

Norton Rose Fulbright Canada LLP
1 Place Ville Marie, Suite 2500
Montréal, Quebec H3B 1R1 Canada

F: +1 514.286.5474
nortonrosefulbright.com

Pierre Bienvenu, Ad. E.
+1 514.847.4452
pierre.bienvenu@nortonrosefulbright.com

Your reference	Our reference
01-18-0004-2702	1001083941

5 March 2020

By email

Mr. Arif H. Ali
Mr. Alexandre de Gramont
Ms. Rose Marie Wong
Dechert LLP
1900 K Street, NW
Washington, D.C. 20006-1110

Mr. Ethan Litwin
Constantine Cannon LLP
335 Madison Avenue
New York, NY 10017

Mr. Jeffrey A. LeVee
Mr. Eric P. Enson
Ms. Kelly Ozurovich
Jones Day LLP
555 South Flower Street, Fiftieth Floor
Los Angeles, California 90071-2300

Mr. Steven L. Smith
Mr. David Wallach
Jones Day LLP
555 California Street, 26th Floor
San Francisco, California 94104

Mr. James S. Blackburn
Mr. Ronald Johnston
Ms. Maria Chedid
Arnold & Porter Kaye Scholer LLP
44th Floor
777 South Figueroa Street
Los Angeles, California 90017-5844

Mr. Charles Elder
Irell & Manella LLP
1800 Avenue of the Stars
Suite 900
Los Angeles, California 90067-4276

Mr. Steven A. Marenberg
Paul Hastings LLP
1999 Avenue of the Stars, 27th Floor
Los Angeles, California 90067

Afilias Domains No. 3 Limited v. Internet Corporation for Assigned Names and Numbers – ICDR Case No. 01-18-0004-2702

Dear Counsel,

On behalf of the Panel, I write further to the case management conference held in this case on 4 March 2020, the proposed agenda for which had been circulated in advance under cover of my email to counsel for the Parties and *Amici* dated 3 March 2020.

This letter and the attached Procedural Timetable shall together constitute the Panel's First Procedural Order in relation to Phase II of the IRP.

List(s) of Issues to be Decided in Phase II

The Parties shall consult to develop a joint list of agreed issues to be decided in Phase II, to be filed with the Tribunal by 13 March 2020. Any disagreement between the Parties as to the contents of the said list shall be reflected in separate list(s) of additional issues to be decided in Phase II, to be prepared, as the case may be, by the Claimant and/or the Respondent, and to be filed with the Panel on 13 March 2020, along with the joint list of agreed issues to be decided in Phase II.

Procedural Timetable for Phase II

The Parties have presented alternative proposed procedural timetables for Phase II. The main differences between the competing timetables are the timing of the document production process that each Party agrees should be provided for in the timetable, and the timing of the filing of the *Amici's* Briefs.

Document Production

The Claimant favours document production taking place after the filing of *Afilias'* Reply, ICANN's Rejoinder and the *Amici's* Briefs, such production to be followed by the simultaneous filing of Responses from *Afilias* and ICANN. The Respondent for its part proposes a document production stage at the outset of Phase II, to be followed by a briefing schedule for the filing of the Parties' additional submissions and the *Amici's* Briefs.

As reflected in the attached Procedural Timetable for Phase II, the Panel has decided to provide for document production at the outset of Phase II, as proposed by the Respondent, so as to give the Parties the benefit of the documents produced during this process in the preparation of their additional submissions.

During the case management conference, the Parties agreed that the document production process would be governed by Rule 8 of the *Interim Supplementary Procedures for ICANN IRP (Interim Procedures)*, to be applied by the Panel using as non-binding guidelines the *IBA Rules on the Taking of Evidence in International Arbitration* (2010).

Briefing Schedule

With respect to the other elements of the Procedural Timetable, the Panel prefers the Claimant's proposed briefing sequence, as set out in its counsel's letter dated 2 March 2020, which provides for the filing of the Claimant's Reply, the Respondent's Rejoinder, the *Amici's* Briefs, and an opportunity for the Claimant and the Respondent subsequently to respond simultaneously to the *Amici's* Briefs.

Attached to this letter is a Procedural Timetable for Phase II reflecting these decisions. The Parties and the *Amici* are hereby directed to comply with the attached Procedural Timetable for Phase II.

Page Limitations for Party Submissions

Rule 6 of the Interim Procedures provide that the "initial written submissions of the parties" cannot exceed 25 pages each. Rule 6 also sets a 15-page limit for "additional written submissions from any person or entity who is intervening as a CLAIMANT or who is participating as an amicus".

In the course of the case management conference, when the Panel invited discussion of whether page limitations should be imposed on the Parties' additional submissions in Phase II, counsel for the Parties appear to agree that the page limitations set out in Rule 6 do not apply to the Reply, Rejoinder and Responses to the *Amici's* Briefs to be filed by the Parties in accordance with the attached timetable. The Panel is of the same view.

As reflected in the Parties' initial submissions in this IRP and their recent correspondence relating to the list of issues to be decided in Phase II, the issues arising on the merits in this IRP are numerous, and some of them are complex. Accordingly, the Panel directs that *Afilias'* Reply and ICANN's Rejoinder should not exceed 60 pages, double-spaced in 12-point font. The page limitation of the Parties' Responses to the *Amici's* Briefs will be determined once the page limit of the *Amici's* Briefs has been decided, in accordance with the Panel's Decision on Phase I and the paragraphs below.

Issues for *Amici's* Briefs

The Panel's Decision on Phase I contemplates the Panel deciding, in consultation with the Parties and the *Amici* based on the list of issues to be decided in Phase II, "the questions as to which the *Amici* will be permitted to submit briefings to the Panel, as well as the deadlines, page limits and other modalities of the filing of those briefings and supporting exhibits related to the IRP" (Decision on Phase I, para. 205(b) (iii)).

Based on the list of agreed issues to be decided in Phase II and, as the case may be, the list(s) of additional issues to be decided in Phase II, the Parties and the *Amici* shall, on 24 April 2020, file submissions of no more than 5 pages indicating the questions as to which, in their submission, the *Amici* should be permitted to submit briefings to the Panel, and their view as to the page limits and other modalities of the filing of those briefings. The Panel's determination of these questions will be made shortly thereafter.

Merits Hearing

The Parties have agreed that the merits hearing scheduled to take place on 3 to 7 August 2020 would be held in Chicago, IL, in the offices of JAMS. The Administrative Secretary has, by separate email communication, provided the Parties with the terms that JAMS proposes for the rental of suitable facilities for that purpose. The Parties are invited to contact JAMS directly and to confirm to the Panel the reservation of these facilities for the hearing.

Record for Phase II

The Parties have agreed to submit to the Panel a list of the constituent elements of the Phase II record reflecting as of the day of filing those elements of the IRP record that remain relevant to Phase II. The Panel asks that this list be hyperlinked to its constituent elements. The Panel directs that this list be filed by 20 March 2020.

Sincerely,



Pierre Bienvenu, Ad. E.
Senior Partner

Enclosure

cc: Prof. Catherine Kessedjian, M4bb
Mr. Richard Chernick, JAMS
Mr. Tom Simotas, ICDR

**IN THE MATTER OF AN INDEPENDENT REVIEW PROCESS
BEFORE THE INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION**

ICDR Case No. 01-18-0004-2702

AFILIAS DOMAINS NO. 3 LIMITED,

Claimant

v.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS,

Respondent

PROCEDURAL TIMETABLE FOR PHASE II

5 March 2020

Members of the IRP Panel

Catherine Kessedjian
Richard Chernick
Pierre Bienvenu Ad. E., Chair

Administrative Secretary to the IRP Panel

Virginie Blanchette-Séguin

PROCEDURAL TIMETABLE FOR PHASE II

<u>No.</u>	<u>Action</u>	<u>Party</u>	<u>Date</u>
1.	Simultaneous requests to produce (via Redfern Schedules)	Afilias and ICANN	6 March 2020
2.	Simultaneous responses/objections (via Redfern Schedules)	Afilias and ICANN	13 March 2020
3.	List of agreed issues to be decided in Phase II and, as the case may be, list(s) of additional issues to be decided in Phase II	Afilias and ICANN	13 March 2020
4.	Simultaneous replies to responses/objections (via Redfern Schedules)	Afilias and ICANN	20 March 2020
5.	Hyperlinked list of constituent elements (as of that date) of the Phase II record	Afilias and ICANN	20 March 2020
6.	Panel ruling on outstanding objections	N/A	27 March 2020
7.	Production of documents	Afilias and ICANN	17 April 2020
8.	Submissions on questions as to which the <i>Amici</i> will be permitted to submit briefings to the Panel, as well as page limits and other modalities	Afilias, ICANN, VeriSign and NDC	24 April 2020
9.	Reply (along with all supporting exhibits, witness statements, expert reports and legal authorities)	Afilias	1 May 2020
10.	Rejoinder (along with all supporting exhibits, witness statements, expert reports and legal authorities)	ICANN	29 May 2020
11.	<i>Amici</i> 's Briefs (along with all supporting exhibits, if any, and legal authorities)	VeriSign and NDC	26 June 2020
12.	Simultaneous Responses to the <i>Amici</i> 's Briefs	Afilias and ICANN	15 July 2020
13.	Parties to identify witnesses called for cross-examination at the hearing	Afilias and ICANN	24 July 2020
14.	Final status and pre-hearing conference	Afilias, ICANN, VeriSign and NDC	29 July 2020
15.	Hearing	Afilias, ICANN, VeriSign and NDC	3-7 August 2020
16.	Post-hearing submissions	Afilias, ICANN, VeriSign and NDC	TBD