

[PLEASE NOTE EMERGENCY REQUEST FOR RELIEF CONTAINED IN SECTION 9]

Reconsideration Request by Ruby Glen, LLC and Radix FZC

Regarding Staff Action Taken in Response to Concerns Raised by Multiple Members of the .WEB/.WEBS Contention Set in Relation to Apparent Discrepancies in the Application of Contention Set Member, NU DOT CO LLC

Introductory Summary

Ruby Glen, LLC and Radix FZC (on behalf of its applicant affiliate DotWeb Inc.), applicants for the .WEB/.WEBS gTLD contention set (hereinafter, the "Applicants"), submit this Request for Reconsideration (the "Request") to provide ICANN with an opportunity to correct the actions and inactions of its staff (collectively, the "Staff Action") that (a) violate established ICANN policy and guidelines, (b) materially affect the rights of the contention set members, and (c) compromise the integrity of ICANN's administration of the .WEB/.WEBS auction.

The Staff Action at issue arises from apparent discrepancies in the application of NU DOT CO LLC ("NDC") to participate in the upcoming .WEB/.WEBS contention set auction. Specifically, on June 7, 2016, when explaining NDC's decision to forego agreement to resolve the .WEB/.WEBS contention set prior to ICANN auction (as it had done before with its other applied-for gTLDs), NDC stated that (a) Nicolai Bezsonoff, who is identified as NDC's Secondary Contact, Manager, and COO, is "no longer involved with [NDC's] applications" and (b) there were "several other[]" new members of the NDC "board" not listed in its application. NDC also advised of a potential change in the ownership and/or leadership of NDC.¹ Noting that NDC's statements directly

¹ In the time since NDC made these statements, Applicants have learned of speculation within the industry that NDC has sold its application to Neustar, Inc. or Verisign, Inc. See e.g., Kevin Murphy, *Is Verisign .web applicant's secret sugar*

contradict information contained in its application, Applicants and other members of the contention set diligently reached out to alert both ICANN staff and the ICANN ombudsman to the apparent changes in leadership and/or control of NDC.

On July 13, 2016, in response to the concerns raised by multiple .WEB applicants, ICANN staff issued a statement acknowledging that it had received multiple requests to investigate “potential changes of control of [NDC]” and postpone the .WEB/.WEBS auction of last resort. Despite the gravity of the concerns raised by these applicants, ICANN staff summarily dismissed the requests with a blunt three-line statement that ICANN had “investigated the matter” and “found no basis to initiate the application change request process or postpone the auction.” Notably, ICANN’s statement made no mention of having conducted an inquiry into (a) Mr. Bezsonoff’s current status, if any, with NDC; (b) any new board members or managers not listed in the application; or (c) any change in ownership or leadership of NDC.

The decision by ICANN staff to forego a full and transparent investigation into the material representations made by NDC is a clear violation of the principles and procedures set forth in the ICANN Articles of Incorporation and Bylaws (the “ICANN Bylaws”) and the ICANN gTLD Applicant Guidebook (the “Applicant Guidebook”). Indeed, the unceremonious nature of the statement provided by ICANN raises serious issues as to the thoroughness of any investigation undertaken by ICANN staff and the impartiality with which ICANN administers its own guidelines and policies. The curt

daddy?, DOMAIN INCITE (July 14, 2016) <http://domainincite.com/20748-is-verisign-web-applicants-secret-sugar-daddy>. Although Applicants are unaware of the legitimacy of these reports, they cannot help but observe that such a transfer would explain NDC’s statements regarding an apparent change of control and its decision to deviate from prior auction behavior by pushing the .WEB/.WEBS contention set to an ICANN auction of last resort.

dismissal also provokes suspicion as to whether the inherent conflict of interest presented by the benefit to ICANN of conducting an auction of last resort impacted the manner in which NDC’s change of leadership and control was “investigated.”

The Staff Action has placed ICANN in a position of having to defend against questions of accountability and self-interest in the face of clearly contradictory statements provided by a gTLD applicant in the .WEB/.WEBS contention set. Applicants respectfully request that the Board remedy the missteps presented by the Staff Action and restore integrity to the transparency, accountability mechanisms, and rules upon which Applicants relied in applying to participate in the .WEB/.WEBS auction.

1. Requester Information

Name: Ruby Glen, LLC (“Ruby Glen”)
Address: c/o Donuts Inc., Contact Information Redacted
Email: Contact Information Redacted
Counsel: Alvaro Alvarez – Donuts Inc. SVP, General Counsel & Secretary

Name: Radix FZC on behalf of applicant affiliate DotWeb Inc. (“Radix”)
Address: c/o Brijesh Joshi, Contact Information Redacted
Email: Contact Information Redacted

2. Request for Reconsideration of (check one only):

- Board action/inaction
- Staff action/inaction

3. Description of specific action you are seeking to have reconsidered.

Applicants seek reconsideration of (a) ICANN's determination that it "found no basis to initiate the application change request process" in response to the contradictory statements of NDC and (b) ICANN's improper denial of Applicants' (and at least one other .WEB applicant's) request to postpone the .WEB/.WEBS auction, currently scheduled for July 27, 2016. The requested postponement would have provided ICANN and the .WEB/.WEBS applicants the time necessary to conduct a full and transparent investigation into material discrepancies in NDC's application and its eligibility as a contention set member.

4. Date of action/inaction:

July 13, 2016. The Staff Action was set forth in a statement from Christine Willett, Vice President of gTLD Operations for ICANN to the members of the .WEB/.WEBS contention set.

5. On what date did you become aware of the action or that action would not be taken?

July 13, 2016. Notice of the Staff Action was provided to the .WEB/.WEBS contention set members via electronic mail.

6. Describe how you believe you are materially affected by the action or inaction:

Applicants and other members of the .WEB/.WEBS contention set, with the exception of NDC, continue to be adversely affected by ICANN's (a) failure to thoroughly investigate the issues raised by NDC's own statements and (b) refusal to postpone the .WEB/.WEBS auction of last resort to allow for a full and transparent investigation into the apparent discrepancies in NDC's .WEB/.WEBS application.

Applicants applied for the .WEB gTLD in reliance on ICANN's representations that, in accordance with well-established ICANN policies and procedures, the application, evaluation, and auction processes would be administered in a fair and transparent manner. Applicants also relied on ICANN's representations that applicants would be held accountable for the accuracy of their submissions. Just as Applicants understood that they were bound to the obligations set forth in the Applicant Guidebook to preserve a level playing field, Applicants understood and relied upon ICANN's representations that each of the other members of the contention set would be required to abide by the same obligations. By failing to hold NDC accountable for its own contradictory statements, ICANN has placed all other .WEB applicants in a situation where they will be forced to bid against a party that has violated ICANN guidelines by being less than transparent as to changes in its ownership and/or leadership and, as a result, may be subject to disqualification.

Proceeding to the ICANN auction of last resort now would also ensure that Applicants and the remaining members continue to face an unsettled result. Applicants anticipate that if NDC is the successful bidder at the .WEB/.WEBS auction, multiple members of the contention set will renew their calls for ICANN to investigate and perhaps even take legal action to enforce their rights. This is especially true if it later comes to light that there was any truth to the rumors that NDC has sold or otherwise transferred its interest in the .WEB application to an ineligible third party—rumors that could be easily vetted by ICANN in the process of investigating NDC's recent and undisputed statements at issue in this Request. There exists the very real likelihood that ICANN will be forced to unwind the transaction, further delaying the release of the

.WEB/.WEBS gTLD to the public, eroding ICANN's legitimacy and reputation, and causing ICANN and the members of the contention set to expend additional time, money, and resources in resolving an issue that could have easily been addressed at this juncture with a modest delay.

7. Describe how others may be adversely affected by the action or inaction, if you believe that this is a concern.

The damage caused by ICANN's failure to adhere to the accountability and transparency mechanisms by which it agreed to administer the .WEB/.WEBS auction is not limited to Applicants and the members of the contention set. As stated above, it is more than likely that absent an investigation into the contradictory statements made by NDC, a successful bid by NDC at an auction of last resort will ultimately be challenged by way of an appeal within the ICANN process, a multi-party lawsuit filed in the court system, and potentially, an antitrust review conducted by the U.S. Department of Justice. By proceeding with the .WEB/.WEBS auction, in the face of admissions by NDC and other credible evidence of discrepancies in NDC's application and an apparent change of control, leadership and/or ownership, there is a strong likelihood of a further and more significant delay in releasing these domains, thereby adversely affecting the public at large.

More fundamentally, ICANN's decision to forego a harmless postponement of the .WEB/.WEBS auction to conduct a transparent investigation into these issues does nothing to dispel questions surrounding ICANN's ability to be accountable and transparent in its administration of the gTLD program—questions that were raised recently by a federal court in California regarding the .AFRICA gTLD. The ramifications

of yet another breakdown in ICANN's transparency and accountability obligations will further harm ICANN and the Internet community at large by (a) broadening the public perception that ICANN lacks either the ability or the willingness to effectively combat the appearance of disparate treatment among gTLD applicants and (b) advising gTLD applicants that there will be neither penalty nor recourse for failing to abide by the obligations set forth in the Application Guidebook. Each of these results will severely affect ICANN, the Internet community, and the public at large.

8. Detail of Board or Staff Action – Required Information

The Staff Action at issue arises from apparent discrepancies in NDC's .WEB/.WEBS application and recent statements regarding an apparent change of control, leadership and/or ownership over its application. As relevant here, Section 1.2.7 of the Applicant Guidebook requires an applicant to notify ICANN of any changes to its application; the failure to do so can result in the denial of an application. See e.g., Applicant Guidebook at § 1.2.7 (stating ongoing duty to update "applicant-specific information such as changes in financial position and changes in ownership or control of the applicant"); § 6.1 (confirming that "[a]pplicant agrees to notify ICANN in writing of any change in circumstances that would render any information provided in the application false or misleading"). Similarly, under Section 6.10 of the Applicant Guidebook, an applicant may not "resell, assign, or transfer any of applicant's rights or obligations in connection with the application"; violating this provision may result in the disqualification of an active application. *Id.* at § 6.10. As set forth below, there is significant evidence that NDC may have violated each of these guidelines.

On June 13, 2012, NDC submitted application number 1-1296-36138 for the

.WEB/.WEBS contention set. Among other things, the application required NDC to provide “the identification of directors, officers, partners, and major shareholders of that entity.” See Applicant Guidebook at § 1.2.1. As relevant here, NDC provided the following response to Sections 7 and 11 of the application:

Secondary Contact

7(a). Name

Mr. Nicolai Bezsonoff

7(b). Title

Manager

Applicant Background

11(a). Name(s) and position(s) of all directors

Jose Ignacio Rasco III	Manager
Juan Diego Calle	Manager
Nicolai Bezsonoff	Manager

11(b). Name(s) and position(s) of all officers and partners

Jose Ignacio Rasco III	CFO
Juan Diego Calle	CEO
Nicolai Bezsonoff	COO

11(c). Name(s) and position(s) of all shareholders holding at least 15% of shares

Domain Marketing Holdings, LLC	Not Applicable
NUCO LP, LLC	Not Applicable

By submitting its application for the .WEB gTLD and electing to participate in the .WEB/.WEBS auction, NDC expressly agreed to the terms and conditions set forth in the Applicant Guidebook as well as ICANN’s Auction Rules for New gTLDs (“Auction Rules”), including specifically, and without limitation, Sections 1.2.1, 1.2.7, 6.1 and 6.10

of the Applicant Guidebook.

On June 7, 2016, Ruby Glen contacted NDC to inquire as to whether NDC might reconsider its then-recent decision to forego resolution of the .WEB/.WEBS contention prior to ICANN's auction of last resort.² In response, NDC stated that its position had not changed. NDC also advised, however, that Nicolai Bezsonoff, who is identified on NDC's .WEB application (see above) as Secondary Contact, Manager, and COO, is "no longer involved with [NDC's] applications." NDC also made statements indicating a potential change in the ownership of NDC, including an admission that the board of NDC had changed to add "several others." The email communication³ containing these statements is set forth in pertinent part below:

|
From: Jose Ignacio Rasco <r@straat.co>
Subject: Re: .web
Date: June 7, 2016 at 11:32:17 AM EDT
To: Jon Nevett <jon@donuts.email>
Cc: Juan Diego Calle <j@straat.co>

Jon,

[Redacted]

Nicolai is at NSR full time and no longer involved with our TLD applications. I'm still running our program and Juan sits on the board with me and several others.

[Redacted]

Best,
Jose

Noting that (a) NDC's statements appeared to directly contradict information in

² To the extent it may be relevant to this Request, NDC applied for 13 gTLDs in the New gTLD Program. As of the date of this submission, nine of those gTLDs were resolved with NDC's agreement to participate in a private resolution. NDC did not become the registry operator for any of the gTLDs it resolved to date. The auction for the .WEB gTLD is the first auction in which NDC has pushed for an ICANN auction of last resort.

³ An unredacted copy of the embedded email was previously provided by Ruby Glen to the ICANN Ombudsman.

NDC's .WEB application and (b) strong direct and circumstantial evidence shows that NDC has either resold, assigned or transferred its rights in the application in violation of its duties under the Applicant Guidebook, Ruby Glen diligently contacted ICANN staff in writing with the discrepancy on or about June 22. Ruby Glen also formally raised the issue with the ICANN Ombudsman on or about June 30, 2016. It also discussed the matter with ICANN staff and the Ombudsman at ICANN's most recent meeting in Helsinki, Finland. At the time of submission of this Request, Ruby Glen's most recent correspondence with the ICANN Ombudsman, dated July 10, 2016, in which it provided further information related to the statements made by NDC, remains unanswered.

At every opportunity, Ruby Glen raised the need for a postponement of the .WEB/.WEBS auction to allow ICANN (and the other applicants) time to investigate and address the contradictory representations made by NDC in relation to its pending application and status as an auction participant. On July 11, 2016, Radix (on behalf of DotWeb Inc.) and Schlund Technologies GmbH, each members of the .WEB/.WEBS contention set, sent correspondence to ICANN stating their own concerns in proceeding with the .WEB/.WEBS auction as currently scheduled. The correspondence stated:

We support a postponement of the auction, to give ICANN and the other applicants time to investigate whether there has been a change of leadership and/or control of another applicant, NU DOT CO LLC. To do otherwise would be unfair, as we do not have transparency into who leads and controls that applicant as the auction approaches.

On July 13, 2016, ICANN issued a statement denying the collective request of multiple members of the .WEB/.WEBS contention set to postpone the July 27, 2016 auction to allow for a full and transparent investigation into apparent discrepancies in the NDC application, as highlighted by NDC's own statements. Without providing any

detail, ICANN simply stated as follows:

Secondly, in regards to potential changes of control of NU DOT CO LLC, we have investigated the matter, and to date we have found no basis to initiate the application change request process or postpone the auction.

ICANN's decision did not address the manner or scope of the claimed investigation nor did it specifically address whether specific inquiry was made into (a) Mr. Bezsonoff's current status, if any, with NDC, (b) the identity of "several other[]" new and unvetted members of NDC's board or (c) any change in ownership—the very issues raised by NDC's own statements.

As set forth more fully in Section 10, *infra*, the brief statement provided by ICANN in response to the applicants' concerns—without any explanation to resolve the issues presented by NDC's provision of contradictory information or to address the failure to grant the requested postponement—is inconsistent with ICANN's stated commitment to accountability and transparency in the auction process, and innumerable provisions of the rules and regulations governing ICANN's administration of the New gTLD Program.

9. What are you asking ICANN to do now?

Applicants respectfully request ICANN (1) delay the ICANN auction of last resort for the .WEB/.WEBS contention set on an emergency basis and (2) conduct a thorough and transparent investigation into the apparent discrepancies and/or changes in NDC's .WEB/.WEBS application in accordance with ICANN's Bylaws (including ICANN's guiding principles to ensure transparency, openness and accountability), the Auction Rules, and the Applicant Guidebook.

A. Urgent Request for Immediate Stay of .WEB/.WEBS Auction

In light of the rapidly approaching .WEB/.WEBS auction date, Applicants request

a stay of the pending .WEB/.WEBS auction of last resort until (45) days after the issuance of a ruling on the merits of this Request. This Request for stay is supported by the factual background underlying the Staff Action, the grounds upon which the Request is based, and the ongoing harm to the affected parties. See *supra* Sections 6-8 and *infra* Section 10.

More to the point, the stay requested by Applicants is mandated by ICANN's own rules governing Auction Eligibility given the pendency of (a) Ruby Glen's complaint to the ICANN Ombudsman and (b) this Request. As plainly stated on ICANN's "New gTLD Program Auctions", a string contention set will be eligible to enter into a New gTLD Program auction only where all active applications in the contention set have "**no pending ICANN Accountability Mechanisms.**" See ICANN's New gTLD Program Auctions page, available at <https://newgtlds.icann.org/en/applicants/auctions> (emphasis added).⁴

Pursuant to Article IV of ICANN's Bylaws, entitled "Accountability and Review of ICANN's By-Laws," both the ongoing Ombudsman investigation and the Reconsideration Request process constitute ICANN Accountability Mechanisms. As

⁴ Applicants are aware of the position taken by ICANN with regard to a similar argument advanced in connection with the "DETERMINATION OF THE BOARD GOVERNANCE COMMITTEE (BGC) RECONSIDERATION REQUESTS 16-1 AND 16-2" dated 25 February 2016. As an initial matter, Applicants believe that the position taken by ICANN in response to Requests 16-1 and 16-2 is limited to the facts presented by the underlying request, which are wholly distinguishable from those presented here. Specifically, Applicants' Request is supported by (a) good cause, as established by NDC's own contradictory statements, and (b) Applicants' diligent efforts to address this issue in the month and half preceding the July 27, 2016 auction date. Moreover, Applicants respectfully disagree with ICANN's awkward attempt to rewrite the phrase "enter into a New gTLD Program Auction" as "enter[] into the auction process." ICANN's argument in support of the proffered interpretation is contradicted not only by the plain language of the Auction Eligibility statement, but also by ICANN's historical administration of the New gTLD Program. It is also unlikely to pass legal muster.

such, ICANN must refrain from proceeding with the .WEB/.WEBS auction until the resolution of Ruby Glen's Ombudsman complaint, this Request and any other ICANN Accountability Mechanisms that may currently be in process or outstanding.

The stay is further supported by the fact that NDC's statements have called into question whether, under the New gTLD Auction Bidder Agreement for the .WEB/.WEBS contention set (the "ICANN Auction Agreement"), NDC meets the standard of a "Qualified Applicant." In light of these questions, the requested stay will also allow ICANN the opportunity to "conduct due diligence on the Qualified Applicant...in an effort to ensure compliance with all applicable laws, regulations and rules governing the [ICANN auction of last resort]." See ICANN Auction Agreement at § 2.7.

Applicants' request to stay the .WEB/.WEBS auction of last resort for an additional (45) days after the issuance of a ruling on the merits of this Request will provide the members of the contention set, as well as ICANN, with a reasonable opportunity to re-engage with each other in advance of the auction and give ICANN the time it needs to conduct the investigation this matter deserves. As addressed above, the failure to grant the requested stay will have wide-ranging repercussions that extend far beyond the .WEB/.WEBS auction.

B. Request for ICANN to Conduct Thorough Investigation into Issues Raised by NDC's Contradictory Statements

Concurrent with the above request, Applicants ask ICANN to utilize the broad investigatory controls described in the Applicant Guidebook—notably, those under Sections 6.8 and 6.11 that seemingly exist precisely for situations such as this—to investigate (a) changes in Mr. Bezsonoff's status, if any, with NDC and (b) changes in

the control, ownership, or leadership of NDC since the time of NDC's original gTLD application. Such inquiry should include, at the very least, interviews with Mr. Bezsonoff and all other individuals identified in Section 11 of NDC's application.

10. Please state specifically the grounds under which you have the standing and the right to assert this Request for Reconsideration, and the grounds or justifications that support your request.

Applicants are approved members of the .WEB/.WEBS contention set, with a scheduled auction for July 27, 2016. As approved members, and as set forth more fully throughout this Request, Applicants have been "adversely affected by ... one or more staff actions or inactions that contradict established ICANN policy." ICANN Bylaws, Art. IV, § 2.2(a). Specifically, the Staff Action was taken in contradiction of various policy provisions contained in ICANN's Bylaws (including ICANN's guiding principles to ensure transparency, openness and accountability), the Auction Rules, and the Applicant Guidebook, all of which require a full and transparent investigation into the discrepancies presented by NDC's application and its current status as an auction participant.

A. The Staff Action Contradicted Established Policy By Failing to Utilize the Broad Investigative Powers at ICANN's Disposal in Investigating NDC's Potential Violation of Guidelines Contained in the Applicant Guidebook

As set forth in the Applicant Guidebook, ICANN has broad authority to investigate all applicants who apply to participate in the New gTLD Auction Program. This investigative authority, willingly provided by each applicant as part of the terms and

conditions set forth in the guidelines contained in the Applicant Guidebook, is set forth in relevant part below:

8. ... In addition, **Applicant acknowledges that [sic] to allow ICANN to conduct thorough background screening investigations:**

...

- c. **Additional identifying information may be required to resolve questions of identity of individuals within the applicant organization; ...**

...

11. **Applicant authorizes ICANN to:**

- a. **Contact any person, group, or entity to request, obtain, and discuss any documentation or other information that, in ICANN’s sole judgment, may be pertinent to the application;**
- b. **Consult with persons of ICANN’s choosing regarding the information in the application or otherwise coming into ICANN’s possession . . .**

See Applicant Guidebook at §§ 6.8, 6.10 (emphasis added).

ICANN’s obligation to conduct a thorough investigation is necessary to ensure the integrity of the auction process and the existence of a level playing field among the ultimate members of a contention set. Background investigations into “applicants (including all parent companies, subsidiaries, affiliates, agents, contractors, employees and any all others acting on [their] behalf)” also ensure that each applicant is capable of administering any new gTLD that it may secure at auction, thereby benefiting the public at large. See Applicant Guidebook, § 6 at Introduction. This information also allows ICANN to determine whether an entity applicant, or an individual associated with an entity applicant, has engaged in the *automatically disqualifying* conduct set forth in Section 1.2.1 of the Applicant Guidebook. Indeed, ICANN requires those submitting a

gTLD application to provide warranties as to the truth and accuracy of their representations, even going so far as to mandate a continuing obligation to notify ICANN of “any change in circumstances that would render any information provided in the application false or misleading.” See *id.* at 1.

In spite of the above, when faced with recent statements by NDC that expressly contradict those contained in its gTLD application—and directly affect its ability to participate in the .WEB/.WEBS auction—ICANN appears to have engaged in only a cursory examination of the issue. The only available conclusion is that the Staff Action was taken without attention to, in contravention of, and with apparent disregard for its obligation to investigate the veracity of the representations made by NDC and its potential changes of control, leadership, and/or ownership.⁵

In light of the noted deficiencies identified in relation to the Staff Action, Applicants respectfully request ICANN now take the time to engage in a full and transparent investigation into material discrepancies in NDC’s application and its status as a contention set member and postpone the .WEB/.WEBS auction, currently scheduled for July 27, 2016. All .WEB/.WEBS applicants deserve to participate in an auction with transparency as to the competition and integrity as to the process.

B. The Staff Action Contradicted Established Policy By Failing to Adhere to the Transparency and Accountability Guidelines Set Forth in ICANN’s Bylaws

⁵ Because the Staff Action also contradicted established policy relating to transparency, as set forth *infra*, Applicants are unfortunately forced to presume that a thorough background investigation of the nature described in Sections 6.8 and 6.11 of the Applicant Guidebook did not occur during the course of the decision-making process.

In addition to ICANN's failure to adhere to the specific guidelines established for the administration of gTLD auctions, the Staff Action (and the events leading thereto) were taken in contravention of multiple provisions of the ICANN Bylaws, all of which require ICANN to administer the .WEB/.WEBS auction process with transparency, accountability, good faith and fair dealing. Collectively, these violations not only provide a solid basis for granting this Request but also revive serious doubts as to ICANN's ability to process and manage the New gTLD Program in a transparent and accountable manner.

i. The Staff Action Contradicts ICANN Bylaws, Art. I, § 2.8:

Article 1, section 2.8 of ICANN's Bylaws requires ICANN to “[m]ak[e] decisions by applying documented policies neutrally and objectively, with integrity and fairness.” As set forth above, ICANN obligates each applicant who seeks to participate in the gTLD auction process to affirm that the statements and representations contained in the application are true and accurate; applicants also undertake a continuing obligation to update their application when changes in circumstance affect an application's accuracy. See Applicant Guidebook at § 6.1. In turn, ICANN represents to the applicants that it will safeguard the entire gTLD application process, including any auctions of last resort, by taking steps to diligently investigate the information provided by each applicant to ensure its accuracy. By failing to engage in a thorough, open and transparent investigation of the contradictory statements made by NDC in relation to its application, as well as an apparent change of control with potential antitrust implications, the Staff Action plainly—and *inexplicably*—failed to reach its decisions by “applying documented policies neutrally and objectively, with integrity and fairness.” See ICANN Bylaws, Art. I,

§ 2.8.

ii. The Staff Action Contradicts ICANN Bylaws, Art. I, § 2.9:

Article 1, section 2.9 of ICANN's Bylaws requires ICANN to “[act] with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.” In undertaking only a cursory examination of the contradictory statements made by NDC and the apparent change in NDC's rights to its application, the Staff Action failed to balance ICANN's interest in a swift resolution of the concerns raised by the members of the .WEB/.WEBS contention set with its obligation to obtain sufficient assurances and information from the individuals and entities at the center of the statements made by NDC; at the very least, ICANN staff should have conducted interviews with Mr. Bezsonoff and all other individuals identified in Section 11 of NDC's application prior to reaching its conclusion.

iii. The Staff Action Contradicts ICANN Bylaws, Art. I, § 2.10

Article 1, section 2.10 of ICANN's Bylaws requires ICANN to “[r]emain[] accountable to the Internet community through mechanisms that enhance ICANN's effectiveness.” By failing to make use of the processes established in Sections 6.8 and 6.10 to the Applicant Guidebook in investigating an admitted failure by NDC to abide by its continuing obligation to update its application, ICANN staff disregarded the very accountability mechanisms put in place to serve and protect not only the Internet community but the public at large. This error was compounded by the cursory dismissal of the concerns raised by multiple members of the .WEB/.WEBS contention set relating to the accuracy of the representations made in NDC's application. By failing to apprise

the members of the contention set as to the manner and scope of the investigation conducted by ICANN staff, ICANN failed to ensure that it would hold itself accountable to any gTLD applicant, let alone the broader Internet community.

iv. The Staff Action Contradicts ICANN Bylaws, Art. II, § 3:

Article II, section 3 of ICANN's Bylaws states that "ICANN shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition." There can be no questioning the fact that the Staff Action resulted in disparate treatment in favor of NDC. On one hand, there are clear statements from NDC that representations made in its application are, at best, misleading and there is ample evidence that NDC has either resold, assigned or transferred all or some of its rights to the application. On the other hand, when pressed by multiple members of the contention set to fully investigate the matter, ICANN provided only a conclusory statement that raises more questions than it resolves. To the extent it had reason to engage in such disparate treatment of the members of the .WEB/.WEBS contention set, ICANN failed to provide such a reason in reaching the determinations at issue in this Request. Certainly, Applicants can think of no "substantial and reasonable cause," to justify the Staff Action. *Id.* at ICANN Bylaws, Art. II, § 3.

v. The Staff Action Contradicts ICANN Bylaws, Art. III, § 1:

Article 3, section 1 ICANN's Bylaws states the "ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness." Over the course of its

existence, ICANN has repeatedly prevailed upon the stakeholders in the ICANN policy process to trust that it will administer its obligations in a fair and transparent manner. The continued trust of ICANN's stakeholders, however, can only extend as far as ICANN is willing to honor its stated commitments to accountability and transparency in every aspect of its work.

If any situation demanded the full transparency to which ICANN has repeatedly committed itself, it must certainly be the one presented here, where a single, hasty backroom decision effectively ensures that the proceeds from the .WEB/WEBS auction will flow to ICANN under an unfortunate cloud of suspected conflicts of interest and disparate treatment. Applicants respectfully request that ICANN reconsider the Staff Action and provide relief in the manner set forth in Section 8 of its Request.

11. Are you bringing this Reconsideration Request on behalf of multiple persons or entities? (Check one)

Yes

No

11a. If yes, Is the causal connection between the circumstances of the Reconsideration Request and the harm the same for all of the complaining parties? Explain.

Applicants have joined together to submit this Request. Moreover, as of date of the submission of this Request, Applicants are aware that other members of the .WEB/WEBS contention set also may join in Applicants' Request. With the exception of NDC, both the circumstances of this Request and the harm described herein is the same for Applicants and all other contention members.

Terms and Conditions for Submission of Reconsideration Requests

The Board Governance Committee has the ability to consolidate the consideration of Reconsideration Requests if the issues stated within are sufficiently similar. The Board Governance Committee may dismiss Reconsideration Requests that are querulous or vexatious. Hearings are not required in the Reconsideration Process, however Requestors may request a hearing. The BGC retains the absolute discretion to determine whether a hearing is appropriate, and to call people before it for a hearing. The BGC may take a decision on reconsideration of requests relating to staff action/inaction without reference to the full ICANN Board. Whether recommendations will issue to the ICANN Board is within the discretion of the BGC. The ICANN Board of Director's decision on the BGC's reconsideration recommendation is final and not subject to a reconsideration request.

DATED: 17 July 2016

Respectfully submitted,

/ama/

Alvaro Alvarez

SVP, General Counsel & Secretary
Donuts Inc.

/bj/

Brijesh Joshi

Director, Radix FZC, on behalf of its
applicant affiliate DotWeb Inc.