

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. 9
(Ruling on Claimant's Motion for Reconsideration
Regarding Procedural Order No. 6)

1. In Procedural Order No. 6, issued on February 12, 2021, the Panel:
 - Granted ICANN's Motion to Dismiss the IRP request of the Claimant, Namecheap, Inc. ("Namecheap") with respect to the change of control Issue, including the associated requests for declaratory relief, and
 - Denied ICANN's Motion to Dismiss Namecheap's IRP request with respect to the price control Issue, including the associated request for declaratory relief.

The Panel indicated that it was "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." The Panel further noted that "[a] subsequent order will follow detailing the Panel's reasoning." (Procedural Order No. 6, ¶8).

2. On February 19, 2021, Namecheap submitted a Motion for Reconsideration Regarding Procedural Order No. 6 on the following grounds:

- i. Procedural Order No. 6 did not include reasons.

- ii. The Panel denied ICANN's Motion to Dismiss with respect to the price control issue, but nonetheless dismissed a request for declaratory relief that was related to that issue (item iii. in Paragraph 2 of Procedural Order No. 6).
- iii. In dismissing Namecheap's claims with respect to the change of control issue, the Panel dismissed a request for declaratory relief that was related to both the change of control issue and the price control issue (item ii. in Paragraph 2 of Procedural Order No. 6, which sought a declaration that "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").
- iv. Namecheap's change of control claims should not have been dismissed based on mootness.
- v. "[I]t was erroneous for the Panel to dismiss Namecheap's claims for declaratory relief in items ii. and iii. of Paragraph 2 of [Procedural Order] No. 6 without allowing for a full opportunity for Namecheap to present its case on these claims, which were not specifically addressed by ICANN in its Motion to Dismiss." (Namecheap's Motion for Reconsideration Regarding Procedural Order No. 6, at 3).

3. Namecheap's first ground for reconsideration is denied. As promised in Procedural Order No. 6, the Panel has issued a detailed order explaining the bases for its ruling (Procedural Order No. 8). The Panel thoroughly studied and deliberated on the parties' arguments prior to issuing Procedural Order No. 6, as reflected in the detailed questions presented by the Panel even prior to the hearing (outlined in footnote 8 of Procedural Order No. 8).

4. Namecheap's second ground for reconsideration (dismissal of the request for declaratory relief specified in item iii. in Paragraph 2 of Procedural Order No. 6) is sustained. As set forth in Procedural Order No. 8, the Panel will consider on the merits Namecheap's request for a declaration that 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.

5. Namecheap's third ground for reconsideration is granted in part. The portion of Namecheap's request for declaratory request as specified in item ii. in Paragraph 2 of Procedural Order No. 6 – relating to charging "registry fees that remain as low as feasible" – will be considered by the Panel on the merits, but solely in the

context of the removal of price caps (not in the context of regulating changes of control). The remainder of that request – "ensur[ing] that .org remains dedicated to the non-profit sector by adopting measures such as requiring that .org be operated by a non-profit entity" – is dismissed, for the reasons explained in Procedural Order No. 8.

6. The Claimant's fourth ground for reconsideration (objecting to mootness as a basis for dismissal) is denied inasmuch as the Panel's final ruling on ICANN's Motion to Dismiss (Procedural Order No. 8) does not rely on mootness.

7. The Claimant's fifth ground for reconsideration is denied. ICANN's Motion to Dismiss requested "that Namecheap's IRP Request be dismissed in its entirety," which would include all requests for declaratory relief. (ICANN's Motion to Dismiss, at 26). Dismissal of the Claimant's claims on the change of control issue necessarily entails dismissal of any requests for relief associated with the change of control issue.

As at Los Angeles, California, USA
March 10, 2021



Glenn P. Hendrix, Chair



Grant L. Kim



Christof Siefarth