

Procedural Order No. 10

of October 4, 2022

issued by the Independent Review Panel composed of

**Hon. William J. Cahill
(Ret.)**
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***in the matter before the International Centre for Dispute Resolution
(Case No. 01-19-0004-0808)***

Mr. Tom Simotas

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Ms. Amelia Krajewska

Administrative Secretary to the Independent Review Panel
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between

- 1. Fegistry, LLC**
- 2. Radix Domain Solutions Pte. Ltd.**
- 3. Domain Venture Partners PCC
Limited**

**Internet Corporation for Assigned Names
and Numbers (ICANN)**

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By this Procedural Order No. 10 the Independent Review Panel (“**IRP**”):

1. recognizes significant complexity of the issues covered by the Parties’ submissions related to the Summary Adjudication Motion (“**SAM**”), as well as their vagueness and ambiguity;
2. informs that after reviewing the Parties’ submissions related to the SAM, including all the Annexes and Exhibits, it finds itself unclear as to what the Claimants have put at issue and the Respondent’s response to those issues and thus, requires further clarifications from the Parties;
3. indicates that the Parties’ submissions in the present proceedings, including the SAM and the opposition thereto, should be framed in the light of the IRP’s fundamental rights and obligations established, *inter alia*, in Article 4, Section 4.3 of the ICANN’S Bylaws as amended on 28 November 2019 (“**ICANN’S Bylaws**”). In this regard the IRP points out the following provisions of the ICAAN’S Bylaws which should be taken into account in the Parties’ submissions:
 - a) Article 4, Section 4.3 (a)(i)-(iii) of the ICANN’S Bylaws establishes the purposes of the IRP which are the following:
 - (i) Ensure that ICANN does not exceed the scope of its Mission and otherwise complies with its Articles of Incorporation and Bylaws.
 - (ii) Empower the global Internet community and Claimants to enforce compliance with the Articles of Incorporation and Bylaws through meaningful, affordable and accessible expert review of Covered Actions (as defined in Section 4.3(b)(i)).
 - (iii) Ensure that ICANN is accountable to the global Internet community and Claimants. (...)
 - b) Article 4, Section 4.3 (b)(iii)(A) of the ICANN’S Bylaws states that the scope of the IRP is defined, *inter alia*, with reference to the term “*Disputes*” defined as:
 - (A) Claims that Covered Actions constituted an action or inaction that violated the Articles of Incorporation or Bylaws, including but not limited to any action or inaction that:
 - (1) exceeded the scope of the Mission;
 - (2) resulted from action taken in response to advice or input from any Advisory Committee or Supporting Organization that are claimed to be inconsistent with the Articles of Incorporation or Bylaws;
 - (3) resulted from decisions of process-specific expert panels that are claimed to be inconsistent with the Articles of Incorporation or Bylaws;
 - (4) resulted from a response to a DIDP (as defined in Section 22.7(d)) request that is claimed to be inconsistent with the Articles of Incorporation or Bylaws; or

(5) arose from claims involving rights of the EC as set forth in the Articles of Incorporation or Bylaws.

c) Article 4, Section 4.3 (i) of the ICANN'S Bylaws sets forth the scope of the IRP's examination of the Dispute. It reads in the relevant part as follows:

(i) Each IRP Panel shall conduct an objective, de novo examination of the Dispute.

(i) With respect to Covered Actions, the IRP Panel shall make findings of fact to determine whether the Covered Action constituted an action or inaction that violated the Articles of Incorporation or Bylaws.

(ii) All Disputes shall be decided in compliance with the Articles of Incorporation and Bylaws, as understood in the context of the norms of applicable law and prior relevant IRP decisions.

(iii) For Claims arising out of the Board's exercise of its fiduciary duties, the IRP Panel shall not replace the Board's reasonable judgment with its own so long as the Board's action or inaction is within the realm of reasonable business judgment.

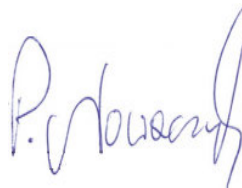
In light of the above, it is ORDERED that:

1. the in-person hearing scheduled for October 17 – 18, 2022 **be off calendar**;
2. the in-person hearing be rescheduled;
3. the Parties further explain, and preferably stipulate, the following questions by October 21, 2022:
 - a) in a joint submission the Parties are to explain the nature of the particular procedures (using the appropriate acronyms and their definitions, *e.g.* CPE, EIU, BAMC, *etc.*) referred to in their briefs.
 - (i) The explanation shall explain how they relate to each other and in what sequence they are designed to be invoked. The Parties are to explain the interplay of the various acronyms which are used in the Complaint and other submissions regarding the SAM;
 - (ii) Please note that the IRP does not want nor will it accept additional briefing on the SAM;
 - (iii) The Panel advises counsel that in setting forth a comprehensible explanation of the inherently confusing developments that they address in their SAM papers, the IRP does not understand the relevance, if any, of the allegations of theft of trade secrets and undue influence nor of the invocation of discovery requests (which the IRP believes have already been disposed of).

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- b) The Parties are to provide a clearer explanation as to the relationship between RFRs 16-11 and 18-6, including the following:
- (iv) How do the pendency of the RFRs 16-11 and 18-6 have a bearing on the statute of limitations?
 - (v) As to which claim[s] do they have a bearing?
 - (vi) How do RFRs fit into the framework of the requirements for an IRP as provided in relevant parts of Article 4, Section 4.3 of the ICAAN'S Bylaws cited above?
4. the next procedural steps, including the ruling on the SAM, will be taken in due course after reviewing the Parties' clarifications indicated in the point 3(a)-(c) above.

Done in Warsaw, Poland

Respectfully yours



Piotr Nowaczyk
Presiding Panelist