

# JONES DAY

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18 April 2012

*VIA EMAIL*

Contact Information Redacted



**Re: *Employ Media LLC v. Internet Corporation for Assigned Names and Numbers  
ICC 17917/VRO:***

Dear Contact

On behalf of the Internet Corporation for Assigned Names and Numbers (“ICANN”), I write in response to your 13 April 2012 letter regarding the Terms of Reference for the arbitration in the above-referenced matter. ICANN thanks the Arbitral Panel for its work in preparing the draft Terms of Reference. Herein, ICANN provides minor comments regarding these materials, as you requested.

First, ICANN agrees that a case preparation conference would be useful, but believes that there is little need – at this early stage of the litigation – for the Arbitrators, Claimant and Claimant’s counsel to travel to Los Angeles for an in-person meeting. Instead, ICANN suggests that the conference be held telephonically, among counsel and the Arbitral Panel, and that the discussions focus on a schedule by which the parties will submit their memoranda to the Panel. ICANN’s counsel is available for such a conference on May 1, 7, or 8, at a time convenient for the Panel.

Second, ICANN renews its requests that the Arbitral Panel determine the issues relevant to this matter through presentations by counsel and testimony by affidavit, rather than through a hearing with live witnesses, like that suggested in Paragraph 47 of the draft Terms of Reference. But ICANN is certainly open to discussing this matter further, and perhaps finding a middle-ground solution that would provide the Panel with the information and evidence it believes it needs, but also minimize the costs associated with calling live witnesses to a hearing in Los Angeles. Accordingly, ICANN requests that Arbitral Panel defer a decision on this issue until after the parties have submitted their memoranda to the Panel and the legal and factual issues have crystallized.

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Third, ICANN is supportive of the Transparency and Confidentiality provision contained in Paragraph 55 of the draft Terms of Reference. Consistent with its own policies and procedures, ICANN publicly posts all material litigation and arbitration submissions on its website at <http://www.icann.org/en/news/litigation>. As with its own disclosure policies, ICANN believes that the Transparency and Confidentiality provision should contain defined conditions of nondisclosure that permit the parties to withhold publication of evidentiary materials and submissions in the arbitration that may impinge on privacy or confidentiality rights, if any.

Should you have any questions or require further information, please let me know. We look forward to hearing from you regarding these issues. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric P. Enson", with a long horizontal flourish extending to the right.

Eric P. Enson

cc: Jeffrey A. LeVee, Esq.  
Arif Ali, Esq.  
George Ruttinger, Esq.  
Alexander de Gramont, Esq.