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March 8, 2022

VIA EMAIL

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Re: *Afilias Domains No. 3. Ltd. v. ICANN*, ICDR Case No. 01-18-0004-2702

Dear all:

As counsel to the Internet Corporation for Assigned Names and Numbers (“ICANN”), I write in response to the following letters: (i) the 11 February 2022 (corrected on 13 February 2022) letter to the ICANN Board, ICANN’s Board Accountability Mechanisms Committee (“BAMC”), and ICANN from Altanovo Domains Limited (“Altanovo”), formerly known as Afilias Domains No. 3 Limited (“Afilias”); (ii) the 18 February 2022 letter to the Board, BAMC and ICANN from Altanovo; (iii) the 23 February 2022 letter from Altanovo to me; and (iv) the 23 February 2022 letter from Nu Dotco, LLC (“NDC”) and Verisign, Inc. (“Verisign”) to Mr. LeVee and me all regarding the .WEB gTLD.

As an initial matter, Altanovo and its counsel are certainly aware that ICANN is represented by counsel in this matter, namely, by Jones Day, and we ask that all parties refrain from communicating directly with ICANN about this matter, unless requested to do so by

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ICANN. Rule 4.2 of the Model Rules of Professional Conduct prohibits a lawyer from communicating about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter. The claims in Altanovo's 23 February letter that Rule 4.2 does not apply to ICANN are incorrect and Altanovo's repeated threats of continued litigation demonstrate that this matter is ongoing. To the extent any party feels further need to express its views to ICANN, you can do so through Jones Day and we will certainly pass those communications on to the ICANN Board and appropriate ICANN personnel.

As to Altanovo's claims regarding the wording of the Board's 16 January 2022 Resolutions and Rationale, its allegations and aspersions are unsupported. The wording of the statement in the Board's Rationale that the "Domain Acquisition Agreement (DAA) between NDC and Verisign (pursuant to which Verisign financially supported NDC's bidding in the .WEB auction)," was in no way intended, nor should have been understood, to be an all-encompassing legal definition or description of the DAA or its terms. This statement, and all others in the Resolutions and Rationale, could not and should not be read as an adoption of any party's arguments or as a pre-judgment of any issues relevant to the Board's and/or BAMC's evaluation of this matter.

Also untrue is Altanovo's claim that the IRP Panel never described the DAA as an agreement whereby Verisign provided NDC with funding for the .WEB auction. The Panel described the DAA as an agreement "under which Verisign undertook to provide funds for NDC's bid for the .WEB gTLD" (Final Decision at ¶ 3; *see also id.* at 87 (stating that Verisign provided "funds for NDC's bid for the .WEB gTLD . . .").)

Further, Altanovo's claim that the Rationale gives the false impression that Altanovo has alleged that the DAA is a mere funding agreement is belied by the fact that the Rationale sets forth a detailed summary of Altanovo's arguments as to why the DAA violates the Guidebook and Auction Rules. Indeed, ICANN has publicly posted Altanovo's (previously Afiliás') filings in connection with the .WEB IRP, which set forth Altanovo's arguments as to the DAA.

The statements in Altanovo's 11 February letter regarding potential conflicts of interest and ICANN's process for evaluating the DAA are noted. ICANN has robust conflict-of-interest policies that it follows in all matters, and ICANN will continue to do so in this matter. And, with regard to ICANN's evaluation process, the Board understands the nature of the work ahead of it and will continue to employ a vigorous process that ensures all parties' views and arguments are sufficiently taken into account, as it does in all matters.

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As to the statements in Altanovo's 18 February letter regarding Verisign's Annual Report dated 19 February 2021, ICANN had no part in drafting it and was not consulted by Verisign regarding its wording. Suffice it to say, however, that ICANN has not awarded the .WEB gTLD to Verisign.

Finally, as to NDC's and Verisign's assertions that ICANN should disregard and not publicly post Altanovo's 11 February letter because it is prejudicial, contains inaccuracies and discloses confidential information, the objection is noted. ICANN's Correspondence process, however, was created to support ICANN's commitment to operate in an open and transparent manner and ICANN publishes applicable written communications on its website. It is important for the community to see all sides of the issues regarding .WEB and, for that reason, ICANN will be publicly posting Altanovo's 11 February letter, 18 February letter and 23 February letter, NDC's and Verisign's 23 February letter, and this letter. Prior to posting, ICANN will determine if any redactions to these letters are necessary under its policies.

Sincerely,

Eric P. Enson

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