1   INDEPENDENT REVIEW PROCESS

2   INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

3   ---o0o---

4

5

6

        AFILIAS DOMAINS NO. 3 LTD.,   )
7   )
                        Claimant,   )
8   )
             vs.   )   ICDR Case No.
9   )   01-18-0004-
        INTERNET CORPORATION FOR   )   2702
10   ASSIGNED NAMES AND NUMBERS,   )
)
11   Respondent.   )
)
12

13

14   VOLUME III

15   ARBITRATION

16   AUGUST 5, 2020

17

18

19

20

21

22

23

24   BALINDA DUNLAP, CSR 10710, RPR, CRR, RMR
     465534
25

1   INDEPENDENT REVIEW PROCESS

2   INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

3   ---o0o---

4

5

6

    AFILIAS DOMAINS NO. 3 LTD.,   )
7   )
                      Claimant,   )
8   )
               vs.   )   ICDR Case No.
9   )   01-18-0004-
    INTERNET CORPORATION FOR   )   2702
10   ASSIGNED NAMES AND NUMBERS,   )
)
11   Respondent.   )
)
12

13

14

15   ---o0o---

16   WEDNESDAY, AUGUST 5, 2020

17   ARBITRATION HEARING HELD BEFORE

18   PIERRE BIENVENU
               RICHARD CHERNICK
19   CATHERINE KESSEDJIAN

20   VOLUME III (Pages 424-586)

21   ---o0o---

22

23

24

    REPORTER: BALINDA DUNLAP, CSR 10710, RPR, CRR, RMR
25

                         424

```
1                A-P-P-E-A-R-A-N-C-E-S

2                      ---o0o---

3    FOR THE CLAIMANT AFILIAS DOMAINS NO. 3 LTD.:

4             DECHERT LLP
              1900 K Street, NW
5             Washington, DC  20006-1110
              BY: ARIF HYDER ALI, ESQ.
6                 ALEXANDRE de GRAMONT, ESQ.
                  ROSEY WONG, ESQ.
7                 DAVID ATTANASIO, ESQ.
                  MICHAEL LOSCO, ESQ.
8                 TAMAR SARJVELADZE, ESQ.
              (202) 261-3300
9             arif.ali@dechert.com
              alexandre.degramont@dechert.com
10            rosey.wong@dechert.com
              david.attanasio@dechert.com
11            michael.losco@dechert.com

12            CONSTANTINE CANNON
              335 Madison Avenue, 9th Floor
13            New York, New York  10017
              BY: ETHAN E. LITWIN, ESQ.
14            (212) 350-2700
              elitwin@constantinecannon.com

15

16   FOR THE RESPONDENT THE INTERNET CORPORATION FOR
     ASSIGNED NAMES AND NUMBERS:
17
              JONES DAY
18            555 California Street, 26th Floor
              San Francisco, California  94104
19            BY: STEVEN L. SMITH, ESQ.
                  DAVID L. WALLACH, ESQ.
20                PAUL C. HINES, ESQ.
              (415) 626-3939
21            ssmith@jonesday.com
              dwallach@jonesday.com
22            phines@jonesday.com

23

24

25
```

BARKLEY
Court Reporters

```
 1              A-P-P-E-A-R-A-N-C-E-S
                    ---o0o---
 2

    FOR THE RESPONDENT THE INTERNET CORPORATION FOR
 3  ASSIGNED NAMES AND NUMBERS:

 4           JONES DAY
             555 South Flower Street, 50th Floor
 5           Los Angeles, California  90071
             BY: JEFFREY A. LeVEE, ESQ.
 6               ERIC P. ENSON, ESQ.
                 KELLY M. OZUROVICH, ESQ.
 7           (213) 489-3939
             jlevee@jonesday.com
 8           eenson@jonesday.com
             kozurovich@jonesday.com
 9
    FOR NDC AMICI:
10

             PAUL HASTINGS
11           1999 Avenue of the Stars
             Los Angeles, California  90067
12           BY: STEVEN A. MARENBERG, ESQ.
                 JOSH GORDON, ESQ.
13               APRIL HUA, ESQ.
             (310) 620-5700
14           stevenmarenberg@paulhastings.com
             joshgordon@paulhastings.com
15           aprilhua@paulhastings.com

16  FOR VERISIGN AMICI:

17           ARNOLD & PORTER
             777 South Figueroa Street, 44th Floor
18           Los Angeles, California  90017
             BY: RONALD L. JOHNSTON, ESQ.
19               RONALD BLACKBURN, ESQ.
                 OSCAR RAMALIO, ESQ.
20               MARIA CHEDID, ESQ.
                 JOHN MUSE-FISHER, ESQ.
21               HANNAH COLEMAN, ESQ.
             (213) 243-4000
22           ronald.johnston@arnoldporter.com
             ronald.blackburn@arnoldporter.com
23           oscar.ramalio@arnoldporter.com
             maria.chedid@arnoldporter.com
24           john.musefisher@arnoldporter.com
             hannah.coleman@arnoldporter.com
25
```

426

BARKLEY
Court Reporters

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

ARBITRATION

BARKLEY
Court Reporters

1   CALIFORNIA, CALIFORNIA, AUGUST 5, 2020

2   ---o0o---

3   ARBITRATOR BIENVENU: Let me begin by

4   wishing everyone welcome to Day 3 of this hearing.

5   We are a few minutes past the hour, and that's

6   because of me. I had a problem joining the

7   meeting.

8   Are there any preliminary matters that

9   anyone would wish to raise before we continue with

10   the cross-examination of Ms. Eisner?

11   MR. ALI: Yes, Mr. Chairman. This is Arif

12   here. Good morning and good evening to everyone.

13   The matter we would like to raise is one

14   regarding which I just sent a message literally a

15   couple minutes ago, so I apologize for the

16   tardiness, but it is the matter of three documents

17   we would like to add to the record, one of which I

18   mentioned yesterday, mainly the Board resolution

19   associated with the admission -- the Board's

20   acceptance of the CCWG and its report and

21   transmittal to the NTIA.

22   ARBITRATOR BIENVENU: Mr. Ali, sorry to

23   cut you off. Is this something you have had

24   occasion to discuss with your friends opposite?

25   MR. ALI: Yes. We transmitted the

1 documents with a request that the parties agree to

 2 have the documents admitted to the record by

 3 agreement.

 4   Amici responded that they objected -- can

 5 you hear me?

 6   ARBITRATOR BIENVENU: Yes.

 7   MR. ALI: And Mr. LeVee sent a message

 8 this morning saying that ICANN endorses and

 9 supports the Amici's position objecting to the

10 admission of the documents.

11   My proposal, sir, is that we address this

12 matter perhaps after Ms. Eisner's testimony, and

13 indeed we can do so at the end of the day if it is

14 not too much of an imposition on Professor

15 Kessedjian, so that we don't take up time and keep

16 Ms. Eisner waiting.

17   ARBITRATOR BIENVENU: Let's do that. In

18 the meantime, we'll have occasion to read your

19 email message.

20   Any other preliminary matter?

21   MR. LeVEE: Mr. Chairman, I apologize for

22 cutting you off. I just wanted to say we have a

23 written response that we are preparing this

24 morning, and we will send that as well. So the

25 Panel can either decide during the break on its own

1   or it can take a hearing at a convenient time.

2   ARBITRATOR BIENVENU: That's helpful.

3   Thank you for mentioning this. Let's push it off

4   to the end of the day.

5   In the meantime, we will have occasion to

6   read the parties' written submissions on the point.

7   MR. LeVEE: Thank you so much.

8   MR. ALI: Mr. Chairman, we haven't made a

9   written submission. We were proposing oral

10   argument just to deal with the matter very promptly

11   in the context of the hearings.

12   But if Mr. LeVee is preparing a written

13   response, then I suppose we should make a formal

14   written application to the Panel, which you could

15   then respond or he puts in his position and then we

16   respond.

17   ARBITRATOR BIENVENU: Let's let Mr. LeVee

18   put in his position and let us look at the request

19   and the objection to the request, and rest assured

20   that you'll have occasion to address us before a

21   decision is made; is that all right?

22   MR. LeVEE: It is. The reason that I

23   indicated that we would have a written response is

24   that Mr. Ali sent me a several-paragraph statement

25   yesterday. I thought he was sending me -- I have

BARKLEY
Court Reporters

```
 1  been standing here, so I don't have my laptop in

 2  front of me.  So I did not appreciate that he had

 3  only sent a request.  Yesterday he sent a fairly

 4  thorough request, and if he forwards that to the

 5  Panel, I was planning to respond to that.

 6           ARBITRATOR BIENVENU:  Okay.  Why don't you

 7  look at what he sent us and let us look at the

 8  request before we, perhaps, make more of something

 9  that can be dealt with summarily.

10           MR. LeVEE:  Thank you.

11           ARBITRATOR BIENVENU:  Good with you,

12  Mr. Ali?

13           MR. ALI:  Yes, Mr. Chairman.  I went mute

14  and dark.  Yes, excellent.

15           ARBITRATOR BIENVENU:  Any other

16  preliminary matters?

17           MR. LeVEE:  No.

18           MR. ALI:  Nothing from claimant.

19           ARBITRATOR BIENVENU:  JD, please bring

20  back Ms. Eisner.

21           Ms. Eisner, good morning.  This is Pierre

22  Bienvenu, Chairman of the Panel.  How are you?

23           THE WITNESS:  I am doing very well today.

24  How are you?

25           ARBITRATOR BIENVENU:  Excellent.
```

431

1   Ms. Eisner, you will be testifying under the same

     2   solemn -- not solid, for the stenographer -- solemn

     3   affirmation as yesterday?

     4   THE WITNESS: Yes.

     5   ARBITRATOR BIENVENU: Thank you very much.

     6   Mr. Litwin, you are prepared to continue

     7   your cross-examination?

     8   MR. LITWIN: Yes.

     9   ARBITRATOR BIENVENU: Please proceed.

    10   MR. LITWIN: Thank you, Mr. Chairman.

    11   CROSS-EXAMINATION (Cont'd)

    12   BY MR. LITWIN

    13   Q.   Good morning, Ms. Eisner. Can you hear me

    14   okay?

    15   A.   Yes, I can. Can you hear me?

    16   Q.   I can. I just wanted to set the stage on

    17   where we left off yesterday. We had just

    18   established, and I just would ask if you recollect

    19   that the IOT had not held any meetings during the

    20   months of July, August and September 2008?

    21   Do you recall that?

    22   A.   Yes.

    23   Q.   And that the IOT's meeting on October 9,

    24   2018, was the committee's first meeting in nearly

    25   four months, correct?

ARBITRATION

BARKLEY
Court Reporters

1   A.   Yes.   There is a likelihood that we

2 were -- we had times that we convened but did not

3 have a quorum.   So there might have been a request

4 to continue items on list or take matters through

5 with emails.

6   So we had likely had times when people had

7 talked, but there was no decisional discussion or

8 anything, and they were not treated as regular

9 meetings because they were not a quorum.

10   Q.   So if there were a nonquorum meeting or an

11 email discussion among IOT members, those emails

12 and transcripts would have been posted to the IOT's

13 Wiki page, correct?

14   A.   So the emails would have been on the

15 probably available mailing list.   We would not have

16 continued with the meeting -- we would never have

17 convened a meeting for discussion if it was not a

18 quorum.   So there wouldn't be transcripts of that.

19   Q.   Okay.   So the first substantive meeting

20 where you discussed the proposed interim rules in

21 detail would have been -- the first one after June

22 2018 would have been on October 9; is that correct?

23   A.   Based on your representation of the status

24 of the Wiki page, yes.

25   Q.   Okay.   So were you aware that there were

BARKLEY
Court Reporters

1 only six other people in addition to yourself that

2 participated on October 9, 2018?

3   A.   I don't recall the exact attendee list,

4 but I know that we had very small numbers of

5 attendees, so that would not surprise me.

6   Q.   Okay. And two of the people who attended

7 on October 9 were Kate Wallace of Jones Day and

8 Elizabeth Le of ICANN's in-house legal department,

9 correct?

10   A.   If they were listed among the attendees,

11 yes.

12   Q.   And also Mr. McAuley, David McAuley, who

13 was the chair of the IOT, attended that meeting,

14 correct?

15   A.   Again, if he was recorded as an attendee,

16 yes.

17   Q.   So if you accept my representation that

18 there were seven participants, including yourself,

19 by my count, that is four participants who were

20 either ICANN lawyers or -- well, let me just ask

21 this before I do that.

22   Mr. McAuley was employed by VeriSign as of

23 October 9, 2018, correct?

24   A.   As far as I am aware.

25   Q.   So going back to my question, by my math,

BARKLEY
Court Reporters

1 there were seven attendees, four of whom were

2 either ICANN lawyers or an employee of VeriSign; is

3 that right?

4   A.   If you're referring to Liz, me and Kate

5 from ICANN and then David, yeah.

6   Q.   So I'd like to direct your attention to

7 Tab 3 of your binder, and this is the transcript as

8 it appears on the IOT Wiki page for the October 9,

9 2018, meeting.

10   A.   Okay.

11   Q.   Can you please turn to Page 14 of that

12 transcript?

13   A.   With your unique numbers?

14   Q.   Yes, my unique numbers. It is Page 13 of

15 the transcript, but Page 14 as we have marked it.

16   A.   Thanks so much.

17   Q.   So you'll see in the middle of the page

18 that a gentleman named Bernard Turcotte is

19 speaking?

20   A.   Correct.

21   Q.   Who is Mr. Turcotte?

22   A.   He is a contractor that in this instance

23 that was employed by ICANN to help facilitate the

24 work of the IOT.

25   Q.   So it's someone who was facilitating the

435

BARKLEY
Court Reporters

```
 1  work of the IOT; he was not a member of the IOT,

 2  correct?

 3       A.   Correct.

 4       Q.   Now, is it fair to say that during this

 5  October 9 meeting, Mr. Turcotte was reading the

 6  text of various rules to the attending IOT members?

 7       A.   Yes.

 8       Q.   Now, on Page 14 he's reading the text of

 9  what was then the current draft of Rule 7,

10  consolidation, intervention and joinder, correct?

11       A.   Yes.

12       Q.   As Mr. Turcotte reads, Rule 7 provides

13  that, quote, "Requests for consolidation and

14  intervention or participation as an amicus are

15  committed to the reasonable discussion of the" --

16  it says "properties officer," but I am assuming

17  that's "procedures officer"?

18       A.   Yes.  Just so you know and the Panel

19  knows, we were using an automated transcription

20  service.  So you will see random items in the

21  transcript that you have to kind of piece together.

22       Q.   Yeah, we'll come to that later.  I had to

23  go back to the audio recording to make sense of it.

24       A.   Right.

25       Q.   But thank you for pointing that out.
```

ARBITRATION

BARKLEY
Court Reporters

1   So that's what Rule 7 provided as of

2   October 9, that participation as an amicus was

3   committed to the reasonable discretion of the

4   procedures officer, right?

5   A.   Yes.

6   Q.   So if we turn to Page 15, which is the

7   next page, and look towards the bottom of the page,

8   it is the second-to-last paragraph, Mr. Turcotte

9   continues, and I quote, "If the procedures officer

10   determines in his or her discretion that the

11   proposed amicus has a material interest relevant to

12   the dispute, he or she shall allow the

13   participation by the amicus curiae."

14   That is also what Rule 7 provided as of

15   October 9, correct?

16   A.   Correct.

17   Q.   Now, that was a general rule, and there

18   was one exception that the IOT had provided for,

19   and that's what comes next, that if the IRP

20   concerned a review of a decision made by what is

21   quoted here, an underlying proceeding, the

22   participants in that underlying proceeding would be

23   deemed to have a material interest, and therefore,

24   would have a right to participate, correct?

25   A.   Correct.

BARKLEY
Court Reporters

1   Q.   Now, as you look at Page 15, Rule 7 also

2   provided that the scope of amicus participation was

3   committed to the discretion of the IRP Panel.

4   That's at the very bottom of the page, continuing

5   on to the next page, yeah, Page 16, where

6   Mr. Turcotte quotes, "The IRP Panel may request

7   briefing in the discretion of the IRP Panel and

8   subject to such deadlines and page limits and other

9   procedural rules as the IRP Panel may specify in

10 its discretion."

11   Do you see that?

12   A.   Yes.

13   Q.   Okay. Now, looking down the page, you'll

14 see that Mr. McAuley responds first. You see where

15 he starts speaking?

16   A.   Yes.

17   Q.   And he says here that he has his hand up

18 because "I want to participate as a participant

19 here." So he's distinguishing his role between

20 being a participant and Chair of the IRP -- of IOT,

21 correct?

22   A.   Correct.

23   Q.   He goes on, he says, "I do have a concern

24 about this, and what I believe is that on joinder

25 intervention, whatever we are going to call it,

BARKLEY
Court Reporters

1   it's essential that a person or entity have a right

2   to join an IRP if they feel that a significant --

3   if they claim that a significant interest they have

4   relates to the subject of an IRP and that

5   adjudicating the IRP in their absence would impair

6   or impede their ability to protect that."

7   Do you see where he says that?

8   A.   Yes.

9   Q.   So what Mr. McAuley is proposing here is

10   to amend Rule 7 to provide that if an entity

11   believes that it has a significant interest to

12   protect and that interest relates to the subject of

13   an IRP, then that IRP would have a right to

14   participate in the IRP; is that what you

15   understood?

16   A.   Yes.

17   Q.   Now, Mr. McAuley goes on to say on Page 16

18   that "It's important to provide this right to

19   participate," quote, "especially given the finality

20   of these kinds of proceedings. It's my view that

21   intervention, whatever term we are using, needs to

22   capture that."

23   Do you see that?

24   A.   Yes.

25   Q.   So essentially Mr. McAuley is saying if

BARKLEY
Court Reporters

```
 1  you have a significant interest and that interest
 2  is relevant to an IRP, and given the Panel's
 3  authority to issue final and binding decisions that
 4  affect that interest, you need to be able to
 5  participate in the IRP; is that fair?
 6       A.   That's my understanding of what he was
 7  saying, yes.
 8       Q.   Okay.  And Mr. McAuley concludes that he
 9  would propose specific language on the, quote,
10  "List," and that's the LISTSERV, "the group email
11  for the entire IOT committee," correct?
12       A.   Correct, the publicly-available list,
13  yeah.
14       Q.   In fact, Mr. McAuley did send an email to
15  the IOT list on October 11, 2018, the next day,
16  with his proposed language.
17            Do you recall that?
18       A.   Yes.
19       Q.   Okay.  If you turn to Tab 4 in your
20  binder, that is Mr. McAuley's email from October
21  11, 2018.
22            Do you recall reviewing that?
23       A.   Yes, I do.
24       Q.   Okay.  If you could turn to Page 5 in that
25  exhibit, which is an attachment to his email,
```

440

BARKLEY
Court Reporters

1 you'll see that Mr. McAuley has inserted what I'll

 2 characterize as a redline. I suppose this was

 3 probably Track Changes --

 4   A.   Yes.

 5   Q.   -- into the draft of Rule 7? What he

 6 writes here is that, "In addition, any person,

 7 group or entity shall have a right to intervene as

 8 a claimant where, one, that person, group or entity

 9 claims a significant interest relating to the

10 subjects of the Independent Review Process."

11   And if you skip down a couple of lines, he

12 says, "Because that entity's absence might impair

13 or impede that person, group or entity's ability to

14 protect that interest."

15   Do you see that?

16   A.   Yes.

17   Q.   So this is essentially in written form

18 what Mr. McAuley was proposing the day before, on

19 October 9, correct?

20   A.   Right.

21   Q.   Or two days before, sorry. Yeah, two days

22 before, on October 9.

23   And what he's proposing here essentially

24 is to broaden claimant standing; is that your

25 understanding?

BARKLEY
Court Reporters

```
 1        A.    Yes.

 2        Q.    Okay.  And the IOT discussed Mr. McAuley's

 3   proposal during its meeting later that day on

 4   October 11; is that right?

 5        A.    Yes.

 6        Q.    Okay.  Turning to the next tab in your

 7   binder, Tab 5, you'll see that's the transcript

 8   from October 11, 2018; is that correct?

 9        A.    Yes.

10        Q.    Okay.  I'll represent to you that in

11   addition to yourself, there were five other

12   attendees at that meeting.  Again, they included

13   Kate Wallace and Liz Le of ICANN's legal

14   department, and Mr. McAuley of VeriSign; is that

15   correct?

16        A.    I don't know.  I would ask -- are you

17   taking the attendees off of the recording that

18   would appear from the electronic meeting room or

19   based on the transcript?  Because sometimes you

20   might have attendees who would not speak during the

21   meeting.

22        Q.    I will represent to you that I get the

23   participant list from -- there's a page for each

24   IOT meeting, and it lists who attended it.  Is

25   that --
```

442

1   A.   If you take it from there, yes.

         2   Q.   Okay. And that listing on the Wiki page

         3   indicates that you and Kate Wallace of Jones Day

         4   and Elizabeth Le of ICANN's legal department

         5   attended that meeting and Mr. McAuley attended, but

         6   there were only six attendees in that meeting.

         7   So do you have any reason to believe that

         8   that listing is inaccurate in any way?

         9   A.   Do you have the names of the other people?

        10   I don't have any reason to believe that what was

        11   recorded on the page is incorrect.

        12   Q.   Okay. That's fair enough.

        13   Now, during the October meeting, you

        14   responded to Mr. McAuley's proposal.

        15   Do you recall that?

        16   A.   Yes.

        17   Q.   And is it fair to say that in general,

        18   your primary concern was that Mr. McAuley was

        19   proposing to significantly expand claimant

        20   standing; is that right?

        21   A.   I would have to look specifically when I

        22   said that I know that was a very large part of my

        23   concern. I received the text within a short amount

        24   of time before the meeting. So I probably had

        25   highlighted my biggest concern that I wanted to

                                443

BARKLEY
Court Reporters

```
 1   raise on this.  I believe I also took time to go

 2   back to more specifically look at the language.

 3       Q.   Fair enough.  And do you recall that your

 4   proposal was essentially to move some of what

 5   Mr. McAuley was proposing from claimant standing

 6   down to the amicus participation standing of Rule

 7   7?

 8           I can direct you to Pages 14 and 15 of the

 9   transcript, if that will help.

10       A.   Great.  Thank you.

11       Q.   That's our 14 and 15, just to be clear.

12       A.   Yes.

13           So my concerns were both regarding the

14   significant interest test and the confusion between

15   claimant versus amicus status.

16       Q.   Could you explain what you mean by

17   confusion between claimant and amicus?

18       A.   Sure.  So one of the issues that we had

19   long -- as a lasting issue, including when we were

20   drafting the new bylaws as well as in the

21   discussions in the IOT, that because the IOT is

22   such a narrow process, that it is really about

23   someone coming to ICANN and saying, "You violated

24   your bylaws or you violated your articles in doing

25   something."  It is a very unique set of persons or
```

444

1   entities that would serve as claimant status. And

2   that the IRP is not about adjudicating all of the

3   rights -- all of the issues or disputes that might

4   be amongst ICANN and the claimant or between other

5   people who have interest in the proceeding.

6   So here what I saw was the suggestion that

7   McAuley had raised that because someone might have

8   an interest in the proceeding, they should be a

9   claimant, which would also technically mean under

10   the bylaws that they would be asserting that ICANN

11   violated its bylaws or its articles, but that might

12   not always be the case for someone who has an

13   interest in a proceeding.

14   I think it is very important to be clear

15   and narrow in what you mean about who is a claimant

16   for the purposes of an efficient IRP.

17   Q.   Okay.

18   A.   What Mr. McAuley said is creating

19   confusion between those lines.

20   Q.   Right. So Rule 7 is entitled

21   "Consolidation, Intervention and Participation As

22   an Amicus," right?

23   A.   I believe so, yes.

24   Q.   Well, you can refer back to Tab 4 on Page

25   4 just to refresh your recollection on that.

1   A.   Yes.

2   Q.   So what -- if I understand you correctly,

3 Mr. McAuley had proposed to broaden the

4 intervention rules, and your suggestion was rather

5 you should look to broadening the participation as

6 an amicus rule; is that right?

7   A.   I don't believe it was a broadening of the

8 amicus rule. I think it was a consideration of

9 whether or not there might be other parties that

10 might be appropriate to consider -- deem having a

11 material interest as opposed to leave it up to a

12 briefing matter as to whether or not they had a

13 material interest, but it wasn't necessarily a

14 broadening of the amicus rule.

15   Because that would have been -- if we had

16 taken, for example, his significant interest test

17 and made that the test for amicus as opposed to

18 material interest, that would have been a

19 broadening, but that's not anything from the ICANN

20 side we were considering or supporting.

21   Q.   Okay. Well, if we can look back at Page

22 14 of your -- of the October 11 transcript, which

23 is Tab 5, what you say there is, "So I think we can

24 move that down either to amicus. So I think we can

25 put some things into the amicus section that cover

446

BARKLEY
Court Reporters

1   this type of interest in a proceeding."
     2   So you were essentially saying, "I hear
     3   what you're saying about entities with a
     4   significant interest. Let's look at moving that
     5   down to the amicus section"; is that fair?
     6   A.   I think it's more I hear what you're
     7   saying about the need for having a full and final
     8   adjudication -- having parties that are necessary
     9   to -- not necessary, but having parties that could
    10   be impacted by an IRP decision having the
    11   opportunity to participate in some way, shape or
    12   form within the IRP so that they are also going to
    13   abide by the standing -- the binding decision
    14   that's coming out of the IRP Panel.
    15   Because that is one of the significant
    16   changes to the IRP that happened throughout this
    17   whole process, is that no longer was it just an
    18   advisory declaration that the Panel was issuing,
    19   but they are now binding precedent across ICANN.
    20   So it binds people, even those who are not part of
    21   the process.
    22   Q.   Okay. So let's look at how Mr. McAuley
    23   responded to you, and I am going to refer to the
    24   second full paragraph on Page 15, that's our 15, of
    25   the October 11 transcript.

                              447

1   As you helpfully previewed a few minutes

 2   ago, sometimes the transcript's a little rough. So

 3   I will represent to you that I listened to the

 4   audio recording, and I am going to read to you what

 5   I heard on the audio recording, and I'd like your

 6   reaction as to whether or not that's a reasonable

 7   and fair and accurate representation of what you

 8   recall Mr. McAuley said here.

 9   As I heard it, Mr. McAuley said, "But if

10   it was moved to an amicus thing, I would like to

11   look at the language you came up with. You can

12   tell between this and Rule 8 where I'm coming from

13   is a competitive situation where members of

14   contracted party houses or others who have

15   contracts with ICANN or others that have contracts

16   that are affected by ICANN have to be able to

17   protect their interest in competitive situations.

18   So I used language that largely followed U.S.

19   rules -- U.S. Federal Rules of Procedure, but these

20   rules are fairly -- I think, at least in common-law

21   countries, fairly routinely accepted that someone

22   has an interest can defend themselves because they

23   can't look for the defendant to make their argument

24   for them."

25   Is that a fair representation of what

ARBITRATION

1   Mr. McAuley said?

2   A.   Yes, I believe so.

3   Q.   Now, you proposed that instead of

4   Mr. McAuley's -- strike that.

5   Now, you responded to Mr. McAuley, and you

6   noted that time was of the essence, and I am

7   referring you to the top of Page 16, that's our 16

8   in the October 11th transcript, where you state,

9   "From the ICANN org side, we are getting very

10   nervous that we are on the precipice of having IRPs

11   filed for which we don't have an adequate set of

12   procedures to meet the bylaws."

13   Now, as we discussed yesterday, Afilias

14   had sent a draft of its IRP request to ICANN the

15   day before, on October 10th.

16   Do you recall that conversation?

17   A.   I recall the conversation, yes.

18   Q.   Yeah. And now you're telling the IOT on

19   October 11th that ICANN was, quote, "On the

20   precipice of having an IRP filed."

21   Was that a reference to Afilias's

22   forthcoming IRP?

23   A.   No, it was not. I had -- if you go back

24   into the record of the IOT proceedings, back in May

25   of 2018, I had introduced to the IOT the idea of

449

1 bringing forth a set of interim rules, because we

2 were nervous then, too, that we could be subject to

3 an IRP because we could be subject to an IRP over

4 anything.

5   And at this point, we were -- when you sit

6 here in October, we were two years out from the

7 passage of the new ICANN bylaws after the IANA

8 transition. Even in May we were a year and a half

9 out, and we were well-aware from the ICANN side

10 that there would be great confusion if an IRP was

11 filed under the supplementary procedures that did

12 not align with the new bylaws.

13   So this concern was part of the genesis of

14 even introducing that idea of an interim

15 supplementary procedure note in May.

16   By this point, we had already -- we had

17 been working with the IOT to get a set of interim

18 procedures finalized and had it on our board agenda

19 for that end of October meeting, and it was

20 becoming very clear that if we weren't going to

21 have a set coming out of the IOT, we then had an

22 even longer delay.

23   So we had been -- from my side with ICANN,

24 I had been working with a sense of urgency about

25 this since at least May of 2018.

1   Q.   Okay.   Now, you state on October 11th that

2   ICANN was on the precipice.

3   "Precipice" means right at the edge; is

4   that fair?

5   A.   Yes.

6   Q.   And let's just look at what the status was

7   of IRPs and accountability mechanisms on October

8   11th.   The .WEB contention set was on hold because

9   there were two accountability mechanisms pending as

10   of October 11th, 2018; is that correct?

11   A.   I know that the .WEB contention set was on

12   hold.   I don't recall the number of accountability

13   proceedings around it.

14   Q.   So I will represent to you that Afilias's

15   CEP was still pending, correct, do you understand

16   that?

17   A.   Based on the conversation, yes, yes.

18   Q.   Were you also aware that Afilias had a

19   reconsideration request pending at that time

20   concerning .WEB?

21   A.   I probably was.   I don't recall that

22   today, but I probably was at the time.

23   Q.   Now, on October 11th, ICANN emailed

24   Afilias to request times for a CEP conference

25   between November 1st and November 16th.

451

1   Are you aware of that?

2   A.   No, I don't recall that.

3   Q.   And we know from -- well, I will represent

4 to you that at the start of the next conference

5 that we had with ICANN in CEP, which was on

6 November 13th, ICANN terminated the CEP.

7   Are you aware that ICANN terminated the

8 CEP on November 13th?

9   A.   Only based on your representation

10 yesterday and today.

11   Q.   Now, ICANN had also scheduled a special

12 Board meeting on November 6 to consider Afilias's

13 reconsideration request.

14   Were you aware of that?

15   A.   I don't have specific recollection about

16 that, but we do have specific time limits within

17 which the Board must consider a reconsideration

18 request. So that is actually a normal thing to

19 happen as a reconsideration request is hitting the

20 end of that deadline.

21   Q.   In fact, on November 6th, ICANN rejected

22 and denied Afilias' reconsideration request.

23   Are you aware of that?

24   A.   I am aware that Afilias' reconsideration

25 request was denied.

452

```
 1         Q.    So on --

 2         A.    I don't remember the specific date.

 3         Q.    So on October 11th, as you are

 4    representing to the IOT that ICANN is on the

 5    precipice of having an IRP filed, ICANN is getting

 6    ready to remove over the next few weeks the only

 7    two accountability mechanisms that were keeping the

 8    .WEB contention set on hold; is that fair to say?

 9         A.    I wasn't involved in the discussions

10    around the reconsideration or the CEP.

11         Q.    And ICANN also knew that Afilias was ready

12    to file its IRP because it had a copy of its draft

13    IRP request which it had gotten the day before; is

14    that right?

15         A.    There might have been people aware at

16    ICANN, but that was not the basis of my

17    participation in the IOT.

18         Q.    So you were under pressure to get the

19    interim rules adopted by the Board at the October

20    25 Board meeting; is that fair to say?

21         A.    Yes.

22         Q.    And --

23         A.    I felt pressure to do that based on the

24    totality of not having supplementary procedures in

25    place for two years.
```

453

1   Q.   Now, the Board was scheduled to meet on --

2   next in mid-January 2019.

3   Are you aware of that?

4   A.   I'm aware that the Board has regularly

5   scheduled meetings, and then at that time our

6   practice would be to identify if there's any need

7   for a meeting in between those regularly-scheduled

8   meetings, but at that point we were not -- it was

9   not our practice to have monthly or bimonthly

10 meetings scheduled outside of the ICANN meeting or

11 org workshop session.

12   Q.   So I'll represent to you that if you go to

13 ICANN's website and look at the page for Board

14 meetings for 2018, it shows that the last regular

15 Board meeting was on October 25th, 2018.

16   Do you recall that being the case for

17 2018?

18   A.   So in terms of regular -- if it was a

19 meeting titled "Regular," that has a particular

20 meaning within ICANN as opposed to "Special."

21   So "regular" reflects the times when the

22 Board is expected to come together face-to-face and

23 revisit that in today's world, but then "special"

24 would be the meetings that are convened by

25 teleconference.

454

1   So "special" doesn't mean extraordinary in

2   any case, it just is kind of an external

3   designation as to whether or not it happened by

4   teleconference or in a face-to-face setting.

5   Q.   Right. So --

6   A.   So the October 2018 meeting, the last one.

7   Q.   It was regular?

8   A.   Yes. So that would be the last

9   face-to-face meeting scheduled for the Board.

10   Q.   Then there was the November 6 special

11   meeting, correct?

12   A.   Yes. That meeting would have been

13   designated as special, yes.

14   Q.   Then the next regular ICANN Board meeting,

15   the next face-to-face Board meeting, as I can tell

16   from ICANN's website, occurred on January 19, 2019?

17   A.   That date makes sense to me because that

18   would align when we hold our workshops for the

19   Board.

20   Q.   Now, if the Board wanted to take up

21   approval of the interim rules, could it have

22   scheduled a special meeting between October 25th

23   and January 19th?

24   A.   Yes.

25   Q.   Now --

                              455

1   A.   If it was prepared to do it on October

2   25th or 26th, whatever the date was.

3   Q.   But the October 25th date was the one that

4   you felt the pressure to get the interim rules

5   before the Board on, correct?

6   A.   That was the date that we had been working

7   to. I believe we had a version that had come out

8   of the IOT at the end of September, and it was

9   prepared. We had briefed it for the Board. It was

10   already on the Board's agenda. We were trying to

11   keep it on the Board's agenda for that date even

12   when we had late edits coming in, as you see here.

13   Q.   And that's because ICANN was getting ready

14   to terminate CEP and deny Afilias' reconsideration

15   request as early as November 6th, and it was

16   reasonable to believe that after that Afilias would

17   file pretty quickly, right?

18   A.   If ICANN had an intention to terminate the

19   CEP, that was never communicated to me.

20   Q.   In fact, that's what happened, Afilias

21   filed its IRP request on November 14th, correct?

22   A.   Based on our conversations about when the

23   CEP terminated, I accept your representation, and

24   yes, Afilias filed, as far as I recall, on November

25   14th.

456

ARBITRATION

1   Q.   And, in fact, the very next IRP to be

2   filed after this one wouldn't be filed for more

3   than another year, in December of 2019; isn't that

4   right?

5   A.   As far as I recall, yes, but people can

6   file an IRP on any day.

7   Q.   Okay. So now I would like to return to

8   the October 11th transcript, which is Tab 5 in your

9   binder. And on Page 16 you write, "I will come

10   back on list with some proposals about how to

11   integrate some of these ideas into the set of

12   interim rules," which I assume is a reference to

13   the ideas regarding Rule 7 that you had been

14   discussing, correct?

15   A.   Yes.

16   Q.   Okay. I'd like to direct your attention

17   to Tab 6 in your binder. This is a copy of an

18   email that you sent to Mr. McAuley on October 12,

19   2018, the day after the IOT meeting we had just

20   reviewed.

21   Starting at the top of your email, you

22   write, "I sat down with this and tried to develop

23   some language, but realized that this is really

24   tricky definitional issue. Without being extremely

25   careful, we would be granting anyone who said they

457

1   have an interest in the case the right to

2   participate, which takes away from the discretion

3   of the Panel on a much broader basis than is

4   currently allowed."

5   Is it fair to say that you were concerned

6   that granting anyone who says they have an interest

7   in an IRP a right to participate would take away

8   from the IRP Panel's discretion in a pretty

9   significant way?

10   A.   Yes.

11   Q.   You proceed to write, "As I was thinking

12   through all this, I realized that giving this

13   participation as of right based on significant

14   interest is broader than what the IOT discussed in

15   the outcomes of the public comment. As I

16   understand, we agreed as an IOT, and we have

17   reflected in the rules, that those who participate

18   in underlying panels should have the ability to

19   participate as of right (either as a claimant,

20   where we've identified that they meet the material

21   harm threshold, or as an amicus, also reflected in

22   there). We do not have comments on nor agree as an

23   IOT, from what I can tell, that having an interest

24   that might be impaired by or is similar to that

25   which is under discussion should give right to

459

1 participation."

 2   So to summarize, is it fair to say that

 3 you were concerned that granting broader amicus

 4 participation as of right went beyond the scope of

 5 the IOT's discussion of the public comments?

 6   A.   It was -- so just no. I think my

 7 statement here is that allowing someone to just put

 8 up their hand and say "I have an interest" and then

 9 making that sufficient to participate as of right

10 as an amicus was an inappropriate threshold for the

11 IRP and that it would impair the Panel's

12 discretion.

13   Q.   Right. And what you specifically say here

14 is that, "As I understand, we agreed as an IOT and

15 reflect in the rules that those who participate in

16 underlying Panels should have the ability to

17 participate as of right," correct?

18   A.   Yes.

19   Q.   And you go on to say that, "We did not

20 have comments on, nor agree as an IOT on anything

21 else," correct?

22   A.   Well, that we didn't agree that other

23 people with different interests would have the

24 ability to participate as of right. We had very --

25 we have a lot of discussion about this within the

459

1 IOT as we are going over the public comment.

 2   And what was coming out of the IOT is

 3 that -- based on the public comment was that there

 4 was a need to allow people who did not fit into a

 5 claimant category but could state a material

 6 interest in the proceedings should be -- should be

 7 able to have the opportunity to come in and ask to

 8 participate in the proceeding.

 9   And we had already started using that tool

10 of identifying if there was anyone who might come

11 in as of right -- as a matter of reducing the level

12 of briefing and streamlining the IRP proceedings.

13 Again, thinking back to that idea that IRPs are now

14 binding.

15   So when -- like in this situation, we'll

16 just talk about the situation at hand, there are

17 other parties to this that would be impaired by --

18 or might not be impaired, but would have -- they

19 would expect to have some visibility into the

20 proceedings when the outcome of the Panel

21 declaration could impact their expectation on a

22 contract right.

23   That's a little bit different than the

24 very broad discussion that McAuley was bringing in,

25 where he said anyone who has a -- who is just a

```
 1   contracted party should be able to come in at any

 2   time to an IRP.

 3           For looking at that, what he was

 4   suggesting was so much broader than how you

 5   consider a normal type of interest passer or where

 6   you might have reason to draw a line about coming

 7   into an IRP either as a claimant or as an amicus.

 8       Q.   Okay.  So moving on in your email, you

 9   then write, "I don't have an objection to

10   continuing this conversation for the final set of

11   rules, but think that from the principles laid out

12   for the interim set, this inclusion goes far

13   beyond."

14           Just to break there, what you're saying

15   there is, "Look, we are in the home stretch.  We

16   are trying to get this done by October 25th.  We

17   have principles laid out that govern how we are

18   supposed to adopt rules.  Why don't we just take up

19   this discussion when we are working on the final

20   rules?"

21           Is that fair?

22       A.   Basically.  If you want to change the

23   standard or make it really broader than you've ever

24   discussed, this is not the time to do it, and we

25   would have to reserve that conversation for when we
```

461

1   were back and having fulsome conversations about

 2   where there were any major revisions that need to

 3   happen.

 4   Q.   Right. Because what you say here is that,

 5   "Working on it for too short a time frame also

 6   increases the possibility that we make it too broad

 7   and make it very difficult to tailor in the final

 8   rule," right? That was your basic concern, that it

 9   would overly complicate the IRP, as you have

10   testified here today; is that fair?

11   A.   Yes. If we went, for example, to a

12   significant interest test, that would be a very

13   hard test to move back from in a final rule set.

14   So we didn't want to go -- things like that, going

15   too far, where you could then create new

16   expectations for how people would participate and

17   then moving back is a really difficult way to go.

18   So if you start narrower, you still have

19   the ability to radically change the rule in the

20   future, but it doesn't make sense to start off too

21   broad when you think you might need to pull it

22   back.

23   Q.   Then you go on to say, "Finally, depending

24   on the scope of the final rule, we propose we'd

25   have to see how significant change it is from what

                        462

1   was posted from comment previously." And that's

2   because if it's a significant change, you would

3   have to go back out for a second public

4   consultation; is that right?

5   A.   Correct.

6   Q.   And that's, in fact, what you did in June

7   of 2018 with Rule 4, correct?

8   A.   Yes. Because that's an issue that there

9   hadn't been any identified trends and public

10   comment on, and one of the proposals was very

11   different from what you saw in the posted for

12   public comment, and there hadn't been significant

13   agreement in the community and the public comment

14   forum about how that should proceed.

15   Q.   Now, you close your October email, October

16   12 email by writing, "The rules" -- in your view,

17   that, "The rules are broad enough, and in

18   particular, the amicus rules are quite broad as

19   well."

20   So is it fair to say that in considering

21   Mr. McAuley's concerns, as he discussed them on

22   October 9 in his email of October 11 and at the IOT

23   meeting on October 11, that the rules were probably

24   good enough for the interim; is that a fair

25   representation of what you were saying there?

BARKLEY
Court Reporters

1   A.   Yes.   I was prepared to recommend to the

2   Board that they move along with that version.

3   Q.   Now, I'll represent to you that October

4   12th was a Friday. And do you recall that

5   Mr. McAuley initially responded to you that he

6   looked at your email over the weekend?

7   A.   I recall he responded in some way, shape

8   or form.

9   Q.   And then on Monday, October 15th, he wrote

10   back to you saying he had some concerns about what

11   you had written and wanted to discuss your October

12   12th email on your 1:00 p.m. call.

13   Do you recall that?

14   A.   I don't recall that.

15   Q.   Did you have a regular standing call with

16   Mr. McAuley?

17   A.   No, I did not.

18   Q.   Do you recall having a telephone call with

19   Mr. McAuley on October 15th, 2018?

20   A.   I don't recall specifically having that

21   call.

22   Q.   Between the time that you sent your

23   October 12 email -- actually, let me do this: If

24   you turn to Tab 7 in your binder, you'll see a copy

25   of an email that you sent on Tuesday, October 16,

464

1   2018.

     2   Do you see that?

     3   A.   Yes.

     4   Q.   Between the time that you -- that you sent

     5   your email on Friday, October 12th, and your

     6   sending of this email, Tab 7 on October 18 at 11:00

     7   a.m., did you speak with Mr. McAuley by phone?

     8   A.   I don't recall if I did.

     9   Q.   Do you recall around this period of time,

    10   when you were drafting Rule 7, having a telephone

    11   conversation with Mr. McAuley?

    12   A.   I really don't recall that.

    13   Q.   Do you recall ever discussing with

    14   Mr. McAuley the various concerns that you

    15   identified in your October 12 email?

    16   A.   Discussing orally?

    17   Q.   Yes, orally.

    18   A.   I don't recall.

    19   Q.   Okay. Well, let's take a look at your

    20   October 16 email.

    21   In this email, what you have done here

    22   is -- is it fair to say -- to propose specific

    23   modifications to Rule 7's amicus participation

    24   provisions; is that right?

    25   A.   I proposed modifications to those who

```
 1   could participate as of right, though not changing

 2   the basic premise that any party could apply for an

 3   amicus to the Panel.

 4        Q.   Okay.  Just specifically you added -- or

 5   you proposed adding two categories of amicus who

 6   would be deemed to have a material interest in the

 7   IRP; is that correct?

 8        A.   Yes.

 9        Q.   Okay.  The first category relates to an

10   application arising out of ICANN's new gTLD program

11   so that any member of a contention set for a

12   particular new gTLD would have the right to

13   participate as an amicus in an IRP that concerned

14   that gTLD and the resolution of that contention

15   set; is that right?

16        A.   Yes.

17        Q.   So, for example, this IRP concerns

18   Afilias' application for .WEB, correct?

19        A.   Correct.

20        Q.   So any member of the .WEB contention set

21   would have a right to participate in this IRP as of

22   right; is that correct?

23        A.   As an amicus?

24        Q.   As an amicus, yes.

25        A.   Yes.
```

466

BARKLEY
Court Reporters

1   Q.   And that's because all of the members of

2   the .WEB contention set would be deemed to have a

3   material interest in the outcome of this IRP,

4   correct?

5   A.   Under this rule, yes.

6   Q.   And the procedures officer would have no

7   discretion to request their -- to reject their

8   request to participate as an amicus curiae in this

9   IRP, correct?

10   A.   Correct. So --

11   Q.   Please.

12   A.   The Panel would self-discretion about the

13 terms of how they would participate.

14   Q.   So if all of the members of the contention

15 set had applied to appear here and participate as

16 amicus curiae, we could have had five more amici in

17 this IRP, correct?

18   A.   If that's the number who applied for .WEB.

19   Q.   I will represent to you there were seven

20 applicants, two of which are already in the IRP,

21 Afilias and NU DOT CO, and then there were five

22 others. So we would have had five others?

23   A.   Right.

24   Q.   That would seem to cure your concerns on

25 October 12th that this was pretty tricky to draft

BARKLEY
Court Reporters

1   and, quote, "Granting anyone that says they have an

2   interest in the case the right to participate takes

3   away from the discretion of the Panel on a much

4   broader basis and could complicate the IRP"; isn't

5   that right?

6   A.   I don't think so. So if you look back at

7   the genesis of some of the concerns around the

8   updating of the IRP and then the history of the use

9   of ICANN's accountability mechanisms, we had

10 become -- within ICANN, I think if you look both at

11 the reconsideration level and at the IRP level, the

12 one that has become a surety within ICANN was when

13 someone lost an application or the right to operate

14 a new gTLD through a process, be it the 2012

15 process or our previous processes, that those

16 losers, in quotes, I am not trying to be

17 deprecating at all, would then use ICANN's

18 accountability processes to try to challenge that.

19   We knew that that was a very typical and

20 expected use case for the IRP. So when you step

21 back and you think about it, if you have a

22 contention set, for example, in this case, as I

23 understand it, there were a smaller number of

24 people who got to the final auction of last resort.

25 So those who had previously dropped out likely

```
 1   wouldn't come in any way.

 2          Contention sets could be small, they could

 3   be large.  Typically within a contention set, you

 4   wouldn't have all seven people coming, but you

 5   could.  And they might each have an interest in

 6   making sure that they got to see how this run if

 7   they were all in active contention at the time that

 8   ICANN took whatever action that's been complained

 9   about.

10          So if you look at the expectations for how

11   we thought the IRP would be run, on the other hand,

12   would you really want to have a process, as a

13   claimant in the process, to have to consider the

14   briefing of seven different entities to come in

15   where the question could just be what right -- how

16   should these people participate and leave that to

17   the discretion of the Panel instead of barging on

18   the proceedings in seven different, possibly

19   somewhat unique, but very similar situations of

20   requesting amicus status?

21          So I think you can look at it either way.

22   And really based on the use cases that we knew

23   existed for an IRP, this seemed to be a way to

24   actually streamline the proceedings.

25      Q.   Okay.  Now, looking at the next change
```

1   that you propose, that's for any person, group or

2   entity who is not in the IRP but whose actions are

3   significantly referred to in the briefings before

4   the Panel, they would also have a right to

5   participate as an amicus, correct?

6   A.   Correct.

7   Q.   Now, the IRP rules are supposed to be

8   based on norms of international arbitration. Can

9   you refer me to a norm of international arbitration

10   that would grant an entity a right to participate

11   in an arbitration solely because the pleadings or

12   briefings before the arbitrator significantly

13   referred to actions taken by that entity?

14   A.   I think this is where the IRP is unique

15   when you consider it alongside arbitration. So

16   typically you would not have a private arbitration

17   outcome that becomes binding across an organization

18   like ICANN to guide future decisions and possibly

19   impact past decisions that go broader than just the

20   dispute between two parties.

21   This is really the crux of what makes some

22   of the development of the rule set for the

23   supplemental rules difficult and where some of the

24   confusion that we see about issues of intervention

25   and that continued change of -- maybe from a

470

1   claimant, maybe from a joinder.

2   The IRP -- one of the things that we

3   wanted to do, one of the things the community asked

4   us to do with it was to make it a binding process

5   and to make it look more like international

6   arbitration. That's exactly why we had the

7   language in there about the international

8   arbitration norms.

9   But you can't look at the IRP as it's been

10 designed and suggest that only international

11 arbitration norms should apply. If that's the

12 case, we wouldn't need to have detailed

13 supplemental rules that we have, and we would just

14 pick a set of international arbitration rules to

15 apply and go with it.

16   But it's always been clear that some

17 modification to those international arbitration

18 norms needed to be in place to better reflect the

19 purpose and the intent and the import of the IRP

20 within the ICANN process.

21   Q.   Okay. So I think I understand. Let me

22 try and just summarize here.

23   So the IRP was supposed to move more

24 towards what international arbitration looks like,

25 right, and that's why you have the language about

471

1   norms of international arbitration, right, that's

 2   what you're saying?

 3   A.   The big way that the IRP was supposed to

 4   move more like international arbitration is it was

 5   supposed to become binding.

 6   In the past, IRP declarations were not

 7   binding on ICANN, and that's very different from a

 8   normal arbitrable proceeding, where the Panel has

 9   come to a decision and the parties are expected to

10   abide by it and not just take it as advisory.

11   Q.   Right.

12   A.   That was a big accountability gap that the

13   community said, "We want this closed." So what --

14   how do you make that closed? You say that it is

15   more like arbitration because you expect the

16   binding nature to be there.

17   Q.   So --

18   A.   They didn't expect it to become

19   arbitration, but they expected it to be final like

20   arbitrations are final.

21   Q.   Got it. Not only final and binding, but

22   because of sort of the unique nature of ICANN and

23   the IRP process, it can be final and binding on a

24   really broad stroke, including the rights of third

25   parties, right?

                            472

1   A.   That's right.

2   Q.   Now, where did you get this language from

3   that you were proposing here about entities whose

4   actions were significantly referred to in the

5   briefings before the Panel?

6   A.   I was thinking about past cases we have

7   had, IRPs where we have had mention of other

8   parties, for example, the .AFRICA IRP talks a lot

9   about the actions of some of the other parties to

10   the contention set. I was thinking about how this

11   could present and what would make sense in terms of

12   allowing an IRP to move forward and not get bogged

13   down in briefing just about who can be there as an

14   amicus and who can't.

15   Q.   Well, let me ask you this: Let's assume

16   that there is an IRP that contains a lengthy

17   discussion of a prior IRP, and therefore, in that

18   discussion of the prior IRP, the claimant has a

19   lengthy discussion of what the prior claimant in

20   that prior IRP had done. So its briefings before

21   the Panel contain a relatively significant

22   description of actions taken by that other claimant

23   in the prior IRP.

24   Under this language, wouldn't that other

25   entity that participated in a different IRP have a

473

1 right to participate in this -- in the new IRP?

 2   A.   If they chose to, yes. And also, you

 3 know, depending on how their actions were being

 4 characterized and if it would result in language in

 5 a Panel declaration that would impact them or

 6 recast their actions in the future, that could be

 7 fully appropriate.

 8   But if it is just a recounting of facts

 9 like in the facts section, when you are trying to

10 suggest that one situation is like another, that's

11 just a fully factual recounting of what happened,

12 why would they want to come in? They are not

13 required to. This isn't an intervention where you

14 pull them in. It is an opportunity for someone to

15 come in and preserve their right.

16   So if there is significant discussion,

17 even if it is someone fully outside of a process,

18 but for some reason they are recounting how they

19 did something and it is not correct, that party, if

20 they got on notice about it, should have the

21 ability to come in and clear their name or get

22 something clarified within the process without

23 having to fight about coming to do that.

24   Q.   Well, what about a competitor? A

25 competitor may want to intervene in an IRP just to

                      474

1 disrupt it. And if they have a procedural hook

    2 that removes all discretion of the procedures

    3 panelists, doesn't that give them a pretty good

    4 opportunity just to come in and muck up the

    5 process?

    6   A.   Well, first, you have to consider what

    7 mucking up the process means. Is it making -- is

    8 it giving one party the ability to cast however

    9 they wish the actions of another? If this is a

   10 competitive situation, the competitor wouldn't be

   11 able to come into the IRP under this rule, and

   12 their actions have been significantly discussed

   13 within the papers.

   14   So it is not like someone just looking,

   15 oh, Afilias is doing this, I am a competitor, I

   16 want to come in, then they have to go through all

   17 the normal -- the normal briefings to document how

   18 they have a material interest to come in as an

   19 amicus, as opposed to saying, "Afilias keeps

   20 talking about me. Can you hear me and what I think

   21 about this?" That's the difference here.

   22   Q.   Okay. I get that.

   23   Now, the Sidley firm had been advising the

   24 IOT on the drafting of these rules, correct?

   25   A.   Yes.

                           475

1   Q.   Did you show these edits that you made

2 here in your October 16 email to anyone at the

3 Sidley firm?

4   A.   No.

5   Q.   Did anyone provide you with advice or

6 language about how to change Rule 7 between the

7 time you sent your October 12 letter to Mr. --

8 email to Mr. McAuley and the time that you sent

9 these edits on October 16?

10   A.   There may have been privileged

11 interactions internal at ICANN.

12   Q.   Okay. Did you speak with anybody within

13 ICANN? Without revealing the substance of those

14 communications, did you speak with anybody at ICANN

15 about edits to Rule 7 between October 12 and

16 October 16?

17   A.   Likely, yes.

18   Q.   Who?

19   A.   Most likely Liz Le, who I was working with

20 on the IOT.

21   Q.   Anyone else?

22   A.   Not that I recall.

23   Q.   Now, in your October 16 email you also

24 included a proposed footnote that is also

25 underlined. I think as you were stating earlier,

476

1 this is where you provided that the IRP Panel

 2 should have discretion to determine the proper

 3 scope of amicus participation, correct?

 4   A.   Yes.

 5   Q.   Do you recall that Mr. McAuley proposed

 6 amending this footnote to provide that Amici should

 7 be allowed to, quote, "Participate broadly in the

 8 IRP"?

 9   A.   Yes.

10   Q.   And you revised the final version of Rule

11 7 to reflect Mr. McAuley's proposal, correct?

12   A.   I'd have to look at the final text that

13 was approved to see what I proposed.

14   Q.   Sure. It is in the -- well, we don't need

15 to do that now. That's fine.

16   A.   I do believe that Mr. McAuley was

17 proposing to remove some discretion of the Panel

18 about the terms of that broad participation. If I

19 included the word "broad" in the final topic, it

20 was solely the discretion of the Panel, but

21 encouraging broad participation. I think there's a

22 difference, if I recall what Mr. McAuley proposed

23 and how that was reflected in the Rule 7 that was

24 approved.

25   Q.   Okay. Now, the full set of the interim

ARBITRATION

BARKLEY
Court Reporters

1 supplementary rules were sent to the entire

2 membership of the IOT on Friday, October 19th,

3 correct?

4   A.   I believe that's right, yes.

5   Q.   And the cover note, which is Tab 8 in your

6 binder, if you want to refer to it, states that,

7 "If comments are not received by midnight on

8 Sunday, October 21st, the interim rules would be

9 deemed approved by the committee"; is that right?

10   A.   Yes.

11   Q.   And turning to Tab 9 in your binder, in

12 fact, Mr. Turcotte reports on Sunday, October 21st,

13 that there had been no comments received, correct?

14   A.   Yes.

15   Q.   Now, there was no requirement that any

16 member reply with their assent to the proposed

17 rules, correct?

18   A.   Correct.

19   Q.   So there was no way to confirm whether any

20 member of the IOT had even looked at the draft over

21 the weekend, correct?

22   A.   There was no way to confirm by the record,

23 but this was also in the middle of an ICANN

24 meeting, where by the Saturday most people were on

25 site and active in meetings. So there was hallway

```
 1  conversation.  There were reminders as people were
 2  passing each other, "Did you look at this?"  "Can
 3  you make sure you check it?"  So this wasn't a
 4  normal weekend, right.  It wasn't a normal Friday
 5  to Sunday time frame.
 6           This was a time when most of the people
 7  who are active on the IOT, including those who
 8  hadn't necessarily been quite active, would be
 9  typically in meetings, on their email, talking to
10  people, interacting face-to-face with people in the
11  IOT.  So there was --
12      Q.   I'm sorry, I cut you -- but there was no
13  record and you can't point to any document to
14  confirm that any other member of the IOT, other
15  than you and Mr. McAuley, had seen the proposed
16  changes to Rule 7 by the time it was deemed
17  approved by the IOT on Sunday, October 21st; isn't
18  that right?
19      A.   There's no record, but there was -- there
20  were additional issues relating to the time for
21  filing issues that made it clear that other members
22  of the IOT were looking at the rule set because
23  they were approved and were having discussions
24  about that in other channels, but not on this list,
25  but not about the amicus.
```

479

1   Q.   So those other communications about the

2 time for filing Rule 4, were they posted to the

3 IOT's LISTSERV?

4   A.   I don't believe so. There was a member of

5 the IOT who was coordinating off IOT list a time in

6 writing and a time back -- I don't -- to the extent

7 I might have any of those records, they were only

8 forwarded to me because they weren't on

9 publicly-available lists -- where they were trying

10 to impact the Board consideration regarding the

11 time for filing issue and having that conversation.

12   Q.   And that was Mr. Hutty, correct?

13   A.   Correct.

14   Q.   And Mr. Hutty was one of the few non-ICANN

15 lawyers or VeriSign employees who attended the

16 October 9 and October 11 IOT meetings, correct?

17   A.   He was one of the attendees, yes.

18   Q.   Yeah. And did you hear from any of the

19 other members of the IOT over the weekend between

20 October 19 and October 21st that confirmed that

21 they had, in fact, read the interim rules that were

22 circulated?

23   A.   I don't recall specific conversations that

24 I had.

25   Q.   Now, the ICANN Board voted to adopt the

1   interim rules on October 25th, correct?

2   A.   Correct.

3   Q.   Did you attend that Board meeting?

4   A.   Yes.

5   Q.   In preparation for Board meetings, is it

6   customary for ICANN legal to draft resolutions for

7   the Board's consideration?

8   A.   Yes, or other members of the organization.

9   Q.   And on October 25th the Board considered a

10 draft resolution adopting the interim rules; is

11 that correct?

12   A.   Correct.

13   Q.   Did you draft those resolution?

14   A.   I did.

15   Q.   I would direct your attention to Tab 10 in

16 your binder, which is a copy -- a full copy of the

17 October 25 Board resolution, and there were quite a

18 few things on the agenda. So I would direct your

19 attention to Page 57. This is where the discussion

20 of the interim supplementary rules start.

21   If you turn to Page 60, that's the

22 rationale for the resolutions that were adopted; is

23 that right?

24   A.   Correct.

25   Q.   So this is the explanation for why the

481

1 Board voted to adopt the interim rules; is that

2 right?

3   A.   Yes.

4   Q.   Turning to Page 62, the resolution

5 reflected the principles that we mentioned earlier

6 about the adoption on how the IOT went about

7 adopting the supplementary rules; is that right?

8   A.   I don't recall that we really discussed

9 that, but yes, they reflect that principle.

10   Q.   And, in fact, I direct your attention to

11 the first page in the document behind Tab 11, which

12 is the final set of rules that were adopted on

13 October 25th. Those principles are reflected in

14 the last paragraph on Page 1, going on to Page 2;

15 is that right?

16   A.   Yes.

17   Q.   Okay. I just want to go through these

18 with you.

19   In drafting the interim supplementary

20 procedures, what the principles state is that the

21 IOT applied the following principles: "One, remain

22 as close as possible to the current supplementary

23 procedures for the updated supplementary procedures

24 posted for public comment on 28 November of 2016,"

25 correct?

1   A.   Correct.

2   Q.   So that first principle was to remain as

3   close as possible to the rules that were already in

4   effect or the draft rules that had been posted for

5   comment in 2016; is that right?

6   A.   Right, the first of three principles, yes.

7   Q.   Yes.   We are going to go through all of

8   them, I promise.

9   A.   Okay.

10   Q.   The second principle is, "Two, to the

11   extent that public comments received in response to

12   the draft that was posted in 2016 and reflect clear

13   movement away from either the current supplementary

14   procedures or the draft," the public comment draft,

15   "that the IOT should reflect that movement," so I

16   think as you said, trend, "unless doing so would

17   require significant drafting that should be

18   properly deferred for broader consideration."

19   Is that a fair summary of what that second

20   principle is?

21   A.   Yes.

22   Q.   So in short, the IOT should reflect the

23   changes that the public suggests unless doing so

24   would require significant drafting; is that right?

25   A.   Correct, and unless -- yes.   We don't

                         483

1   necessarily have a significant drafting task, but

2   that's what's there.

3   Q.   And is that because if one comment

4   suggested something and the IOT thought it was a

5   good idea but it required significant drafting, the

6   rest of the community should have an opportunity to

7   see what that is; is that right?

8   A.   And also, if you reflect back, these

9   principles were initially put in in May, when the

10 interim supplementary procedures were initially

11 proposed. So there it was -- there were some

12 situations where it wasn't clear that we had -- if

13 we were to approve a rule set in May, say, for

14 example, the IOT looked at the rule set that was

15 produced in May as the interim set, that would

16 reflect for the IOT why some of those trends that

17 had been reflected in public comment might not be

18 incorporated.

19   Here we do have some of the passage of

20 time as well, where there had been significant work

21 towards embodying those trends and language and

22 significant agreement amongst the IOT to reflect

23 those trends.

24   Q.   So --

25   A.   Go on.

484

1   Q.   I'm sorry. I didn't mean to interrupt

 2   you. Have you completed your answer?

 3   A.   Yes, yes.

 4   Q.   Okay. Now, you recall that when the draft

 5   IRP rules were posted for public comment in 2016,

 6   there was a page devoted to that on the ICANN

 7   website, correct?

 8   A.   Yes.

 9   Q.   And on that -- and I am reading from it

10   right now. I don't have a copy in your binder, but

11   I will represent I am reading to you. It says,

12   "Next Steps. If significant changes are required

13   as a result of the public consultation, the IOT may

14   opt out" -- sorry -- "the IOT may opt to have a

15   further public comment period on these changes. If

16   there are no significant changes, the rule will be

17   included in the updated supplementary procedures."

18   Do you recall that?

19   A.   Yes.

20   Q.   So I think that it is fair to say that

21   what you told the community in 2016 and what you

22   reflect here in Principle 2 is that we are going to

23   take the public comments unless it's a significant

24   change, and if it's a significant change, like

25   there was in Rule 4, we are going to go back out

1   for a second public comment; is that right?

       2   A.   I think so. What we do -- when we take

       3   public comment, if it requires significant change,

       4   particularly significant change that is not

       5   expected or supported by public comment, we would

       6   take it back out for public comment, and that's

       7   what the community should expect.

       8   Q.   Okay. Looking at Principle 3, it says,

       9   "Three, take no action that would materially expand

      10   on any part of the supplementary procedures that

      11   the IRP-IOT has not clearly agreed upon or that

      12   represents a significant change from what was

      13   posted for comment and would, therefore, require

      14   further public consultation."

      15   So that's basically what we just talked

      16   about, correct?

      17   A.   Right, right.

      18   Q.   Just to refresh your recollection, that's

      19   also what you were talking about in your October 12

      20   email that the IOT would need to consider whether

      21   the changes to Rule 7 that Mr. McAuley was

      22   proposing was a significant change than what had

      23   been posted for public comment, right?

      24   A.   Right, particularly in that significant

      25   interest test that he was introducing.

                                486

1   Q.   Now, is it fair to say that when the Board

 2   adopts a resolution and it includes a rationale for

 3   that conclusion, that the Board has reviewed and

 4   agrees with everything that's in the resolution and

 5   the rationales?

 6   A.   Yes, each Board member has the opportunity

 7   to either abstain or vote against.

 8   Q.   So would you say, as someone who attends

 9   Board meetings and someone who has drafted

10   resolutions and rationales, that these resolutions

11   and rationales that were adopted on October 25th

12   reflect the fact that the Board believed that the

13   IOT had followed these procedures, correct?

14   A.   Yes. And then further in the rationale it

15   also identified the Board's understanding of the

16   continued conversation and how things might have

17   changed over the time leading up to the Board

18   meeting.

19   Q.   Okay. I'd like to direct your attention

20   to the document behind Tab 12 in your binder, and

21   this is, I will represent to you, a redline that we

22   ran some time ago when we were in front of the

23   Panel on Phase I.

24   And this redline is the current version of

25   Rule 7 that was adopted on the 25th of October 2018

                        487

1 against the version that went out for public

2 comment in November of 2016. And I would just ask

3 you to review the four pages of this document.

4   And I would ask that whether or not --

5 given the changes reflected in this redline, this

6 is a significant change, isn't it?

7   A.   If you mean "significant" in terms of

8 volume of words, yes, but I don't think that it is

9 significant in terms of between what was posted,

10 particularly as it relates to the consolidation and

11 intervention.

12   And the changes there really are

13 reflecting some of the other specifics that were

14 raised through public comment about how to make

15 sure we were doing it correctly, and then the

16 addition of the amicus part also comes out of

17 public comments.

18   So while there's clearly two and a half

19 additional pages here, I won't say there's not --

20 there's -- volume alone doesn't mean that it is a

21 significant change.

22   Q.   Well, if you look at the bottom of Page 2

23 and the top of Page 3, which is "Participation as

24 an Amicus Curiae" -- I know it is called a redline,

25 but this is a blue line. It is all blue, right?

488

1   A.   Yeah.

2   Q.   And what you had told the community in

3   2016, that if significant changes are required as a

4   result of the public consultation, the IOT may opt

5   to have a further public comment period on these

6   changes.

7   So is it fair to say that you opted not to

8   have a further public comment on these changes?

9   A.   There clearly was not a further public

10   comment on these changes because there were

11   multiple comments that asked us to consider

12   including an amicus section, and that's what the

13   IOT delivered.

14   If we put things back out for public

15   comment once there's a change that clearly reflects

16   a trend for public comment, we would be in a

17   never-ending loop of not getting our work

18   completed.

19   I think when we look back at the IOT's

20   expectations of this and the community's

21   expectations of this, we didn't hear -- even after

22   the Board approved it, we heard no concerns from

23   the IOT that the Board had approved the rules in

24   this form, and we also didn't hear from the

25   community other than Afilias of a concern that the

489

```
 1   Board had approved the rule in this form.
 2            We have a very vocal community that will
 3   stand up and raise their hand and raise issues
 4   regarding that if they had concerns.
 5            MR. LITWIN:  Mr. Chairman, I know we have
 6   been going for about an hour and a half now.  I
 7   probably have about another 10 or 15 minutes for
 8   Ms. Eisner.  Would you like to take a break now or
 9   would you like for me to finish my
10   cross-examination?
11            ARBITRATOR BIENVENU:  I think we should
12   take a break now.  How long did you say you still
13   have?
14            MR. LITWIN:  I think 10 or 15 minutes at
15   most.
16            ARBITRATOR BIENVENU:  Okay.  Very well.
17   So that means that you're going beyond your
18   estimate, at least as reflected in the agenda.
19            MR. LITWIN:  That is possible,
20   Mr. Chairman.  I do expect that future witnesses
21   will go quite a bit faster than anticipated.
22            ARBITRATOR BIENVENU:  Very well.  I am not
23   reproaching you.  I am just observing that will be
24   the case.
25            So we will take our first 15-minute break.
```

1   Ms. Eisner, as I instructed you yesterday,

2   you are not to discuss your evidence during the

3   break. You are aware of that?

4   THE WITNESS: Yes, I am. Thank you.

5   ARBITRATOR BIENVENU: Mr. Wallach, any

6   sense, as we stand now, of the length of your

7   redirect?

8   MR. WALLACH: It will not be long. I

9   would not expect it to be more than 10 or 15

10 minutes.

11   ARBITRATOR BIENVENU: Very well. So we

12 will resume in 15 minutes. Thank you all.

13   MR. LITWIN: Thank you, Mr. Chairman.

14   (Whereupon a recess was taken.)

15   ARBITRATOR BIENVENU: Ms. Eisner, you are

16 under the same solemn affirmation.

17   And, Mr. Litwin, please continue with your

18 cross.

19   MR. LITWIN: Thank you, Mr. Chairman.

20   Q.   Ms. Eisner, I'd like to switch topics and

21 ask you a few questions about Rule 4 of the

22 supplementary rules.

23   Before the interim rules came into effect

24 on October 25th, 2018, the deadline to file an IRP

25 had been set in ICANN's bylaws; is that right?

1   A.   Before October 1st, 2016, the deadlines

 2   had been set in ICANN's bylaws.

 3   Q.   Before October 2016 the bylaws required a

 4   claimant to file within 30 days of the posting of

 5   the minutes of a Board meeting, correct?

 6   A.   Yes, I believe that's right.

 7   Q.   And those bylaws, I think, as you've

 8   anticipated my question, were replaced in 2016, and

 9   the new bylaws didn't have a timing provision in

10   it; is that right?

11   A.   Correct. The accountability group that

12   came up with the recommendations on the IRP

13   reserved that matter for the IOT to decide.

14   Q.   So I just want to go through the timetable

15   here with you.

16   Are you aware that ICANN maintains in this

17   IRP that the relevant ICANN action here was the

18   ICANN Board's decision to defer consideration of

19   Afilias' complaints about how the .WEB contention

20   set had been resolved; are you aware of that?

21   A.   I have read the papers, but that's the

22   extent to which I am aware of it.

23   Q.   Okay. Now, that decision to defer

24   consideration, according to ICANN, took place on

25   November 3rd, 2016; are you aware of that?

                         492

1   A.   Only from the papers.

2   Q.   Okay.   Now, I'll represent to you that

3 ICANN did not disclose the fact that that Board

4 workshop on November 3rd, 2016, was occurring and

5 did not disclose any decision that was taken during

6 that November 3rd meeting.

7   Are you aware of that?

8   A.   I am not aware of that.

9   Q.   Okay.   Now, let's just consider the date

10 of November 13, 2016.   I think as you just

11 testified the then-current bylaws did not have any

12 deadline in it for filing an IRP, correct?

13   A.   On November 13th, 2016?

14   Q.   Correct?

15   MR. BIENVENU: You said 13.   Did you mean

16 to say 3rd?

17   MR. LITWIN: I'm sorry, November 3rd.

18 Thank you, Mr. Chairman.

19   Q.   As of November 3rd, 2016, the then-current

20 bylaws did not have a deadline in it for the filing

21 of an IRP; is that right?

22   A.   That's correct.

23   Q.   And the supplementary rules for the IRP

24 that were in effect on November 3rd, 2016, didn't

25 have a deadline for filing either; is that correct?

1   A.   I believe that's correct. I would have to

2   go back and refer to them, but I believe the bylaws

3   at the time specified, but the supplementary

4   procedures did not.

5   Q.   So let's fast-forward to 2018. Afilias

6   initiated its CEP on June 18, 2018; is that right?

7   A.   That's right, based on your

8   representation.

9   Q.   As of that date, June 18, 2018, there was

10 still no deadline to file an IRP because neither

11 the bylaws nor the supplementary rules that were in

12 effect had a timing provision in it; is that right?

13   A.   Yes.

14   Q.   Now, in October of 2018, Afilias was still

15 in CEP with ICANN; is that correct?

16   A.   Based on our discussions today, yes.

17   Q.   And on October 10, as I have represented

18 to you, Afilias had sent a draft IRP request to

19 ICANN to enable ICANN to respond to the merits of

20 its claim in the context of that CEP.

21   Do you remember that discussion?

22   A.   Yes, I do.

23   Q.   Now, at the same time within the IOT, is

24 it fair to say that the committee was debating the

25 substance of the interim rules?

494

1   A.   "At the same time" being that November

2 3rd, 2016, up through --

3   Q.   During October 2018.

4   A.   During October 2018, yes, the committee

5 was debating the substance of a few different rules

6 that are reflected in the exhibits that you

7 presented.

8   Q.   And one of them was, in fact, Rule 4, the

9 timing provisions, correct?

10   A.   Yes.

11   Q.   In fact, Mr. Hutty objected, I will say

12 strenuously --

13   A.   Yes.

14   Q.   -- to the adoption of those rules?

15   I always think of A Few Good Men when I

16 say that.

17   Those draft rules weren't finalized until

18 October 19th, correct?

19   A.   If we consider what was sent in the email,

20 yes, that's correct.

21   Q.   And they were first deemed approved by the

22 IOT on Sunday, October 21st, correct?

23   A.   Yes, I think so.

24   Q.   And they were first sent to the Board on

25 Monday, October 22nd, correct?

495

BARKLEY
Court Reporters

1   A.   So let's back up for a second. In terms

2   of deemed approved, I believe that we had had a set

3   at the end of September that had been pretty well

4   gone through, recognizing that there were a few

5   minor changes that might have happened a couple

6   other places. There was -- and then there was a

7   discussion of Rule 7. We will set that aside.

8   So in the other form -- I have to go back

9   and recall, but I think that one of the only areas

10 where there was any change on the time for filing

11 issue -- if we're discussing that part -- had to do

12 with the fact that we agreed at some point and

13 finalized language on a footnote that would confirm

14 that if there was a future change in a deadline for

15 time for filing, that ICANN would work to make sure

16 no one was prejudiced by that.

17   But I think that the language otherwise in

18 Rule 4 had remained pretty steady up to that point

19 and there had been final readings through the IOT

20 on that.

21   Q.   And the Board voted on the interim rules,

22 including the text of Rule 4, on October 25th,

23 correct?

24   A.   Yes.

25   Q.   And that's the first time that the

496

```
 1    time-bar rules in Rule 4 came into effect, correct?

 2        A.   It is the first time that a time for

 3    filing had been specified and came into effect for

 4    the IRPs after October 1st, 2016.

 5        Q.   And then the ICANN Board rejected Afilias'

 6    reconsideration request on November 6th, correct?

 7        A.   Based on your representation, yes.

 8        Q.   And then ICANN terminated CEP on November

 9    13th, correct?

10        A.   Again, based on our discussion, yes.

11        Q.   And then Afilias filed its IRP the next

12    day, on November 14th, correct?

13        A.   I believe that's correct.

14        Q.   But ICANN's Board was going to work to

15    make sure no one would be prejudiced by the

16    adoption of Rule 4; is that what you said?

17        A.   The footnote that was included in the Rule

18    4 was about the change between the -- we are

19    putting the interim rules into effect.

20            And then if in the future a discussion

21    where people were suggesting that there should be

22    basically no statute of limitations on the ability

23    to challenge an act of ICANN, if that were to be

24    the predominant view, and what the Board put into

25    effect that there would be some sort of stopgap
```

497

BARKLEY
Court Reporters

1 measure put in so that anyone who was not able to

2 file under the interim rules and the timing set out

3 there but could have filed if the other rules, the

4 broader rules had been in effect, that we would put

5 in a stopgap to make sure that no one was

6 prejudiced by that differentiation because we had

7 agreed on a different timing for the final set.

8   Q.   Ms. Eisner, who at ICANN legal was

9 responsible for tracking and working on CEPs and

10 IRPs?

11   A.   That would be a team led by Amy Stathos,

12 one of the deputy general counsel, and the people

13 who work for her that she would assign based on

14 availability and subject matter.

15   Q.   So when you -- I'm sorry.

16   A.   Go on. Sorry.

17   Q.   So when you said during the IOT meeting on

18 October 11th that, "We at ICANN org are getting

19 nervous about being on the precipice of having an

20 IRP filed," were you referring to Ms. Stathos?

21   A.   In part. It was a general area of

22 discomfort for us. We committed to have this IRP

23 in place through our bylaws, and we knew that it

24 was a stopgap measure. Every single day we are at

25 risk of having IRPs filed. So it is a general

ARBITRATION

BARKLEY
Court Reporters

```
 1   collective concern.
 2           We are -- we're the lawyers responsible
 3   for making sure that our entity's in compliance,
 4   and part of that is in compliance to our bylaws,
 5   and there's a really big gap there.
 6       Q.   And, in fact, Afilias filed its IRP 34
 7   days after that October 11th meeting, right?
 8       A.   Yes.
 9       Q.   And the next IRP to be filed wouldn't be
10   filed for more than 400 days; is that right?
11       A.   I believe so, based on when you said the
12   next filing was.
13           MR. LITWIN:  Thank you, Ms. Eisner.
14           I have no further questions, Mr. Chairman.
15           Thank you, Ms. Eisner, very much for your
16   time today.
17           THE WITNESS:  Thank you.
18           ARBITRATOR BIENVENU:  Thank you,
19   Mr. Litwin.
20           Do my colleagues have questions for
21   Ms. Eisner, starting with Catherine Kessedjian?
22           ARBITRATOR KESSEDJIAN:  I do.
23           Ms. Eisner, I am Catherine Kessedjian.  I
24   am speaking from Paris.
25           I noted at the very beginning of your
```

ARBITRATION

```
 1   testimony today before us that you are in the
 2   position in which you are at ICANN as deputy
 3   counsel, general counsel since 2014; is that
 4   correct?
 5           THE WITNESS:  I have been -- I can't
 6   recall when I was promoted to deputy.  I believe it
 7   was somewhere in 2016, but I have been either
 8   associate general counsel or deputy since 2014 and
 9   doing the same work since 2014.
10           ARBITRATOR KESSEDJIAN:  Okay.  My
11   recollection may not be good, but I think I have
12   seen a CV of yours on the Internet saying that you
13   have joined ICANN in 2009; is that correct?
14           THE WITNESS:  That's correct, yes.
15           ARBITRATOR KESSEDJIAN:  So could you
16   describe for us what you did before becoming the
17   deputy general counsel?
18           THE WITNESS:  Sure.  When I joined ICANN
19   in 2009, I joined a three-person department, making
20   it a four-person department, and I was the most
21   junior member of the department at that point.
22           ARBITRATOR KESSEDJIAN:  You mean the legal
23   department?
24           THE WITNESS:  The legal department, yes.
25   So I assisted on any matter that came up before --
```

ARBITRATION

BARKLEY
Court Reporters

1	across the legal needs of the organization.
2	So because ICANN itself was a smaller
3	organization and the legal department was smaller,
4	we all covered a lot of the areas and kind of
5	stepped in and out as needed to cover our service
6	areas.
7	In 2013 ICANN doubled the size of its
8	legal department, and with that came a
9	differentiation of duties. So we wound up
10	separating out the work that we do across
11	Ms. Stathos, who is a deputy -- she was a deputy
12	then and remains a deputy now, who manages our
13	litigation management as well as the internal work.
14	We have someone that handles a lot of the
15	policy side of what we do and our stakeholder
16	services and actually for the contracted parties.
17	And I stepped into a role of -- that I
18	explained yesterday of supporting our strategic
19	initiatives work as well as the global stakeholder
20	engagement work and then special projects that come
21	up, such as the community-facing work that I do.
22	ARBITRATOR KESSEDJIAN: Thank you. You
23	have described many times during the
24	cross-examination the fact that IRPs have been at
25	the center of the worries, if I may say so, of the

501

1 legal department and of ICANN org.

2   Could you explain to us how the

3 information is going through the legal department

4 throughout the community? What information do you

5 get and how often do you discuss that with your

6 colleagues?

7   And since you were drafting rules about

8 IRPs, how come -- I may have misunderstood you. I

9 would have to read the transcript again -- but how

10 come you cannot recall anything about IRPs? I find

11 a disconnect from what you have been telling us in

12 your cross-examination between the fact that you

13 say it's a major worry and the fact that you have

14 answered a lot that you do not recall when you are

15 asked precise questions about IRPs.

16   THE WITNESS: Thank you. I appreciate why

17 it might appear that there's a disconnect.

18   So I am not involved in the day-to-day

19 operation of the IRPs. I am not part of our

20 regular litigation support function that prepares

21 our defenses and really engages on the substance of

22 how ICANN itself will, you know, participate in IRP

23 proceedings or, for that matter, our other

24 accountability mechanisms.

25   My day-to-day work -- and there's a lot of

BARKLEY
Court Reporters

1 it and separate, but that doesn't mean that I am

2 not involved in helping to make sure that ICANN as

3 an organization is prepared to handle those.

4   So one of my biggest roles in our legal

5 department is to help make sure that we are acting

6 in alignment with our bylaws. It is one of the

7 obligations of all of our counsel, of course.

8   Because of the specific nature of work

9 that I do and I have been very involved in the

10 accountability processes that led up to the

11 development of the recommendations that enhance the

12 IRPs, and so then I kept going with that work.

13   That's one of the reasons why we also had

14 Liz Le, Elizabeth Le, who you have heard me discuss

15 and she's been referred to, she works more closely

16 with Amy and her team on the litigation management.

17 I am not sure about her involvement in individual

18 IRPs.

19   So I am very familiar with the operation

20 of IRPs in general, and I am very familiar with how

21 actions taken within the supplementary procedures

22 might impact efficiency of proceedings, resources

23 needed and those sorts of things.

24   It is like -- imagine really understanding

25 civil procedure, for example, but not getting

503

1 involved in the day-to-day procedure of a case.

2 That's exactly kind of where I sit.

3   So I, of course -- if that makes sense.

4   ARBITRATOR KESSEDJIAN: But saying that

5 you are not involved in the day-to-day management

6 of a case, I fully understand that. But when an

7 IRP is filed or about to be filed, there are some

8 conversations within the department of which you

9 are, if not a participant, at least an observer,

10 aren't you?

11   THE WITNESS: Of course there are times

12 when I know when an IRP is filed. I will get an

13 update about that fact. It is both a special and a

14 regular course of our life at ICANN.

15   So it is something that -- like this IRP,

16 of course, has touched me much differently than any

17 IRP that has happened since I was a junior attorney

18 in 2009, working with ICANN, where I might have

19 been more directly involved with litigation

20 support, only because as you can manage, my name is

21 in it and it is about the activities and centers

22 around some of that.

23   But often also the IRPs themselves relate

24 to day-to-day work at ICANN that I am also not

25 involved in. So, for example, I don't do a lot of

504

BARKLEY
Court Reporters

1   the work that relates to the new gTLD Program or

2   those -- as I discussed earlier, much of the IRPs

3   have been about processing the applications for the

4   new gTLD Program.

5   So because I don't have substantive

6   expertise on that and it's not my role, I hear

7   things are coming in and I am aware of what my

8   colleagues are working on, but I have a full desk

9   of work, so I don't necessarily get involved in a

10   lot of the day-to-day conversations about it.

11   It becomes a fact of something that's

12   going on, but because it's not something that I

13   need to give attention to, I would only give

14   support when I'm called on to give support for it,

15   but otherwise I don't get involved in regular

16   status updates with my colleagues on it because it

17   is not something that -- typically just a general

18   conversation among our department unless there's --

19   we know that there's hearings coming up.

20   Someone says, "There's a hearing coming up

21   in this IRP, so I'll be very busy with that. Maybe

22   you can help pick up some of my work over here."

23   Something like that.

24   ARBITRATOR KESSEDJIAN: My last question.

25   I understand you cannot recall now in 2020 what has

BARKLEY
Court Reporters

1   happened in 2016 and '18, but it would be fair to

     2   say that at the time when you were working on those

     3   rules, you heard about what was going on in the

     4   other parts of the department, and so your thinking

     5   may have been influenced by that?

     6   THE WITNESS: I would have had general

     7   knowledge of it, but I think it is also important

     8   to recall that I -- knowing that someone might be

     9   filing an IRP, that's -- it makes it important to

     10 make sure we have the basis for that IRP to be

     11 filed. That's one thing that exists no matter what

     12 the topic or who that entity might be.

     13   So even -- I would assume I was aware at

     14 some point that there was a CEP happening, for

     15 example, that I don't recall the specifics of

     16 because, again, it was a fact of note, right. But

     17 it wasn't about who it was. It was about the fact

     18 that there was something happening.

     19   ARBITRATOR KESSEDJIAN: Because it was

     20 directly important for the work you were doing?

     21   THE WITNESS: In order to make sure that

     22 we had the basis of rules coming through. So it

     23 could have been any entity that had initiated a

     24 CEP, for example. That didn't matter.

     25   So the important thing was we needed to

                              506

```
 1   have some rules that matched with the bylaws to
 2   allow the Panel to run an IRP that made sense for
 3   everyone.
 4          ARBITRATOR KESSEDJIAN:  Thank you very
 5   much.  I am done.
 6          ARBITRATOR BIENVENU:  Mr. Chernick, any
 7   questions for Ms. Eisner?
 8          ARBITRATOR CHERNICK:  No.  Thank you.
 9          ARBITRATOR BIENVENU:  Ms. Eisner, could I
10   ask you to turn to Paragraph 5 of your witness
11   statement?
12          THE WITNESS:  Yes.  I am there.
13          ARBITRATOR BIENVENU:  So this paragraph
14   deals with the period between 11 October 2018 and
15   16 October 2018, a period during -- concerning
16   which Mr. Litwin questioned you.
17          THE WITNESS:  Yes.
18          ARBITRATOR BIENVENU:  And there is
19   presented in this paragraph a sequence of events
20   which, for the purpose of my question, I'll break
21   down in five steps, if I may.
22          The first one is Mr. McAuley's suggestion
23   to give claimant status to persons with a
24   significant interest, correct?
25          THE WITNESS:  Yes.
```

1   ARBITRATOR BIENVENU: Then you mentioned

  2   Mr. Hutty's suggestion that interim procedures

  3   should specify the categories of persons entitled

  4   as a matter of right to participate in an IRP,

  5   right?

  6   THE WITNESS: Yes.

  7   ARBITRATOR BIENVENU: And then you

  8   mentioned that you are tasked by the IOT to propose

  9   language to reflect the discussion?

 10   THE WITNESS: Yes.

 11   ARBITRATOR BIENVENU: And then you

 12   mentioned that you drafted further revisions which

 13   included a deemed interest in favor of members of

 14   the contention set or an entity whose actions are

 15   significantly referred to in the IRP, that's Step

 16   4?

 17   THE WITNESS: Yes.

 18   ARBITRATOR BIENVENU: Then you mentioned

 19   that you send out those revisions on 16 October to

 20   Mr. Turcotte and McAuley and then you and McAuley

 21   had subsequent exchanges over the next three days,

 22   right?

 23   THE WITNESS: Right.

 24   ARBITRATOR BIENVENU: There is no mention

 25   in that sequence of events of the fact that between

ARBITRATION

BARKLEY
Court Reporters

```
 1   Steps 3 and 5, as I understand it, you had contacts

 2   with Mr. McAuley and to the fact that Mr. McAuley

 3   had input into the drafting of the revisions that

 4   were sent out on 16 October; is that correct?

 5              THE WITNESS:  I don't recall the contact

 6   that you are speaking of.

 7              ARBITRATOR BIENVENU:  Can you look at Tab

 8   8 of the witness bundle?

 9              THE WITNESS:  Yes.

10              ARBITRATOR BIENVENU:  You recognize this

11   email message?  This is the email by which

12   Mr. Turcotte, on behalf of Mr. McAuley, sends out

13   the draft that you have been working on since

14   October 11, correct?

15              THE WITNESS:  Correct.

16              ARBITRATOR BIENVENU:  Can you look at the

17   fifth paragraph?

18              Just before you do that, we know that this

19   email was, in fact, drafted by Mr. McAuley, who

20   sent that draft to Mr. Turcotte, who then on behalf

21   of Mr. McAuley sent that out to the members of the

22   IOT, correct?

23              THE WITNESS:  That's correct.

24              ARBITRATOR BIENVENU:  So if we look at

25   this paragraph, we read, "As some attempted to
```

BARKLEY
Court Reporters

1 draft a compromise in this respect." So he's

    2 talking about the period between the 11th of

    3 October and the 16th of October, correct?

    4   THE WITNESS: Let me just refer back to my

    5 declaration. Can you repeat your question?

    6   ARBITRATOR BIENVENU: Yes. I am just

    7 trying to situate this language here.

    8   What I'm understanding reading this email

    9 is that Mr. McAuley is explaining to the members of

   10 the IOT that as you were attempting to draft the

   11 compromise, basically to deliver on the task that

   12 you were given on the 11th of October, you

   13 encountered difficulty, and he explains here that

   14 you "encountered difficulty in capturing

   15 appropriate language that she felt would be

   16 consistent with bylaws."

   17   Then he goes on to say, "Sam reached out

   18 to me in my participant capacity, and we discussed

   19 over the ensuing days, and so the language you will

   20 see there is not exactly as discussed on the calls.

   21 The language is acceptable to me in my participant

   22 capacity. I felt these discussions were

   23 appropriate inasmuch as I had raised the issue as

   24 participant and knew I would forward the resulting

   25 language to the list, a way to try to take

                           510

BARKLEY
Court Reporters

```
 1   advantage of Board action at next week's meeting,"

 2   end of quote.

 3              THE WITNESS:  Yes.

 4              ARBITRATOR BIENVENU:  So in point of fact,

 5   there were discussions between you and Mr. McAuley

 6   on the subject of the changes to Rule 7 between the

 7   11 of October meeting and the 16 of October draft,

 8   correct?

 9              THE WITNESS:  Yes.  And there are email

10   discussions that reflect that that are in the

11   record.  For example, at Tab 6 of my binder, the

12   binder that Afilias' counsel presented to me,

13   you'll see the difficulty reflected on that

14   February 12th -- sorry, on that Friday, October

15   12th, email.

16              ARBITRATOR BIENVENU:  Right.

17              THE WITNESS:  And then we had exchanged

18   emails regarding that.  So we had email discussions

19   that I -- that's what I understand he's referring

20   to here.

21              ARBITRATOR BIENVENU:  And do I understand

22   that these discussions were only by emails?  There

23   were no telephone discussions?

24              THE WITNESS:  As far as I recall, that's

25   the case.
```

511

1   ARBITRATOR BIENVENU: As you sit here

2   today, Ms. Eisner, do you remember these exchanges?

3   THE WITNESS: Yes. I remember the email

4   exchanges that are in front of us, yes.

5   ARBITRATOR BIENVENU: Are you sure that

6   they were only email exchanges, or might you have

7   had telephone exchanges?

8   THE WITNESS: There were times when I

9   spoke with Mr. McAuley in his role on the IOT on

10 the telephone.

11   I don't recall specifically when those

12 occurred, and I don't recall if it was around this

13 time period or about this topic.

14   I did speak with Mr. McAuley at times by

15 telephone, but I don't recall sitting here today if

16 we ever discussed this topic by telephone.

17   ARBITRATOR BIENVENU: Do you recall -- or

18 I'll put it even in sensitive terms.

19   Is it possible that in the course of these

20 discussions, Mr. McAuley influenced or shaped the

21 language added to Rule 7 during that very short and

22 critical period, and in particular, the two

23 categories of parties who, according to the new

24 draft, would be deemed to have a material interest?

25   THE WITNESS: So Mr. -- the revisions that

512

1 happened in that middle part of October would never

2 have happened if Mr. McAuley hadn't introduced the

3 new language that he did around the October 9 to

4 October 11 time frame, that's true. We were

5 prepared to move the rules forward.

6   Whether Mr. McAuley -- to your question of

7 did Mr. McAuley influence the specific language --

8   ARBITRATOR BIENVENU: I wouldn't even put

9 it in those terms. What I suggested is whether

10 your discussions with him may have influenced or

11 shaped that language? Because they are very

12 specific scenarios that are contemplated there.

13 They emerged during that period.

14   And what we know based on that email --

15 unless you correct it -- is that, as he says, you

16 reached out to him and you discussed over the

17 ensuing dates, so the language that you see there

18 is not exactly as discussed on the calls.

19   So the question I have is: Is it possible

20 that during that period, the language that you came

21 up with was shaped by those discussions?

22   THE WITNESS: I believe my outreach to him

23 in his participant capacity would have been a

24 Friday, October 12th, email that was directed to

25 him with Mr. Turcotte and Ms. Le. That's where you

513

1   see my discomfort with his initial language

         2   reflected.

         3   I clearly -- so within my role at ICANN --

         4   or with ICANN and as we get to points where we are

         5   getting ready to have something sent to the Board

         6   to reach conclusion in a group, it sometimes

         7   happens that people come in towards the end and

         8   request changes.

         9   No matter who those people are, my role in

        10   this group was to help move this language forward.

        11   It didn't matter who was presenting it. Anyone

        12   else could have raised this language, and I would

        13   have had the same obligation to try to move the

        14   language forward.

        15   I clearly had to think about the issues

        16   that Mr. McAuley was raising that he was expressing

        17   regarding why he was proposing this to see if I

        18   could move this language within the bounds of the

        19   appropriate structure of the IRP, and where it

        20   appeared that we had the ability to go with it, to

        21   make -- to see if we could move it to a place where

        22   we would have rules that we could put in place.

        23   But I was also extremely careful to not

        24   expand the rules beyond a place where it didn't

        25   seem appropriate.

                                    514

```
1              MR. LITWIN:  Mr. Chairman.

2              ARBITRATOR BIENVENU:  Yes.

3              MR. LITWIN:  There is a document that I

4    referred to obliquely in my questioning, which is

5    not a substantive document.  It is a two-line email

6    that Mr. McAuley sent to Ms. Eisner at 7:09 a.m. on

7    October 15, 2018.  It is one of the documents that

8    ICANN posted to the IOT-IRP website in response to

9    our motion before the procedures officer.

10             It is not in the record, but I do believe

11   that if we could introduce this document and ask

12   Ms. Eisner about it, it would confirm the existence

13   of a phone call between Mr. McAuley and Ms. Eisner

14   on October 15th.

15             ARBITRATOR BIENVENU:  I don't think we

16   should embark on a discussion of adding to the

17   record at this point, Mr. Litwin.

18             MR. ALI:  Mr. Chairman, if I may, this is

19   a two-line email, which was sent -- where

20   Ms. Eisner, who is the witness before you, is the

21   recipient.  It seems to me that she can be asked

22   about it, particularly in light of the line of your

23   questioning.

24             It is simply a question of confirming or

25   helping her to refresh her memory that, in fact,
```

ARBITRATION

BARKLEY
Court Reporters

1 there was the phone call that you were alluding to.

2 It is there in black and white. It doesn't take

3 more than 30 seconds for her to review the message.

4   MR. WALLACH: Mr. Bienvenu, may I say

5 something?

6   ARBITRATOR BIENVENU: Is that Mr. Wallach?

7   MR. WALLACH: Yes, it is.

8   ARBITRATOR BIENVENU: I think Mr. LeVee

9 also wanted to say something, but I'll listen to

10 you, Mr. Wallach.

11   MR. WALLACH: I would object to the

12 addition of new evidence, new documents into the

13 record at this point on any issue, but particularly

14 on the Rule 7 issue, which has been the subject of

15 significant briefing going back a year and a half

16 now. It has already been the subject of one

17 hearing.

18   I would also object to Mr. Ali's

19 interjecting himself at this point. We agreed that

20 one attorney would do the examination other than in

21 exceptional circumstances. Mr. Litwin did the

22 examination.

23   This came up also in respect to Ms. Burr's

24 examination yesterday, where Mr. Litwin did the

25 examination and Mr. Ali interjected himself in

516

```
 1   objecting to questions on redirect.  I believe we

 2   have agreed that one attorney will do the

 3   examination, and that should apply to redirect.

 4   That should also apply to other issues, such as

 5   this, that are interjected during the course of the

 6   examination.

 7            MR. ALI:  Mr. Chairman, I think that is, I

 8   would say, unfortunately an uninformed view.  We

 9   had agreed that there would be only one counsel to

10   question a witness, which we have stuck by that

11   rule.

12            I am lead counsel representing Afilias in

13   this matter, and I believe I am entitled, with your

14   permission, to make interventions before you on

15   matters.

16            I have not posed a single question to a

17   witness.  Unfortunately, we are having this

18   conversation in front of Ms. Eisner, and I remember

19   Professor Kessedjian's admonition yesterday.  So

20   perhaps Ms. Eisner could go back into the waiting

21   room while we hear from Mr. LeVee on other matters,

22   if I may suggest that.

23            ARBITRATOR BIENVENU:  Yes, that's probably

24   appropriate.  Ms. Eisner, forgive us, but we'll ask

25   you to go to another room.
```

```
 1           I do want to take this opportunity --
 2  well, I address everybody.  We had a discussion
 3  about the one-lawyer rule, and we decided that a
 4  counsel team would be permitted to consult during
 5  cross-examination, and we were asked to pause to
 6  allow such consultations, and we will continue to
 7  do so.  That is appropriate.
 8           To correct you, Mr. Ali, you did yesterday
 9  raise an objection in the course of the redirect
10  examination of a witness, and that normally would
11  have been for the counsel who had conducted the
12  cross-examination to do.
13           We do not want to be formally -- we do not
14  want to be overly formal, but we do want both
15  parties to feel that there are rules of engagement
16  that have been either agreed or determined by the
17  Panel and that those rules apply to everybody.
18           I don't want to have a discussion about
19  it, Mr. Ali.
20           MR. ALI:  I'd like to put it on the
21  record.  No, Mr. Bienvenu, I need to put it on the
22  record.
23           We are here in a virtual hearing because
24  of ICANN's insistence and because the Panel
25  insisted on having this hearing.  We have been put
```

1   under incredible pressure because of the way in

    2   which this procedure has been played out. The

    3   pressure has resulted from the manner in which

    4   ICANN has chosen to conduct itself.

    5   I don't want to sound like I'm whining,

    6   but the way in which this is played out has not

    7   only put us under incredible pressure that if it

    8   continues will give rise to issue of fairness,

    9   number one.

    10   Number two, we have been put in the

    11   position because of the way in which we have been

    12   proceeding, where I have had to -- where my team

    13   has had to basically break every rule of engagement

    14   that is required by the D.C. government and by my

    15   law firm in terms of health and safety because of

    16   the pace at which we are proceeding.

    17   We are proceeding under immense pressure

    18   by this Panel that allows -- that -- where we are.

    19   We have nine witnesses.

    20   Mr. Chairman, you, yourself, have been

    21   counsel in international arbitrations. One week to

    22   get ready for a hearing with nine witnesses that we

    23   have to cross-examine is no mean feat, and we are

    24   doing so where people are not in the same room.

    25   People are having to make special arrangements

1 because of how they live and where they live and

2 who they live with in order to be able to

3 participate in the hearings, unlike the three

4 arbitrators and some of the members of the team, do

5 not have the luxury of being in a location where

6 they can work easily or, for that matter, the lead

7 counsel and the partners. So it has, indeed, been

8 extremely difficult.

9   I will say if I were sitting next to

10 Mr. Litwin, as would be the case for any lead

11 counsel, Mr. Chairman and members of the Panel, I

12 would have been able to pass him a note.

13   So these objections that are being raised

14 I find are to the rules of engagement and the

15 formalities and the procedures. You know, it is

16 either virtual or not virtual. If we are in a

17 virtual world, then allowances need to be made as

18 we are all learning how to manage the technology,

19 how we are trying to manage health and safety

20 issues, how we are trying to manage the time zone

21 witnesses, how we are trying to get nine witnesses

22 done in truncated hearing days.

23   So, Mr. Chairman, yes, I do need to put

24 that on record, and I apologize if I'm being

25 strident about this, but, frankly, I have reached

BARKLEY
Court Reporters

```
 1   the end of my tether in the way in which some of

 2   this has been -- how some of this has played itself

 3   out.

 4              I do think that allowances need to be made

 5   for the circumstances that we are in because I am

 6   seeing what this has done and is doing to my team,

 7   whose health and safety is paramount.

 8              And together with that is our right to a

 9   fair hearing in which we are given an opportunity,

10   a full and fair opportunity to present our case.

11   Thank you.

12              MR. BIENVENU:  Thank you, Mr. Ali.  So we

13   will take the request for the addition of this

14   document into the record under advisement.  I will

15   discuss it with my colleagues during the next

16   break.

17              And for the moment, unless there are

18   questions from my colleagues for Ms. Eisner, we

19   would move to the redirect, then probably break and

20   then see if the addition into the record of this

21   document would lead to a few additional questions.

22              So let's bring the witness back in.

23              Before we do, Mr. Ali, I will just say

24   that we are conscious of the additional burden that

25   the crisis which befalls the world is putting on
```

521

```
 1   parties engaged in dispute resolution.  We are

 2   conscious of the fact that the burden is

 3   particularly heavy for the party in the case that

 4   has to conduct the cross-examination of witnesses,

 5   and in your case there are many.  We are fully

 6   conscious of that.

 7           My recalling the one-counsel rule was to

 8   make sure that both parties feel that the rules

 9   agreed -- discussed and agreed are followed, so

10   that was the only import of my reference to that

11   rule.

12           So let us then bring -- I have no more

13   questions for Ms. Eisner.  Let's bring her back in.

14           Mr. Wallach, are you ready for your

15   redirect?

16           MR. ALI:  Just one more point of order

17   before she comes back because I don't want her to

18   hear this question.  We would request that she not

19   be released until the Panel has decided on the

20   document.

21           ARBITRATOR BIENVENU:  Of course.  It goes

22   without saying.

23           MR. ALI:  Thank you.

24           ARBITRATOR BIENVENU:  So, Mr. Wallach,

25   please proceed with your redirect.
```

1   MR. WALLACH: Thank you, Mr. Bienvenu.

2   REDIRECT EXAMINATION

3   BY MR. WALLACH

4   Q.   Good morning, Ms. Eisner.

5   A.   Good morning.

6   Q.   I have only a few questions for you.

7   First, you were asked by Mr. Litwin some

8   questions about the number and identity of

9   attendees at certain meetings of the IOT?

10   A.   Yes.

11   Q.   Were all IOT members given notice before a

12   meeting was held?

13   A.   Yes. It is a practice that there's

14   typically both an email on the list as well as

15   calendar notifications that go out from the

16   secretary to all the people who are in that group.

17   Q.   And were all IOT members given an

18   opportunity to attend any meeting that was held?

19   A.   Yes.

20   Q.   Okay. Moving on to another subject. I

21   believe Mr. Litwin suggested to you -- or asked a

22   series of questions which suggested that any

23   significant change to the version of the

24   supplementary procedures that was sent out for

25   public comment would need to be sent out for a

```
 1   second public comment period.

 2            Is it a correct statement of your

 3   understanding of the standard that any significant

 4   change to the supplementary procedures sent out for

 5   public comment would need to be sent out for a

 6   second public comment period?

 7            MR. LITWIN:  Objection; that's a leading

 8   question.

 9            ARBITRATOR BIENVENU:  Mr. Wallach, do you

10   want to reformulate your question?

11       Q.   BY MR. WALLACH:  Okay.  What is your

12   understanding of the standard applied within ICANN

13   regarding when a change to the version of the

14   supplementary procedures sent out for public

15   comment would need to be subjected to a second

16   public comment period?

17       A.   My understanding of when a change made to

18   a version of the supplementary procedures that have

19   previously been put out for public comment would

20   have to go out again would be if it was -- if there

21   was a change made that is not reflective of a trend

22   that arrived from that first public comment or if

23   it was significant or an unexpected change --

24   significant and unexpected change from that version

25   that was previously put out.
```

524

BARKLEY
Court Reporters

1   Q.   Thank you. Did you have a view on whether

2   the changes to Rule 7 were required to be put out

3   for a second public comment period?

4   A.   I did not think that the changes made to

5   Rule 7 as reflected in the version that the Board

6   approved needed to go out for public comment

7   because I believe they were in line with the trend

8   of public comment that we had received on the

9   versions that had been posted in 2016.

10   Q.   Thank you. And now I'd like to look at a

11   document. This is Tab 10 of the binder that was

12   provided to you by Mr. Litwin. It is Exhibit C-314

13   for the arbitrator.

14   I'd like to turn to Page 63, using the

15   page numbers that are in the bottom right-hand

16   corner of the document. Actually, if we could

17   refer to 62 for a moment.

18   On Page 62, you have that on the screen,

19   on Page 62 in the final full paragraph you'll see a

20   paragraph that Mr. Litwin referred to and took you

21   through.

22   Do you recall that?

23   A.   Yes.

24   Q.   Okay. So now if we could turn over to

25   Page 63 and look at the top paragraph. It says,

1   "The IOT began consideration of a set of interim

2   supplementary procedures in May 2018. The versions

3   considered by the Board today was the subject of

4   intensive focus by the IOT in two meetings on 9 and

5   11 October 2018, convened with the intention of

6   delivering a set to the Board for our consideration

7   at ICANN63. There were modifications to four

8   sections identified through those meetings, and a

9   set reflecting those changes was proposed to the

10 IOT on 9 October 2018."

11   Do you see that?

12   A.   Yes.

13   Q.   What is your view on whether the Board was

14 aware of the changes made to the amicus procedures

15 in the interim supplementary procedures in October

16 2018?

17   A.   My view is the Board was aware of the

18 changes that had been made.

19   MR. WALLACH: Thank you. Those are all my

20 questions. Thank you very much for your testimony.

21   ARBITRATOR BIENVENU: Thank you,

22 Mr. Wallach. Let me just see here.

23   So I am looking at my colleagues,

24 Professor Kessedjian, Mr. Chernick, would you be

25 agreeable to breaking now? We can have a side-bar

BARKLEY
Court Reporters

```
 1  and discuss the request for the addition of a

 2  document.

 3           We would ask Ms. Eisner to remain

 4  available, and then we would move to hearing either

 5  more from Ms. Eisner or to move to Ms. Willett.  Is

 6  that agreeable to you?

 7           ARBITRATOR CHERNICK:  Yes.

 8           ARBITRATOR KESSEDJIAN:  Fine.  Thank you.

 9           MR. BIENVENU:  Very good.

10           So, Ms. Eisner, I cannot see you, but I

11  think you can still hear me?

12           THE WITNESS:  Yes.

13           ARBITRATOR BIENVENU:  Okay.  May we ask

14  you to go back in your room, if I may say so, stay

15  available to the parties and the Panel, and we will

16  instruct you and communicate our decision, and

17  we'll go from there.

18           THE WITNESS:  I'll be ready whenever you

19  are.

20           ARBITRATOR BIENVENU:  Thank you very much.

21           So take our break, 15 minutes, and we'll

22  convene in our break-out room.

23           Oh, before we break, is everyone still

24  there?

25           MR. LITWIN:  Yes, Mr. Chairman.
```

ARBITRATION

1   ARBITRATOR BIENVENU: This question is for

 2 Mr. Litwin or Mr. Ali, depending on who can provide

 3 an answer. When did the claimant become aware of

 4 the document that you wish to add to the record?

 5   MR. LITWIN: May I answer this, Arif?

 6   MR. ALI: Yeah, I was going to say, Ethan,

 7 please do.

 8   MR. LITWIN: Mr. Chairman, as you are

 9 aware, we had made a motion before the procedures

10 officer to disclose what is called off-list

11 communications that took place in this October time

12 period because they had not been posted to the

13 ICANN IRP-IOT's Wiki website that contained all the

14 other emails that are in the record.

15   ICANN produced those on a sliding scale.

16 These were -- this email along with, as you may

17 recall, the October 12th email, were disclosed at

18 the end of April 2019, after we had concluded the

19 procedures panelist process. That record is now

20 closed.

21   That caused us really on the eve of the

22 Phase I hearing to move the Panel to admit the

23 October 12 email, which ICANN objected to at the

24 time because it was not part of the record that was

25 before this Panel, as we had agreed to abide by the

528

ARBITRATION

BARKLEY
Court Reporters

```
 1  record that had been developed before the

 2  procedures officer.

 3          We were at the time, of course, aware of

 4  all the other emails that had been disclosed at the

 5  time, but given that they were nonsubstantive in

 6  nature, chose only to move to admit the October 12

 7  email at that time.

 8          This is also a nonsubstantive email.  It

 9  is two lines that respond directly to Ms. Eisner's

10  October 12th email.  For that reason and because

11  the relevance of it became clear today,

12  particularly in light of, Mr. Chairman, your

13  questioning, we thought it would assist the Panel

14  in answering a question that you were trying to

15  elicit from Ms. Eisner.

16          ARBITRATOR BIENVENU:  And can you -- could

17  you please repeat, what is the date of that email?

18          MR. LITWIN:  It is Monday, October 15th,

19  2018, at 7:09 a.m., so a day before Ms. Eisner

20  sends her October 16 email that you questioned her

21  about, and I did as well.

22          MR. WALLACH:  Mr. Bienvenu, could I just

23  briefly respond to that?

24          MR. ALI:  May I just supplement, David, so

25  you can respond to everything?
```

BARKLEY
Court Reporters

1   Just points of information so we have

         2   everything in front of the Panel.

         3   Chairman, this isn't clear, Ethan wasn't

         4   aware, this is not an email from Ms. Eisner to

         5   Mr. McAuley. It is from Mr. McAuley to Ms. Eisner.

         6   ARBITRATOR BIENVENU: Yeah.

         7   MR. ALI: This is a document that would

         8   also be helpful to examine Mr. McAuley when he

         9   testifies later next week.

        10   Sorry, David.

        11   ARBITRATOR BIENVENU: Someone on behalf of

        12   ICANN wanted to say something. Could you please

        13   identify yourself? I see Mr. LeVee, but I hear

        14   someone else.

        15   MR. WALLACH: Yes. This is David Wallach.

        16   I just had something to say very briefly. I

        17   haven't seen the document that they are proposing

        18   to enter. It has never previously been provided to

        19   counsel for ICANN or mentioned in any context

        20   before it was raised for the first time this

        21   morning. So I obviously have not had a chance to

        22   investigate any of what Mr. Litwin said.

        23   I believe the crux of what he said, the

        24   answer to your question, was that Afilias has had

        25   this document since April of 2019, which, of

BARKLEY
Court Reporters

1   course, is approximately 16 months ago.

2   ARBITRATOR BIENVENU: Yes. I think he was

3   also saying, Mr. Wallach, that the relevance of

4   that document arose out of questions asked by the

5   Panel.

6   MR. WALLACH: I would not accept that

7   representation, though. The issue of the drafting

8   of these provisions of the interim supplementary

9   procedures and exactly what communications happened

10 in the lead-up to their adoption in October of 2018

11 has been front and center since the Amici sought to

12 intervene in this proceeding and Afilias opposed

13 their request on the basis of alleged improprieties

14 in the adoption of Rule 7.

15   So the notion that Afilias had no concept

16 that what they represent this email to say had any

17 relevance until this morning is difficult to

18 understand.

19   MR. LITWIN: Mr. Chairman, if I might,

20 yes, this issue has been front and center, as

21 Mr. Wallach says, since December 2018, when NDC and

22 VeriSign sought to intervene in this IRP, but ICANN

23 had not disclosed that document by then.

24   It was also relevant in the hearings

25 before the procedures officer where that issue was

1   arbitrated, but ICANN had not produced that

2   document at that time.

3   It was produced months after we made the

4   arguments and the record had closed on the Rule 7

5   issue. We had agreed to simplify things and not

6   overcomplicate the matters and burden this Panel in

7   Phase I by relying on the record as it had been

8   developed before the procedures officer, i.e.,

9   before this document had been produced, which would

10   have, if that rule was followed strictly, exclude

11   the October 12 email, which is so interesting and

12   that the Panel quoted in its entirety in its Phase

13   I decision.

14   This is not a substantive email. This is

15   not an email that reflects any substantive

16   communication between Mr. McAuley and Ms. Eisner on

17   any point.

18   It simply goes to answer the question of

19   whether or not there was a telephone call between

20   Mr. McAuley and Ms. Eisner the day before she sent

21   her September -- her October 16 email, and that is

22   it.

23   MR. BLACKBURN: May I speak for a moment?

24   MR. WALLACH: May I speak briefly and then

25   I will turn it over to Mr. Blackburn? It will not

ARBITRATION

1 take me more than 30 seconds.

2   ARBITRATOR BIENVENU: Go ahead.

3   MR. WALLACH: I believe Mr. Litwin said

4 Afilias has been aware of this email and the

5 relevance of this email since prior to the Phase I

6 hearing. There was a deadline for the introduction

7 of all new evidence into the record, which the

8 parties agreed was the 23rd of July.

9   If they sought -- if Afilias wanted to add

10 this to the record, they could have added it then.

11 They chose to sit on it and wait until Ms. Eisner's

12 testimony was underway and to spring it in the

13 course of that. I believe those circumstances

14 should be sufficient to resolve their application.

15   ARBITRATOR BIENVENU: Thank you,

16 Mr. Wallach.

17   I saw counsel for VeriSign raising his

18 hand metaphorically.

19   MR. BLACKBURN: Yes, Mr. Bienvenu. I just

20 wanted to note on this issue that if the Panel

21 refers back to its Phase I decision, as Mr. Litwin

22 noted, the October 12th email is set out in full

23 followed by a discussion in which I believe the

24 Panel does directly question the communications

25 that occurred between Mr. McAuley and Ms. Eisner

1   between that date and the October 16th email.

 2   So I would say that the Panel has raised

 3   that question first in the Phase I decision in

 4   which it also then continued its final decision on

 5   Rule 7 to this proceeding.

 6   So the Panel's questions in that regard

 7   were evident in the Phase I decision and amplified

 8   by you today. That's all.

 9   ARBITRATOR BIENVENU: Thank you very much,

10   sir.

11   So we will take our second break and

12   resume in 15 minutes.

13   MR. LITWIN: Thank you, Mr. Chairman.

14   (Whereupon a recess was taken.)

15   ARBITRATOR BIENVENU: So on the request by

16   Afilias to admit into the record an email from

17   Mr. McAuley to Ms. Eisner dated 15 October 2018,

18   the Panel decides as follows: Counsel for Afilias

19   will be permitted to show the email in question to

20   Ms. Eisner in order to see if it assists in

21   refreshing Ms. Eisner's memory on the question of

22   whether before October 11 and October 16 she had

23   conversations with Mr. McAuley, as opposed to email

24   communications, about the draft of Rule 7, a

25   question that I raised with the witness at the end

BARKLEY
Court Reporters

```
 1   of her cross-examination by counsel for Afilias.

 2           The email is allowed to be used strictly

 3   for that purpose and is not admitted as an

 4   additional exhibit into the record, although

 5   evidently the transcript will reflect the Panel's

 6   decision and the text of the email when it is put

 7   to the witness.

 8           Mr. Litwin, we will call the witness back

 9   into the hearing room, and you are permitted to

10   show her that email.  I will continue with my

11   questions and will ask the witness if that email

12   assists in refreshing her memory.

13           MR. LITWIN:  Very good, your Honor --

14   Mr. Chairman.

15           MR. BIENVENU:  Ms. Eisner, this is Pierre

16   Bienvenu.  So the Panel has decided that counsel

17   for Afilias would be permitted to show you the

18   email -- an email dated 15 October 2018 that

19   Mr. McAuley sent you in order to see if it assists

20   you in recalling whether you had discussions

21   with -- discussions as apart from -- as opposed

22   from email communications with Mr. McAuley during

23   the period between October 11th and October 16th.

24           So Mr. Litwin.

25           MR. LITWIN:  Thank you, Mr. Chairman.
```

ARBITRATION

BARKLEY
Court Reporters

1   Can we have the exhibit brought up so

 2   Ms. Eisner can see it? Chuck, if you can focus in

 3   on the top half of that where it is Mr. McAuley's

 4   email down to, "Hi, David," because it is very

 5   small on my screen.

 6   RECROSS-EXAMINATION

 7   BY MR. LITWIN

 8   Q.   Can you see this, Ms. Eisner?

 9   A.   Yes.

10   Q.   Ms. Eisner, this is an email dated Monday,

11   October 15th, 2018, and it is an email that

12   Mr. McAuley sent to you in response to that email

13   that you sent to him on October 12th, 2018.

14   If you can take a minute and review it.

15   And my only question for you is whether this helps

16   refresh your recollection whether you had a

17   telephone call with Mr. McAuley at 1:00 p.m. on

18   October 15th, 2018, to discuss your email of

19   Friday, October 12th, 2018?

20   A.   I don't have any recollection of the call,

21   but I don't have any reason to think this email is

22   untrue.

23   MR. LITWIN: Mr. Chairman, that is my only

24   question.

25   ARBITRATOR BIENVENU: Thank you very much.

                             536

1   Mr. Wallach, anything arising from this

2 exchange?

3   MR. WALLACH: No, nothing for me. Thank

4 you, Mr. Bienvenu.

5   ARBITRATOR BIENVENU: Okay. Ms. Eisner,

6 it remains for me on behalf of the Panel to thank

7 you very much for your evidence and for assisting

8 the Panel in this matter.

9   MR. LITWIN: Thank you, Ms. Eisner.

10   THE WITNESS: Thank you.

11   ARBITRATOR BIENVENU: Ms. Eisner, you're

12 still there?

13   MR. ENGLISH: I'm sorry, Pierre, I removed

14 her. Do you want her to come back?

15   ARBITRATOR BIENVENU: Yes, please.

16   MR. ENGLISH: She's back. Sorry.

17   ARBITRATOR BIENVENU: Ms. Eisner, I would

18 like to inform you that the sequestration effect of

19 witnesses in this case extends to instructing

20 witnesses after they have been heard by the Panel

21 to not communicate or discuss with other witnesses

22 whose testimony has not yet been heard.

23   MR. ENGLISH: Sorry, Mr. Bienvenu, she

24 hasn't appeared yet.

25   ARBITRATOR KESSEDJIAN: She hasn't

```
 1   appeared.  I don't think she is there.

 2           ARBITRATOR BIENVENU:  Okay.  Mr. Litwin,

 3   are you satisfied if we ask your friends opposite

 4   to convey these instructions to Ms. Eisner on

 5   behalf of the Panel?

 6           MR. LITWIN:  Of course, Mr. Chairman.

 7           MR. BIENVENU:  Mr. Wallach?

 8           MR. WALLACH:  We will give her the

 9   instructions.

10           ARBITRATOR BIENVENU:  Thank you very much.

11           So we move then to the

12   cross-examination -- well, to the introduction of

13   the next witness, which is Ms. Willett.  And who

14   will be introducing the witness?

15           MR. LeVEE:  I will, Mr. Chairman, Jeff

16   LeVee.

17           ARBITRATOR BIENVENU:  Mr. LeVee, very

18   well.  Is she waiting to be brought into the room?

19           MR. LeVEE:  She has been.

20           Mr. Chairman, we have a fire alarm that is

21   going.  I am assuming since the building is almost

22   empty, that we should follow the alarm.

23           I will bring my phone so I can relay to

24   Mr. Smith what's happening.  Usually these are

25   about five minutes.
```

1   ARBITRATOR BIENVENU: Okay. So we will

 2   wait to hear from you, Mr. LeVee. We will wait ten

 3   minutes.

 4   MR. LeVEE: I apologize. This has

 5   certainly never happened to me. We are going to

 6   leave the line open. I am going to put us on mute.

 7   ARBITRATOR BIENVENU: We will take a

 8   second -- a third break, and perhaps, Mr. De

 9   Gramont, when you hear from your friends, or maybe

10   we'll hear directly from them, then we can either

11   reconnect or decide how we are going to move

12   forward.

13   MR. De GRAMONT: Very good, Mr. Chairman.

14   Thank you.

15   (Whereupon a recess was taken.)

16   ARBITRATOR BIENVENU: Ms. Willett, good

17   afternoon, or end of morning, and welcome.

18   My name is Pierre Bienvenu. I chair the

19   Panel hearing this case.

20   I would like to direct your attention,

21   Ms. Willett, to the witness statement that you

22   signed on the 31st of May 2019.

23   THE WITNESS: Yes.

24   ARBITRATOR BIENVENU: And at the end of

25   that statement, you swear that the content of the

```
 1  witness statement is true and correct?

 2          THE WITNESS:  Yes, I did.

 3          ARBITRATOR BIENVENU:  May I ask you,

 4  Ms. Willett, in relation to the evidence that you

 5  will give to the Panel today, likewise solemnly to

 6  affirm that it will be the truth, the whole truth

 7  and nothing but the truth?

 8          THE WITNESS:  I so affirm.

 9          ARBITRATOR BIENVENU:  Thank you very much.

10          Mr. LeVee, your witness.

11          MR. LeVEE:  Thank you, Mr. Chairman.

12          Good very late morning.  How are you?

13          THE WITNESS:  I'm well.  How are you?

14          MR. LeVEE:  Our apologies for keeping you

15  in your own waiting period, but the fire alarm is

16  over and it is fine.

17          I did want to ask if you have any

18  corrections to your witness statement?

19          THE WITNESS:  I have one correction.  When

20  I signed this witness statement in 2019 it was

21  accurate, but since signing this statement I have

22  left ICANN.  I am no longer an employee of ICANN.

23          So the first paragraph that states I am

24  the vice president of operations, I am no longer in

25  that role at ICANN.
```

1   MR. LeVEE: So in order to make it

2   accurate, you can say "I am the former president of

3   operations"?

4   THE WITNESS: That would be correct.

5   MR. LeVEE: And likewise, Paragraph 5, it

6   would say, "In my former role as vice president"?

7   THE WITNESS: That would be accurate.

8   MR. LeVEE: Okay. Any other corrections

9   that you are aware of at this time?

10   THE WITNESS: No.

11   MR. LeVEE: Then, Mr. Chairman,

12   Ms. Willett is available for cross-examination.

13   ARBITRATOR BIENVENU: Thank you very much,

14   Mr. LeVee.

15   Mr. De Gramont, are you ready for your

16   cross-examination?

17   MR. De GRAMONT: I am ready, Mr. Chairman.

18   Thank you. May I proceed?

19   ARBITRATOR BIENVENU: Please proceed.

20   CROSS-EXAMINATION

21   BY MR. De GRAMONT

22   Q.   Good morning, Ms. Willett. My name is

23   Alex De Gramont. I represent Afilias. You should

24   have with you a binder -- or rather a package that

25   contains a binder, and pursuant to our agreement,

541

1 you can now open it. Your counsel, Mr. LeVee, who

2 has been eagerly awaiting to open it, may do so as

3 well.

4   Do you have it in front of you,

5 Ms. Willett?

6   A.   Yes.

7   Q.   So at the first tab you will see your

8 witness statement, and then in the following tabs

9 are documents, some of which, or all of which, we

10 will discuss with you today.

11   You will see that we have put the page

12 numbers in brackets just so -- sometimes the

13 hardcopies and the PDFs differ. So that we are all

14 on the same page, literally, I will be referring to

15 the page number in brackets.

16   I just want to confirm, this is the first

17 time you have seen this binder; is that correct?

18   A.   That's correct.

19   Q.   Yes. And you haven't spoken to anyone

20 about the testimony that's been provided in this

21 hearing to date?

22   A.   So today, no, but I have spoken with

23 counsel.

24   Q.   Okay. But you have not spoken to any of

25 the witnesses?

542

```
 1        A.    No.

 2        Q.    And you haven't reviewed any of the

 3   transcripts?

 4        A.    No.

 5        Q.    All right.  You said you have left ICANN.

 6   When did you leave ICANN?

 7        A.    13 December of 2019.

 8        Q.    And what were the reasons for your leaving

 9   ICANN?

10        A.    I was terminated as part of a

11   restructuring within the organization.

12        Q.    Okay.  Did you sign any sort of agreement

13   providing that you would give testimony in this

14   proceeding?

15        A.    So I did not sign anything pertaining to

16   testimony in this proceeding.

17        Q.    It wasn't part of your separation

18   agreement or anything like that?

19        A.    Correct.

20        Q.    Are you currently employed?

21        A.    I am not.

22        Q.    Have you been employed in any capacity

23   since 13 December 2019?

24        A.    I have not.

25        Q.    When did you start working at ICANN?
```

ARBITRATION

BARKLEY
Court Reporters

1   A.   1 October 2012 was my first day of

2   employment at ICANN.

3   Q.   Had you ever worked in the DNS industry

4   before that?

5   A.   No, I had not.

6   Q.   And what was your first position in

7   joining ICANN?

8   A.   I believe the title that I was hired in

9   with was as general manager of the new gTLD

10 Program.

11   Q.   Now, the deadline for new gTLD

12 applications was June 2012.

13   Do you recall that?

14   A.   It was May, June of 2012, prior to my

15 arrival at ICANN.

16   Q.   So you started at ICANN after that

17 deadline had already passed?

18   A.   That is correct.

19   Q.   And just to be clear, you started at ICANN

20 after Afilias, NDC and the other .WEB applicants

21 had submitted their .WEB applications?

22   A.   Yes, that's correct.

23   Q.   After being general manager of the

24 program, you were promoted to vice president of the

25 program; is that correct?

ARBITRATION

BARKLEY
Court Reporters

1   A.   I believe that there was a restructuring

         2   of titles and title change. So I don't believe

         3   there was a promotion, but yes, my title did

         4   change.

         5   Q.   Did your responsibilities change?

         6   A.   At that time of the title change, no.

         7   Q.   To whom did you report in those positions?

         8   A.   So when I first joined ICANN, I reported

         9   to Akram Atallah. His position changed, but I

        10   believe he was COO at the time he was hired.

        11   ARBITRATOR KESSEDJIAN: Sorry to

        12   interrupt. This is Catherine Kessedjian, a member

        13   of the Panel. I have a difficulty understanding

        14   what you said. You are cut off from time to time.

        15   So perhaps if you want to speak closer to your

        16   microphone. Particularly when you turn your head

        17   there is a problem.

        18   I'm sorry, but we need to be clear.

        19   THE WITNESS: Is this any better?

        20   ARBITRATOR KESSEDJIAN: Much better.

        21   Q.   BY MR. De GRAMONT: When you first started

        22   at ICANN, you reported to Mr. Atallah, you were

        23   saying?

        24   A.   Yes.

        25   Q.   And what was his position at that time?

                                   545

1   A.   I believe his title at that time was chief

           2   operating officer.

           3   Q.   And did you always report to Mr. Atallah

           4   until the time he left ICANN?

           5   A.   Yes, I did.

           6   Q.   Let's take a look at your witness

           7   statement, which is, again, at Tab 1 of your

           8   binder, and you will see -- so you can look at the

           9   documents in the binder, which I personally find

          10   easier. Our exhibit wizard, Chuck Vaughan, will

          11   also be putting the documents up on the screen, but

          12   I personally prefer to look at the documents in

          13   hardcopy, but it is obviously your preference.

          14   If you turn to Page 2 of the witness

          15   statement, Paragraph 4, it says, quote, "In

          16   connection with the new gTLD Program, ICANN

          17   published an applicant guidebook, which sets forth

          18   the requirements for new gTLD applications to be

          19   approved and the criteria by which they are

          20   evaluated. The guidebook was developed in a

          21   years-long public consultation process in which

          22   numerous versions were published for public comment

          23   and revised based on comments received from the

          24   public," close quote.

          25   I take it you still agree with that

ARBITRATION

BARKLEY
Court Reporters

1 | testimony?

 2 | A.   Yes, I do.

 3 | Q.   Now, the guidebook was completed before

 4 | you started at ICANN; is that correct?

 5 | A.   Yes. There was a version of the guidebook

 6 | completed. I don't think that there was any update

 7 | to the guidebook after I started at ICANN.

 8 | Q.   So you must --

 9 | A.   It was completed.

10 | Q.   So you must have studied the guidebook

11 | upon assuming your position at ICANN?

12 | A.   Yes, I did.

13 | Q.   Okay. And it's obvious from the guidebook

14 | itself that the purpose is, to use your words, set

15 | forth, quote, "The requirements of the new gTLD

16 | applications and the criteria by which they are

17 | evaluated," unquote.

18 | Do you agree?

19 | A.   Yes, I do.

20 | Q.   And in addition to studying the guidebook,

21 | I take it that you also studied ICANN's articles

22 | and bylaws?

23 | A.   Well, I reviewed them. They were quite

24 | lengthy and -- but I could definitely say that

25 | there were aspects of the guidebook that I studied

1 in order to manage the operation of the program. I

 2 wouldn't say that I studied the articles of

 3 incorporation and the bylaws.

 4   Q.   But you understood that the new gTLD

 5 Program and the guidebook were designed to promote

 6 the principles in the bylaws, correct?

 7   A.   Correct.

 8   Q.   Okay. Take a look at Tab 3 in your

 9 bundle, which is Exhibit C-9. This document is

10 entitled "ICANN Board Rationales for the Approval

11 of the Launch of the new gTLD Program."

12   I assume you have seen this before?

13   A.   I may have. I honestly don't recall. It

14 does not look familiar to me.

15   Q.   Take a look at Page 9, which is under the

16 heading, quote, "ICANN Board Rationale on the

17 Evaluation Process Associated with the gTLD

18 Program," close quote. Under the heading

19 "Introduction," it states, quote, "Through the

20 development of the new gTLD program, one of the

21 areas that required significant focus is a process

22 that allows for the evaluation of applications for

23 new gTLDs. The Board determined that the

24 evaluation and selection procedure for new gTLD

25 registries should respect the principles of

1 fairness, transparency and non-discrimination," end

2 quote.

3   Do you see that?

4   A.   Yes, I do.

5   Q.   And those are all principles that are

6 stated in the bylaws, are they not?

7   A.   I believe them to be.

8   Q.   You don't recall that specifically?

9   A.   I don't.

10   Q.   Okay. But the guidebook had lots of

11 requirements to promote the principles of fairness

12 and transparency and nondiscrimination.

13   Do you agree with that?

14   A.   I would, yes.

15   Q.   As an example, the guidebook required that

16 the public had the right to know which gTLD strings

17 were being applied for and who was behind the

18 application, right?

19   A.   Correct.

20   Q.   You're familiar with the frequently asked

21 questions about the new gTLD Program which is

22 posted on the ICANN website; is that right?

23   A.   Is there a specific page? There is an

24 entire new gTLD microsite, a subset of the

25 ICANN.org website.

1   Q.   Yeah. Would you turn to Tab 4 of your

2   binder. This is Exhibit C-181, and these are the

3   frequently asked questions that are posted as of

4   today. And I know that 1.6 has been posted since,

5   I believe, at least 2014, and it says, "1.6, how

6   and when can I see which gTLD strings are being

7   applied for and who is behind the application?"

8   And the answer is: "Approximately 2 weeks

9   after the application submission period closes,

10   ICANN will post the public portions of all

11   applications received, including applied-for

12   strings, applicant names, application type,

13   mission/purpose of the proposed gTLD, and other

14   application data."

15   Do you see that?

16   A.   Yes, I do.

17   Q.   Do you know who prepared this document?

18   A.   I don't know specifically.

19   Q.   Okay. But, again, we can see that,

20   consistent with the principle of transparency,

21   ICANN committed that the public would be able to

22   see which gTLD strings were applied for and who was

23   behind each application, do you agree?

24   A.   I don't know what you mean by "who was

25   behind." The application required applicants to

BARKLEY
Court Reporters

1 disclose -- the applications had to be submitted by

2 an applying entity, by a company, not by an

3 individual. But we did, as part of the

4 application, the directors had to be -- directors,

5 officers, managers had to be disclosed and any

6 ownership interest in the applying entity greater

7 than 15 percent, and the other individual that

8 would have been disclosed would be -- that was

9 definitely public was the applicant primary

10 contact.

11   So those were the people related to the

12 application.

13   Q.   All right. I am simply quoting the

14 language of the document, who was behind the

15 application. The purpose for that was so the

16 public could know who, in fact, was seeking to

17 obtain a particular gTLD string; is that right?

18   A.   I think it was to inform the public of the

19 entity.

20   Q.   And "the public" included other

21 applicants, correct?

22   A.   Correct.

23   Q.   And so the guidebook, as you say, provided

24 rules for portions of each application to be posted

25 publicly so the public could comment on them.

551

1   Do you recall that?

2   A.   I believe there were multiple purposes of

3 posting the public application.

4   Q.   Would you take a look at Tab 5 of your

5 binder, which contains the first 30 pages of Module

6 1 to the guidebook.

7   For the record, the entire guidebook is on

8 the record as Exhibit C-3. I'd ask you to look at

9 Page 1-5, which is Section 1.1.2.3, and the

10 guidebook states, quote, "Public comment mechanisms

11 are part of ICANN's policy development,

12 implementation, and operational processes. As a

13 private-public partnership, ICANN is dedicated to:

14 preserving the operational security and stability

15 of the Internet, promoting competition, achieving

16 broad representation of global Internet communities

17 and developing policy appropriate to its mission

18 through bottom-up consensus-based processes. This

19 necessarily involves the participation of many

20 stakeholder groups in a public discussion,"

21 unquote.

22   Those are among the principles that the

23 public comment period were seeking to advance; is

24 that correct?

25   A.   I believe this is describing the intention

BARKLEY
Court Reporters

1 of the comment period for applications.

 2   Q.   It also provided for governments to submit

 3 comments on applications?

 4   A.   Yes, yes, did it.

 5   Q.   Okay. In fact, on Page 1-6, Page 6, the

 6 highlighted paragraph just above "Comments and

 7 Formal Objection Process," says, "In the new gTLD

 8 application process, all applicants should be aware

 9 that comment fora are a mechanism for the public to

10 bring relevant information and issues to the

11 attention of those charged with handling new gTLD

12 applications. Anyone may submit a comment in a

13 public comment forum," unquote.

14   Was that your understanding?

15   A.   Yes.

16   Q.   There's a separate process by which

17 governments can submit comments in response to

18 applications as well.

19   Do you recall that?

20   A.   I am not sure what you are referring to.

21   Q.   There's a separate process by which

22 members of the GAC can submit comments on

23 applications?

24   A.   I apologize. What do you mean by

25 "comments"?

553

1   Q.   Comments, concerns, there was a mechanism

2 by which governments could express any concerns

3 they had with respect to a particular gTLD and who

4 was applying for it?

5   A.   Yes, that's correct.

6   Q.   Okay. Have you ever reviewed the public

7 portions of NDC's .WEB application?

8   A.   Not that I recall.

9   Q.   You never took a look at NDC's application

10 even though you were involved in the investigations

11 that we'll talk about in a little bit?

12   A.   So we had -- we received over 1,900

13 applications. They were frequently over 100 pages

14 of content and dozens of attachments, and I had a

15 large team of people, over 35, maybe 45 staff as

16 well as hundreds of evaluators on various panels.

17 They were the ones responsible for reviewing the

18 content of the applications.

19   I on occasion did look at applications,

20 but I don't -- I don't specifically recall looking

21 at NU DOT CO's application.

22   Q.   You recalled that in 2016 you were asked

23 to investigate an allegation that there had been a

24 change of ownership and control.

25   Did you not review the public portions of

ARBITRATION

BARKLEY
Court Reporters

```
 1    the application at that time?
 2         A.   I may have.  I don't personally recall
 3    looking at the application.
 4         Q.   Let's take a look at what's behind Tab 10
 5    of your binder to see if it refreshes your
 6    recollection.  This is Exhibit C-24, and it is the
 7    public portions of the NDC .WEB application.  Just
 8    tell me when you're there.
 9         A.   I am there.  Thank you.
10         Q.   If you flip through it, Pages 1 through 3
11    contain background information about the applicant,
12    who the main contacts are, what the address is and
13    so on, right?
14         A.   Yes.
15         Q.   And it lists two primary contacts, Jose
16    Ignacio Rasco and Mr. Nicolai Bezsonoff.
17              You see that on Page 2?
18         A.   Yes.
19         Q.   Then if you go to Page 4, it asks for the
20    names and positions of all directors.
21              Do you see that?
22         A.   Yes, I do.
23         Q.   And, again, it lists Mr. Rasco,
24    Mr. Bezsonoff and also Juan Diego Calle.
25              Do you see that?
```

555

BARKLEY
Court Reporters

1   A.   Yes, I do.

2   Q.   And then it asks for the names and

3   positions of all officers and partners, and

4   Mr. Rasco is listed as the CFO. Mr. Calle is

5   listed as the CEO, and Mr. Bezsonoff is listed as

6   the COO.

7   Do you see that?

8   A.   Yes, I do.

9   Q.   It asks for the names and positions of all

10   shareholders holding at least 15 percent of the

11   shares, and here we see Domain Marketing Holdings,

12   LLC, and NUCO LP, LLC.

13   Do you know who owns those companies?

14   A.   I have no idea.

15   Q.   Okay. Have you reviewed Mr. Rasco's

16   witness statement in this case?

17   A.   I have not.

18   Q.   He refers to beneficial owners of those

19   companies. You don't know who the beneficial

20   owners of these two companies are?

21   A.   I do not.

22   Q.   Now, Paragraph 11(d) says, quote, "For an

23   applying entity that does not have directors,

24   officers, partners or shareholders," it asks for

25   the names and positions of all individuals having

556

1   legal or executive responsibility.

          2   What was the purpose of that request, that

          3   question?

          4   A.   So I'll say I wasn't part of the team

          5   drafting the guidebook or the questions, but I can

          6   respond from the perspective of how we utilized

          7   that information in the course of administering the

          8   program.

          9   Q.   I assume it was because you wanted to know

         10   who, in fact, was controlling the entity if there

         11   were no directors, officers, partners or

         12   shareholders; is that a fair statement?

         13   A.   Well, I guess my understanding is that

         14   there's different legal structures in different

         15   countries around the globe and that they might --

         16   those entities might not have typical directors,

         17   officers, partners, shareholders.

         18   So it was an option that if you didn't --

         19   in a way, if the applicant wasn't able to respond

         20   to 11(a), 11(b) and 11(c), then 11(d) was another

         21   place where they could respond with relevant

         22   information.

         23   Q.   Again, that's so ICANN and the public can

         24   see who is the controlling entity applying for a

         25   particular string, right?

                                 557

                                                    BARKLEY
                                                    Court Reporters

1   A.   I wouldn't use the word "controlling," but

2   individuals who had some involvement in the

3   organization.

4   Q.   Who have legal or executive

5   responsibility; those are the words used, right?

6   A.   In 11(d), yes.

7   Q.   Skipping ahead to Page 6, this is the

8   mission/purpose part of the application, and ICANN

9   requires that to be publicly posted; is that

10 correct?

11   A.   Yes. This is Question 18. This is one of

12 the questions that is publicly posted.

13   Q.   Okay. And you can see that it's one of

14 the longer responses that NDC has given in the

15 application; is that a fair assessment?

16   A.   Well, it's -- their response to 18(b) is

17 over two pages long, but I haven't reviewed the

18 entire application. So two pages is lengthy. Some

19 applicants' applications were very, very long. We

20 did have some sort of -- I think there was some

21 sort of word-count limit to questions.

22   Q.   And if you look at the response to 18(b),

23 "How do you expect that your proposed gTLD will

24 benefit registrants, Internet users, and others?"

25 It says in the last sentence of the first

1   paragraph, quote, "Prospective users benefit from

2   the long-term commitment of a proven executive team

3   that has a track record of building and

4   successfully marketing affinity TLDs."

5   You understand the proven executive team

6   to be referring to the NDC executive team?

7   A.   Oh, I see. Sorry.

8   Q.   In your understanding -- I think the plain

9   language understanding that anyone reviewing this

10   in the public portions of the application would

11   understand that the proven executive team is a

12   reference to NDC's executive team; is that a fair

13   reading of this?

14   A.   I don't know what NDC meant, but I

15   would -- that's how I would interpret it.

16   Q.   Okay. And then on Page 7, the first full

17   paragraph, "The experienced team behind this

18   application initially launched and currently

19   operates the .CO ccTLD," and that's a country code

20   TLD?

21   A.   That's correct.

22   Q.   It says, The intention is for .WEB to be

23   added to .CO's product portfolio, where it can

24   benefit from economies of scale along with the

25   firm's experience and expertise in marketing and

559

1   branding TLD properties, unquote.

 2   Again, the reader would assume the

 3   experienced team being referred to is the

 4   experienced team at NDC?

 5   A.   That's how I would read it.

 6   Q.   That's the experienced team behind this

 7   application, correct?

 8   A.   That would be my understanding.

 9   Q.   And then in the -- one, two, three --

10   third full paragraph on Page 7, last sentence, "We

11   plan to implement a very similar strategy for .WEB

12   in its launch, operation, promotion and growth,"

13   and the reader would assume that that's a similar

14   strategy that NDC used for .CO.

15   Is that a fair reading?

16   A.   I believe so.

17   Q.   And then in the next paragraph, at the

18   last sentence of the paragraph, quote, "The

19   domain's marketing strategy will utilize a

20   three-pillar framework similar to that used with

21   .CO."

22   Is it fair to assume that the average

23   reader would understand that to mean that NDC was

24   going to use the same or similar strategy that it

25   had used with .CO?

                        560

1   A.   I believe so.

2   Q.   And then if you go up in the middle of the

3   second paragraph, it says, "In addition, .CO has

4   become the standard secondary option to .COM from

5   the leading global registrars to having the most

6   conversions when presented with a non-.COM option."

7   And the suggestion is that NDC will use

8   .WEB in the same manner as it used .CO to compete

9   against .COM; is that a fair reading?

10   A.   I don't -- I don't think I would take that

11 understanding. Could I ask you to repeat the

12 question? I was still reading this paragraph.

13   Q.   Yeah, sure.

14   So NDC's mission purpose statement is

15 saying that it successfully launched .CO as a -- as

16 another option to .COM, and it is going to use --

17 it plans to use .WEB in the same manner; is that a

18 fair summary?

19   A.   Yes. I believe they plan to market .WEB

20 in the same way.

21   Q.   Let's turn to Tab 8 of your binder, and

22 that is Module 6 to the guidebook, again, part of

23 Exhibit C-3.

24   And these are the terms and conditions by

25 which the applicant agrees to be bound when it

561

1 submits an application for a gTLD under the new

2 gTLD Program; is that correct?

3   A.   Correct.

4   Q.   And ICANN considers these terms and

5 conditions to be binding on the applicants, right?

6   A.   Yes, they do.

7   Q.   In fact, ICANN considers the submission of

8 a new gTLD application to form a contract between

9 the applicant and ICANN; is that your

10 understanding?

11   A.   I am not a lawyer. I am not quite sure

12 if -- I don't think I could speak to it being a

13 contract.

14   Q.   Have you ever heard ICANN refer to the

15 submission of a new gTLD application to form a

16 contract?

17   A.   I don't recall it being expressed that

18 way.

19   Q.   Okay. Do you recall that Ruby Glen filed

20 a lawsuit in Federal Court against ICANN in

21 connection with .WEB?

22   A.   Yes, I do.

23   Q.   And you submitted a declaration in that

24 lawsuit, right?

25   A.   Yes.

BARKLEY
Court Reporters

1   Q.   And ICANN invoked the litigation waiver

2   that is a part of Module 6.

3   Do you recall that?

4   A.   I do.

5   Q.   You don't recall that ICANN argued that

6   the application formed a contract between the

7   applicant and ICANN in those proceedings?

8   A.   I don't recall reading ICANN's arguments

9   in the matter.

10   Q.   Do you remember that the Federal Court

11   dismissed Ruby Glen's lawsuit based on the

12   litigation waiver?

13   A.   I recall that the lawsuit was -- it did

14   not proceed. I believe you that it was based on

15   the litigation waiver, but I don't recall knowing

16   that either.

17   Q.   Ordinarily I would offer you some water,

18   but I'm afraid I can't.

19   A.   Thank you.

20   Q.   Let's take a look at the terms and

21   conditions. And looking at the first paragraph of

22   Module 6, on Page 2, the guidebook states that the

23   applicant agrees to be bound by the terms and

24   conditions, quote, "without modification," unquote.

25   Do you recall that?

1   A.   I do, yes.

2   Q.   Okay. And you recall that according to

3   Paragraph 1, and I quote, applicant warrants that

4   the statements and representations contained in the

5   application (including any documents submitted and

6   oral statements made and confirmed in writing in

7   connection with the application) are true and

8   accurate and complete in all material respects, end

9   of quote.

10   Do you recall that warranty?

11   A.   Yes, I do.

12   Q.   And your understanding is that that

13 warranty applied to all statements and

14 representations contained in the application; is

15 that your understanding?

16   A.   Yes.

17   Q.   Okay. And then the last sentence of

18 Paragraph 1 says, quote, applicant agrees to notify

19 ICANN in writing of any change in circumstances

20 that would render any information provided in the

21 application false or misleading, unquote.

22   Do you recall that?

23   A.   Yes.

24   Q.   Again, that applies to all of the

25 information submitted in the application; is that

564

BARKLEY
Court Reporters

1 right?

2   A.   Yes.

3   Q.   If we turn to Page 4, Paragraph (c),

4 you'll see the litigation waiver that we just

5 talked about.

6   Do you recall that?

7   A.   Yes.

8   Q.   And then I have a couple of questions

9 about Paragraph 10 on Page 6. I want to ask you

10 about the first sentence and the last sentence.

11   So the first sentence says, quote,

12 applicant understands and agrees that it will

13 acquire rights in connection with a gTLD only in

14 the event that it enters into a registry agreement

15 with ICANN, and that applicant's rights in

16 connection with such gTLD will be limited to those

17 expressly stated in the registry agreement.

18   Do you see that?

19   A.   I do.

20   Q.   So by filing an application, an applicant

21 doesn't receive any rights in the gTLD itself; is

22 that your understanding?

23   A.   Correct. It is simply an application to

24 operate a top-level domain in the future.

25   Q.   So it only receives rights in the gTLD if

1 it enters a registry agreement with ICANN; is that

2 correct?

3   A.   Correct.

4   Q.   By contrast, the last sentence says,

5 quote, applicant may not resell, assign, or

6 transfer any of applicant's rights or obligations

7 in connection with the application.

8   Do you see that?

9   A.   I do.

10   Q.   So ICANN distinguishes between rights and

11 obligations in the gTLD on the one hand from rights

12 and obligations in the application on the other

13 hand; is that right?

14   A.   Yes, ICANN makes a significant

15 distinction.

16   Q.   So just as an example, one of the

17 applicant's rights is that if they make it through

18 the evaluation process and go on to an ICANN

19 auction, they have the right to submit bids on

20 their behalf in advance of the application, right?

21   A.   So participating in an auction, the way I

22 would express that is participating at auction is

23 one of the applicant's rights or not participating

24 in an ICANN auction of last resort.

25   Q.   So they are prohibited under Section 10

566

BARKLEY
Court Reporters

1   from reselling, assigning or transferring that

        2   right, correct?

        3   A.   Well, they are prohibited from

        4   assigning -- reassigning, transferring their

        5   application.

        6   Q.   Well, you just said that they had certain

        7   rights in the application, one of which is to make

        8   bids in a public auction -- rather, an ICANN

        9   auction, whether to choose to enter a private

       10   auction.

       11   So there are particular rights or

       12   obligations that they are not allowed to resell,

       13   assign or transfer?

       14   A.   Well, so applicants, because they were in

       15   many cases not always expert in how to submit an

       16   application, they engaged with third parties to

       17   submit their applications on their behalf or

       18   they -- to provide responses to how technical

       19   registry operations would be held to essentially

       20   provide them with the technical responses to their

       21   application.

       22   I mean, in fact, Afilias was one of those

       23   consultants. They provided and submitted

       24   applications on behalf of a couple dozen other

       25   applicants. So applicants all the time were

BARKLEY
Court Reporters

1   assigning rights or designating third parties to

2   operate on their behalf.

3   But the way we -- like, from an

4   operational or transactional perspective, we viewed

5   this Paragraph 10 about not assigning the rights

6   and obligation of the application to be of the

7   total application. You couldn't sell your

8   application in total to someone else.

9   Q.   You could hire someone to assist you, but

10   you couldn't sell to someone the right to tell you

11   whether you are allowed to bid in a public auction

12   or not?

13   A.   I don't -- I am not a lawyer. I don't

14   think -- I haven't evaluated that. I wouldn't say

15   so. I wouldn't agree with that, but I am not a

16   lawyer.

17   Q.   Do you know if anyone at ICANN has

18   prepared any sort of analysis of what the rights or

19   obligations in an application are?

20   A.   Not that I'm aware of.

21   Q.   But in any event, to your knowledge, NDC

22   has not yet entered a .WEB registry agreement with

23   ICANN, correct?

24   A.   That's correct.

25   Q.   And as far as you know, NDC has not

BARKLEY
Court Reporters

```
 1  formally requested ICANN to prove -- to approve an

 2  assignment of the .WEB registry agreement to

 3  VeriSign, has it?

 4      A.   Since there's no agreement, registry

 5  agreement signed, there's nothing to assign.

 6      Q.   And the process for seeking agreement --

 7  or, rather, assignment of an executed registry

 8  agreement is different from the process for

 9  applying for a new gTLD, do you agree?

10      A.   Yes.

11      Q.   For example, you don't have to pay 185,000

12  application fee to seek assignment of an executed

13  registry agreement, right?

14      A.   That's correct.

15      Q.   And you don't have to go through a public

16  notice and comment period, do you?

17      A.   I don't recall all of the administrative

18  aspects of assigning a registry agreement.  I don't

19  recall if there's a public notice period.

20      Q.   Any event, it's a different process --

21      A.   Yes.

22      Q.   -- from the new gTLD?

23      A.   Yes.

24      Q.   Take a look at Tab 9 of your binder, which

25  is the model Registry Agreement that's included
```

BARKLEY
Court Reporters

```
 1   to -- in the guidebook.

 2           We are going to skip to Page 18 -- sorry,

 3   Page 17, Paragraph 7.5, the heading is "Change in

 4   Control:  Assignment and Contracting," quote,

 5   neither party may assign this Agreement without the

 6   prior written approval of the other party, which

 7   approval will not be unreasonably withheld.

 8           Do you see that?

 9       A.   I do.

10       Q.   And that's very different from the

11   language and terms and conditions where they say

12   applicant may not resell, assign or transfer any of

13   the applicant's rights in connection with the

14   application, do you agree?

15       A.   You're asking if I agree that they are

16   different language?

17       Q.   Well, my question, ma'am, is:  In the

18   terms and conditions, the language "approval will

19   not be unreasonably withheld" doesn't appear?

20       A.   Correct.

21       Q.   Now, in Paragraph 39 of your witness

22   statement, you mention two transactions involving

23   Afilias, one in which Afilias sought ICANN's

24   permission to assign an executed registry agreement

25   for .MEET to Google.
```

1   Do you remember that?

2   A.   I am going to my witness statement. Thank

3 you.

4   Q.   Yes. Please take your time.

5   A.   Yes. Afilias sought ICANN's approval to

6 transfer, assign the .MEET registry agreement. It

7 also -- another entity requested an assignment of

8 the top-level domain .PROMO to Afilias, yes.

9   Q.   Right. Those were requests made with

10 respect to execute Registry Agreements that had

11 already been entered; is that correct?

12   A.   That's correct.

13   Q.   So those requests were evaluated under a

14 different process than the process for applying for

15 a new gTLD; is that correct?

16   A.   Yes.

17   Q.   Are you aware that during the application

18 process, Mr. Kane of VeriSign asked ICANN for

19 information about assigning Registry Agreements?

20   A.   I don't -- I am not aware of that. I

21 don't recall.

22   Q.   Okay. Would you take a look at Tab 11 of

23 your binder, which is Exhibit R-18. It consists of

24 several emails in early September 2015 between

25 Mr. Pat Kane at VeriSign and Mr. Atallah and

571

1   Mr. Halloran at ICANN.

2   And my question is whether you have ever

3   seen this before?

4   A.   I have not.

5   Q.   Okay. Let's skip ahead to the summer of

6   2016. And you now know that in early June 2016,

7   Mr. Rasco of NDC was corresponding with Mr. Nevett

8   of Donuts about whether .WEB could be resolved

9   through a private auction.

10   Do you recall that?

11   A.   I recall being informed that they were

12   corresponding. I don't recall the exact date.

13   Q.   Could you take a look at Tab 12 of your

14   binder, Exhibit C-35?

15   A.   I am there.

16   Q.   Okay. We all know who Mr. Rasco is.

17   Mr. Nevett was an executive at Donuts, which owned

18   Ruby Glen, which was one of the .WEB applicants,

19   right?

20   A.   Yes.

21   Q.   And he says in the email below, written on

22   6 June 2016, "Hi, guys. Jose and I corresponded

23   last week, but I wanted to take another run at the

24   three of you."

25   Do you understand Jose to be -- well,

BARKLEY
Court Reporters

1 obviously it is a reference to Jose Rasco; is that

2 your understanding?

3   A.   That's my understanding.

4   Q.   Okay. And he says, "Until Monday, I

5 believe that we have a right to ask for a two-month

6 delay of the ICANN auction with the agreement of

7 all applicants. Would you be okay with an

8 extension while we try to work this out

9 cooperatively?"

10   Do you see that?

11   A.   I do.

12   Q.   Have you seen these two emails before?

13   A.   I may have. I recall reading Mr. Rasco's

14 response. It may have been -- I may have seen

15 Mr. Nevett's response, but I don't specifically

16 recall.

17   Q.   Okay. Before we look at Mr. Rasco's

18 response, do you recall that most contention sets

19 are resolved privately?

20   A.   Yes. Without ICANN's involvement, yes.

21   Q.   In fact, in the guidebook, ICANN

22 encourages contention sets to resolve the

23 contention sets privately; is that right?

24   A.   That is correct.

25   Q.   So let's turn back to Tab 7, which is

573

1 Module 4 of the guidebook, on string contention

2 procedures, and I'd ask you to turn to Page 6.

3 Just let me know when you're there.

4   A.   Yes, I am there.

5   Q.   Okay. So under 4.1.3, "Self-Resolution of

6 String Contention," it says in the first paragraph,

7 quote, applicants that are identified as being in

8 contention are encouraged to reach a settlement or

9 agreement among themselves that resolves the

10 contention. This may occur at any stage of the

11 process, once ICANN publicly posts the applications

12 received and the preliminary contention sets on its

13 website."

14   Now, this applies only to applicants,

15 correct?

16   A.   Correct. Yes, it is regarding applicants

17 with new gTLD applications.

18   Q.   And it specifically applies only to

19 applicants who have made it through the evaluation

20 process and who are in a contention set?

21   A.   Well, since it's -- I would disagree

22 there. It says that it could happen as soon as the

23 applications are received and the contention sets

24 are posted. Evaluations are not complete at that

25 time.

574

1   Q.   I see. But, again, it is only referring

2 to entities that have -- submitted applicants and

3 are applying for a particular string and who have

4 been identified in the public comment period?

5   A.   Yeah, that's who had applications, so yes.

6   Q.   Yeah. And applicants can resolve a

7 contention set in any number of ways, right?

8   A.   True.

9   Q.   So if we look at the next paragraph, it

10 says applicants may -- quote, applicants may

11 resolve string contention in a manner whereby one

12 or more applicants withdraw their applications,

13 unquote, right, that's one of the ways they could

14 resolve contention?

15   A.   Correct.

16   Q.   But it goes on to say, "An applicant may

17 not resolve string contention by selecting a new

18 string or by replacing itself with a joint

19 venture," unquote.

20   Then the next sentence says, quote, "It is

21 understood that applicants may seek to establish

22 joint ventures in their efforts to resolve string

23 contention," unquote.

24   And the way I understand this is that an

25 applicant could not form a joint venture by -- let

575

1 me state that again.

2   An applicant could not resolve string

3 contention by forming a joint venture with a

4 nonapplicant, but that applicants could establish

5 joint ventures with one another in their efforts to

6 resolve string contention.

7   A.   That would not be my understanding.

8   Q.   What is your understanding?

9   A.   So my understanding was that where it

10 says, "An applicant may not resolve string

11 contention by selecting a new string or replacing

12 itself with a joint venture," meaning company Acme

13 Corporation couldn't form a joint venture with

14 Company B, C, D and E and then say, "We have a

15 Joint Venture ABCDE, and we are now replacing my

16 Acme Corporation application with Company ABCDE."

17 Essentially they couldn't change the applying

18 entity.

19   But that they could form a joint venture

20 with other applicants, anybody else, other

21 interested parties, some subset of them, and

22 potentially ICANN would not have any cause to

23 reject if -- that new entity or joint venture that

24 acquired Acme Corporation. That would have been

25 consistent with the rules of the program and

1   consistent with the applicant guidebook.

2   Q.   But the proviso is that any material

3   changes in applications will require reevaluation,

4   and so it goes on to say, quote, "Applicants are

5   encouraged to resolve contention by combining in a

6   way that does not materially affect the remaining

7   application. Accordingly, new joint ventures must

8   take place in a manner that does not materially

9   change the application, to avoid being subject to

10 re-evaluation," end quote, right?

11   A.   Yes. So may I explain?

12   Q.   Sure.

13   A.   My understanding -- again, I didn't write

14 the language in the guidebook, but the mechanism

15 for reevaluation was not fully understood and there

16 were significant concerns that reevaluation would

17 be extremely onerous and time-consuming.

18   During the course of operating the program

19 and because the program went on for so many years,

20 much longer than was anticipated in the guidebook,

21 my team and I, we had to devise a mechanism,

22 various mechanisms for reevaluation.

23   So truly we -- I believe we reevaluated

24 dozens, possibly hundreds of applications, some

25 portion, either financial reevaluation or technical

577

1 reevaluation. But the applicant itself wasn't

2 changing, but some portion of their application may

3 have changed, or the ownership, those interests,

4 the directors and the 15 percent interest might

5 have changed.

6   Q. Right. But the idea, again, is one of

7 transparency. The joint venture, the combination

8 can't fundamentally change the identity of the

9 applicant or the purpose for which the string is

10 being applied, right?

11   A. Well, there's a lot thrown in there.

12   So certainly the applicant couldn't

13 change. That was one of the hard-and-fast rules.

14 The applying entity couldn't change.

15   However, there were multiple instances

16 where the applying entity was acquired by another

17 organization, did, in fact, no longer -- it ceased

18 to exist, and it was subsumed or there was some --

19 its assets were acquired by some parent or tertiary

20 organization.

21   Over years and years there were a variety

22 of scenarios that weren't anticipated, in my

23 belief, in this portion of the applicant guidebook

24 that we then had to find a mechanism to manage,

25 administer as part of the program.

578

BARKLEY
Court Reporters

1   Q.   The applicants would have to provide

2 notice to you so you could evaluate them, right?

3   A.   Correct. We asked that they submit what

4 we called an application change request in writing,

5 and then the program team determined if and what

6 reevaluation might have been necessary.

7   Q.   Okay. Let's go back to Exhibit C-35,

8 which is behind Tab 12 of your --

9   MR. BIENVENU: Mr. De Gramont, I am sorry

10 to interrupt you, but while we are on this page,

11 may I just ask a question?

12   MR. De GRAMONT: Yes, please.

13   ARBITRATOR BIENVENU: So the second

14 sentence of the highlighted paragraph, the first

15 scenario there, "An applicant may not resolve

16 string contention by selecting a new string," what

17 does that mean?

18   THE WITNESS: So if the applicant applied

19 for .WEB and then they noticed, wait, there are six

20 other people who applied for .WEB, they can't say,

21 "Oh, oops. Let me apply for .INTERNET. I don't

22 want to be -- have to fight this out with six other

23 people. So let me just change the string I applied

24 for."

25   ARBITRATOR BIENVENU: Basically change

1 contention set?

2   THE WITNESS: Really even before

3 applications were put into a contention set. Once

4 they were published, the world, the applicants were

5 able to see who had applied for the same string.

6   Those applicants presumed, rightly so, if

7 you applied for the same string, that was a direct

8 contention and only one applicant could prevail.

9 And we did have requests for applicants to change

10 their string to a completely different word.

11   ARBITRATOR BIENVENU: Okay. So there's a

12 continuum here in time.

13   First there is a string contention, and

14 that's when more than one person, one entity

15 applies for a gTLD, and then at a subsequent

16 time -- point in time, there is created a

17 contention set where these competing applicants are

18 placed?

19   THE WITNESS: Yes. This is a complex

20 aspect of the program. I can explain sort of

21 sequentially what occurred, if that's helpful.

22   So the applications came in, in May, June

23 of 2012. ICANN published the list of all of those

24 applications and saw -- applicants could see all of

25 the other applications, so it was very easy for

1 them to see that there were seven applications for

2 .WEB.

3   At that time, in June of 2012, there were

4 no contention sets. There was another process

5 described in the applicant guidebook that evaluated

6 string similarity. And we had an expert panel who

7 evaluated and made those determinations, and they

8 defined for us what applications were put into the

9 contention set. Those contention sets were

10 published, to my best recollection, February of

11 2013, but then -- it still goes on.

12   And then the final complexity is that

13 there were -- there was a type of objection that

14 could be filed, a string-confusion objection, and

15 it was -- such an objection was filed in this case

16 that said even strings that were not obviously

17 similar or hadn't been deemed by that string

18 similarity panel to be in contention, that a

19 party -- an applicant or another party could say --

20 raise this objection to say that they might be

21 confusingly similar, which would change the

22 constitution, and the members of that contention

23 set.

24   ARBITRATOR BIENVENU: Right. But focusing

25 back on the language that I was questioning you

581

1 about, when we see the words "string contention,"

2 that is at a point in time before the creation of a

3 contention set?

4   THE WITNESS: From my perspective, when

5 the guidebook refers to this and it says,

6 "Applicants may resolve string contention," that is

7 after ICANN has published contention sets. Until

8 then, it was all supposition what would be in a

9 contention set.

10   ARBITRATOR BIENVENU: Okay. Very well. I

11 understand. Thank you for that clarification.

12   Mr. De Gramont, we are coming to the end

13 of our hearing day as scheduled.

14   Today's the day when one member of the

15 Panel has a need for a hard close. It will not

16 always be the case, but today is such a day.

17   May I ask you how are we doing for time in

18 terms of your game plan and where you are in your

19 cross?

20   MR. De GRAMONT: Mr. Chairman, we had

21 estimated that we would need about four hours of

22 time for the examination of Ms. Willett. I think

23 we have been going for about an hour and ten

24 minutes, so another two hours and 50 minutes or so

25 should get us there.

1   ARBITRATOR BIENVENU: So the four hours

        2   remains the right estimate?

        3   MR. De GRAMONT: I believe so,

        4   Mr. Chairman.

        5   ARBITRATOR BIENVENU: Okay.

        6   So, Ms. Willett, you haven't completed

        7   giving your evidence to the Panel, and therefore, I

        8   must instruct you not to discuss the case or your

        9   evidence with anyone until we resume tomorrow.

       10   MR. De GRAMONT: Mr. Chairman, I assume

       11   that the witness should not be looking through the

       12   exhibits. Ordinarily in a real hearing, we would

       13   probably take back the bundle.

       14   So I would request an instruction to the

       15   witness not to be reviewing the exhibits about

       16   which we have not yet questioned her.

       17   ARBITRATOR BIENVENU: Very well.

       18   You don't object to that, Mr. LeVee?

       19   MR. LeVEE: No, that's fine.

       20   After the witness leaves, I have a

       21   scheduling issue I want to raise. It is something

       22   I could raise in the morning. I just want to

       23   handle this.

       24   ARBITRATOR BIENVENU: Let's do one thing

       25   at a time.

                            583

1   Ms. Willett, you are not to look at the

2   witness binder that you were provided.

3   THE WITNESS: Understood. Thank you,

4   Mr. Chairman.

5   ARBITRATOR BIENVENU: Thank you very much.

6   So we say good-bye until tomorrow morning.

7   And you want to raise something,

8   Mr. LeVee?

9   MR. LeVEE: Really I am just giving notice

10 to the Panel and to the parties, following

11 Ms. Willett, Mr. Disspain, because of the

12 estimates -- I am not interested in casting

13 dispersions at all -- the Panel has questions, and

14 we will have to sort out questions later.

15   Mr. Disspain is available tomorrow and

16 also on Friday. He's not available for chunks of

17 next week. So I just wanted to alert everyone, we

18 may -- we should get to Mr. Disspain tomorrow, but

19 he needs to finish Friday.

20   Under the time estimates, that should not

21 be a problem, but I don't know if anybody else has

22 timing issues with the witness. I just wanted to

23 make sure.

24   ARBITRATOR BIENVENU: That's very helpful

25 for you to mention that, and everybody has taken

```
 1  due note of it.

 2          MR. LeVEE:  Thank you.

 3          ARBITRATOR BIENVENU:  So we'll suspend the

 4  hearing until tomorrow morning.

 5          MR. ALI:  One other tiny issue is how

 6  would you like to deal with the question of the

 7  other plea documents?

 8          ARBITRATOR BIENVENU:  We will look at the

 9  exchange of emails overnight and communicate our

10  decision to the parties tomorrow.

11          MR. ALI:  Thank you.

12          ARBITRATOR BIENVENU:  Thank you, Mr. Ali.

13          Good night, everyone.

14          MR. De GRAMONT:  Thank you, Mr. Chairman.

15  Thank you, everyone.

16              (Whereupon the proceedings were

17               concluded at 1:03 p.m.)

18                      ---o0o---

19

20

21

22

23

24

25
```

BARKLEY
Court Reporters

```
 1            COURT REPORTERS CERTIFICATE
 2    STATE OF CALIFORNIA       )
                                ) ss.
 3    COUNTY OF SAN FRANCISCO )

 4

 5

 6            I, Balinda Dunlap, hereby certify:

 7            I am a duly qualified Certified Shorthand

 8    Reporter, in the State of California, holder of

 9    Certificate Number CSR 10710 issued by the Court

10    Reporters Board of California and which is in full

11    force and effect.

12            I am not financially interested in this

13    action and am not a relative or employee of any

14    attorney of the parties, or of any of the parties.

15            I am the reporter that stenographically

16    recorded the testimony in the foregoing

17    proceeding and the foregoing transcript is a true

18    record of the testimony given.

19

20    Dated: August 13, 2020

21

22

23                        [signature: B. Dunlap]

24    _____

25
```
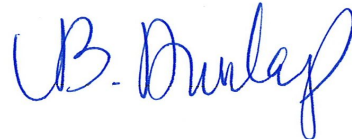
586

ARBITRATION

A

ABCDE (2)
576:15,16
abide (3)
447:13;472:10;
528:25
ability (10)
439:6;441:13;
458:18;459:16,24;
462:19;474:21;
475:8;497:22;
514:20
able (11)
440:4;448:16;
460:7;461:1;475:11;
498:1;520:2,12;
550:21;557:19;
580:5
above (1)
553:6
absence (2)
439:5;441:12
abstain (1)
487:7
accept (3)
434:17;456:23;
531:6
acceptable (1)
510:21
acceptance (1)
428:20
accepted (1)
448:21
according (3)
492:24;512:23;
564:2
Accordingly (1)
577:7
accountability (10)
451:7,9,12;453:7;
468:9,18;472:12;
492:11;502:24;
503:10
accurate (5)
448:7;540:21;
541:2,7;564:8
achieving (1)
552:15
Acme (3)
576:12,16,24
acquire (1)
565:13
acquired (3)
576:24;578:16,19
across (4)
447:19;470:17;
501:1,10
act (1)
497:23
acting (1)
503:5

action (4)
469:8;486:9;
492:17;511:1
actions (11)
470:2,13;473:4,9,
22;474:3,6;475:9,12;
503:21;508:14
active (4)
469:7;478:25;
479:7,8
activities (1)
504:21
actually (5)
452:18;464:23;
469:24;501:16;
525:16
add (3)
428:17;528:4;
533:9
added (4)
466:4;512:21;
533:10;559:23
adding (2)
466:5;515:16
addition (10)
434:1;441:6;
442:11;488:16;
516:12;521:13,20;
527:1;547:20;561:3
additional (5)
479:20;488:19;
521:21,24;535:4
address (4)
429:11;430:20;
518:2;555:12
adequate (1)
449:11
adjudicating (2)
439:5;445:2
adjudication (1)
447:8
administer (1)
578:25
administering (1)
557:7
administrative (1)
569:17
admission (2)
428:19;429:10
admit (3)
528:22;529:6;
534:16
admitted (2)
429:2;535:3
admonition (1)
517:19
adopt (3)
461:18;480:25;
482:1
adopted (5)
453:19;481:22;
482:12;487:11,25
adopting (2)

481:10;482:7
adoption (5)
482:6;495:14;
497:16;531:10,14
adopts (1)
487:2
advance (2)
552:23;566:20
advantage (1)
511:1
advice (1)
476:5
advisement (1)
521:14
advising (1)
475:23
advisory (2)
447:18;472:10
affect (2)
440:4;577:6
affected (1)
448:16
affinity (1)
559:4
affirm (2)
540:6,8
affirmation (2)
432:3;491:16
Afilias (33)
449:13;451:18,24;
453:11;456:16,20,
24;467:21;475:15,
19;489:25;494:5,14,
18;497:11;499:6;
517:12;530:24;
531:12,15;533:4,9;
534:16,18;535:1,17;
541:23;544:20;
567:22;570:23,23;
571:5,8
Afilias' (7)
452:22,24;456:14;
466:18;492:19;
497:5;511:12
Afilias's (3)
449:21;451:14;
452:12
afraid (1)
563:18
AFRICA (1)
473:8
afternoon (1)
539:17
Again (18)
434:15;442:12;
460:13;497:10;
502:9;506:16;
524:20;546:7;
550:19;555:23;
557:23;560:2;
561:22;564:24;
575:1;576:1;577:13;
578:6

against (4)
487:7;488:1;
561:9;562:20
agenda (5)
450:18;456:10,11;
481:18;490:18
ago (4)
428:15;448:2;
487:22;531:1
agree (12)
429:1;458:22;
459:20,22;546:25;
547:18;549:13;
550:23;568:15;
569:9;570:14,15
agreeable (2)
526:25;527:6
agreed (14)
458:16;459:14;
486:11;496:12;
498:7;516:19;517:2,
9;518:16;522:9,9;
528:25;532:5;533:8
agreement (23)
429:3;463:13;
484:22;541:25;
543:12,18;565:14,
17;566:1;568:22;
569:2,4,5,6,8,13,18,
25;570:5,24;571:6;
573:6;574:9
Agreements (2)
571:10,19
agrees (5)
487:4;561:25;
563:23;564:18;
565:12
ahead (3)
533:2;558:7;572:5
Akram (1)
545:9
alarm (3)
538:20,22;540:15
alert (1)
584:17
Alex (1)
541:23
ALI (26)
428:11,22,25;
429:7;430:8,24;
431:12,13,18;
515:18;516:25;
517:7;518:8,19,20;
521:12,23;522:16,
23;528:2,6;529:24;
530:7;585:5,11,12
align (2)
450:12;455:18
alignment (1)
503:6
Ali's (1)
516:18
allegation (1)

554:23
alleged (1)
531:13
allow (4)
437:12;460:4;
507:2;518:6
allowances (2)
520:17;521:4
allowed (5)
458:4;477:7;
535:2;567:12;
568:11
allowing (2)
459:7;473:12
allows (2)
519:18;548:22
alluding (1)
516:1
almost (1)
538:21
alone (1)
488:20
along (3)
464:2;528:16;
559:24
alongside (1)
470:15
although (1)
535:4
always (6)
445:12;471:16;
495:15;546:3;
567:15;582:16
amend (1)
439:10
amending (1)
477:6
Amici (4)
429:4;467:16;
477:6;531:11
Amici's (1)
429:9
amicus (40)
436:14;437:2,11,
13;438:2;444:6,15,
17;445:22;446:6,8,
14,17,24,25;447:5;
448:10;458:21;
459:3,10;461:7;
463:18;465:23;
466:3,5,13,23,24;
467:8,16;469:20;
470:5;473:14;
475:19;477:3;
479:25;488:16,24;
489:12;526:14
among (5)
433:11;434:10;
505:18;552:22;
574:9
amongst (2)
445:4;484:22
amount (1)

443:23
amplified (1)
534:7
Amy (2)
498:11;503:16
analysis (1)
568:18
answered (1)
502:14
anticipated (4)
490:21;492:8;
577:20;578:22
apart (1)
535:21
apologies (1)
540:14
apologize (5)
428:15;429:21;
520:24;539:4;
553:24
appear (4)
442:18;467:15;
502:17;570:19
appeared (3)
514:20;537:24;
538:1
appears (1)
435:8
applicant (29)
546:17;550:12;
551:9;555:11;
557:19;561:25;
562:9;563:7,23;
564:3,18;565:12,20;
566:5;570:12;
575:16,25;576:2,10;
577:1;578:1,9,12,23;
579:15,18;580:8;
581:5,19
applicants (31)
467:20;544:20;
550:25;551:21;
553:8;562:5;567:14,
25,25;572:18;573:7;
574:7,14,16,19;
575:2,6,10,10,12,21;
576:4,20;577:4;
579:1;580:4,6,9,17,
24;582:6
applicants' (1)
558:19
applicant's (5)
565:15;566:6,17,
23;570:13
application (60)
430:14;466:10,18;
468:13;533:14;
549:18;550:7,9,12,
14,23,25;551:4,12,
15,24;552:3;553:8;
554:7,9,21;555:1,3,
7;558:8,15,18;
559:10,18;560:7;

562:1,8,15;563:6;
564:5,7,14,21,25;
565:20,23;566:7,12,
20;567:5,7,16,21;
568:6,7,8,19;569:12;
570:14;571:17;
576:16;577:7,9;
578:2;579:4
applications (32)
505:3;544:12,21;
546:18;547:16;
548:22;550:11;
551:1;553:1,3,12,18,
23;554:13,18,19;
558:19;567:17,24;
574:11,17,23;575:5,
12;577:3,24;580:3,
22,24,25;581:1,8
applied (14)
467:15,18;482:21;
524:12;549:17;
550:7,22;564:13;
578:10;579:18,20,
23;580:5,7
applied-for (1)
550:11
applies (4)
564:24;574:14,18;
580:15
apply (7)
466:2;471:11,15;
517:3,4;518:17;
579:21
applying (11)
551:2,6;554:4;
556:23;557:24;
569:9;571:14;575:3;
576:17;578:14,16
appreciate (2)
431:2;502:16
appropriate (9)
446:10;474:7;
510:15,23;514:19,
25;517:24;518:7;
552:17
approval (6)
455:21;548:10;
570:6,7,18;571:5
approve (2)
484:13;569:1
approved (12)
477:13,24;478:9;
479:17,23;489:22,
23;490:1;495:21;
496:2;525:6;546:19
approximately (2)
531:1;550:8
April (2)
528:18;530:25
arbitrable (1)
472:8
arbitrated (1)
532:1

arbitration (15)
470:8,9,11,15,16;
471:6,8,11,14,17,24;
472:1,4,15,19
arbitrations (2)
472:20;519:21
ARBITRATOR (108)
428:3,22;429:6,
17;430:2,17;431:6,
11,15,19,25;432:5,9;
470:12;490:11,16,
22;491:5,11,15;
499:18,22;500:10,
15,22;501:22;504:4;
505:24;506:19;
507:4,6,8,9,13,18;
508:1,7,11,18,24;
509:7,10,16,24;
510:6;511:4,16,21;
512:1,5,17;513:8;
515:2,15;516:6,8;
517:23;522:21,24;
524:9;525:13;
526:21;527:7,8,13,
20;528:1;529:16;
530:6,11;531:2;
533:2,15;534:9,15;
536:25;537:5,11,15,
17,25;538:2,10,17;
539:1,7,16,24;540:3,
9;541:13,19;545:11,
20;579:13,25;
580:11;581:24;
582:10;583:1,5,17,
24;584:5,24;585:3,8,
12
arbitrators (1)
520:4
area (1)
498:21
areas (4)
496:9;501:4,6;
548:21
argued (1)
563:5
argument (2)
430:10;448:23
arguments (2)
532:4;563:8
Arif (2)
428:11;528:5
arising (2)
466:10;537:1
arose (1)
531:4
around (8)
451:13;453:10;
465:9;468:7;504:22;
512:12;513:3;
557:15
arrangements (1)
519:25
arrival (1)

544:15
arrived (1)
524:22
articles (4)
444:24;445:11;
547:21;548:2
aside (1)
496:7
aspect (1)
580:20
aspects (2)
547:25;569:18
assent (1)
478:16
asserting (1)
445:10
assessment (1)
558:15
assets (1)
578:19
assign (8)
498:13;566:5;
567:13;569:5;570:5,
12,24;571:6
assigning (6)
567:1,4;568:1,5;
569:18;571:19
assignment (5)
569:2,7,12;570:4;
571:7
assist (2)
529:13;568:9
assisted (1)
500:25
assisting (1)
537:7
assists (3)
534:20;535:12,19
associate (1)
500:8
associated (2)
428:19;548:17
assume (9)
457:12;473:15;
506:13;548:12;
557:9;560:2,13,22;
583:10
assuming (3)
436:16;538:21;
547:11
assured (1)
430:19
Atallah (4)
545:9,22;546:3;
571:25
attachment (1)
440:25
attachments (1)
554:14
attempted (1)
509:25
attempting (1)
510:10

attend (2)
481:3;523:18
attended (6)
434:6,13;442:24;
443:5,5;480:15
attendee (2)
434:3,15
attendees (9)
434:5,10;435:1;
442:12,17,20;443:6;
480:17;523:9
attending (1)
436:6
attends (1)
487:8
attention (9)
435:6;457:16;
481:15,19;482:10;
487:19;505:13;
539:20;553:11
attorney (3)
504:17;516:20;
517:2
auction (11)
468:24;566:19,21,
22,24;567:8,9,10;
568:11;572:9;573:6
audio (3)
436:23;448:4,5
AUGUST (2)
428:1;432:20
authority (1)
440:3
automated (1)
436:19
availability (1)
498:14
available (6)
433:15;527:4,15;
541:12;584:15,16
average (1)
560:22
avoid (1)
577:9
awaiting (1)
542:2
aware (32)
433:25;434:24;
451:18;452:1,7,14,
23,24;453:15;454:3,
4;491:3;492:16,20,
22,25;493:7,8;505:7;
506:13;526:14,17;
528:3,9;529:3;
530:4;533:4;541:9;
553:8;568:20;
571:17,20
away (4)
458:2,7;468:3;
483:13

B

back (42)
431:20;434:25;
436:23;444:2;
445:24;446:21;
449:23,24;457:10;
460:13;462:1,13,17,
22;463:3;464:10;
468:6,21;480:6;
484:8;485:25;486:6;
489:14,19;494:2;
496:1,8;510:4;
516:15;517:20;
521:22;522:13,17;
527:14;533:21;
535:8;537:14,16;
573:25;579:7;
581:25;583:13
background (1)
555:11
barging (1)
469:17
Based (20)
433:23;442:19;
451:17;452:9;
453:23;456:22;
458:13;460:3;
469:22;470:8;494:7,
16;497:7,10;498:13;
499:11;513:14;
546:23;563:11,14
basic (2)
462:8;466:2
Basically (6)
461:22;486:15;
497:22;510:11;
519:13;579:25
basis (6)
453:16;458:3;
468:4;506:10,22;
531:13
became (1)
529:11
become (6)
468:10,12;472:5,
18;528:3;561:4
becomes (2)
470:17;505:11
becoming (2)
450:20;500:16
befalls (1)
521:25
began (1)
526:1
begin (1)
428:3
beginning (1)
499:25
behalf (9)
509:12,20;530:11;
537:6;538:5;566:20;
567:17,24;568:2
behind (11)
482:11;487:20;

549:17;550:7,23,25;
551:14;555:4;
559:17;560:6;579:8
belief (1)
578:23
believes (1)
439:11
below (1)
572:21
beneficial (2)
556:18,19
benefit (3)
558:24;559:1,24
Bernard (1)
435:18
best (1)
581:10
better (3)
471:18;545:19,20
beyond (4)
459:4;461:13;
490:17;514:24
Bezsonoff (3)
555:16,24;556:5
bid (1)
568:11
bids (2)
566:19;567:8
BIENVENU (107)
428:3,22;429:6,
17;430:2,17;431:6,
11,15,19,22,25;
432:5,9;490:11,16,
22;491:5,11,15;
493:15;499:18;
507:6,9,13,18;508:1,
7,11,18,24;509:7,10,
16,24;510:6;511:4,
16,21;512:1,5,17;
513:8;515:2,15;
516:4,6,8;517:23;
518:21;521:12;
522:21,24;523:1;
524:9;526:21;527:9,
13,20;528:1;529:16,
22;530:6,11;531:2;
533:2,15,19;534:9,
15;535:15,16;
536:25;537:4,5,11,
15,17,23;538:2,7,10,
17;539:1,7,16,18,24;
540:3,9;541:13,19;
579:9,13,25;580:11;
581:24;582:10;
583:1,5,17,24;584:5,
24;585:3,8,12
big (3)
472:3,12;499:5
biggest (2)
443:25;503:4
bimonthly (1)
454:9
binder (27)

435:7;440:20;
442:7;457:9,17;
464:24;478:6,11;
481:16;485:10;
487:20;511:11,12;
525:11;541:24,25;
542:17;546:8,9;
550:2;552:5;555:5;
561:21;569:24;
571:23;572:14;
584:2
binding (12)
440:3;447:13,19;
460:14;470:17;
471:4;472:5,7,16,21,
23;562:5
binds (1)
447:20
bit (3)
460:23;490:21;
554:11
black (1)
516:2
BLACKBURN (3)
532:23,25;533:19
blue (2)
488:25,25
Board (52)
428:18;450:18;
452:12,17;453:19,
20;454:1,4,13,15,22;
455:9,14,15,19,20;
456:5,9;464:2;
480:10,25;481:3,5,9,
17;482:1;487:1,3,6,
9,12,17;489:22,23;
490:1;492:5;493:3;
495:24;496:21;
497:5,14,24;511:1;
514:5;525:5;526:3,6,
13,17;548:10,16,23
Board's (6)
428:19;456:10,11;
481:7;487:15;
492:18
bogged (1)
473:12
both (6)
444:13;468:10;
504:13;518:14;
522:8;523:14
bottom (4)
437:7;438:4;
488:22;525:15
bottom-up (1)
552:18
bound (2)
561:25;563:23
bounds (1)
514:18
brackets (2)
542:12,15
branding (1)

560:1
break (14)
429:25;461:14;
490:8,12,25;491:3;
507:20;519:13;
521:16,19;527:21,
23;534:11;539:8
breaking (1)
526:25
break-out (1)
527:22
briefed (1)
456:9
briefing (6)
438:7;446:12;
460:12;469:14;
473:13;516:15
briefings (5)
470:3,12;473:5,
20;475:17
briefly (3)
529:23;530:16;
532:24
bring (6)
431:19;521:22;
522:12,13;538:23;
553:10
bringing (2)
450:1;460:24
broad (10)
460:24;462:6,21;
463:17,18;472:24;
477:18,19,21;552:16
broaden (2)
441:24;446:3
broadening (4)
446:5,7,14,19
broader (9)
458:3,14;459:3;
461:4,23;468:4;
470:19;483:18;
498:4
broadly (1)
477:7
brought (2)
536:1;538:18
building (2)
538:21;559:3
bundle (3)
509:8;548:9;
583:13
burden (3)
521:24;522:2;
532:6
Burr's (1)
516:23
busy (1)
505:21
bylaws (25)
444:20,24;445:10,
11;449:12;450:7,12;
491:25;492:2,3,7,9;
493:11,20;494:2,11;

498:23;499:4;503:6;
507:1;510:16;
547:22;548:3,6;
549:6

C

C-181 (1)
550:2
C-24 (1)
555:6
C-3 (2)
552:8;561:23
C-314 (1)
525:12
C-35 (2)
572:14;579:7
C-9 (1)
548:9
calendar (1)
523:15
CALIFORNIA (2)
428:1,1
call (11)
438:25;464:12,15,
18,21;515:13;516:1;
532:19;535:8;
536:17,20
Calle (2)
555:24;556:4
called (4)
488:24;505:14;
528:10;579:4
calls (2)
510:20;513:18
came (10)
448:11;491:23;
492:12;497:1,3;
500:25;501:8;
513:20;516:23;
580:22
can (58)
429:4,13,25;
430:1;431:9;432:13,
15,15,16;435:11;
444:8;445:24;
446:21,23,24;
448:11,22;455:15;
457:5;458:23;
469:21;470:8;
472:23;473:13;
475:20;479:2;
504:20;505:22;
509:7,16;510:5;
515:21;520:6;
526:25;527:11;
528:2;529:16,25;
536:1,2,2,8,14;
538:23;539:10;
541:2;542:1;546:8;
550:6,19;553:17,22;
557:5,23;558:13;
559:23;575:6;

580:20
capacity (4)
510:18,22;513:23;
543:22
capture (1)
439:22
capturing (1)
510:14
careful (2)
457:25;514:23
case (22)
445:12;454:16;
455:2;458:1;468:2,
20,22;471:12;
490:24;504:1,6;
511:25;520:10;
521:10;522:3,5;
537:19;539:19;
556:16;581:15;
582:16;583:8
cases (3)
469:22;473:6;
567:15
cast (1)
475:8
casting (1)
584:12
categories (3)
466:5;508:3;
512:23
category (2)
460:5;466:9
Catherine (3)
499:21,23;545:12
cause (1)
576:22
caused (1)
528:21
ccTLD (1)
559:19
CCWG (1)
428:20
ceased (1)
578:17
center (3)
501:25;531:11,20
centers (1)
504:21
CEO (1)
556:5
CEP (15)
451:15,24;452:5,6,
8;453:10;456:14,19,
23;494:6,15,20;
497:8;506:14,24
CEPs (1)
498:9
certain (2)
523:9;567:6
certainly (2)
539:5;578:12
CFO (1)
556:4

chair (3)
434:13;438:20;
539:18
Chairman (39)
428:11;429:21;
430:8;431:13,22;
432:10;490:5,20;
491:13,19;493:18;
499:14;515:1,18;
517:7;519:20;
520:11,23;527:25;
528:8;529:12;530:3;
531:19;534:13;
535:14,25;536:23;
538:6,15,20;539:13;
540:11;541:11,17;
582:20;583:4,10;
584:4;585:14
challenge (2)
468:18;497:23
chance (1)
530:21
change (43)
461:22;462:19,25;
463:2;469:25;
470:25;476:6;
485:24,24;486:3,4,
12,22;488:6,21;
489:15;496:10,14;
497:18;523:23;
524:4,13,17,21,23,
24;545:2,4,5,6;
554:24;564:19;
570:3;576:17;577:9;
578:8,13,14;579:4,
23,25;580:9;581:21
changed (4)
487:17;545:9;
578:3,5
Changes (23)
441:3;447:16;
479:16;483:23;
485:12,15,16;
486:21;488:5,12;
489:3,6,8,10;496:5;
511:6;514:8;525:2,
4;526:9,14,18;577:3
changing (2)
466:1;578:2
channels (1)
479:24
characterize (1)
441:2
characterized (1)
474:4
charged (1)
553:11
check (1)
479:3
Chernick (4)
507:6,8;526:24;
527:7
chief (1)

546:1
choose (1)
567:9
chose (3)
474:2;529:6;
533:11
chosen (1)
519:4
Chuck (2)
536:2;546:10
chunks (1)
584:16
circulated (1)
480:22
circumstances (4)
516:21;521:5;
533:13;564:19
civil (1)
503:25
claim (2)
439:3;494:20
claimant (22)
431:18;441:8,24;
443:19;444:5,15,17;
445:1,4,9,15;458:19;
460:5;461:7;469:13;
471:1;473:18,19,22;
492:4;507:23;528:3
claims (1)
441:9
clarification (1)
582:11
clarified (1)
474:22
clear (12)
444:11;445:14;
450:20;471:16;
474:21;479:21;
483:12;484:12;
529:11;530:3;
544:19;545:18
clearly (6)
486:11;488:18;
489:9,15;514:3,15
close (6)
463:15;482:22;
483:3;546:24;
548:18;582:15
closed (4)
472:13,14;528:20;
532:4
closely (1)
503:15
closer (1)
545:15
closes (1)
550:9
CO (8)
467:21;559:19;
560:14,21,25;561:3,
8,15
code (1)
559:19

colleagues (7)
499:20;502:6;
505:8,16;521:15,18;
526:23
collective (1)
499:1
COM (3)
561:4,9,16
combination (1)
578:7
combining (1)
577:5
coming (14)
444:23;447:14;
448:12;450:21;
456:12;460:2;461:6;
469:4;474:23;505:7,
19,20;506:22;582:12
comment (48)
458:15;460:1,3;
463:1,10,12,13;
482:24;483:5,14;
484:3,17;485:5,15;
486:1,3,5,6,13,23;
488:2,14;489:5,8,10,
15,16;523:25;524:1,
5,6,15,16,19,22;
525:3,6,8;546:22;
551:25;552:10,23;
553:1,9,12,13;
569:16;575:4
comments (16)
458:22;459:5,20;
478:7,13;483:11;
485:23;488:17;
489:11;546:23;
553:3,6,17,22,25;
554:1
commitment (1)
559:2
committed (5)
436:15;437:3;
438:3;498:22;
550:21
committee (4)
440:11;478:9;
494:24;495:4
committee's (1)
432:24
common-law (1)
448:20
communicate (3)
527:16;537:21;
585:9
communicated (1)
456:19
communication (1)
532:16
communications (7)
476:14;480:1;
528:11;531:9;
533:24;534:24;
535:22

communities (1)
552:16
community (10)
463:13;471:3;
472:13;484:6;
485:21;486:7;489:2,
25;490:2;502:4
community-facing (1)
501:21
community's (1)
489:20
companies (3)
556:13,19,20
company (4)
551:2;576:12,14,
16
compete (1)
561:8
competing (1)
580:17
competition (1)
552:15
competitive (3)
448:13,17;475:10
competitor (4)
474:24,25;475:10,
15
complained (1)
469:8
complaints (1)
492:19
complete (2)
564:8;574:24
completed (6)
485:2;489:18;
547:3,6,9;583:6
completely (1)
580:10
complex (1)
580:19
complexity (1)
581:12
compliance (2)
499:3,4
complicate (2)
462:9;468:4
compromise (2)
510:1,11
concept (1)
531:15
concern (8)
438:23;443:18,23,
25;450:13;462:8;
489:25;499:1
concerned (4)
437:20;458:5;
459:3;466:13
concerning (2)
451:20;507:15
concerns (12)
444:13;463:21;
464:10;465:14;
466:17;467:24;

468:7;489:22;490:4;
554:1,2;577:16
concluded (2)
528:18;585:17
concludes (1)
440:8
conclusion (2)
487:3;514:6
conditions (6)
561:24;562:5;
563:21,24;570:11,18
conduct (2)
519:4;522:4
conducted (1)
518:11
conference (2)
451:24;452:4
confirm (6)
478:19,22;479:14;
496:13;515:12;
542:16
confirmed (2)
480:20;564:6
confirming (1)
515:24
confusingly (1)
581:21
confusion (5)
444:14,17;445:19;
450:10;470:24
connection (7)
546:16;562:21;
564:7;565:13,16;
566:7;570:13
conscious (3)
521:24;522:2,6
consensus-based (1)
552:18
consider (11)
446:10;452:12,17;
461:5;469:13;
470:15;475:6;
486:20;489:11;
493:9;495:19
consideration (8)
446:8;480:10;
481:7;483:18;
492:18,24;526:1,6
considered (2)
481:9;526:3
considering (2)
446:20;463:20
considers (2)
562:4,7
consistent (4)
510:16;550:20;
576:25;577:1
consists (1)
571:23
consolidation (4)
436:10,13;445:21;
488:10
constitution (1)

581:22
consult (1)
518:4
consultants (1)
567:23
consultation (5)
463:4;485:13;
486:14;489:4;
546:21
consultations (1)
518:6
contact (2)
509:5;551:10
contacts (3)
509:1;555:12,15
contain (2)
473:21;555:11
contained (3)
528:13;564:4,14
contains (3)
473:16;541:25;
552:5
Cont'd (1)
432:11
contemplated (1)
513:12
content (3)
539:25;554:14,18
contention (50)
451:8,11;453:8;
466:11,14,20;467:2,
14;468:22;469:2,3,7;
473:10;492:19;
508:14;573:18,22,
23;574:1,6,8,10,12,
20,23;575:7,11,14,
17,23;576:3,6,11;
577:5;579:16;580:1,
3,8,13,17;581:4,9,9,
18,22;582:1,3,6,7,9
context (3)
430:11;494:20;
530:19
continue (6)
428:9;432:6;
433:4;491:17;518:6;
535:10
continued (4)
433:16;470:25;
487:16;534:4
continues (2)
437:9;519:8
continuing (2)
438:4;461:10
continuum (1)
580:12
contract (5)
460:22;562:8,13,
16;563:6
contracted (3)
448:14;461:1;
501:16
Contracting (1)

570:4
contractor (1)
435:22
contracts (2)
448:15,15
contrast (1)
566:4
control (2)
554:24;570:4
controlling (3)
557:10,24;558:1
convene (1)
527:22
convened (4)
433:2,17;454:24;
526:5
convenient (1)
430:1
conversation (11)
449:16,17;451:17;
461:10,25;465:11;
479:1;480:11;
487:16;505:18;
517:18
conversations (6)
456:22;462:1;
480:23;504:8;
505:10;534:23
conversions (1)
561:6
convey (1)
538:4
COO (2)
545:10;556:6
cooperatively (1)
573:9
coordinating (1)
480:5
copy (6)
453:12;457:17;
464:24;481:16,16;
485:10
corner (1)
525:16
Corporation (3)
576:13,16,24
correction (1)
540:19
corrections (2)
540:18;541:8
correctly (2)
446:2;488:15
corresponded (1)
572:22
corresponding (2)
572:7,12
CO's (2)
554:21;559:23
counsel (21)
498:12;500:3,3,8,
17;503:7;511:12;
517:9,12;518:4,11;
519:21;520:7,11;

530:19;533:17;
534:18;535:1,16;
542:1,23
count (1)
434:19
countries (2)
448:21;557:15
country (1)
559:19
couple (5)
428:15;441:11;
496:5;565:8;567:24
course (15)
503:7;504:3,11,14,
16;512:19;517:5;
518:9;522:21;529:3;
531:1;533:13;538:6;
557:7;577:18
Court (2)
562:20;563:10
cover (3)
446:25;478:5;
501:5
covered (1)
501:4
create (1)
462:15
created (1)
580:16
creating (1)
445:18
creation (1)
582:2
crisis (1)
521:25
criteria (2)
546:19;547:16
critical (1)
512:22
cross (2)
491:18;582:19
cross-examination (14)
428:10;432:7,11;
490:10;501:24;
502:12;518:5,12;
522:4;535:1;538:12;
541:12,16,20
cross-examine (1)
519:23
crux (2)
470:21;530:23
cure (1)
467:24
curiae (4)
437:13;467:8,16;
488:24
current (4)
436:9;482:22;
483:13;487:24
currently (3)
458:4;543:20;
559:18
customary (1)

481:6
cut (3)
428:23;479:12;
545:14
cutting (1)
429:22
CV (1)
500:12

D

dark (1)
431:14
data (1)
550:14
date (12)
453:2;455:17;
456:2,3,6,11;493:9;
494:9;529:17;534:1;
542:21;572:12
dated (3)
534:17;535:18;
536:10
dates (1)
513:17
David (6)
434:12;435:5;
529:24;530:10,15;
536:4
Day (20)
428:4;429:13;
430:4;434:7;440:15;
441:18;442:3;443:3;
449:15;453:13;
457:6,19;497:12;
498:24;529:19;
532:20;544:1;
582:13,14,16
days (8)
441:21,21;492:4;
499:7,10;508:21;
510:19;520:22
day-to-day (6)
502:18,25;504:1,5,
24;505:10
DC (1)
519:14
De (14)
539:8,13;541:15,
17,21,23;545:21;
579:9,12;582:12,20;
583:3,10;585:14
deadline (10)
452:20;491:24;
493:12,20,25;
494:10;496:14;
533:6;544:11,17
deadlines (2)
438:8;492:1
deal (2)
430:10;585:6
deals (1)
507:14

dealt (1)
431:9
debating (2)
494:24;495:5
December (4)
457:3;531:21;
543:7,23
decide (3)
429:25;492:13;
539:11
decided (3)
518:3;522:19;
535:16
decides (1)
534:18
decision (16)
430:21;437:20;
447:10,13;472:9;
492:18,23;493:5;
527:16;532:13;
533:21;534:3,4,7;
535:6;585:10
decisional (1)
433:7
decisions (3)
440:3;470:18,19
declaration (5)
447:18;460:21;
474:5;510:5;562:23
declarations (1)
472:6
dedicated (1)
552:13
deem (1)
446:10
deemed (10)
437:23;466:6;
467:2;478:9;479:16;
495:21;496:2;
508:13;512:24;
581:17
defend (1)
448:22
defendant (1)
448:23
defenses (1)
502:21
defer (2)
492:18,23
deferred (1)
483:18
defined (1)
581:8
definitely (2)
547:24;551:9
definitional (1)
457:24
delay (2)
450:22;573:6
deliver (1)
510:11
delivered (1)
489:13

delivering (1)
526:6
denied (2)
452:22,25
deny (1)
456:14
department (16)
434:8;442:14;
443:4;500:19,20,21,
23,24;501:3,8;502:1,
3;503:5;504:8;
505:18;506:4
depending (3)
462:23;474:3;
528:2
deprecating (1)
468:17
deputy (8)
498:12;500:2,6,8,
17;501:11,11,12
describe (1)
500:16
described (2)
501:23;581:5
describing (1)
552:25
description (1)
473:22
designated (1)
455:13
designating (1)
568:1
designation (1)
455:3
designed (2)
471:10;548:5
desk (1)
505:8
detail (1)
433:21
detailed (1)
471:12
determinations (1)
581:7
determine (1)
477:2
determined (3)
518:16;548:23;
579:5
determines (1)
437:10
develop (1)
457:22
developed (3)
529:1;532:8;
546:20
developing (1)
552:17
development (4)
470:22;503:11;
548:20;552:11
devise (1)
577:21

devoted (1)
485:6
Diego (1)
555:24
differ (1)
542:13
difference (2)
475:21;477:22
different (17)
459:23;460:23;
463:11;469:14,18;
472:7;473:25;495:5;
498:7;557:14,14;
569:8,20;570:10,16;
571:14;580:10
differentiation (2)
498:6;501:9
differently (1)
504:16
difficult (5)
462:7,17;470:23;
520:8;531:17
difficulty (4)
510:13,14;511:13;
545:13
direct (9)
435:6;444:8;
457:16;481:15,18;
482:10;487:19;
539:20;580:7
directed (1)
513:24
directly (5)
504:19;506:20;
529:9;533:24;
539:10
directors (7)
551:4,4;555:20;
556:23;557:11,16;
578:4
disagree (1)
574:21
disclose (4)
493:3,5;528:10;
551:1
disclosed (5)
528:17;529:4;
531:23;551:5,8
discomfort (2)
498:22;514:1
disconnect (2)
502:11,17
discretion (15)
437:3,10;438:3,7,
10;458:2,8;459:12;
467:7;468:3;469:17;
475:2;477:2,17,20
discuss (11)
428:24;464:11;
491:2;502:5;503:14;
521:15;527:1;
536:18;537:21;
542:10;583:8

discussed (15)
433:20;442:2;
449:13;458:14;
461:24;463:21;
475:12;482:8;505:2;
510:18,20;512:16;
513:16,18;522:9
discussing (4)
457:14;465:13,16;
496:11
discussion (24)
433:7,11,17;
436:15;458:25;
459:5,25;460:24;
461:19;473:17,18,
19;474:16;481:19;
494:21;496:7;
497:10,20;508:9;
515:16;518:2,18;
533:23;552:20
discussions (15)
444:21;453:9;
479:23;494:16;
510:22;511:5,10,18,
22,23;512:20;
513:10,21;535:20,21
dismissed (1)
563:11
dispersions (1)
584:13
dispute (3)
437:12;470:20;
522:1
disputes (1)
445:3
disrupt (1)
475:1
Disspain (3)
584:11,15,18
distinction (1)
566:15
distinguishes (1)
566:10
distinguishing (1)
438:19
DNS (1)
544:3
document (25)
475:17;479:13;
482:11;487:20;
488:3;515:3,5,11;
521:14,21;522:20;
525:11,16;527:2;
528:4;530:7,17,25;
531:4,23;532:2,9;
548:9;550:17;
551:14
documents (12)
428:16;429:1,2,
10;515:7;516:12;
542:9;546:9,11,12;
564:5;585:7
Domain (3)

556:11;565:24;
571:8
domain's (1)
560:19
done (6)
461:16;465:21;
473:20;507:5;
520:22;521:6
Donuts (2)
572:8,17
DOT (2)
467:21;554:21
doubled (1)
501:7
down (9)
438:13;441:11;
444:6;446:24;447:5;
457:22;473:13;
507:21;536:4
dozen (1)
567:24
dozens (2)
554:14;577:24
draft (23)
436:9;441:5;
449:14;453:12;
467:25;478:20;
481:6,10,13;483:4,
12,14,14;485:4;
494:18;495:17;
509:13,20;510:1,10;
511:7;512:24;
534:24
drafted (3)
487:9;508:12;
509:19
drafting (12)
444:20;465:10;
475:24;482:19;
483:17,24;484:1,5;
502:7;509:3;531:7;
557:5
draw (1)
461:6
dropped (1)
468:25
due (1)
585:1
during (22)
429:25;432:19;
436:4;442:3,20;
443:13;491:2;493:5;
495:3,4;498:17;
501:23;507:15;
512:21;513:13,20;
517:5;518:4;521:15;
535:22;571:17;
577:18
duties (1)
501:9

E

Barkley Court Reporters

eagerly (1)
542:2
earlier (3)
476:25;482:5;
505:2
early (3)
456:15;571:24;
572:6
easier (1)
546:10
easily (1)
520:6
easy (1)
580:25
economies (1)
559:24
edge (1)
451:3
edits (4)
456:12;476:1,9,15
effect (10)
483:4;491:23;
493:24;494:12;
497:1,3,19,25;498:4;
537:18
efficiency (1)
503:22
efficient (1)
445:16
efforts (2)
575:22;576:5
Eisner (49)
428:10;429:16;
431:20,21;432:1,13;
490:8;491:1,15,20;
498:8;499:13,15,21,
23;507:7,9;512:2;
515:6,12,13,20;
517:18,20,24;
521:18;522:13;
523:4;527:3,5,10;
529:15,19;530:4,5;
532:16,20;533:25;
534:17,20;535:15;
536:2,8,10;537:5,9,
11,17;538:4
Eisner's (4)
429:12;529:9;
533:11;534:21
either (17)
429:25;434:20;
435:2;446:24;
458:19;461:7;
469:21;483:13;
487:7;493:25;500:7;
518:16;520:16;
527:4;539:10;
563:16;577:25
electronic (1)
442:18
elicit (1)
529:15
Elizabeth (3)

434:8;443:4;
503:14
else (7)
459:21;476:21;
514:12;530:14;
568:8;576:20;
584:21
email (76)
429:19;433:11;
440:10,14,20,25;
457:18,21;461:8;
463:15,16,22;464:6,
12,23,25;465:5,6,15,
20,21;476:2,8,23;
479:9;486:20;
495:19;509:11,11,
19;510:8;511:9,15,
18;512:3,6;513:14,
24;515:5,19;523:14;
528:16,17,23;529:7,
8,10,17,20;530:4;
531:16;532:11,14,
15,21;533:4,5,22;
534:1,16,19,23;
535:2,6,10,11,18,18,
22;536:4,10,11,12,
18,21;572:21
emailed (1)
451:23
emails (10)
433:5,11,14;
511:18,22;528:14;
529:4;571:24;
573:12;585:9
embark (1)
515:16
embodying (1)
484:21
emerged (1)
513:13
employed (4)
434:22;435:23;
543:20,22
employee (2)
435:2;540:22
employees (1)
480:15
employment (1)
544:2
empty (1)
538:22
enable (1)
494:19
encountered (2)
510:13,14
encouraged (2)
574:8;577:5
encourages (1)
573:22
encouraging (1)
477:21
end (17)
429:13;430:4;

450:19;452:20;
456:8;496:3;511:2;
514:7;521:1;528:18;
534:25;539:17,24;
549:1;564:8;577:10;
582:12
endorses (1)
429:8
engaged (2)
522:1;567:16
engagement (4)
501:20;518:15;
519:13;520:14
engages (1)
502:21
ENGLISH (3)
537:13,16,23
enhance (1)
503:11
enough (4)
443:12;444:3;
463:17,24
ensuing (2)
510:19;513:17
enter (2)
530:18;567:9
entered (2)
568:22;571:11
enters (2)
565:14;566:1
entire (5)
440:11;478:1;
549:24;552:7;
558:18
entirety (1)
532:12
entities (6)
445:1;447:3;
469:14;473:3;
557:16;575:2
entitled (4)
445:20;508:3;
517:13;548:10
entity (23)
439:1,10;441:7,8;
470:2,10,13;473:25;
506:12,23;508:14;
551:2,6,19;556:23;
557:10,24;571:7;
576:18,23;578:14,
16;580:14
entity's (3)
441:12,13;499:3
especially (1)
439:19
essence (1)
449:6
essential (1)
439:1
essentially (7)
439:25;441:17,23;
444:4;447:2;567:19;
576:17

establish (2)
575:21;576:4
established (1)
432:18
estimate (2)
490:18;583:2
estimated (1)
582:21
estimates (2)
584:12,20
Ethan (2)
528:6;530:3
evaluate (1)
579:2
evaluated (6)
546:20;547:17;
568:14;571:13;
581:5,7
Evaluation (5)
548:17,22,24;
566:18;574:19
Evaluations (1)
574:24
evaluators (1)
554:16
eve (1)
528:21
even (14)
447:20;450:8,14,
22;456:11;474:17;
478:20;489:21;
506:13;512:18;
513:8;554:10;580:2;
581:16
evening (1)
428:12
event (3)
565:14;568:21;
569:20
events (2)
507:19;508:25
everybody (3)
518:2,17;584:25
everyone (7)
428:4,12;507:3;
527:23;584:17;
585:13,15
evidence (7)
491:2;516:12;
533:7;537:7;540:4;
583:7,9
evident (1)
534:7
evidently (1)
535:5
exact (2)
434:3;572:12
exactly (5)
471:6;504:2;
510:20;513:18;
531:9
examination (9)
516:20,22,24,25;

517:3,6;518:10;
523:2;582:22
examine (1)
530:8
example (14)
446:16;462:11;
466:17;468:22;
473:8;484:14;
503:25;504:25;
506:15,24;511:11;
549:15;566:16;
569:11
excellent (2)
431:14,25
exception (1)
437:18
exceptional (1)
516:21
exchange (2)
537:2;585:9
exchanged (1)
511:17
exchanges (5)
508:21;512:2,4,6,7
exclude (1)
532:10
execute (1)
571:10
executed (3)
569:7,12;570:24
executive (8)
557:1;558:4;
559:2,5,6,11,12;
572:17
exhibit (13)
440:25;525:12;
535:4;536:1;546:10;
548:9;550:2;552:8;
555:6;561:23;
571:23;572:14;
579:7
exhibits (3)
495:6;583:12,15
exist (1)
578:18
existed (1)
469:23
existence (1)
515:12
exists (1)
506:11
expand (3)
443:19;486:9;
514:24
expect (7)
460:19;472:15,18;
486:7;490:20;491:9;
558:23
expectation (1)
460:21
expectations (4)
462:16;469:10;
489:20,21

expected (5)
454:22;468:20;
472:9,19;486:5
experience (1)
559:25
experienced (4)
559:17;560:3,4,6
expert (2)
567:15;581:6
expertise (2)
505:6;559:25
explain (4)
444:16;502:2;
577:11;580:20
explained (1)
501:18
explaining (1)
510:9
explains (1)
510:13
explanation (1)
481:25
express (2)
554:2;566:22
expressed (1)
562:17
expressing (1)
514:16
expressly (1)
565:17
extends (1)
537:19
extension (1)
573:8
extent (3)
480:6;483:11;
492:22
external (1)
455:2
extraordinary (1)
455:1
extremely (4)
457:24;514:23;
520:8;577:17

F

face-to-face (5)
454:22;455:4,9,
15;479:10
facilitate (1)
435:23
facilitating (1)
435:25
fact (34)
440:14;452:21;
456:20;457:1;463:6;
478:12;480:21;
482:10;487:12;
493:3;495:8,11;
496:12;499:6;
501:24;502:12,13;
504:13;505:11;

506:16,17;508:25;
509:2,19;511:4;
515:25;522:2;
551:16;553:5;
557:10;562:7;
567:22;573:21;
578:17
facts (2)
474:8,9
factual (1)
474:11
fair (33)
436:4;440:5;
443:12,17;444:3;
447:5;448:7,25;
451:4;453:8,20;
458:5;459:2;461:21;
462:10;463:20,24;
465:22;483:19;
485:20;487:1;489:7;
494:24;506:1;521:9,
10;557:12;558:15;
559:12;560:15,22;
561:9,18
fairly (3)
431:3;448:20,21
fairness (3)
519:8;549:1,11
false (1)
564:21
familiar (4)
503:19,20;548:14;
549:20
far (7)
434:24;456:24;
457:5;461:12;
462:15;511:24;
568:25
faster (1)
490:21
fast-forward (1)
494:5
favor (1)
508:13
feat (1)
519:23
February (2)
511:14;581:10
Federal (3)
448:19;562:20;
563:10
fee (1)
569:12
feel (3)
439:2;518:15;
522:8
felt (4)
453:23;456:4;
510:15,22
few (11)
428:5;448:1;
453:6;480:14;
481:18;491:21;

495:5,15;496:4;
521:21;523:6
fifth (1)
509:17
fight (2)
474:23;579:22
file (7)
453:12;456:17;
457:6;491:24;492:4;
494:10;498:2
filed (22)
449:11,20;450:11;
453:5;456:21,24;
457:2,2;497:11;
498:3,20,25;499:6,9,
10;504:7,7,12;
506:11;562:19;
581:14,15
filing (12)
479:21;480:2,11;
493:12,20,25;
496:10,15;497:3;
499:12;506:9;
565:20
final (21)
440:3;447:7;
461:10,19;462:7,13,
24;468:24;472:19,
20,21,23;477:10,12,
19;482:12;496:19;
498:7;525:19;534:4;
581:12
finality (1)
439:19
finalized (3)
450:18;495:17;
496:13
Finally (1)
462:23
financial (1)
577:25
find (4)
502:10;520:14;
546:9;578:24
fine (4)
477:15;527:8;
540:16;583:19
finish (2)
490:9;584:19
fire (2)
538:20;540:15
firm (3)
475:23;476:3;
519:15
firm's (1)
559:25
first (35)
432:24;433:19,21;
438:14;466:9;475:6;
482:11;483:2,6;
490:25;495:21,24;
496:25;497:2;
507:22;523:7;

524:22;530:20;
534:3;540:23;542:7,
16;544:1,6;545:8,21;
552:5;558:25;
559:16;563:21;
565:10,11;574:6;
579:14;580:13
fit (1)
460:4
five (6)
442:11;467:16,21,
22;507:21;538:25
flip (1)
555:10
focus (3)
526:4;536:2;
548:21
focusing (1)
581:24
follow (1)
538:22
followed (5)
448:18;487:13;
522:9;532:10;
533:23
following (3)
482:21;542:8;
584:10
follows (1)
534:18
footnote (4)
476:24;477:6;
496:13;497:17
fora (1)
553:9
forgive (1)
517:24
form (11)
441:17;447:12;
464:8;489:24;490:1;
496:8;562:8,15;
575:25;576:13,19
formal (3)
430:13;518:14;
553:7
formalities (1)
520:15
formally (2)
518:13;569:1
formed (1)
563:6
former (2)
541:2,6
forming (1)
576:3
forth (3)
450:1;546:17;
547:15
forthcoming (1)
449:22
forum (2)
463:14;553:13
forward (6)

473:12;510:24;
513:5;514:10,14;
539:12
forwarded (1)
480:8
forwards (1)
431:4
four (7)
432:25;434:19;
435:1;488:3;526:7;
582:21;583:1
four-person (1)
500:20
frame (3)
462:5;479:5;513:4
framework (1)
560:20
frankly (1)
520:25
frequently (3)
549:20;550:3;
554:13
Friday (9)
464:4;465:5;
478:2;479:4;511:14;
513:24;536:19;
584:16,19
friends (3)
428:24;538:3;
539:9
front (8)
431:2;487:22;
512:4;517:18;530:2;
531:11,20;542:4
full (10)
447:7,24;477:25;
481:16;505:8;
521:10;525:19;
533:22;559:16;
560:10
fully (6)
474:7,11,17;
504:6;522:5;577:15
fulsome (1)
462:1
function (1)
502:20
fundamentally (1)
578:8
further (8)
485:15;486:14;
487:14;489:5,8,9;
499:14;508:12
future (7)
462:20;470:18;
474:6;490:20;
496:14;497:20;
565:24

G

GAC (1)
553:22

game (1)
582:18
gap (2)
472:12;499:5
general (13)
437:17;443:17;
498:12,21,25;500:3,
8,17;503:20;505:17;
506:6;544:9,23
genesis (2)
450:13;468:7
gentleman (1)
435:18
given (9)
439:19;440:2;
488:5;510:12;521:9;
523:11,17;529:5;
558:14
giving (4)
458:12;475:8;
583:7;584:9
Glen (2)
562:19;572:18
Glen's (1)
563:11
global (3)
501:19;552:16;
561:5
globe (1)
557:15
goes (9)
438:23;439:17;
461:12;510:17;
522:21;532:18;
575:16;577:4;
581:11
good (19)
428:12,12;431:11,
21;432:13;463:24;
475:3;484:5;495:15;
500:11;523:4,5;
527:9;535:13;
539:13,16;540:12;
541:22;585:13
good-bye (1)
584:6
Google (1)
570:25
govern (1)
461:17
government (1)
519:14
governments (3)
553:2,17;554:2
Gramont (14)
539:9,13;541:15,
17,21,23;545:21;
579:9,12;582:12,20;
583:3,10;585:14
grant (1)
470:10
granting (4)
457:25;458:6;

459:3;468:1
Great (2)
444:10;450:10
greater (1)
551:6
group (9)
440:10;441:7,8,
13;470:1;492:11;
514:6,10;523:16
groups (1)
552:20
growth (1)
560:12
gTLD (41)
466:10,12,14;
468:14;505:1,4;
544:9,11;546:16,18;
547:15;548:4,11,17,
20,24;549:16,21,24;
550:6,13,22;551:17;
553:7,11;554:3;
558:23;562:1,2,8,15;
565:13,16,21,25;
566:11;569:9,22;
571:15;574:17;
580:15
gTLDs (1)
548:23
guess (1)
557:13
guide (1)
470:18
guidebook (28)
546:17,20;547:3,5,
7,10,13,20,25;548:5;
549:10,15;551:23;
552:6,7,10;557:5;
561:22;563:22;
570:1;573:21;574:1;
577:1,14,20;578:23;
581:5;582:5
guys (1)
572:22

H

half (5)
450:8;488:18;
490:6;516:15;536:3
Halloran (1)
572:1
hallway (1)
478:25
hand (8)
438:17;459:8;
460:16;469:11;
490:3;533:18;
566:11,13
handle (2)
503:3;583:23
handles (1)
501:14
handling (1)

553:11
happen (3)
452:19;462:3;
574:22
happened (11)
447:16;455:3;
456:20;474:11;
496:5;504:17;506:1;
513:1,2;531:9;539:5
happening (3)
506:14,18;538:24
happens (1)
514:7
hard (2)
462:13;582:15
hard-and-fast (1)
578:13
hardcopies (1)
542:13
hardcopy (1)
546:13
harm (1)
458:21
head (1)
545:16
heading (3)
548:16,18;570:3
health (3)
519:15;520:19;
521:7
hear (17)
429:5;432:13,15;
447:2,6;475:20;
480:18;489:21,24;
505:6;517:21;
522:18;527:11;
530:13;539:2,9,10
heard (8)
448:5,9;489:22;
503:14;506:3;
537:20,22;562:14
hearing (18)
428:4;430:1;
505:20;516:17;
518:23,25;519:22;
520:22;521:9;527:4;
528:22;533:6;535:9;
539:19;542:21;
582:13;583:12;
585:4
hearings (4)
430:11;505:19;
520:3;531:24
heavy (1)
522:3
held (4)
432:19;523:12,18;
567:19
help (5)
435:23;444:9;
503:5;505:22;
514:10
helpful (4)

430:2;530:8;
580:21;584:24
helpfully (1)
448:1
helping (2)
503:2;515:25
helps (1)
536:15
Hi (2)
536:4;572:22
highlighted (3)
443:25;553:6;
579:14
himself (2)
516:19,25
hire (1)
568:9
hired (2)
544:8;545:10
history (1)
468:8
hitting (1)
452:19
hold (4)
451:8,12;453:8;
455:18
holding (1)
556:10
Holdings (1)
556:11
home (1)
461:15
honestly (1)
548:13
Honor (1)
535:13
hook (1)
475:1
hour (3)
428:5;490:6;
582:23
hours (3)
582:21,24;583:1
houses (1)
448:14
hundreds (2)
554:16;577:24
Hutty (3)
480:12,14;495:11
Hutty's (1)
508:2

I

IANA (1)
450:7
ICANN (139)
429:8;434:20;
435:2,5,23;444:23;
445:4,10;446:19;
447:19;448:15,16;
449:9,14,19;450:7,9,
23;451:2,23;452:5,6,

7,11,21;453:4,5,11,
16;454:10,20;
455:14;456:13,18;
468:10,12;469:8;
470:18;471:20;
472:7,22;476:11,13,
14;478:23;480:25;
481:6;485:6;492:16,
17,18,24;493:3;
494:15,19,19;
496:15;497:5,8,23;
498:8,18;500:2,13,
18;501:2,7;502:1,22;
503:2;504:14,18,24;
514:3,4;515:8;
519:4;524:12;
528:13,15,23;
530:12,19;531:22;
532:1;540:22,22,25;
543:5,6,9,25;544:2,
7,15,16,19;545:8,22;
546:4,16;547:4,7,11;
548:10,16;549:22;
550:10,21;552:13;
557:23;558:8;562:4,
7,9,14,20;563:1,5,7;
564:19;565:15;
566:1,10,14,18,24;
567:8;568:17,23;
569:1;571:18;572:1;
573:6,21;574:11;
576:22;580:23;
582:7
ICANN63 (1)
526:7
ICANNorg (1)
549:25
ICANN's (18)
434:8;442:13;
443:4;454:13;
455:16;466:10;
468:9,17;491:25;
492:2;497:14;
518:24;547:21;
552:11;563:8;
570:23;571:5;
573:20
idea (6)
449:25;450:14;
460:13;484:5;
556:14;578:6
ideas (2)
457:11,13
identified (7)
458:20;463:9;
465:15;487:15;
526:8;574:7;575:4
identify (2)
454:6;530:13
identifying (1)
460:10
identity (2)
523:8;578:8

470:24;479:20,21;
490:3;514:15;517:4;
520:20;553:10;
584:22
issuing (1)
447:18
items (2)
433:4;436:20

J

January (2)
455:16,23
JD (1)
431:19
Jeff (1)
538:15
join (1)
439:2
joinder (3)
436:10;438:24;
471:1
joined (4)
500:13,18,19;
545:8
joining (2)
428:6;544:7
joint (12)
575:18,22,25;
576:3,5,12,13,15,19,
23;577:7;578:7
Jones (2)
434:7;443:3
Jose (4)
555:15;572:22,25;
573:1
Juan (1)
555:24
July (2)
432:20;533:8
June (10)
433:21;463:6;
494:6,9;544:12,14;
572:6,22;580:22;
581:3
junior (2)
500:21;504:17

K

Kane (2)
571:18,25
Kate (4)
434:7;435:4;
442:13;443:3
keep (2)
429:15;456:11
keeping (2)
453:7;540:14
keeps (1)
475:19
kept (1)
503:12

Kessedjian (18)
429:15;499:21,22,
23;500:10,15,22;
501:22;504:4;
505:24;506:19;
507:4;526:24;527:8;
537:25;545:11,12,20
Kessedjian's (1)
517:19
kind (4)
436:21;455:2;
501:4;504:2
kinds (1)
439:20
knew (5)
453:11;468:19;
469:22;498:23;
510:24
knowing (2)
506:8;563:15
knowledge (2)
506:7;568:21
knows (1)
436:19

L

laid (2)
461:11,17
language (39)
440:9,16;444:2;
448:11,18;457:23;
471:7,25;473:2,24;
474:4;476:6;484:21;
496:13,17;508:9;
510:7,15,19,21,25;
512:21;513:3,7,11,
17,20;514:1,10,12,
14,18;551:14;559:9;
570:11,16,18;
577:14;581:25
laptop (1)
431:1
large (3)
443:22;469:3;
554:15
largely (1)
448:18
last (14)
454:14;455:6,8;
468:24;482:14;
505:24;558:25;
560:10,18;564:17;
565:10;566:4,24;
572:23
lasting (1)
444:19
late (2)
456:12;540:12
later (4)
436:22;442:3;
530:9;584:14
Launch (2)

548:11;560:12
launched (2)
559:18;561:15
law (1)
519:15
lawsuit (4)
562:20,24;563:11,
13
lawyer (3)
562:11;568:13,16
lawyers (4)
434:20;435:2;
480:15;499:2
Le (7)
434:8;442:13;
443:4;476:19;
503:14,14;513:25
lead (4)
517:12;520:6,10;
521:21
leading (3)
487:17;524:7;
561:5
lead-up (1)
531:10
learning (1)
520:18
least (6)
448:20;450:25;
490:18;504:9;550:5;
556:10
leave (4)
446:11;469:16;
539:6;543:6
leaves (1)
583:20
leaving (1)
543:8
led (2)
498:11;503:10
left (4)
432:17;540:22;
543:5;546:4
legal (16)
434:8;442:13;
443:4;481:6;498:8;
500:22,24;501:1,3,8;
502:1,3;503:4;557:1,
14;558:4
length (1)
491:6
lengthy (4)
473:16,19;547:24;
558:18
letter (1)
476:7
LeVee (31)
429:7,21;430:7,12,
17,22;431:10,17;
516:8;517:21;
530:13;538:15,16,
17,19;539:2,4;
540:10,11,14;541:1,

5,8,11,14;542:1;
583:18,19;584:8,9;
585:2
level (3)
460:11;468:11,11
life (1)
504:14
light (2)
515:22;529:12
likelihood (1)
433:1
likely (4)
433:6;468:25;
476:17,19
likewise (2)
540:5;541:5
limit (1)
558:21
limitations (1)
497:22
limited (1)
565:16
limits (2)
438:8;452:16
line (5)
461:6;488:25;
515:22;525:7;539:6
lines (3)
441:11;445:19;
529:9
list (13)
433:4,15;434:3;
440:10,12,15;
442:23;457:10;
479:24;480:5;
510:25;523:14;
580:23
listed (4)
434:10;556:4,5,5
listen (1)
516:9
listened (1)
448:3
listing (2)
443:2,8
lists (4)
442:24;480:9;
555:15,23
LISTSERV (2)
440:10;480:3
literally (2)
428:14;542:14
litigation (8)
501:13;502:20;
503:16;504:19;
563:1,12,15;565:4
little (3)
448:2;460:23;
554:11
Litwin (44)
432:6,8,10,12;
490:5,14,19;491:13,
17,19;493:17;

499:13,19;507:16;
515:1,3,17;516:21,
24;520:10;523:7,21;
524:7;525:12,20;
527:25;528:2,5,8;
529:18;530:22;
531:19;533:3,21;
534:13;535:8,13,24,
25;536:7,23;537:9;
538:2,6
live (3)
520:1,1,2
Liz (4)
435:4;442:13;
476:19;503:14
LLC (2)
556:12,12
location (1)
520:5
long (5)
444:19;490:12;
491:8;558:17,19
longer (7)
447:17;450:22;
540:22,24;558:14;
577:20;578:17
long-term (1)
559:2
look (52)
430:18;431:7,7;
437:7;438:1;443:21;
444:2;446:5,21;
447:4,22;448:11,23;
451:6;454:13;
461:15;465:19;
468:6,10;469:10,21;
471:5,9;477:12;
479:2;488:22;
489:19;509:7,16,24;
525:10,25;546:6,8,
12;548:8,14,15;
552:4,8;554:9,19;
555:4;558:22;
563:20;569:24;
571:22;572:13;
573:17;575:9;584:1;
585:8
looked (3)
464:6;478:20;
484:14
looking (11)
438:13;461:3;
469:25;475:14;
479:22;486:8;
526:23;554:20;
555:3;563:21;
583:11
looks (1)
471:24
loop (1)
489:17
losers (1)
468:16

lost (1)
468:13
lot (9)
459:25;473:8;
501:4,14;502:14,25;
504:25;505:10;
578:11
lots (1)
549:10
LP (1)
556:12
luxury (1)
520:5

M

ma'am (1)
570:17
mailing (1)
433:15
main (1)
555:12
mainly (1)
428:18
maintains (1)
492:16
major (2)
462:2;502:13
makes (5)
455:17;470:21;
504:3;506:9;566:14
making (5)
459:9;469:6;
475:7;499:3;500:19
manage (6)
504:20;520:18,19,
20;548:1;578:24
management (3)
501:13;503:16;
504:5
manager (2)
544:9,23
managers (1)
551:5
manages (1)
501:12
manner (5)
519:3;561:8,17;
575:11;577:8
many (5)
501:23;522:5;
552:19;567:15;
577:19
marked (1)
435:15
market (1)
561:19
Marketing (4)
556:11;559:4,25;
560:19
matched (1)
507:1
material (13)

437:11,23;446:11,
13,18;458:20;460:5;
466:6;467:3;475:18;
512:24;564:8;577:2
materially (3)
486:9;577:6,8
math (1)
434:25
matter (20)
428:13,16;429:12,
20;430:10;446:12;
460:11;492:13;
498:14;500:25;
502:23;506:11,24;
508:4;514:9,11;
517:13;520:6;537:8;
563:9
matters (6)
428:8;431:16;
433:4;517:15,21;
532:6
may (59)
438:6,9;449:24;
450:8,15,25;474:25;
476:10;484:9,13,15;
485:13,14;489:4;
500:11;501:25;
502:8;506:5;507:21;
513:10;515:18;
516:4;517:22;526:2;
527:13,14;528:5,16;
529:24;532:23,24;
539:22;540:3;
541:18;542:2;
544:14;548:13;
553:12;555:2;566:5;
570:5,12;573:13,14,
14;574:10;575:10,
10,16,21;576:10;
577:11;578:2;
579:11,15;580:22;
582:6,17;584:18
maybe (5)
470:25;471:1;
505:21;539:9;
554:15
McAuley (67)
434:12,12,22;
438:14;439:9,17,25;
440:8,14;441:1,18;
442:14;443:5,18;
444:5;445:7,18;
446:3;447:22;448:8,
9;449:1,5;457:18;
460:24;464:5,16,19;
465:7,11,14;476:8;
477:5,16,22;479:15;
486:21;508:20,20;
509:2,2,12,19,21;
510:9;511:5;512:9,
14,20;513:2,6,7;
514:16;515:6,13;
530:5,5,8;532:16,20;

533:25;534:17,23;
535:19,22;536:12,17
McAuley's (8)
440:20;442:2;
443:14;449:4;
463:21;477:11;
507:22;536:3
mean (16)
444:16;445:9,15;
455:1;485:1;488:7,
20;493:15;500:22;
503:1;519:23;
550:24;553:24;
560:23;567:22;
579:17
meaning (2)
454:20;576:12
means (3)
451:3;475:7;
490:17
meant (1)
559:14
meantime (2)
429:18;430:5
measure (2)
498:1,24
mechanism (5)
553:9;554:1;
577:14,21;578:24
mechanisms (7)
451:7,9;453:7;
468:9;502:24;
552:10;577:22
meet (5)
449:12;454:1;
458:20;570:25;
571:6
meeting (46)
428:7;432:23,24;
433:10,16,17,19;
434:13;435:9;436:5;
442:3,12,18,21,24;
443:5,6,13,24;
450:19;452:12;
453:20;454:7,10,15,
19;455:6,9,11,12,14,
15,22;457:19;
463:23;478:24;
481:3;487:18;492:5;
493:6;498:17;499:7;
511:1,7;523:12,18
meetings (15)
432:19;433:9;
454:5,8,10,14,24;
478:25;479:9;
480:16;481:5;487:9;
523:9;526:4,8
member (11)
436:1;466:11,20;
478:16,20;479:14;
480:4;487:6;500:21;
545:12;582:14
members (17)

433:11;436:6;
448:13;467:1,14;
479:21;480:19;
481:8;508:13;
509:21;510:9;520:4,
11;523:11,17;
553:22;581:22
membership (1)
478:2
memory (3)
515:25;534:21;
535:12
Men (1)
495:15
mention (4)
473:7;508:24;
570:22;584:25
mentioned (7)
428:18;482:5;
508:1,8,12,18;
530:19
mentioning (1)
430:3
merits (1)
494:19
message (5)
428:14;429:7,19;
509:11;516:3
metaphorically (1)
533:18
microphone (1)
545:16
microsite (1)
549:24
middle (4)
435:17;478:23;
513:1;561:2
mid-January (1)
454:2
midnight (1)
478:7
might (31)
433:3;441:12;
442:20;445:3,7,11;
446:9,10;453:15;
458:24;460:10,18;
461:6;462:21;469:5;
480:7;484:17;
487:16;496:5;
502:17;503:22;
504:18;506:8,12;
512:6;531:19;
557:15,16;578:4;
579:6;581:20
minor (1)
496:5
minute (1)
536:14
minutes (14)
428:5,15;448:1;
490:7,14;491:10,12;
492:5;527:21;
534:12;538:25;

539:3;582:24,24
misleading (1)
564:21
mission (2)
552:17;561:14
mission/purpose (2)
550:13;558:8
misunderstood (1)
502:8
model (1)
569:25
modification (2)
471:17;563:24
modifications (3)
465:23,25;526:7
Module (5)
552:5;561:22;
563:2,22;574:1
moment (3)
521:17;525:17;
532:23
Monday (5)
464:9;495:25;
529:18;536:10;
573:4
monthly (1)
454:9
months (4)
432:20,25;531:1;
532:3
more (20)
431:8;444:2;
447:6;457:2;467:16;
471:5,23;472:4,15;
491:9;499:10;
503:15;504:19;
516:3;522:12,16;
527:5;533:1;575:12;
580:14
morning (15)
428:12;429:8,24;
431:21;432:13;
523:4,5;530:21;
531:17;539:17;
540:12;541:22;
583:22;584:6;585:4
Most (7)
476:19;478:24;
479:6;490:15;
500:20;561:5;
573:18
motion (2)
515:9;528:9
move (19)
444:4;446:24;
462:13;464:2;
471:23;472:4;
473:12;513:5;
514:10,13,18,21;
521:19;527:4,5;
528:22;529:6;
538:11;539:11
moved (1)

448:10
movement (2)
  483:13,15
moving (4)
  447:4;461:8;
  462:17;523:20
much (22)
  429:14;430:7;
  432:5;435:16;458:3;
  461:4;468:3;499:15;
  504:16;505:2;507:5;
  526:20;527:20;
  534:9;536:25;537:7;
  538:10;540:9;
  541:13;545:20;
  577:20;584:5
muck (1)
  475:4
mucking (1)
  475:7
multiple (3)
  489:11;552:2;
  578:15
must (5)
  452:17;547:8,10;
  577:7;583:8
mute (2)
  431:13;539:6

N

name (4)
  474:21;504:20;
  539:18;541:22
named (1)
  435:18
names (6)
  443:9;550:12;
  555:20;556:2,9,25
narrow (2)
  444:22;445:15
narrower (1)
  462:18
nature (4)
  472:16,22;503:8;
  529:6
NDC (13)
  531:21;544:20;
  555:7;558:14;559:6,
  14;560:4,14,23;
  561:7;568:21,25;
  572:7
NDC's (4)
  554:7,9;559:12;
  561:14
nearly (1)
  432:24
necessarily (5)
  446:13;479:8;
  484:1;505:9;552:19
necessary (3)
  447:8,9;579:6
need (20)

440:4;447:7;
454:6;460:4;462:2,
21;471:12;477:14;
486:20;505:13;
518:21;520:17,23;
521:4;523:25;524:5,
15;545:18;582:15,21
needed (5)
  471:18;501:5;
  503:23;506:25;
  525:6
needs (3)
  439:21;501:1;
  584:19
neither (2)
  494:10;570:5
nervous (3)
  449:10;450:2;
  498:19
never-ending (1)
  489:17
Nevett (2)
  572:7,17
Nevett's (1)
  573:15
new (42)
  444:20;450:7,12;
  462:15;466:10,12;
  468:14;474:1;492:9;
  505:1,4;512:23;
  513:3;516:12,12;
  533:7;544:9,11;
  546:16,18;547:15;
  548:4,11,20,23,24;
  549:21,24;553:7,11;
  562:1,8,15;569:9,22;
  571:15;574:17;
  575:17;576:11,23;
  577:7;579:16
next (26)
  437:7,19;438:5;
  440:15;442:6;452:4;
  453:6;454:2;455:14,
  15;457:1;469:25;
  485:12;497:11;
  499:9,12;508:21;
  511:1;520:9;521:15;
  530:9;538:13;
  560:17;575:9,20;
  584:17
Nicolai (1)
  555:16
night (1)
  585:13
nine (3)
  519:19,22;520:21
nonapplicant (1)
  576:4
non-COM (1)
  561:6
nondiscrimination (1)
  549:12
non-discrimination (1)

549:1
non-ICANN (1)
  480:14
nonquorum (1)
  433:10
nonsubstantive (2)
  529:5,8
nor (3)
  458:22;459:20;
  494:11
norm (1)
  470:9
normal (7)
  452:18;461:5;
  472:8;475:17,17;
  479:4,4
normally (1)
  518:10
norms (5)
  470:8;471:8,11,
  18;472:1
note (6)
  450:15;478:5;
  506:16;520:12;
  533:20;585:1
noted (3)
  449:6;499:25;
  533:22
notice (6)
  474:20;523:11;
  569:16,19;579:2;
  584:9
noticed (1)
  579:19
notifications (1)
  523:15
notify (1)
  564:18
notion (1)
  531:15
November (24)
  451:25,25;452:6,8,
  12,21;455:10;
  456:15,21,24;
  482:24;488:2;
  492:25;493:4,6,10,
  13,17,19,24;495:1;
  497:6,8,12
NTIA (1)
  428:21
NU (2)
  467:21;554:21
NUCO (1)
  556:12
number (8)
  451:12;467:18;
  468:23;519:9,10;
  523:8;542:15;575:7
numbers (5)
  434:4;435:13,14;
  525:15;542:12
numerous (1)
  546:22

O

o0o- (2)
  428:2;585:18
object (3)
  516:11,18;583:18
objected (3)
  429:4;495:11;
  528:23
objecting (2)
  429:9;517:1
objection (9)
  430:19;461:9;
  518:9;524:7;553:7;
  581:13,14,15,20
objections (1)
  520:13
obligation (2)
  514:13;568:6
obligations (6)
  503:7;566:6,11,
  12;567:12;568:19
obliquely (1)
  515:4
observer (1)
  504:9
observing (1)
  490:23
obtain (1)
  551:17
obvious (1)
  547:13
obviously (4)
  530:21;546:13;
  573:1;581:16
occasion (5)
  428:24;429:18;
  430:5,20;554:19
occur (1)
  574:10
occurred (4)
  455:16;512:12;
  533:25;580:21
occurring (1)
  493:4
October (131)
  432:23;433:22;
  434:2,7,23;435:8;
  436:5;437:2,15;
  440:15,20;441:19,
  22;442:4,8;443:13;
  446:22;447:25;
  449:8,15,19;450:6,
  19;451:1,7,10,23;
  453:3,19;454:15;
  455:6,22;456:1,3;
  457:8,18;461:16;
  463:15,15,22,22,23;
  464:3,9,11,19,23,25;
  465:5,6,15,20;
  467:25;476:2,7,9,15,
  16,23;478:2,8,12;

479:17;480:16,16,
20,20;481:1,9,17;
482:13;486:19;
487:11,25;491:24;
492:1,3;494:14,17;
495:3,4,18,22,25;
496:22;497:4;
498:18;499:7;
507:14,15;508:19;
509:4,14;510:3,3,12;
511:7,7,14;513:1,3,
4,24;515:7,14;526:5,
10,15;528:11,17,23;
529:6,10,18,20;
531:10;532:11,21;
533:22;534:1,17,22,
22;535:18,23,23;
536:11,13,18,19;
544:1
off (8)
  428:23;429:22;
  430:3;432:17;
  442:17;462:20;
  480:5;545:14
offer (1)
  563:17
officer (11)
  436:16,17;437:4,
  9;467:6;515:9;
  528:10;529:2;
  531:25;532:8;546:2
officers (5)
  551:5;556:3,24;
  557:11,17
off-list (1)
  528:10
often (2)
  502:5;504:23
once (3)
  489:15;574:11;
  580:3
one (62)
  428:13,17;433:21;
  437:18;441:8;
  444:18;447:15;
  455:6;456:3;457:2;
  463:10;468:12;
  471:2,3;474:10;
  475:8;480:14,17;
  482:21;484:3;495:8;
  496:9,16;497:15;
  498:5,12;503:4,6,13;
  506:11;507:22;
  515:7;516:16,20;
  517:2,9;519:9,21;
  522:16;540:19;
  548:20;558:11,13;
  560:9;566:11,16,23;
  567:7,22;570:23;
  572:18;575:11,13;
  576:5;578:6,13;
  580:8,14,14;582:14;
  583:24;585:5

one-counsel (1)
522:7
one-lawyer (1)
518:3
onerous (1)
577:17
ones (1)
554:17
only (27)
431:3;434:1;
443:6;452:9;453:6;
471:10;472:21;
480:7;493:1;496:9;
504:20;505:13;
511:22;512:6;517:9;
519:7;522:10;523:6;
529:6;536:15,23;
565:13,25;574:14,
18;575:1;580:8
oops (1)
579:21
open (3)
539:6;542:1,2
operate (3)
468:13;565:24;
568:2
operates (1)
559:19
operating (2)
546:2;577:18
operation (4)
502:19;503:19;
548:1;560:12
operational (3)
552:12,14;568:4
operations (3)
540:24;541:3;
567:19
opportunity (10)
447:11;460:7;
474:14;475:4;484:6;
487:6;518:1;521:9,
10;523:18
opposed (7)
446:11,17;454:20;
475:19;531:12;
534:23;535:21
opposite (2)
428:24;538:3
opt (3)
485:14,14;489:4
opted (1)
489:7
option (4)
557:18;561:4,6,16
oral (2)
430:9;564:6
orally (2)
465:16,17
order (7)
506:21;520:2;
522:16;534:20;
535:19;541:1;548:1

Ordinarily (2)
563:17;583:12
org (4)
449:9;454:11;
498:18;502:1
organization (9)
470:17;481:8;
501:1,3;503:3;
543:11;558:3;
578:17,20
others (5)
448:14,15;467:22,
22;558:24
otherwise (2)
496:17;505:15
out (46)
436:25;447:14;
450:6,9,21;456:7;
460:2;461:11,17;
463:3;466:10;
468:25;485:14,25;
486:6;488:1,16;
489:14;498:2;501:5,
10;508:19;509:4,12,
21;510:17;513:16;
519:2,6;521:3;
523:15,24,25;524:4,
5,14,19,20,25;525:2,
6;531:4;533:22;
573:8;579:22;
584:14
outcome (3)
460:20;467:3;
470:17
outcomes (1)
458:15
outreach (1)
513:22
outside (2)
454:10;474:17
over (19)
450:3;453:6;
460:1;464:6;478:20;
480:19;487:17;
505:22;508:21;
510:19;513:16;
525:24;532:25;
540:16;554:12,13,
15;558:17;578:21
overcomplicate (1)
532:6
overly (2)
462:9;518:14
overnight (1)
585:9
own (2)
429:25;540:15
owned (1)
572:17
owners (2)
556:18,20
ownership (3)
551:6;554:24;

578:3
owns (1)
556:13

P

pace (1)
519:16
package (1)
541:24
page (63)
433:13,24;435:8,
11,14,15,17;436:8;
437:6,7,7;438:1,4,5,
5,8,13;439:17;
440:24;442:23;
443:2,11;445:24;
446:21;447:24;
449:7;454:13;457:9;
481:19,21;482:4,11,
14,14;485:6;488:22,
23;525:14,15,18,19,
25;542:11,14,15;
546:14;548:15;
549:23;552:9;553:5,
5;555:17,19;558:7;
559:16;560:10;
563:22;565:3,9;
570:2,3;574:2;
579:10
Pages (8)
444:8;488:3,19;
552:5;554:13;
555:10;558:17,18
Panel (58)
429:25;430:14;
431:5,22;436:18;
438:3,6,7,9;447:14,
18;458:3;460:20;
466:3;467:12;468:3;
469:17;470:4;472:8;
473:5,21;474:5;
477:1,17,20;487:23;
507:2;518:17,24;
519:18;520:11;
522:19;527:15;
528:22,25;529:13;
530:2;531:5;532:6,
12;533:20,24;534:2,
18;535:16;537:6,8,
20;538:5;539:19;
540:5;545:13;581:6,
18;582:15;583:7;
584:10,13
panelist (1)
528:19
panelists (1)
475:3
panels (3)
458:18;459:16;
554:16
Panel's (5)
440:2;458:8;

459:11;534:6;535:5
papers (3)
475:13;492:21;
493:1
paragraph (34)
437:8;447:24;
482:14;507:10,13,
19;509:17,25;
525:19,20,25;
540:23;541:5;
546:15;553:6;
556:22;559:1,17;
560:10,17,18;561:3,
12;563:21;564:3,18;
565:3,9;568:5;570:3,
21;574:6;575:9;
579:14
paramount (1)
521:7
parent (1)
578:19
Paris (1)
499:24
part (20)
443:22;447:20;
450:13;486:10;
488:16;496:11;
498:21;499:4;
502:19;513:1;
528:24;543:10,17;
551:3;552:11;557:4;
558:8;561:22;563:2;
578:25
participant (8)
438:18,20;442:23;
504:9;510:18,21,24;
513:23
participants (3)
434:18,19;437:22
participate (31)
437:24;438:18;
439:14,19;440:5;
447:11;458:2,7,17,
19;459:9,15,17,24;
460:8;462:16;466:1,
13,21;467:8,13,15;
468:2;469:16;470:5,
10;474:1;477:7;
502:22;508:4;520:3
participated (2)
434:2;473:25
participating (3)
566:21,22,23
participation (17)
436:14;437:2,13;
438:2;444:6;445:21;
446:5;453:17;
458:13;459:1,4;
465:23;477:3,18,21;
488:23;552:19
particular (9)
454:19;463:18;
466:12;512:22;

551:17;554:3;
557:25;567:11;
575:3
particularly (8)
486:4,24;488:10;
515:22;516:13;
522:3;529:12;
545:16
parties (22)
429:1;446:9;
447:8,9;460:17;
470:20;472:9,25;
473:8,9;501:16;
512:23;518:15;
522:1,8;527:15;
533:8;567:16;568:1;
576:21;584:10;
585:10
parties' (1)
430:6
partners (5)
520:7;556:3,24;
557:11,17
partnership (1)
552:13
parts (1)
506:4
party (10)
448:14;461:1;
466:2;474:19;475:8;
522:3;570:5,6;
581:19,19
pass (1)
520:12
passage (2)
450:7;484:19
passed (1)
544:17
passer (1)
461:5
passing (1)
479:2
past (4)
428:5;470:19;
472:6;473:6
Pat (1)
571:25
pause (1)
518:5
pay (1)
569:11
PDFs (1)
542:13
pending (3)
451:9,15,19
people (30)
433:6;434:1,6;
443:9;445:5;447:20;
453:15;457:5;
459:23;460:4;
462:16;468:24;
469:4,16;478:24;
479:1,6,10,10;

497:21;498:12;
514:7,9;519:24,25;
523:16;551:11;
554:15;579:20,23
percent (3)
551:7;556:10;
578:4
perhaps (5)
429:12;431:8;
517:20;539:8;
545:15
period (23)
465:9;485:15;
489:5;507:14,15;
510:2;512:13,22;
513:13,20;524:1,6,
16;525:3;528:12;
535:23;540:15;
550:9;552:23;553:1;
569:16,19;575:4
permission (2)
517:14;570:24
permitted (4)
518:4;534:19;
535:9,17
person (6)
439:1;441:6,8,13;
470:1;580:14
personally (3)
546:9,12;555:2
persons (3)
444:25;507:23;
508:3
perspective (3)
557:6;568:4;582:4
pertaining (1)
543:15
Phase (8)
487:23;528:22;
532:7,12;533:5,21;
534:3,7
phone (4)
465:7;515:13;
516:1;538:23
pick (2)
471:14;505:22
piece (1)
436:21
Pierre (4)
431:21;535:15;
537:13;539:18
place (10)
453:25;471:18;
492:24;498:23;
514:21,22,24;
528:11;557:21;
577:8
placed (1)
580:18
places (1)
496:6
plain (1)
559:8

plan (3)
560:11;561:19;
582:18
planning (1)
431:5
plans (1)
561:17
played (3)
519:2,6;521:2
plea (1)
585:7
pleadings (1)
470:11
please (13)
431:19;432:9;
435:11;467:11;
491:17;522:25;
528:7;529:17;
530:12;537:15;
541:19;571:4;
579:12
pm (3)
464:12;536:17;
585:17
point (17)
430:6;450:5,16;
454:8;479:13;
496:12,18;500:21;
506:14;511:4;
515:17;516:13,19;
522:16;532:17;
580:16;582:2
pointing (1)
436:25
points (2)
514:4;530:1
policy (3)
501:15;552:11,17
portfolio (1)
559:23
portion (3)
577:25;578:2,23
portions (6)
550:10;551:24;
554:7,25;555:7;
559:10
posed (1)
517:16
position (9)
429:9;430:15,18;
500:2;519:11;544:6;
545:9,25;547:11
positions (5)
545:7;555:20;
556:3,9,25
possibility (1)
462:6
possible (5)
482:22;483:3;
490:19;512:19;
513:19
possibly (3)
469:18;470:18;

577:24
post (1)
550:10
posted (21)
433:12;463:1,11;
480:2;482:24;483:4,
12;485:5;486:13,23;
488:9;515:8;525:9;
528:12;549:22;
550:3,4;551:24;
558:9,12;574:24
posting (2)
492:4;552:3
posts (1)
574:11
potentially (1)
576:22
practice (3)
454:6,9;523:13
precedent (1)
447:19
precipice (6)
449:10,20;451:2,
3;453:5;498:19
precise (1)
502:15
predominant (1)
497:24
prefer (1)
546:12
preference (1)
546:13
prejudiced (3)
496:16;497:15;
498:6
preliminary (4)
428:8;429:20;
431:16;574:12
premise (1)
466:2
preparation (1)
481:5
prepared (8)
432:6;456:1,9;
464:1;503:3;513:5;
550:17;568:18
prepares (1)
502:20
preparing (2)
429:23;430:12
present (2)
473:11;521:10
presented (4)
495:7;507:19;
511:12;561:6
presenting (1)
514:11
preserve (1)
474:15
preserving (1)
552:14
president (4)
540:24;541:2,6;

544:24
pressure (7)
453:18,23;456:4;
519:1,3,7,17
presumed (1)
580:6
pretty (6)
456:17;458:8;
467:25;475:3;496:3,
18
prevail (1)
580:8
previewed (1)
448:1
previous (1)
468:15
previously (5)
463:1;468:25;
524:19,25;530:18
primary (3)
443:18;551:9;
555:15
principle (7)
482:9;483:2,10,
20;485:22;486:8;
550:20
principles (13)
461:11,17;482:5,
13,20,21;483:6;
484:9;548:6,25;
549:5,11;552:22
prior (8)
473:17,18,19,20,
23;533:5;544:14;
570:6
private (3)
470:16;567:9;
572:9
privately (2)
573:19,23
private-public (1)
552:13
privileged (1)
476:10
probably (10)
433:15;441:3;
443:24;451:21,22;
463:23;490:7;
517:23;521:19;
583:13
problem (3)
428:6;545:17;
584:21
procedural (2)
438:9;475:1
Procedure (6)
448:19;450:15;
503:25;504:1;519:2;
548:24
procedures (36)
436:17;437:4,9;
449:12;450:11,18;
453:24;467:6;475:2;

482:20,23,23;
483:14;484:10;
485:17;486:10;
487:13;494:4;
503:21;508:2;515:9;
520:15;523:24;
524:4,14,18;526:2,
14,15;528:9,19;
529:2;531:9,25;
532:8;574:2
proceed (7)
432:9;458:11;
463:14;522:25;
541:18,19;563:14
proceeding (15)
437:21,22;445:5,8,
13;447:1;460:8;
472:8;519:12,16,17;
531:12;534:5;
543:14,16
proceedings (12)
439:20;449:24;
451:13;460:6,12,20;
469:18,24;502:23;
503:22;563:7;
585:16
Process (33)
441:10;444:22;
447:17,21;468:14,
15;469:12,13;471:4,
20;472:23;474:17,
22;475:5,7;528:19;
546:21;548:17,21;
553:7,8,16,21;
566:18;569:6,8,20;
571:14,14,18;
574:11,20;581:4
processes (5)
468:15,18;503:10;
552:12,18
processing (1)
505:3
produced (5)
484:15;528:15;
532:1,3,9
product (1)
559:23
Professor (3)
429:14;517:19;
526:24
program (21)
466:10;505:1,4;
544:10,24,25;
546:16;548:1,5,11,
18,20;549:21;557:8;
562:2;576:25;
577:18,19;578:25;
579:5;580:20
prohibited (2)
566:25;567:3
projects (1)
501:20
promise (1)

483:8
PROMO (1)
571:8
promote (2)
548:5;549:11
promoted (2)
500:6;544:24
promoting (1)
552:15
promotion (2)
545:3;560:12
promptly (1)
430:10
proper (1)
477:2
properly (1)
483:18
properties (2)
436:16;560:1
proposal (5)
429:11;442:3;
443:14;444:4;
477:11
proposals (2)
457:10;463:10
propose (5)
440:9;462:24;
465:22;470:1;508:8
proposed (17)
433:20;437:11;
440:16;446:3;449:3;
465:25;466:5;
476:24;477:5,13,22;
478:16;479:15;
484:11;526:9;
550:13;558:23
proposing (11)
430:9;439:9;
441:18,23;443:19;
444:5;473:3;477:17;
486:22;514:17;
530:17
Prospective (1)
559:1
protect (4)
439:6,12;441:14;
448:17
prove (1)
569:1
proven (3)
559:2,5,11
provide (8)
439:10,18;476:5;
477:6;528:2;567:18,
20;579:1
provided (13)
437:1,14,18;
438:2;477:1;525:12;
530:18;542:20;
551:23;553:2;
564:20;567:23;
584:2
provides (1)

436:12
providing (1)
543:13
provision (2)
492:9;494:12
provisions (3)
465:24;495:9;
531:8
proviso (1)
577:2
public (70)
458:15;459:5;
460:1,3;463:3,9,12,
13;482:24;483:11,
14,23;484:17;485:5,
13,15,23;486:1,3,5,6,
14,23;488:1,14,17;
489:4,5,8,9,14,16;
523:25;524:1,5,6,14,
16,19,22;525:3,6,8;
546:21,22,24;
549:16;550:10,21;
551:9,16,18,20,25;
552:3,10,20,23;
553:9,13;554:6,25;
555:7;557:23;
559:10;567:8;
568:11;569:15,19;
575:4
publicly (4)
551:25;558:9,12;
574:11
publicly-available (2)
440:12;480:9
published (6)
546:17,22;580:4,
23;581:10;582:7
pull (2)
462:21;474:14
purpose (8)
471:19;507:20;
535:3;547:14;
551:15;557:2;
561:14;578:9
purposes (2)
445:16;552:2
pursuant (1)
541:25
push (1)
430:3
put (25)
430:18;446:25;
459:7;484:9;489:14;
497:24;498:1,4;
512:18;513:8;
514:22;518:20,21,
25;519:7,10;520:23;
524:19,25;525:2;
535:6;539:6;542:11;
580:3;581:8
puts (1)
430:15
putting (3)

497:19;521:25;
546:11

Q

quickly (1)
456:17
quite (6)
463:18;479:8;
481:17;490:21;
547:23;562:11
quorum (3)
433:3,9,18
quote (31)
436:13;437:9;
439:19;440:9;
449:19;468:1;477:7;
511:2;546:15,24;
547:15;548:16,18,
19;549:2;552:10;
556:22;559:1;
560:18;563:24;
564:3,9,18;565:11;
566:5;570:4;574:7;
575:10,20;577:4,10
quoted (2)
437:21;532:12
quotes (2)
438:6;468:16
quoting (1)
551:13

R

R-18 (1)
571:23
radically (1)
462:19
raise (10)
428:9,13;444:1;
490:3,3;518:9;
581:20;583:21,22;
584:7
raised (8)
445:7;488:14;
510:23;514:12;
520:13;530:20;
534:2,25
raising (2)
514:16;533:17
ran (1)
487:22
random (1)
436:20
Rasco (6)
555:16,23;556:4;
572:7,16;573:1
Rasco's (3)
556:15;573:13,17
rather (4)
446:4;541:24;
567:8;569:7
rationale (4)

481:22;487:2,14;
548:16
rationales (4)
487:5,10,11;
548:10
reach (2)
514:6;574:8
reached (3)
510:17;513:16;
520:25
reaction (1)
448:6
read (8)
429:18;430:6;
448:4;480:21;
492:21;502:9;
509:25;560:5
reader (3)
560:2,13,23
reading (11)
436:5,8;485:9,11;
510:8;559:13;
560:15;561:9,12;
563:8;573:13
readings (1)
496:19
reads (1)
436:12
ready (9)
453:6,11;456:13;
514:5;519:22;
522:14;527:18;
541:15,17
real (1)
583:12
realized (2)
457:23;458:12
really (17)
444:22;457:23;
461:23;462:17;
465:12;469:12,22;
470:21;472:24;
482:8;488:12;499:5;
502:21;503:24;
528:21;580:2;584:9
reason (7)
430:22;443:7,10;
461:6;474:18;
529:10;536:21
reasonable (4)
436:15;437:3;
448:6;456:16
reasons (2)
503:13;543:8
reassigning (1)
567:4
recall (77)
432:21;434:3;
440:17,22;443:15;
444:3;448:8;449:16,
17;451:12,21;452:2;
454:16;456:24;
457:5;464:4,7,13,14,

18,20;465:8,9,12,13,
18;476:22;477:5,22;
480:23;482:8;485:4,
18;496:9;500:6;
502:10,14;505:25;
506:8,15;509:5;
511:24;512:11,12,
15,17;525:22;
528:17;544:13;
548:13;549:8;552:1;
553:19;554:8,20;
555:2;562:17,19;
563:3,5,8,13,15,25;
564:2,10,22;565:6;
569:17,19;571:21;
572:10,11,12;
573:13,16,18
recalled (1)
554:22
recalling (2)
522:7;535:20
recast (1)
474:6
receive (1)
565:21
received (10)
443:23;478:7,13;
483:11;525:8;
546:23;550:11;
554:12;574:12,23
receives (1)
565:25
recess (3)
491:14;534:14;
539:15
recipient (1)
515:21
recognize (1)
509:10
recognizing (1)
496:4
recollect (1)
432:18
recollection (8)
445:25;452:15;
486:18;500:11;
536:16,20;555:6;
581:10
recommend (1)
464:1
recommendations (2)
492:12;503:11
reconnect (1)
539:11
reconsideration (10)
451:19;452:13,17,
19,22,24;453:10;
456:14;468:11;
497:6
record (29)
428:17;429:2;
449:24;478:22;
479:13,19;511:11;

515:10,17;516:13;
518:21,22;520:24;
521:14,20;528:4,14,
19,24;529:1;532:4,7;
533:7,10;534:16;
535:4;552:7,8;559:3
recorded (2)
434:15;443:11
recording (4)
436:23;442:17;
448:4,5
records (1)
480:7
recounting (3)
474:8,11,18
RECROSS-EXAMINATION (1)
536:6
redirect (8)
491:7;517:1,3;
518:9;521:19;
522:15,25;523:2
redline (5)
441:2;487:21,24;
488:5,24
reducing (1)
460:11
reevaluated (1)
577:23
reevaluation (7)
577:3,15,16,22,25;
578:1;579:6
re-evaluation (1)
577:10
refer (8)
445:24;447:23;
470:9;478:6;494:2;
510:4;525:17;
562:14
reference (5)
449:21;457:12;
522:10;559:12;
573:1
referred (8)
470:3,13;473:4;
503:15;508:15;
515:4;525:20;560:3
referring (8)
435:4;449:7;
498:20;511:19;
542:14;553:20;
559:6;575:1
refers (3)
533:21;556:18;
582:5
reflect (15)
459:15;471:18;
477:11;482:9;
483:12,15,22;484:8,
16,22;485:22;
487:12;508:9;
511:10;535:5
reflected (12)
458:17,21;477:23;

482:5,13;484:17;
488:5;490:18;495:6;
511:13;514:2;525:5
reflecting (2)
488:13;526:9
reflective (1)
524:21
reflects (3)
454:21;489:15;
532:15
reformulate (1)
524:10
refresh (4)
445:25;486:18;
515:25;536:16
refreshes (1)
555:5
refreshing (2)
534:21;535:12
regard (1)
534:6
regarding (9)
428:14;444:13;
457:13;480:10;
490:4;511:18;
514:17;524:13;
574:16
registrants (1)
558:24
registrars (1)
561:5
registries (1)
548:25
registry (15)
565:14,17;566:1;
567:19;568:22;
569:2,4,7,13,18,25;
570:24;571:6,10,19
regular (11)
433:8;454:14,18,
19,21;455:7,14;
464:15;502:20;
504:14;505:15
regularly (1)
454:4
regularly-scheduled (1)
454:7
reject (2)
467:7;576:23
rejected (2)
452:21;497:5
relate (1)
504:23
related (1)
551:11
relates (5)
439:4,12;466:9;
488:10;505:1
relating (2)
441:9;479:20
relation (1)
540:4
relatively (1)

473:21
relay (1)
538:23
released (1)
522:19
relevance (4)
529:11;531:3,17;
533:5
relevant (6)
437:11;440:2;
492:17;531:24;
553:10;557:21
relying (1)
532:7
remain (3)
482:21;483:2;
527:3
remained (1)
496:18
remaining (1)
577:6
remains (3)
501:12;537:6;
583:2
remember (7)
453:2;494:21;
512:2,3;517:18;
563:10;571:1
reminders (1)
479:1
remove (2)
453:6;477:17
removed (1)
537:13
removes (1)
475:2
render (1)
564:20
repeat (3)
510:5;529:17;
561:11
replaced (1)
492:8
replacing (3)
575:18;576:11,15
reply (1)
478:16
report (3)
428:20;545:7;
546:3
reported (2)
545:8,22
reports (1)
478:12
represent (13)
442:10,22;448:3;
451:14;452:3;
454:12;464:3;
467:19;485:11;
487:21;493:2;
531:16;541:23
representation (11)
433:23;434:17;

448:7,25;452:9;
456:23;463:25;
494:8;497:7;531:7;
552:16
representations (2)
564:4,14
represented (1)
494:17
representing (2)
453:4;517:12
represents (1)
486:12
reproaching (1)
490:23
request (32)
429:1;430:18,19;
431:3,4,8;433:3;
438:6;449:14;
451:19,24;452:13,
18,19,22,25;453:13;
456:15,21;467:7,8;
494:18;497:6;514:8;
521:13;522:18;
527:1;531:13;
534:15;557:2;579:4;
583:14
requested (2)
569:1;571:7
requesting (1)
469:20
Requests (4)
436:13;571:9,13;
580:9
require (4)
483:17,24;486:13;
577:3
required (10)
474:13;484:5;
485:12;489:3;492:3;
519:14;525:2;
548:21;549:15;
550:25
requirement (1)
478:15
requirements (3)
546:18;547:15;
549:11
requires (2)
486:3;558:9
resell (3)
566:5;567:12;
570:12
reselling (1)
567:1
reserve (1)
461:25
reserved (1)
492:13
resolution (9)
428:18;466:14;
481:10,13,17;482:4;
487:2,4;522:1
resolutions (4)

481:6,22;487:10,
10
resolve (13)
533:14;573:22;
575:6,11,14,17,22;
576:2,6,10;577:5;
579:15;582:6
resolved (3)
492:20;572:8;
573:19
resolves (1)
574:9
resort (2)
468:24;566:24
resources (1)
503:22
respect (5)
510:1;516:23;
548:25;554:3;
571:10
respects (1)
564:8
respond (10)
430:15,16;431:5;
494:19;529:9,23,25;
557:6,19,21
responded (6)
429:4;443:14;
447:23;449:5;464:5,
7
responds (1)
438:14
response (12)
429:23;430:13,23;
483:11;515:8;
536:12;553:17;
558:16,22;573:14,
15,18
responses (3)
558:14;567:18,20
responsibilities (1)
545:5
responsibility (2)
557:1;558:5
responsible (3)
498:9;499:2;
554:17
rest (2)
430:19;484:6
restructuring (2)
543:11;545:1
result (3)
474:4;485:13;
489:4
resulted (1)
519:3
resulting (1)
510:24
resume (3)
491:12;534:12;
583:9
return (1)
457:7

revealing (1)
476:13
review (6)
437:20;441:10;
488:3;516:3;536:14;
554:25
reviewed (7)
457:20;487:3;
543:2;547:23;554:6;
556:15;558:17
reviewing (4)
440:22;554:17;
559:9;583:15
revised (2)
477:10;546:23
revisions (5)
462:2;508:12,19;
509:3;512:25
revisit (1)
454:23
right (120)
430:21;435:3;
436:24;437:4,24;
439:1,13,18;441:7,
20;442:4;443:20;
445:20,22;446:6;
451:3;453:14;455:5;
456:17;457:4;458:1,
7,13,19,25;459:4,9,
13,17,24;460:11,22;
462:4,8;463:4;
465:24;466:1,12,15,
21,22;467:23;468:2,
5,13;469:15;470:4,
10;471:25;472:1,11,
25;473:1;474:1,15;
478:4,9;479:4,18;
481:23;482:2,7,15;
483:5,6,24;484:7;
485:10;486:1,17,17,
23,24;488:25;
491:25;492:6,10;
493:21;494:6,7,12;
499:7,10;506:16;
508:4,5,22,23;
511:16;521:8;543:5;
549:16,18,22;
551:13,17;555:13;
557:25;558:5;562:5,
24;565:1;566:13,19,
20;567:2;568:10;
569:13;571:9;
572:19;573:5,23;
575:7,13;577:10;
578:6,10;579:2;
581:24;583:2
right-hand (1)
525:15
rightly (1)
580:6
rights (17)
445:3;472:24;
565:13,15,21,25;

566:6,10,11,17,23;
567:7,11;568:1,5,18;
570:13
rise (1)
519:8
risk (1)
498:25
role (8)
438:19;501:17;
505:6;512:9;514:3,
9;540:25;541:6
roles (1)
503:4
room (8)
442:18;517:21,25;
519:24;527:14,22;
535:9;538:18
rough (1)
448:2
routinely (1)
448:21
Ruby (3)
562:19;563:11;
572:18
Rule (62)
436:9,12;437:1,14,
17;438:1;439:10;
441:5;444:6;445:20;
446:6,8,14;448:12;
457:13;462:8,13,19,
24;463:7;465:10,23;
467:5;470:22;
475:11;476:6,15;
477:10,23;479:16,
22;480:2;484:13,14;
485:16,25;486:21;
487:25;490:1;
491:21;495:8;496:7,
18,22;497:1,16,17;
511:6;512:21;
516:14;517:11;
518:3;519:13;522:7,
11;525:2,5;531:14;
532:4,10;534:5,24
rules (68)
433:20;436:6;
438:9;446:4;448:19,
19,20;450:1;453:19;
455:21;456:4;
457:12;458:17;
459:15;461:11,18,
20;463:16,17,18,23;
470:7,23;471:13,14;
475:24;478:1,8,17;
480:21;481:1,10,20;
482:1,7,12;483:3,4;
485:5;489:23;
491:22,23;493:23;
494:11,25;495:5,14,
17;496:21;497:1,19;
498:2,3,4;502:7;
506:3,22;507:1;
513:5;514:22,24;

518:15,17;520:14;
522:8;551:24;
576:25;578:13
run (4)
469:6,11;507:2;
572:23

S

safety (3)
519:15;520:19;
521:7
Sam (1)
510:17
same (14)
432:1;491:16;
494:23;495:1;500:9;
514:13;519:24;
542:14;560:24;
561:8,17,20;580:5,7
sat (1)
457:22
satisfied (1)
538:3
Saturday (1)
478:24
saw (4)
445:6;463:11;
533:17;580:24
saying (18)
429:8;439:25;
440:7;444:23;447:2,
3,7;461:14;463:25;
464:10;472:2;
475:19;500:12;
504:4;522:22;531:3;
545:23;561:15
scale (2)
528:15;559:24
scenario (1)
579:15
scenarios (2)
513:12;578:22
scheduled (7)
452:11;454:1,5,
10;455:9,22;582:13
scheduling (1)
583:21
scope (4)
438:2;459:4;
462:24;477:3
screen (3)
525:18;536:5;
546:11
second (14)
447:24;463:3;
483:10,19;486:1;
496:1;524:1,6,15;
525:3;534:11;539:8;
561:3;579:13
secondary (1)
561:4
seconds (2)

516:3;533:1
second-to-last (1)
437:8
secretary (1)
523:16
section (6)
446:25;447:5;
474:9;489:12;552:9;
566:25
sections (1)
526:8
security (1)
552:14
seeing (1)
521:6
seek (2)
569:12;575:21
seeking (3)
551:16;552:23;
569:6
seem (2)
467:24;514:25
seemed (1)
469:23
seems (1)
515:21
selecting (3)
575:17;576:11;
579:16
selection (1)
548:24
self-discretion (1)
467:12
Self-Resolution (1)
574:5
sell (2)
568:7,10
send (3)
429:24;440:14;
508:19
sending (2)
430:25;465:6
sends (2)
509:12;529:20
sense (8)
436:23;450:24;
455:17;462:20;
473:11;491:6;504:3;
507:2
sensitive (1)
512:18
sent (32)
428:14;429:7;
430:24;431:3,3,7;
449:14;457:18;
464:22,25;465:4;
476:7,8;478:1;
494:18;495:19,24;
509:4,20,21;514:5;
515:6,19;523:24,25;
524:4,5,14;532:20;
535:19;536:12,13
sentence (10)

558:25;560:10,18;
564:17;565:10,10,
11;566:4;575:20;
579:14
separate (3)
503:1;553:16,21
separating (1)
501:10
separation (1)
543:17
September (5)
432:20;456:8;
496:3;532:21;
571:24
sequence (2)
507:19;508:25
sequentially (1)
580:21
sequestration (1)
537:18
series (1)
523:22
serve (1)
445:1
service (2)
436:20;501:5
services (1)
501:16
session (1)
454:11
set (51)
432:16;444:25;
449:11;450:1,17,21;
451:8,11;453:8;
457:11;461:10,12;
462:13;466:11,15,
20;467:2,15;468:22;
469:3;470:22;
471:14;473:10;
477:25;479:22;
482:12;484:13,14,
15;491:25;492:2,20;
496:2,7;498:2,7;
508:14;526:1,6,9;
533:22;547:14;
574:20;575:7;580:1,
3,17;581:9,23;582:3,
9
sets (10)
469:2;546:17;
573:18,22,23;
574:12,23;581:4,9;
582:7
setting (1)
455:4
settlement (1)
574:8
seven (7)
434:18;435:1;
467:19;469:4,14,18;
581:1
several (1)
571:24

Barkley Court Reporters

several-paragraph (1)
430:24
shall (2)
437:12;441:7
shape (2)
447:11;464:7
shaped (3)
512:20;513:11,21
shareholders (4)
556:10,24;557:12,
17
shares (1)
556:11
short (4)
443:23;462:5;
483:22;512:21
show (4)
476:1;534:19;
535:10,17
shows (1)
454:14
side (5)
446:20;449:9;
450:9,23;501:15
side-bar (1)
526:25
Sidley (2)
475:23;476:3
sign (2)
543:12,15
signed (3)
539:22;540:20;
569:5
significant (46)
439:2,3,11;440:1;
441:9;444:14;
446:16;447:4,15;
458:9,13;462:12,25;
463:2,12;473:21;
474:16;483:17,24;
484:1,5,20,22;
485:12,16,23,24;
486:3,4,12,22,24;
488:6,7,9,21;489:3;
507:24;516:15;
523:23;524:3,23,24;
548:21;566:14;
577:16
significantly (6)
443:19;470:3,12;
473:4;475:12;
508:15
signing (1)
540:21
similar (8)
458:24;469:19;
560:11,13,20,24;
581:17,21
similarity (2)
581:6,18
simplify (1)
532:5
simply (4)

515:24;532:18;
551:13;565:23
single (2)
498:24;517:16
sit (4)
450:5;504:2;
512:1;533:11
site (1)
478:25
sitting (2)
512:15;520:9
situate (1)
510:7
situation (5)
448:13;460:15,16;
474:10;475:10
situations (3)
448:17;469:19;
484:12
six (4)
434:1;443:6;
579:19,22
size (1)
501:7
skip (3)
441:11;570:2;
572:5
Skipping (1)
558:7
sliding (1)
528:15
small (3)
434:4;469:2;536:5
smaller (3)
468:23;501:2,3
Smith (1)
538:24
solely (2)
470:11;477:20
solemn (3)
432:2,2;491:16
solemnly (1)
540:5
solid (1)
432:2
someone (20)
435:25;444:23;
445:7,12;448:21;
459:7;468:13;
474:14,17;475:14;
487:8,9;501:14;
505:20;506:8;
530:11,14;568:8,9,
10
sometimes (4)
442:19;448:2;
514:6;542:12
somewhat (1)
469:19
somewhere (1)
500:7
soon (1)
574:22

sorry (18)
428:22;441:21;
479:12;485:1,14;
493:17;498:15,16;
511:14;530:10;
537:13,16,23;
545:11,18;559:7;
570:2;579:9
sort (8)
472:22;497:25;
543:12;558:20,21;
568:18;580:20;
584:14
sorts (1)
503:23
sought (5)
531:11,22;533:9;
570:23;571:5
sound (1)
519:5
speak (9)
442:20;465:7;
476:12,14;512:14;
532:23,24;545:15;
562:12
speaking (4)
435:19;438:15;
499:24;509:6
special (10)
452:11;454:20,23;
455:1,10,13,22;
501:20;504:13;
519:25
specific (10)
440:9;452:15,16;
453:2;465:22;
480:23;503:8;513:7,
12;549:23
specifically (11)
443:21;444:2;
459:13;464:20;
466:4;512:11;549:8;
550:18;554:20;
573:15;574:18
specifics (2)
488:13;506:15
specified (2)
494:3;497:3
specify (2)
438:9;508:3
spoke (1)
512:9
spoken (3)
542:19,22,24
spring (1)
533:12
stability (1)
552:14
staff (1)
554:15
stage (2)
432:16;574:10
stakeholder (3)

501:15,19;552:20
stand (2)
490:3;491:6
standard (4)
461:23;524:3,12;
561:4
standing (7)
431:1;441:24;
443:20;444:5,6;
447:13;464:15
start (5)
452:4;462:18,20;
481:20;543:25
started (6)
460:9;544:16,19;
545:21;547:4,7
Starting (2)
457:21;499:21
starts (1)
438:15
state (5)
449:8;451:1;
460:5;482:20;576:1
stated (2)
549:6;565:17
statement (18)
430:24;459:7;
507:11;524:2;
539:21,25;540:1,18,
20,21;542:8;546:7,
15;556:16;557:12;
561:14;570:22;
571:2
statements (3)
564:4,6,13
states (5)
478:6;540:23;
548:19;552:10;
563:22
Stathos (3)
498:11,20;501:11
stating (1)
476:25
status (7)
433:23;444:15;
445:1;451:6;469:20;
505:16;507:23
statute (1)
497:22
stay (1)
527:14
steady (1)
496:18
stenographer (1)
432:2
step (2)
468:20;508:15
stepped (2)
501:5,17
Steps (3)
485:12;507:21;
509:1
still (11)

451:15;462:18;
490:12;494:10,14;
527:11,23;537:12;
546:25;561:12;
581:11
stopgap (3)
497:25;498:5,24
strategic (1)
501:18
strategy (4)
560:11,14,19,24
streamline (1)
469:24
streamlining (1)
460:12
strenuously (1)
495:12
stretch (1)
461:15
strictly (2)
532:10;535:2
strident (1)
520:25
strike (1)
449:4
string (25)
551:17;557:25;
574:1,6;575:3,11,17,
18,22;576:2,6,10,11;
578:9;579:16,16,23;
580:5,7,10,13;581:6,
17;582:1,6
string-confusion (1)
581:14
strings (5)
549:16;550:6,12,
22;581:16
stroke (1)
472:24
structure (1)
514:19
structures (1)
557:14
stuck (1)
517:10
studied (4)
547:10,21,25;
548:2
studying (1)
547:20
subject (12)
438:8;439:4,12;
450:2,3;498:14;
511:6;516:14,16;
523:20;526:3;577:9
subjected (1)
524:15
subjects (1)
441:10
submission (4)
430:9;550:9;
562:7,15
submissions (1)

436:19
transcripts (3)
433:12,18;543:3
transcript's (1)
448:2
transfer (4)
566:6;567:13;
570:12;571:6
transferring (2)
567:1,4
transition (1)
450:8
transmittal (1)
428:21
transmitted (1)
428:25
transparency (4)
549:1,12;550:20;
578:7
treated (1)
433:8
trend (4)
483:16;489:16;
524:21;525:7
trends (4)
463:9;484:16,21,
23
tricky (2)
457:24;467:25
tried (1)
457:22
true (4)
513:4;540:1;
564:7;575:8
truly (1)
577:23
truncated (1)
520:22
truth (3)
540:6,6,7
try (5)
468:18;471:22;
510:25;514:13;
573:8
trying (10)
456:10;461:16;
468:16;474:9;480:9;
510:7;520:19,20,21;
529:14
Tuesday (1)
464:25
Turcotte (11)
435:18,21;436:5,
12;437:8;438:6;
478:12;508:20;
509:12,20;513:25
turn (17)
435:11;437:6;
440:19,24;464:24;
481:21;507:10;
525:14,24;532:25;
545:16;546:14;
550:1;561:21;565:3;

573:25;574:2
Turning (3)
442:6;478:11;
482:4
two (24)
434:6;441:21,21;
450:6;451:9;453:7,
25;466:5;467:20;
470:20;483:10;
488:18;512:22;
519:10;526:4;529:9;
555:15;556:20;
558:17,18;560:9;
570:22;573:12;
582:24
two-line (2)
515:5,19
two-month (1)
573:5
type (4)
447:1;461:5;
550:12;581:13
typical (2)
468:19;557:16
Typically (5)
469:3;470:16;
479:9;505:17;
523:14

U

under (21)
432:1;445:9;
450:11;453:18;
458:25;467:5;
473:24;475:11;
491:16;498:2;519:1,
7,17;521:14;548:15,
18;562:1;566:25;
571:13;574:5;
584:20
underlined (1)
476:25
underlying (4)
437:21,22;458:18;
459:16
understands (1)
565:12
understood (5)
439:15;548:4;
575:21;577:15;
584:3
underway (1)
533:12
unexpected (2)
524:23,24
unfortunately (2)
517:8,17
uninformed (1)
517:8
unique (6)
435:13,14;444:25;
469:19;470:14;

472:22
unless (7)
483:16,23,25;
485:23;505:18;
513:15;521:17
unlike (1)
520:3
unquote (9)
547:17;552:21;
553:13;560:1;
563:24;564:21;
575:13,19,23
unreasonably (2)
570:7,19
untrue (1)
536:22
up (27)
429:15;438:17;
446:11;448:11;
455:20;459:8;
461:18;475:4,7;
487:17;490:3;
492:12;495:2;496:1,
18;500:25;501:9,21;
503:10;505:19,20,
22;513:21;516:23;
536:1;546:11;561:2
update (2)
504:13;547:6
updated (2)
482:23;485:17
updates (1)
505:16
updating (1)
468:8
upon (2)
486:11;547:11
urgency (1)
450:24
use (10)
468:8,17,20;
469:22;547:14;
558:1;560:24;561:7,
16,17
used (7)
448:18;535:2;
558:5;560:14,20,25;
561:8
users (2)
558:24;559:1
using (4)
436:19;439:21;
460:9;525:14
Usually (1)
538:24
utilize (1)
560:19
utilized (1)
557:6

V

variety (1)

578:21
various (4)
436:6;465:14;
554:16;577:22
Vaughan (1)
546:10
venture (9)
575:19,25;576:3,
12,13,15,19,23;
578:7
ventures (3)
575:22;576:5;
577:7
VeriSign (9)
434:22;435:2;
442:14;480:15;
531:22;533:17;
569:3;571:18,25
version (11)
456:7;464:2;
477:10;487:24;
488:1;523:23;
524:13,18,24;525:5;
547:5
versions (3)
525:9;526:2;
546:22
versus (1)
444:15
vice (3)
540:24;541:6;
544:24
view (7)
439:20;463:16;
497:24;517:8;525:1;
526:13,17
viewed (1)
568:4
violated (3)
444:23,24;445:11
virtual (4)
518:23;520:16,16,
17
visibility (1)
460:19
vocal (1)
490:2
volume (2)
488:8,20
vote (1)
487:7
voted (3)
480:25;482:1;
496:21

W

wait (4)
533:11;539:2,2;
579:19
waiting (4)
429:16;517:20;
538:18;540:15

waiver (4)
563:1,12,15;565:4
Wallace (3)
434:7;442:13;
443:3
Wallach (28)
491:5,8;516:4,6,7,
10,11;522:14,24;
523:1,3;524:9,11;
526:19,22;529:22;
530:15,15;531:3,6,
21;532:24;533:3,16;
537:1,3;538:7,8
warrants (1)
564:3
warranty (2)
564:10,13
water (1)
563:17
way (23)
443:8;447:11;
458:9;462:17;464:7;
469:1,21,23;472:3;
478:19,22;510:25;
519:1,6,11;521:1;
557:19;561:20;
562:18;566:21;
568:3;575:24;577:6
ways (2)
575:7,13
WEB (26)
451:8,11,20;
453:8;466:18,20;
467:2,18;492:19;
544:20,21;554:7;
555:7;559:22;
560:11;561:8,17,19;
562:21;568:22;
569:2;572:8,18;
579:19,20;581:2
website (8)
454:13;455:16;
485:7;515:8;528:13;
549:22,25;574:13
week (4)
519:21;530:9;
572:23;584:17
weekend (4)
464:6;478:21;
479:4;480:19
weeks (2)
453:6;550:8
week's (1)
511:1
welcome (2)
428:4;539:17
well-aware (1)
450:9
weren't (4)
450:20;480:8;
495:17;578:22
what's (3)
484:2;538:24;

555:4
whenever (1)
　527:18
whereby (1)
　575:11
Whereupon (4)
　491:14;534:14;
　539:15;585:16
whining (1)
　519:5
white (1)
　516:2
whole (2)
　447:17;540:6
whose (5)
　470:2;473:3;
　508:14;521:7;
　537:22
Wiki (5)
　433:13,24;435:8;
　443:2;528:13
Willett (12)
　527:5;538:13;
　539:16,21;540:4;
　541:12,22;542:5;
　582:22;583:6;584:1,
　11
wish (3)
　428:9;475:9;528:4
wishing (1)
　428:4
withdraw (1)
　575:12
withheld (2)
　570:7,19
within (20)
　443:23;447:12;
　452:16;454:20;
　459:25;468:10,12;
　469:3;471:20;
　474:22;475:13;
　476:12;492:4;
　494:23;503:21;
　504:8;514:3,18;
　524:12;543:11
Without (7)
　457:24;474:22;
　476:13;522:22;
　563:24;570:5;
　573:20
WITNESS (78)
　431:23;432:4;
　491:4;499:17;500:5,
　14,18,24;502:16;
　504:11;506:6,21;
　507:10,12,17,25;
　508:6,10,17,23;
　509:5,8,9,15,23;
　510:4;511:3,9,17,24;
　512:3,8,25;513:22;
　515:20;517:10,17;
　518:10;521:22;
　527:12,18;534:25;

535:7,8,11;537:10;
538:13,14;539:21,
23;540:1,2,8,10,13,
18,19,20;541:4,7,10;
542:8;545:19;546:6,
14;556:16;570:21;
571:2;579:18;580:2,
19;582:4;583:11,15,
20;584:2,3,22
witnesses (10)
　490:20;519:19,22;
　520:21,21;522:4;
　537:19,20,21;542:25
wizard (1)
　546:10
word (3)
　477:19;558:1;
　580:10
word-count (1)
　558:21
words (4)
　488:8;547:14;
　558:5;582:1
work (23)
　435:24;436:1;
　484:20;489:17;
　496:15;497:14;
　498:13;500:9;
　501:10,13,19,20,21;
　502:25;503:8,12;
　504:24;505:1,9,22;
　506:20;520:6;573:8
worked (1)
　544:3
working (12)
　450:17,24;456:6;
　461:19;462:5;
　476:19;498:9;
　504:18;505:8;506:2;
　509:13;543:25
works (1)
　503:15
workshop (2)
　454:11;493:4
workshops (1)
　455:18
world (4)
　454:23;520:17;
　521:25;580:4
worries (1)
　501:25
worry (1)
　502:13
wound (1)
　501:9
write (5)
　457:9,22;458:11;
　461:9;577:13
writes (1)
　441:6
writing (5)
　463:16;480:6;
　564:6,19;579:4

written (10)
　429:23;430:6,9,12,
　14,23;441:17;
　464:11;570:6;
　572:21
wrote (1)
　464:9

Y

year (3)
　450:8;457:3;
　516:15
years (5)
　450:6;453:25;
　577:19;578:21,21
years-long (1)
　546:21
yesterday (12)
　428:18;430:25;
　431:3;432:3,17;
　449:13;452:10;
　491:1;501:18;
　516:24;517:19;
　518:8

Z

zone (1)
　520:20

1

1 (7)
　482:14;544:1;
　546:7;552:6;555:10;
　564:3,18
1,900 (1)
　554:12
1.1.2.3 (1)
　552:9
1.6 (2)
　550:4,5
1:00 (2)
　464:12;536:17
1:03 (1)
　585:17
10 (10)
　481:15;490:7,14;
　491:9;494:17;
　525:11;555:4;565:9;
　566:25;568:5
100 (1)
　554:13
10th (1)
　449:15
11 (17)
　440:15,21;442:4,
　8;446:22;447:25;
　463:22,23;480:16;
　482:11;507:14;
　509:14;511:7;513:4;
　526:5;534:22;

571:22
11:00 (1)
　465:6
11a (1)
　557:20
11b (1)
　557:20
11c (1)
　557:20
11d (3)
　556:22;557:20;
　558:6
11th (13)
　449:8,19;451:1,8,
　10,23;453:3;457:8;
　498:18;499:7;510:2,
　12;535:23
12 (13)
　457:18;463:16;
　464:23;465:15;
　476:7,15;486:19;
　487:20;528:23;
　529:6;532:11;
　572:13;579:8
12th (12)
　464:4,12;465:5;
　467:25;511:14,15;
　513:24;528:17;
　529:10;533:22;
　536:13,19
13 (5)
　435:14;493:10,15;
　543:7,23
13th (4)
　452:6,8;493:13;
　497:9
14 (6)
　435:11,15;436:8;
　444:8,11;446:22
14th (3)
　456:21,25;497:12
15 (18)
　437:6;438:1;
　444:8,11;447:24,24;
　490:7,14;491:9,12;
　515:7;527:21;
　534:12,17;535:18;
　551:7;556:10;578:4
1-5 (1)
　552:9
15-minute (1)
　490:25
15th (6)
　464:9,19;515:14;
　529:18;536:11,18
16 (19)
　438:5;439:17;
　449:7,7;457:9;
　464:25;465:20;
　476:2,9,16,23;
　507:15;508:19;
　509:4;511:7;529:20;
　531:1;532:21;

534:22
1-6 (1)
　553:5
16th (4)
　451:25;510:3;
　534:1;535:23
17 (1)
　570:3
18 (6)
　465:6;494:6,9;
　506:1;558:11;570:2
185,000 (1)
　569:11
18b (2)
　558:16,22
19 (2)
　455:16;480:20
19th (3)
　455:23;478:2;
　495:18
1st (3)
　451:25;492:1;
　497:4

2

2 (7)
　482:14;485:22;
　488:22;546:14;
　550:8;555:17;
　563:22
2008 (1)
　432:20
2009 (3)
　500:13,19;504:18
2012 (6)
　468:14;544:1,12,
　14;580:23;581:3
2013 (2)
　501:7;581:11
2014 (4)
　500:3,8,9;550:5
2015 (1)
　571:24
2016 (25)
　482:24;483:5,12;
　485:5,21;488:2;
　489:3;492:1,3,8,25;
　493:4,10,13,19,24;
　495:2;497:4;500:7;
　506:1;525:9;554:22;
　572:6,6,22
2018 (43)
　432:24;433:22;
　434:2,23;435:9;
　440:15,21;442:8;
　449:25;450:25;
　451:10;454:14,15,
　17;455:6;457:19;
　463:7;464:19;465:1;
　487:25;491:24;
　494:5,6,9,14;495:3,
　4;507:14,15;515:7;

526:2,5,10,16;
529:19;531:10,21;
534:17;535:18;
536:11,13,18,19
2019 (9)
454:2;455:16;
457:3;528:18;
530:25;539:22;
540:20;543:7,23
2020 (2)
428:1;505:25
21st (5)
478:8,12;479:17;
480:20;495:22
22nd (1)
495:25
23rd (1)
533:8
25 (2)
453:20;481:17
25th (12)
454:15;455:22;
456:2,3;461:16;
481:1,9;482:13;
487:11,25;491:24;
496:22
26th (1)
456:2
28 (1)
482:24

3

3 (7)
428:4;435:7;
486:8;488:23;509:1;
548:8;555:10
30 (4)
492:4;516:3;
533:1;552:5
31st (1)
539:22
34 (1)
499:6
35 (1)
554:15
39 (1)
570:21
3rd (8)
492:25;493:4,6,16,
17,19,24;495:2

4

4 (19)
440:19;445:24,25;
463:7;480:2;485:25;
491:21;495:8;
496:18,22;497:1,16,
18;508:16;546:15;
550:1;555:19;565:3;
574:1
4.1.3 (1)

574:5
400 (1)
499:10
45 (1)
554:15

5

5 (9)
428:1;440:24;
442:7;446:23;457:8;
507:10;509:1;541:5;
552:4
50 (1)
582:24
57 (1)
481:19

6

6 (12)
452:12;455:10;
457:17;511:11;
553:5;558:7;561:22;
563:2,22;565:9;
572:22;574:2
60 (1)
481:21
62 (4)
482:4;525:17,18,
19
63 (2)
525:14,25
6th (3)
452:21;456:15;
497:6

7

7 (33)
436:9,12;437:1,
14;438:1;439:10;
441:5;444:7;445:20;
457:13;464:24;
465:6,10;476:6,15;
477:11,23;479:16;
486:21;487:25;
496:7;511:6;512:21;
516:14;525:2,5;
531:14;532:4;534:5,
24;559:16;560:10;
573:25
7.5 (1)
570:3
7:09 (2)
515:6;529:19
7's (1)
465:23

8

8 (4)
448:12;478:5;

509:8;561:21

9

9 (19)
432:23;433:22;
434:2,7,23;435:8;
436:5;437:2,15;
441:19,22;463:22;
478:11;480:16;
513:3;526:4,10;
548:15;569:24