

ARIF HYDER ALI

Contact Information Redacted

May 1, 2018

VIA E-MAIL

Jeffrey A. LeVee
Jones Day
555 South Flower Street
Fiftieth Floor
Los Angeles, CA 90071

Re: .WEB

Dear Jeff:

Thank you for your letter dated 28 April 2018 on behalf of ICANN. However, we do not understand the basis for your assertion that “in this particular matter, ICANN has been quite transparent” about its conduct. To date, ICANN has provided *no* information about the investigation (if any) it has undertaken regarding the concerns raised by Afilias – viz., that the bid for .WEB that NDC supposedly made on its own behalf was in fact secretly funded by and made for the benefit of Verisign.

As you know, Afilias first raised its concerns that the conduct of NDC and Verisign had violated the rules set forth in the 2012 gTLD Applicant Guidebook in August 2016. In September 2016, ICANN sent Afilias a lengthy set of questions regarding Afilias’ concerns, which Afilias fully answered in October 2016. More than 18 months later, Afilias has received no further information from ICANN regarding this matter.

You refer in your letter to “papers publicly filed in the federal court action that Ruby Glen initiated,” but do not identify the particular submissions to which you are referring. We are of course aware of the questions that Ruby Glen raised in June and July 2016, concerning whether NDC had undergone a change in its ownership or control that caused its withdrawal from the private auction. You are perhaps referring to the exhibits reflecting the brief correspondence from July 2016, in which ICANN asked NDC if it had undergone any change in ownership or control, and NDC responded that it had not. But that correspondence pre-dates Verisign’s public acknowledgement in August 2016 that it had been the real party in interest behind NDC’s bid. We do not see anything in the public

record (whether in the *Ruby Glen* submissions or elsewhere) to indicate that ICANN has taken any steps to address the concerns that Afilias raised about the secret involvement of Verisign in NDC's bid, apart from issuing the written questions sent to Afilias and other members of the .WEB contention set in September 2016.

You also assert in your letter that "ICANN will continue to follow its processes." But ICANN has provided no information about what those "processes" are or when they will be completed. Indeed, the public information available to Afilias regarding the status of .WEB is contradictory. ICANN reports that the .WEB contention set is still "on hold" but that NDC's application status is "in contracting."¹ We do not understand how the contention set can be "on hold" if ICANN is currently "contracting" with NDC.

In the meantime, you assert that ICANN is rejecting Afilias' request for 60 days' notice of a change to the "on-hold" status of the .WEB contention set. Afilias' request is entirely reasonable. As we explained, Afilias has asked for this notice because – in the event that ICANN decides to delegate .WEB to NDC and/or Verisign – Afilias wishes to have adequate time to challenge that delegation *before* the delegation is made and a Registry Agreement is executed, which would otherwise result in irreparable injury to Afilias. It will not be to anyone's benefit if Afilias were to challenge the delegation successfully after ICANN has already entered into a Registry Agreement for .WEB with NDC and/or Verisign.

You also assert that providing Afilias with 60 days' notice to a change to the "on-hold" status would constitute a "special notice that is not available to others" But we are unable to find any provision in ICANN's "documented policies" stating the notice period to be given to applicants who plan to challenge a proposed delegation of contested TLD licensing rights. Afilias has no objection to ICANN's providing the same 60-day notice to any other member of the .WEB contention set or other parties who are similarly situated to Afilias. If ICANN believes that some other notice period is applicable, we would ask ICANN to state what the notice period is and to identify where in its policies such notice period is set forth.

¹ See <https://gtldresult.icann.org/applicationstatus/applicationdetails/1053>.

Finally, you assert that ICANN “vehemently disputes” our “characterizations.” At this point, we have no idea which of our “characterizations” ICANN is disputing, other than our assertion that ICANN has not acted transparently in this matter. (E.g., does ICANN dispute that Verisign secretly funded NDC’s bid or that Verisign was secretly the true party in interest behind NDC’s bid? If not, does ICANN actually believe that such conduct complied with the Guidebook, or that ICANN’s failure (so far) to address such conduct is consistent with its Core Values?) We can assure you that ICANN is not helping itself on the issue of transparency when it refuses to provide us with the basic information we have requested – including what (if anything) ICANN is doing to address Afilias’ concerns and how much notice Afilias might receive before ICANN makes a decision on the .WEB contention set and proceeds to enter a Registry Agreement.

We look forward to your prompt response on these matters.

Sincerely,

A handwritten signature in black ink, appearing to read 'Arif Hyder Ali', with a long horizontal flourish extending to the right.

Arif Hyder Ali
Counsel for Afilias