

**INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION**

Independent Review Process Panel

Namecheap, Inc.

Claimant,

Case Number: 01-20-0000-6787

- and -

Internet Corporation for Assigned Names  
and Numbers (ICANN)

Respondent.

**PROCEDURAL ORDER NO. 6  
(Ruling on Respondent's Motion to Dismiss)**

1. The Request for Independent Review Process ("IRP Request") of the Claimant, Namecheap, Inc. ("Namecheap"), challenges the following actions by the Respondent Internet Corporation for Assigned Names and Numbers ("ICANN"):
  - i. ICANN's handling of an announcement by the .org registry operator (Public Interest Registry or "PIR") regarding a transfer of PIR's ownership to a for-profit company, Ethos Capital (the "Change of Control Issue"); and
  - ii. As stated by Namecheap in its IRP Request, "ICANN's decision to remove the provisions according to which the operators of .org, .info and .biz were bound by maximum prices they could charge to ICANN-accredited registrars for new and renewal domain name registrations and for transferring a domain name registration from one ICANN-accredited registrar to another" (the "Price Control Issue").
2. Namecheap's IRP Request sought, *inter alia*, the following relief:
  - i. A declaration that, in order to comply with its Articles of Incorporation and Bylaws, ICANN must annul the decision that removed price caps in the .org, .info and .biz registry agreements;
  - ii. A declaration that, in order to comply with its Articles of Incorporation and Bylaws, ICANN must ensure that .org remains dedicated to the non-

profit sector by adopting measures such as requiring that .org be operated by a non-profit entity that charges registry fees that remain as low as feasible consistent with the maintenance of good quality service; and

- iii. A declaration that, in order to comply with its Articles of Incorporation and Bylaws, ICANN must ensure that price caps from legacy gTLDs can only be removed following policy development process that takes due account of the interests of the Internet user and with the involvement of the different stakeholders.

3. As permitted in Procedural Order No. 3, ICANN filed a Motion to Dismiss Namecheap's IRP Request in its entirety on the bases that: 1) Namecheap is not a proper "Claimant" under ICANN's Bylaws as to both the Change of Control and the Price Control Issues, in that it has not "suffer[ed] an injury or harm that is directly and causally connected to the alleged violation"; and 2) the allegations in the IRP Request regarding a previously contemplated change of control of the registry operator of the .org domain (PIR) are moot because ICANN has since decided not to consent to that change of control.

4. The motion was briefed by the parties. Namecheap also submitted two declarations and an expert report. On February 3, 2021, a hearing was conducted via Zoom videoconference. Jeffrey A. LeVee (Jones Day, Los Angeles, CA), argued the motion for ICANN. Flip J. Petillion and Jan Janssen (both with Petillion Huizingen, Belgium) argued for Namecheap. By agreement of the parties, the hearing was recorded.

5. Having considered the parties' written submissions and presentations at the hearing, the Panel GRANTS ICANN's Motion to Dismiss Namecheap's IRP request with respect to the Change of Control Issue, including the associated requests for declaratory relief (items ii. and iii. in Paragraph 2 above).

6. In responding to ICANN's motion, Namecheap raised the issue of the acquisition of the .biz registry business by GoDaddy, Inc. and the acquisition of the .info registry operator (Afilias, Inc.) by Donuts Inc., stating that these acquisitions could increase Namecheap's costs or otherwise harm its profits. The Panel will not issue a ruling on the propriety of these acquisitions. To the extent that Namecheap seeks any relief with respect to these acquisitions, it must do so in a different proceeding.

7. The Panel DENIES ICANN's Motion to Dismiss Namecheap's IRP request with respect to the Price Control Issue, including the associated request for declaratory relief (item i. in Paragraph 2 above).

8. A subsequent order will follow detailing the Panel's reasoning. The Panel is issuing its bottom-line ruling now, prior to the issuance of a reasoned order, because the outcome of the Motion to Dismiss is a fork-in-the-road issue for the further course of the proceedings, including the scope of disclosure.

9. As noted in the Appendices to Procedural Order No. 5, the Panel deferred a ruling regarding ICANN's Disclosure Request No. 2 pending a ruling on ICANN's Motion to Dismiss. That request is hereby denied. The Panel also deferred a ruling regarding Namecheap's Disclosure Requests No. 1(c) and No. 3 pending a ruling on ICANN's Motion to Dismiss. Those requests, including all sub-requests under Request No. 3, are hereby denied.

10. ICANN's Request No. 1 sought the following:

"All documents or communications referring to or reflecting the alleged harm Namecheap has suffered or will suffer as a result of removal of the price control provisions in the .ORG, .INFO, and .BIZ Registry Agreements."

The Panel's ruling on that request stated in part:

"If the motion to dismiss is not granted and the harm caused by the removal of price controls remains relevant (as stated by the Panel in its ruling on the motion to dismiss), Namecheap shall produce any other pre-existing, non-privileged documents that Namecheap contends supports its claim of standing as to the removal of price controls."

The Panel deems the issue of harm to be potentially relevant on the merits, notwithstanding the denial of ICANN's Motion to Dismiss. Accordingly, Namecheap shall proceed with production in response to that request.

**As at Los Angeles, California, USA  
February 12, 2021**

**FOR THE PANEL:**



**Glenn P. Hendrix, Chair**