

INDEPENDENT REVIEW PROCESS
INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

GCCIX, W.L.L.,)	ICDR CASE NO. 01-21-0004-1048
)	
Claimant,)	
)	
and)	
)	
THE INTERNET CORPORATION FOR)	
ASSIGNED NAMES AND NUMBERS,)	
)	
Respondent.)	

**CLAIMANT’S SUR-REPLY TO
ICANN’S APPLICATION TO STAY THE IRP**

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GCCIX, W.L.L.
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ICANN still offers no explanation whatsoever as to why it did not initiate this GAC discussion many years ago -- in 2013, 2014, 2016 or 2019 -- when it received letters from Claimant that Redacted - Confidential Information . Nor does ICANN attempt to explain in any detail why such a discussion could possibly be “necessary” now, when it could have been done at any time previously. Thus, ICANN’s request is frivolous, and offered for no other purpose than to delay this matter and cause further harm to Claimant.

A. ICANN Disingenuously Quotes Only Half of ICDR Rule 27(1).

ICANN’s own rules indicate that interim relief shall be designed only to maintain the *status quo*, not to alter and confuse the issues as ICANN wants to do now. (Interim Supp. Rules, #10.) ICANN cites only to ICDR Rule 27(1) for the proposition that the Panel can award any interim relief that the Panel “deems necessary.” (Reply, #1.) But that more general rule cannot take precedence over the more specific IRP procedural rule that ICANN itself has adopted for IRP proceedings.

Moreover, in further bad faith, ICANN twice only quoted to the Panel half of that Rule, omitting the critical part that explains what “necessary” measures are contemplated by it. (App. #25; Reply, #6.) The Rule fully states (emphasis added):

At the request of any party, the arbitral tribunal may order or award any interim or conservatory measures it deems necessary, **including injunctive relief and measures for the protection or conservation of property.**

So that Rule is entirely consistent with the Supplemental Rules, as it only contemplates measures to maintain the *status quo* – not measures which would alter and/or confuse the facts of the matter. ICANN requests neither injunctive relief nor measures for protection of property, and thus the sole legal authority that ICANN cites is facially inapplicable to its Request.

There is no precedent, nor any semblance of any procedural rule, which would allow ICANN time to remediate its failings, after an IRP is filed. Such a precedent would effectively

eviscerate the IRP. The time for ICANN to have remediated was during the CEP, when it had some eight years to do so, and was repeatedly urged by Claimant to do so – but instead entirely ignored Claimant’s communications and did nothing to remediate Claimant’s concerns. ICANN cannot be allowed to evade accountability now under its Bylaws, by merely admitting that it should have done more and now wants to do more.

B. ICANN Makes No Effort to Explain Why It Did Not Do This Sooner, Nor How GAC Discussion Could Change Any Material Issue in This Case.

ICANN has made no effort whatsoever to explain why it refused to take this step for some eight years, despite Claimant’s repeated pleas. Nor has ICANN made any effort to explain why it needs six more months for this ongoing discussion with the GAC -- when it has already had six months since the Board resolution seeking a stay, and since it first requested a six-month stay. By its IRP Complaint, the Claimant seeks to hold ICANN accountable only for its past misconduct, which cannot be cured now by further discussion with the GAC.

ICANN fails to explain how a stay of this IRP could possibly resolve or even narrow issues in this case, and thus offers no specific reason why it should be stayed. Nothing that ICANN does now can change either the material facts or the claims asserted in this IRP. ICANN repeatedly says that now it wants to consider “prior IRP precedents”, but those .Africa and .Amazon decisions are from 2015 and 2017, respectively. ICANN’s failure to consider those precedents in a timely manner has been in bad faith, and is one of the bases of Claimant’s IRP Complaint.

ICANN seeks only to delay the IRP so that it can create more confusion, and further penalize Claimant who has waited almost a decade for proper consideration of its application. The prior precedents indicate what ICANN already should have done. It should have returned the application for processing as in .Africa, or facilitated a dialogue between Claimant and GAC

with the express purpose of allowing Claimant, as the sole and qualified applicant, to operate the TLD.

But ICANN is not doing either of those things. And ICANN is unlikely to do either of those things unless and until ordered by this Panel to do so. The prior decisions do not indicate that ICANN shall be allowed to rewrite the history of what it already has done, or has not done. Instead, those precedents are part of the history of this case, as ICANN has ignored them for so long despite Claimant's repeated written protestations. That has been in bad faith, which now is exacerbated by ICANN's request to stay the matter even longer, creating even more unnecessary confusion in the matter, and creating more expense and delay to Claimant's quest for some semblance of justice.

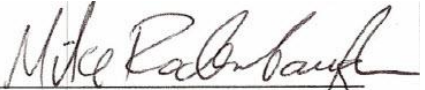
ICANN may continue its discussions with the GAC, and may take any further decision that ICANN decides to take. But it cannot be allowed to suspend this proceeding for that reason or any other. The GAC only meets three times a year, and just held a meeting – six months after the Board resolution in this matter. It issued its 52-page Communique on March 14. (Exhibit A.) There is no mention of this matter. That proves there is no additional "GAC Advice" that could possibly make any difference, and ICANN offers no indication that there will be.

C. Conclusion.

This case exemplifies Gladstone's legal maxim that "justice delayed is justice denied." It has been nearly a decade since 2013, when Claimant first asked ICANN to substantiate its decision. Claimant then patiently asked ICANN for such substantiation, *inter alia*, three more times. ICANN has no excuse, nor any equitable reason, for seeking six more months to do so now. ICANN's Bylaws call for IRP proceedings to be concluded within six months. Yet this IRP is already nine months old, and has hardly begun.

Claimant maintains that ICANN has brought this application in bad faith, for no other purpose than to delay the IRP and to cause Claimant undue expense. ICANN has cited scant if any legal authority, and no equitable basis whatsoever, to support its unprecedented and unseemly application to alter the *status quo*, attempt extremely belated remedial action, and attempt to evade accountability for its past misconduct. Therefore, Claimant respectfully requests that ICANN's application be denied, that it be deemed frivolous and abusive, and that ICANN be ordered to pay the reasonable attorneys' fees incurred by Claimant in opposition.

Respectfully Submitted,

By: 
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