@dechert.com](mailto:Ethan.Litwin@dechert.com)>, "Wong, Rosey" <[Rosey.Wong@dechert.com](mailto:Rosey.Wong@dechert.com)>, 'Scott Hemphill' Contact Information Redacted

**Subject:** Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear Mr. Gramont,

Thank you for responding.

Mr. Jeffrey is available for a telephonic CEP conference on the following days and times:

17 July 2018 10:00am – 11:00am (Pacific time)

19 July 2018 11:00am – 12:00pm (Pacific time)

Please let us know if Mr. Hemphill and Mr. Ali are available on either of those two dates.

Best regards,

ICANN

12025 Waterfront Drive, Suite 300

Los Angeles, CA 90094

---

**From:** Independentreview <[independentreview-bounces@icann.org](mailto:independentreview-bounces@icann.org)> on behalf of "de Gramont, Alexandre" <[Alexandre.deGramont@dechert.com](mailto:Alexandre.deGramont@dechert.com)>

**Date:** Friday, July 6, 2018 at 10:01 AM

**To:** "[independentreview@icann.org](mailto:independentreview@icann.org)" <[independentreview@icann.org](mailto:independentreview@icann.org)>

**Cc:** "Ali, Arif" <[Arif.Ali@dechert.com](mailto:Arif.Ali@dechert.com)>, "Litwin, Ethan" <[Ethan.Litwin@dechert.com](mailto:Ethan.Litwin@dechert.com)>, "Wong, Rosey" <[Rosey.Wong@dechert.com](mailto:Rosey.Wong@dechert.com)>, 'Scott Hemphill' Contact Information Redacted

**Subject:** Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Thank you for your email below and we apologize for not responding sooner. Our team has been in an arbitration hearing in Paris that just finished up today. In any event, neither Mr. Ali nor Mr. Hemphill were able to attend ICANN62. We would be available for a meeting (preferably in Washington, D.C. or elsewhere on the east coast) from July 17-24 or July 30-Aug. 3. If those dates don't work, we will have to look for dates in September. Please let us know.

Kind regards,

**Alexandre de Gramont**  
Partner

**Dechert LLP**

1900 K Street N.W.  
Washington, DC 20006  
+1 202 261 3320 Direct  
Contact information Redacted Mobile  
+1 202 261 3082 Fax  
[alex.degramont@dechert.com](mailto:alex.degramont@dechert.com)  
[dechert.com](http://dechert.com) [[dechert.com](http://dechert.com)]

----- Original Message -----

Subject: Re: [Independent Review] Afilias' Notice Invoking the Cooperative Engagement Process

From: [independentreview@icann.org](mailto:independentreview@icann.org)

Date: Jun 20, 2018, 3:08 PM

To: "Ali, Arif" <[Arif.Ali@dechert.com](mailto:Arif.Ali@dechert.com)>, "Wong, Rosey" <[Rosey.Wong@dechert.com](mailto:Rosey.Wong@dechert.com)>

Dear Mr. Ali,

This will acknowledge receipt of the email, with the attached letter, on behalf of your clients Afilias plc and Afilias Domains No. 3 Limited (collectively, "Afilias") to [independentreview@icann.org](mailto:independentreview@icann.org) on 18 June 2018, whereby Afilias initiated the Cooperative Engagement Process (CEP) regarding .WEB in advance of filing a Request for Independent Review (IRP). Pursuant to Section 3 of the CEP, ICANN has designated John Jeffrey as the Executive that will participate in the CEP that Afilias has initiated.

As Mr. Jeffrey is currently traveling to Panama, we will be contacting you in the next few days regarding your client's availability for a conference as set forth in Section 4 of the CEP, perhaps to take place at ICANN62 in Panama (please advise if Mr. Hemphill will be attending ICANN62) or soon thereafter.

Best regards,

ICANN  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094

**From:** Independentreview <[independentreview-bounces@icann.org](mailto:independentreview-bounces@icann.org)> on behalf of "Wong, Rosey" <[Rosey.Wong@dechert.com](mailto:Rosey.Wong@dechert.com)>

**Date:** Monday, June 18, 2018 at 12:23 PM

**To:** "[independentreview@icann.org](mailto:independentreview@icann.org)" <[independentreview@icann.org](mailto:independentreview@icann.org)>

**Cc:** "Ali, Arif" <[Arif.Ali@dechert.com](mailto:Arif.Ali@dechert.com)>, "Litwin, Ethan" <[Ethan.Litwin@dechert.com](mailto:Ethan.Litwin@dechert.com)>, Scott Hemphill Contact Information Redacted, "de Gramont, Alexandre" <[Alexandre.deGramont@dechert.com](mailto:Alexandre.deGramont@dechert.com)>, "Sancheti, Harsh" <[Harsh.Sancheti@dechert.com](mailto:Harsh.Sancheti@dechert.com)>

**Subject:** [Independent Review] Afilias' Notice Invoking the Cooperative Engagement Process

Dear ICANN:

Please find attached a letter on behalf of Afiliac plc and Afiliac Domains No. 3, initiating the Cooperative Engagement Process with ICANN pursuant to Article 4, Section 4.3(e) of the ICANN Bylaws. The exhibits accompanying the letter can be downloaded at: <https://dechert.box.com/s/hguexsi6nj99bvtx4grlq7mw5ex14epq> [[dechert.box.com](https://dechert.box.com)].

We would be grateful if you acknowledge receipt.

Sincerely,  
Rose Marie Wong

**Rose Marie Wong**  
Associate

**Dechert LLP**  
+1 215 994 2052  
[rosey.wong@dechert.com](mailto:rosey.wong@dechert.com)  
[dechert.com](https://dechert.com) [[dechert.com](https://dechert.com)]

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Independentreview mailing list  
[Independentreview@icann.org](mailto:Independentreview@icann.org)  
<https://mm.icann.org/mailman/listinfo/independentreview>

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Independentreview mailing list  
[Independentreview@icann.org](mailto:Independentreview@icann.org)  
<https://mm.icann.org/mailman/listinfo/independentreview>

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**EXHIBIT C-65**



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ARIF HYDER ALI

arif.ali@dechert.com  
+1 202 261 3307 Direct  
+1 261 261 3079 Fax

November 20, 2018

**VIA E-MAIL**

ICANN  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094  
independentreview@icann.org

**Re: “On Hold” Status of the .WEB Contention Set**

Dear ICANN:

We write with reference to your email of 14 November 2018 in which you set out ICANN’s position regarding the “on hold” status of the .WEB contention set. Specifically, in response to Afiliias’ request that ICANN continue to maintain the hold status on the .WEB contention set, you state: “If Afiliias does not file its request for emergency interim relief with the ICDR on or before 27 November 2018, the .WEB contention set will be taken off the “on hold” status. If Afiliias does file its request for emergency interim relief with the ICDR on or before 27 November, the status of the .WEB contention set will remain “on hold” until the parties receive a decision from the IRP panel regarding the interim relief request.”<sup>1</sup>

First, consistent with ICANN’s policy mandate and past practice, given that Afiliias has commenced an ICANN accountability process, the .WEB contention set must remain on hold. As the emergency arbitrator noted in the Donuts IRP regarding .SPORTS: “In other words, a deal is a deal. If claimant is entitled to a prompt, efficacious, and thorough independent review process, why has it had to file the present request for emergency relief . . .?”<sup>2</sup> The .AFRICA panel raised similar concerns, agreeing that the claimant in that IRP had a “procedural right” to an IRP conducted “with legitimacy and integrity, with the capacity to provide a meaningful remedy.”<sup>3</sup> We note that ICANN voluntarily placed the .SPORTS contention set on hold in light of the concerns of, and issues identified, by the emergency arbitrator in that IRP.

---

<sup>1</sup> Email from ICANN to A. Ali (14 Nov. 2018).

<sup>2</sup> *Donuts Inc. v. ICANN*, ICDR Case No. 01-14-0000-1579, Procedural Order No. 2 (10 Nov. 2014), p. 2.

<sup>3</sup> See *DotConnectAfrica (DCA) Trust v. ICANN*, ICDR Case No. 50-117-T-1083-13, Decision on Interim Measures of Protection (12 May 2014), ¶¶ 19, 27, 47.

Second, ICANN is required by its Bylaws to apply its policies and make decisions consistently, neutrally, objectively, and fairly, and to not single out any particular party for discriminatory treatment. ICANN is also obligated to act transparently. Absent a clear justification by ICANN as to why the contention set's status must be changed, ICANN cannot simply at its whim decide the status of the contention set. Specifically, there is nothing to suggest that the removal of the hold status is either urgent or necessary here. To the contrary, should ICANN seek to delegate .WEB to Afilias' competitor, ICANN would needlessly create an urgent situation making the grant of interim measures necessary under international law, as was the case in the .AFRICA IRP. As that panel reasoned: if a stay was not ordered there, "the chances for [claimant] having its Request for an independent review heard and properly considered will be jeopardized."<sup>4</sup>

If there are, in fact, compelling reasons as to why the contention set must be removed from the on hold status, including circumstances of urgency and necessity (which ICANN must disclose to the contention set, if they in fact exist), then it is for ICANN to seek emergency interim relief and not Afilias. ICANN cannot artificially and opaquely create circumstances of urgency, and place the onus on (i.e., force) an applicant to unnecessarily seek emergency relief.

Third, as ICANN well knows, a panel will be constituted in short order in the IRP commenced by Afilias. This is certainly achievable if ICANN cooperates with Afilias in establishing an efficient procedural framework for the IRP. Once the panel is constituted, ICANN can determine whether to seek an early ruling from the panel as to whether it has the right to change the status of the contention set.

Fourth, instead of proceeding in an objective, fair, transparent, non-discriminatory, and efficient manner, should ICANN decide to change the on hold status of the .WEB gTLD and proceed to conclude a registry agreement with NDC/VeriSign and with the delegation of the gTLD, ICANN will be intentionally causing significant harm to Afilias. Afilias will assert all of its rights and remedies against ICANN in all available forums.

Finally, we request immediate disclosure by ICANN of the documents listed below, all of which must be provided to Afilias by 23 November 2018. Subject to our position above, Afilias considers that there can be no obligation on its part, if one exists at all (which we reject), to seek emergency interim relief until ICANN has disclosed the relevant documents.

- All documents relevant to the status of the delegation of the .WEB gTLD, including internal ICANN communications and communications between (1) ICANN and (2) either or both of NDC and VeriSign, including, but not limited to,

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<sup>4</sup> *Id.* at ¶ 45.

(a) negotiation of a registry agreement concerning .WEB, (b) pre-delegation testing for the .WEB registry, and (c) Afilias' invocation of CEP concerning .WEB, the conduct of CEP concerning .WEB, and Afilias' request for IRP concerning .WEB.

- Documents sufficient to show that there are in fact underlying circumstances of urgency and necessity sufficient to justify taking the .WEB contention set off hold and forcing Afilias to file a request for emergency relief.
- All documents, including internal memoranda and policy positions, addressing ICANN's decisions to place a contention set on hold or to take a contention set off the "on hold" status. In this regard, we request that ICANN provide any and all documents, including internal emails and memoranda, relating to the justifications as to why a specific gTLD contention set was put on hold or was taken off the "on hold" status. This request includes all documents related to ICANN's decision to put the .WEB contention set on hold pending the .WEBS IRP concerning Vistaprint's application.

We find it astonishing that we are still in the position of having to make the above requests— notwithstanding our repeated inquiries for the most basic information about the status of the contention set.

Sincerely,



Arif Hyder Ali

Partner

**EXHIBIT C-66**

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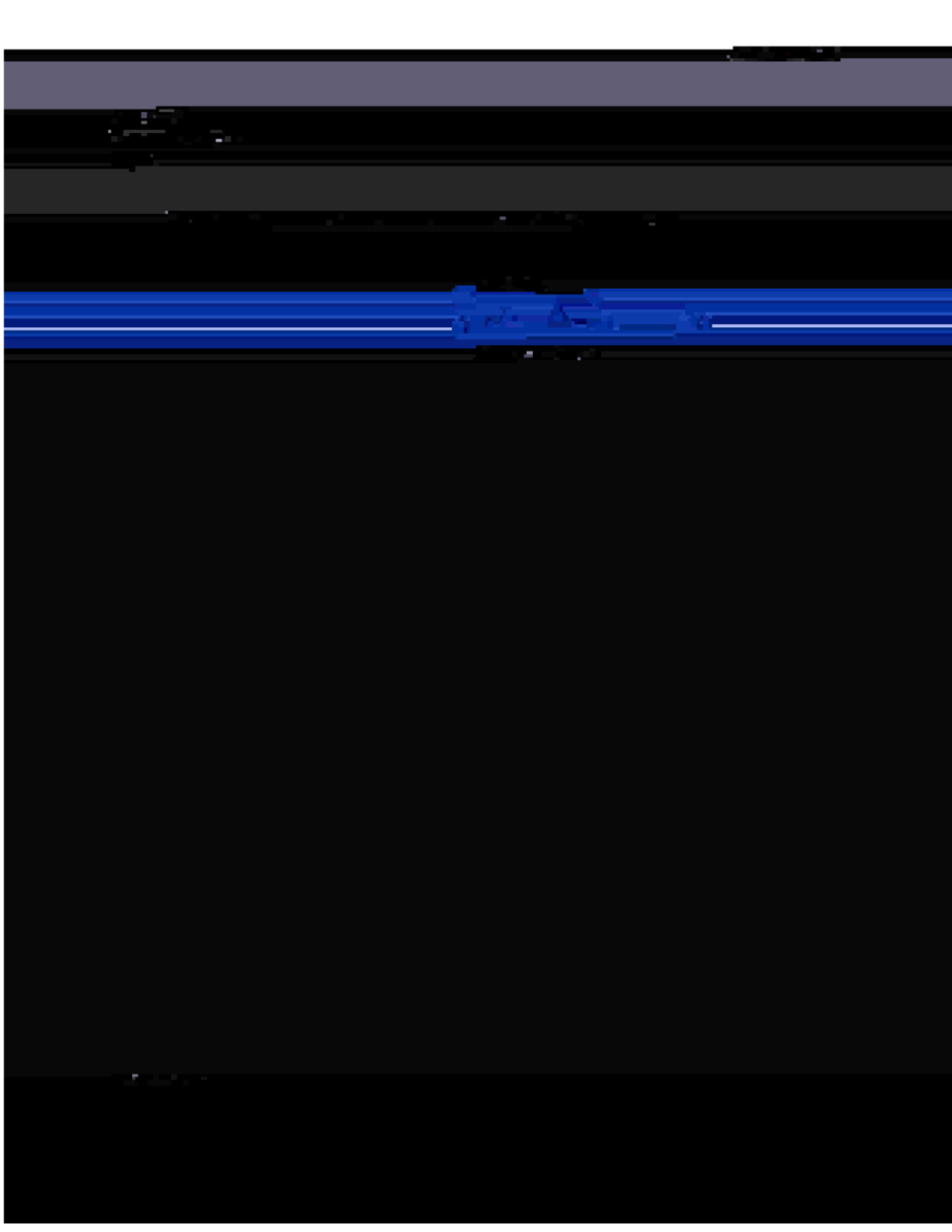
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**EXHIBIT C-67**

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A/811/6

UNIVERSAL DECLARATION OF HUMAN RIGHTS

Approved by the General Assembly at its  
Plenary Meeting on 10 December 1948

Preamble

WHEREAS recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

WHEREAS disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

WHEREAS it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

WHEREAS it is essential to promote the development of friendly relations between nations,

WHEREAS the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

WHEREAS Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

WHEREAS a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

NOW THEREFORE

THE GENERAL ASSEMBLY,

PROCLAIMS this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education

/to promote



to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, Trust, Non-Self-Governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and the security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

/Article 10

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each state.

2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

1. Everyone has the right to a nationality,

2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

/3. The family

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

1. Everyone has the right to own property alone as well as in association with others.

2. No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.

2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

2. Everyone has the right of equal access to public service in his country.

3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to the realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

/2. Everyone,

2. Everyone, without any discrimination, has the right to equal pay for equal work.

3. Everyone who works has the right to just and favourable remuneration insuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4. Everyone has the right to form and to join trade unions for the protection of his interests.

#### Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

#### Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

#### Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

#### Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

**EXHIBIT C-68**

# UNCITRAL Arbitration Rules

(as revised in 2010)



*Further information may be obtained from*  
UNCITRAL secretariat, Vienna International Centre  
P.O. Box 500, 1400 Vienna, Austria

Telephone: (+43-1) 26060-4060

Telefax: (+43-1) 26060-5813

Internet: [www.uncitral.org](http://www.uncitral.org)

E-mail: [uncitral@uncitral.org](mailto:uncitral@uncitral.org)



UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

# UNCITRAL Arbitration Rules

(as revised in 2010)



UNITED NATIONS  
New York, 2011

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This publication has not been formally edited.

Publishing production: English, Publishing and Library Section.  
United Nations Office at Vienna.

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# **Resolution adopted by the General Assembly**

[*on the report of the Sixth Committee (A/65/465)*]

## **65/22. UNCITRAL Arbitration Rules as revised in 2010**

*The General Assembly,*

*Recalling* its resolution 2205 (XXI) of 17 December 1966, which established the United Nations Commission on International Trade Law with the purpose of furthering the progressive harmonization and unification of the law of international trade in the interests of all peoples, in particular those of developing countries,

*Also recalling* its resolution 31/98 of 15 December 1976 recommending the use of the Arbitration Rules of the United Nations Commission on International Trade Law,<sup>1</sup>

*Recognizing* the value of arbitration as a method of settling disputes that may arise in the context of international commercial relations,

*Noting* that the Arbitration Rules are recognized as a very successful text and are used in a wide variety of circumstances covering a broad range of disputes, including disputes between private commercial parties, investor-State disputes, State-to-State disputes and commercial disputes administered by arbitral institutions, in all parts of the world,

*Recognizing* the need for revising the Arbitration Rules to conform to current practices in international trade and to meet changes that have taken place over the last thirty years in arbitral practice,

*Believing* that the Arbitration Rules as revised in 2010 to reflect current practices will significantly enhance the efficiency of arbitration under the Rules,

*Convinced* that the revision of the Arbitration Rules in a manner that is acceptable to countries with different legal,

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<sup>1</sup> *Official Records of the General Assembly, Thirty-first Session, Supplement No. 17 (A/31/17), chap. V, sect. C.*

social and economic systems can significantly contribute to the development of harmonious international economic relations and to the continuous strengthening of the rule of law,

*Noting* that the preparation of the Arbitration Rules as revised in 2010 was the subject of due deliberation and extensive consultations with Governments and interested circles and that the revised text can be expected to contribute significantly to the establishment of a harmonized legal framework for the fair and efficient settlement of international commercial disputes,

*Also noting* that the Arbitration Rules as revised in 2010 were adopted by the United Nations Commission on International Trade Law at its forty-third session after due deliberation,<sup>2</sup>

1. *Expresses its appreciation* to the United Nations Commission on International Trade Law for having formulated and adopted the revised provisions of the Arbitration Rules, the text of which is contained in an annex to the report of the United Nations Commission on International Trade Law on the work of its forty-third session;<sup>3</sup>

2. *Recommends* the use of the Arbitration Rules as revised in 2010 in the settlement of disputes arising in the context of international commercial relations;

3. *Requests* the Secretary-General to make all efforts to ensure that the Arbitration Rules as revised in 2010 become generally known and available.

*57th plenary meeting  
6 December 2010*

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<sup>2</sup> *Ibid.*, *Sixty-fifth Session, Supplement No. 17 (A/65/17)*, chap. III.

<sup>3</sup> *Ibid.*, annex I.

# UNCITRAL Arbitration Rules

(as revised in 2010)

## Section I. Introductory rules

### *Scope of application\**

#### *Article 1*

1. Where parties have agreed that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to arbitration under the UNCITRAL Arbitration Rules, then such disputes shall be settled in accordance with these Rules subject to such modification as the parties may agree.
2. The parties to an arbitration agreement concluded after 15 August 2010 shall be presumed to have referred to the Rules in effect on the date of commencement of the arbitration, unless the parties have agreed to apply a particular version of the Rules. That presumption does not apply where the arbitration agreement has been concluded by accepting after 15 August 2010 an offer made before that date.
3. These Rules shall govern the arbitration except that where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

### *Notice and calculation of periods of time*

#### *Article 2*

1. A notice, including a notification, communication or proposal, may be transmitted by any means of communication that provides or allows for a record of its transmission.
2. If an address has been designated by a party specifically for this purpose or authorized by the arbitral tribunal, any notice shall be delivered to that party at that address, and if so delivered shall

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\*A model arbitration clause for contracts can be found in the annex to the Rules.

be deemed to have been received. Delivery by electronic means such as facsimile or e-mail may only be made to an address so designated or authorized.

3. In the absence of such designation or authorization, a notice is:

- (a) Received if it is physically delivered to the addressee; or
- (b) Deemed to have been received if it is delivered at the place of business, habitual residence or mailing address of the addressee.

4. If, after reasonable efforts, delivery cannot be effected in accordance with paragraphs 2 or 3, a notice is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means that provides a record of delivery or of attempted delivery.

5. A notice shall be deemed to have been received on the day it is delivered in accordance with paragraphs 2, 3 or 4, or attempted to be delivered in accordance with paragraph 4. A notice transmitted by electronic means is deemed to have been received on the day it is sent, except that a notice of arbitration so transmitted is only deemed to have been received on the day when it reaches the addressee's electronic address.

6. For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

### ***Notice of arbitration***

#### *Article 3*

1. The party or parties initiating recourse to arbitration (hereinafter called the "claimant") shall communicate to the other party or parties (hereinafter called the "respondent") a notice of arbitration.

2. Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the respondent.



3. The notice of arbitration shall include the following:
  - (a) A demand that the dispute be referred to arbitration;
  - (b) The names and contact details of the parties;
  - (c) Identification of the arbitration agreement that is invoked;
  - (d) Identification of any contract or other legal instrument out of or in relation to which the dispute arises or, in the absence of such contract or instrument, a brief description of the relevant relationship;
  - (e) A brief description of the claim and an indication of the amount involved, if any;
  - (f) The relief or remedy sought;
  - (g) A proposal as to the number of arbitrators, language and place of arbitration, if the parties have not previously agreed thereon.
  
4. The notice of arbitration may also include:
  - (a) A proposal for the designation of an appointing authority referred to in article 6, paragraph 1;
  - (b) A proposal for the appointment of a sole arbitrator referred to in article 8, paragraph 1;
  - (c) Notification of the appointment of an arbitrator referred to in article 9 or 10.
  
5. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the sufficiency of the notice of arbitration, which shall be finally resolved by the arbitral tribunal.

### ***Response to the notice of arbitration***

#### *Article 4*

1. Within 30 days of the receipt of the notice of arbitration, the respondent shall communicate to the claimant a response to the notice of arbitration, which shall include:
  - (a) The name and contact details of each respondent;
  - (b) A response to the information set forth in the notice of arbitration, pursuant to article 3, paragraphs 3 (c) to (g).
  
2. The response to the notice of arbitration may also include:
  - (a) Any plea that an arbitral tribunal to be constituted under these Rules lacks jurisdiction;

- (b) A proposal for the designation of an appointing authority referred to in article 6, paragraph 1;
- (c) A proposal for the appointment of a sole arbitrator referred to in article 8, paragraph 1;
- (d) Notification of the appointment of an arbitrator referred to in article 9 or 10;
- (e) A brief description of counterclaims or claims for the purpose of a set-off, if any, including where relevant, an indication of the amounts involved, and the relief or remedy sought;
- (f) A notice of arbitration in accordance with article 3 in case the respondent formulates a claim against a party to the arbitration agreement other than the claimant.

3. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the respondent's failure to communicate a response to the notice of arbitration, or an incomplete or late response to the notice of arbitration, which shall be finally resolved by the arbitral tribunal.

### ***Representation and assistance***

#### *Article 5*

Each party may be represented or assisted by persons chosen by it. The names and addresses of such persons must be communicated to all parties and to the arbitral tribunal. Such communication must specify whether the appointment is being made for purposes of representation or assistance. Where a person is to act as a representative of a party, the arbitral tribunal, on its own initiative or at the request of any party, may at any time require proof of authority granted to the representative in such a form as the arbitral tribunal may determine.

### ***Designating and appointing authorities***

#### *Article 6*

1. Unless the parties have already agreed on the choice of an appointing authority, a party may at any time propose the name or names of one or more institutions or persons, including the Secretary-General of the Permanent Court of Arbitration at The Hague (hereinafter called the "PCA"), one of whom would serve as appointing authority.

2. If all parties have not agreed on the choice of an appointing authority within 30 days after a proposal made in accordance

with paragraph 1 has been received by all other parties, any party may request the Secretary-General of the PCA to designate the appointing authority.

3. Where these Rules provide for a period of time within which a party must refer a matter to an appointing authority and no appointing authority has been agreed on or designated, the period is suspended from the date on which a party initiates the procedure for agreeing on or designating an appointing authority until the date of such agreement or designation.

4. Except as referred to in article 41, paragraph 4, if the appointing authority refuses to act, or if it fails to appoint an arbitrator within 30 days after it receives a party's request to do so, fails to act within any other period provided by these Rules, or fails to decide on a challenge to an arbitrator within a reasonable time after receiving a party's request to do so, any party may request the Secretary-General of the PCA to designate a substitute appointing authority.

5. In exercising their functions under these Rules, the appointing authority and the Secretary-General of the PCA may require from any party and the arbitrators the information they deem necessary and they shall give the parties and, where appropriate, the arbitrators, an opportunity to present their views in any manner they consider appropriate. All such communications to and from the appointing authority and the Secretary-General of the PCA shall also be provided by the sender to all other parties.

6. When the appointing authority is requested to appoint an arbitrator pursuant to articles 8, 9, 10 or 14, the party making the request shall send to the appointing authority copies of the notice of arbitration and, if it exists, any response to the notice of arbitration.

7. The appointing authority shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.

## **Section II. Composition of the arbitral tribunal**

### ***Number of arbitrators***

#### *Article 7*

1. If the parties have not previously agreed on the number of arbitrators, and if within 30 days after the receipt by the respondent of the notice of arbitration the parties have not agreed that there shall be only one arbitrator, three arbitrators shall be appointed.

2. Notwithstanding paragraph 1, if no other parties have responded to a party's proposal to appoint a sole arbitrator within the time limit provided for in paragraph 1 and the party or parties concerned have failed to appoint a second arbitrator in accordance with article 9 or 10, the appointing authority may, at the request of a party, appoint a sole arbitrator pursuant to the procedure provided for in article 8, paragraph 2, if it determines that, in view of the circumstances of the case, this is more appropriate.

### ***Appointment of arbitrators (articles 8 to 10)***

#### *Article 8*

1. If the parties have agreed that a sole arbitrator is to be appointed and if within 30 days after receipt by all other parties of a proposal for the appointment of a sole arbitrator the parties have not reached agreement thereon, a sole arbitrator shall, at the request of a party, be appointed by the appointing authority.

2. The appointing authority shall appoint the sole arbitrator as promptly as possible. In making the appointment, the appointing authority shall use the following list-procedure, unless the parties agree that the list-procedure should not be used or unless the appointing authority determines in its discretion that the use of the list-procedure is not appropriate for the case:

- (a) The appointing authority shall communicate to each of the parties an identical list containing at least three names;
- (b) Within 15 days after the receipt of this list, each party may return the list to the appointing authority after having deleted the name or names to which it objects

and numbered the remaining names on the list in the order of its preference;

- (c) After the expiration of the above period of time the appointing authority shall appoint the sole arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties;
- (d) If for any reason the appointment cannot be made according to this procedure, the appointing authority may exercise its discretion in appointing the sole arbitrator.

### *Article 9*

1. If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the arbitral tribunal.
2. If within 30 days after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator it has appointed, the first party may request the appointing authority to appoint the second arbitrator.
3. If within 30 days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be appointed by the appointing authority in the same way as a sole arbitrator would be appointed under article 8.

### *Article 10*

1. For the purposes of article 9, paragraph 1, where three arbitrators are to be appointed and there are multiple parties as claimant or as respondent, unless the parties have agreed to another method of appointment of arbitrators, the multiple parties jointly, whether as claimant or as respondent, shall appoint an arbitrator.
2. If the parties have agreed that the arbitral tribunal is to be composed of a number of arbitrators other than one or three, the arbitrators shall be appointed according to the method agreed upon by the parties.
3. In the event of any failure to constitute the arbitral tribunal under these Rules, the appointing authority shall, at the request of any party, constitute the arbitral tribunal and, in doing so,

may revoke any appointment already made and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator.

***Disclosures by and challenge of arbitrators\*\****  
***(articles 11 to 13)***

*Article 11*

When a person is approached in connection with his or her possible appointment as an arbitrator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, from the time of his or her appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties and the other arbitrators unless they have already been informed by him or her of these circumstances.

*Article 12*

1. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.
2. A party may challenge the arbitrator appointed by it only for reasons of which it becomes aware after the appointment has been made.
3. In the event that an arbitrator fails to act or in the event of the de jure or de facto impossibility of his or her performing his or her functions, the procedure in respect of the challenge of an arbitrator as provided in article 13 shall apply.

*Article 13*

1. A party that intends to challenge an arbitrator shall send notice of its challenge within 15 days after it has been notified of the appointment of the challenged arbitrator, or within 15 days after the circumstances mentioned in articles 11 and 12 became known to that party.

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\*\*Model statements of independence pursuant to article 11 can be found in the annex to the Rules.

2. The notice of challenge shall be communicated to all other parties, to the arbitrator who is challenged and to the other arbitrators. The notice of challenge shall state the reasons for the challenge.
3. When an arbitrator has been challenged by a party, all parties may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his or her office. In neither case does this imply acceptance of the validity of the grounds for the challenge.
4. If, within 15 days from the date of the notice of challenge, all parties do not agree to the challenge or the challenged arbitrator does not withdraw, the party making the challenge may elect to pursue it. In that case, within 30 days from the date of the notice of challenge, it shall seek a decision on the challenge by the appointing authority.

### ***Replacement of an arbitrator***

#### *Article 14*

1. Subject to paragraph 2, in any event where an arbitrator has to be replaced during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in articles 8 to 11 that was applicable to the appointment or choice of the arbitrator being replaced. This procedure shall apply even if during the process of appointing the arbitrator to be replaced, a party had failed to exercise its right to appoint or to participate in the appointment.
2. If, at the request of a party, the appointing authority determines that, in view of the exceptional circumstances of the case, it would be justified for a party to be deprived of its right to appoint a substitute arbitrator, the appointing authority may, after giving an opportunity to the parties and the remaining arbitrators to express their views: (a) appoint the substitute arbitrator; or (b) after the closure of the hearings, authorize the other arbitrators to proceed with the arbitration and make any decision or award.

### ***Repetition of hearings in the event of the replacement of an arbitrator***

#### *Article 15*

If an arbitrator is replaced, the proceedings shall resume at the stage where the arbitrator who was replaced ceased to perform his or her functions, unless the arbitral tribunal decides otherwise.

## ***Exclusion of liability***

### *Article 16*

Save for intentional wrongdoing, the parties waive, to the fullest extent permitted under the applicable law, any claim against the arbitrators, the appointing authority and any person appointed by the arbitral tribunal based on any act or omission in connection with the arbitration.



## **Section III. Arbitral proceedings**

### ***General provisions***

#### *Article 17*

1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at an appropriate stage of the proceedings each party is given a reasonable opportunity of presenting its case. The arbitral tribunal, in exercising its discretion, shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute.
2. As soon as practicable after its constitution and after inviting the parties to express their views, the arbitral tribunal shall establish the provisional timetable of the arbitration. The arbitral tribunal may, at any time, after inviting the parties to express their views, extend or abridge any period of time prescribed under these Rules or agreed by the parties.
3. If at an appropriate stage of the proceedings any party so requests, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.
4. All communications to the arbitral tribunal by one party shall be communicated by that party to all other parties. Such communications shall be made at the same time, except as otherwise permitted by the arbitral tribunal if it may do so under applicable law.
5. The arbitral tribunal may, at the request of any party, allow one or more third persons to be joined in the arbitration as a party provided such person is a party to the arbitration agreement, unless the arbitral tribunal finds, after giving all parties, including the person or persons to be joined, the opportunity to be heard, that joinder should not be permitted because of prejudice to any of those parties. The arbitral tribunal may make a single award or several awards in respect of all parties so involved in the arbitration.

## ***Place of arbitration***

### *Article 18*

1. If the parties have not previously agreed on the place of arbitration, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case. The award shall be deemed to have been made at the place of arbitration.
2. The arbitral tribunal may meet at any location it considers appropriate for deliberations. Unless otherwise agreed by the parties, the arbitral tribunal may also meet at any location it considers appropriate for any other purpose, including hearings.

## ***Language***

### *Article 19*

1. Subject to an agreement by the parties, the arbitral tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings. This determination shall apply to the statement of claim, the statement of defence, and any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.
2. The arbitral tribunal may order that any documents annexed to the statement of claim or statement of defence, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

## ***Statement of claim***

### *Article 20*

1. The claimant shall communicate its statement of claim in writing to the respondent and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The claimant may elect to treat its notice of arbitration referred to in article 3 as a statement of claim, provided that the notice of arbitration also complies with the requirements of paragraphs 2 to 4 of this article.

2. The statement of claim shall include the following particulars:

- (a) The names and contact details of the parties;
- (b) A statement of the facts supporting the claim;
- (c) The points at issue;
- (d) The relief or remedy sought;
- (e) The legal grounds or arguments supporting the claim.

3. A copy of any contract or other legal instrument out of or in relation to which the dispute arises and of the arbitration agreement shall be annexed to the statement of claim.

4. The statement of claim should, as far as possible, be accompanied by all documents and other evidence relied upon by the claimant, or contain references to them.

### ***Statement of defence***

#### *Article 21*

1. The respondent shall communicate its statement of defence in writing to the claimant and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The respondent may elect to treat its response to the notice of arbitration referred to in article 4 as a statement of defence, provided that the response to the notice of arbitration also complies with the requirements of paragraph 2 of this article.

2. The statement of defence shall reply to the particulars (b) to (e) of the statement of claim (art. 20, para. 2). The statement of defence should, as far as possible, be accompanied by all documents and other evidence relied upon by the respondent, or contain references to them.

3. In its statement of defence, or at a later stage in the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a counterclaim or rely on a claim for the purpose of a set-off provided that the arbitral tribunal has jurisdiction over it.

4. The provisions of article 20, paragraphs 2 to 4, shall apply to a counterclaim, a claim under article 4, paragraph 2 (f), and a claim relied on for the purpose of a set-off.

## ***Amendments to the claim or defence***

### *Article 22*

During the course of the arbitral proceedings, a party may amend or supplement its claim or defence, including a counterclaim or a claim for the purpose of a set-off, unless the arbitral tribunal considers it inappropriate to allow such amendment or supplement having regard to the delay in making it or prejudice to other parties or any other circumstances. However, a claim or defence, including a counterclaim or a claim for the purpose of a set-off, may not be amended or supplemented in such a manner that the amended or supplemented claim or defence falls outside the jurisdiction of the arbitral tribunal.

## ***Pleas as to the jurisdiction of the arbitral tribunal***

### *Article 23*

1. The arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null shall not entail automatically the invalidity of the arbitration clause.

2. A plea that the arbitral tribunal does not have jurisdiction shall be raised no later than in the statement of defence or, with respect to a counterclaim or a claim for the purpose of a set-off, in the reply to the counterclaim or to the claim for the purpose of a set-off. A party is not precluded from raising such a plea by the fact that it has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

3. The arbitral tribunal may rule on a plea referred to in paragraph 2 either as a preliminary question or in an award on the merits. The arbitral tribunal may continue the arbitral proceedings and make an award, notwithstanding any pending challenge to its jurisdiction before a court.

## ***Further written statements***

### *Article 24*

The arbitral tribunal shall decide which further written statements, in addition to the statement of claim and the statement of defence, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.

## ***Periods of time***

### *Article 25*

The periods of time fixed by the arbitral tribunal for the communication of written statements (including the statement of claim and statement of defence) should not exceed 45 days. However, the arbitral tribunal may extend the time limits if it concludes that an extension is justified.

## ***Interim measures***

### *Article 26*

1. The arbitral tribunal may, at the request of a party, grant interim measures.

2. An interim measure is any temporary measure by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party, for example and without limitation, to:

- (a) Maintain or restore the status quo pending determination of the dispute;
- (b) Take action that would prevent, or refrain from taking action that is likely to cause, (i) current or imminent harm or (ii) prejudice to the arbitral process itself;
- (c) Provide a means of preserving assets out of which a subsequent award may be satisfied; or
- (d) Preserve evidence that may be relevant and material to the resolution of the dispute.

3. The party requesting an interim measure under paragraphs 2 (a) to (c) shall satisfy the arbitral tribunal that:

- (a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such

harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and

- (b) There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

4. With regard to a request for an interim measure under paragraph 2 (d), the requirements in paragraphs 3 (a) and (b) shall apply only to the extent the arbitral tribunal considers appropriate.

5. The arbitral tribunal may modify, suspend or terminate an interim measure it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.

6. The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.

7. The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the interim measure was requested or granted.

8. The party requesting an interim measure may be liable for any costs and damages caused by the measure to any party if the arbitral tribunal later determines that, in the circumstances then prevailing, the measure should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.

9. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

## ***Evidence***

### ***Article 27***

1. Each party shall have the burden of proving the facts relied on to support its claim or defence.

2. Witnesses, including expert witnesses, who are presented by the parties to testify to the arbitral tribunal on any issue of fact or expertise may be any individual, notwithstanding that

the individual is a party to the arbitration or in any way related to a party. Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, may be presented in writing and signed by them.

3. At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the arbitral tribunal shall determine.

4. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

## ***Hearings***

### ***Article 28***

1. In the event of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof.

2. Witnesses, including expert witnesses, may be heard under the conditions and examined in the manner set by the arbitral tribunal.

3. Hearings shall be held in camera unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses, including expert witnesses, during the testimony of such other witnesses, except that a witness, including an expert witness, who is a party to the arbitration shall not, in principle, be asked to retire.

4. The arbitral tribunal may direct that witnesses, including expert witnesses, be examined through means of telecommunication that do not require their physical presence at the hearing (such as videoconference).

## ***Experts appointed by the arbitral tribunal***

### ***Article 29***

1. After consultation with the parties, the arbitral tribunal may appoint one or more independent experts to report to it, in writing, on specific issues to be determined by the arbitral tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.

2. The expert shall, in principle before accepting appointment, submit to the arbitral tribunal and to the parties a description of his or her qualifications and a statement of his or her impartiality and independence. Within the time ordered by the arbitral tribunal, the parties shall inform the arbitral tribunal whether they have any objections as to the expert's qualifications, impartiality or independence. The arbitral tribunal shall decide promptly whether to accept any such objections. After an expert's appointment, a party may object to the expert's qualifications, impartiality or independence only if the objection is for reasons of which the party becomes aware after the appointment has been made. The arbitral tribunal shall decide promptly what, if any, action to take.
3. The parties shall give the expert any relevant information or produce for his or her inspection any relevant documents or goods that he or she may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.
4. Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties, which shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his or her report.
5. At the request of any party, the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this hearing, any party may present expert witnesses in order to testify on the points at issue. The provisions of article 28 shall be applicable to such proceedings.

## ***Default***

### *Article 30*

1. If, within the period of time fixed by these Rules or the arbitral tribunal, without showing sufficient cause:
  - (a) The claimant has failed to communicate its statement of claim, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings, unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so;
  - (b) The respondent has failed to communicate its response to the notice of arbitration or its statement of defence, the arbitral tribunal shall order that the proceedings



continue, without treating such failure in itself as an admission of the claimant's allegations; the provisions of this subparagraph also apply to a claimant's failure to submit a defence to a counterclaim or to a claim for the purpose of a set-off.

2. If a party, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.

3. If a party, duly invited by the arbitral tribunal to produce documents, exhibits or other evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

### ***Closure of hearings***

#### *Article 31*

1. The arbitral tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.

2. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own initiative or upon application of a party, to reopen the hearings at any time before the award is made.

### ***Waiver of right to object***

#### *Article 32*

A failure by any party to object promptly to any non-compliance with these Rules or with any requirement of the arbitration agreement shall be deemed to be a waiver of the right of such party to make such an objection, unless such party can show that, under the circumstances, its failure to object was justified.

## **Section IV. The award**

### ***Decisions***

#### ***Article 33***

1. When there is more than one arbitrator, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators.
2. In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorizes, the presiding arbitrator may decide alone, subject to revision, if any, by the arbitral tribunal.

### ***Form and effect of the award***

#### ***Article 34***

1. The arbitral tribunal may make separate awards on different issues at different times.
2. All awards shall be made in writing and shall be final and binding on the parties. The parties shall carry out all awards without delay.
3. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.
4. An award shall be signed by the arbitrators and it shall contain the date on which the award was made and indicate the place of arbitration. Where there is more than one arbitrator and any of them fails to sign, the award shall state the reason for the absence of the signature.
5. An award may be made public with the consent of all parties or where and to the extent disclosure is required of a party by legal duty, to protect or pursue a legal right or in relation to legal proceedings before a court or other competent authority.
6. Copies of the award signed by the arbitrators shall be communicated to the parties by the arbitral tribunal.

## ***Applicable law, amiable compositeur***

### *Article 35*

1. The arbitral tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law which it determines to be appropriate.
2. The arbitral tribunal shall decide as *amiable compositeur* or *ex aequo et bono* only if the parties have expressly authorized the arbitral tribunal to do so.
3. In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract, if any, and shall take into account any usage of trade applicable to the transaction.

## ***Settlement or other grounds for termination***

### *Article 36*

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by the parties and accepted by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.
2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so.
3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties. Where an arbitral award on agreed terms is made, the provisions of article 34, paragraphs 2, 4 and 5, shall apply.

## ***Interpretation of the award***

### *Article 37*

1. Within 30 days after the receipt of the award, a party, with notice to the other parties, may request that the arbitral tribunal give an interpretation of the award.
2. The interpretation shall be given in writing within 45 days after the receipt of the request. The interpretation shall form part of the award and the provisions of article 34, paragraphs 2 to 6, shall apply.

## ***Correction of the award***

### *Article 38*

1. Within 30 days after the receipt of the award, a party, with notice to the other parties, may request the arbitral tribunal to correct in the award any error in computation, any clerical or typographical error, or any error or omission of a similar nature. If the arbitral tribunal considers that the request is justified, it shall make the correction within 45 days of receipt of the request.
2. The arbitral tribunal may within 30 days after the communication of the award make such corrections on its own initiative.
3. Such corrections shall be in writing and shall form part of the award. The provisions of article 34, paragraphs 2 to 6, shall apply.

## ***Additional award***

### *Article 39*

1. Within 30 days after the receipt of the termination order or the award, a party, with notice to the other parties, may request the arbitral tribunal to make an award or an additional award as to claims presented in the arbitral proceedings but not decided by the arbitral tribunal.
2. If the arbitral tribunal considers the request for an award or additional award to be justified, it shall render or complete its award within 60 days after the receipt of the request. The arbitral tribunal may extend, if necessary, the period of time within which it shall make the award.

3. When such an award or additional award is made, the provisions of article 34, paragraphs 2 to 6, shall apply.

### ***Definition of costs***

#### *Article 40*

1. The arbitral tribunal shall fix the costs of arbitration in the final award and, if it deems appropriate, in another decision.

2. The term “costs” includes only:

- (a) The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself in accordance with article 41;
- (b) The reasonable travel and other expenses incurred by the arbitrators;
- (c) The reasonable costs of expert advice and of other assistance required by the arbitral tribunal;
- (d) The reasonable travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;
- (e) The legal and other costs incurred by the parties in relation to the arbitration to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;
- (f) Any fees and expenses of the appointing authority as well as the fees and expenses of the Secretary-General of the PCA.

3. In relation to interpretation, correction or completion of any award under articles 37 to 39, the arbitral tribunal may charge the costs referred to in paragraphs 2 (b) to (f), but no additional fees.

### ***Fees and expenses of arbitrators***

#### *Article 41*

1. The fees and expenses of the arbitrators shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstances of the case.

2. If there is an appointing authority and it applies or has stated that it will apply a schedule or particular method for determining the fees for arbitrators in international cases, the arbitral tribunal in

fixing its fees shall take that schedule or method into account to the extent that it considers appropriate in the circumstances of the case.

3. Promptly after its constitution, the arbitral tribunal shall inform the parties as to how it proposes to determine its fees and expenses, including any rates it intends to apply. Within 15 days of receiving that proposal, any party may refer the proposal to the appointing authority for review. If, within 45 days of receipt of such a referral, the appointing authority finds that the proposal of the arbitral tribunal is inconsistent with paragraph 1, it shall make any necessary adjustments thereto, which shall be binding upon the arbitral tribunal.

4. (a) When informing the parties of the arbitrators' fees and expenses that have been fixed pursuant to article 40, paragraphs 2 (a) and (b), the arbitral tribunal shall also explain the manner in which the corresponding amounts have been calculated;

(b) Within 15 days of receiving the arbitral tribunal's determination of fees and expenses, any party may refer for review such determination to the appointing authority. If no appointing authority has been agreed upon or designated, or if the appointing authority fails to act within the time specified in these Rules, then the review shall be made by the Secretary-General of the PCA;

(c) If the appointing authority or the Secretary-General of the PCA finds that the arbitral tribunal's determination is inconsistent with the arbitral tribunal's proposal (and any adjustment thereto) under paragraph 3 or is otherwise manifestly excessive, it shall, within 45 days of receiving such a referral, make any adjustments to the arbitral tribunal's determination that are necessary to satisfy the criteria in paragraph 1. Any such adjustments shall be binding upon the arbitral tribunal;

(d) Any such adjustments shall either be included by the arbitral tribunal in its award or, if the award has already been issued, be implemented in a correction to the award, to which the procedure of article 38, paragraph 3, shall apply.

5. Throughout the procedure under paragraphs 3 and 4, the arbitral tribunal shall proceed with the arbitration, in accordance with article 17, paragraph 1.

6. A referral under paragraph 4 shall not affect any determination in the award other than the arbitral tribunal's fees and expenses;

nor shall it delay the recognition and enforcement of all parts of the award other than those relating to the determination of the arbitral tribunal's fees and expenses.

### ***Allocation of costs***

#### *Article 42*

1. The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

2. The arbitral tribunal shall in the final award or, if it deems appropriate, in any other award, determine any amount that a party may have to pay to another party as a result of the decision on allocation of costs.

### ***Deposit of costs***

#### *Article 43*

1. The arbitral tribunal, on its establishment, may request the parties to deposit an equal amount as an advance for the costs referred to in article 40, paragraphs 2 (a) to (c).

2. During the course of the arbitral proceedings the arbitral tribunal may request supplementary deposits from the parties.

3. If an appointing authority has been agreed upon or designated, and when a party so requests and the appointing authority consents to perform the function, the arbitral tribunal shall fix the amounts of any deposits or supplementary deposits only after consultation with the appointing authority, which may make any comments to the arbitral tribunal that it deems appropriate concerning the amount of such deposits and supplementary deposits.

4. If the required deposits are not paid in full within 30 days after the receipt of the request, the arbitral tribunal shall so inform the parties in order that one or more of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.

5. After a termination order or final award has been made, the arbitral tribunal shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.



## ANNEX

### Model arbitration clause for contracts

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules.

*Note. Parties should consider adding:*

- (a) The appointing authority shall be ... [name of institution or person];
- (b) The number of arbitrators shall be ... [one or three];
- (c) The place of arbitration shall be ... [town and country];
- (d) The language to be used in the arbitral proceedings shall be ... .

### Possible waiver statement

*Note. If the parties wish to exclude recourse against the arbitral award that may be available under the applicable law, they may consider adding a provision to that effect as suggested below, considering, however, that the effectiveness and conditions of such an exclusion depend on the applicable law.*

#### *Waiver*

The parties hereby waive their right to any form of recourse against an award to any court or other competent authority, insofar as such waiver can validly be made under the applicable law.

### Model statements of independence pursuant to article 11 of the Rules

#### *No circumstances to disclose*

I am impartial and independent of each of the parties and intend to remain so. To the best of my knowledge, there are no circumstances, past or present, likely to give rise to justifiable doubts as to my impartiality or independence. I shall promptly notify the parties and the other arbitrators of

any such circumstances that may subsequently come to my attention during this arbitration.

*Circumstances to disclose*

I am impartial and independent of each of the parties and intend to remain so. Attached is a statement made pursuant to article 11 of the UNCITRAL Arbitration Rules of (a) my past and present professional, business and other relationships with the parties and (b) any other relevant circumstances. [Include statement.] I confirm that those circumstances do not affect my independence and impartiality. I shall promptly notify the parties and the other arbitrators of any such further relationships or circumstances that may subsequently come to my attention during this arbitration.

*Note. Any party may consider requesting from the arbitrator the following addition to the statement of independence:*

I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this arbitration diligently, efficiently and in accordance with the time limits in the Rules.







Printed in Austria



V.11-80167—April 2011—1,500