

11 June 2014

To the attention of:

Mr. Steve Crocker
Chair, ICANN Board;

Mr. Bruce Tonkin
Chair, Board Governance Committee;

Mr. Cherine Chalaby
Chair, New gTLD Program Committee; and

Mr. Fadi Chehade,
President and CEO, ICANN

12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536
USA

By fax +1 310 823 8649 and by e-mail: independentreview@icann.org

Re: Notice of Independent Review Process

Dear Sirs,

I write you on behalf of Vistaprint Limited, a company having its corporate seat at ^{Contact}
Contact Information Redacted (hereinafter,
“Vistaprint”). Reference is made to the Board Governance Committee’s Determination of 27
February 2014 on Reconsideration Request 14-5 affecting Vistaprint.

Vistaprint has asked me to proceed with the filing of the Request for Independent Review on
its behalf. I wanted to inform you that this request is being filed today at ICDR. Attached is a
copy of Vistaprint’s request.

Yours sincerely,



Flip Petillion
Crowell & Moring LLP
Contact Information Redacted

Attachment: Request for Independent Review

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

Vistaprint Limited)
Contact Information Redacted)
)
)
Claimant)
)
v.)
)
INTERNET CORPORATION FOR)
ASSIGNED NAMES AND NUMBERS)
)
Respondent)
_____)

ICDR Case No. _____

**REQUEST FOR INDEPENDENT REVIEW PROCESS
BY VISTAPRINT LIMITED**

Flip Petillion,
Crowell & Moring LLP
Contact Information Redacted

Counsel for Claimant

I. IDENTIFICATION OF THE PARTIES

A. Claimant

1. The Claimant in this dispute is Vistaprint Limited (Vistaprint). The Claimant's contact details are as follows: **Contact Information Redacted**

Contact Information Redacted

2. Vistaprint is represented in these proceedings by:

Flip Petillion
Crowell & Moring LLP
Contact Information Redacted

B. Respondent

3. The Respondent is the Internet Corporation for Assigned Names and Numbers (ICANN). The Respondent's contact details are as follows: 12025 Waterfront Drive, Suite 300, Los Angeles, CA 90094-2536.

II. EXECUTIVE SUMMARY

4. Vistaprint requests an Independent Review of ICANN's treatment of Vistaprint's applications for the .webs gTLDs. This case relates to ICANN's handling of the determination and advice of the ICDR appointed expert, following objections to Vistaprint's applications. It does not relate to the merits of said determination and advice.

5. During ICANN's recent new gTLD application round, Vistaprint applied to operate .webs with a view to reinforcing the reputation of the Applicant's website creation tools and hosting services, known under the identifier 'WEBS', and the community it represents. Seven other applicants applied for the string .web. Of these seven applicants, one (Web.com Group, Inc.) argued that the .webs and .web gTLDs were confusingly similar and filed a so-called string confusion objection in accordance with ICANN's new gTLD Dispute Resolution Procedure (the 'Procedure').

6. ICANN appointed the ICDR as a Dispute Resolution Service Provider (DRSP) for administering objections to be conducted in accordance with the Procedure and the DRSP Rules. The Procedure and the DRSP Rules set out the rules to be applied by the ICDR in designating a panel, as well as the standard (determined by ICANN) to be applied by the panel in ruling on string confusion objections. Findings by such a panel are to be considered an expert determination and advices addressed to ICANN within the dispute resolution process. ICANN is not entitled to blindly accept expert determinations and advice: it must verify whether or not, by accepting the expert determination and advice, it is acting consistent with its obligations under its Articles of Incorporation, Bylaws and Affirmation of Commitments. ICANN would be in violation of these obligations if it were to accept a determination or advice in circumstances where the ICDR and/or the appointed panel had failed to comply with the Procedure and/or the DRSP Rules, or where a panel – even if it had been correctly appointed – had failed to correctly apply the standard set by ICANN.

In the present case, both the DRSP and the – incorrectly appointed – panel have derogated from the Procedure. In addition, the panel has failed to apply the standard set by ICANN in ruling that the application for .webs and the application for .web are confusingly similar. This has not however prevented ICANN from accepting the erroneous determination.

7. Following ICANN's decision to accept the panel's determination on the string confusion objection, Vistaprint filed a Request for Reconsideration (RfR) with ICANN, detailing how ICANN's acceptance of the panel's determination was inconsistent with ICANN's policy and ICANN's obligations under its Articles of Incorporation, Bylaws and Affirmation of Commitments. Despite this, ICANN refused to reverse its decision.

8. As a result of ICANN's acceptance of the string confusion objection, Vistaprint's application has been needlessly delayed and subjected to additional procedures (RfR, Cooperative Engagement Process (CEP)). ICANN's acceptance of the expert determination on the string

confusion objection and the refusal to reverse this decision was an abdication of responsibility and contrary to the evaluation policies ICANN had established for new gTLD applications.

9. Additionally, TLD strings at least as similar to each other as .webs is to .web have coexisted for many years. ICANN's acceptance of the expert determination is not justified by any legitimate security or stability concerns. It is baseless and arbitrary and conflicts with ICANN's obligation to promote consumer choice, innovation and competition.

10. Vistaprint repeatedly asked ICANN – including in the RfR – to comply with its own policy and remedy the improper treatment of the .webs application. ICANN has not only declined, but has attempted to evade all responsibility, hereby infringing fundamental obligations under its Bylaws, Articles of Incorporation and Policies.

11. Vistaprint requests that ICANN be required to overturn the string confusion objection determination in relation to .webs and .web and allow Vistaprint's application to proceed on its own merits without reference to the application for .web.

III. SUMMARY OF RELEVANT FACTS

A. The parties

1. Vistaprint

12. Vistaprint is a limited company established under the laws of Bermuda. Vistaprint is an Intellectual Property holding company of the publicly traded company, Vistaprint NV, a large online supplier of printed and promotional material as well as marketing services to micro businesses and consumers. It offers business and consumer marketing and identity products and services worldwide. Through its subsidiaries, the Applicant provides hosting and other Internet related services, in particular under its WEBS brand.

2. ICANN

13. ICANN is a Californian non-profit public benefit corporation, responsible for administering technical aspects of the Internet's domain name system (DNS). Core to its mission is increasing competition and fostering choice in the DNS. ICANN's Articles of Incorporation require ICANN to act "*for the benefit of the Internet community as a whole*" and "*in conformity with the relevant*

principles of international law and local law” (RM¹ 1, Article 4). ICANN’s fundamental principles, which are reiterated numerous times in ICANN’s governance documents and other policies, require ICANN to act in good faith, to ensure fairness, non-discrimination, openness and transparency, accountability, and the promotion of competition.

B. ICANN established the new gTLD Program

14. ICANN’s responsibilities include establishing a process for introducing new top-level domains (TLDs) in order to promote consumer choice and competition (RM 4, Article 9.3). Before the introduction of the new gTLD program, ICANN had, over time, expanded the DNS from the original six generic TLDs (gTLDs) to 22 gTLDs and approximately 250 two-letter country-code TLDs (ccTLDs). These TLDs have coexisted for years without a problem, notwithstanding the similarities between certain of them (such as .gl / .gi; .io / .jo) (RM 6).

15. In 2005, ICANN’s Generic Names Supporting Organization (GNSO) began a policy development process to consider the introduction of new gTLDs (RM 7-8). The GNSO is the main policy-making body for generic top-level domains, and encourages global participation in the technical management of the Internet (RM 2, Article X). In 2008, the ICANN Board adopted 19 specific GNSO policy recommendations for implementing new gTLDs, with allocation criteria and contractual conditions (RM 9). These allocation criteria were set out in the Applicant Guidebook, which is the crystallization of Board-approved consensus policy concerning the introduction of new gTLDs. In June 2011, ICANN’s Board approved the Guidebook and authorized the launch of the New gTLD Program (RM 10). The program’s goals include enhancing competition and consumer choice, and enabling the benefits of innovation via the introduction of new gTLDs, including both new ASCII and new internationalized domain name (IDN) top-level domains (RM 11).

16. The purpose of the Applicant Guidebook was to ensure that prospective applicants understood what was required of them when applying for a new gTLD and what they could expect

¹ Reference Material.

at each stage of the evaluation process (**RM 11**, p. 12; **RM 12**). The final version of the Applicant Guidebook was made available only on 4 June 2012 (**RM 5**), *i.e.*, after the application window for new gTLD applicants closed on 30 May 2012 (**RM 13**).

C. Vistaprint applied for .webs

17. Vistaprint has filed 2 applications to operate the .webs gTLD (Application ID 1-1033-22687 and 1-1033-73917), one standard and one community-based application. As specified in the applications, Vistaprint intends the .webs gTLD to be unambiguous as regards:

- the identity of Vistaprint as the Registry Operator;
- the fact that the services offered under the .WEBS space are made possible thanks to the products and services offered by and for the Webs community² (**Annex 1**).

D. Web.com Group, Inc. and 6 other applicants applied for .web

18. According to its own statements, Web.com Group, Inc. (Web.com) offers a variety of TLDs and a full suite of domain-name services, including registration, management, renewal, expiration protection and privacy services. Web.com applied for the .web gTLD. The primary drivers of its application are to increase consumer choice and to spark competition across all industries engaging customers online by providing greater opportunities for registrants to secure easy to find domains (**Annex 3**).

19. In addition to Web.com, 6 other companies also applied for .web (**Annexes 4-9**).

E. ICANN established a Policy in relation to String Similarity

1. Overview of the Policy for dealing with String Similarity and applicable standard

20. In giving meaning to the so-called ‘GNSO Recommendation 2’, ICANN developed a policy of reviewing similarity between (i) applied-for gTLD strings and (ii) existing TLDs, reserved names and other applied-for strings. The objective of this review is to prevent user confusion. If several applied-for strings are found to be confusingly similar to one another, only one of those strings will be delegated.

² The Webs community is predominantly comprised of non-US clients (54% non-US, 46% US) (**Annex 2**).

21. As part of its string similarity policy, ICANN gave applicants the opportunity to submit a String Confusion Objection before a DRSP panel which had to assess the likelihood of string confusion according to a strict standard:

“A DRSP panel hearing a string confusion objection will consider whether the applied-for gTLD string is likely to result in string confusion. String confusion exists where a string so nearly resembles another that it is likely to deceive or cause confusion. For a likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.” (RM 5, Module 3-18)

22. At various times, ICANN has indicated that the string confusion test sets a high bar:

- *“[T]he standard indicates that confusion must be probable, not merely possible, in order for this sort of harm to arise. Consumers also benefit from competition. For new gTLDs, the similarity test is a high bar, as indicated by the wording of the standard.[...] Therefore, while the objection and dispute resolution process is intended to address all types of similarity, the process is not intended to hobble competition or reserve a broad set of string [sic] for a first mover.”(RM 14, p. 149)*
- *“Policy discussions indicate that the most important reason to disallow similar strings as top-level domain names is to protect Internet users from the increased exposure to fraud and other risks that could ensue from confusion of one string for another. This reasoning must be balanced against unreasonable exclusion of top-level labels and denial of applications where considerable investment has all ready been made. As the top-level grows in number of registrations, drawing too large a circle of “similarity protection” around each existing string will quickly result in the unnecessary depletion of available names. The unnecessary exclusion of names would also tend to stifle the opportunity of community representation at the top-level and innovation.” (RM 15, p. 4)*

23. ICANN’s high standard for dealing with string confusion objections has been explicitly confirmed by the NGPC, which states in the Applicant Guidebook that ‘similar’ means:

“strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone. During the policy development and implementation design phases of the New gTLD Program, aural and conceptual string similarities were considered. These types of similarity were discussed at length, yet ultimately not agreed to be used as a basis for the analysis of the string similarity panels’ consideration because on balance, this could have unanticipated results in limiting the expansion of the DNS as well as the reach and utility of the Internet. [...] The NGPC reflected on existing string similarity in the DNS and considered the positive and negative impacts. The NGPC observed that numerous examples of similar strings, including singulars and plurals exist within the DNS at the second level. Many of these are not registered to or operated by the same registrant. There are thousands of examples [...]” (RM 16, Rationale).

24. As a result, two strings should only be placed in a contention set if they are so similar that they would create a probability of user confusion were both to be delegated into the root zone, and

the finding of confusing similarity must be balanced against the risk of unreasonable exclusion of top-level labels and the denial of applications.

2. **Procedural rules for dealing with string confusion objections**

a. **Applicable rules**

25. String confusion objections between applicants are to be resolved in accordance with the Procedure³ (Article 1(b) Procedure). Such objection proceedings are to be administered by a DRSP in accordance with the Procedure and the applicable DRSP Rules⁴ (Article 1(c) Procedure). The panel, appointed by the DRSP, must apply the standards set by ICANN (Article 20(a) Procedure). In string confusion objections, this is likelihood of confusion standard set out above.

b. **Appointment procedure**

26. Pursuant to Article 13 (a) of the Procedure, the DRSP must select and appoint the panel of expert(s) within thirty (30) days after receiving the Response. All experts acting under the Procedure must be impartial and independent of the parties. The applicable DRSP Rules stipulate the manner in which each expert is obliged to “confirm and ***maintain their impartiality and independence***” (Article 13(c) Procedure, emphasis added).

27. The procedures for challenging and replacing an expert are described in the applicable DRSP Rules (Article 13(d) Procedure). The applicable DRSP Rules of the ICDR state that a party:

“may challenge any Expert whenever circumstances exist that give rise to justifiable doubts as to the Expert’s impartiality or independence. Upon receipt of such a challenge, the DRSP shall notify the other parties of the challenge. [...] Upon review of the challenge the DRSP in its sole discretion shall make the decision on the challenge and advise the parties of its decision. The challenged Expert may also withdraw from office upon notice of the challenge” (Article 2 DRSP Rules).

28. The DRSP and the panel must make reasonable efforts to ensure that the Expert Determination is rendered within 45 days of the constitution of the panel (Article 21 Procedure). In

³ The Procedure is included in **RM 5**, Attachment to Module 3.

⁴ The applicable DRSP Rules are taken up as **RM 17**.

specific circumstances, such as consolidated cases, and in consultation with the DRSP, a brief extension may be allowed, if significant additional documentation is requested by the panel.

c. The procedure for considering additional submissions

29. Only the panel is entitled to decide whether the parties may submit written statements in addition to the Objection and the Response (Article 17 Procedure). Additional evidence may be submitted only in exceptional cases (Article 18 Procedure).

d. The burden of proof

30. The Applicant Guidebook states, as a fundamental rule, that “[t]he objector bears the burden of proof in each case” (RM 5, Module 3-18). This is confirmed in Article 20(c) of the Procedure, stating that “[t]he Objector bears the burden of proving that its Objection should be sustained in accordance with the applicable standards”. As a result, for an objector in a string confusion objection to prevail, he must prove that ICANN’s high standard on likelihood of confusion is met.

F. ICANN selected the ICDR as DRSP

31. According to the website of the ICDR, in 2009 ICANN selected the ICDR to act as the DRSP for string confusion objections (RM 18). In 2012, the ICDR and ICANN executed a Memorandum of Understanding confirming that the Procedure and the DRSP Rules apply to string confusion objections and confirming ICANN’s support to the ICDR in optimizing the services and procedures for the ICDR to perform its duties in a timely and efficient manner (RM 19).

G. Web.com filed an objection

32. On March 13, 2013, Web.com filed 2 identical objections to Vistaprint’s applications for .webs. Web.com argued that the .webs applications were confusingly similar from a visual, aural and conceptual perspective to Web.com’s application for .web.

H. The DRSP failed to apply ICANN's Policies in failing to comply with the appointment procedure

1. The DRSP belatedly appointed a panel and allowed for unjustified extensions

33. Vistaprint's (identical) responses to the string confusion objection were received by the DRSP on May 23, 2013 (Annex 10). This meant that the panel had to be appointed by June 22, 2013 (Article 13(a) Procedure). On May 31, 2013, the DRSP confirmed its commitment to appoint an expert by that date (Annex 11). It nevertheless took the DRSP until June 28, 2013 to appoint Steve Y. Koh, Esq. as the Panel (Annex 12).

34. Once appointed, Mr. Koh created additional delays. On September 18, 2013 (i.e. 82 days after the appointment of Mr. Koh as the Panel), the DRSP informed the parties that the expert determination was going to be issued on or about October 4, 2013 (i.e. 98 days after the appointment of Mr. Koh as the Panel) (Annex 14).

35. No reason was given for this delay-- which can in no way be considered a brief extension of the 45-day deadline for rendering the determination: it more than doubles the timeframe to render the decision. The consolidation of the two cases cannot justify this disproportionate extension, as the cases were identical (involving the same gTLD strings, the same parties and the same arguments). Similarly the unjustified acceptance of additional submissions (*infra*) cannot excuse this disproportionate extension.

2. The DRSP unjustifiably accepted a challenge to a panel (or created the circumstances for such challenge) and failed to achieve the goal of resolving disputes rapidly

36. On October 1, 2013, the DRSP informed the parties that Mr. Koh had stepped down from his role as the Panel (Annex 15). Mr. Koh stepping down was a violation of the procedural rules (*infra*).

37. On October 14, 2013, the DRSP informed the parties that it had appointed Bruce W. Belding, Esq. as the new Panel (Annex 16). On October 24, 2013, Web.com challenged the appointment of Mr. Belding (Annex 17). However, there were no grounds for such a challenge (Annex 18). Web.com's challenge was based solely on the fact that Mr. Belding had served as the

Panel in an unrelated string confusion objection involving the same DRSP. As demonstrated by Vistaprint in its request to deny the challenge (**Annex 18**), this was not a reason for doubting the impartiality or independence of Mr. Belding or to challenge his appointment.

38. Moreover, as the DRSP administered the unrelated string confusion objection proceedings in which Mr. Belding served as the Panel, it was necessarily aware of this issue when appointing him in the case between Web.com and Vistaprint. If the DRSP was of the opinion that the fact that Mr. Belding served as the Panel in previous proceedings could give rise to justifiable doubts as to the impartiality and independence of the Panel, it should never have appointed him in the case between Web.com and Vistaprint.

39. Without justification, the DRSP accepted Web.com's challenge to the appointment of Mr. Belding on November 4, 2013 (**Annex 19**). On November 5, 2013, Vistaprint requested that the DRSP reconsider its decision to accept the challenge to the appointment of Mr. Belding (**Annex 20**). On November 8, 2013, the DRSP denied this request and indicated that it was going to appoint a new Panel shortly (**Annex 21**). On November 20, 2013, the DRSP appointed Prof. Ilhyung Lee as the Panel (**Annex 22**). In accordance with Article 21 of the Procedure, his determination should have been rendered by January 4, 2014. However, it took this Panel until January 24, 2014 to render its decision.

40. The unfounded acceptance of the challenge of the Panel was a clear violation of the Procedure and the DRSP rules. Web.com's challenge was either unfounded and the DRSP should have rejected it, or it was founded, which would mean that the DRSP appointed a Panel knowing that justifiable doubts existed as to the Panel's impartiality and independence. Either way, the DRSP failed to correctly apply the Procedure and the DRSP Rules, which require the appointment of impartial and independent Panels and a rapid resolution of string confusion objections.

41. The goal of resolving disputes rapidly was clearly not met by the DRSP. From the date that the Panel had to be ultimately appointed, it took no less than 216 (!) days for a Panel to render a

decision that should have been rendered in maximum of 45 days. The DRSP has not made reasonable efforts to ensure that a timely decision was taken (*see also* **Annex 23**, pp. 11-12 *et al.*).

I. The appointed panel(s) failed to apply ICANN’s Policies in failing to comply with the procedural rules, in unjustifiably accepting additional submissions and in making an incorrect application of the burden of proof and standard for string confusion objections

1. Unjustified acceptance of additional submissions

42. On July 19, 2013 (i.e. 58 days after the receipt of the Vistaprint’s response), Web.com submitted an unsolicited supplementary filing to Mr. Koh, the first Panel. The filing was said to contain a reply brief and 25 annexes of additional evidence. The original objection contained only 4 annexes. On July 31, 2013, Vistaprint objected to the acceptance of this unsolicited supplementary filing (**Annex 23**). As mentioned above, only the Panel was entitled to decide that parties could submit written statements in addition to the Objection and the Response, and additional evidence could be submitted only in exceptional circumstances (Articles 17 and 18 Procedure). Despite the fact that no prior leave was granted to Web.com to file an additional submission, that there were no exceptional circumstances justifying the submission of additional evidence and that requiring Vistaprint to examine and respond to the unsolicited additional submission created unreasonable additional costs for Vistaprint, the first Panel disregarded the procedural ramifications of the admission of the Objector’s unsolicited filing and additional evidence in violation of the express goal of the Procedure “*of resolving disputes rapidly and at reasonable costs*”. On August 8, 2013, the first Panel accepted Web.com’s supplemental filing AND annexes. The first Panel provided no justification for this decision. Instead, the first Panel authorized Vistaprint to submit a surreply, but required that this surreply was not to exceed 5 pages and was to be submitted within 29 days (**Annex 13**). This page limit and deadline are in stark contrast with the 58 day period taken by Web.com to submit a 6-page reply with no less than 25 additional annexes. Vistaprint considers that the principle of equality of arms was not respected by this decision.

2. Failure to maintain independence and impartiality

43. On October 1, 2013, the DRSP informed Vistaprint that “*due to a new conflict, the Expert, Steve Koh [...] [was not going to] be able to serve [any] longer*” (**Annex 15**, emphasis added). Vistaprint wonders whether this conflict arose before or after the unjustified acceptance of Web.com’s additional submissions. The DRSP clearly mentions a “new” conflict, which can only mean that one or more other conflicts had already existed. Otherwise, the DRSP would have said something along the lines of “due to a conflict that has recently arisen”. In any event, once appointed, each expert is obliged to maintain his impartiality and independence (Article 13(c) Procedure). The fact that a new conflict arose shows that Mr. Koh failed to maintain his impartiality and independence and thus violated the Procedure. The DRSP failed to react, when Vistaprint expressed its concerns about this violation of the Procedure (**Annex 20**).

3. Reliance on an erroneous decision that was not based on an impartial and independent assessment

44. When Prof. Ilhyung Lee was ultimately appointed as the Panel, he did not invite any of the parties to submit additional written statements or additional evidence. He simply accepted Web.com’s unsolicited additional submission and Vistaprint’s surreply. This was a further violation of the procedural rules, as only “[t]he Panel [was entitled to] decide that parties shall submit any written statements in addition to the Objection and the Response[...]” and only “[...] the Panel may require a party to provide additional evidence” (Article 17(a) *juncto* 18 Procedure, emphasis added). The Panel did not decide on the submission of additional statements or evidence, but simply relied on the erroneous acceptance of additional statements and evidence by a previous Panel that had been unable to warrant its independence and impartiality. No independent assessment of whether or not to require additional submissions and evidence was made. For this reason too, ICANN’s policy and process was not followed.

4. **Incorrect application of the burden of proof and of the standard set by ICANN**

45. The unjustified acceptance of additional submissions and evidence also had implications in relation to the burden of proof. Indeed, it is unclear whether Web.com could have met the burden of proof if its unauthorized additional submission had not been accepted.

46. The Panel sets out no analysis showing that Web.com had met the burden of proof. Before entering into the discussion of the parties' arguments, the Panel simply states (**Annex 1**, p. 10):

The Panel concludes that the <.webs> string so nearly resembles <.web> -- visually, aurally and in meaning -- that it is likely to cause confusion. A contrary conclusion, the Panel is simply unable to reach. The Applicant's <.webs> is visually identical to

It is unclear how the Panel came to this conclusion, let alone that this conclusion was based on the Web.com's evidence and arguments. The Panel merely makes this statement and then starts discussing Vistaprint's arguments. This is a reversal of the proper order. The Panel should have looked into Web.com's evidence and arguments and then analyzed them in view of the Vistaprint's evidence and counterarguments. The Panel concludes that .web and .webs are confusingly similar without discussing Web.com's submissions or arguments. This raises serious concerns about the independence and impartiality of the Panel, which simply accepted Web.com's assertion without any analysis.

47. Furthermore, the Panel failed to apply the appropriate high standard for assessing the likelihood of confusion. The third Panel reasoned that, since ICANN had not defined the 'average, reasonable Internet user', it could make its own individual determination of the likely perceptions of such a user (**Annex 24**, p. 11). However, the absence of an explicit definition of the average, reasonable Internet user does not give a Panel carte blanche discretion to determine on the basis of his own personal assumptions, how an Internet user that he considers average and reasonable would perceive string similarity. The objector – Web.com in this case – must prove that the average, reasonable Internet user is likely to be confused. By its own admission, and as argued by Vistaprint, Web.com considers that the average, reasonable Internet user interested in Web.com's services is sophisticated enough to understand the difference between the strings WEB.COM and WEBCOM,

which are much more similar to each other than the .web and .webs strings at issue in this case (Annex 10, p. 7). Vistaprint argued that it was impossible to understand how Web.com was able to agree to the coexistence of WEB.COM and WEB.COM and yet to object to the coexistence of .web and .webs (Annex 10, p. 7).

The Panel failed to address this argument (and many of Vistaprint's other arguments, *infra*). The Panel simply stated – without any explanation or justification – that it was unable to concur with assessments of the perceptions of Internet users accepted by other experts and panels (Annex 24, pp. 16-18).

48. In addition, the Panel questioned whether the co-existence of Vistaprint's <webs.com> extension and the Objector's <web.com> extension for many years without (any evidence of) actual confusion was relevant to his determination. ICANN has itself made clear reference to the existence today of similar strings at the second level in the DNS in explaining the rationale behind its high standard for string confusion (RM 16). The absence of actual confusion between the existing <webs.com> and <web.com> strings, as well as between the more similar <web.com> and <webcom> strings, is the best possible real-life evidence that the average, reasonable Internet user would not be confused between .web and .webs. The fact that the Panel dismissed the relevance of this evidence—to the extent that it did not even consider the evidence – is further evidence that the Panel failed to apply the burden and standard of proof imposed by ICANN.

49. In sum, the cursory nature of the Decision and the arbitrary and selective discussion of the parties' arguments by the Panel show a lack of either independence and impartiality or appropriate qualification on the part of the Panel. The former is contrary to Article 13 of the Procedure; the latter is contrary to the Applicant Guidebook, Module 3-16, which requires that a panel (ruling on a string confusion or other objection) must consist of “*appropriately qualified experts appointed to each proceeding by the designated DRSP*”.

J. ICANN accepted the Panel's decision as an expert determination and advice despite the DRSP's and the Panel's failure to apply the policies in the Applicant Guidebook

50. ICANN simply accepted the Panel's ruling on the string objection, without any analysis as to whether the DRSP and the Panel complied with ICANN's policies and fundamental principles, and without giving any rationale for doing so.

K. Vistaprint filed a Request for Reconsideration to have ICANN's decision reversed

51. ICANN's Board ultimately has responsibility for ensuring that ICANN policies are respected. Vistaprint asked the Board to fulfill this obligation in its Request for Reconsideration (RfR). Vistaprint filed the RfR with ICANN on February 6, 2014, seeking reconsideration of ICANN's decision to accept the advice set forth in the Panel's decision and to instruct a panel to make an expert determination that applies the standards defined by ICANN (Annex 25).

L. ICANN improperly rejected Vistaprint's Request for Reconsideration

52. On February 27, 2014, ICANN's Board Governance Committee (BGC) concluded that Vistaprint had not stated proper grounds for reconsideration and denied the RfR (Annex 26). However, as shown above, and as explained in Vistaprint's RfR, the DRSP violated various provisions of the Procedure, the DRSP Rules and ICANN's policy. ICANN disregarded these accumulated infringements and turned a blind eye to the appointed Panel's lack of independence and impartiality. In addition, ICANN failed to show that it has done any investigation into Vistaprint's fundamental questions about the Panel's arbitrariness, lack of independence, partiality, inappropriate qualification, the DRSP's and the Panel's disregard of the applicable rules and policies, etc. As it is ICANN's responsibility to ensure that its policies and fundamental principles are respected by its third party vendors, ICANN had agreed with the DRSP that they were going to "communicate regularly with each other and seek to optimize the service that the ICDR provides as a DRSP in the New gTLD Program" and that ICANN was going to support the ICDR "to perform its duties as DRSP in a timely and efficient manner". It is clear from the many violations by the DRSP that it did not perform its duties in a timely and efficient manner. ICANN has failed to show

that it sought in any way to optimize the DRSP's service vis-à-vis Vistaprint or that it performed any due diligence in addressing the serious concerns raised by Vistaprint. In fact, ICANN chose to ignore them. ICANN's BGC denied Vistaprint's request, without conducting any investigation. In contrast to the handling of other RfRs, the BGC did not give the full Board the opportunity to consider the matter and did not provide detailed minutes of the meeting in which the BGC's decision was taken. This is all the more striking as, in other files related to handling of string confusion objections – with no concerns about the impartiality and independence of the panel or the procedure – ICANN's Board considered potential paths forward to address perceived inconsistencies in expert determinations in the string confusion objections process, including implementing a review mechanism and directed ICANN's President and CEO, or his designee, to publish this proposed review mechanism for public comment (**RM 20**). ICANN's Board took this decision the day before Vistaprint submitted the RfR. This did not prevent the BGC from summarily rejecting Vistaprint's RfR without considering whether such review mechanism might also be appropriate for dealing with the unfair and erroneous treatment of the string confusion objection related to Vistaprint's .webs applications. No rationale is given for this disparate treatment.

M. Vistaprint entered into a Cooperative Engagement Process with ICANN

53. On March 17, 2014, Vistaprint filed a request for a Cooperative Engagement Process (CEP) with ICANN (**Annex 28**). Although there were (and still are) compelling reasons for ICANN to reverse the erroneous decision, the CEP did not lead to a satisfactory result.

N. Vistaprint had no choice but to initiate a request for an Independent Review Process

54. As ICANN had failed to voluntarily remedy the errors made by the DRSP and the appointed Panel(s) and by ICANN in its refusal to reconsider the acceptance of the Panel's decision on the string confusion objection as an expert determination and advice, Vistaprint had no choice but to initiate this request for an Independent Review Process (IRP). The challenged decisions and actions are attributable to the ICANN Board only, and materially affect Vistaprint. A correct application of

ICANN's policy would inevitably have led to a different result and would not have resulted in unnecessary delays and costs for Vistaprint. As a result, Vistaprint has standing to file this request.

IV. APPLICABLE LAW, APPLICABLE RULES AND NATURE OF THE PROCEEDINGS

55. The applicable law for these proceedings is ICANN's own Articles of Incorporation and Bylaws. The provisions of these documents must be interpreted in light of Article IV of ICANN's Articles of Incorporation, which provides that ICANN is subject to both local and international law (**RM 1**). In particular, Article IV charges ICANN "*with acting consistently with relevant principles of international law, including the general principles of law recognized as a source of international law*" (**RM 21**, para. 140).⁵ General principles of international law – and in particular the obligation of good faith – thus serve as a prism through which the various obligations imposed on ICANN under its Articles of Incorporation and Bylaws must be interpreted.

56. Pursuant to these Bylaws, these proceedings are established to ensure that:

"[i]n carrying out its mission as set out in [the] Bylaws, ICANN [is] accountable to the community for operating in a manner that is consistent with [the] Bylaws, and with due regard for the core values set forth in Article I of [the] Bylaws." (**RM 2**, Art. IV, §1)

To achieve the required accountability, the Panel is:

"charged with comparing contested actions of the Board to the Articles of Incorporation and Bylaws, and with declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws." (**RM 2**, Art. IV, §3(4))⁶

57. The IRP Panel's fulfillment of this core obligation is crucial to ICANN's commitment to accountability. The IRP is the only method established by ICANN for holding itself accountable through third-party review of its decisions. Not only do the Bylaws and Articles of Incorporation clearly require the establishment of robust accountability mechanisms, but the Affirmation of Commitments also explicitly requires ICANN to strengthen and improve its accountability

⁵ Reasoning that the intention behind the inclusion of international law in Art. 4 of the Articles of Incorporation was "to subject ICANN to relevant international legal principles because of its governance of an intrinsically international resource of immense importance to global communications and economies. Those intentions might not be realized were Article 4 interpreted to exclude the applicability of general principles of law."

⁶ Notably, this standard did not change when the Bylaws were revised (See **RM 2 and 3**, Art. IV, §3(3)).

mechanisms (**RM 4**, Articles 3 and 9.1). The IRP only fulfills these obligations if the Panel analyzes whether ICANN's actions comply with the Bylaws.

In addition, the Panel is charged with reviewing whether the ICANN Board was free from conflicts of interest, exercised an appropriate level of due diligence, and used its independent judgment in making decisions relating to Vistaprint's applications. Nothing in that analysis alters the Panel's core obligation as part of an Independent Review: declaring whether or not ICANN acted consistent with its Articles and Bylaws.

58. Because ICANN's Bylaws require ICANN to apply established policies neutrally and fairly, the IRP Panel must consider other ICANN policies relevant to the dispute. In this dispute, relevant policies are also established in ICANN's new gTLD Applicant Guidebook, in particular the policies in Module 3 regarding ICANN's dispute resolution procedures (**RM 5**).

V. SUMMARY OF ICANN'S OBLIGATIONS

A. Act in good faith

59. Many of the guiding substantive and procedural rules in ICANN's Articles and Bylaws – including the rules involving transparency, fairness, and non-discrimination – are so fundamental that they appear in some form in virtually every legal system in the world. One of the reasons they are so universal is because they arise from the general principle of good faith, which is considered to be the foundation of all law and convention. As stated by the ICJ, the principle of good faith is “[o]ne of the basic principles governing the creation and performance of legal obligations.”⁷

60. The principle of good faith includes an obligation to ensure procedural fairness by, *inter alia*, adhering to substantive and procedural rules, avoiding arbitrary action, and recognizing

⁷ Nuclear Tests (Austl. v. Fr.), 1974 I.C.J. 253, 268 (20 Dec.) (merits); *see also* Land and Maritime Boundary (Cameroon v. Nig.), 1998 I.C.J. 275, 296 (11 June) (good faith is a “well established principle of international law”).

legitimate expectations.⁸ ICANN’s core values require ICANN to obtain informed input from those entities most affected by ICANN’s decisions (**RM 2**, Art. I, §2(9)).

B. Apply policies neutrally, fairly and without discrimination

61. ICANN is subject to a fundamental obligation to act fairly and apply established policies neutrally and without discrimination. Not only does this obligation arise from general principles of international law, it is also repeatedly in ICANN’s governing documents. Article 2(3) of ICANN’s Bylaws provides that:

“ICANN shall not apply its standards, policies, procedures, or practices inequitably or single out any party for disparate treatment unless justified by substantial and reasonable cause”

62. The above obligation is further elaborated in ICANN’s Core Values, which require ICANN to make *“decisions by applying documented policies neutrally and objectively, with integrity and fairness.”*(**RM 2**, Art. I, §2)⁹

C. Remain transparent

63. Article 4 of ICANN’s Articles of Incorporation sets forth that ICANN:

“shall operate for the benefit of the Internet community as a whole, carrying out its activities ... to the extent appropriate and consistent with these Articles and its Bylaws, through open and transparent processes that enable competition and open entry in Internet-related markets.”

64. Similarly, Article III of ICANN’s Bylaws states that:

“ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.”

65. These provisions are supplemented by the ‘Core Values’ set forth in ICANN’s Bylaws, which are to *“guide the decisions and actions of ICANN”* in the performance of its mission (**RM 2**, Art. I, §2, *See* in particular Art. I, §2(7)).

⁸ U.S. and California law, like almost all jurisdictions, recognize obligations to act in good faith and ensure procedural fairness. The requirement of procedural fairness has been an established part of the California common law since before the turn of the 19th century.

⁹ This requirement is also found in applicable California law, which requires that decisions be made according to procedures that are ‘fair and applied uniformly’, and not in an ‘arbitrary and capricious manner.’

66. The core elements of transparency include clarity of procedures, the publication and notification of guidelines and applicable rules, and the duty to provide reasons for actions taken. The coupling of the terms ‘open’ and ‘transparent’, and a consideration of the context within which the term ‘transparent’ is used, confirm that ICANN intended to denote openness in decision-making.

D. Remain accountable

67. As already noted, ICANN is required to ensure that it is accountable (*See* in particular **RM 2**, Art. I, §2(10); Art. IV, § 1).

E. Promote competition and innovation

68. In performing its mission, ICANN must depend to the largest possible extent on market mechanisms to promote and sustain a competitive environment. ICANN must be as non-interventionist as possible and its activities are limited to matters requiring, or significantly benefiting from, global coordination. This follows clearly from ICANN’s Core Values (*See* in particular **RM2**, Art. I, §2(2), (5) and (6)).

VI. SUMMARY OF ICANN’S BREACHES

A. ICANN failed to comply with its obligation to act in good faith by failing to provide due process to Vistaprint’s applications

69. As noted above, the international law standard of good faith encompasses an obligation to ensure procedural fairness and due process. General principles of ‘international due process’ self-evidently include equal and fair treatment of the parties, fair notice, and a fair opportunity to present one’s case. These requirements are basic principles that inform transnational public policy with regard to procedure. They are more than just formalistic procedural requirements. The opportunity must be meaningful: the party must be given adequate notice of the relevant rules and be given a full and fair opportunity to present its case. And the mechanisms for redress must be both timely and effective.

70. In this case, Vistaprint was not given a fair opportunity to present its case. Vistaprint was deprived of procedural fairness and the opportunity to be heard by an independent panel applying the appropriate rules.

71. Nor was Vistaprint given any (meaningful) opportunity for remedy or redress once the decision was made. Although Vistaprint challenged the decision through ICANN's Reconsideration process, ICANN explicitly refused to reconsider the substance of the challenged decision, or to take any action to remedy the lack of due process. Doing so, ICANN failed to act with due diligence and independent judgment, and to act in good faith as required by ICANN's Bylaws and Articles of Incorporation.

B. ICANN failed to act neutrally, fairly and without discrimination

1. ICANN failed to comply with its obligation to neutrally and fairly apply the Policy established in the Applicant Guidebook and Bylaws by accepting the Determination that .webs is confusingly similar to .web

72. There is no probability of user confusion if both .webs and .web were delegated as gTLD strings into the Internet root zone. Expert evidence confirms that there is no risk that Internet users will be confused. The appointed Panel could not have reasonably found that the average reasonable Internet user is likely to be confused between the two strings. As confirmed by the string confusion objector itself (**Annex 10**), the average reasonable Internet user is well used to distinguishing clearly between words (and non-words) that are much more similar (**Annex 10**). Since .webs and .web cannot be perceived confusingly similar by the average reasonable Internet user, the determination that they are is contradictory to ICANN policy as established in the Applicant Guidebook.

2. ICANN failed to comply with its obligation to act fairly by accepting a determination that was not made by an independent and impartial panel

73. As demonstrated above, Vistaprint was not given due process in the string confusion objection proceedings. The Panel was not independent and impartial and/or not appropriately qualified. This did not prevent ICANN from accepting the determination by the Panel, without even investigating the dependence and partiality of the Panel, when serious concerns were raised to the

ICANN Board. This is a further failure of ICANN to act with due diligence and independent judgment, and to act in good faith as required by ICANN's Bylaws and Articles of Incorporation.

3. **ICANN failed to comply with its obligation to provide non-discriminatory treatment by delaying Vistaprint's Applications but allowing other applications with at least equally serious string similarity concerns to proceed**

74. A tool that was used by ICANN to assess visual string similarity considered .web and .webs much less similar to each other than other applied-for gTLDs for which no objections were filed (**Annex 10, 29-30**). Moreover, Internet users have become used to the existence of TLDs having much more similarity than the claimed similarity between .web and .webs. For instance, .io and .jo are considered visually more similar by ICANN's tool (**Annex 31; RM 6**). Also, in certain languages, from an aural perspective, .io is virtually identical to .jo. From a conceptual point of view, .io and .jo are equally meaningful (or rather equally meaningless). Nonetheless, this poses no problem for the average Internet user, who is used to small differences between TLDs.

75. Allowing these strings, but not allowing .webs and .web is discriminatory and unfair. For this reason too, ICANN's acceptance of the Panel's determination, and ICANN's repeated failure to remedy the wrongful determination, is a failure to act with due diligence and independent judgment, and a failure to act fairly and without discrimination as required by the Bylaws and Articles of Incorporation.

4. **ICANN failed to comply with its obligation to provide non-discriminatory treatment by putting Vistaprint's Applications in a contention set while allowing for a separate process for other applications that have been subject to an adverse determination in a string confusion objection**

76. As explained above, the BGC summarily rejected Vistaprint's RfR without considering the usefulness of a review mechanism that ICANN proposed for dealing with (perceived) inconsistent determinations on string confusion objections. ICANN has not explained why it proposed the introduction of a review mechanism for dealing with the string confusion objections related to .cars and .car (**RM 20**), but rejected such a review mechanism for .webs and .web. This is all the more

bizarre given that the serious procedural errors in the determination of Vistaprint's .webs applications were absent in the other determinations.

C. ICANN failed to comply with its obligations to act fairly and transparently by failing to disclose/perform any efforts to optimize the service that the ICDR provides as a DRSP in the new gTLD Program

77. The BGC's determination on Vistaprint's RfR clearly shows that ICANN made no investigation of the impartiality and independence of the Panel. Rather than identifying the nature of the conflict that forced the first Panel to step down, ICANN focused on developing baseless hypotheses for other reasons that could have led to this Panel stepping down. Not only does this show that the ICANN Board did not exercise due diligence in making its determination, it also shows that ICANN was looking for (unsubstantiated) reasons to turn down the RfR rather than making a fair determination. In addition, it shows that ICANN did not seek to communicate with the DRSP to optimize the DRSP's service.

D. ICANN failed to comply with its obligation to remain accountable by failing to provide any remedy for its mistreatment of Vistaprint's Application

78. Because of ICANN's unique history, role and responsibilities – exercising plenary authority over a global resource – ICANN's constituent documents require that ICANN operate with complete accountability. In stark contrast to this obligation, throughout its treatment of Vistaprint's applications for .webs, ICANN has acted as if it, and its vendor, are entitled to act with complete impunity.

79. ICANN adopted the Panel's determination without examining whether that determination was made in accordance with ICANN's policy and ICANN's fundamental principles under its Bylaws and Articles of Incorporation. When confronted with blatant process violations, ICANN sought to escape its responsibilities by relying on unrealistic hypotheses rather than on facts that it could and should have verified in the first place. Additionally, ICANN has not created *any* general process for challenging the substance of the so-called expert determination, while effectively conceding the need for such a process by taking steps to develop such a process for individual

objections. Instead of taking its obligation to remain accountable seriously, it brashly flouted any such notion.

E. ICANN failed to promote competition and innovation by accepting the so-called Expert Determination

80. As demonstrated in Vistaprint's response to the string confusion objection, Web.com's sole motive in filing the objection was to prevent a potential competitor from entering the gTLD market (**Annex 10**). Such a motive is clearly contrary to the purpose of ICANN's new gTLD program. ICANN's erroneous acceptance of an objection that was filed with such an intent is contrary to the interests of both competition and consumers. For this reason too, ICANN's erroneous and unfair application of its policies is contrary to ICANN's Bylaws.

VII. PROCEDURAL MATTERS

81. Pursuant to Article IV, Section 3(9) of the Bylaws, the Claimant hereby requests that the Panel be composed of three (3) members, each of whom shall be impartial and independent of the parties.¹⁰

82. It does not appear that ICANN has established the omnibus standing panel described in Art. IV, Section (6) of the Bylaws. As a result, pursuant to Art. 6 of the ICDR Rules, the Claimant suggests that the parties agree to the following method for appointing the IRP Panel: each party shall appoint one panelist, after which the two panelists so appointed, and in consultation with the parties, shall jointly select the third panelist, who shall serve as the Chairman of the Panel.

83. The Claimant proposes that both the Claimant and ICANN simultaneously appoint their panelists within twenty (20) days of ICANN's agreement to the Panel appointment procedure set forth herein. The two co-panelists shall select the Chairman of the Panel within twenty (20) days of ICANN's panelist appointment. In the event that ICANN fails to make its panelist appointment

¹⁰ See also Supplementary Procedures, Rule 3.

within the time period indicated, the ICDR shall make the appointment of ICANN's panelist within thirty (30) days of the date on which ICANN should have made its panelist appointment. In the event that the two party-appointed panelists fail to agree on the identity of the third arbitrator, that appointment shall be made by the ICDR, in accordance with its established procedures.

VIII. RELIEF REQUESTED

84. Based on the foregoing, and reserving all rights to rebut ICANN's response in further briefs and during a hearing, Vistaprint respectfully requests that the IRP Panel issue a declaration:

- Finding that ICANN breached its Articles of Incorporation, its Bylaws, and the gTLD Applicant Guidebook;
- Requiring that ICANN reject the determination that .webs and .web are confusingly similar and disregard the resulting contention set;
- Requiring that ICANN organizes a new independent and impartial string confusion objection procedure between Vistaprint and Web.com;
- Awarding Vistaprint its costs in this proceeding; and
- Awarding such other relief as the Panel may find appropriate or Vistaprint may request.

Respectfully submitted,

Flip Petillion

Flip Petillion,
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Contact Information Redacted

June 11, 2014

Counsel for Claimant

List of annexes

- Annex 1 - Vistaprint's applications to operate the .webs gTLD (Application ID 1-1033-22687 and 1-1033-73917)
- Annex 2 - Overview of US and non-US members of the Webs community
- Annex 3 - Web.com, Inc.'s application to operate the .web gTLD (Application ID 1-1009-97005)
- Annex 4 - Application for gTLD '.web' by DotWeb Inc. (AE)
- Annex 5 - Application for gTLD '.web' by Charleston Road Registry Inc., (US)
- Annex 6 - Application for gTLD '.web' by Afilias Domains No. 3 Limited (IE)
- Annex 7 - Application for gTLD '.web' by Ruby Glen, LLC (US)
- Annex 8 - Application for gTLD '.web' by Schlund Technologies GmbH (DE)
- Annex 9 - Application for gTLD '.web' by NU DOT CO LLC (US)
- Annex 10 - Vistaprint's Response to the Objection, as filed on May 22, 2013
- Annex 11 - Communication by the ICDR of May 31, 2013
- Annex 12 - Communication by the ICDR of June 28, 2013
- Annex 13 - Communication by Mr. Koh of August 8, 2013
- Annex 14 - Communication by the ICDR of September 18, 2013
- Annex 15 - Communication by the ICDR of October 1, 2013
- Annex 16 - Communication by the ICDR of October 14, 2013
- Annex 17 - Communication by Web.com of October 24, 2013
- Annex 18 - Communication by Vistaprint of October 30, 2013
- Annex 19 - Communication of the ICDR of November 4, 2013
- Annex 20 - Communication by Vistaprint of November 5, 2013
- Annex 21 - Communication by the ICDR of On November 8, 2013
- Annex 22 - Communication by the ICDR of November 20, 2013
- Annex 23 - Communication by Vistaprint of On 31 July 2013
- Annex 24 - Expert Determination in the matter before the ICDR with case numbers 50 504 T 00221 13 and 50 504 T 00246 13
- Annex 25 - Request for Reconsideration 14-5 as filed on February 6, 2014
- Annex 26 - Board Governance Committee determination on Request for Reconsideration 14-5
- Annex 27 - Vistaprint's request for a Cooperative Engagement Process on March 17, 2014
- Annex 28 - Minutes of the Meeting of the Board Governance Committee on February 27, 2014 published on March 13, 2014
- Annex 29 - Printout of the website where the String Similarity Assessment Tool is used to compare .ACCOUNTANTS and .ACCOUNTANT
- Annex 30 - Printout of the website where the String Similarity Assessment Tool is used to compare .COUPONS and .COUPON
- Annex 31 - Printout of the website where the String Similarity Assessment Tool is used to compare .IO and .JO

List of Reference Material (RM)

1. ICANN's Articles of Incorporation
2. ICANN's Bylaws of 11 April 2013
3. ICANN's Bylaws as amended on 16 March 2012, *available at* <http://www.icann.org/en/about/governance/bylaws/bylaws-16mar12-en.htm>
4. Affirmation of Commitments
5. gTLD Applicant Guidebook (v. 2012-06-04)
6. Overview of the Internet Root Zone Database on May 15, 2013
7. Public Comment Forum for Terms of Reference for New gTLDs (6 December 2005), <http://www.icann.org/en/news/announcements/announcement-06dec05-en.htm#TOR>
8. GNSO Issues Report, Introduction of New Top-Level Domains (5 December 2005)
9. ICANN Resolution 2008.06.26.02, <http://www.icann.org/en/groups/board/documents/resolutions-26jun08-en.htm>
10. ICANN Resolution 2011.06.20.01, <http://www.icann.org/en/groups/board/documents/resolutions-20jun11-en.htm>
11. ICANN Board Rationales for the Approval of the Launch of the New gTLD Program, <http://www.icann.org/en/groups/board/documents/rationale-board-approval-new-gtld-program-launch-20jun11-en.pdf>
12. Information on the Applicant Guidebook as published on <http://newgtlds.icann.org/en/applicants/agb>
13. New gTLD Update (30 May 2012) on the close of the TLD Application system, <http://newgtlds.icann.org/en/announcements-and-media/announcement-3-30may12-en>
14. New gTLD Draft Applicant Guidebook-Version 2: Analysis of Public Comment, p. 149, available at <http://archive.icann.org/en/topics/new-gtlds/agv2-analysis-public-comments-31may09-en.pdf>
15. ICANN's call for expression of interest for new gTLD String Similarity Examiners, <http://archive.icann.org/en/topics/new-gtlds/eoi-string-sim-31jul09-en.pdf>
16. NGPC Resolution 2013.06.25.NG07
17. ICDR Supplementary Procedures for String Confusion Objections (DRSP Rules)
18. Announcement by the ICDR
19. Memorandum of Understanding between ICANN and the ICDR
20. NGPC Resolution 2014.02.05.NG02
21. Declaration of the Independent Review Panel in ICDR Case No. 50 117 T 00224 08