

1                   **Case Number: 01-14-0001-6263 [Donuts Inc.-vs- Internet**  
2                   **Corporation for Assigned Names and Numbers (ICANN)]**

3                                   **PROCEDURAL ORDER NO. 2**  
4                                   **Issued August 8, 2015**

5           1. In its Procedural Order No. 1, dated July 17, 2015, the Tribunal, inter alia, advised the Parties  
6           that “[a]ny further exchanges of documents and other information between the Parties should  
7           occur through cooperation and in the manner set forth in Article 21 of the ICDR Rules.”

8           2. By email dated August 8, 2015, Mr. Genga informed the Tribunal, in pertinent part, that:

9                   Counsel have met and conferred telephonically and in writing regarding: (i) scheduling  
10                  conflicts identified by counsel for Donuts; and (ii) document requests that Donuts have  
11                  propounded to ICANN (a copy of which is attached for the Panel's information).

12                 As to the first issue, counsel believe that schedules can be accommodated reasonably  
13                 and without unduly delaying the timeline envisioned by the Panel in its Procedural  
14                 Order No. 1.

15                 Regarding the document requests, while the parties have no dispute as to certain of  
16                 them, they disagree as to others. As such, the parties would like to present their  
17                 respective positions to the Panel expeditiously so as not to delay resolving this  
18                 proceeding on the merits as soon as their respective schedules reasonably allow.  
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20                 In furtherance of these objectives, the parties have agreed upon, and respectfully  
21                 propose that the Panel adopt, the following schedule in lieu of that suggested in  
22                 Procedural Order No.1:

23                   1) The parties shall simultaneously submit letter briefs of no more than five (5) pages  
24                   concerning the document requests by 5:00 p.m. PDT on August 10, 2015;

25                   2) Given that Mr. Genga's trial schedule makes him unavailable for oral argument on  
26                   the dates suggested in the Panel's Procedural Order No. 1, and unless the Panel  
27                   determines otherwise based on its consideration of the document requests:

28                         a) Donuts shall make its supplemental written submission on the merits  
29                         electronically by 5:00 p.m. PDT on August 18, 2015;

30                         b) ICANN shall make its supplemental written submission on the merits  
31                         electronically by 5:00 p.m. PDT on September 18, 2015; and

32                         c) The hearing on the merits shall take place by telephone commencing at 9:30 a.m.  
33                         PDT October 8, 2015.

34           3. The Tribunal is grateful for the initiative taken by the Parties, and in light of the forgoing  
35           agreement, orders as follows:

36                   The Parties shall simultaneously submit letter briefs of no more than five (5) pages  
37                   concerning the document requests by 5:00 p.m. PDT on August 10, 2015.

38                   In their letter submissions, each Party shall address the controlling questions of “necessity”  
39                   and “appropriateness” as established in ICDR Rule 20(4), and shall bear in mind Article 21

1 of the ICDR Rules text. In particular, but not to the exclusion of the remainder of Article  
2 21, the Tribunal notes that paragraphs 1, 4, 5 and 8, provide the following guidance:

3 1. The arbitral tribunal shall manage the exchange of information between the parties with a  
4 view to maintaining efficiency and economy. The tribunal and the parties should endeavor to  
5 avoid unnecessary delay and expense while at the same time avoiding surprise, assuring  
6 equality of treatment, and safeguarding each party's opportunity to present its claims and  
7 defenses fairly. /...

8  
9 4. The tribunal may, upon application, require a party to make available to another party  
10 documents in that party's possession not otherwise available to the party seeking the  
11 documents, that are reasonably believed to exist and to be relevant and material to the  
12 outcome of the case. Requests for documents shall contain a description of specific  
13 documents or classes of documents, along with an explanation of their relevance and  
14 materiality to the outcome of the case.

15  
16 5. The tribunal may condition any exchange of information subject to claims of commercial or  
17 technical confidentiality on appropriate measures to protect such confidentiality. /...

18 8. In resolving any dispute about pre-hearing exchanges of information, the tribunal shall  
19 require a requesting party to justify the time and expense that its request may involve and  
20 may condition granting such a request on the payment of part or all of the cost by the party  
21 seeking the information. The tribunal may also allocate the costs of providing information  
22 among the parties, either in an interim order or in an award.

23 4. Once having considered the Parties' simultaneous submissions in light of the standards  
24 suggested above, the Tribunal will indicate what further exchanges, if any, will be  
25 necessary.

26 5. **Supplemental briefing on the merits:** The Tribunal further orders that the schedule for  
27 supplemental briefing on the merits envisaged in Procedural Order No. 1 stands modified.  
28 As amended, the schedule is that:

29 Donuts will make its supplemental written submission on the merits electronically by 5:00  
30 p.m. PDT on **August 20, 2015**;

31 ICANN will make its supplemental written submission on the merits electronically by 5:00  
32 p.m. PDT on **September 20, 2015**.

33 6. **Hearing for Argument:** The Hearing for Argument is scheduled for **October 8, 2015**,  
34 commencing at 9:30 a.m. The Tribunal does not exclude the possibility that the Hearing will  
35 occur at a physical gathering in Southern California, rather than telephonically.

36 As to the question of hearing format (physical or telephonic), the Tribunal wishes to be  
37 informed by the Parties of their preferences, if any.

38  
39 Jack J. Coe, Jr (Chair, for the Tribunal)

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