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September 16, 2010

VIA EMAIL

Mr. Dennis Jennings, Chair
Ms. Rita Rodin
Mr. Raymond Plzak
Mr. Ram Mohan
Board of Directors Governance Committee
Internet Corporation for Assigned Names and Numbers
4676 Admiralty Way, Suite 330
Marina del Rey, California 90292

**RE: Request for Reconsideration -- <.jobs> Registry Agreement
Amendments**

Dear Ms. Rodin and Mssrs. Jennings, Plzak, and Mohan:

We represent Monster Worldwide, Inc. (“Monster Worldwide”) in this matter. Reference is made to the Petition for Reconsideration of Board Action submitted on August 20, 2010 by the .JOBS Charter Compliance Coalition (the “Coalition”) along with the supplemental filing regarding the same submitted on September 2, 2010 (collectively, the “Reconsideration Request”). Monster Worldwide is one of the many members of the Coalition, which consists of various businesses, associations and other entities representing diverse constituents of the community served by the Internet Corporation for Assigned Names and Numbers (“ICANN”). The Reconsideration Request submitted on behalf of the Coalition contested both the process and result reached by the ICANN Board (the “Board”) in its decision on August 5, 2010 to approve the Phased Allocation Program (the “Program”).

Monster Worldwide concurs with the various arguments set forth in the Reconsideration Request, which raise serious procedural and substantive concerns relating to the Board’s decision. Monster Worldwide further agrees that such problems mandate that ICANN enter a stay of the contested action (*i.e.*, the Program) pending resolution of the reconsideration. Monster Worldwide asserts that such a stay and reconsideration is warranted based on the following grounds, among others:

ALBANY
AMSTERDAM
ATLANTA
AUSTIN
BERLIN*
BOSTON
BRUSSELS*
CHICAGO
DALLAS
DELAWARE
DENVER
FORT LAUDERDALE
HOUSTON
LAS VEGAS
LONDON*
LOS ANGELES
MIAMI
MILAN*
NEW JERSEY
NEW YORK
ORANGE COUNTY
ORLANDO
PALM BEACH COUNTY
PHILADELPHIA
PHOENIX
ROME*
SACRAMENTO
SHANGHAI
SILICON VALLEY
TALLAHASSEE
TAMPA
TOKYO
TYSONS CORNER
WASHINGTON, D.C.
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*STRATEGIC ALLIANCE

The Defective Decision-Making Process Failed To Satisfy The Directors' Duty Of Inquiry. As an initial matter, the Board was poorly served by its Staff in connection with the deliberative process that resulted in the approval of the Program. Specifically, the numerous procedural and substantive issues supporting the rejection of the Program that were raised by Monster Worldwide in its comment letter dated July 15, 2010 (attached hereto) were essentially ignored by the ICANN Staff in its summary and analysis of the 274 comments made by members of the ICANN community, 86% of which were opposed to the Program. Similar critical comments submitted by the supermajority of hundreds of other ICANN constituent organizations affected by the proposed Program were likewise disregarded by the ICANN Staff. Conversely, the limited comments from entities that supported the Program were given undue emphasis in the Staff's summary document, which formed the basis of the Board's decision.

The duty of inquiry is one of the fiduciary obligations owed by the ICANN Board of Directors to the organization and its constituencies. *See* ICANN Management Operating Principles at p. 18. This duty requires that "a Director take such steps as are necessary to be sufficiently informed to make decisions on behalf of the organization and participate in the Board of Directors." *Id.* The scrutiny required by a well-informed decision-making process was not met by the Board in arriving at its approval of the Program. The deeply flawed procedural methods did not permit the Directors of ICANN to be sufficiently informed about the broad implications of the proposed Program, and thus they failed to satisfy their duty of inquiry. In order to fulfill their fiduciary obligation, the Board should reconsider this matter and implement a scrupulous decision-making process that accounts for the positions of all of ICANN's commenting constituents, including the numerous businesses, associations and individuals that oppose the Program. In fact, ICANN's bylaws require that the Board guide its decisions and actions by "[e]mploying open and transparent policy development mechanisms that . . . ensure that those entities most affected can assist in the policy development process." *See* ICANN Bylaws, Article I, Section 2 at No. 7.

The Board's Decision Has Empowered Employ Media To Violate The .JOBS Charter. The effect of the Board's approval of the Program is that it permits Employ Media, as registry, the usage of second-level domain names in a manner which improperly exceeds the clearly defined restrictions of the .JOBS Charter ("Charter"). The Charter explicitly allows entities to register second-level domain names in .JOBS *only* in furtherance of their own human resource management goals. Thus, the plain language of the Charter does not support the Program's inappropriate expansion of "product and service offerings" into the .JOBS domain. By approving the Program, the Board has unwittingly authorized Employ Media to flagrantly violate the terms of the Charter under which it operates.

In addition, the Staff report prepared during the Board's decision-making process indicates that Employ Media represented to them that the changes would not violate the

Charter's restrictions. It appears from the public record that the Staff failed to conduct a diligent, independent evaluation of this erroneous claim and instead simply took Employ Media at their word. This deficient process contradicts the stated accountability and transparency standards set forth in the ICANN Management Operating Principles and also prevented the Directors of the Board from satisfying their duty of inquiry.

An Anti-Competitive Marketplace Will Emerge If The Board's Decision Is Not Reversed. The Board's decision has broad, anti-competitive implications that were not properly examined by the Staff. In addition to the unauthorized modifications to the Charter restrictions, the Board's decision allows the registry (*i.e.*, Employ Media) to "shop" for an essentially exclusive registrant for its out-of-charter second-level domain names. In effect, Employ Media has been granted free reign to act as the sole arbiter over this process, and will be permitted to exploit its position of control to its improper advantage. The Board has, without proper consideration and deliberation, consented to the privatization and capture of a sponsored top-level domain ("sTLD") by a single registrant or small group of registrants. The Board's decision directly violates ICANN's bylaws, which promise the "introduc[tion] and promoti[on] of competition in the registration of domain names where practicable and beneficial to the public interest." *See* ICANN Bylaws, Article I, Section 2 at No. 6.

The Board's Decision Sets An Unacceptable Precedent For The New gTLD Program. The Board's decision has serious consequences for ICANN's credibility as it seeks to roll out new generic top-level domains ("gTLDs"), especially the so-called "community" gTLDs. If this decision stands and ICANN permits Employ Media, as a sTLD registry, to abandon its charter restrictions and "privatize" its TLD, the unintended consequence is that ICANN will be viewed as willing to tolerate sweeping, unauthorized changes to community based TLDs with no regard for the representations made by the registries during the application process. For example, a brand owner may allow a community based registry to adopt a string which may be confusingly similar to the brand owner's mark because of the community charter restrictions. However, if the brand owner has no faith that ICANN will actually require the registry to honor the charter's restriction based on the ill-advised precedent set forth in this decision, the brand owner may be more likely to bring claims against both the applicant and ICANN to prevent the delegation from occurring.

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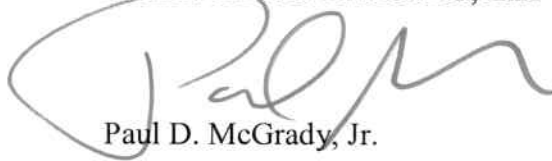
In sum, Monster Worldwide contends that the decision by the Board to approve the Program violated the core values espoused by ICANN in its bylaws, which mandate that the decision-making process be conducted in a neutral and objective manner, and with integrity and fairness. *See* ICANN Bylaws, Article I, Section 2 at No. 8. That did not occur here. By imposing a stay on the Program and reconsidering the consequences of its far-reaching and precedential decision, the ICANN Board will demonstrate to its

constituents that its decision-making method will be conducted in a manner consistent with ICANN's mission of employing an open and transparent policy development process. Accordingly, Monster Worldwide respectfully requests that the ICANN Board grant the Reconsideration Request, stay the implementation of the Program, and reverse its initial decision approving implementation of the Program. In addition, Monster Worldwide requests that the ICANN Board inform the <.jobs> policy council that any modifications to Employ Media's service offerings must be consistent with the Charter, and that any changes to the Charter must be considered in the transparent manner that is consistent with ICANN's stated ideals. Furthermore, Monster Worldwide requests that the ICANN Board inform the Society for Human Resource Management ("SHRM") that it is contractually bound to represent the Community, as defined in the delegation documents, not the interests of the registry operator or any other party with whom it may have a financial relationship.

While this letter is written with the hope that this dispute may be settled through a comprehensive and transparent reconsideration and decision-making process, Monster Worldwide nonetheless expressly reserves, and does not waive, any and all of the rights, claims, and actions it may have relating to this matter to seek relief, damages and remedies, in law or in equity.

Very truly yours,

GREENBERG TRAURIG, LLP



Paul D. McGrady, Jr.

cc: Jeffrey A. LeVee, Esq.
J. Beckwith Burr, Esq.

PDM/lig
Enclosure



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Peter Dengate Thrush, Chairman
Members of the Board of Directors
The Internet Corporation for Assigned Names and Numbers
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292-6601

Re: Employ Media LLC's Proposed Amendment to .jobs Registry Agreement

Dear Chairman Dengate Thrush and Members of the Board:

I am writing on behalf of Monster Worldwide, Inc. with respect to Employ Media LLC's proposed amendment to Appendix S of the .jobs Registry Agreement.

Monster pioneered the business of digital recruiting in 1994, and today operates on a global basis with a presence in approximately 50 countries. We have a vast amount of experience working with job seekers and employers to develop and provide effective, efficient and secure online recruitment solutions.

Monster appreciates the opportunity to comment on Employ Media's proposed amendment. While we are unclear on ICANN's approval process at this stage, we trust that ICANN will conduct a thorough review of the proposed amendment, its history and its potential implications to all constituencies. Monster has significant procedural and substantive concerns regarding Employ Media's proposal, and we believe strongly that ICANN should reject the proposed amendment. There has been a lack of transparency on this initiative, which proposes to grant unlimited decision-making authority to a single entity—Employ Media—that stands to reap significant financial benefits and has already exhibited and continues to exhibit a lack of regard for the commitments it has to ICANN. Approval of the proposed amendment would be inconsistent with ICANN's core values of employing open and transparent policy development mechanisms that promote well-informed decisions based on expert advice, and making decisions by applying documented policies neutrally and objectively, with integrity and fairness.

Employ Media is proposing a complete overhaul of the .jobs sponsored Top-Level Domain ("sTLD") with a proposed new provision that is startling in its breadth: "Domain registrations are permitted for other types of names (e.g., occupational and certain geographic identifiers) in addition to the 'company name' designation." Moreover, Employ Media's proposed methods for allocating domain names are not clearly defined. Employ Media proposes that it may allocate domain names using the following methods: "1) Request for Proposals (RFP) to invite interested parties to propose specific plans for registration, use and promotion of domains that are not their company name; 2) By auction that offers domains not allocated through the RFP process; and 3) A first-come, first-served real-time release of any domains not registered through the RFP or auction processes (sic)." As discussed below, it does not appear that Employ Media has any intention of allocating any non-"company name" domain names to third parties, other than

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perhaps to DirectEmployers Association, Inc. as part of the continued “building out” of “The Dot Jobs Universe” that has been occurring since 2009 in contravention of the .jobs Registry Agreement and Charter.

When Employ Media was provided the opportunity to explain to the .jobs Policy Development Process (“PDP”) Council its reasons for its proposed amendment, the explanation was remarkably devoid of any substance. According to the minutes of the April 9, 2010 meeting of the PDP Council, the CEO of Employ Media merely explained that “Employ Media has submitted the current proposed amendment because it believes that Employ Media may use and register non-‘companyname’ domain names in the best interests of the international human resource management community, so long as Employ Media maintains adherence to the .jobs Charter that is enforced.”

Monster’s reasons for commenting are not the result of any competitive pressures that might arise from Employ Media’s proposed amendment. Competition in the online recruitment space is already intense, with tens of thousands of online job boards already in existence. Rather, we believe that ICANN must reject the proposed amendment for the following reasons:

- Employ Media and DirectEmployers Association have been blatantly disregarding the .jobs Registry Agreement since 2009, acting as if they have free reign with the .jobs sTLD and calling into question whether Employ Media should continue to be trusted with the significant responsibility of acting as registry operator for the .jobs sTLD. We urge ICANN to review the materials located at <http://www.universe.jobs> describing “The Dot Jobs Universe” and detailing the steps that were taken by Employ Media and DirectEmployers Association during an eight-month “beta test”. Those past actions, as well as the plans for further “building out” the .jobs sTLD, are contrary to the Registry Agreement’s unambiguous, fundamental limitation on .jobs domain registrations to the legal name of an employer and/or a name or abbreviation by which the employer is commonly known.¹
- While Employ Media and DirectEmployers Association go to great lengths to answer questions that have arisen regarding their plans, their relationship and the process they have followed – see for example the White Paper and “informational” video located at The Dot Jobs Universe site – their answers are disingenuous. Using careful wording, they gloss over the fact that they have been disregarding the .jobs Registry Agreement. They state that the “agreement” between DirectEmployers Association and Employ Media is non-exclusive, allowing Employ Media to continue to accept ideas and proposals from interested parties in the human resource community. That statement rings hollow, however, as Employ Media has stated that it will likely restart the “beta test” if

¹ It should also be noted that according to the minutes of the April 9, 2010 PDP Council meeting, a member of the PDP Council was able purchase the domain name michiganhospitals.jobs over two years ago with the intent of using it as a consolidated applicant search site, suggesting that the disregard of the .jobs Registry Agreement commenced even earlier than 2009.

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its proposed amendment is approved, and that it is not Employ Media's intent to provision or allocate non-"company name" domain names.² This is consistent with the claims made on The Dot Jobs Universe site, where it is presented as a foregone conclusion that DirectEmployers Association will control non-"company name" .jobs domain names in the future: "DirectEmployers Association is powering hundreds of thousands of sites comprised of every niche, occupation, and geographic domain in the .jobs toplevel domain (TLD) and creating a unified platform to serve employers and job seekers."³ Remarkably, the proposed cost and prominence of job postings to be posted in the .jobs "universe" is tied to membership in DirectEmployers Association, and information is provided about how to contact DirectEmployers Association for membership.⁴ While Employ Media and DirectEmployers Association tout their transparency and outreach for Human Resource community feedback, it is clear that they have only been transparent between themselves, and to some extent with DirectEmployers Association's member companies. The relationship and agreement between Employ Media and DirectEmployers Association remains unclear and should be reviewed thoroughly by ICANN.

- ICANN conducted an extensive review process for the .jobs sTLD in 2004 – 2005, utilizing "an independent panel of experts with substantial knowledge of relevant technical, business/financial and policy areas ... to review and evaluate the applications."⁵ The result of that extensive process was a Registry Agreement and Charter with strict limitations on the use of the .jobs sTLD, including a limitation that ".jobs domain registrations are limited to the legal name of an employer and/or a name or abbreviation by which the employer is commonly known."⁶ The resulting Registry Agreement and Charter were entirely based on that premise. As just one example, Appendix S of the Registry Agreement notes that the limited scope of the current Agreement and Charter alleviates concerns about potential trademark infringement. It would be inappropriate to approve Employ Media's proposed amendment without reviewing all aspects of the Registry Agreement and Charter through the lens of Employ Media's proposed transformation of the .jobs sTLD.
- While Monster does not deem new job boards managed by Employ Media and/or DirectEmployers Association to be any more of a competitive threat than the tens of thousands of job boards already in existence, it would be unjust for ICANN to permit Employ Media to transform the .jobs sTLD into a new category of competitors to existing

² See <http://www.policy.jobs> ("Approval of the proposed amendment confirms that Employ Media has the authorities identified above. Such authority is broad enough to cover the workings of the shared domain beta test, and Employ Media would likely restart the shared domain beta." (emphasis added); "While it is not Employ Media's current intent to employ any of these industry-standard or industry non-standard ways of provisioning/allocating domains, Employ Media will remain open to all proposals regarding .jobs domains, so long as the scope of the .jobs Charter is maintained." (emphasis added))

³ See <http://www.universe.jobs/faqs.html>.

⁴ See <http://www.universe.jobs/faqs.html>, FAQs 5 and 6.

⁵ *Status Report on the sTLD Evaluation Process* (www.icann.org/en/tlds/stld-apps-19mar04/stld-status-report.pdf) at page 5.

⁶ .jobs Registry Agreement, Appendix S.

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job boards, with Employ Media having discretion to allocate domain names and/or use them to compete for its own profit as it sees fit.

- The Society for Human Resource Management (“SHRM”) is the sponsor under the current Registry Agreement and Charter. While SHRM may have been an appropriate sponsor for a system where only company names could be used for purposes of internal hiring purposes, ICANN should closely review whether SHRM is an appropriate sponsor to evaluate Employ Media’s proposed amendment and to help enforce any resulting amended Registry Agreement and Charter. The community that would be affected by Employ Media’s proposed amendment is significantly broader than the original sponsored community. Moreover, we note that according to the minutes of the April 28, 2010 meeting of the PDP Council, in response to a question during the meeting regarding complaints in 2009 about Employ Media violating the Charter, a representative of SHRM noted that “SHRM was aware of what Employ Media was doing and did not take action because in SHRM’s opinion it did not violate the Charter.”
- The PDP Council appears to have focused on a narrow question: “If done the right way, would the use of non-‘companyname’ domains of .jobs be of benefit for the human resource community?” (emphasis added).⁷ Neither the Council nor SHRM fully explored the implications of providing Employ Media with such sweeping authority over the process, and certainly no detailed discussions were held regarding appropriate contractual or Charter limitations. Although the Council contemplated asking Employ Media about its financial interest in the proposed amendment, it noted that it never had the opportunity to ask this question.⁸ When the Council discussed Employ Media’s interests at a subsequent meeting, a representative of SHRM noted that “it is not reasonable for Employ Media or the Council to know what their business will look like in future years.”⁹ When the Council discussed whether it should consider who might ultimately own the domain names allocated by Employ Media, a representative of SHRM stated that while it is fair to weigh that consideration if it is important to the HR profession, “the ownership method is not the Council’s ultimate concern.”¹⁰
- It is likely that smaller or regional job boards would be the most adversely and unfairly affected by the proposed amendment. There are thousands of online job boards with names like [type of occupation]jobs.com and [name of city]jobs.com. Employ Media simply cannot be permitted to now transform the .jobs sTLD into a wide open territory that it controls, including the ability to sell, use or otherwise exploit the [type of occupation].jobs and [name of city].jobs domain names.
- The proposed amendment would harm job seekers by adding complexity to their job search. With tens of thousands of online job boards already in existence, it is unclear why another category of job boards under the .jobs sTLD would be beneficial to job

⁷ See minutes of the April 9, 2010 PDP Council meeting.

⁸ See minutes of the April 9, 2010 PDP Council meeting.

⁹ See minutes of the April 28, 2010 PDP Council meeting.

¹⁰ See minutes of the April 28, 2010 PDP Council meeting.

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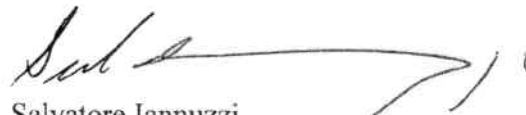
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seekers or employers or how it would enhance competition. Rather, it seems certain to create confusion among employers and job seekers while having a negligible impact on overall competition in an already competitive market. DirectEmployers Association itself has claimed that its efforts will lead to millions of geographical .jobs domain names coming online.¹¹ It is difficult to imagine how anyone other than Employ Media and DirectEmployers Association will benefit from the addition of millions of new job boards.

- Given the abundance of existing job boards, ICANN should evaluate whether there is a meaningful potential use for the .jobs sTLD, or whether the vast expansion proposed by Employ Media would simply create a rush for a multitude of defensive registrations.
- Expansion of the .jobs sTLD could invite unsavory or criminal actors who may use these new domains to impersonate legitimate job boards, employers or governmental or regional authorities. In turn, this could result in increased incidence of the theft of personal information or luring job seekers into unwittingly engaging in criminal activity, such as laundering money or re-shipping stolen goods. While DirectEmployers Association claims that the .jobs “universe” will be for use by legitimate employers only, it is highly unlikely that Employ Media and/or DirectEmployers Association will have the resources or incentive to adequately enforce such policies on a global basis.

In sum, we believe that a thorough review of the proposed amendment is necessary, and we welcome the opportunity to participate in that process. Members of our senior management team would be more than happy to meet with representatives of ICANN to discuss this matter in detail. Please feel free to contact me if you have any questions. Thank you again for the opportunity to provide these comments.

Very truly yours,



Salvatore Iannuzzi
Chairman of the Board, President and
Chief Executive Officer

¹¹ “Soon hundreds of thousands (and, eventually, millions) of geographical .jobs domain names will come online,” boasts the website, Universe.jobs.” (See <http://www.ere.net/2009/11/10/a-universe-of-jobs-job-boards-is-set-to-launch>.)

“DirectEmployers Association is powering hundreds of thousands of sites comprised of every niche, occupation, and geographic domain in the .jobs toplevel domain (TLD) and creating a unified platform to serve employers and job seekers.” (See <http://www.universe.jobs/faqs.html>.)