

ANNEX A
Excerpts from the Record Establishing Afilias’ International Law Claim

Location in the Record	Relevant Language
I. Afilias’ Pleadings	
Request for Independent Review Process (14 Nov. 2018), ¶ 6 (citations omitted).	“ICANN is required to carry out its activities ‘in conformity with relevant principles of international law and applicable international conventions and local law[.]’”
Amended Request for Independent Review Process (21 Mar. 2019), ¶ 5.	“ICANN has also breached its obligations under international and California law to act in good faith.”
Amended Request for Independent Review Process (21 Mar. 2019), ¶ 8 (citations omitted).	“ICANN is required to carry out its activities ‘in conformity with relevant principles of international law and international conventions and applicable local law[.]’ As determined by the first-ever IRP panel (Schwebel, Paulsson, Trevizian), this includes the obligation of good faith.”
Amended Request for Independent Review Process (21 Mar. 2019), ¶ 89(1).	“Reserving its rights to amend the relief requested below, inter alia, to reflect document production and further witness evidence, Afilias respectfully requests the IRP Panel to issue a binding Declaration: (1) that ICANN has acted inconsistently with its Articles and Bylaws, breached the binding commitments contained in the AGB, and violated international law[.]”
Revised Reply Memorial (4 May 2020, as revised on 6 May 2020), ¶ 26 (emphasis omitted; citations omitted).	“Pursuant to ICANN’s Articles and Bylaws, the New gTLD Program Rules must be applied and enforced ‘in a manner that complies with and reflects ICANN’s Commitments and respects ICANN’s Core Values.’ Thus, ICANN committed and represented to applicants that the New gTLD Program Rules would be implemented consistently, neutrally, objectively, fairly, non-discriminatorily, and transparently. Pursuant to its Articles, ICANN must also ‘carry[] out its activities in conformity with relevant principles of international law,’ which fundamentally requires ‘good faith.’ Applicants thus had the legitimate expectation that the New gTLD Program Rules and the application review and gTLD delegation process would be conducted and implemented by ICANN consistently, neutrally, objectively, fairly, non-discriminatory, transparently, and in good faith.”

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Response to the <i>Amicus Curiae</i> Briefs (24 July 2020), ¶ 143 (citations omitted).	“The requirement that ICANN comply with relevant principles of international law not only guides the interpretation of these terms, it provides independent (and generally overlapping) substantive and procedural safeguards appropriate for an entity that has oversight authority of a key global resource. Despite incorporating this requirement into its Articles of Incorporation and Bylaws, ICANN has long-taken the position that there are essentially no ‘relevant principles of international law’ that regulate its activities. This is incorrect. It is contrary to the manifest intention behind its Articles of Incorporation—these would not have vacuously referenced principles of international law—and to the decision of past IRP panels that ICANN must, at a minimum, ‘carry out its activities’ in good faith.”
Response to the <i>Amicus Curiae</i> Briefs (24 July 2020), ¶ 144 (citations omitted).	“The guiding substantive and procedural rules in ICANN’s Articles and Bylaws—including the rules involving procedural fairness, transparency, and non-discrimination—are so fundamental that they appear in some form in virtually every legal system in the world, and, as discussed below, are given definition by numerous sources of international law. They arise from the general principle of good faith, which is considered to be ‘the foundation of all law and all conventions.’”
Response to the <i>Amicus Curiae</i> Briefs (24 July 2020), ¶¶ 156, 161 (citations omitted).	“Instead, ICANN simply proceeded to delegate .WEB to NDC in an implicit acceptance of its conduct at the .WEB Auction. A good faith application of the New gTLD Program Rules to NDC’s conduct—carried out consistent with ICANN’s Articles and Bylaws—required ICANN to disqualify NDC’s application and bid. ... Afilias, as a participant in ICANN’s New gTLD Program, legitimately expected ICANN to comply with its own rules, policies, and procedures in its Bylaws, the Guidebook and the New gTLD Program Rules. ICANN did not. The plain text of the DAA is in violation of the New gTLD Program Rules when interpreted honestly, fairly, and loyally— <i>i.e.</i> , in good faith. Had ICANN actually followed the New gTLD Program Rules, it would have disqualified NDC from the application and bidding process.”
Post-Hearing Brief (12 Oct. 2020), ¶ 1 (citation omitted).	“The two fundamental questions before the Panel are whether ICANN, in accordance with the terms of and policies underlying its Articles and Bylaws, was required to (i) determine that NDC is ineligible to enter into a registry agreement for .WEB for having violated the New gTLD

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	Program Rules, and, if so, (ii) offer the .WEB gTLD registry to Afilias. The hearing evidence should leave no doubt that the answer to both questions is plainly ‘yes’ and that by failing to do so ICANN has not acted consistently with its Articles and Bylaws, including relevant principles of international law, specifically the obligation of good faith.”
Post-Hearing Brief (12 Oct. 2020), ¶ 238.	“Thus, the Panel can indisputably declare that ICANN has breached: ... Article III of ICANN’s Articles of Incorporation and Sections 1.2, 1.2(a), [and] 1.2(c) of the Bylaws by failing to conduct itself in accordance with relevant principles of international law, specifically the obligation of good faith.”
Revised Statement of Issues (12 Oct. 2020), p. 3.	“To the extent ICANN had discretion within its Articles and Bylaws to proceed to finalize a .WEB registry agreement with NDC despite NDC’s violations of the New gTLD Rules, whether ICANN exercised such discretion consistently with its Articles and Bylaws, including, without limitation, its Competition Mandate and the international law obligation of good faith.”
II. The Panel’s Decision	
Decision (20 May 2021, as corrected on 15 July 2021), ¶ 129.	“The Claimant contends that the Respondent has breached its obligation, under its Bylaws, to make decisions by applying its documented policies ‘neutrally, objectively, and fairly,’ in addition to breaching its obligations under international law and California law to act in good faith.”
Decision (20 May 2021, as corrected on 15 July 2021), ¶ 131.	“By way of relief, the Claimant requested the Panel to issue a binding declaration: (1) that ICANN has acted inconsistently with its Articles and Bylaws, breached the binding commitments contained in the AGB, and violated international law[.]”
Decision (20 May 2021, as corrected on 15 July 2021), ¶ 194 (citation omitted).	“Responding to the <i>Amici</i> ’s arguments pertaining to the discretion enjoyed by ICANN in the administration of the New gTLD Program, the Claimant contends that such discretion is circumscribed by the Articles and Bylaws, as well as principles of international law, including the principle of good faith.”

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Decision (20 May 2021, as corrected on 15 July 2021), ¶ 195.	“The Claimant also argues that ICANN is required by its Bylaws to afford impartial and non-discriminatory treatment, an obligation that is consistent with the principles of impartiality and non-discrimination under international law.”
Decision (20 May 2021, as corrected on 15 July 2021), ¶ 196 (citation omitted).	“The Claimant avers that the Respondent also failed to act openly and transparently as required by the Articles, Bylaws and international law. ... The Claimant further claims that the Respondent failed to respect its legitimate expectations despite its commitment to make decisions by applying documented policies consistently, neutrally, objectively and fairly. According to the Claimant, had the Respondent followed the New gTLD Program Rules, it would necessarily have disqualified NDC from the application and bidding process.”
Decision (20 May 2021, as corrected on 15 July 2021), ¶ 221 (citation omitted).	“The Claimant avers that ICANN’s enactment and invocation of Rule 4 is an abuse of right and is contrary to the international law principle of good faith.”

ANNEX B
Proposed Additional Dispositif

1. **Declares** that the Respondent has violated its *Amended and Restated Articles of Incorporation of Internet Corporation for Assigned Names and Numbers*, as approved by the ICANN Board on 9 August 2016, and filed on 3 October 2016 (**Articles**), and its *Bylaws for Internet Corporation for Assigned Names and Numbers*, as amended on 18 June 2018 (**Bylaws**), by (a) its staff (**Staff**) failing to pronounce on the question of whether the Domain Acquisition Agreement entered into between Nu Dotco, LLC (**NDC**) and Verisign Inc. (**Verisign**) on 25 August 2015, as amended and supplemented by the “Confirmation of Understanding” executed by these same parties on 26 July 2016 (**DAA**), complied with the New gTLD Program Rules following the Claimant’s complaints that it violated the Guidebook and Auction Rules, and, while these complaints remained unaddressed, by nevertheless moving to delegate .WEB to NDC in June 2018, upon the .WEB contention set being taken “off hold”; and (b) its Board, having deferred consideration of the Claimant’s complaints about the propriety of the DAA while accountability mechanisms in connection with .WEB remained pending, nevertheless (i) failing to prevent the Staff, in June 2018, from moving to delegate .WEB to NDC, and (ii) failing itself to pronounce on these complaints while taking the position in this IRP, an accountability mechanism in which these complaints were squarely raised, that the Panel should not pronounce on them out of respect for, and in order to give priority to the Board’s expertise and the discretion afforded to it in the management of the New gTLD Program;
2. **Declares** that in so doing, the Respondent violated its commitment to make decisions by applying documented policies objectively and fairly;
3. **Declares** that in preparing and issuing its questionnaire of 16 September 2016 (**Questionnaire**), and in failing to communicate to the Claimant the decision made by the Board on 3 November 2016, the Respondent has violated its commitment to operate in an open and transparent manner and consistent with procedures to ensure fairness;

4. **Grants** in part the Claimant's Request for Emergency Interim Relief dated 27 November 2018, and directs the Respondent to stay any and all action or decision that would further the delegation of the .WEB gTLD until such time as the Respondent has considered the present Final Decision;
5. **Declares** that ICANN violated its Articles and Bylaws by (a) not rejecting NDC's application, (b) not declaring NDC's bids at the ICANN auction invalid, (c) not deeming NDC ineligible to enter into a registry agreement for .WEB because of its violations of the New gTLD Program Rules, and (d) not offering .WEB to Afilias as the next highest bidder;
6. **Declares** that ICANN violated its obligation to conduct its activities in accordance with relevant principles of international law, including the principle of good faith and thereby breached its Articles and Bylaws;
7. **Declares** that ICANN violated its Articles and Bylaws through its inequitable and disparate treatment of Afilias as compared to its treatment of NDC and Verisign;
- ~~5.8.~~ **Recommends** that the Respondent stay any and all action or decision that would further the delegation of the .WEB gTLD until such time as the Respondent's Board has considered the opinion of the Panel in this Final Decision, and, in particular (a) considered and pronounced upon the question of whether the DAA complied with the New gTLD Program Rules following the Claimant's complaints that it violated the Guidebook and Auction Rules and, as the case may be, (b) determined whether by reason of any violation of the Guidebook and Auction Rules, NDC's application for .WEB should be rejected and its bids at the auction disqualified;
- ~~6.9.~~ **Designates** the Claimant as the prevailing party in relation to the above declarations, decisions, findings, and recommendations, which relate to the liability portion of the Claimant's core claims and the Claimant's Request for Emergency Interim Relief dated 27 November 2018;
- ~~7.10.~~ **Dismisses** the Claimant's other requests for relief in connection with its core claims and, in particular, the Claimant's request that that the Respondent be ordered by the Panel to disqualify NDC's bid for .WEB, proceed with contracting the Registry Agreement for .WEB with the Claimant in accordance with the New gTLD Program Rules, and specify the bid price to be paid by the Claimant, all of which

are premature pending consideration by the Respondent of the questions set out above in sub-paragraph 410 (5);

~~8.11.~~ **Designates** the Respondent as the prevailing party in respect of the matters set out in the immediately preceding paragraph;

~~9.12.~~ **Determines** that the outstanding aspects of the Rule 7 Claim that were joined to the Claimant's other claims in Phase II have become moot by the participation of the *Amici* in this IRP in accordance with the Panel's Decision on Phase I and, for that reason, decides that no useful purpose would be served by the Rule 7 Claim being addressed beyond the findings and observations contained in the Panel's Decision of Phase I;

~~10.13.~~ **Fixes** the total costs of this IRP, consisting of the administrative fees of the ICDR, and the fees and expenses of the Panelists, the Emergency Panelist, and the Procedures Officer at USD 1,198,493.88, and in accordance with the general rule set out in Section 4.3(r) of the Bylaws, **declares** that the Respondent shall reimburse the Claimant the full amount of the share of these costs that the Claimant has advanced, in the amount of USD 479,458.27;

~~11.14.~~ **Finds** that the Respondent's requirement, as part of its defence strategy, that the Claimant introduce a Request for Emergency Interim Relief at the outset of the IRP, failing which the Respondent would lift the "on hold" status of the .WEB contention set, was abusive within the meaning of the cost shifting provisions of the Bylaws and Interim Procedures in light of the Respondent's subsequent decision to agree to keep the .WEB contention set on hold until the conclusion of this IRP; and, as a consequence of this finding,

~~12.15.~~ **Grants** the Claimant's request that the Panel shift liability for the Claimant's legal fees in connection with its Request for Emergency Interim Relief, **fixes** at USD 450,000, inclusive of pre-award interest, the amount of the legal fees to be reimbursed to the Claimant on account of the Emergency Interim Relief proceedings, and **orders** the Respondent to pay this amount to the Claimant within thirty (30) days of the date of notification of this Final Decision, after which 30 day-period this amount shall bear interest at the rate of 10% *per annum*;

~~13.16.~~ **Dismisses** the Claimant's other requests for the shifting of its legal fees in connection with this IRP;

~~14.17.~~ **Dismisses** all of the Parties' other claims and requests for relief.