

INDEPENDENT REVIEW PROCESS

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

DOTCONNECTAFRICA TRUST,) ICDR CASE NO. 50 117 T 1083 13
)
Claimant,)
)
and)
)
INTERNET CORPORATION FOR ASSIGNED)
NAMES AND NUMBERS,)
)
Respondent.)
_____)

**ICANN'S RESPONSE TO THE PANEL'S 12 MAY 2014 DECISION
AND REQUEST FOR PARTIAL RECONSIDERATION**

Jeffrey A. LeVee
Eric Enson
Rachel Zernik
Jones Day
555 South Flower Street
50th Floor
Los Angeles, CA 90071
Tel: +1 213-489-3939
Fax: +1 213-243-2539

Counsel to Respondent
The Internet Corporation
For Assigned Names and Numbers

20 May 2014

1. ICANN has reviewed the Panel's Decision on Interim Measures of Protection, dated 12 May 2014 (the "Interim Stay"), and wishes to advise the Panel that ICANN has elected to voluntarily stay processing activities toward the delegation of the .AFRICA Top Level Domain to ZA Central Registry at this time, pending further developments in this Independent Review proceeding.

2. Although ICANN does not agree that a stay is appropriate under the circumstances, ICANN has elected to abide by the recommendation in the Interim Stay for the time being. There is, however, one statement in the Interim Stay that ICANN formally requests that the Panel reconsider. Specifically, in paragraphs 29-33 of the Interim Stay, the Panel notes the provision in ICANN's Bylaws that addresses the composition of Independent Review panels. The Panel then states in paragraphs 29 and 33 of the Interim Stay that ICANN failed to follow its Bylaws. ICANN did not fail to follow its Bylaws.

3. Article IV, Section 3, paragraph 6 of ICANN's Bylaws provides in its entirety (with emphasis added):

There shall be an omnibus standing panel of between six and nine members with a variety of expertise, including jurisprudence, judicial experience, alternative dispute resolution and knowledge of ICANN's mission and work from which each specific IRP Panel shall be selected. The panelists shall serve for terms that are staggered to allow for continued review of the size of the panel and the range of expertise. A Chair of the standing panel shall be appointed for a term not to exceed three years. Individuals holding an official position or office within the ICANN structure are not eligible to serve on the standing panel. ***In the event that an omnibus standing panel: (i) is not in place when an IRP Panel must be convened for a given proceeding, the IRP proceeding will be considered by a one- or three-member panel comprised in accordance with the rules of the IRP Provider; or (ii) is in place but does not have the requisite diversity of skill and experience needed for a particular proceeding, the IRP Provider shall identify one or more panelists, as required, from outside the omnibus standing panel to augment the panel members for that proceeding.***

4. ICANN acknowledges that a standing panel is not yet in place to hear Independent Review proceedings. However, the last sentence of Article IV, Section 3, paragraph 6 of ICANN's Bylaws – the portion that is in bold italics above – specifically provides that, in the circumstances in which a standing panel is not in place when a particular proceeding is initiated, the proceeding will be considered by a one- or three-member panel comprised in accordance with the ICDR's rules. This is in fact the circumstance in this proceeding, and the reason this proceeding is able to proceed in the absence of any standing panel.

5. Because Article IV, Section 3, paragraph 6 of ICANN's Bylaws specifically identifies how a panel would be selected to address an Independent Review proceeding when a standing panel is not in place, the Panel's statement that ICANN has "fail[ed] to follow its own Bylaws and procedures" is not accurate. (Decision, ¶ 33.) ICANN recognizes that the Panel's statement was in the context of addressing which of the parties should be viewed as responsible for the delays associated with DCA's request for interim relief, and ICANN is not asking the Panel to re-evaluate its position on interim relief at this time. But since the Bylaws specifically address the possibility that a standing panel might not exist, and those same Bylaws set forth how an Independent Review proceeding would be presided over in the absence of a standing panel, it is not appropriate to state that, because no standing panel is in place, ICANN has failed to follow its Bylaws.

CONCLUSION

ICANN appreciates the Panel's willingness to reconsider a portion of the Interim Stay and requests that the Panel modify paragraphs 29 and 33 of the Interim Stay so as to eliminate any inference or statement that ICANN "failed to follow its Bylaws."

Respectfully submitted,

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By: Jeffrey A. LeVee /RHZ
Jeffrey A. LeVee
Jones Day
Counsel for Respondent ICANN

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