

**IN THE MATTER OF AN INDEPENDENT REVIEW PROCESS
BEFORE THE INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION**

ALTANOVO DOMAINS LIMITED,

Claimant

v.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS,

Respondent

ICDR Case No. _____

EXPERT REPORT OF JEFFREY J. NEUMAN

July 3, 2023

TABLE OF CONTENTS

	Page
I. SUMMARY.....	1
II. QUALIFICATIONS AND DECLARATIONS.....	2
III. DISCUSSION.....	3
A. Origin and Development of the Domain Name System	3
B. The Birth of ICANN.....	6
(1) ICANN Evolution and the IANA Transition	8
(2) ICANN’s Authority Over TLDs	10
C. ICANN’s Early New gTLD Program	10
D. 2007 Final Report on the Introduction of New gTLDs.....	12
(1) Development of the Applicant Guidebook	15
(2) Agreement to Terms and Conditions/Avoiding Material Changes to Applications	16
(3) New gTLD Process/Applications for .Web	18
(4) Application Change Process	21
(5) String Contention/Auction of Last Resort	23
E. The Domain Acquisition Agreement	25
F. Violations of the Terms and Conditions (Module 6) and of the Applicant Guidebook.....	28
(1) Violation of Terms and Conditions, Section 1.....	28
(2) Violation of Terms and Conditions, Section 10.....	29
G. Board Resolutions 2023.04.30.12 – 2023.04.30.14.....	31
(1) ICANN Misstates the Direct Language of the Applicant Guidebook substituting the action language “any rights” with “all rights.”.....	31
(2) ICANN Creates False Equivalency Between Application Process And Assignment/Change Of Control In The Normal Course Of Business, And Thus Subverts ICANN’s Community-Developed Policies and Processes.....	33
IV. CONCLUSION	35
LIST OF EXHIBITS.....	37
LIST OF C EXHIBITS	42

I. SUMMARY

1. I have been asked by DECHERT LLP and CONSTANTINE CANNON LLP (collectively, “**Counsel**”), on behalf of Afilias Domains No. 3 (“**Afilias**”), a.k.a. Altanovo Domains, Ltd. (“**Altanovo**”), to provide my independent expert analysis and opinions on the Domain Acquisition Agreement entered into between VeriSign, Inc. (“**Verisign**”) and NuDot Co LLC (“**NDC**”), dated August 25, 2015 (the “**DAA**” or “**Agreement**”). More specifically, I was asked to provide an in-depth analysis and interpretation of the New gTLD Program Rules¹ (the “**Rules**”) and their underlying rationale, and on that basis to offer an opinion on whether the terms of the DAA violated the Rules in a manner that calls for the disqualification of NDC’s application for the .web generic top-level domain (“**gTLD**”).
2. I submit this report to offer my independent expert opinion regarding this matter.²
3. Based on my professional experience over the course of more than 25 years in matters relating to the Internet Corporation for Assigned Names and Numbers (“**ICANN**”), my work in the development of the New gTLD Program and the Rules, and my review of the DAA, it is my opinion that NDC’s entry into the DAA, as well as NDC’s failure to inform ICANN about the existence of the DAA or certain of its key terms and conditions, constituted a clear violation of not only the explicit provisions of the Rules, but the entire policy foundation upon which the New gTLD Program Rules were based. The DAA unquestionably amounted to an effective change of control over NDC’s application for the .web top-level domain. It allowed Verisign to become the actual applicant for .web in a manner that was never disclosed to ICANN or anyone else, including, most importantly, the other .web contention set members and the Internet Community. ICANN has overlooked this material violation of the Rules. By doing so, it has treated NDC more favorably than the other .web applicants, which is contrary to ICANN’s Bylaws, which require equal treatment and non-discrimination.
4. In the case of the DAA, the violation of the Rules occurred in part because of NDC’s failure to report the change of control over critical aspects of its application to ICANN through the established application change request process, which not only would have required a new evaluation of the new applicant’s financials, background, and business model for the TLD, but would have also: (a) afforded the Internet Community the ability to submit comments on the proposed change of control, and (b) provided transparency to each of the other applicants for the .web gTLD during the contention set resolution process. The foregoing assessment is based on my extensive involvement in various aspects of the

¹ For the purposes of this Expert Report, as instructed by Altanovo, I use the phrase the “New gTLD Program Rules.” The New gTLD Program Rules are comprised of the rules, policies, and procedures related to the New gTLD Program, including the gTLD Applicant Guidebook, the Auction Rules for New gTLDs: Indirect Contention Edition, the New gTLD Auctions Bidder Agreement, and the supplement to the New gTLD Auctions Bidder Agreement.

² All of the sources used in the drafting of this opinion are contained in the footnotes associated with the specific content set forth therein.

development of the Rules, as well as my involvement in preparing several top-level domains (“TLD”) applications.

5. Transparency, predictability, and fairness were three of the main lynchpins of the New gTLD Program upon which the Rules, and in fact the entire New gTLD Program, were based. The DAA effectively changed the applicant from NDC to Verisign and did so in complete secrecy. NDC’s lack of transparency about the change of control was a material violation of the Rules.

II. QUALIFICATIONS AND DECLARATIONS

6. I have been providing legal, policy, and implementation assistance and advice in the fields of internet governance, intellectual property protection, and domain name policy since the mid-1990s. In doing so, I have served in key business, policy, and legal roles in the domain name industry for more than 25 years. Currently, I am the Founder and CEO of JJN Solutions, LLC., a consultancy focusing on legal and policy services related to online brand protection, domain name management, intellectual property licensing, and enforcement.
7. I have served in a number of leadership positions within the ICANN community, including serving as the Chair of the gTLD Registries Stakeholder Group (2001 – 2004), a Council Member of the Generic Names Supporting Organization (“GNSO”) (2003 – 2004, 2010 – 2013) (including serving for two years as its Vice Chair on behalf of the Contracted Parties), and chair of the working group responsible for revising the policy development process (“PDP”), the process by which policy recommendations are developed and refined by the ICANN community in a “bottom-up”, open and transparent manner. PDPs are instrumental not only to promulgate rules and regulations for domain name registries and registrars which are implemented through contracts with ICANN, but also in the development and administration of essential operational programs such as the New gTLD Program for the application, evaluation, and delegation of new gTLDs.
8. With respect to the addition of new gTLDs, I was intimately involved in each of the rounds of new gTLDs since ICANN’s inception from a policy, legal, and business perspective. This included serving in several of the Working Groups prior to the first round of new gTLDs in 2000 (“**Proof of Concept Round**”), before leading NeuStar, Inc.’s (“**Neustar**”) business development team in its applications for the .biz TLD with ICANN and for .us with the United States Department of Commerce, which were awarded in October 2000 and July 2001, respectively. In 2005, on behalf of Neustar, I led Neustar’s team in drafting the technical documentation in support of Tralliance’s application for the .travel TLD, pursuant to which Tralliance entered into an Agreement with ICANN on May 5, 2005. Although Neustar was not the initial back-end operator for Telnic’s application for .tel, prior to its launch, Telnic switched to Neustar to operate its back end. I served on Telnic’s Advisory Board responsible for assisting Telnic during its launch phases.
9. In support of the 2012 New gTLD Round, in addition to leading Neustar’s policy team submitting comments to each version of the draft Applicant Guidebook, and on issues related to the Base Registry Agreement, the centralized Trademark Clearinghouse, and vertical integration for domain name registries and registrars, I served as the sole gTLD

Registry member of the Implementation Review Team responsible for advising the ICANN Board on Intellectual Property issues relating to the introduction of new gTLDs. I also served as a leader of the legal committee responsible for the development of the ICANN new base gTLD Registry Agreement, and more recently as a Co-Chair of the New gTLD Subsequent Procedures Policy Development Process Working Group (“**SubPro**”), responsible for the review of the 2012 New gTLD Program and for developing policy recommendations for subsequent new gTLD rounds. I also served as the GNSO Liaison to the SubPro Operational Design Phase being conducted by ICANN Staff.

10. A complete description of my background and qualifications to provide this opinion, as well as my current CV, are attached at **Appendix A**.
11. In forming the opinions expressed in this report, I have considered the materials referenced in this report as well as materials from *Afilias v. ICANN*, ICDR Case. No. 01-18-004-2702 (the “**First IRP**”), the submissions made by Altanovo and Verisign/NDC to the Board Accountability Mechanisms Committee (“**BAMC**”), and Resolutions 2023.04.30.12 through 2023.04.30.14 of the ICANN Board dated April 30, 2023,³ including the published rationale (the “**Board Resolution**”). Further, I have relied on my own knowledge and training; my nearly 25 years of experience in the domain name industry; my previous employment with domain name registry operators; my more than 25 years of participation in the ICANN (and pre-ICANN) community; and my previous and current work as an attorney who frequently works on numerous types of corporate legal agreements, including mergers & acquisitions, intellectual property licensing, information technology agreements, as well as a host of other forms of legal contracts.
12. I have discussed issues relevant to the matter with Counsel. However, the opinions expressed in this report are my own. My compensation is not related in any way to the outcome of this proceeding, and I have no other interest in this proceeding.
13. This report has been prepared solely for use in this matter. It should not be used for any other purpose without prior written authorization. I understand that it will be made available to the Independent Review Panel. I also understand that this report may be posted on ICANN’s website in accordance with Section 4(3)(u) of the ICANN Bylaws.

III. DISCUSSION

A. Origin and Development of the Domain Name System

14. The domain name system (“**DNS**”) is a fundamental part of the infrastructure of the Internet. However, the term DNS is actually used by different people in different ways and the only way to understand which way the term is being used is to look at the context.
15. For the purpose of this report, the term DNS refers to the structured namespace responsible for mapping characters and symbols to Internet Protocol addresses (“**IP Address**”). An IP

³ See Approved Board Resolution, Regular Meeting of the ICANN Board, Board Resolution No. 2023.04.30.12 (April 30, 2023) (unredacted), **Exhibit C-17**.

Address is a unique address that identifies a device on the Internet or a local network.⁴ In short, it is the address where devices, computers, or person(s) can find the content, websites, other persons, or other devices for which they are looking. The IP Address consists of a set of numbers/letters/characters mathematically produced and allocated by the Internet Assigned Names and Numbers Authority (“IANA”), a division of ICANN.⁵ An example of an IP Address would be 172.217.0.36 (if using IP version 4) or 2607:f8b0:4004:80a::2004 (if using IP version 6).

16. Recognizing that these strings of numbers are not easily remembered, the DNS namespace was created to map more easily readable names to the IP Address. In the example above, both IP Addresses represent <https://www.Google.com>.
17. In DNS nomenclature, the “Top-Level Domain” represents the characters to the right of the dot. In the [google.com](https://www.google.com) example above, the “.com” portion of the domain name constitutes the TLD. The portion of a domain name immediately to the left of the dot is called the “Second Level Domain” or “SLD”. In the above example, “Google” is the SLD in [google.com](https://www.google.com).
18. In general, when a person refers to a “Domain Name”, that person is referring to the combination of the TLD and SLD (e.g., [Google.com](https://www.Google.com)).
19. According to the most recent Verisign Domain Name Industry Brief, of the 350.4 million total domain name registrations, 133.1 million of those names are registered in one of the over 200⁶ country code TLDs (“ccTLDs”).⁷ The remaining approximately 217.3 million domain names are registered within a gTLD. Although there are currently over 1200 gTLDs, the .com gTLD is by far the largest TLD with more than 160 million .com SLDs registered.⁸
20. Entities that operate and manage TLD Registries have been recognized globally over the years as the providers of critical infrastructure upon which billions of Internet users rely for all of their essential needs and services. So much so, that TLD registries were formally added to the NIS Directive (EU) 2022/2555 within the European Union, which went into force on January 16, 2023, replacing Directive (EU) 2016/1148 (NIS2).⁹ The NIS Directive, as amended by NIS2, is the first piece of EU-wide legislation on cybersecurity,

⁴ Kaspersky, What is an IP Address – Definition and Explanation, <https://www.kaspersky.com/resource-center/definitions/what-is-an-ip-address> (last visited June 13, 2023), **Exhibit JJN-1**, p. 1.

⁵ *Id.*, p. 2.

⁶ See IONOS, A Comprehensive ccTLD List (September 16, 2023), <https://www.ionos.com/digitalguide/domains/domain-extensions/cctlds-a-list-of-every-country-domain/> (last visited June 13, 2023), **Exhibit JJN-2**.

⁷ Verisign, *The Domain Name Industry Brief*, Vol. 20, No. 1 (March 2023), **Exhibit JJN-3**, p. 2.

⁸ *Id.*

⁹ See, generally, ENISA (European Union Agency for Cybersecurity), NIS Directive, <https://www.enisa.europa.eu/topics/cybersecurity-policy/nis-directive-new> (last visited June 13, 2023), **Exhibit JJN-4**; Directive (EU) 2022/2555 of 14 December 2022, on measures for a high common level of cybersecurity across the Union, amending Regulation (EU) No. 910/2014 and Directive (EU) 2018/1972, and repealing Directive (EU) 2016/1148 (NIS 2 Directive), 2002 O.J. (L 333) 30, **Exhibit JJN-5**.

and its specific aim was to achieve a high common level of cybersecurity across the EU Member States.¹⁰ NIS2 identifies operators of essential services that are essential in cybersecurity risk management covering the providers of critical energy, financial, transport, health and digital infrastructure services. The inclusion of TLD registries in NIS2 is a clear recognition that the operators of domain name registration services is essential in protecting the critical infrastructure of the EU members states.

21. In the United States the new Cybersecurity and Infrastructure Security Agency (“CISA”) announced in March 2021 that it was taking over responsibility of the .gov TLD from the General Services Administration.¹¹ In its press release, CISA explained:

Because the TLD is central to the availability and integrity of thousands of online services relied upon by millions of users, .gov is critical infrastructure for governments throughout the country and all aspects of its administration have cybersecurity significance. Under the actions required by the Act, CISA will work to increase security and decrease complexity for our government partners.¹²

22. Not only are TLD Registries considered critical infrastructure, but owning the license to operate and administer gTLD Registries has proven to be an incredibly valuable asset. Verisign, whose main service is the operation of the .com and .net registries, reported revenue of \$1.42 billion for 2022¹³ with an operating margin of 66.2 percent. According to Verisign’s annual filings, although Verisign does provide registration services to a number of gTLDs and ccTLDs, “[s]ubstantially all of [its] revenues are derived from [its] operation of the .com gTLD under [its] Cooperative Agreement with the [Department of Commerce] and [its] .com Registry Agreement as well as [its] operation of the .net gTLD under [its] .net Registry Agreement.”¹⁴
23. The immense value of owning the exclusive license to operate a gTLD Registry is also demonstrated by the proposed acquisition of Public Interest Registry (“PIR”), which had the registry rights for the .org gTLD, by the private equity firm Ethos Capital¹⁵ for a

¹⁰ See European Parliament, Briefing: The NIS2 Directive: A High Common Level of Cybersecurity in the EU (February 8, 2023), **Exhibit JJN-6**.

¹¹ See CISA, Press Release: CISA Announces Transfer of the .gov Top-level Domain from U.S. General Services Administration (March 8, 2021), <https://www.cisa.gov/news-events/news/cisa-announces-transfer-gov-top-level-domain-us-general-services-administration> (last visited June 11, 2023), **Exhibit JJN-7**.

¹² *Id.*, p. 2.

¹³ See Verisign, Press Release: Verisign Reports Fourth Quarter and Full Year 2022 Results (February 9, 2023), **Exhibit JJN-8**.

¹⁴ Verisign, Annual Report (Form 10-K) (February 17, 2023), **Exhibit JJN-9**, p. 13 (emphasis omitted).

¹⁵ See Internet Society, Press Release: Ethos Capital to Acquire Public Interest Registry from the Internet Society (November 13, 2019), <https://www.internetsociety.org/news/press-releases/2019/ethos-capital-to-acquire-public-interest-registry-from-the-internet-society/> (last visited June 13, 2023), **Exhibit JJN-10**.

reported \$1.1 billion.¹⁶ PIR derives virtually all of its revenue from its operation and administration of the .org gTLD.

B. The Birth of ICANN

24. The Internet is an outgrowth of U.S. government investments in packet-switching technology and communications networks carried under agreements with the Defense Advanced Research Projects Agency, the National Science Foundation (“NSF”), and other U.S. research agencies. NSF established the NSFNET as a network for research and education purposes, and in 1992 the U.S. Congress gave the NSF statutory authority to commercialize NSFNET, which essentially formed what we consider the Internet today.
25. As part of its responsibilities, NSF solicited proposals for a variety of infrastructure services, including domain name registrations services. Effective January 1, 1993, Network Solutions, Inc. (“NSI”) was awarded a five-year contract to assume responsibility for all non-military domain name registrations on the Internet.¹⁷
26. On September 13, 1995, as the demand for domain names had moved from being mostly academic to overwhelmingly commercial institutions, NSF authorized NSI for the first time to charge a fee for each domain name registration.¹⁸ At that time, there were only 120,000 registrations, but by 1998 (when NSF’s agreement with NSI was supposed to expire), the number had reached over 2,000,000 registrations.¹⁹
27. In response to the rapid commercialization and growth of the Internet, and in recognition of the approaching expiration of the NSF Cooperative Agreement with NSI (“**Cooperative Agreement**”), the National Telecommunications and Information Administration (“NTIA”), an agency of the U.S. Department of Commerce (“DoC”), issued for comment, *A Proposal to Improve the Technical Management of Internet Names and Addresses*.²⁰ The proposed rulemaking, or “**Green Paper**,” was published in the Federal Register on February 20, 1998, providing opportunity for public comment. The Green Paper proposed

¹⁶ See Lina Saigol and Selin Bucak, “Ethos Capital Defends Deal to Take Private the Group that Registers Nonprofits’ Websites,” *Barron’s* (February 11, 2020, 10:38 am ET), <https://www.barrons.com/articles/ethos-capital-private-equity-pir-public-interest-registry-internet-51581435420> (last visited June 11, 2023), **Exhibit JJN-11**.

¹⁷ See ICANN, Cooperative Agreement between NSI and U.S. Government, effective January 1, 1993, Cooperative Agreement No. NCR-9218742, <https://archive.icann.org/en/nsi/coopagmt-01jan93.htm> (last visited June 13, 2023), **Exhibit JJN-12**.

¹⁸ See ICANN, Amendment 4 to Cooperative Agreement between NSI and U.S. Government (September 13, 1995), <https://archive.icann.org/en/nsi/coopagmt-amend4-13sep95.htm> (last visited June 13, 2023), **Exhibit JJN-13**, p. 1; see also NSF, Fact Sheet: A Brief History of NSF and the Internet (August 2003), https://www.nsf.gov/od/lpa/news/03/fsnsf_internet.htm (last visited June 13, 2023), **Exhibit JJN-14**, p. 2. Prior to 1995, domain name registrations were being subsidized by NSF.

¹⁹ NSF, Fact Sheet: A Brief History of NSF and the Internet (August 2003), https://www.nsf.gov/od/lpa/news/03/fsnsf_internet.htm (last visited June 13, 2023), **Exhibit JJN-14**, pp. 2-3.

²⁰ NTIA, A Proposal to Improve Technical Management of Internet Names and Addresses, Discussion Draft 1/30/98, <https://www.ntia.doc.gov/legacy/ntiahome/domainname/dnsdrft.htm> (last visited June 13, 2023), **Exhibit JJN-15**.

certain actions designed to privatize the management of Internet names and addresses in a manner that allows for the development of robust competition and facilitates global participation in Internet management.²¹ It also proposed for discussion a variety of issues relating to DNS management including private sector creation of a new not-for-profit corporation managed by a globally and functionally representative Board of Directors.²²

28. On June 5, 1998, the NTIA released a *Statement of Policy on the Management of Internet Names and Addresses*, which is generally referred to as the “**White Paper**.”²³ The NTIA in its White Paper stated, “[t]he new corporation’s processes should be fair, open and pro-competitive, protecting against capture by a narrow group of stakeholders. Typically this means that decision-making processes should be sound and transparent; the basis for corporate decisions should be recorded and made publicly available.”²⁴ Given the widespread dissatisfaction about the absence of competition in domain name registration services, the growth of commercial interests in the Internet, the desire to add new top-level domains, NTIA formally recommended the privatization of the domain name system “in a manner that allows for the development of robust competition and that facilitates global participation in the management of Internet names and address.”²⁵ As part of this revised policy statement, NTIA stated that the U.S. Government was prepared to recognize, by entering into an agreement with, and seeking international support for, a new, not-for-profit corporation formed by private sector Internet stakeholder to administer policy for the Internet name and address system (“**NewCo**”).
29. Among the core principles underpinning the transition of these functions to NewCo was: “Where possible, market mechanisms that support competition and consumer choice should drive the management of the Internet because they will lower costs, promote innovation, encourage diversity, and enhance user choice and satisfaction.”²⁶
30. The White Paper also suggested that the addition of new gTLDs should only be done at a deliberate controlled pace to allow for evaluation of the impact of the new gTLDs and well-reasoned evolution of the domain space.²⁷ It therefore recommended that the decision of if and when to allow additional gTLDs into the root be given to NewCo.
31. On November 25, 1998, the DoC executed a Memorandum of Understanding (“**MoU**”) with ICANN, a newly formed California not-for-profit corporation, to take on the

²¹ *Id.*, p. 5.

²² *Id.*

²³ Management of Internet Names and Addresses, Docket No. 980212036-8146-02 (June 5, 1998), 63(111) Fed. Reg. 31741 (1998), **Exhibit JJN-16**.

²⁴ *Id.*, p. 31750.

²⁵ *Id.*, p. 31749.

²⁶ *Id.*

²⁷ *Id.*, 31746.

management and operation of the Internet domain name system.²⁸ Though by no means was this a full transition of all of the desired functions, which would not happen for nearly two decades. Under DoC oversight, ICANN committed, among other things, to oversee “the policy for determining the circumstances under which new top level domains would be added to the root system[.]”²⁹ More specifically, the MoU required ICANN to “[c]ollaborate on the design, development and testing a plan for creating a process that will consider the possible expansion of the number of gTLDs.”³⁰

(1) ICANN Evolution and the IANA Transition

32. The original ICANN-DoC MOU from 1998 was extended and then replaced by a “Joint Project Agreement”³¹ and then an “Affirmation of Commitments”³² between ICANN and NTIA, with each new agreement progressively reducing the U.S. government’s direct involvement in ICANN’s technical coordination of the DNS. The Affirmation of Commitments was terminated in January 2017 through a process that is commonly known as “the IANA Transition.”
33. In the Affirmation of Commitments, ICANN agreed that it would “ensure that as it contemplates expanding the top-level domain space, the various issues that are involved (including competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection) will be adequately addressed prior to implementation.”³³
34. Although each replacement for the MoU acknowledged ICANN’s role in Internet governance and policy development, the performance of the “IANA functions” remained subject to a separate agreement with the U.S. Government, called the “IANA Functions Contract.”³⁴ This contract, originally awarded in 2000, delegated the responsibility of a number of administrative functions involved in maintaining the Internet’s root zone to ICANN. This included receiving delegation and re-delegation requests from ccTLD operators, as well as requests to modify contact information and nameservers associated with all top-level domains. Additionally, the IANA Function contract included the

²⁸ NTIA, Memorandum of Understanding between the U.S. Department of Commerce and Internet Corporation for Assigned Names and Number (November 25, 1998), **Exhibit C-6**.

²⁹ *Id.*, p. 3.

³⁰ *Id.*, p. 12.

³¹ Joint Project Agreement between the U.S. Department of Commerce and the Internet Corporation for Assigned Names and Number (September 29, 2006), **Exhibit JJN-17**.

³² Affirmation of Commitments by the United States Department of Commerce and the Internet Corporation for Assigned Names and Number (September 30, 2009), **Exhibit JJN-18**.

³³ *Id.*, ¶ 9.3 (at p. 4).

³⁴ *See, generally*, NTIA, IANA Functions Contract, <https://ntia.doc.gov/page/iana-functions-purchase-order> (last visited June 13, 2023), **Exhibit JJN-19**.

allocation of IP-addresses and the approval of the delegation of new top-level domains into the root.³⁵

35. Despite the fact that the IANA Functions Contract was primarily administrative in nature, the community knew that this critical agreement was essential to keep ICANN accountable for its actions (or lack thereof). When it was announced in 2014³⁶ that the United States was contemplating transitioning the IANA Functions Contract to ICANN, this not only meant that ICANN would be performing the IANA functions without any governmental supervision, but that the only remaining mechanisms to hold ICANN accountable for its actions (or lack thereof) would be those enumerated within its own Articles of Incorporation and Bylaws, subject to applicable international and local law. It was for this reason that in December 2014, a working group of ICANN community members, formed to propose enhancements to ICANN's accountability to the global Internet community.³⁷ More specifically, improvement of ICANN's accountability mechanisms was deemed:

integral to the transition of the United States' stewardship of the IANA functions to the global Internet community, reflecting the ICANN community's conclusion that improvements to ICANN's accountability were necessary in the absence of the accountability backstop that the historical contractual relationship with the United States government provided.³⁸

36. In 2016, after more than two years of work by ICANN's multi-stakeholder community on both improving the IANA Functions as well as strengthening ICANN's accountability mechanisms, the U.S. Government allowed the IANA Functions Contract to expire, signaling the formal transition of the IANA functions to ICANN.³⁹ With the expiration of the IANA Functions Contract, the U.S. Government no longer had any oversight or authority over ICANN, and therefore, ICANN became solely responsible for everything within its mission (including the promotion of competition of domain name registration services).

³⁵ NTIA, Purchase Order No. 40SBNT067020 (IANA Contract) (February 9, 2000), **Exhibit JJN-20**, p. 6.

³⁶ NTIA, Press Release: NTIA Announces Intent to Transition Key Internet Domain Name Functions (March 14, 2014), <https://ntia.gov/press-release/2014/ntia-announces-intent-transition-key-internet-domain-name-functions> (last visited June 29, 2023), **Exhibit JJN-21**.

³⁷ ICANN, CCWG-Accountability, Supplemental Final Proposal on Work Stream 1 Recommendations (February 23, 2016), **Exhibit JJN-22**.

³⁸ *Id.*, p. 5.

³⁹ ICANN, Announcement: Stewardship of IANA Functions Transitions to Global Internet Community as Contract with U.S. Government Ends (October 1, 2016), <https://www.icann.org/en/announcements/details/stewardship-of-iana-functions-transitions-to-global-internet-community-as-contract-with-us-government-ends-1-10-2016-en> (last visited June 13, 2023), **Exhibit JJN-23**.

(2) ICANN's Authority Over TLDs

37. Prior to 1999, the oversight over the one generic top-level domain name registry, NSI, was the sole responsibility of the NTIA, an agency within the DoC.⁴⁰ As stated above, this oversight was accomplished through the Cooperative Agreement, as amended.
38. In September 1999, other than with respect to a few aspects to ensure competition in the domain name space, particularly with respect to the .com TLD, responsibility and oversight of all gTLD registry agreements was transitioned to ICANN.⁴¹ In February 1999, NTIA notified NSI that ICANN was empowered to oversee a transition to registrar competition through the development of a Shared Registration System. In addition, ICANN became the sole entity responsible for entering into contracts for reassignments of existing gTLDs as well as the assignment, licensing, and renewals of any new gTLDs added to the root zone.
39. Although a number of policies governing the operation and administration of gTLDs were subject to the ICANN multi-stakeholder policy development process, at the end of the day, ICANN itself was, and still is, the singular negotiating body on behalf of the Internet community to enter into or amend registry agreements.⁴² ICANN's primary mechanism to carry out its mission and enforce policies against domain name registries and registrars is through the contracts it holds with those entities.
40. In other words, ICANN is the only entity that can enter into agreements with registries to operate and administer gTLDs, and as such, has both responsibility: (a) for ensuring that the promotion and maintenance of competition is implemented through the registry and registrar agreements, and (b) by virtue of being the only entity, to accredit third parties to serve as a registry or registrar.

C. ICANN's Early New gTLD Program

41. The Domain Name Supporting Organization (“DNSO”), the precursor to what is now known as the GNSO, issued a policy statement recommending that the ICANN Board should use a so-called “proof-of-concept” round to evaluate if and how future rounds for the introduction of new gTLDs should be conducted.
42. Although the DNSO Working Groups did substantial work related to the types of TLDs that could be selected, the qualifications for serving as a registry, and the policies that should be implemented by the registry, there was very little discussion relating to the process by which new TLDs should be selected. In other words, there was no effective

⁴⁰ Technically there were other so-called gTLDs, including .edu, .gov, .int, .mil, and .arpa, which were also managed by the U.S. Government, but they were (and still are) closed TLDs that were not made available to the general public. For the purposes of this opinion, they have been intentionally excluded.

⁴¹ At this time, NTIA retained the right to control certain terms and conditions of the .com, .net, and .org agreements, including pricing; structural separation of the .com, .net, and .org registries and registrars; etc. The eventual transition of most of these rights to ICANN are discussed in Sections III.B(2) above.

⁴² As discussed in Section III.B(2) above, while the NTIA did (and still does) retain the ability to approve of certain amendments to the .COM registry, this ability has been transitioned to ICANN to a large extent.

guidance given to the Board by the community on how it should select a registry in the event there was more than one applicant applying for a specific TLD.

43. In response to questions submitted by several applicants for new gTLDs in August 2000, regarding the process to be used by ICANN in the event there were multiple applications for the same string, ICANN provided little guidance other than the following:

FAQ #22: What is the procedure in the event of duplicate submission of a domain name by different parties? Which party would get preference? Would the fee be non-refundable for the party that is not selected?

Applications to sponsor or operate a TLD will be evaluated according to the Criteria for Assessing TLD Proposals, under which all aspects of the proposal (operational, financial, technical, etc.) will be considered. The particular TLD string requested is only one of many factors in the evaluation. Clearly, the same TLD cannot be established for both proposals; differences between the applications would be considered according to the criteria. The fee paid by a non-selected applicant would not be refundable.⁴³

44. In response to the 2000 round Request for Proposals (“RFP”), 47 applications were received for new gTLDs. Multiple applications were received for several strings. ICANN issued a report on the new TLD applications on November 9, 2000, which evaluated each of the applications and found that 22 applications (7 applications for open new gTLDs (including those for .biz and .web), 5 applications for special purpose TLDs, 4 applications for personal TLDs, 3 applications for restricted content TLDs (all 3 applied for .kids), 3 applications for restricted commercial TLDs, and 4 applications for new services TLDs (3 of which applied for .tel)) all “merited further review.”⁴⁴
45. After lengthy presentations by each of the applicants on November 15, 2000, the ICANN Board met on November 16, 2000, to decide on which of the applications would proceed to negotiations. As the official notes make clear,⁴⁵ there was no pre-determined mechanism for how the Board was to choose between applicants for the same string. As an attendee at that meeting working for Neustar in support of its application for .biz, I can best describe the selection process as chaotic. Although Neustar was selected to operate .biz, the process lacked any predictability or objectivity. During the lengthy heated debate the Board had not agreed on such important issues as: (a) how many TLDs it would select; (b) if it selected

⁴³ ICANN, TLD Application Process FAQs (updated October 10, 2000), <https://archive.icann.org/en/tlds/tld-faqs.htm> (last visited June 13, 2023), **Exhibit JJN-24**, pp. 8-9.

⁴⁴ See ICANN, Report on TLD Applications: Application of the August 15 Criteria to Each Category or Group (November 9, 2000), <https://archive.icann.org/en/tlds/report/report-iiib1a-09nov00.htm> (last visited June 13, 2023), **Exhibit JJN-25**.

⁴⁵ Harvard University, Scribe’s Notes: ICANN Board Meeting, November 16, 2000, Los Angeles, California, <https://cyber.harvard.edu/icann/la2000/archive/scribe-icann-111600.html> (last visited June 13, 2023), **Exhibit JJN-26**.

an application, was it selecting just one string from that application or was it approving all of the strings listed in that application; (c) would the Board accept more than one application from the same entity; and (d) if it were to accept only one application per entity, how would it treat situations where a selected applicant also served as a technical contractor for a separate application.

46. ICANN itself has acknowledged on numerous occasions public criticism about using a comparative evaluation process, including in its response to public comments advocating the use of comparative evaluation for the 2012 New gTLD Program. ICANN stated, “[c]omparative evaluations were used in the 2001 proof-of-concept round and the 2003 sponsored TLD round. Comparative evaluation was also used in the .NET rebid process and transition of .ORG. It was widely noted in the community that ICANN did not have a good experience with comparative evaluation in the .NET rebid process.”⁴⁶
47. ICANN and the Internet Community’s experience with the gTLD application, evaluation, and delegation process in these earlier rounds directly informed the rules development process for the 2012 round.

D. 2007 Final Report on the Introduction of New gTLDs

48. On August 8, 2007, after a nearly two-year policy development process intended to rectify the gaps and flaws of the prior selection rounds of new gTLDs, the GNSO Council released its Final Report on the Introduction of New Generic Top-Level Domains.⁴⁷ The importance of this bottom-up multistakeholder policy development process and its contributions to the rules and procedures ultimately implemented in the 2012 round of new gTLDs cannot be overstated. In fact, ICANN itself often states that “The [New gTLD] program has its origins in carefully deliberated policy development work by the ICANN community”, involving a “wide variety of stakeholder groups—governments, individuals, civil society, business and intellectual property constituencies, and the technology community”.⁴⁸
49. The 2007 Final Report was the culmination of dozens of teleconferences and face-to-face consultations that began in December 2005 with the release of the Issues Report,⁴⁹ which set forth an “early collation of issues that the GNSO wished to take into account in developing the Terms of Reference for future rounds.”⁵⁰ In addition to an initial public comment period on the Issues Report, ICANN also issued a Call for Expert Papers on

⁴⁶ New gTLD Draft Applicant Guidebook: Analysis of Public Comment (February 18, 2009), **Exhibit JJN-27**, p. 113.

⁴⁷ ICANN, GNSO, Final Report, Part A (August 8, 2007), **Exhibit C-18**.

⁴⁸ See ICANN, gTLD Applicant Guidebook, Version 2012-06-04 (the “**Applicant Guidebook**”), **Exhibit C-5**, Preamble.

⁴⁹ See GNSO Issues Report: Introduction of New Top-Level Domains (December 5, 2005), **Exhibit JJN-28**.

⁵⁰ ICANN, GNSO, Final Report, Part B (August 1, 2007), <https://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-partb-01aug07.htm> (last visited June 13, 2023), **Exhibit JJN-29**, ¶¶ 1 and 2.

January 3, 2006,⁵¹ which was advertised widely in the international press and “yielded eleven responses from a diverse range of stakeholders. The authors of the papers were invited to present their papers and participate in a question and answer session” in February 2006.⁵² The new TLD committee working on these issues met in person during that session to discuss selection criteria and to analyze lessons learned from previous TLD rounds. In March 2006, in response to the committee’s work, the ICANN Board indicated its intention to facilitate the implementation of new top-level domains.⁵³

50. The new TLD committee met again in Brussels in May 2006 to discuss, in further detail, the work that had been undertaken on refining the selection criteria and allocation methods.⁵⁴ A draft Initial Report was released on June 15, 2006.⁵⁵ This report was discussed during the ICANN Meeting later in June 2006 and a final Initial Report was released for public comment on July 28, 2006.⁵⁶
51. The new TLD committee held a third set of face-to-face consultations in late August 2006 to develop a set of draft recommendations and review the public comments received from the final Initial Report. It also met with the Governmental Advisory Committee (“GAC”) on several occasions before it released a set of draft Recommendations on September 14, 2006.⁵⁷
52. After a series of additional meetings, the new TLD committee released an updated set of Recommendations,⁵⁸ and continued their work with the release of an updated version of the Final Report.⁵⁹ From February 2007 through May 2007 a set of working groups continued with separate streams of work which were completed on June 1, 2007.⁶⁰

⁵¹ See ICANN, Announcement: Call for papers -- Policy Development for Introduction of New gTLDs (January 3, 2006), <http://icann.org/announcements/announcement-03jan06.htm> (last visited June 13, 2023), **Exhibit JJN-30**.

⁵² ICANN, GNSO, Final Report, Part B (August 1, 2007), <https://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-partb-01aug07.htm> (last visited June 13, 2023), **Exhibit JJN-29**, ¶ 4. For a full list of the papers, see ICANN, GNSO, Input Received on the Policy Development Process on New gTLDs (updated August 31, 2009), <https://gns0.icann.org/issues/new-gtlds/new-gtld-pdp-input.htm> (last visited June 13, 2023), **Exhibit JJN-31**.

⁵³ See ICANN, Board Activities and Meetings, Minutes, Regular Meeting of the Board (March 31, 2006), <http://www.icann.org/minutes/minutes-31mar06.htm> (last visited June 13, 2023), **Exhibit JJN-32**, p. 7.

⁵⁴ See ICANN, GNSO, Final Report, Part B (August 1, 2007), <https://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-partb-01aug07.htm> (last visited June 13, 2023), **Exhibit JJN-29**, ¶ 11.

⁵⁵ ICANN, GNSO Initial Report: Introduction of New Generic Top-Level Domains (June 8, 2006), **Exhibit JJN-33**.

⁵⁶ See ICANN, GNSO Initial Report: Introduction of New Generic Top-Level Domains (July 28, 2006), <https://gns0.icann.org/drafts/newgtlds-issues-report-01-28jul06.htm> (last visited June 13, 2023), **Exhibit JJN-34**.

⁵⁷ See ICANN, Draft GNSO Recommendation Summary (September 14, 2006), <https://gns0.icann.org/issues/new-gtlds/recom-summary-14sep06.htm> (last visited June 14, 2023), **Exhibit JJN-35**.

⁵⁸ See ICANN, GNSO new TLDs Committee, Draft Final Report (November 14, 2006), **Exhibit JJN-36**.

⁵⁹ See ICANN, GNSO Draft Final Report - Introduction of New Generic Top-Level Domains (February 13, 2007), <https://gns0.icann.org/drafts/GNSO-PDP-Dec05-FR13-FEB07.htm> (last visited June 14, 2023), **Exhibit JJN-37**.

⁶⁰ The Internationalized Domain Names Working Group (IDN-WG) released its Final Report on 22 March 2007 (ICANN, Outcomes Report of the GNSO Internationalized Domain Names Working Group (IDN-WG) (March

53. The Final Report was divided into two parts: (a) a comprehensive examination of the four Terms of Reference designed to establish a stable and ongoing process that facilitates the introduction of new top-level domains, and (b) supplementary materials used in the policy development process, including a series of Working Group Reports on important sub-elements of the committee’s deliberations.
54. Among the key principles approved unanimously by the GNSO Council with respect to the introduction of new gTLDs were: (a) “[n]ew generic top-level domains (gTLDs) must be introduced in an orderly, timely and predictable way[;]” and (b) “[a] set of technical criteria must be used for assessing a new gTLD registry applicant to minimize the risk of harming the operational stability, security and global interoperability of the Internet.”⁶¹
55. In addition, the GNSO Council also issued a crucial set of recommendations regarding the new gTLD process, which was also adopted unanimously by the GNSO Council (except where explicitly referenced). Among those recommendations were:
 - A. “The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency[,] and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.”⁶²
 - B. “Applicants must be able to demonstrate their technical capability to run a registry operation for the purpose the applicant sets out.”⁶³
 - C. “Applicants must be able to demonstrate their financial and organizational operational capability.”⁶⁴
 - D. “There must be a clear and pre-published application process using objective and measurable criteria.”⁶⁵

22, 2007), <http://gns0.icann.org/drafts/idn-wg-fr-22mar07.htm> (last visited June 14, 2023), **Exhibit JJN-38**). The Reserved Names Working Group (RN-WG) released its first report on 16 March 2007 (ICANN, GNSO Reserved Name Working Group Report (March 16, 2007), **Exhibit JJN-39**) and its Final Report on 23 May 2007 (ICANN, GNSO Reserved Names Working Group, Final Report (May 23, 2007), <http://gns0.icann.org/issues/new-gtlds/final-report-rn-wg-23may07.htm> (last visited June 14, 2023), **Exhibit JJN-40**). The Protecting the Rights of Others Working Group (PRO-WG) completed its Final Report on 1 June 2007 (ICANN, Protecting the Rights of Others Working Group (PRO WG), Final Report (June 1, 2007), **Exhibit JJN-41**).

⁶¹ ICANN, Protecting the Rights of Others Working Group (PRO WG), Final Report (June 1, 2007), **Exhibit JJN-41**, Principles A and D (at p. 107).

⁶² *Id.*, Recommendation 1 (at p. 108).

⁶³ *Id.*, Recommendation 7 (at p. 109).

⁶⁴ *Id.*, Recommendation 8 (at p. 109).

⁶⁵ *Id.*, Recommendation 9 (at p. 109).

56. Further, the GNSO Council issued a series of Implementation Guidelines intended to be used by ICANN for the New gTLD Program. The reason they were classified as implementation guidance as opposed to recommendations is that the Council recognized that certain of the guidelines may or may not be feasible to implement in exactly the way they were worded. However, the Council expected that any change implemented by ICANN should follow the “spirit” of the Guidelines. This included the notion that if there was contention for strings, applicants could resolve contention between themselves within a pre-established timeframe. On June 26, 2008, the ICANN Board adopted the GNSO policy recommendations for the introduction of new gTLDs and directed ICANN Staff to continue to develop and complete its detailed implementation plan and provide the Board with a final version of the Implementation proposals for the Board and Community to approve before the new gTLD introduction process was launched.⁶⁶
57. The foregoing is thusly described in the Applicant Guidebook:

The program has its origins in *carefully deliberated policy development work by the ICANN community*. In October 2007, the Generic Names Supporting Organization (GNSO)—one of the groups that coordinate global Internet policy at ICANN—formally completed its policy development work on new gTLDs and approved a set of 19 policy recommendations. Representatives from *a wide variety of stakeholder groups*—governments, individuals, civil society, business and intellectual property constituencies, and the technology community—were engaged in discussions for more than 18 months on such questions as the demand, benefits and risks of new gTLDs, the selection criteria that should be applied, how gTLDs should be allocated, and the contractual conditions that should be required for new gTLD registries going forward. *The culmination of this policy development process was a decision by the ICANN Board of Directors to adopt the community-developed policy in June 2008.*⁶⁷

(1) Development of the Applicant Guidebook

58. In accordance with the June 2008 Board resolution, ICANN Staff published a more detailed implementation proposal, which was released on October 8, 2008, entitled “Draft Applicant Guidebook, version 1” (“**AGB v.1**”).⁶⁸ AGB v.1, like all its successors, consisted of six parts (called modules).

⁶⁶ See ICANN, Board Activities and Meetings, Adopted Board Resolution (Paris, June 26, 2008), <https://www.icann.org/resources/board-material/resolutions-2008-06-26-en> (last visited June 14, 2023), **Exhibit JJN-42**, pp. 3 and 4.

⁶⁷ Applicant Guidebook, **Exhibit C-5**, Preamble.

⁶⁸ See ICANN, Archives, Applicant Guidebook, <https://archive.icann.org/en/topics/new-gtlds/dag-en.htm> (last visited June 30, 2023), **Exhibit JJN-43**, p. 2; ICANN, New gTLD Program: Draft Applicant Guidebook (Draft RFP) (October 24, 2008), **Exhibit JJN-44**.

59. Over the next 3.5 years, there were at least 9 other versions of the Applicant Guidebook, each of which was published for Community review and comment. In addition, many of the topics within the Applicant Guidebook were the subject of dozens of face-to-face Community sessions in which each of the stakeholders were asked to provide their input to lay the foundation for an open, transparent, fair, and predictable process.
60. Comments to these versions of the Applicant Guidebook were raised early on seeking clarity or proposing suggestions that applicants should be contractually bound to inform ICANN if any material changes arise in regard to their submitted application. In response to these comments, ICANN stated, “The current wording in the guidebook requires notice of changes to information, and makes it clear that if an applicant is found to have failed to notify ICANN of a material change, their application may be rendered invalid.”⁶⁹
61. This culminated in the approval of the final Applicant Guidebook (“**Applicant Guidebook**”)⁷⁰ in June 2011. As stated in the Applicant Guidebook’s preamble, the Applicant Guidebook’s goal was to “create[] an application and evaluation process for new gTLDs that is aligned with the policy recommendations and provides a clear roadmap for applicants to reach delegation, including Board approval.”⁷¹

(2) Agreement to Terms and Conditions/Avoiding Material Changes to Applications

62. When applying for a new gTLD, applicants have to agree to a set of terms and conditions that are found in Module 6 of the Applicant Guidebook (“**Terms and Conditions**”).⁷² In effect, applicants enter into a contract with ICANN that binds them to follow the New gTLD Program Rules. I address some of the most pertinent rules for the purposes of my analysis below.
63. As had been the case in all previous application rounds, the Terms and Conditions for the 2012 round required applicants to certify that the information contained within their applications is “true[,] . . . accurate and complete,” and that such information could be relied upon by ICANN in its evaluation.⁷³ Further, a violation of such a representation

⁶⁹ New ICANN, New gTLD Draft Applicant Guidebook Version 4, Public Comment Summary and Analysis (November 12, 2010), **Exhibit JJN-45**, p. 21.

⁷⁰ Applicant Guidebook, **Exhibit C-5**.

⁷¹ *Id.*, Preamble. Although the final Applicant Guidebook approved initially by the ICANN Board of Directors was version 7 (ICANN, gTLD Applicant Guidebook, Version 2011-05-30, **Exhibit JJN-46**), this version was modified in September 2011 (ICANN, gTLD Applicant Guidebook, Version 2011-09-19, **Exhibit JJN-47**), then again on January 11, 2012 (ICANN, gTLD Applicant Guidebook, Version 2012-01-11, **Exhibit JJN-48**), and finally on June 4, 2012 (the Applicant Guidebook, **Exhibit C-5**). All references to the final Applicant Guidebook shall be to the version existing as of June 4, 2012.

⁷² See Applicant Guidebook, **Exhibit C-5**, Module 6 (Top-Level Domain Application – Terms and Conditions).

⁷³ *Id.*, p. 6-2.

could serve as the basis for the immediate disqualification of their applications.⁷⁴ In previous rounds, this came in the form of a “Fitness Disclosure.”⁷⁵

64. Commencing with the first New gTLD round in 2000, it was evident that ICANN sought to prevent applicants for new gTLDs using bait-and-switch tactics designed to conceal the identity of, and information about, new gTLD applicants and applications. Having complete up-to-date applications not only allowed ICANN to evaluate whether a Registry Operator had the necessary skills, expertise, and resources to operate a critical piece of Internet infrastructure, but it also was the only way to allow the public to file informed comments about the applicant, its application, and its proposed use of the TLD.
65. The 2012 Terms and Conditions went further than previous rounds’ Fitness Disclosures and also required applicants to warrant:

that the statements and representations contained in the application (including any documents submitted and oral statements made and confirmed in writing in connection with the application) are true and accurate and complete in all material respects, and that ICANN may rely on those statements and representations fully in evaluating this application. Applicant acknowledges that any material misstatement or misrepresentation (or omission of material information) may cause ICANN and the evaluators to reject the application without a refund of any fees paid by Applicant. Applicant agrees to notify ICANN in writing of any change in circumstances that would render any information provided in the application false or misleading.⁷⁶

66. In addition, Paragraph 10 of the Terms and Conditions specifically stated that the “Applicant may not resell, assign, or transfer any of applicant’s rights or obligations in connection with the application.”⁷⁷ This prohibition in some form was contained in every version of the draft Applicant Guidebook.⁷⁸ This provision was added by the Community to ensure that there were no material changes to applications, which would potentially

⁷⁴ *Id.*

⁷⁵ For example, the Registry Operator’s Fitness Disclosure, which was required to be signed by all applicants during the original 2000 round of new gTLDs, states: “[b]y signing this fitness disclosure, the undersigned certifies that he or she has authority to do so on behalf of the registry operator. On his or her own behalf and on behalf of the registry operator, the undersigned certifies that all information contained in this fitness disclosure, and all documents attached to this disclosure, is true and accurate to the best of his/her/its knowledge and information. The undersigned and the registry operator understand that any material misstatement or misrepresentation will reflect negatively on any application of which this disclosure is a part and may cause cancellation of any delegation of a top-level domain based on such an application.” ICANN, TLD Application: Registry Operator’s Fitness Disclosure (August 15, 2000), **Exhibit JJN-49**, p. 2.

⁷⁶ Applicant Guidebook, **Exhibit C-5**, Module 6, ¶ 1 (at p. 6-2).

⁷⁷ *Id.*, Module 6, ¶ 10 (at p. 6-6).

⁷⁸ *See, e.g.*, ICANN, New gTLD Program: Draft Applicant Guidebook (Draft RFP) (October 24, 2008), **Exhibit JJN-44**, Module 6, ¶ 10 (at p. 6-4).

require re-evaluation, the imposition of additional fees, or even the delaying of the resolution of contention sets.⁷⁹

(3) New gTLD Process/Applications for .Web

67. In order to ensure a consistent, predictable, transparent, and fair application process, the application window opened for the submission of new gTLD applications on January 12, 2012 and closed on May 30, 2012.⁸⁰ In accordance with the Applicant Guidebook, following the application submission period, ICANN completed an “Administrative Completeness Check” and posted the public portions of each of the 1,930 applications received for public comment on June 13, 2012.⁸¹ The public portion of each of the applications included information about the applicant itself, the applied-for TLD, the type of TLD (e.g., standard, geographic, community, Internationalized Domain Name (“IDN”), etc.), relevant policies of the TLD, the back-end capabilities of the registry operator, and an overview of the technical operations of the registry. They also included the applicant’s mission statement, an explanation of why the applicant was seeking the string, and how it intended to market and operate the string.
68. As ICANN’s Bylaws state, the public notice and comment periods are a critically important element of ICANN’s Mission.⁸² More specifically, the Applicant Guidebook states, “ICANN is dedicated to[] preserving the operational security and stability of the Internet, promoting competition, achieving broad representation of the global Internet communities, and developing policy applicable to its mission through bottom-up, consensus-based processes. This necessarily involves the participation of many stakeholder groups in a public discussion.”⁸³ According to the Applicant Guidebook, evaluators perform due diligence on the application comments and take the information provided in these comments into consideration.⁸⁴ As the Applicant Guidebook states: “In the new gTLD

⁷⁹ This principle is illustrated in ICANN’s response to the question of whether those in contention sets could be allowed to combine their applications into new joint ventures and avoid an ICANN Auction of Last Resort. Although, as discussed below, private resolution of contention sets was encouraged, “material changes in applications (for example, combinations of applicants to resolve contention) will require re-evaluation. This might require additional fees or evaluation in a subsequent application round. Applicants are encouraged to resolve contention by combining in a way that does not materially affect the remaining application. *Accordingly, new joint ventures must take place in a manner that does not materially change the application, to avoid being subject to re-evaluation.*” Applicant Guidebook, **Exhibit C-5**, Module 4, Section 4.1.3 (at p. 4-6) (emphasis added).

⁸⁰ *See id.*, Module 1, Section 1.1.1 (at pp. 1-2 – 1-3). Although the application period was originally set to expire on April 12, 2012, this time period was extended until May 30, 2012 due to a technical glitch with ICANN’s TLD Application System.

⁸¹ ICANN, New Generic Top-Level Domains, Announcement: New Top-Level Domain Name Applications Revealed, Historic Milestone for the Internet’s Domain Name System (June 13, 2012), <https://newgtlds.icann.org/en/announcements-and-media/announcement-13jun12-en> (last visited June 13, 2023), **Exhibit JJN-50**, p. 1.

⁸² Bylaws for Internet Corporation for Assigned Names and Numbers (as amended June 2, 2022), **Exhibit C-14**, Section 3.6.

⁸³ Applicant Guidebook, **Exhibit C-5**, Module 1, Section 1.1.2.3 (at p. 1-5).

⁸⁴ *Id.*, Module 1, Section 1.1.2.3 (at p. 1-6).

application process, all applicants should be aware that comment fora are a mechanism for the public to bring relevant information and issues to the attention of those charged with handling new gTLD applications.”⁸⁵

69. Of the 1,930 applications received by ICANN for new gTLDs, there were 7 applications for .web.⁸⁶
70. According to ICANN’s Public Comment database, there were a total of 78 comments received for the 7 applications for .web.⁸⁷ Public comments were submitted about both the applicants for .web as well as about the specific policies and services described in the .web applications. For example, there were a number of comments objecting to Radix Registry’s background screening results,⁸⁸ Google’s application for .web,⁸⁹ Donuts’ introduction of the Donuts Protected Marks List for each of its extensions including .web,⁹⁰ as well as comments calling for the inclusion of additional rights protection mechanisms in NDC’s and Afiliás’ applications for .web.⁹¹ No GAC Early Warnings were submitted regarding

⁸⁵ *Id.*, Module 1, Section 1.1.2.3 (at 1-6).

⁸⁶ See ICANN, New Generic Top-Level Domains, Announcement: New Top-Level Domain Name Applications Revealed, Historic Milestone for the Internet’s Domain Name System (June 13, 2012), <https://newgtlds.icann.org/en/announcements-and-media/announcement-13jun12-en> (last visited June 13, 2023), **Exhibit JJN-50**, p. 1; ICANN, Contention Set Status for .WEB/WEBS (as of May 26, 2023), **Exhibit C-15**, p. 2. There were also two applications submitted by VistaPrint Limited for .webs. *Id.* Web.com challenged VistaPrint’s applications based on string similarity to its application for .web. It prevailed in that objection on January 24, 2014. See *Web.com Group, Inc. (Objector) and Vistaprint Ltd. (Applicant)*, New gTLD String Confusion Panel, ICDR Case Nos. 50-504-221-13 and 50-504-246-13 (Consolidated), Expert Determination (January 24, 2014), **Exhibit JJN-51**. As a result, although not in contention with the six other applications for .web, it was determined that if Web.com prevailed in contention resolution for .web, there would have to be a second contention resolution process between Web.com and Vistaprint’s applications for .webs. For the purpose of this opinion, I will not be including the .webs applications in the discussion of the .web contention set.

⁸⁷ ICANN, New Generic Top-Level Domains, Application Comments, <https://gtldcomment.icann.org/applicationcomment/viewcomments> (last visited June 13, 2023) (search by “string” and enter WEB in the field).

⁸⁸ See, e.g., ICANN, New Generic Top-Level Domains, Application Comment Details, Comment ID ywu8llsb, by Paul McGrady (September 26, 2012, 23:29:09 UTC), <https://gtldcomment.icann.org/applicationcomment/commentdetails/11694> (last visited June 13, 2023), **Exhibit JJN-52**; ICANN, New Generic Top-Level Domains, Application Comment Details, Comment ID tkudyfhj, by Paul McGrady (September 26, 2012, 23:32:07 UTC), <https://gtldcomment.icann.org/applicationcomment/commentdetails/11695> (last visited June 13, 2023), **Exhibit JJN-53**.

⁸⁹ See, e.g., ICANN, New Generic Top-Level Domains, Application Comment Details, Comment ID ycupgfw6, by Ivan Smirnov (September 24, 2012, 03:00:27 UTC), <https://gtldcomment.icann.org/applicationcomment/commentdetails/7904> (last visited June 13, 2023), **Exhibit JJN-54** (comment about Google controlling a generic extension).

⁹⁰ See, e.g., ICANN, New Generic Top-Level Domains, Application Comment Details, Comment ID mjclg90q, by Bill Millner (September 25, 2012, 21:53:08 UTC), <https://gtldcomment.icann.org/applicationcomment/commentdetails/9442> (last visited June 13, 2023), **Exhibit JJN-55**; ICANN, New Generic Top-Level Domains, Application Comment Details, Comment ID fo2imfq7, by Mette Andersen (August 8, 2012, 08:01:41 UTC), <https://gtldcomment.icann.org/applicationcomment/commentdetails/3254> (last visited June 13, 2023), **Exhibit JJN-56**.

⁹¹ See, e.g., ICANN, New Generic Top-Level Domains, Application Comment Details, Comment ID x77a6fp4, by Ewa M Abrams (August 7, 2012, 21:09:23 UTC), <https://gtldcomment.icann.org/applicationcomment/commentdetails/3123> (last visited June 13, 2023), **Exhibit JJN-57**; ICANN, New Generic

any of the seven applications posted for .web, although the GAC had issued several Early Warnings on competition grounds regarding other applications.⁹²

71. Concurrent with the public comment period, ICANN began its Initial Evaluation on each of the applications.⁹³ Initial Evaluation included reviews regarding the string selected by the applicant as well as a comprehensive review of the applicant itself, to determine whether the applicant “has the requisite technical, operational, and financial capabilities to operate a registry.”⁹⁴ More specifically, background screening of the applicant consisted of a general business due diligence and criminal history check as well as whether the applicant had a “history of cybersquatting behavior.”⁹⁵ During the Initial Evaluation, most Registry Operators received “Clarifying Questions” seeking additional clarifications on subject matter sought by the evaluators. One of these subjects involved the specific “Registry Services” being offered by the applicant, including any “other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator.”⁹⁶ As described above, the additional Registry Services an applicant could provide was a common focal point for public comment.⁹⁷ Not only were additional registry services different amongst Registry Operators, but they were also highly dependent on the back-end registry system used by the Registry Operator. For example, as detailed in NDC’s application for .web, its back-end services provider, Neustar, offered an extensive abuse mitigation program (described in NDC’s response to question 28 of its

Top-Level Domains, Application Comment Details, Comment ID v53v42i9, by Carol E Robbins (August 8, 2012, 19:08:06 UTC), <https://gtldcomment.icann.org/applicationcomment/commentdetails/4124> (last visited June 13, 2023), **Exhibit JJN-58**; ICANN, New Generic Top-Level Domains, Application Comment Details, Comment ID wt3qpy7q, by Carol E Robbins (August 8, 2012, 18:14:10 UTC), <https://gtldcomment.icann.org/applicationcomment/commentdetails/3885> (last visited June 13, 2023), **Exhibit JJN-59**.

⁹² See, e.g., ICANN, GAC, Work Efforts: GAC Early Warnings (last updated February 7, 2022), <https://gac.icann.org/activity/gac-early-warnings> (last visited June 13, 2023), **Exhibit JJN-60**.

⁹³ The order in which ICANN initially reviewed all applications was intended to be decided by a time-system skills-based competition called “digital archery.” However, due to the ease with which such a system could be gamed, ICANN abandoned that approach and moved to determining the order in a prioritization draw that was held on December 17, 2012.

⁹⁴ Applicant Guidebook, **Exhibit C-5**, Module 1, Section 1.1.2.5 (at p. 1-9).

⁹⁵ *Id.*, Module 2, Section 2.1.2 (at p. 2-4). Cybersquatting was initially defined by the World Intellectual Property Organization (WIPO) as the “deliberate, bad faith abuse registration of a domain name in violation of rights in trademarks and service marks.” The Management of Internet Names and Addresses: Intellectual Property Issues, Final Report of the WIPO Internet Domain Name Process (April 30, 1999), **Exhibit JJN-61**, ¶ 170. In the Applicant Guidebook, applicants that have been involved in a pattern of adverse, final decisions indicating that the applicant or individual named in the application was engaged in cybersquatting, as defined in the Uniform Dispute Resolution Policy (UDRP), the Anti-Cybersquatting Consumer Protection Act (ACPA), or other equivalent legislation, were automatically disqualified from the new gTLD program. Applicant Guidebook **Exhibit C-5**, Section 1.2.1, ¶ (m) (at p. 1-23 – 1-24).

⁹⁶ Applicant Guidebook, **Exhibit C-5**, Module 2, Section 2.2.3.1 (at p. 2-24).

⁹⁷ See Paragraphs 67-70 above.

application), which Neustar considered to be much more extensive than what Verisign offered in any of the TLDs for which it proposed to serve as the back-end.⁹⁸

72. Each of the applications were determined to have passed Initial Evaluation based on the information contained in their applications.⁹⁹ NDC's application passed Initial Evaluation on June 7, 2013. Afiliac completed its Initial Evaluation on July 26, 2013. NDC's application passed initial evaluation using Neustar's back-end registry system, not Verisign's. Therefore, not only was it Neustar's back-end services that were evaluated, but also NDC's proposed Registry Services using the Neustar back-end. Thus, none of the Registry Services that were to be provided by Verisign with respect to .web were evaluated or subject to public comment.
73. ICANN publicly identified the members of the .web contention set on its website.

(4) Application Change Process

74. Prior to the 2012 launch of the new gTLD Application window, ICANN had expected approximately 500 applications to be submitted. Even with that number of applications, ICANN understood that the evaluation, dispute, and contention resolution processes could take many months, if not years. It also knew there could be changes that occur in the ordinary course of business to the entities that had submitted applications, including management changes, employee turnover, mergers and acquisitions (unrelated to the gTLD application), address changes, etc. and that such changes might occur after Initial Evaluation had been completed. Therefore, ICANN had to develop a process to review such changes. That process needed to provide ICANN time to determine whether such changes could render previously submitted information submitted by the applicant to be untrue or inaccurate, and if so, what the consequences should be. Section 1.2.7 of the Applicant Guidebook entitled "Notice of Changes to Information" was added to "maintain the integrity of application materials."¹⁰⁰ It states:

If at any time during the evaluation process information previously submitted by an applicant becomes untrue or inaccurate, the applicant must promptly notify ICANN via submission of the appropriate forms. This includes applicant-specific information such as changes in financial position and changes in ownership or control of the applicant.

⁹⁸ See, e.g., ICANN, New gTLD Application for .WEB Submitted to ICANN by NU DOT CO LLC, Application ID: 1-1296-36138 (June 13, 2012) ("**NDC .WEB Application**"), **Exhibit C-16**, Response to Question 28 (at pp. 35-43); ICANN, New gTLD Application for Hebrew transliteration of .com submitted by VeriSign Sarl, Application ID 1-1254-29622 (June 13, 2012), **Exhibit JJN-62**, Response to Question 28 (at pp. 41-49).

⁹⁹ See ICANN, New Generic Top-Level Domains, New gTLD Current Application Status, <https://gtdresult.icann.org/applicationstatus/viewstatus> (last visited June 13, 2023) (enter WEB on search bar).

¹⁰⁰ See ICANN, Program Implementation Review (January 29, 2016) ("**PIR**"), **Exhibit JJN-63**, Section 1.4.3 (at p. 35).

ICANN reserves the right to require a re-evaluation of the application in the event of a material change. This could involve additional fees or evaluation in a subsequent application round.

Failure to notify ICANN of any change in circumstances that would render any information provided in the application false or misleading may result in denial of the application.¹⁰¹

75. Here, too, the purpose of this provision was to ensure transparency and, as stated in the provision, the “integrity” of the process. Applicants who had passed through the public notice and comment period and the initial evaluation were not allowed to make changes that would render any of the application information untrue or inaccurate, without ICANN reviewing the changes to determine if they were material and would require re-evaluation or other remedies. In order to undertake this evaluation of changes, ICANN developed an Application Change Request process (“ACR”) for applicants to notify ICANN of any changes to the information contained within or pertaining to the application and to evaluate those changes to determine whether they were material. If the changes were deemed material, ICANN reserved the right to require a re-evaluation of the application, which could involve additional fees or even an application being deferred until the next subsequent round of new gTLDs.¹⁰²
76. The published ACR reiterated what was in the Applicant Guidebook, namely that “Failure to notify ICANN of any change in circumstances that would render any information provided in the application false or misleading may result in denial of the application.”¹⁰³
77. The determination of whether changes would be approved by ICANN was based on a balancing of factors according to the ACR process. These factors “were carefully developed to enable applicants to make necessary changes to their applications while ensuring a fair and equitable process for all applicants.”¹⁰⁴ These included: (a) whether the change affected other third parties materially (e.g., how the change request would impact the status of the application and its competing applications, the string, the contention set, and any additional Program processes that it or its competing applications must complete), (b) whether there were other similar changes previously approved, (c) whether allowing the change would be construed as fair to the general community, (d) whether the change would affect the evaluation score or require re-evaluation of some or all of the application, (e) whether the change would affect string contention or community priority consideration, and (f) would the timing interfere with the evaluation process in some way?

¹⁰¹ Applicant Guidebook, **Exhibit C-5**, Module 1, Section 1.2.7 (at p. 1-30).

¹⁰² See ICANN, New Generic Top-Level Domains, New gTLD Application Change Request Process and Criteria, <https://newgtlds.icann.org/en/applicants/global-support/change-requests> (last visited June 13, 2023), **Exhibit JJJN-64**.

¹⁰³ *Id.*, p. 1.

¹⁰⁴ *Id.*, p. 2.

78. If ICANN approved the changes to the application, certain information was required to be posted for a 30-day public comments period.¹⁰⁵ In conjunction with the posting of such information for public comment, ICANN also informed applicants whether the applications required re-evaluation (and additional fees). This re-posting underscores how important transparency is in the New gTLD Program and how seriously ICANN takes this obligation to the public.
79. Numerous change requests were made pursuant to this process. As of July 31, 2015, ICANN reported having processed 2,587 change requests.¹⁰⁶ In a presentation made on May 31, 2022, during ICANN 74 “Prep Week,” ICANN reported that a total of 2,772 change requests have been processed for applications from the 2012 round.¹⁰⁷
80. The ICANN new gTLD portal does not show that any change requests were filed regarding NDC’s application for .web prior to string contention resolution.¹⁰⁸

(5) String Contention/Auction of Last Resort

81. Section 4.1 of the Applicant Guidebook sets forth the overarching process for string contention resolution when there are two or more applicants for a string in a contention set that pass each of the requisite evaluations and for which there is no applicant given priority for achieving “community” status. In such a case, as described in Section 4.1.3, applicants were encouraged to “reach a settlement among themselves that resolved the contention.”¹⁰⁹ Here, too, the principles of transparency, predictability, and fairness required that applicants could not enter into a settlement that would materially change the application that had originally been submitted and had passed through the notice and comment period and initial evaluation. As stated above, applicants could settle a contention set only in a manner that did not materially alter any of the existing applications for the string and where the settlement resulted in the withdrawal of all but one application.¹¹⁰
82. Absent private resolution of the contention set, the Applicant Guidebook set forth a process to conduct auctions of last resort.¹¹¹ This was the case for the applicants for the .web gTLD,

¹⁰⁵ In general, the changes that were not required to be posted consisted of the changes made to the confidential portions of the new gTLD application for which the original application information was not posted for public comment. This included the changes to particular officers, directors, employees, address information, and changes related to the security portions of the application.

¹⁰⁶ See PIR, **Exhibit JJN-63**, Section 1.4.3 (at p. 37).

¹⁰⁷ ICANN, Presentation: New gTLD Subsequent Procedures, Operational Design Phase (ODP) (PREP Week ICANN74, May 31, 2022), **Exhibit JJN-65**, Slide 17.

¹⁰⁸ If there had been any change requests, those would have been visible when clicking “View Application Update History” on the top right portion of NDC’s .web application page (ICANN, Application Details, NDC .WEB Application, <https://gtdresult.icann.org/applicationstatus/applicationdetails/1053> (last visited June 30, 2023), **Exhibit JJN-66**).

¹⁰⁹ Applicant Guidebook, **Exhibit C-5**, Module 4, Section 4.1.3 (at p. 4-6).

¹¹⁰ *Id.*

¹¹¹ See, generally, *id.*, Module 4, Section 4.3 (at pp. 4-19 – 4-26).

as they were apparently unable to resolve the contention set amongst themselves. They were therefore forced to participate in the ICANN Auction of Last Resort.

83. Any applicant that participated in an auction was required to sign a bidder agreement that acknowledges its rights and responsibilities in the auction.¹¹² ICANN further revised the Auction Rules for New gTLDs on February 24, 2015 (“**Auction Rules**”),¹¹³ so that those Auction Rules applied to the ICANN Auction for .web, which took place in July 2016.
84. The New gTLD Auctions Bidder Agreement (“**Bidder Agreement**”) was released on April 3, 2014. It sets forth the legal obligations undertaken by each new gTLD Applicant involved in an auction of last resort (“**Qualified Applicant**” or “**Bidder**”).¹¹⁴ The Bidder Agreement not only incorporates the applicable sections of the Applicant Guidebook, but also the Auction Rules, and contains additional legal terms and conditions. It contains standard anti-collusion rules prohibiting the bidders from discussing with each other their bidding strategies, or collaborating with each other on negotiating strategies.¹¹⁵ The Bidder Agreement also reserved the right for ICANN to conduct due diligence on each Qualified Applicant to ensure compliance with all applicable laws, regulations and rules governing the auction.¹¹⁶ Further, each Qualified Applicant must confirm that all representations, warranties, covenants, indemnities, and other provisions made by the parties shall be considered to have been relied upon by the parties, and shall be true and correct as of the date of the execution of the Bidder Agreement.¹¹⁷ Finally, ICANN is designated as an intended third party beneficiary of the Bidder Agreement and is entitled to enforce the Bidder Agreement against a Bidder or the manager of the auctions.¹¹⁸
85. As stated above, all of the applications for .web passed Initial Evaluation and were placed into the contention set. ICANN scheduled an auction of last resort for the .web gTLD on April 27, 2016.¹¹⁹ ICANN posted the results of the auction for the .web gTLD on July 28, 2016, in which NDC was declared the winning bidder at a price of \$135,000,000.¹²⁰

¹¹² See *id.*, Module 4, Section 4.3.2 (at pp. 4-25 – 4-26).

¹¹³ Power Auctions LLC, Auction Rules for New gTLDs: Indirect Contentions Edition (February 24, 2015), **Exhibit C-3**.

¹¹⁴ ICANN, New gTLD Auctions Bidder Agreement (April 3, 2014), **Exhibit C-4**.

¹¹⁵ *Id.*, Section 2.6 (Anti-Collusion Rules).

¹¹⁶ *Id.*, Section 2.7 (Compliance).

¹¹⁷ *Id.*, Section 7.1 (Survival; Successors and Assigns).

¹¹⁸ *Id.*, Section 7.10 (Third Party Beneficiary).

¹¹⁹ ICANN, New gTLD Auction Schedule (April 27, 2016), **Exhibit JJN-67**.

¹²⁰ ICANN, Announcements: Results Available for 27 July 2016 New gTLD Program Auction (July 28, 2016), <https://www.icann.org/en/announcements/details/results-available-for-27-july-2016-new-gtld-program-auction-28-7-2016-en> (last visited June 13, 2023), **Exhibit JJN-68**, p. 2.

E. The Domain Acquisition Agreement

86. Nearly one year prior to the ICANN Auction, NDC had entered into an agreement with Verisign called a “Domain Acquisition Agreement,” dated August 25, 2015.¹²¹ Under this Agreement, Redacted - Third Party Designated Confidential Information

87. Redacted - Third Party Designated Confidential Information

the execution of the DAA between NDC and Verisign unquestionably amounted to a transfer or change of control of virtually all of NDC’s rights and obligations in connection with the application for .web, all private resolution of the .web gTLD, and in the event of an ICANN auction, all control over every aspect of the auction process.

88. The following elements of the DAA demonstrate this transfer or change of control. The DAA:

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¹²¹ Domain Acquisition Agreement between NDC and Verisign (August 25, 2015) (the “DAA”), **Exhibit C-2**.

¹²² *Id.*, p. 1.

¹²³ *Id.*, Section 1 and Exhibit A (Sections 4(b) and 4(d)).

¹²⁴ *Id.*, Exhibit A (Section 5).

¹²⁵ *See id.*, Section 4(j).

¹²⁶ *See id.*, Section 4(f).

¹²⁷ *See id.*, Section 4(i). Redacted - Third Party Designated Confidential Information

¹²⁸ *See id.*, Section 6(a).

¹²⁹ *See id.*

¹³⁰ *See id.*, Section 6(b).

¹³¹ *See id.*, Section 8.

¹³² *Id.*, Exhibit A, Section 1 (emphasis added).

¹³³ *See id.*, Exhibit A, Section 1(a).

¹³⁴ *See id.*, Exhibit A, Section 1(b).

89. Through the transfer of these (and other) rights and obligations that NDC held as an applicant for .web, Verisign not only took over complete control of the .web application and auction process, but also controlled the time, manner, and process for NDC to negotiate the Registry Agreement with ICANN.

¹³⁵ *See id.*, Exhibit A, Section 1(c).

¹³⁶ *See id.*, Exhibit A, Section 1(e).

¹³⁷ *See id.*, Exhibit A, Section 1(f).

¹³⁸ *See id.*, Exhibit A, Section 1(h).

¹³⁹ *See id.*, Exhibit A, Section 1(i).

¹⁴⁰ *See id.*, Exhibit A, Section 2(e).

¹⁴¹ *See id.*, Exhibit A, Section 3.

90. Upon execution of the Registry Agreement by both ICANN and NDC, ^{Redacted - Third Party Designated Confidential Information}
91. In addition, ^{Redacted - Third Party Designated Confidential Information}

show

that the true ownership interest in .web belongs to Verisign.

92. Finally, ^{Redacted - Third Party Designated Confidential Information}

.¹⁴³

F. Violations of the Terms and Conditions (Module 6) and of the Applicant Guidebook

(1) Violation of Terms and Conditions, Section 1

93. As stated above,¹⁴⁴ the Terms and Conditions required NDC to warrant “that the statements and representations contained in the application (including any documents submitted and oral statements made and confirmed in writing in connection with the application) are true and accurate and complete in all material respects, and that ICANN may rely on those statements and representations fully in evaluating this application.”¹⁴⁵ In addition, NDC acknowledged that any material misstatement or misrepresentation (or omission of material information) may cause ICANN and the evaluators to reject the application without a refund of any fees paid by NDC. NDC also agreed to notify ICANN in writing of “any change in circumstances that would render any information provided in the application false or misleading.”¹⁴⁶
94. These Terms and Conditions further the principles of transparency that the Program was meant to achieve. The application that each applicant submitted at the outset of the Program was not supposed to change, and if it did, the applicant had to notify ICANN in writing of *any changes in or changes in circumstances relating to its application*, so that ICANN could determine if the changes were material and, if so, what the consequences should be.

¹⁴² See *id.*, Exhibit A, Section 3(c).

¹⁴³ See *id.*, Exhibit B.

¹⁴⁴ See Paragraphs 62-66 above.

¹⁴⁵ Applicant Guidebook, **Exhibit C-5**, Module 6, ¶ 1 (at p. 6-2).

¹⁴⁶ *Id.*, Module 6, ¶ 1 (at p. 6-2).

In my assessment, there can be no question that NDC was required to notify ICANN of the existence and terms of the DAA.

95. The DAA entered into between NDC and Verisign committed NDC to: Redacted - Third Party Designated Confidential Information

Although the name of the “Applicant” was to remain the same, the execution of the DAA made it clear that NDC no longer had any intention in serving as the registry operator for .web. Upon the DAA’s execution, all of NDC’s submitted information contained within its application (filed several years prior) was no longer “true, accurate and complete in all material respects.” Moreover, the DAA prohibited NDC Redacted - Third Party Designated Confidential Information

As a result:

- The due diligence performed by ICANN’s evaluators on NDC itself, the policies proposed by NDC, and the business and financial information provided by NDC was no longer valid.
- The technical evaluation of NDC’s application was no longer valid because the evaluation was of Neustar’s back-end solution, not of Verisign’s.
- There was (at best) uncertainty as to whether all the registry services proposed by NDC that were the subject of extensive public comment (e.g., domain name anti-abuse services, RPMs, etc.) would continue to be provided by the new back-end solution.
- The Community was not afforded the ability to file any comments on or objections to NDC’s new application information (including that the entity seeking the string was no longer NDC but was now Verisign).
- ***In sum, the DAA amounted to a “bait and switch” rendering the results of the Initial Evaluation invalid.***

96. The execution of the DAA triggered a duty to file an application change request with ICANN under Section 1.2.7 of the Applicant Guidebook. The failure to file such an application change request is in itself a violation of the Applicant Guidebook, and therefore is grounds for the disqualification of NDC’s application. Not only did NDC not file a change request, none of these fundamental changes to NDC’s application caused by the DAA was disclosed to ICANN or anyone else.

(2) Violation of Terms and Conditions, Section 10

97. I consider that the DAA also violated Section 10 of the Terms and Conditions which prohibits an applicant from reselling, assigning, or transferring any of the applicant’s rights or obligations in connection with its application for a new gTLD. Although the Terms and Conditions do not elaborate further on the precise definition of what constitutes reselling,

assigning, or transferring any of applicant’s rights or obligations in connection with the application, these types of clauses in a contract are generally intended to prohibit an effective change in the entity identified as the applicant for the gTLD—either through a functional change of control over, or otherwise through the transfer or assignment of, any of the applicant’s rights or obligations in its contract with ICANN.

98. When a contract does not specifically define certain terms, the most common approach to interpreting those terms is through an examination of how they are generally defined and used in the industry. The AGB defines “control” as the “possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities . . . by serving as a member of a board of directors . . . , by contract . . . or otherwise.”¹⁴⁷ This same definition appears in ICANN’s base Registry Agreement—the contract between ICANN and an approved registry operator governing the terms and conditions for the operation and management of a top-level domain.¹⁴⁸
99. Thus, the New gTLD Program Rules themselves contemplate that a change of control may be effectuated by contract that allows one party to direct the conduct of another through a transfer of rights or obligations that the assigning party has in connection with its application, even if a formal change of legal control via a stock sale has not occurred.
100. A copy of a near final draft of the base Registry Agreement was included in the final Applicant Guidebook for review by each applicant prior to filing an application for a TLD during the 2012 New gTLD application process.¹⁴⁹ That Registry Agreement contained the same definition of control as set forth in Paragraph 65 above and in other sections of the AGB. Therefore, NDC was on notice of the definition and should have been fully aware of what ICANN considered a “change of control.”
101. As I explained above,¹⁵⁰ I have no doubt that the execution of the DAA amounted to an effective change of control over the applicant NDC by contract which transferred many of the rights and obligations in connection with NDC’s .web application. I believe the ICANN Board should have found as much. Redacted - Third Party Designated Confidential Information

¹⁴⁷ *Id.*, Module 5, Section 5.1 (at pp. 5-2 – 5-3).

¹⁴⁸ *See* ICANN, Registry Agreement (July 31, 2017), <https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-31jul17-en.html> (last visited June 13, 2023), **Exhibit JJN-69**, Section 2.9(c).

¹⁴⁹ *See* Applicant Guidebook, **Exhibit C-5**, Module 5, Attachment (New gTLD Agreement) (at [PDF] p. 229).

¹⁵⁰ *See* Paragraphs 93-96 above.

In short, from the moment the DAA was executed, NDC ceded all effective control of its .web application and rights to participate in the .web contention set to Verisign.

102. Redacted - Third Party Designated Confidential Information

G. Board Resolutions 2023.04.30.12 – 2023.04.30.14

(1) ICANN Misstates the Direct Language of the Applicant Guidebook substituting the action language “any rights” with “all rights.”

103. On April 30, 2023, the ICANN Board met and passed Resolutions 2023.04.30.12 - 2023.04.30.14, which determined *inter alia* that “NDC did not violate the Guidebook or Auction Rules, either through entering into the DAA or through its participation in the .WEB auction[.]”¹⁵¹ It also resolved that “the Board hereby notes the questions raised

¹⁵¹ Board Resolution, **Exhibit C-17**, p. 53.

regarding certain conduct by both NDC and Altanovo and directs the Interim President and CEO, or her designee(s), to carefully consider the issues raised by the parties and the Panel in the .WEB IRP with regard to agreements similar to the DAA . . . when developing the Guidebook and auction rules for the next round of the New gTLD Program in order to provide greater clarity to applicants regarding the transparency and notification requirements throughout the application and auction processes.”¹⁵²

104. In its rationale, the ICANN Board quotes Paragraph 10 of the Terms and Conditions contained within the Guidebook, which as noted above, states that “Applicant may not resell, assign, or transfer any of applicant’s rights or obligations in connection with the Application.”¹⁵³ However, it concludes that because NDC remained the applicant of its .web application, and would be the formal entity that would enter into the Registry Agreement for .web (before immediately being required by contract to assign the Registry Operator Agreement to Verisign), that there was no violation of Paragraph 10.¹⁵⁴
105. In my opinion, the conclusion by the ICANN Board is not in line with either the specific language of the Guidebook or the multi-stakeholder policies behind Paragraph 10’s prohibition on the sale, assignment or transfer of any rights or obligations in connection with the application. The ICANN Board makes this finding despite also conceding that under the terms of the DAA, NDC agreed that it Redacted - Third Party Designated Confidential Information
106. In a 2022 blog post addressing ICANN’s role in entering into contractual arrangements, ICANN’s General Counsel and its Senior Vice President of Global Domains and Strategy stated:

ICANN enters into contractual agreements with registry operators by following Board-adopted, community-developed policies and processes, with the objective of establishing the rights, duties, and obligations required to operate TLDs. The intention of these agreements and the community-developed Consensus Policies are to protect domain name holders, rights holders, and end users by helping to maintain a stable, secure, and resilient DNS. Registry Operators adherence to these requirements are critical, and ICANN’s

¹⁵² *Id.*, p. 35.

¹⁵³ *Id.*, p. 38 (quoting Module 6, ¶ 10 (at p. 6-6)).

¹⁵⁴ *Id.*, p. 44.

means to enforce such obligations is through the Registry Agreements for TLDs in the DNS.¹⁵⁵

107. This is an accurate description of ICANN’s role and its responsibility under its Bylaws to carry out the terms of its contracts, which are based on community-developed Consensus Policies. ICANN’s Terms and Conditions contained within the Applicant Guidebook were also based on these same principles. Paragraph 10 clearly states that there shall not be an assignment of “any rights or obligations” in connection with the application. Despite the Board acknowledging that there were rights and/or obligations that were transferred from NDC to Verisign as explicitly called out by the DAA, ICANN ignored the plain meaning of the words “*any* rights or obligations” in Paragraph 10 of the Terms and Conditions (the result of community-developed policies) and on its own interpreted them to mean that so long as not *all* of the rights were transferred and NDC’s name remained on the application during the auction, NDC did not violate the Terms and Conditions. The Board’s position has no support from any community developed policy nor does it in any way operate to protect domain name holder, rights holder, and end users by helping to maintain a stable, secure, and resilient DNS. Just as it is critical for ICANN to hold Registry Operators accountable for their commitments in the Registry Agreement , similarly it is equally as critical (if not more so) to ensure that the requirements of an application for a TLD are enforced.

(2) ICANN Creates False Equivalency Between Application Process And Assignment/Change Of Control In The Normal Course Of Business, And Thus Subverts ICANN’s Community-Developed Policies and Processes

108. The ICANN Board also found that even if NDC immediately requested the formal assignment of the Registry Agreement to Verisign, such an assignment would not equate to a circumvention of the application process, because that request would be handled through the standard assignment/change of control process.¹⁵⁶ By doing so, ICANN creates a false equivalence between the processes that occur during an application phase and the processes that occur post-delegation (and normally well after the registry has begun its operations).
109. But the two processes are not at all equivalent. The reviews performed during the application phase on both the string applied for as well as on the entity applying for that string are much more comprehensive than the diligence process that occurs when an

¹⁵⁵ See John Jeffrey and Theresa Swinehart, “Relying on ICANN Community-Developed Processes for a Safe, Secure Internet,” *ICANN Blogs* (January 5, 2022), <https://www.icann.org/en/blogs/details/relying-on-icann-community-developed-processes-for-a-safe-secure-internet-5-1-2022-en> (last visited June 13, 2023), **Exhibit JJN-70**, p. 4.

¹⁵⁶ For a description of the process, see ICANN, Assignment of Registry Agreement or Registry Operator Change of Control (October 21, 2022), <https://www.icann.org/resources/pages/assignment-registry-agreement-registry-operator-change-control-2022-10-21-en> (last visited June 13, 2023), **Exhibit JJN-71**.

existing registry operator that has been running a TLD requests an assignment of the Registry Agreement or a change of control in the normal course of business.

110. First, during the application process, there is not just a review of the application and the applicant by ICANN itself (albeit through third party evaluators under the direction of ICANN), but applications are thoroughly scrutinized by the Internet Community at large. This includes the ability for any member of the public to file comments about the application and/or the applicant and to have those comments not only publicly viewable, but also have them made available to evaluators performing initial Evaluation reviews. Evaluators were instructed to “take the information provided in [the] comments into consideration.”¹⁵⁷ There is no such public comment period during an assignment/change of control process after the string has been in operation.
111. Second, during the application process, there is an ability for impacted third parties to file formal objections “that concern matters outside those evaluation criteria.”¹⁵⁸ The formal objection process was created, “to allow a full and fair consideration of objections based on certain limited grounds outside of ICANN’s evaluation of applications on their merits.”¹⁵⁹ A list of the objections filed as well as the Objection decisions were also made publicly available.¹⁶⁰ There is no formal objection process that occurs for assignments/change of control that occur post signing of the Registry Agreement nor any mechanism to file an objection to such an assignment.
112. Third, during the application process, individual governments had the right to file “early warnings” and potentially GAC Advice with respect to applications submitted. There were 240 early warnings filed by individual and/or groups of governments, some of which pertained to the string being applied for, but others were directed at the applicant itself. The issuance of an early warning and/or GAC Advice signified that the granting of a string itself or a string to a particular entity may not be in the public interest (GAC Early Warnings), or is not in the public interest (GAC Advice). Unlike the application process, during an assignment or change of control process, there the governments are not invited to file early warnings nor have they ever been subject to GAC Advice.
113. In short, unlike the standard ICANN assignment process that occurs after a Registry Operator signs a Registry Agreement and has been in operation, the application process allows for much more community involvement and examination of both the string being applied for as well as the entity that applies for that string. Unlike the application process, acquiring registries through the standard assignment / change of control process is not subject to public scrutiny through a public comment process, objections or review by governments.

¹⁵⁷ Applicant Guidebook, **Exhibit C-5**, Module 1, Section 1.1.2.3 (at pp. 1-5–1-6).

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ See ICANN, New Generic Top-Level Domains, Objection Determinations, <https://newgtlds.icann.org/en/program-status/odr/determination> (last visited June 13, 2023), **Exhibit JJN-72**.

114. Although Verisign acquired control over most of the rights in the application during the application process, by keeping those arrangements confidential (even from ICANN), Verisign intended to avoid any public scrutiny on the .web application. It avoided any potential objections by third parties, as well as concerns being expressed by governments.
115. Despite the fact that the initial application process was always intended to be a much more rigorous diligence process than changes of material subcontractors and/or assignments or change of control in the normal course of business after a registry has already entered into a registry agreement, ICANN creates a false equivalence between the two processes by stating “[a]nd if NDC subsequently decides to request such an assignment, there are processes in place to review such a request, including the need of ICANN’s approval of that request. Such an assignment does not equate to a ‘circumvention’ of the application process but, rather, is a necessary component for the servicing Registry Operators and allowing the continued operation of gTLDs.”¹⁶¹

IV. CONCLUSION

116. The protections included in the Applicant Guidebook were not only put in there to ensure that the technical operator would be qualified to run a registry (as Verisign clearly would be having run the .com registry for decades). They were also put in place so that the ICANN community would know the identity of each applicant and have a chance to comment on each application; so that objections could be filed; and so that governments could evaluate whether to issue early warnings or provide GAC Advice. The application materials were also used to define the policies of the specific TLD, the actions a registry would (or would not be taking) with respect to rights protection mechanisms, and which registry services would be offered. This is not analogous to just substituting a technical back-end operator.
117. To restate from the Applicant Guidebook, “ICANN is dedicated to[] preserving the operational security and stability of the Internet, promoting competition, achieving broad representation of the global Internet communities, and developing policy applicable to its mission through bottom-up, consensus-based processes. This necessarily involves the participation of many stakeholder groups in a public discussion.”¹⁶²
118. NDC’s unreported application changes fundamentally altered the entire nature and purpose of its .web application. By enabling Verisign to indirectly participate in the .web contention set, NDC changed the dynamics of that contention set, the possibility of its private resolution, and the ICANN Auction. By failing to notify ICANN of these changes, it not only deprived evaluators of the opportunity to evaluate all the aspects of the application, but also deprived the Community of “a mechanism for the public to bring relevant information and issues to the attention of those charged with handling new gTLD applications.”¹⁶³ Moreover, by entering into the DAA, NDC secretly changed the very nature of the .web contention set. Simply put, by virtue of NDC’s and Verisign’s unfair

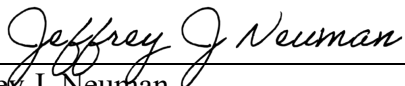
¹⁶¹ Board Resolution, **Exhibit C-17**, p. 74.

¹⁶² See Applicant Guidebook, **Exhibit C-5**, Module 1, Section 1.1.2.3 (at p. 1-5).

¹⁶³ *Id.*, Module 1, Section 1.1.2.3 (at p. 1-6).

behavior, the other contention set members were deprived of a fair opportunity to compete for .web. All of the applicants in the contention set were not playing by the same rules.

119. NDC has claimed that even if it had a duty to notify ICANN about the changes to its application, there was no harm because Verisign would have passed its initial evaluation had they notified ICANN. This reasoning, however, ignores the fundamental truth that the DAA not only violated the Applicant Guidebook, but also ultimately altered the outcome of the .web contention set. If Verisign's acquisition of .web were allowed to move forward, it would set a precedent for future applicants to apply for a TLD on the premise that they meet all of the qualifications for serving as a Registry Operator, only to enter into an arrangement with a secret entity and immediately upon execution of a Registry Agreement with ICANN transfer its application to the concealed entity. Even if that concealed entity were "qualified" to operate a TLD, it would have avoided the evaluation process by ICANN Evaluators and, more significantly, would have avoided (a) public comment on its true application, (b) potential objections by the community, and (c) a review of the actual registry services being proposed. All of the detailed rules that ICANN provided and the work the Community did concerning these requirements, criteria, and procedures would be meaningless.
120. In my opinion, having not only actively participated in every new gTLD application process held and administered by ICANN since its inception in 1998, but also having served as a co-chair of the Policy Development Process responsible for reviewing the 2012 New gTLD Program and recommending policy and implementation changes for subsequent new gTLD Rounds, the DAA does in fact represent a circumvention of the application process and the multi-stakeholder community driven policies that supported the New gTLD Program. By finding that there was no violation of the New gTLD Program Rules and effectively approving NDC's and Verisign's actions, ICANN has condoned a bait and switch application process. That is, ICANN is permitting entities to apply for a new gTLD on behalf of undisclosed parties, who ultimately will go through ICANN's less rigorous and non-transparent ICANN assignment process.



Jeffrey J. Neuman

July 3, 2023

Date

LIST OF EXHIBITS

Exhibit No.	Description
JJN-1	Kaspersky, What is an IP Address – Definition and Explanation, https://www.kaspersky.com/resource-center/definitions/what-is-an-ip-address (last visited June 13, 2023)
JJN-2	IONOS, A Comprehensive ccTLD List (September 16, 2023), https://www.ionos.com/digitalguide/domains/domain-extensions/cclds-a-list-of-every-country-domain/ (last visited June 13, 2023)
JJN-3	Verisign, <i>The Domain Name Industry Brief</i> , Vol. 20, No. 1 (March 2023)
JJN-4	ENISA (European Union Agency for Cybersecurity), NIS Directive, https://www.enisa.europa.eu/topics/cybersecurity-policy/nis-directive-new (last visited June 13, 2023)
JJN-5	Directive (EU) 2022/2555 of 14 December 2022, on measures for a high common level of cybersecurity across the Union, amending Regulation (EU) No. 910/2014 and Directive (EU) 2018/1972, and repealing Directive (EU) 2016/1148 (NIS 2 Directive), 2002 O.J. (L 333) 30
JJN-6	European Parliament, Briefing: The NIS2 Directive: A High Common Level of Cybersecurity in the EU (February 8, 2023)
JJN-7	CISA, Press Release: CISA Announces Transfer of the .gov Top-level Domain from U.S. General Services Administration (March 8, 2021), https://www.cisa.gov/news-events/news/cisa-announces-transfer-gov-top-level-domain-us-general-services-administration (last visited June 11, 2023)
JJN-8	Verisign, Press Release: Verisign Reports Fourth Quarter and Full Year 2022 Results (February 9, 2023)
JJN-9	Verisign, Annual Report (Form 10-K) (February 17, 2023)
JJN-10	Internet Society, Press Release: Ethos Capital to Acquire Public Interest Registry from the Internet Society (November 13, 2019), https://www.internetsociety.org/news/press-releases/2019/ethos-capital-to-acquire-public-interest-registry-from-the-internet-society/ (last visited June 13, 2023)
JJN-11	Lina Saigol and Selin Bucak, “Ethos Capital Defends Deal to Take Private the Group that Registers Nonprofits’ Websites,” <i>Barron’s</i> (February 11, 2020, 10:38 am ET), https://www.barrons.com/articles/ethos-capital-private-equity-pir-public-interest-registry-internet-51581435420 (last visited June 11, 2023)
JJN-12	ICANN, Cooperative Agreement between NSI and U.S. Government, effective January 1, 1993, Cooperative Agreement No. NCR-9218742, https://archive.icann.org/en/nsi/coopagmt-01jan93.htm (last visited June 13, 2023)

Exhibit No.	Description
JJN-13	ICANN, Amendment 4 to Cooperative Agreement between NSI and U.S. Government (September 13, 1995), https://archive.icann.org/en/nsi/coopagmt-amend4-13sep95.htm (last visited June 13, 2023)
JJN-14	NSF, Fact Sheet: A Brief History of NSF and the Internet (August 2003), https://www.nsf.gov/od/lpa/news/03/fsnsf_internet.htm (last visited June 13, 2023)
JJN-15	NTIA, A Proposal to Improve Technical Management of Internet Names and Addresses, Discussion Draft 1/30/98, https://www.ntia.doc.gov/legacy/ntiahome/domainname/dnsdrft.htm (last visited June 13, 2023)
JJN-16	Management of Internet Names and Addresses, Docket No. 980212036-8146-02 (June 5, 1998), 63(111) Fed. Reg. 31741 (1998)
JJN-17	Joint Project Agreement between the U.S. Department of Commerce and the Internet Corporation for Assigned Names and Number (September 29, 2006)
JJN-18	Affirmation of Commitments by the United States Department of Commerce and the Internet Corporation for Assigned Names and Number (September 30, 2009)
JJN-19	NTIA, IANA Functions Contract, https://ntia.doc.gov/page/iana-functions-purchase-order (last visited June 13, 2023)
JJN-20	NTIA, Purchase Order No. 40SBNT067020 (IANA Contract) (February 9, 2000)
JJN-21	NTIA, Press Release: NTIA Announces Intent to Transition Key Internet Domain Name Functions (March 14, 2014), https://ntia.gov/press-release/2014/ntia-announces-intent-transition-key-internet-domain-name-functions (last visited June 29, 2023)
JJN-22	ICANN, CCWG-Accountability, Supplemental Final Proposal on Work Stream 1 Recommendations (February 23, 2016)
JJN-23	ICANN, Announcement: Stewardship of IANA Functions Transitions to Global Internet Community as Contract with U.S. Government Ends (October 1, 2016), https://www.icann.org/en/announcements/details/stewardship-of-iana-functions-transitions-to-global-internet-community-as-contract-with-us-government-ends-1-10-2016-en (last visited June 13, 2023)
JJN-24	ICANN, TLD Application Process FAQs (updated October 10, 2000), https://archive.icann.org/en/tlds/tld-faqs.htm (last visited June 13, 2023)
JJN-25	ICANN, Report on TLD Applications: Application of the August 15 Criteria to Each Category or Group (November 9, 2000), https://archive.icann.org/en/tlds/report/report-iiib1a-09nov00.htm (last visited June 13, 2023)

Exhibit No.	Description
JJN-26	Harvard University, Scribe's Notes: ICANN Board Meeting, November 16, 2000, Los Angeles, California, https://cyber.harvard.edu/icann/la2000/archive/scribe-icann-111600.html (last visited June 13, 2023)
JJN-27	New gTLD Draft Applicant Guidebook: Analysis of Public Comment (February 18, 2009)
JJN-28	GNSO Issues Report: Introduction of New Top-Level Domains (December 5, 2005)
JJN-29	ICANN, GNSO, Final Report, Part B (August 1, 2007), https://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-partb-01aug07.htm (last visited June 13, 2023)
JJN-30	ICANN, Announcement: Call for papers -- Policy Development for Introduction of New gTLDs (January 3, 2006), http://icann.org/announcements/announcement-03jan06.htm (last visited June 13, 2023)
JJN-31	ICANN, GNSO, Input Received on the Policy Development Process on New gTLDs (updated August 31, 2009), https://gns0.icann.org/issues/new-gtlds/new-gtld-pdp-input.htm (last visited June 13, 2023)
JJN-32	ICANN, Board Activities and Meetings, Minutes, Regular Meeting of the Board (March 31, 2006), http://www.icann.org/minutes/minutes-31mar06.htm (last visited June 13, 2023)
JJN-33	ICANN, GNSO Initial Report: Introduction of New Generic Top-Level Domains (June 8, 2006)
JJN-34	ICANN, GNSO Initial Report: Introduction of New Generic Top-Level Domains (July 28, 2006), https://gns0.icann.org/drafts/newgtlds-issues-report-01-28jul06.htm (last visited June 13, 2023)
JJN-35	ICANN, Draft GNSO Recommendation Summary (September 14, 2006), https://gns0.icann.org/issues/new-gtlds/recom-summary-14sep06.htm (last visited June 14, 2023)
JJN-36	ICANN, GNSO new TLDs Committee, Draft Final Report (November 14, 2006)
JJN-37	ICANN, GNSO Draft Final Report - Introduction of New Generic Top-Level Domains (February 13, 2007), https://gns0.icann.org/drafts/GNSO-PDP-Dec05-FR13-FEB07.htm (last visited June 14, 2023)
JJN-38	ICANN, Outcomes Report of the GNSO Internationalized Domain Names Working Group (IDN-WG) (March 22, 2007), http://gns0.icann.org/drafts/idn-wg-fr-22mar07.htm (last visited June 14, 2023)
JJN-39	ICANN, GNSO Reserved Name Working Group Report (March 16, 2007)

Exhibit No.	Description
JN-40	ICANN, GNSO Reserved Names Working Group, Final Report (May 23, 2007), http://gns0.icann.org/issues/new-gtlds/final-report-rn-wg-23may07.htm (last visited June 14, 2023)
JN-41	ICANN, Protecting the Rights of Others Working Group (PRO WG), Final Report (June 1, 2007)
JN-42	ICANN, Board Activities and Meetings, Adopted Board Resolution (Paris, June 26, 2008), https://www.icann.org/resources/board-material/resolutions-2008-06-26-en (last visited June 14, 2023)
JN-43	ICANN, Archives, Applicant Guidebook, https://archive.icann.org/en/topics/new-gtlds/dag-en.htm (last visited June 30, 2023)
JN-44	ICANN, New gTLD Program: Draft Applicant Guidebook (Draft RFP) (October 24, 2008)
JN-45	ICANN, New gTLD Draft Applicant Guidebook Version 4, Public Comment Summary and Analysis (November 12, 2010)
JN-46	ICANN, gTLD Applicant Guidebook, Version 2011-05-30
JN-47	ICANN, gTLD Applicant Guidebook, Version 2011-09-19
JN-48	ICANN, gTLD Applicant Guidebook, Version 2012-01-11
JN-49	ICANN, TLD Application: Registry Operator's Fitness Disclosure (August 15, 2000)
JN-50	ICANN, New Generic Top-Level Domains, Announcement: New Top-Level Domain Name Applications Revealed, Historic Milestone for the Internet's Domain Name System (June 13, 2012), https://newgtlds.icann.org/en/announcements-and-media/announcement-13jun12-en (last visited June 13, 2023)
JN-51	<i>Web.com Group, Inc. (Objector) and Vistaprint Ltd. (Applicant)</i> , New gTLD String Confusion Panel, ICDR Case Nos. 50-504-221-13 and 50-504-246-13 (Consolidated), Expert Determination (January 24, 2014)
JN-52	ICANN, New Generic Top-Level Domains, Application Comment Details, Comment ID ywu8llsb, by Paul McGrady (September 26, 2012, 23:29:09 UTC), https://gldcomment.icann.org/applicationcomment/commentdetails/11694 (last visited June 13, 2023)
JN-53	ICANN, New Generic Top-Level Domains, Application Comment Details, Comment ID tkudyfhj, by Paul McGrady (September 26, 2012, 23:32:07 UTC), https://gldcomment.icann.org/applicationcomment/commentdetails/11695 (last visited June 13, 2023)

Exhibit No.	Description
JN-54	ICANN, New Generic Top-Level Domains, Application Comment Details, Comment ID ycupgw6, by Ivan Smirnov (September 24, 2012, 03:00:27 UTC), https://gtldcomment.icann.org/applicationcomment/commentdetails/7904 (last visited June 13, 2023)
JN-55	ICANN, New Generic Top-Level Domains, Application Comment Details, Comment ID mjclg90q, by Bill Millner (September 25, 2012, 21:53:08 UTC), https://gtldcomment.icann.org/applicationcomment/commentdetails/9442 (last visited June 13, 2023)
JN-56	ICANN, New Generic Top-Level Domains, Application Comment Details, Comment ID fo2imfq7, by Mette Andersen (August 8, 2012, 08:01:41 UTC), https://gtldcomment.icann.org/applicationcomment/commentdetails/3254 (last visited June 13, 2023)
JN-57	ICANN, New Generic Top-Level Domains, Application Comment Details, Comment ID x77a6fp4, by Ewa M Abrams (August 7, 2012, 21:09:23 UTC), https://gtldcomment.icann.org/applicationcomment/commentdetails/3123 (last visited June 13, 2023)
JN-58	ICANN, New Generic Top-Level Domains, Application Comment Details, Comment ID v53v42i9, by Carol E Robbins (August 8, 2012, 19:08:06 UTC), https://gtldcomment.icann.org/applicationcomment/commentdetails/4124 (last visited June 13, 2023)
JN-59	ICANN, New Generic Top-Level Domains, Application Comment Details, Comment ID wt3qpy7q, by Carol E Robbins (August 8, 2012, 18:14:10 UTC), https://gtldcomment.icann.org/applicationcomment/commentdetails/3885 (last visited June 13, 2023)
JN-60	ICANN, GAC, Work Efforts: GAC Early Warnings (last updated February 7, 2022), https://gac.icann.org/activity/gac-early-warnings (last visited June 13, 2023)
JN-61	The Management of Internet Names and Addresses: Intellectual Property Issues, Final Report of the WIPO Internet Domain Name Process (April 30, 1999)
JN-62	ICANN, New gTLD Application for Hebrew transliteration of .com submitted by VeriSign Sarl, Application ID 1-1254-29622 (June 13, 2012)
JN-63	ICANN, Program Implementation Review (January 29, 2016)
JN-64	ICANN, New Generic Top-Level Domains, New gTLD Application Change Request Process and Criteria, https://newgtlds.icann.org/en/applicants/global-support/change-requests (last visited June 13, 2023)
JN-65	ICANN, Presentation: New gTLD Subsequent Procedures, Operational Design Phase (ODP) (PREP Week ICANN74, May 31, 2022)

Exhibit No.	Description
JJN-66	ICANN, Application Details, NDC .WEB Application, https://gtldresult.icann.org/applicationstatus/applicationdetails/1053 (last visited June 30, 2023)
JJN-67	ICANN, New gTLD Auction Schedule (April 27, 2016)
JJN-68	ICANN, Announcements: Results Available for 27 July 2016 New gTLD Program Auction (July 28, 2016), https://www.icann.org/en/announcements/details/results-available-for-27-july-2016-new-gtld-program-auction-28-7-2016-en (last visited June 13, 2023)
JJN-69	ICANN, Registry Agreement (July 31, 2017), https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-31jul17-en.html (last visited June 13, 2023)
JJN-70	John Jeffrey and Theresa Swinehart, “Relying on ICANN Community-Developed Processes for a Safe, Secure Internet,” <i>ICANN Blogs</i> (January 5, 2022), https://www.icann.org/en/blogs/details/relying-on-icann-community-developed-processes-for-a-safe-secure-internet-5-1-2022-en (last visited June 13, 2023)
JJN-71	ICANN, Assignment of Registry Agreement or Registry Operator Change of Control (October 21, 2022), https://www.icann.org/resources/pages/assignment-registry-agreement-registry-operator-change-control-2022-10-21-en (last visited June 13, 2023)
JJN-72	ICANN, New Generic Top-Level Domains, Objection Determinations, https://newgtlds.icann.org/en/program-status/odr/determination (last visited June 13, 2023)
-	ICANN, New Generic Top-Level Domains, Application Comments, https://gtldcomment.icann.org/applicationcomment/viewcomments (last visited June 13, 2023)
-	ICANN, New Generic Top-Level Domains, New gTLD Current Application Status, https://gtldresult.icann.org/applicationstatus/viewstatus (last visited June 13, 2023)

LIST OF C EXHIBITS

Exhibit No.	Description
C-2	Domain Acquisition Agreement between VeriSign Inc. and Nu Dotco LLC (August 25, 2015)
C-3	Power Auctions LLC, Auction Rules for New gTLDs: Indirect Contentions Edition (February 24, 2015)
C-4	ICANN, New gTLD Auctions Bidder Agreement (April 3, 2014)

Exhibit No.	Description
C-5	ICANN, gTLD Applicant Guidebook (June 4, 2012)
C-6	Memorandum of Understanding between the U.S. Department of Commerce and Internet Corporation for Assigned Names and Numbers (November 25, 1998)
C-14	Bylaws for Internet Corporation for Assigned Names and Numbers (as amended June 2, 2022)
C-15	ICANN, Contention Set Status for .WEB/WEBS (as of May 26, 2023)
C-16	ICANN, New gTLD Application for .WEB Submitted to ICANN by NU DOT CO LLC, Application ID: 1-1296-36138 (June 13, 2012)
C-17	Approved Board Resolution, Regular Meeting of the ICANN Board, Board Resolution No. 2023.04.30.12 (April 30, 2023) (unredacted)
C-18	ICANN, GNSO, Final Report, Part A (August 8, 2007)

JEFFREY J. NEUMAN

Vienna, VA | Contact Information Redacted

Accomplished legal and policy services professional with 10+ years of expertise in online brand protection, domain name management, intellectual property licensing, and enforcement. Successful at providing strategic policy, implementation assistance, and advice for Internet governance while serving in key business, policy, and legal roles. Proven ability to deliver outside-the-box solutions with integrity and a can-do mentality.

WORK EXPERIENCE

JJN Solutions, LLC | Vienna, VA

Founder & CEO | July 2020 – Present

- Found consultancy focusing on providing legal and policy advice to clients related to online brand protection and domain name management services
- Provided governance, acquisition, enforcement and disputes, Internet policy advice, top-level domain management, infrastructure licensing transactions services to get brands up and running online

Com Laude / Valideus | McLean, VA

Senior Vice President | January 2015 – June 2020

- Served as overall business and strategic lead for North American operations
- Bestowed policy assistance and advice in fields of Internet governance, intellectual property protection, and domain name portfolio management and operations
- Governed new Generic Top-level Domains (gTLD) business development program which secured more than 350 new gTLD applications, more than any other registry services provider
- Ran front-end registry management services for new gTLD applicants/registry operators and provision of corporate domain name portfolio management while serving as Executive Lead in North America
- Spearheaded P&L for Registry Consulting Services and Corporate Domain Name Management in USA
- Conducted presentations and spoke frequently on issues involving intellectual property, domain names, domain name registry operations and management, and introduction of new gTLDs
- Created and pioneered intellectual property protection and dispute services for domain name system, which is in use today by 1200+ gTLDs and many ccTLDs

Neustar, Inc. (NSR) | Sterling, VA January 2001 – January 2015

Vice President, Registry Services | March 2010 – January 2015

- Served as sales, business, legal, and policy lead for Registry Services business while managing strategic accounts for Neustar's registry services and implementing new gTLD program
- Led team of 25 employees while directing franchise registry business, including top-level

domains, common short code registry, Ultraviolet, and Global System for Mobile Communications (GSMA)

- Piloted P&L of \$100M domain name registry business at Neustar overseeing sales, business development, channel relationships, marketing, operations, and customer service

Vice President, Law & Policy | January – 2001 | February – 2010

- Managed all legal services and policy for Neustar's enterprise services, including domain name registries, mobile registries, bar codes, Internet Information Services (IIS), and Media lines of business
- Oversaw intellectual property law and policy matters, information technology licensing as well as legal issues, including litigation, related to employment and insurance matters
- Steered legal counsel on all software technology agreements for advanced services, domain name services, registry, wireless data, common short code, and other IP lines of business
- Developed, negotiated, closed, and implemented software licenses and service agreements, vendor agreements, joint venture, marketing distribution, and reseller agreements
- Assisted General Counsel with public company reporting, corporate governance, and legal compliance while heading policy development for .us and .BIZ top-level domains
- Acted as Liaison for United States Department of Commerce, Internet Corporation for Assigned Names and Numbers (ICANN) and Generic Name Supporting Organization of ICANN, and other entities

ADDITIONAL EXPERIENCE

Greenberg Traurig /Akin, Gump, Strauss, Hauer & Feld | Information Technology Associate
Arter & Hadden, LLP Associate | Summer Associate

CORE COMPETENCIES

Corporate, Litigation, Intellectual Property Law, Internet Policy Law, Labor Law, Domain Name Management, Legal Counseling, IP and Technology Licensing, Board Activity Oversight, Board Advising, Program Development and Implementation, Project Management, Strategic Planning, Vendor Management, Stakeholder Relations, Operations Management, Transparency and Accountability Strategies, Risk Management, Ethics and Integrity, Governance Policy Setting, Team Leadership

EDUCATION

Juris Doctor, Cum Laude, The George Washington University Law School, Washington, DC, Notes Editor, American Intellectual Property Law Association Quarterly Journal
Legal Fellow, Administrative Advocacy Legal Clinic

Bachelor of Arts, Political Science, Pennsylvania State University, University Park, PA, Summa

Cum Laude

Bachelor of Arts, Labor and Industrial Relations, Student Marshal (only for top students), Phi Beta Kappa

PROFESSIONAL AND COMMUNITY INVOLVEMENT

- FORUM, Uniform Dispute Resolution Policy and Uniform Rapid Suspension Qualified Dispute Resolution Panelist
- Board Member of NextStop Theatre, Herndon, VA (January 2021-Present)
- Member, Biden's Innovation Policy Committee's Subcommittee on Cybersecurity, Privacy and Intellectual Property (2020 – Present)
- ICANN GNSO Council's Liaison to the Governmental Advisory Committee (October 2020 – Present)
- Co-Chair, GNSO Policy Development Process on new gTLD Subsequent Procedures (2016 – Present)
- Former Co-Chair of GNSO New gTLD Discussion Group (2014 – 2016)
- Former Council Member and Vice Chairman of ICANN's Generic Names Supporting Organization (GNSO) on behalf of the gTLD Registries Stakeholder Group (RySG)
- Board member of the Domain Name Association (2013 – 2014; 2015 – 2017)
- Member of the International Trademark Association's Internet Committee (2010–2013; 2016–Present)
- Testified before Subcommittee on Courts, Internet and Intellectual Property of the Committee on the Judiciary, U.S. House of Representatives Oversight Committee regarding "ICANN, New gTLDs and the Protection of Intellectual Property."
- Frequent speaker on issues involving intellectual property, domain names, online dispute resolution, and introduction of new generic top-level domain names
- Featured in worldwide publications, including the New York Times, Wired Magazine, and IP Asia regarding domain name issues
- Served as Treasurer and Founding Board member for Center for Safe Internet Pharmacies (CSIP)
- Member of Pharmacy Advisory Committee in support of National Association of Boards of Pharmacy's Application

ANNEX A

1. I received two Bachelor of Arts degrees from the Pennsylvania State University in 1994; one in Labor & Industrial Relations and one in Political Science with a business minor. I graduated Summa Cum Laude and was the student Marshall for the Labor & Industrial Relations department.
2. In 1997, I received a J.D. from The George Washington University Law School in Washington, D.C. During my tenure there I became a member and editor of the American Intellectual Property Law Association Law Journal and focused on what was then called “Computer Law”.
3. During the summer of 1996, and throughout my third year of law school, I worked as a student associate at the law firm of Arter & Hadden, LLP in the Washington, D.C. office and continued to work there after I graduated from law school until 1999, when I left to join the law firm of Greenberg Traurig.
4. While working at Arter & Hadden, I became a member of the bar in both the Commonwealth of Virginia as well as the District of Columbia.
5. At Arter & Hadden, I became the “go-to” lawyer for all domain name enforcement issues and represented clients including the United States Olympic Committee, the International Olympic Committee, the American Red Cross, Major League Soccer, NCAA, and some local DC colleges and Universities.
6. In addition, I joined the American Intellectual Property Association (“AIPLA”) and became one of the first co-chairs of their “Cyberlaw” committee. On behalf of both AIPLA and the clients we represented, I was asked to participate in the Internet Governance discussions in 1997/1998 with the United States Department of Commerce (“DoC”) and members of the Internet Community. Through this representation, I assisted in the formation of the Internet Corporation of Names and Numbers (“ICANN”) in 1998 on behalf of Intellectual Property owners and was one of the first members of the Intellectual Property Constituency (“IPC”) of ICANN.*
7. In 1999 I joined the law firm of Greenberg Traurig serving in their Intellectual Property and Information Technology transaction groups. I continued to represent clients participating in ICANN’s IPC and was appointed to the Working Group responsible for the development of the Uniform Dispute Resolution Policy (“UDRP”), an alternative dispute resolution mechanism designed as a faster, cheaper, and more efficient process in handling domain names registered and used in bad faith. The UDRP formally went into effect in 1999 and was ICANN’s first “Consensus Policy.”†
8. In 2000, I was introduced to Neustar, Inc., who at the time was a telecommunications client of Greenberg Traurig. During discussions with their head of business development, I encouraged

* I represented AIPLA as one of the initial members of the IPC.

† Consensus Policies are those policies of the Multi-stakeholder community of ICANN that are incorporated into the Registry and Registrar agreements governing the domain name registries and registrars and which must be passed through to domain name registrants.

Neustar to apply for a generic top-level domain (“gTLD”) in the then-upcoming new gTLD application process and introduced Neustar to a domain name registrar called MelbourneIT. I assisted in the formation of the partnership (initially called “JVTeam” and subsequently renamed “NeuLevel”) and led the application process on behalf of NeuLevel for the .BIZ gTLD, which was selected by ICANN as one of the first competitors to .COM.[‡] For .BIZ, I invented the Intellectual Property Claims Service (now called Trademark Claims), which is still in use today for all new gTLDs.[§] This was a unique service that (a) provided notice to perspective registrants that the domain name they were applying for was subject to a trademark owner’s claim of intellectual property rights (putting registrants on notice), and (b) if the registrant continued with the registration, the trademark owner would be notified about the registration. As part of this, I created a new alternative dispute resolution mechanism, modeled after the UDRP, called the Start-up Trademark Opposition Policy (“STOP”) whereby trademark owners could allege that registrants, who had notice of the trademark owners’ rights, continued to register and use the domain name in bad faith.

9. After being selected, I was asked in January 2001 to join Neustar in as its Director of Law and Policy responsible for all legal and policy work related to Neustar’s domain name business as well as corporate wide intellectual property, employment, and insurance-related matters. In this capacity, I served as the primary legal contact and chief negotiator of all domain name registry agreements and amendments with ICANN as well as all registrar agreements with ICANN-accredited and/or ccTLD Accredited registrars (as applicable).

10. On March 22, 2001, I was invited to testify before the Subcommittee on Courts, the Internet, and Intellectual Property of the Committee on the Judiciary House of Representatives.^{**} The hearing examined ICANN, New gTLDs and the protection of Intellectual Property in the 2000 round of new gTLDs.

11. In mid-2001, I led Neustar’s legal and policy team in its effort to acquire the .us country-code top-level domain through a competitive procurement process with the United States DoC. After being selected, I authored the first verified Sunrise Policy for trademark owners as well as one of the first ccTLD Dispute Resolution Policy (called the usDRP), which is still in place today.

12. During the next 10 years I was promoted to Vice President of Law & Policy and not only headed up the legal and policy services for Neustar’s domain and DNS businesses, but also its security services, enterprise services and complex franchise transactions. In this role, I served as the primary contact responsible for the negotiations of the 2006 .BIZ renewal Registry Agreement, as well as one of the gTLD Registries Stakeholder Group (RySG), formerly called the gTLD Registries Constituency (RyC), in its development of the new gTLD Base Registry Agreement.

[‡] “ICANN Announces Selections for New Top-Level Domains” (November 16, 2000), <https://www.icann.org/en/announcements/details/icann-announces-selections-for-new-top-level-domains-16-11-2000-en>.

[§] For a description of the IP Claims Service (initially called Intellectual Property Notification Service) *see* Un-sponsored TLD Agreement: Appendix J (.biz) (May 11, 2001), <https://www.icann.org/en/registry-agreements/biz/un-sponsored-tld-agreement-appendix-j-biz-11-5-2001-en>.

^{**} H.R. Hrg., ICANN, New gTLDs, and the Protection of Intellectual Property, Hearing before the Subcommittee on Courts, the Internet, and Intellectual Property, U.S. House of Representatives, 107th Congress, First Session (March 22, 2001), http://commdocs.house.gov/committees/judiciary/hju72143.000/hju72143_0.HTM.

With respect to the new gTLD Base Registry Agreement, Becky Burr and I led the RySG negotiating team on revisions to the Base Registry Agreement in 2013 when ICANN's CEO proposed additional terms to the agreement after applications had been submitted.

13. In 2011, after Neustar's then head of registry services departed, I was asked to serve as Neustar's Vice President of Registry Services responsible for all of Neustar's registry businesses, including its sales, marketing, business development and customer support. While serving as the business lead, I led the acquisition of .co Internet S.A.S. (owners of the .co ccTLD), as well as 350 new gTLD applications for which Neustar served as the back-end technical registry services provider. In addition, I was responsible for the acquisition, development and launch of the .nyc new gTLD on behalf of the City of New York, which launched in 2014.

14. I left Neustar in January 2015 to lead Com Laude, USA, the North American arm of Nom-IQ Ltd., d/b/a Com Laude, a corporate domain name registrar and consultancy service located in the United Kingdom. I was hired to expand Com Laude's operations and business into North America, and to oversee all business development efforts in the United States. Com Laude maintained domain name portfolios for some of the largest global companies including Amazon, Microsoft, Twitter, HSBC, Nestle, Formula 1, Hard Rock, and Caterpillar. In addition, we would assist our clients in acquiring domain names owned by other third parties, file domain name disputes where those third parties abusively registered the domain names, and engaged in other online brand enforcement activities.

15. I also led the United States team in providing consultancy services to brands that acquired their own TLDs. These clients included Citigroup, Amazon, HSBC, Fox (prior to the Disney merger), the National Association of Boards of Pharmacy, IEEE, and Celebrate Broadway, to name a few.

16. On July 1, 2020, I founded a new legal and policy consulting company called JJN Solutions, LLC which specializes in providing legal and policy services involving intellectual property, information technology transactions, Internet governance, domain name disputes, and Entertainment Law.

17. In August 2021, I also became the Chief Legal Officer of Dot Hiphop, LLC, the Registry Operator for the .hiphop gTLD, where I am responsible for legal and operations services for the domain name registry.

18. During my career, I have held a number of leadership positions within the Internet, Intellectual Property and ICANN communities. These include, inter alia:

- A. FORUM Accredited Panelist (2020-present) – Panelist presiding on Uniform Dispute Resolution Policy (“UDRP”) cases. To date, I have issued 14 sole panelist UDRP decisions involving disputes filed by trademark owners and domain name registrants.
- B. GNSO Liaison to the Governmental Advisory Committee (2020 – Present) responsible for ensuring the collaboration of and participation of the Generic Names Supporting Organization (“GNSO”) with the Governmental Advisory Committee (“GAC”). The GNSO is responsible for the development of policy with

respect to new gTLDs, and the GAC is an organization comprised of governmental officials from around the world representing their individual national governments.

- C. Co-Chair Policy Development Process on Subsequent Rounds of New gTLDs (2016-2021). This committee (“SubPro”) was responsible for the review of the 2012 round of new gTLDs and for making recommendations for future introductions of new gTLDs. I was one of two co-chairs overseeing 250+ members from around the world representing applicants, governments, business, civil society, business and IP interests.
- D. Biden Innovation Policy Committee (2020) – Served on the Subcommittee on Cybersecurity, Privacy and Intellectual Property supporting the Biden Presidential Campaign.
- E. Nominee for the Community Excellence Award (2020). Received nomination from members of the Internet community for an annual award ICANN gives to community members “who have deeply invested in consensus-based solutions, acknowledging the importance of ICANN’s multistakeholder model of Internet governance, and contributed in a substantive way to the higher interests of ICANN’s organization and its community.”
- F. Domain Name Association, Board Member (2013-2014; 2015-2017). The DNA was the first domain name industry trade association that represents the interests of the domain name industry.
- G. GNSO Councilor / Vice Chair (2002 – 2004; 2011-2013). The GNSO Council is the Policy Development body of ICANN.
- H. Center for Safe Internet Pharmacies, Founding Board Member & Treasurer (2011-2014). CSIP’s mission is to promote and encourage safe online pharmacies through education, enforcement, and information sharing.
- I. Chairman, gTLD Registries Stakeholder Group (2001-2004). Elected as first chair of the gTLD Registries Stakeholder Group after it expanded in 2001. This group is responsible for representing the interests of gTLD registries within ICANN.

19. I have been a member of the International Trademark Association for a number of years and have previously served several terms on the Internet Committee. I am a frequent speaker on issues involving intellectual property, domain names, online dispute resolution, and the introduction of new gTLDs. In addition, I have written numerous articles on the domain name industry that have been featured on jnsolutions.COM and CircleID and have been interviewed in several worldwide publications including the New York Times, Wired Magazine, IP Asia and the World Trademark Review.

ANNEX B

Articles I have Authored

1. “Comment on the Kleiman/Komatis Proposal on Multiple Clearinghouses for the New gTLD Process”, CircleID, August 13, 2009, (https://circleid.COM/posts/comment_on_kleiman_komaitis_proposal_multiple_ip_clearinghouses_for_gtld)
2. “Post Delegation Dispute: A Once Supportable Concept Proposed by the IRT is No Unsupportable”, CircleID, October 7, 2009 (https://circleid.COM/posts/post_delegation_dispute_irt_concept_unsupportable)
3. “Say No to WIPO’s Proposal to Amend the PDDRP to Create New Law”, CircleID, May 5, 2010 (https://circleid.COM/posts/say_no_to_wipos_proposal_to_amend_the_pddrp_to_create_new_law/)
4. “Neustar Urges Caution to ICANN Before Batching”, CircleID, June 7, 2012 (https://circleid.COM/posts/20120607_neustar_urges_caution_to_icann_before_batching)
5. “Under pressure: new call for increased gTLDs trademark protection mechanisms”, World Trademark Review (October 8, 2012)(<https://www.worldtrademarkreview.COM/online/under-pressure-new-call-increased-gtlds-trademark-protection-mechanisms>) (Subscription Required).
6. “Clearing up the “logjam”: ICANN Must Drop its Request for a Unilateral Right to Amend the Agreements”, CircleID, May 16, 2013 (https://circleid.COM/posts/20130316_icann_must_drop_request_for_unilateral_right_to_amend_agreements)
7. “Neustar Analysis Shows ICANN Study Overstates Risk of Harmful Domain-Name Collision”, CircleID, September 17, 2013, https://circleid.COM/posts/20130717_neustar_analysis_icann_overstates_risk_of_harmful_domain_collisio
8. “Is Your New TLD Protected Against Phishing and Malware?”, CircleID, June 19, 2014 (https://circleid.COM/posts/20140619_is_your_new_tld_protected_against_phishing_and_malware)
9. “Ask Not What ICANN Can Do for You, But What You Can Do for ICANN”, CircleID, February 23, 2017 (https://circleid.COM/posts/20170223_ask_not_what_icann_can_do_for_you_but_what_you_can_do_for_icann)
10. “In Search of a Geographic Name Policy”, Com Laude Spring Newsletter, March 2018 p. 2-3. (<https://comlaude.COM/app/uploads/2018/09/Com-Laude-Newsletter-March-2018-Final.pdf>)
11. “Will PDP 3.0 Save the Multi-Stakeholder Model?”, CircleID, April 1, 2019 (https://circleid.COM/posts/20190401_dwill_pdp_3_save_the_multi_stakeholder_model)
12. “DNS = Brand”, JJN Solution Blog, July 27, 2020 (<https://www.jjnsolutions.COM/post/dns-brand>)

13. “Enhancing the Multi-stakeholder model within ICANN Part 2 (Problems Still Exist), JJN Solutions Blog, July 29, 2020 (<https://www.jjnsolutions.COM/post/enhancing-the-multi-stakeholder-model-within-icann-part-2-problems-still-exist>)
14. “Help Save the Multi-stakeholder Model (Part 3), JJN Solutions Blog, July 31, 2020 (<https://www.jjnsolutions.COM/post/help-save-the-multi-stakeholder-model-part-3>)
15. “The Predictability Problem of the New gTLD Process (Part 1), JJN Solutions Blog, September 4, 2020 (<https://www.jjnsolutions.COM/post/the-predictability-problem-of-the-new-gtld-process-part-1>)
16. “The Predictability Problem of the New gTLD Process (Part 2: A Proposed Solution”, JJN Solutions Blog, September 15, 2020 (<https://www.jjnsolutions.COM/post/the-predictability-problem-of-the-new-gtld-process-part-2-a-proposed-solution>)
17. “Is the Root Zone Growing too Quickly? All you have to do is ask.”, JJN Solutions Blog, October 7, 2020 (<https://www.jjnsolutions.COM/post/is-the-root-zone-growing-too-quickly-all-you-have-to-do-is-ask>)
18. “Jeffrey J. Neuman Appointed to Internet Leadership Positions at ICANN 72”, JJN Solutions Blog, October 28, 2021 (<https://www.jjnsolutions.com/post/jeffrey-j-neuman-appointed-to-internet-leadership-positions-at-icann-72>)
19. “ICANN Accountability Mechanisms – in Name Only”, JJN Solutions Blog, January 3, 2022 (<https://www.jjnsolutions.com/post/icann-accountability-mechnsisms-in-name-only>)
20. “Dot Hip Hop Withdraws ICANN Reconsideration Request and Corrects the Record”, JJN Solutions Blog, January 13, 2022 (<https://www.jjnsolutions.com/post/dot-hip-hop-withdraws-icann-reconsideration-request-and-corrects-the-record>)
21. “Ukraine Asks ICANN for Sanctions against Russia”, JJN Solutions Blog, March 1, 2022 (<https://www.jjnsolutions.com/post/ukraine-asks-icann-for-sanctions-against-russia>), reposting a note sent to the ICANN At-Large mailing lists.
22. “Opinion: The Ultimate Thankless Job (ICANN CEO)”, JJN Solutions Blog December 29, 2022, (<https://www.jjnsolutions.com/post/opinion-the-ultimate-thankless-job-icann-ceo>)
23. “Opinion: Why have I not given up on New gTLDs?” JJN Solutions Blog, January 19, 2023 (<https://www.jjnsolutions.com/post/opinion-why-have-i-not-given-up-on-new-gtlds>)
24. “Equitable Outcome, Bad Precedent or Both?” JJN Solutions Blog, February 23, 2023 (<https://www.jjnsolutions.com/post/equitable-outcome-bad-precedent-or-both>)
25. “ICANN New gTLDs Rounds – The Steady State of New gTLD Applications”, JJN Solutions Blog, March 16, 2023 (<https://www.jjnsolutions.com/post/icann-new-gtlds-rounds-the-steady-state-of-new-gtld-applications>)

Interviews/Mentions

1. “Trying to Win a New Name Game; Trademarks Must Vie for Net Addresses”, New York Times, June 25, 2001 (<https://www.nytimes.COM/2001/06/25/business/trying-to-win-a-new-name-game-trademarks-must-vie-for-net-addresses.html>)
2. “News Focus: Interview: Jeff Neuman”, Managing IP, June 30, 2001 (<https://www.managingip.COM/article/b1kcgqvc4tmhlf/news-focus-interview-jeff-neuman>) (Subscription Required)
3. “Compressed Data; Suit Filed in Registration of Domain Names”, New York Times, July 30, 2001 (<https://www.nytimes.COM/2001/08/15/business/efforts-to-ease-worries-on-new-net-addresses.html>)
4. “Efforts to Ease Worries on New Net Addresses”, New York Times, August 15, 2001 (<https://www.nytimes.COM/2001/08/15/business/efforts-to-ease-worries-on-new-net-addresses.html>)
5. “.BIZ address absorbs lawyers, not marketers”, Boston Business Journal, August 20, 2001 (<https://www.BIZjournals.COM/boston/stories/2001/08/20/story3.html>)
6. “Injunction against .BIZ domain registrar dropped”, CNN.Com/SCI-Tech, October 29, 2001 (<http://www.cnn.COM/2001/TECH/internet/10/29/biz.injunction.idg/index.html>)
7. “Seoul matters: how brand owners connected with domainers via ICANN”, World Trademark Review, November 10, 2009 (<https://www.worldtrademarkreview.COM/search?search=Neuman&sort=2&page=1>) (subscription required).
8. “What if There Were an Application For Dot Wikileaks?”, Intellectual Property Watch, September 12, 2010 (<https://www.ip-watch.org/2010/12/09/what-if-there-were-an-application-for-dot-wikileaks/>)
9. “Jeff Neuman Talks New TLDs and Trademark Protection”, Mobilenextbigthing, March 4, 2011 (<https://www.youtube.COM/watch?v=FDbkcil8QIE>)
10. “UDRP review due in June”, Managing IP, March 21, 2011 (<https://www.managingip.COM/article/b1kc164kbj1p3x/udrp-review-due-in-june>) (Subscription Required)
11. “Jeff Neuman Discusses Key gTLD Applications and Uses”, Mobilenextbigthing, March 30, 2011 (https://www.youtube.COM/watch?v=wEB_KJOAsqE)
12. “Jeff Neuman Discussed Branded New gTLDs and Security. ICANN, April 11, 2011 (<https://www.youtube.COM/watch?v=63DDOSvP1aA>)
13. “Ruling on .US Domain Raises Privacy Issues”, Washington Post, March 4, 2005 (<https://www.washingtonpost.COM/wp-dyn/articles/A7251-2005Mar4.html>)

14. “How Registrars tackle domain name abuse”, IT World Canada, September 16, 2009 (<https://www.itworldcanada.COM/article/how-registrars-tackle-domain-name-abuse/39768>)
15. “Is the Dot Future Now? The ABC’s of the New gTLDs”, Corporate Counsel, May 16, 2011 (Full Interview) (<https://www.law.COM/corpcounsel/almID/1202493951675/?slreturn=20210821113605>) (Subscription Required) (Also posted at https://thepriorart.typepad.COM/the_prior_art/domain-names/).
16. “Prepare for new gTLD approval – even if the policy isn’t finished”, World Trademark Review, June 3, 2011 (<https://www.worldtrademarkreview.COM/governmentpolicy/prepare-new-gtld-approval-even-if-policy-isnt-finished>) (Subscription Required).
17. “Your .brand gTLD: hopeful registry partners go into marketing overdrive”, World Trademark Review, July 7, 2011 (<https://www.worldtrademarkreview.COM/brand-management/your-brand-gtld-hopeful-registry-partners-go-marketing-overdrive>) (Subscription Required)
18. “New GNSO Council Appointment: Jeff Neuman”, Managing IP, October 10, 2011 (<https://www.managingip.COM/article/b1kc0v1lbrvy8l/new-gnso-council-appointment>) (Subscription Required)
19. “IGF-USA 2012 – Jeff Neuman on competition driving innovation.mov”, Internet Governance Forum – USA, July 26, 2012 (https://www.youtube.COM/watch?v=FxIE9Wm_XJU)
20. “Summary of the TMCH Meeting”, August 18, 2012, Neustar Blog, August 28, 2012 (<https://www.about.us/blog/summary-of-the-trademark-clearinghouse-meeting/369>) (link to paper no longer resolves).
21. “Concerns voiced over trademark clearinghouse processes at ICANN meeting”, World Trademark Review, October 28, 2011 (<https://www.worldtrademarkreview.COM/brand-management/concerns-voiced-over-trademark-clearinghouse-processes-icann-meeting>) (Subscription Required).
22. “Law Enforcement officers want “more verification” on domain contracts”, Heise online, April 7, 2013 (<https://www.heise.de/newsticker/meldung/Strafverfolger-wollen-mehr-Verifizierung-bei-Domainvertraegen-1836659.html>) (Original Article in German).
23. “Debate in Beijing: ICANN As Online Content Regulator”, Intellectual Property Watch, April 12, 2013 (<https://www.ip-watch.org/2013/04/12/debate-in-beijing-icann-as-online-content-regulator/>)
24. “Domain name decision-maker growing into a big machine”, Internet Policy Review, July 18, 2013 (<https://policyreview.info/articles/news/domain-name-decision-maker-growing-big-machine/174>)

25. “New York City Gets One Step Closer to Its Own Corner of the Internet”, Next City, December 10, 2013 (<https://nextcity.org/daily/entry/new-york-city-gets-one-step-closer-to-its-own-corner-of-the-intnet>)
26. “dotStrategy Selects Neustar’s Registry Threat Mitigation Services for .Buzz Registry”, CircleID, April 3, 2014 (https://circleid.COM/posts/20140403_dotstrategy_selects_neustars_registry_threat_mitigation_services/)
27. “New York Boosts Its Brand on Web with .NYC Domain”, Wall Street Journal, September 24, 2014 (<https://www.wsj.COM/articles/new-york-boosts-its-brand-on-web-with-nyc-domain-1411611828>).
28. “PR Blitz Blankets Big Apple for .NYC Domain”, AdAge, October 8, 2014 (<https://adage.COM/node/1104671/printable/print>)
29. “NYC’s domain on record pace with over 56,000 accounts so far”, Engadget, November 13, 2014 (<https://news.yahoo.COM/2014-11-13-nyc-domain-fastest-growing.html>)
30. “Jeff Neuman VP at Neustar - .us National 12K 2014”, USATF.tv interview, November 16, 2014 (https://www.usatf.tv/gprofile.php?mgroup_id=45365&mgroup_event_id=8644&year=2014&do=videos&video_id=127339)
31. “Valideus Launches in US with Neuman hire”, Managing IP, January 26, 2015 (<https://www.managingip.COM/article/b1kbp7td3l0wsh/valideus-launches-in-us-with-neuman-hire>)
32. “Thick Whois vote delayed until March”, Managing IP, February 12, 2016 (<https://www.managingip.COM/article/b1kc1nn8kq395s/thick-whois-vote-delayed-until-march>) (Subscription Required)
33. “Jeff Neuman Discusses the new gTLD subsequent Procedures PDP”, ICANN, June 3, 2016 (<https://www.youtube.COM/watch?v=JWE2nYQgOII>)
34. “Com Laude hits out at ‘.sucks’ after contract termination; Vox Populi fires back”, World Trademark Review, June 20, 2016 (<https://www.worldtrademarkreview.COM/online/com-laude-hits-out-sucks-after-contract-termination-vox-populi-fires-back>) (Subscription Required)
35. “Domain name system transitions to private sector”, Managing IP, October 3, 2016 (<https://www.managingip.COM/article/b1kbp9w1n9dlr/domain-name-system-transitions-to-private-sector>)
36. “Update on New gTLD Subsequent Procedures”, ICANN, June 28, 2017 (<https://www.youtube.COM/watch?v=wcal0u8YYdY>)
37. “Preparing for the next round of new gTLDs: ICANN insider reveals key issues brand owners need to be aware of”, World Trademark Review, April 24, 2018

(<https://www.worldtrademarkreview.COM/online/preparing-next-round-new-gtlds-icann-insider-reveals-key-issues-brand-owners-need-be>) (Subscription Required)

38. “New gTLD Subsequent Procedures”, ICANN, June 27, 2018 (https://www.youtube.COM/watch?v=ujErN_AuTww)

39. “Brands and Domains Conference Recap”, CircleID, October 24, 2017 (https://circleid.COM/posts/20171024_brands_and_domains_conference_recap/)

40. “Are PPC Ads on a Registrar Supplied Default Landing Page Evidence of the Respondent’s Bad Faith?”, Internet Commerce Association Blog, May 30, 2023 (<https://www.internetcommerce.org/udrp/are-ppc-ads-on-a-registrar-supplied-default-landing-page-evidence-of-the-respondents-bad-faith/#decathlonjump>)

Speaking Engagements / Conference Presentations

1. “ISOC-NY Panel: The Future of WHOIS Policy (Webcast), CircleID, November 16, 2006 (https://circleid.COM/posts/isoc_ny_panel_whois_policy/); Podcast at <http://punkcast.COM/1064/index.html>.

2. “New gTLD Implementation Consultation Session – Sydney, Australia”, hosted by ICANN on June 24, 2009 during ICANN 35 in Sydney Australia (<https://archive.icann.org/en/meetings/sydney2009/node/3788.html>)

3. “New gTLD Implementation Consultation Session” hosted by ICANN at the Hudson Theatre, Millennium Hotel in New York City, July 13, 2009 (Video Archives can be found at <http://archive.icann.org/en/topics/new-gtlds/consultation-outreach-en.htm>)

4. “New gTLD Implementation Consultation Session in London” hosted by ICANN at the Royal Institute of British Architects, July 15, 2009 (Video Archives can be found at <http://archive.icann.org/en/topics/new-gtlds/consultation-outreach-en.htm>)

5. “Legal and Technological Preparation for ICANN’s New gTLDs”, Greenberg Traurig panel discussion on December 15, 2010 (<https://docplayer.NET/17639470-Legal-and-technological-preparation-for-icann-s-new-gtlds.html>)

6. “The Changing Landscape of the Domain Name System: New Generic Top Level Domains (gTLDs) and their Implications for Users.”, Internet Governance Forum USA Panel Discussion (July 26, 2012)

7. “NYC Public Workshop and Info Session”, hosted by the Brooklyn Law School on December 9, 2013 (<https://youtu.be/5HK1gO6cPBk>)

8. “Erasing Geographic and Linguistic Boundaries; .GEOs and Community-Driven Generics”, Beyond the Dot Conference, February 19, 2014. (<http://events.r20.constantcontact.COM/register/event?oeidk=a07e8mvryk45f74987f&llr=lhgd5amab&showPage=true>) (No video of presentation)

9. “The Launch of .nyc: Protecting your New York City Business Online” hosted by the New York Law School – Institute for Information Law and Policy, April 23, 2014 (<https://isoc.live/tag/dotnyc/>) (Video no longer available)
10. “Positioning Your Business to Succeed in the New .Dot/Anything World”, Panel discussion hosted by Domainskate at WeWork SOHO on September 11, 2014
11. “ICANN, .nyc, and Multi-stakeholder Innovation” Panel Discussion, Internet Society Chapters Webcasting, November 24, 2014 (<https://www.youtube.COM/watch?v=HRZ4A0-C9Kg>)
12. “‘Inside Out’: Global Portfolio Management on a Budget”, International Trademark Association’s Trademark Administrators and Practitioners Meeting”, September 16, 2016 (<https://www.inta.org/events/2016-tmap-trademark-administrators-and-practitioners-meeting/>)
13. “ICANN and the New Top-Level Domains” Panel 2, Washington College of Law, American University, February 25, 2019 (https://www.youtube.COM/watch?v=9_zLGUz_-mg) – starting at 1:58:00
14. “How Will dotBrands shape the future and the next round of new gTLDs”, Brands and Domains Conference hosted by the Brand Registry Group (November 7, 2019)
15. “Webinar: Have your say on ICANN’s Rights Protection Mechanisms”, Com Laude, April 15, 2020 (<https://www.COMlaude.COM/listen-webinar-webinar-rpms/>)
16. “Intelligence Briefing on ICANN’s Second Round of New gTLDs”, Internet Commerce Association, August 6, 2021 (<https://www.internetcommerce.org/watch-the-recording-of-our-business-intelligence-briefing-on-the-second-round-of-new-gtlds/>)

Testimony

1. “ICANN, New gTLDs, and the Protection of Intellectual Property”, Hearing Before the Subcommittee on Courts, The Internet, and Intellectual Property of the Committee on the Judiciary House of Representatives, 107th Congress, March 22, 2001 (http://commdocs.house.gov/committees/judiciary/hju72143.000/hju72143_0.HTM)
2. Namecheap v. ICANN Independent Review Process before the International Centre for Dispute Resolution, ICDR Case No. 01-20-0000-6787 on behalf of the Claimant; Expert Report (<https://www.icann.org/en/system/files/files/irp-namecheap-expert-report-neuman-redacted-30nov21-en.pdf>)

List of Published UDRP Decisions as a Panelist for the FORUM

1. Micros Systems, Inc. / Oracle International Corporation v. Jaron Hunter, FA 1904194 (8/8/2020)
2. Offerpad, Inc. v. Phillip Haynes, FA 1909553 (9/30/2020)

3. Cooper's Hawk Intermediate Holding, LLC v. Tech Admin / Virtual Point Inc, FA 1916204 (11/17/2020)
4. Google LLC v. Floan Delveir, FA 1925079 (1/21/2021)
5. Google LLC v. Robert Stabile, FA 1926977 (2/15/2021)
6. Toei Animation Co., Ltd. v. Jeff Green / SpeedyWebz, FA 1929303 (3/03/2021)
7. Snap Inc. v. Dan Premium, FA 1931133 (3/24/2021)
8. Coldwell Banker Real Estate LLC v. Jenks Presley, FA 1933334 (4/12/2021)
9. Sig Sauer Inc. v. Joseph Lawrence, FA 1937107 (4/22/2021)
10. Google LLC v. Gabriel Duby, FA 1940674 (5/12/2021)
11. Dr. Seuss Enterprises, L.P. v. Domain Administrator / Fundacion Privacy Services LTD, FA 1941414 (6/03/2021)
12. Course Hero, Inc. v. Julius Njeri, FA 1945579 (6/29/2021)
13. Ruggable, LLC v. Zhichao Yang, FA 1950397 (7/21/2021)
14. Kings Point Recreation Corporation, Inc. v. Marty Koitz / martin koitz, FA 957570 (9/14/2021)
15. Swisher International Inc. v. kirby mastrangelo, FA1969097 (11/24/2021)
16. Electrosoft Services Inc. v. TechOps / SyncPoint, FA1969515 (12/09/2021)
17. Blackstone TM L.L.C. v. Eze Emmanuel, FA1980684 (02/07/2022)
18. Delorean Motor Company v. Netcom, FA1989283 (05/03/2022)
19. Scribe Opco, Inc., d/b/a Koozie Group v. The No Company Inc., FA1994308 (06/21/2022)
20. Marvell Asia Pte, Ltd. v. awais hamid / 700hosting, FA 2001261 (07/19/2022)
21. State Farm Mutual Automobile Insurance Company v. Robert Goldman / A4M, FA 2003300 (09/13/2022)
22. York Wallcoverings, Inc. v. Gerard Brady, FA 2012684 (10/31/2022)
23. Sub-Zero, Inc. v. Bernell Burton / Refrigeration 365, LLC, FA 2014880 (11/30/2022)
24. Wilson's Gun Shop dba Wilson Combat v. Dele Church, FA 2026277 (02/10/2023)

25. Wheel Pros, LLC v. q3fegsr / Tristan Tate / Dristan Company / See PrivacyGuardian.org / Domain Administrator, FA 2030563 (03/23/2023)
26. Takeda Pharmaceutical Company Ltd. v. Regery Ukraine, FA 2034486 (04/24/2023)
27. Harmonia Rosales v. Giraldo Rosales / Nitrogen Labs, Inc., FA 2030851 (05/03/2023)
28. Republic Services, Inc. v. Vanessa Martinez, republicservices.com / Michael Young, FA 2038178 (05/26/2023)

List of Published UDRP Decisions as a Panelist for the World Intellectual Property Organization (WIPO)

1. Saudi Arabian Mining Company (Ma'aden) v. Fundacion Privacy Services LTD, WIPO D2021-3590 (February 7, 2022), Dissenting Panelist
2. Bookker Corporate S.L.U and The Graffter SL v. Domain Admin / This Domain is for Sale, HugeDomains.com, WIPO D2021-4277 (March 10, 2022)
3. Delta Dental Plans Association v. Domains By Proxy, LLC / Kwangpyo Kim, WIPO D2022-0566 (May 25, 2022)
4. Victron Energy B.V. v. Privacy Administrator, Anonymize Inc. / SARVIX, INC, WIPO D2-22=1186 (June 2, 2022), Dissenting Panelist