

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION
International Arbitration Tribunal
ICANN Independent Review Process

ICDR Case No. 01-21-0004-1048

GCCIX, W.L.L.,

Claimant

and

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS,

Respondent

PROCEDURAL ORDER NO. 1
(Procedures and Schedule)

Tribunal

Gary L. Benton, Chair
Amb. (r.) David Huebner
Prof. Catherine Kessedjian

Date

7 February 2022

PROCEDURAL ORDER NO. 1

Pursuant to the International Arbitration Rules of the International Centre for Dispute Resolution (ICDR) effective March 1, 2021 (the "ICDR Rules"), a Preparatory Conference was held in this matter by videoconference on 3 February 2021 before the Arbitral Tribunal: Gary L. Benton, Chair, Amb. (r.) David Huebner and Prof. Catherine Kessedjian.

The Preparatory Conference was attended by the parties through counsel. Claimant GCCIX, W.L.L. was represented by Mike Rodenbaugh, Esq. Respondent Internet Corporation For Assigned Names And Numbers was represented by Eric P. Enson, Esq. and Irma Kroneman, Esq. Casandra Furey, Esq., Associate General Counsel of Respondent, was also present.

Mr. Tom Simotas attended on behalf of the ICDR.

This Procedural Order ("**Procedural Order No. 1**" or "**PO1**") establishes certain procedures applicable in this ICANN Independent Review Process. This PO1 is issued as a result of the discussions with the parties at the Preparatory Conference on the matters addressed herein.

I - THE PARTIES AND COUNSEL

A. Claimant

1. Claimant GCCIX, W.L.L. ("Claimant" or "GCCIX") is a company organized under the laws of the Kingdom of Bahrain.

Claimant is represented by Mike Rodenbaugh, Esq. and Jonathan Frost, Esq. of the law firm Rodenbaugh Law in San Francisco, California, USA.

B. Respondent

2. Respondent Internet Corporation For Assigned Names And Numbers ("Respondent" or "ICANN") is a corporation organized under the laws of California, USA.

Respondent is represented by Eric P. Enson, Esq., Jeffrey A. LeVee, Esq., Kelly M. Ozurovich, Esq. and Irma Kroneman, Esq. of the law firm Jones Day in Los Angeles, California.

II - COMMENCEMENT OF THE INDEPENDENT REVIEW PROCESS, PLEADINGS, AND PRELIMINARY MATTERS

3. This ICANN Independent Review Process ("IRP") was commenced by the submission of Claimant's Notice of Arbitration dated 3 June 2021 and subsequently submitted Request for Independent Review ("Initial Request").
4. On 15 July 2021, Respondent requested the appointment of an Emergency Arbitrator with respect to a request for interim relief.
5. The Emergency Arbitrator, Klaus Reichert SC, was duly appointed, conducted a procedural hearing, scheduled and received briefing, conducted an oral hearing and received submissions on costs. The Emergency Arbitrator's Emergency Arbitration Order is dated 8 December 2021.

6. Pursuant to the Emergency Arbitrator Order, Claimant was directed to file a new Request (“Excised Request”) with the ICDR with specified text in the Initial Request excised and it was directed that the sole documents to be placed in the arbitration file for this Tribunal were the Excised Request and the Emergency Arbitration Order.
7. Claimant’s Excised Request is dated 10 December 2021 and Respondent’s Response to the Request is dated 27 December 2021.
8. As described in Claimant’s Excised Request, the dispute giving rise to this Independent Review Process relates, principally, to Respondent’s decision to deny Claimant’s application to operate the .GCC generic top-level domain (“gTLD”). As well Claimant seeks review with respect to policy and practices concerning the Government Advisory Committee (GAC), the GNSO Council, and Independent Review Process rules and procedures. Claimant requests that the Tribunal finds that Respondent violated its Bylaws and recommends that Respondent follow prior IRP precedent, disregard the GAC advice to reject Claimant’s application and return the application to processing. Claimant also requests that Respondent be required to pay all fees and costs.
9. In its Response, Respondent denies and wrongdoing and contends that it complied with its Articles and Bylaws. Accordingly, Respondent requests that Claimant’s Excised Request for relief be denied.
10. Prof. Kessedjian and Amb. Huebner were nominated as co-arbitrators by the parties, respectively, and Mr. Benton was designated as Chair by list selection by the parties. The Arbitrators affirmed to the parties that they are independent and impartial neutral Arbitrators and have requested that the parties disclose any known conflict considerations to the ICDR. All the Arbitrators have been duly confirmed as Arbitrators by the ICDR without objection.
11. The 3 February 2022 Preparatory Conference was duly scheduled for dates acceptable to counsel for the parties.
12. On 19 January 2022, prior to confirmation of the appointment of the Tribunal, Respondent informed the Tribunal that it intends to file a Stay Application in accordance with an ICANN Board resolution to open an informal dialogue with the GAC regarding the rationale for the 11 April 2013 GAC consensus advice on the .GCC application. Thereafter, parties agreed to various dates and provisions for a briefing schedule. The parties were informed that the Tribunal would address matters relating to the Stay Application at the Preparatory Conference.
13. On 1 February 2022, Claimant raised with the Tribunal its request that the Emergency Arbitrator’s decision to excise content from the Request be reviewed by the Tribunal by means of a motion to dismiss filed by Respondent. The Tribunal agreed to address this matter as well at the Preparatory Conference.
14. The 3 February 2022 Preparatory Conference was conducted by videoconference. The ICDR offered and the parties agreed to the ICDR recording the videoconference on the Zoom platform.
15. At the Preparatory Conference, the Tribunal made preliminary remarks as to the arbitration and process. The Tribunal confirmed that this arbitration will be guided, as required by the applicable law, rules and practice, by principles of fairness, efficiency and accessibility. The Tribunal also noted the principles of party autonomy and flexibility and welcomed proposals by the parties to advance the efficiency of the proceeding.

16. Thereafter, counsel made presentations as to pending issues and discussion followed. Key items addressed at the Preparatory Conference are reported below.

III - JURISDICTION

17. The parties confirmed there are no jurisdictional objections including as to administration by the ICDR, the appointment of the Arbitrators, the arbitration agreement as set forth in the ICANN Bylaws and the scope of the IPR process. Any defenses with respect to the timing for initiating proceedings will be addressed in the course of considering the merits.

IV - PLEADINGS AND RELATED PROCEEDINGS

18. Apart from Claimant's request to reconsider the Emergency Arbitrator Order, there are no requests to amend the pleadings or provide further particulars. There are no requests to add parties.
19. There are no pending related court proceedings or arbitration proceedings.

V - ARBITRATION AGREEMENT AND APPLICABLE LAW AND RULES

20. This Independent Review Process is to be conducted in accordance with the ICANN Articles of Incorporation dated October 2016 and the ICANN Bylaws dated 28 November 2019, in particular, Section 4.3 of the Bylaws. Although these versions of the Articles of Incorporation and the Bylaws are the governing documents with respect to the Independent Review Process, Claimant has asserted violations under one or more prior, then-existing, versions of the Bylaws.
21. The Tribunal inquired of the parties as to governing substantive and procedural law(s) and the parties conveyed preliminary views. The Tribunal will address these matters further if and when necessary.
22. As provided in the ICANN Bylaws and as stipulated, the ICDR International Arbitration Rules, contained within the ICDR Dispute Resolution Procedures, as amended and in effect as of 1 March 2021, and as supplemented by the Interim Supplementary Procedures for Internet Corporation for Assigned Names and Numbers (ICANN) Independent Review Process (IRP) adopted 25 October 2018, shall apply to this proceeding. As provided in the Supplementary Procedures, in the event there is any inconsistency between the Supplementary Procedures and the ICDR Rules, the Supplementary Procedures shall govern.

VI - PLACE OF THE ARBITRATION

23. The ICDR has notified the Tribunal that the place of arbitration (seat) is Los Angeles, California, USA.

VII - HEARING FORMAT

24. The parties intend to address following disposition on the initial applications whether an in-person hearing or videoconference hearing is to be requested.

VIII - LANGUAGE

25. The language of the arbitration is English. The parties are requested to immediately notify the

Tribunal if there will be any need for translators.

IX - INITIAL APPLICATIONS

26. Stay Application - The Tribunal agreed to consider Respondent's Stay Application and accepted the briefing schedule agreed by the parties. The Tribunal agreed to Respondent's proposal for additional pages and submission of a Reply Brief. The parties then agreed to Claimant's request for submission of a Sur-Reply.
27. Accordingly, Respondent's Opening Brief on the Stay Application (15-page limit) is due 10 February 2022; Claimant's Opposition (15-page limit) is due 3 March 2022; Respondent's Reply (5-page limit) is due 10 March 2022; and Claimant's Sur-Reply (5-page limit) is due 17 March 2022.
28. Emergency Arbitrator Decision Reconsideration Application – The Tribunal directed that Claimant's request to reconsider the Emergency Arbitrator's Decision to excise content from the Request should be made in an application by Claimant not Respondent. The parties then agreed to a briefing schedule in parallel to the Stay Application.
29. Accordingly, Claimant's Opening Brief on the Reconsideration Application (15 page limit) is due 10 February 2022; Respondent's Opposition (15 page limit) is due 3 March 2022; Claimant's Reply (5 page limit) is due 10 March 2022; and Respondent's Sur-Reply (5 page limit) is due 17 March 2022.
30. Respondent requested that the submissions not disclose the excised content. Claimant responded that would be difficult to do so and provided an overview. The Tribunal is principally concerned as a predicate question whether a basis for exclusion exists. Accordingly, the Tribunal directs that submissions may address the nature of the excised content but should not disclose the content itself. The Tribunal intends to examine this issue further following the initial briefing by both parties.
31. The Tribunal intends to notify the parties by the close of the week of 21 March whether an oral hearing on either of the applications will be conducted. In the event the Tribunal decides to proceed with a hearing, the parties and the Tribunal reserved Tuesday, 12 April 2022 at 9:30 am Pacific Time for a videoconference hearing on the applications.

X - ADDITIONAL PROCEDURES

32. The parties intend to confer and propose a further schedule, including other pre-hearing procedures and a date for the evidentiary hearing, following disposition of the initial applications. The parties anticipate an additional round of memorials. The schedule will include consideration as to information exchange, witness statements, expert reports, joint submission of exhibits, witness schedules, Pre-Hearing briefs, Case Management Conferences, a final Prehearing Conference and hearing dates. The parties are reminded that the Independent Review Process is intended to be a time and cost-efficient process and are encouraged to plan accordingly. If needed, the Tribunal will schedule a Case Management Conference following the decision on the initial applications to address scheduling.
33. In addition to the applicable the applicable law, governing documents and rules noted in paragraph 22, the following particular procedures shall apply in this arbitration:

A. Notices, Communications and Submissions

34. As agreed by the parties, all notices and written communications addressed by a party to the Tribunal, including all written submissions, briefs and supporting documents submitted, shall be sent directly to the Arbitrators. Copies shall be sent simultaneously to the opposing party and to the ICDR. Written notifications and communications from the Arbitrators to the parties shall also be copied to the ICDR.
35. Only communications containing a request addressed to the Tribunal shall be sent to the Tribunal. For the sake of clarity, communications between the parties, including any documents produced or otherwise exchanged by the parties, shall not be addressed, copied or sent to the Tribunal or the ICDR unless submitted in support of a request or other submission addressed to the Tribunal.

B. Means of Communication, Service, Confidentiality, Cybersecurity and Data Protections

36. All correspondence or requests addressed to the Tribunal and all written submissions, briefs or memorials shall be communicated by email. No hard copies should be provided to any Arbitrator unless expressly requested by the Arbitrator.
- (a) All briefs shall be provided in PDF format. The parties may submit additional copies in MS Word format if desired. All page limits are for 8 ½ x 11 pages, double spaced, with standard margins and no smaller than 12-point font.
- (b) Unless agreed otherwise by the Parties and the Tribunal, email communications shall be unencrypted. The parties may encrypt other transmissions so long as such transmissions are readily accessible for viewing and download.
- (c) The Tribunal has invited the parties to consider the need for Confidentiality Orders or similar protections. None are requested at this time although it is anticipated the need may arise. Should the need arise, the parties should confer to try to reach agreement on a stipulated order.
- (d) The Tribunal has invited the parties to consider the need for specific cybersecurity, privacy or data protections. No special considerations are requested at this time. Consistent with ICDR policy, the parties should notify opposing counsel, the ICDR and the Tribunal within 24 hours in the event of any data breach related to this proceeding
- (e) In accordance with ICDR guidance, the Arbitrators may destroy their files related to this matter ninety (90) days after the issuance of the Decision unless otherwise notified by the parties.

C. Evidentiary Disclosures and Experts

34. No evidentiary disclosures have been requested for purposes of the immediate applications. The parties reserved the right to make such requests at a later date.
35. The parties do not plan to submit expert witness testimony for purposes of the immediate applications. The parties anticipate that expert testimony may be required later and will plan any proposed schedule accordingly.

XI - TIMING

36. Written notifications and communications will be considered on time if sent by email prior to the expiry of the relevant time limit or deadline.
37. Except as may be otherwise ordered by the Tribunal, time limits and deadlines shall expire at 23:59 (11:59 p.m.) Pacific Time on the date of the relevant time limit or deadline.
38. Short and reasonable extensions or modifications of time limits or deadlines (other than as to hearing-related dates) may be agreed between the parties without requesting approval from the Tribunal. Applications for extensions or modifications of time limits which are not agreed between the parties should whenever possible be made to the Tribunal at least two business days prior to the expiry of the time limit or deadline in question, in the form of a written communication explaining why the extension is required and for what period of time.
39. The parties are requested to notify the ICDR if they agree that applications for extensions of time and other ministerial matters may be addressed solely by the Chair.

XII - AWARD AND COSTS

40. As provided by the procedures and stipulated by the parties, the Tribunal shall issue a reasoned Decision in writing. It is anticipated that Decision shall be made public in accordance with ICANN procedures.
41. Claimant has made a request for costs and fees. Cost claims shall be addressed on the papers following the evidentiary hearing.

XIII - SETTLEMENT AND MEDIATION

42. The Tribunal encouraged the parties to consider whether further direct negotiations or mediation would be productive. The role of the Tribunal is to provide a decision on the merits and not engage in any settlement processes. The Tribunal would be amenable to revising scheduling if jointly requested by the parties to accommodate settlement processes. The parties are invited to address directly with the ICDR if they require assistance with mediation services.

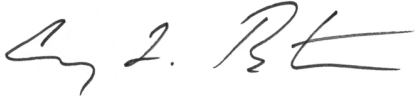
XIV - MODIFICATIONS, CORRECTIONS AND EXECUTION

43. The provisions of this PO1 and of any other procedural decision rendered in this proceeding may be varied or modified by the Tribunal after consultation with the parties.
44. The parties are requested to submit any proposed correction or objections to this PO1 within four days from the issuance date below.

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45. The Tribunal has confirmed that Procedural Orders may be signed by the Chair on behalf of the full Tribunal.

Date: 7 February 2022

A handwritten signature in black ink, appearing to read "Gary L. Benton". The signature is written in a cursive style with a horizontal line extending from the end of the name.

Gary L. Benton, Chair
By and for the Tribunal