


Subject: RE: Employ Media v. ICANN, RE: ICC 17917 VRO 120319 
From: Eric P. Enson 05/04/2012 10:19 AM
Extension: Cont
To: de Gramont, Alexandre
Cc: Contact Information "annmace@Contact", "Ali, Arif",
"creichline@Contact", "emily.alban@Contact", Contact Information
"gruttinger@Contact", "ica5@Contact", "jlevee@Contact",

Dear Mr. Chairman and Members of the Tribunal,

Recognizing that the parties will be discussing these issues with the Tribunal on Monday, I write on behalf of ICANN to briefly respond to Mr. de Gramont's email.

ICANN does believe that this matter can, and should, be resolved well in advance of the schedule proposed by Employ Media. The legal and factual issues relevant to this matter are narrow, and the relevant witnesses and documents are limited. ICANN does not agree that this is a matter of first impression, but instead views this as straight-forward matter of contract interpretation. More importantly, to this day, Employ Media continues to allow registrations within the .JOBS TLD that ICANN believes are violative of the Registry Agreement, as set forth in ICANN's Answer to Employ Media's Request for Arbitration. This cuts to the core of the ICANN process and may possibly undermine any eventual Award issued by this Tribunal. Accordingly, ICANN believes it is important, and feasible, for the parties to work diligently to marshal their evidence and provide it to the Tribunal before the end of the year.

Given these views - as well as the applicable ICC rules - ICANN has made two scheduling proposals to Employ Media. See ICC Rules, Article 20(1) ("The Arbitral Tribunal shall proceed within as short a time as possible to establish the facts of the case by all appropriate means."). ICANN's first proposal assumes that live witnesses will not be called at a hearing, but that the hearing would involve attorney presentations and questions from the Tribunal. ICANN's second proposal assumes that live witnesses would be called during a short hearing, which obviates the need for a reply or rejoinder, in ICANN's view. These proposals are set forth below:

Proposal 1 - Assuming no live witnesses at hearing:

Memorial - June 18, 2012 (6 weeks after Procedural Hearing before the Tribunal);
Countermemorial - July 30, 2012 (6 weeks after service of the Memorial);
Reply - Aug. 20, 2012 (3 weeks after service of the Countermemorial);
Rejoinder - Sept. 10, 2012 (3 weeks after service of the Reply); and
Hearing - Sept. 20-21, 2012.

Proposal 2 - Assuming a hearing with live witnesses:

Memorial - June 18, 2012 (6 weeks after Procedural Hearing before the Tribunal);
Countermemorial - July 30, 2012 (6 weeks after service of the Memorial); and
Hearing - Aug. 27-29, 2012.

ICANN appreciates the Tribunal's time and looks forward to discussing these issues on Monday. Thank you.



Eric P. Enson

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Contact Information Redacted

"de Gramont, Alexandre"

Dear Mr. Chairman and Members of the...

05/04/2012 08:45:07 AM

From: "de Gramont, Alexandre" <Alex.deGramont@Contact-
To: Contact Information Redacted
Cc: "annmace@Contact" <annmace@Contact >, "Ali, Arif" <Arif.Ali@Contact>, "creichline@Contact" <creichline@Contact >, "emily.alban@Contact" <emily.alban@Contact >, "gruttinger@Contact" <gruttinger@Contact >, "ica5@Contact" <ica5@Contact >, "jlevee@Contact" <jlevee@Contact >, "jmurino@Contact" <jmurino@Contact >, 'Libby Parker' <libby.parker@Contact >, "Saiz, Patricia" <patricia.saiz@Contact >, "Haridi, Samaa" <Samaa.Haridi@Contact >, 'Kate Wallace' <kwallace@Contact >, "Eric P. Enson" <epenson@Contact >
Date: 05/04/2012 08:45 AM
Subject: RE: Employ Media v. ICANN, RE: ICC 17917 VRO 120319

Dear Mr. Chairman and Members of the Tribunal:

We write on behalf of Claimant, Employ Media. In advance of the teleconference scheduled with the Tribunal on 7 May 2012, we have reached out to counsel for ICANN to see if the parties could reach agreement on a procedural schedule to propose to the Tribunal. Unfortunately, the parties remain far apart on their views concerning an appropriate timetable for this case.

ICANN has proposed alternative schedules that would contemplate the completion of the written and oral phases of this entire arbitration by August or September 2012. Employ Media submits that, given the complexity of the issues, and the significance of the case, two rounds of written submissions (i.e., Memorial/Counter Memorial and Reply/Rejoinder) will be required to crystallize the factual and legal issues for the Tribunal. Moreover, Employ Media may well submit a number of witness statements. As Claimant, and also taking into consideration financial and other resource considerations, our client is very keen that this matter move forward as quickly as possible, but certainly not at the expense of short-changing the issues and evidence that must be put before the Tribunal.

As the Tribunal is aware, this is a case of first impression that will have significance far beyond the parties to this arbitration. The case involves one of the first new top level domains (TLDs) beyond the few original TLDs. The Registry Agreement at issue in this case is literally one of a few of its kind. The facts and law by which the Tribunal will have to assess the parties' rights and obligations under the Agreement are truly unique. Moreover, as has been well-publicized, ICANN has now undertaken a process in which, according to press reports, more than a thousand applicants (who have each paid an application fee of 185,000 USD) are seeking the rights to new TLDs. The disposition of this case, therefore, is likely to have implications for the burgeoning TLD industry -- which, again, is effectively regulated by ICANN alone.

To go with one round of briefing, as suggested by ICANN, would likely result in a longer and more complicated hearing. We believe that a shorter evidentiary hearing could be organized if each side were allowed two memorials each. Moreover, we believe that the transparency considerations that underlie these proceedings and the interests of the Internet community will be better served were the Tribunal to adopt the briefing model that we have proposed.

Employ Media has taken into consideration these factors, as well as the schedules of its counsel and likely witnesses, in proposing the following schedule:

Employ Media's Memorial: 13 August 2012 (14 weeks from Procedural Hearing with Tribunal)

ICANN's Counter Memorial: 19 November 2012 (14 weeks from 13 August 2012)

Employ Media's Reply: 11 February 2013 (12 weeks from 19 November 2012)

ICANN's Rejoinder: 6 May 2013 (12 weeks from 11 February 2013)

Hearing: 3-5 days to be set at a mutually convenient time in June or July 2013

We look forward to discussing these issues further with the Tribunal and counsel for ICANN during the teleconference on 7 May.

Respectfully,

Alexandre de Gramont
Weil, Gotshal & Manges LLP
Counsel for Claimant

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