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11 MANWIN LICENSING INTERNATIONAL
12 S.À.R.L.,

13 Claimant,

14 v.

15 INTERNET CORPORATION FOR
16 ASSIGNED NAMES AND NUMBERS,

17 Respondent.

ICDR Case No. _____

**REQUEST OF MANWIN LICENSING
INTERNATIONAL S.À.R.L, FOR
INDEPENDENT REVIEW PROCEEDING**

18
19 **I. INTRODUCTION AND SUMMARY OF CLAIM AND RELIEF SOUGHT**

20 1. Manwin Licensing International S.à.r.l. owns and licenses the trademarks and
21 domain names used for many of the most popular adult-oriented websites, including
22 YouPorn.com, the single most popular free adult video website on the internet, as well as
23 xTube.com, Pornhub.com, and Brazzers.com, to cite only a few examples. This request for
24 independent review proceeding refers to Manwin as "YouPorn." YouPorn hereby seeks review of
25 certain acts and omissions of the Internet Corporation for Assigned Names and Numbers
26 ("ICANN") which acts and omissions have, as alleged more fully hereafter, violated ICANN's
27 Articles of Incorporation and Bylaws. Said acts and omissions have caused or threatened to cause
28 YouPorn injury, thereby making YouPorn an affected party within the meaning of Article 4 of

1 ICANN's Bylaws. YouPorn is therefore entitled to seek review of ICANN's acts and omissions
2 pursuant to Article 4 of ICANN's Bylaws, the International Arbitration Rules of the International
3 Centre for Dispute Resolution ("ICDR") and the ICDR Supplementary Rules for ICANN
4 Independent Review Process.

5 2. The dispute between YouPorn and ICANN, as detailed below, relates to ICANN's
6 improper (a) approval of inclusion of the .XXX top-level domain ("the .XXX TLD") into the
7 Internet Domain Name System ("DNS"), (b) administration of the process by which ICANN
8 selected a registry operator for the .XXX TLD, (c) approval of the application of ICM Registry
9 LLC ("ICM") to serve as the registry operator for the .XXX TLD, and (d) agreement with ICM
10 concerning the terms and conditions on which ICM is to act as the registry operator for the .XXX
11 TLD. ICANN's acts and omissions with respect to each of these matters materially violated
12 ICANN's Articles of Incorporation and Bylaws as well as local and international law.

13 3. Reserving its rights to amend or supplement this Request and the relief sought
14 hereby, YouPorn respectfully requests that the Independent Review Panel (the "Panel") grant the
15 following relief:

16 a. Declare that ICANN's approval of the .XXX TLD violated and was
17 inconsistent with ICANN's Articles of Incorporation and Bylaws;

18 b. Declare that ICANN's administration of the process whereby it selected a
19 registry operator for the .XXX TLD violated and was inconsistent with ICANN's Articles
20 of Incorporation and Bylaws;

21 c. Declare that ICANN's approval of the application of ICM Registry LLC
22 ("ICM") to serve as the registry operator for the .XXX TLD violated and was inconsistent
23 with ICANN's Articles of Incorporation and Bylaws;

24 d. Declare that ICANN's agreement with ICM concerning the terms and
25 conditions on which ICM is to act as the registry operator for the .XXX TLD violates and
26 is inconsistent with ICANN's Articles of Incorporation and Bylaws;

1 e. Declare that ICANN must reconsider its decision regarding approval of the
2 .XXX TLD for use in the DNS in a manner consistent with its Articles of Incorporation
3 and Bylaws;

4 f. Declare that ICANN must complete proper economic studies analyzing the
5 impact of the introduction of new TLDs, particularly the .XXX TLD, before reconsidering
6 the .XXX TLD or approving any new TLDs;

7 g. Declare that ICANN's decision approving ICM as registry operator for the
8 .XXX TLD and the agreement between ICANN and ICM setting out the terms and
9 conditions on which ICM would act as the registry operator for the .XXX TLD are void;

10 h. Declare that should ICANN, after reconsideration consistent with its
11 Articles of Incorporation and Bylaws, determine to allow the .XXX TLD to be used in the
12 DNS, it must reconsider who should be allowed to act as the registry operator for the
13 .XXX TLD in a process administered in a manner consistent with ICANN's Articles of
14 Incorporation and Bylaws;

15 i. Declare that ICM has breached the XXX Registry Agreement and the
16 appendices and amendment thereto, and that ICANN must seek to rescind the agreement,
17 appendices and amendments and/or other appropriate relief;

18 j. Declare that ICANN must, upon the expiration of the initial term of the
19 ICM registry agreement, either allow open and fair competition for the .XXX registry
20 and/or upon any renewal of the ICM registry agreement, negotiate conditions and terms
21 that provide adequate protections for free and fair competition, trademarks, and other name
22 and intellectual property rights in connection with the operation of the .XXX TLD;

23 k. Require that ICANN adopt "Consensus Policies" binding on ICM that
24 protect competition, trademarks and other name and intellectual property rights;

25 l. Declare that ICANN must compensate YouPorn for the costs incurred by
26 YouPorn in bringing this Independent Review Proceeding; and

27 m. Make such other declarations and grant such other relief as the Panel may
28 consider appropriate.

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II. THE PARTIES, COUNSEL AND CONTACT INFORMATION

A. CLAIMANT

4. YouPorn is and at all relevant times was a business entity organized as a “Société à responsabilité limitée” under the laws of Luxembourg, and having its principal place of business in the City of Luxembourg, Luxembourg. YouPorn’s contact information for purposes of these proceedings is:

Manwin Licensing International S.à.r.l.
c/o Gianfranco Salerno
7777 Boulevard Decarie, Suite 300
Montreal, QC, Canada H4P 2H2
Gianfranco.Salerno@mansef.com

5. YouPorn is represented in these proceedings by Kevin E. Gaut, Thomas P. Lambert and Jean Pierre Nogues

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tpl@msk.com
jpn@msk.com
Phone: +1 310 312 3000
Fax: +1 310 312 3100

B. RESPONDENT

6. The respondent is ICANN. ICANN’s address is:
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292-6601

1 USA

2 Phone: +1 310 823 9358

3 FAX: +1 310 823 8649

4
5 7. ICANN is a public benefit, non-profit corporation organized under the laws of the
6 State of California. It is headquartered in Marina del Rey, California.

7 8. ICANN was established “for the benefit of the Internet community as a whole.”
8 ICANN Articles of Incorporation, ¶ 4. ICANN’s Articles of Incorporation further state its
9 purposes as follows: “the Corporation shall . . . pursue the charitable and public purposes of
10 lessening the burdens of government and promoting the global public interest in the operational
11 stability of the Internet by (i) coordinating the assignment of Internet technical parameters as
12 needed to maintain universal connectivity on the Internet; (ii) performing and overseeing functions
13 related to the coordination of the Internet Protocol (‘IP’) address space; (iii) performing and
14 overseeing functions related to the coordination of the Internet domain name system (‘DNS’),
15 including the development of policies for determining the circumstances under which new top-
16 level domains are added to the DNS root system; (iv) overseeing operation of the authoritative
17 Internet DNS root server system; and (v) engaging in any other related lawful activity in
18 furtherance of items (i) through (iv).” *Id.* ¶ 3. ICANN’s Articles of Incorporation require it to
19 “carr[y] out its activities in conformity with relevant principles of international law and applicable
20 international conventions and local law.” *Id.* ¶ 4. ICANN is also obligated to operate “in an open
21 and transparent manner and consistent with procedures designed to ensure fairness” and to “be
22 accountable to the community for operating in a manner that is consistent with [the] Bylaws, and
23 with due regard for the core values set forth” in the organization’s Bylaws. ICANN Bylaws, Art.
24 IV, § 1.

25 9. ICANN’s core function is the management of the Internet’s DNS, which includes
26 approving the introduction of new TLDs. The DNS is a database of Internet names and addresses
27 that correlates the “human-readable” computer names, websites, and email addresses made of
28 letters and words with the “computer-readable” Internet Protocol (“IP”) addresses that computers

1 actually use to locate information, but which consist of complicated numerical strings. TLDs
2 appear in the human-readable addresses, or domain names, as a familiar string of letters—such as
3 “.COM”, “.GOV”, “.ORG”, and “.EDU”—following the rightmost “dot” in domain names.

4 ICANN delegates responsibility for the operation of each TLD to a registry operator.

5 10. In performing its functions, ICANN has committed itself to, among other things:

6 a. “Seeking and supporting broad, informed participation reflecting the
7 functional, geographic, and cultural diversity of the Internet at all levels of policy
8 development and decision-making.”

9 b. “Introducing and promoting competition in the registration of domain
10 names where practicable and beneficial in the public interest.”

11 c. “Employing open and transparent policy development mechanisms that
12 (i) promote well-informed decisions based on expert advice, and (ii) ensure that those
13 entities most affected can assist in the policy development process.”

14 d. “While remaining rooted in the private sector, recognizing that governments
15 and public authorities are responsible for public policy and duly taking into account
16 governments’ or public authorities’ recommendations.”

17 e. “[I]n those cases where the policy action affects public policy concerns, to
18 request the opinion of the Governmental Advisory Committee and take duly into account
19 any advice timely presented by the Governmental Advisory Committee on its own
20 initiative or at the Board’s request.”

21 f. “[O]perating in a manner that is consistent with these Bylaws, and with due
22 regard for the core values set forth in Article I of these Bylaws,” including those listed in
23 Paragraph 10(a) through (d) above. Bylaws, Art. I, § 2; Art. III, § 6; Art. IV, § 1.

24 11. Prior to ICANN’s formation in 1998, DNS management was carried out under
25 contractual arrangements between the United States Government, which developed and initially
26 controlled the Internet, and other parties.

27 12. Beginning in 1998, the U.S. Department of Commerce (“DOC”) and ICANN
28 entered into the first of a series of agreements, including a “Memorandum of Understanding” or

1 “MOU,” amendments thereto, and an Affirmation of Commitments relating to DOC’s delegation
2 of authority to ICANN to manage the DNS and DOC’s role in overseeing and approving ICANN’s
3 activities and operating the root server system. The root server system is the physical system
4 which implements the DNS and allows users of the Internet to reach websites and email addresses.
5 In those agreements, DOC and ICANN, among other things, agreed that ICANN would

6 “[c]ontinue the process of implementing new top level domains (TLDs), which process
7 shall include consideration and evaluation of:

- 8 a. The potential impact of new TLDs on the Internet root server system and
9 Internet stability.
- 10 b. The creation and implementation of selection criteria for new and existing
11 TLD registries, including public explanation of the process, selection criteria, and the
12 rationale for selection decisions.
- 13 c. Potential consumer benefits/costs associated with establishing a competitive
14 environment for TLD registries.
- 15 d. Recommendations from expert advisory panels, bodies, agencies, or
16 organizations regarding economic, competition, trademark, and intellectual property
17 issues.” Amendment 5 to MOU, ¶ II(c)(8).

18 13. In 2009, ICANN reaffirmed its commitments to DOC, agreeing, among other
19 things: “ICANN will ensure that as it contemplates expanding the top-level domain space, the
20 various issues that are involved (including competition, consumer protection, security, stability
21 and resiliency, malicious abuse issues, sovereignty concerns, and rights protection) will be
22 adequately addressed prior to implementation.” September 30, 2009 Affirmation of Commitments
23 ¶ 9.3.

24 14. In order to fulfill its commitments under the MOU as amended and to comply with
25 its Articles of Incorporation and Bylaws, the ICANN Board in 2006 instructed ICANN to conduct
26 economic studies regarding competition issues among TLDs, including the question of whether
27 individual TLDs compete with one another or function as self-contained markets. The U.S.
28 Department of Justice reiterated the need for such studies in 2008.

1 15. Under its agreements with DOC, ICANN's duties include determining which new
2 TLDs to approve, choosing registries for existing or newly approved TLDs, and contracting with
3 the registries to operate the TLDs.

4 16. ICANN is managed by a Board of Directors. Its day-to-day operations are
5 overseen by its President and CEO, who is supported by an international staff.

6 17. Pursuant to its Bylaws, ICANN receives input from several Advisory Committees.
7 One of those committees is the Governmental Advisory Committee ("GAC"). Membership in the
8 GAC is open to all national governments. In addition, other multinational inter-governmental or
9 economic organizations may under certain circumstances participate in the GAC. ICANN's
10 Bylaws provide:

11 "The advice of the Governmental Advisory Committee on public policy matters shall be
12 duly taken into account, both in the formulation and adoption of policies. In the event that
13 the ICANN Board determines to take an action that is not consistent with the
14 Governmental Advisory Committee advice, it shall so inform the Committee and state the
15 reasons why it decided not to follow that advice. The Governmental Advisory Committee
16 and the ICANN Board will then try, in good faith and in a timely and efficient manner, to
17 find a mutually acceptable solution." Bylaws, Art. XI, § 2.

18 18. Pursuant to ICANN's Bylaws, ICANN and its Generic Names Supporting
19 Organization ("GNSO") are required to develop and adopt "Consensus Policies" to fulfill and
20 implement ICANN's obligations under its Articles of Incorporation, Bylaws, and the MOU,
21 amendments thereto and Affirmation of Commitments. ICANN and its GNSO have failed to
22 develop and adopt Consensus Policies relating to registry operators adequately protecting
23 competition, trademarks and other name and intellectual property rights.

24
25 **III. SUMMARY OF EVENTS AND FACTS UNDERLYING THIS REQUEST**
26 **FOR REVIEW**

27 19. In or about 2000, ICANN announced that it would consider applications for
28 establishment of new TLDs. More than 40 applicants filed applications for over 150 new TLDs.

1 At least three applicants filed applications for the .XXX TLD. One of those applicants was ICM
2 Registry Inc. ("ICM"), who also applied for a .KIDS TLD. See [http://www.icann.org/en/tlds/tld-](http://www.icann.org/en/tlds/tld-applications-lodged-02oct00.htm)
3 [applications-lodged-02oct00.htm](http://www.icann.org/en/tlds/tld-applications-lodged-02oct00.htm).

4 20. The process for considering new TLDs required that applications first be reviewed
5 by a panel of evaluators appointed by ICANN. ICANN's evaluators reviewed ICM's application
6 and recommended against adopting the .XXX TLD, writing:

7 "ICM Registry's application for an .xxx TLD does not appear to meet unmet needs. Adult
8 content is readily available on the Internet. To the extent that some believe that an .xxx
9 TLD would segregate adult content, no mechanism (technical or non-technical) exists to
10 require adult content to migrate from existing TLDs to an .xxx TLD.

11
12 "It is interesting to note the opposition of at least some segments of the adult online
13 content industry to a .xxx TLD. In testimony recently presented to a United States
14 commission chartered by the U.S. Congress to 'identify technological or other methods
15 that will help reduce access by minors to material that is harmful to minors on the Internet'
16 the COPA Commission <<http://www.copacommission.org>> -- the president and CEO of a
17 leading firm in hosting services for adult sites testified: 'While the proposition of XXX
18 Domain is well intentioned, a XXX Domain, however, is not a global solution for the
19 World Wide Web. It poses ethical risks to a diverse American public, financial burdens on
20 Adult consumers and the Adult Online Community, as well as the assurance of biased
21 censorship on the part of search portals.'

22
23 "The COPA Commission articulated some of the more common reservations about a
24 content-specific TLD for sex-related speech, even when its content-designation is purely
25 voluntary:

1 “Privacy and First Amendment concerns may be raised by the clear identification
2 of a ‘red light district’ and the stigma involved in being found there, and the
3 concern about a ‘slippery slope’ toward mandatory location in the gTLD.’
4

5 “Though these concerns are certainly not universally shared outside (or even within) the
6 United States, they indicate the degree of controversy that surrounds .xxx.
7

8 “The evaluation team concluded that at this early ‘proof of concept’ stage with a limited
9 number of new TLDs contemplated, other proposed TLDs without the controversy of an
10 adult TLD would better serve the goals of this initial introduction of new TLDs. If an
11 adult TLD is to be introduced, moreover, it would be beneficial to have a diversity of
12 proposals, with a diversity of possible approaches to the various problems, from which to
13 choose.
14

15
16 “Because of the inadequacies in the proposed technical and business measures to actually
17 promote kid-friendly content, the evaluation team does not recommend selecting a .KIDS
18 domain in the current phase of the TLD program. In addition, because of the controversy
19 surrounding, and poor definition of the hoped-for benefits of, .xxx, we also recommend
20 against its selection at this time.” Report on TLD Applications: Application of the
21 August 15 Criteria to Each Category or Group (9 November 2000) located at
22 <http://www.icann.org/en/tlds/report/report-iiib1c-09nov00.htm>.

23 21. ICANN moved forward with and eventually approved seven of the TLD
24 applications received in 2000 (.BIZ, .INFO, .NAME, .PRO, .AERO, .COOP and .MUSEUM), but
25 chose not to move forward with .XXX.

26 22. In April 2003, Michael Palage, a co-founder of ICM and member of ICM’s board,
27 was elected to the ICANN Board.

28 23. In June 2003, ICM announced its intention to continue pursuing the .XXX TLD.

1 24. On December 15, 2003, ICANN announced that it would accept applications for
2 new “sponsored” TLDs (“sTLDs”). ICANN set out criteria for “sponsorship” in its request for
3 proposals:

4
5 **“A. Definition of Sponsored TLD Community**

6 The proposed sTLD must address the needs and interests of a clearly defined community
7 (the Sponsored TLD Community), which can benefit from the establishment of a TLD
8 operating in a policy formulation environment in which the community would participate.

9 Applicants must demonstrate that the Sponsored TLD Community is:

- 10 • Precisely defined, so it can readily be determined which persons or entities make
11 up that community; and
12 • Comprised of persons that have needs and interests in common but which are
13 differentiated from those of the general global Internet community.

14
15 **“B. Evidence of support from the Sponsoring Organization**

16 Applicants must:

- 17 • Provide evidence of support for your application from your sponsoring
18 organization; and,
19 • Provide the name and contact information within the sponsoring organization.

20
21 **“C. Appropriateness of the Sponsoring Organization and the policy formulation
22 environment**

23 Applicants must provide an explanation of the Sponsoring Organization’s policy-
24 formulation procedures demonstrating:

- 25 • Operates primarily in the interests of the Sponsored TLD Community;
26 • Has a clearly defined delegated policy-formulation role and is appropriate to the
27 needs of the Sponsored TLD Community; and

- 1 • Has defined mechanisms to ensure that approved policies are primarily in the
2 interests of the Sponsored TLD Community and the public interest.

3 The scope of delegation of the policy formulation role need not be (and is not) uniform for
4 all sTLDs, but is tailored to meet the particular needs of the defined Sponsored TLD
5 Community and the characteristics of the policy formulation environment.

6 **“D. Level of support from the Community**

7 A key requirement of a sTLD proposal is that it demonstrates broad-based support from
8 the community it is intended to represent.

9 Applicants must demonstrate that there is:

- 10 • Evidence of broad-based support from the Sponsored TLD Community for the
11 sTLD, for the Sponsoring Organization, and for the proposed policy-formulation process;
12 and
13 • An outreach program that illustrates the Sponsoring Organization’s capacity to
14 represent a wide range of interests within the community.” Explanatory Notes to sTLD
15 Application found at [http://www.icann.org/en/tlds/new-stld-rfp/new-stld-application-part-](http://www.icann.org/en/tlds/new-stld-rfp/new-stld-application-part-15dec03.htm)
16 [15dec03.htm](http://www.icann.org/en/tlds/new-stld-rfp/new-stld-application-part-15dec03.htm).

17
18 25. ICM submitted the only application for the .XXX TLD under the 2003-04 sTLD
19 program. That application was again evaluated by a team of evaluators appointed by ICANN.
20 The team concluded, among other things, that ICM did not fulfill the sponsorship criteria for an
21 sTLD, a key criterion for the 2003-04 sTLD application process. The panel concluded that ICM’s
22 .XXX application did not merit further discussion.

23 26. Nevertheless, ICM continued to pursue its application before ICANN. The public
24 record indicates that throughout its application process, ICM misrepresented the level of support it
25 had from the adult entertainment community, the community for whom the .XXX TLD was
26 purportedly to be established. For example, the public record indicates that:

- 27 a. ICM claimed that members of the adult entertainment industry who pre-
28 registered for .XXX websites in an effort to protect their existing non-.XXX websites

1 supported ICM's proposal, even though ICM had represented to the pre-registrants, many
2 of whom opposed .XXX, that ICM would not "count" their registrations as support for the
3 .XXX proposal;

4 b. ICM claimed to have support from several major adult entertainment
5 industry companies, when in fact those entities subsequently opposed the application or
6 took neutral positions with respect thereto;

7 c. ICM attempted to obtain support from the Free Speech Coalition ("FSC"),
8 an adult entertainment industry umbrella group, by offering various inducements,
9 including cash and International Foundation For Online Responsibility ("IFFOR") Board
10 memberships, and by attempting to "stack" FSC meetings with supporters in order to
11 obtain FSC's endorsement, but such efforts failed;

12 d. ICM generated fake comments in support of its application by posting a link
13 that purported to lead to additional information about the .XXX proposal, but which in fact
14 automatically generated emails to ICANN supporting ICM's .XXX application;

15 e. ICM submitted misleadingly edited videos and/or photos of an adult
16 industry conference to suggest that there was little or no opposition to its application;

17 f. ICM submitted redacted information concerning alleged supporters of the
18 .XXX application alleged to be in the adult entertainment industry who appeared not to
19 have been involved in the industry, or whose identity as actual persons could not be
20 verified;

21 g. ICM obtained and attempted to obtain support from actual and alleged
22 participants in the industry and in related fields who were at the time or later employed or
23 paid by, or otherwise in receipt of benefits or promises from, ICM without properly
24 disclosing their ICM connections;

25 h. ICM offered various inappropriate inducements to persons and entities to
26 support ICM's application;

1 i. ICM claimed that IFFOR was an independent “sponsoring” entity for
2 ICM’s .XXX application when in fact IFFOR was created and is controlled by ICM and its
3 Chairman, Stuart Lawley; and

4 j. When questioned about these tactics, ICM refused to publicly disclose the
5 identities of its alleged supporters, ostensibly on privacy grounds, making it difficult if not
6 impossible for anyone to verify or challenge the veracity of ICM’s claims.

7 27. After numerous meetings and discussions with ICM and consideration of ICM’s
8 application over several meetings, and in reliance on ICM’s lobbying effort described above, in or
9 about June of 2005, ICANN took the preliminary step of authorizing its president and general
10 counsel to enter into negotiations with ICM relating to its proposal regarding the .XXX TLD. A
11 proposed agreement was posted on ICANN’s website in August 2005.

12 28. Thereafter, ICANN received many communications from members of the GAC and
13 various governments, including the United States Department of Commerce, expressing concerns
14 and opposition to the establishment of the .XXX TLD. In addition, members of the adult
15 entertainment industry and those opposed to the .XXX TLD on religious and moral grounds
16 continued to express opposition to the .XXX TLD in an ever-swelling chorus. The concerns
17 expressed included concerns about freedom of expression and association; about censorship by
18 various governments of the entire .XXX TLD; that ICM’s proposal did not have the support or
19 sponsorship of the adult entertainment community; and that ICM was not acting in the interest of
20 the very community which it contended to be the sponsoring community. In March 2006, the
21 GAC issued the Wellington Communiqué, which noted that several GAC members were
22 “emphatically opposed from a public policy perspective to the introduction of a .XXX sTLD.”
23 ICANN deferred final consideration of the ICM application and agreement for many months to
24 consider these objections and to revisit the issue of whether the .XXX TLD should be approved.

25 29. During this period, ICM applied pressure to ICANN and the U.S. Government to
26 try to force ICANN to allow ICM to proceed with the .XXX TLD. For example, ICM knew that
27 the U.S. Government was under international political pressure to avoid exercising control over
28 the internet. ICM first made Freedom of Information Act requests for sensitive documents

1 relating to Internet policy, and thereafter sued the Department of Commerce and the Department of
2 State seeking to compel disclosure of those documents, especially those relating to the
3 government's position on .XXX, all in an apparent attempt to embarrass the government and
4 muzzle opposition to ICM's .XXX campaign. ICM also submitted a complaint to the ICANN
5 ombudsman regarding ICANN's publication of negative evaluation reports pertaining to ICM's
6 .XXX TLD application.

7 30. On April 4, 2006, Michael Palage, ICM's co-founder, resigned from the ICANN
8 Board in the midst of a controversy about conflicts of interest.

9 31. On May 10, 2006, ICANN rejected ICM's .XXX proposal.

10 32. On May 19, 2006, ICM filed a request for reconsideration with ICANN. That
11 request was amended on May 26, 2006, and withdrawn on October 1, 2006 after ICM's counsel
12 allegedly received a request from ICANN's General Counsel indicating that ICANN would revisit
13 its decision if ICM submitted a revised proposed contract.

14 33. Submissions by ICM in support of its .XXX application falsely contending that it
15 met sponsorship requirements, and submissions by members of the adult entertainment industry,
16 governmental entities, and others voicing strong opposition to the .XXX TLD continued until
17 March 30, 2007, when ICANN again rejected the ICM .XXX application.

18 34. On June 6, 2008, more than a year after ICANN rejected its application for the
19 .XXX TLD, ICM filed a Notice of Independent Review to challenge that decision. ICM's central
20 contention in the Independent Review Proceeding ("IRP") was that ICANN had approved ICM's
21 application for the .XXX TLD in June of 2005, when its Board directed that its President and
22 General Counsel begin negotiating an agreement with ICM, and that ICANN thereafter improperly
23 and unfairly "reconsidered" its decision and rejected ICM's application. *See* Declaration of Panel
24 in ICM v. ICANN ¶ 84 (ICM contends that ICANN had concluded that Board found sponsorship
25 criteria met in June of 2005 and that its reopening of that issue thereafter was "unfair,
26 discriminatory and pretextual").

27 35. On February 19, 2009, the majority of the Independent Review Panel hearing the
28 ICM v. ICANN matter issued a non-binding Declaration siding with ICM, declaring that ICANN

1 had decided that ICM had met the criteria established for a new sTLD in June 2005 when its
2 Board directed that negotiations of a contract with ICM proceed, and declaring that ICANN could
3 not thereafter properly reopen the issue of sponsorship for reconsideration. The Panel's
4 Declaration did not address the issue of whether or not sponsorship criteria were in fact met or
5 whether the "evidence" of sponsorship presented by ICM up through the time of the June 2005
6 decision supported that determination or was misleading or fraudulent. The Panel did not hear
7 directly from members of the adult entertainment industry, the GAC, or others vitally concerned
8 with and opposed to the establishment of the .XXX TLD and making ICM the registry operator for
9 .XXX.

10 36. On March 26, 2010, ICANN published a document setting forth its options in
11 responding to the non-binding Declaration, noting that, among other things, ICANN could accept
12 the majority Declaration and move forward with the ICM application, adopt the findings of the
13 dissenting Declaration and reject ICM's application, adopt portions of the declarations and/or
14 reconsider the application under various scenarios. *See* [http://www.icann.org/en/irp/icm-v-
15 icann/draft-options-post-irp-declaration-26mar10-en.pdf](http://www.icann.org/en/irp/icm-v-icann/draft-options-post-irp-declaration-26mar10-en.pdf). Shortly thereafter, ICM sent ICANN a
16 "response" to the options, stating, among other things, that it was "self-evident" that litigation
17 would result if ICANN did not adopt the IRP majority Declaration and allow ICM to proceed with
18 the .XXX TLD. *See* <http://forum.icann.org/lists/icm-options-report/pdf08UAr9Ao8z.pdf>.
19 YouPorn is informed and believes and on that basis alleges that ICM also made other threats of
20 litigation against ICANN, its Board members, and others it perceived as responsible in some way
21 for the denial of its .XXX application.

22 37. On June 25, 2010, ICANN's Board adopted the IRP majority Declaration in part,
23 and directed its staff to undertake expedited due diligence and take other measures toward possible
24 approval of the ICM application.

25 38. On March 18 and 19, 2011, ICANN approved ICM's application for the .XXX
26 TLD.

27 39. Throughout the period between ICANN's rejection of the ICM application in its
28 March 30, 2007 decision and ICANN's March 2011 approval of ICM's application, and thereafter,

1 members of the adult entertainment industry and others, including members of GAC, continued to
2 object to ICANN's approval of the .XXX TLD in comments submitted in writing and
3 electronically and in various public fora.

4 40. Before approving the .XXX TLD, ICANN was consistently advised by numerous
5 members of the adult entertainment industry that the industry did not support inserting the .XXX
6 TLD into the DNS root server for a variety of reasons, including potential "ghettoization" of adult
7 entertainment websites, other freedom of expression and association concerns, violation of various
8 intellectual property and business rights, and concerns about anticompetitive conduct by the
9 proposed registry operator, ICM. Members of the adult entertainment industry also provided
10 substantial information to ICANN demonstrating that ICM's evidence of alleged "sponsorship" by
11 the adult entertainment industry was misleading or fraudulent, that any initial interest by members
12 of the industry in establishment of the .XXX TLD had eroded to the point of non-existence once
13 the .XXX proposal was fleshed out, and that the industry was opposed to establishment of the
14 .XXX TLD.

15 41. Before approving the .XXX TLD, ICANN received advice from various
16 governments and members of the GAC that they were opposed to establishment of the .XXX TLD
17 on various public policy grounds, including freedom of expression and association, competition,
18 rights protection and concerns about universal resolvability of web addresses given threatened
19 censorship of .XXX websites in some countries.

20 42. At no time prior to approval of the .XXX TLD did ICANN cause proper economic
21 studies to be made of the effects of introduction of new TLDs, including the .XXX TLD, on
22 competition and the rights of various affected parties, despite the fact that ICANN's Board and the
23 U.S. Depart of Justice had previously concluded that such studies were necessary to properly
24 evaluate new TLD requests in a manner consistent with ICANN's Articles of Incorporation and
25 Bylaws and to insure compliance with international and local law. The reports that were prepared
26 at ICANN's behest on these subjects for the most part consisted of nothing more than unsupported
27 speculation and assumptions downplaying the possible adverse effects of the introduction of new
28 TLDs and advocating introduction of new TLDs rather than rigorous and unbiased analysis of the

1 facts and effects. However, those studies, as well as independent analyses submitted to ICANN
2 concerning the potential impact of new TLDs, including the .XXX TLD, did identify negative
3 effects on competition from the introduction of new TLDs.

4 43. On March 21, 2011, ICANN ultimately refused to conduct proper economic
5 studies, stating, without any real or substantial support, that there was no economic basis for not
6 allowing new TLDs, and asserting that “no further economic analysis will prove to be any more
7 informative in that regard than those that have already been conducted.” *See*
8 <https://www.icann.org/en/minutes/rationale-economic-studies-21mar11-en.pdf>.

9 44. ICANN never sought competitive “bids” for the .XXX registry. ICANN’s contract
10 with ICM regarding the .XXX TLD reflects the fact that ICANN did not consider alternatives to
11 ICM running .XXX. Among other things, it provides for automatic renewal of the registry
12 agreement, and does not provide for competitive bidding after the initial period of the agreement.
13 Even though it creates and grants ICM a monopoly over the .XXX TLD, it does not impose
14 conditions and limitations on ICM’s operation of the registry (such as limitations on registration
15 prices and processes) to protect against anticompetitive behavior by ICM. ICANN has imposed
16 such conditions on other registry operators to ensure fairness, competitiveness and compliance
17 with law.

18 45. ICANN approved .XXX and the ICM registry contract, despite these legitimate and
19 strenuously voiced concerns, in violation of its by-laws and contractual obligations, and despite
20 the lack of complete and requisite economic studies, only because: (a) ICANN was intimidated
21 and coerced by ICM’s improper conduct (described above) which threatened ICANN, imposed
22 significant economic expense on ICANN, and promised to continue such tactics if ICANN did not
23 consent to .XXX; and (b) ICM promised ICANN significant financial payments, likely to amount
24 to millions of dollars, under the .XXX registry contract. Reflecting that ICANN’s approvals were
25 in part a reaction to improper ICM pressure, ICANN insisted upon and obtained a release from
26 ICM – barring ICM from further litigation threats – as a condition to signing the .XXX registry
27 contract.

1 46. ICANN and ICM entered into a registry agreement and related appendices and
2 amendments to make ICM the registry operator for .XXX. Under the terms of those agreements,
3 appendices and amendments, among other things:

4 a. ICM represented that the statements it made in applying for the .XXX TLD
5 and negotiating the registry agreement were true and correct (.XXX Registry Agreement
6 §2.1(b));

7 b. ICM agreed to follow “Consensus Policies,” including those relating to
8 resolution of disputes regarding whether particular parties may register or maintain
9 registration of particular domain names (.XXX Registry Agreement §§ 3.1(b)(i) and
10 3(b)(iv)(F));

11 c. ICM agreed to conduct policy development in a manner that reasonably
12 provided members of the sponsored community with the ability to express their views
13 about such policies and to participate in policy development (.XXX Registry Agreement §
14 3.1(g));

15 d. ICM agreed to publish, implement and enforce registry policies consistent
16 with the Registration Agreement and ICM’s obligations under the Sponsoring
17 Organization Agreement Appendix S to the .XXX Registry Agreement (Appendix S to
18 .XXX Registry Agreement Part 8);

19 e. ICM agreed to operate .XXX for the benefit of those who “provide online,
20 sexually-oriented Adult Entertainment,” those who represent such providers and those who
21 provide products or services to such providers (*id.*); and

22 f. ICM agreed that it would only register domain names for persons who
23 already provided sexually-oriented adult entertainment or related products or services on
24 the Internet or who credibly proposed to provide such entertainment, products or services
25 (*id.* Part 3).

26 47. ICM has breached and violated the terms of the registry agreement and related
27 appendices and amendments in at least the following respects:

28 a. It misrepresented its “sponsorship” during the application process;

1 b. It refused to block registration of websites that are confusingly similar to
2 domain names in other TLDs, including YouPorn, unless the operators of those sites are
3 willing to give up valuable legal rights as a condition to blocking;

4 c. It has ignored the input of the vast majority of the members of the online
5 adult entertainment community in establishing the .XXX TLD and the policies governing
6 that TLD;

7 d. It is operating the .XXX TLD in a manner inconsistent with the interests of
8 those for whose benefit it agreed to operate the TLD and to maximize its own profits and
9 to hold domain names confusingly similar to domain names for websites in other TLDs
10 hostage to substantial payments and waivers of valuable rights demanded by ICM to block
11 those .XXX domain names; and

12 e. It has knowingly sold domain names to persons and entities who are known
13 domain name speculators, and whose expressed intent is to resell those domain names at a
14 profit rather than use them for purposes of providing adult entertainment or related
15 products or services.

16 48. Despite the foregoing material breaches of the registry agreement, appendices and
17 amendments, ICANN has failed to take any steps to rescind the registry agreement, to compel
18 compliance therewith or to seek other relief for ICM's breaches thereof.

19 49. Since obtaining ICANN approval, ICM has set up processes for the .XXX TLD that
20 threaten intellectual property rights of various persons and entities in and out of the adult
21 entertainment industry, including YouPorn, has held those rights hostage to substantial payments
22 for registration or blocking of websites using names similar to trademarks and other existing
23 websites, and has otherwise acted in a manner that adversely affects competition and aids, abets,
24 encourages and facilitates misappropriation and misuse of intellectual property by various
25 wrongdoers.

1 **IV. ICANN’S CONSENT TO THE INDEPENDENT REVIEW PROCEDURE**
2 **AND YOUPORN’S STANDING AS AN AFFECTED PARTY**

3
4 50. ICANN’s consent to subject its conduct “alleged by an affected party to be
5 inconsistent with the Articles of Incorporation or Bylaws” to independent review is set forth in
6 Article IV, Section 3 of ICANN’s Bylaws:

7 “1. . . . ICANN shall have in place a separate process for independent third-party
8 review of Board actions alleged by an affected party to be inconsistent with the Articles of
9 Incorporation or Bylaws.

10 2. Any person materially affected by a decision or action by the Board that he
11 or she asserts is inconsistent with the Articles of Incorporation or Bylaws may submit a
12 request for independent review of that decision or action.

13 3. Requests for such independent review shall be referred to an Independent
14 Review Panel (“IRP”).”

15 51. ICANN has selected the International Centre for Dispute Resolution (“ICDR”) to
16 handle requests for an IRP.

17 52. The procedural framework for the independent review process is set out in
18 ICANN’s Bylaws, the ICDR’s International Arbitration Rules and ICDR’s Supplementary
19 Procedures for ICANN Independent Review Process.

20 53. YouPorn has been materially affected by ICANN’s decision to permit the .XXX
21 TLD to be entered into the DNS root server and to allow ICM to act as the registry for the .XXX
22 TLD in at least the following respects:

23 a. Under ICM’s requirements for the .XXX TLD, in order to have an .XXX
24 website, YouPorn must agree to unacceptable restrictions on free expression.

25 b. In order to register for an .XXX website or block registration of an .XXX
26 domain name, YouPorn must waive certain legal and other claims it has against ICM.

27 c. Under ICM’s published rules for the .XXX TLD, YouPorn must either
28 operate .XXX websites as a member of the ICM-defined community or it must declare that

1 it is not a member of the community to block .XXX websites matching its trademarks and
2 existing non-.XXX websites; it is not permitted to operate some websites and block others
3 under ICM's rules, in violation of its rights to freedom of speech and association under
4 international and local law.

5 d. In order to protect their existing websites, trademarks, tradenames and
6 intellectual property, YouPorn and others must pay substantial sums to acquire and/or
7 block .XXX websites, to the detriment of fair competition.

8 e. Under ICM's rules for the .XXX TLD, portions of monies paid by YouPorn
9 to register domain names would be diverted to IFFOR, an organization that espouses
10 viewpoints with which YouPorn disagrees.

11 f. YouPorn has been injured by ICM's breaches of the .XXX Registry
12 Agreement and the appendices and amendments thereto, and ICANN's failure to seek
13 rescission thereof or other appropriate relief for such breaches.

14
15 **V. APPLICABLE REVIEW STANDARD**

16 54. Pursuant to ICANN's Bylaws, the IRP's mandate is to (1) compare those actions of
17 the Board contested by an affected party to the Articles of Incorporation and Bylaws, and (2) to
18 declare whether the Board has taken a decision, acted, or failed to act consistently with the
19 provisions of those Articles of Incorporation and Bylaws.

20 55. The Panel must therefore determine, inter alia, whether ICANN's procedures,
21 processes, consideration and/or disposition of the request to establish the .XXX TLD and ICM's
22 application to serve as the registry operator for the .XXX TLD were inconsistent with all or any
23 part of its Articles of Incorporation or Bylaws, and in particular those portions of the Articles of
24 Incorporation and Bylaws cited in paragraphs 8 through 12 hereinabove, including, without
25 limitation, its commitment to act in the interest of the entire community, to act in accordance with
26 international and local law, and to act in a manner that promotes competition and with due regard
27 for intellectual property right protection. As summarized below, YouPorn submits that ICANN
28 has acted inconsistently with its Articles of Incorporation and Bylaws.

1
2 **VI. ICANN FAILED TO COMPLY WITH ITS ARTICLES OF**
3 **INCORPORATION AND BYLAWS**

4 56. ICANN's Bylaws require that it take public policy into account in making its
5 decisions, and that it seek and take into account the advice it receives from governments and the
6 GAC in making its decisions. ICANN acted inconsistently with and violated its Articles of
7 Incorporation and Bylaws when, among other things:

8 a. It disregarded its commitment under its Articles of Incorporation, Bylaws
9 and its agreements with the DOC to adequately address issues including competition,
10 consumer protection, malicious abuse and rights protection prior to approving the .XXX
11 TLD and granting ICM the exclusive right to act as the .XXX registry operator without
12 adequate safeguards with respect to such issues.

13 b. It disregarded its commitment under its Articles of Incorporation, Bylaws
14 and its agreements with DOC to introduce and promote competition in the registration of
15 domain names by selecting ICM in a closed process without considering other potential
16 registry operators for the .XXX TLD.

17 c. It disregarded the advice of the GAC and its members that the .XXX TLD
18 should not be permitted because of freedom of expression and other public policy issues.

19 d. It failed to conduct proper economic studies of the impact of the
20 introduction of new TLDs, including the .XXX TLD, on competition and rights protection
21 that it agreed with DOC were necessary to fulfill its obligations under the Articles of
22 Incorporation and Bylaws to promote and adequately address competition, rights
23 protection and other issues before approving new TLDs, including the .XXX TLD.

24 e. It failed to take action respecting ICM's breaches of the .XXX Registry
25 Agreement and the appendices and amendments thereto, allowing ICM to persist in
26 anticompetitive conduct and in derogation of trade marks, name rights and other
27 intellectual property rights.

1 57. ICANN's Articles of Incorporation and Bylaws require that ICANN introduce and
2 promote competition in approving TLDs and registries. ICANN acted inconsistently with and
3 violated its Articles of Incorporation and Bylaws when, in approving the .XXX TLD, among other
4 things:

- 5 a. It approved the .XXX TLD and made ICM the registry operator for the
6 .XXX TLD without adequately considering competition issues.
- 7 b. It failed to conduct proper economic studies of the impact of the
8 introduction of the .XXX TLD's on competition and rights protection.
- 9 c. ICANN has failed to adopt or enforce Consensus Policies that adequately
10 protect competition, trademarks, and other name and intellectual property rights applicable
11 to .XXX and other TLDs.
- 12 d. It failed to consider or impose conditions and restrictions on ICM's
13 operation of the .XXX TLD in order to adequately protect consumers, rights holders and
14 members of the adult entertainment industry from the anticompetitive effects of granting
15 ICM a monopoly on the .XXX TLD.
- 16 e. It failed to impose competitive terms on any renewal of ICM's contract to
17 control the .XXX TLD.
- 18 f. It failed to consider potential .XXX registry operators other than ICM.
- 19 g. It disregarded the advice of members of the adult entertainment industry,
20 economists and other experts concerning the significant negative impacts that introduction
21 of the .XXX TLD would have on competition, intellectual property rights, and freedom of
22 expression.

23 58. ICANN's Articles of Incorporation and Bylaws require that it conduct its activities
24 in an open and transparent manner that promotes well-informed decisions based on expert advice
25 and ensures that those most affected by ICANN's actions have a voice in the process. ICANN
26 acted inconsistently with and violated its Articles of Incorporation and Bylaws when, in approving
27 the .XXX TLD, it disregarded the comments, concerns and evidence presented by members of the
28 adult entertainment community and experts, that, among other things:

1 a. ICM and the .XXX TLD did not have community support, and that
2 assertions of “sponsorship” were fraudulent and misleading;

3 b. Establishment of the .XXX TLD could lead to “ghettoization” of the adult
4 entertainment industry, and could lead to curtailment of freedom of expression through
5 restrictions placed on websites within and outside of the .XXX TLD.

6 c. ICM was acting and threatening to act in a manner that was contrary to the
7 interests of the adult entertainment industry, the “community” that ICM contended was
8 “sponsoring” the .XXX TLD.

9 d. The .XXX TLD would have significant anticompetitive effects and would
10 have substantial negative impacts on the intellectual property and other property rights of
11 various rights holders, including YouPorn.

12 e. Establishment of the .XXX TLD would impose substantial costs on
13 operators of websites and on holders of trademarks, tradenames and other intellectual
14 property, including YouPorn, to protect their rights and interests against infringement,
15 violation, dilution and other injury.

16 59. ICANN’s Articles of Incorporation and Bylaws require that it act in compliance
17 with international law and conventions and local laws. ICANN acted inconsistently with and
18 violated its Articles of Incorporation and Bylaws and acted inconsistently with international law
19 and conventions and local laws regarding competition and protection of intellectual property and
20 other property rights by approving the inclusion of the .XXX TLD in the DNS, approving ICM’s
21 application to act as registry operator for the .XXX TLD and in entering into an agreement with
22 ICM for operation of the .XXX registry that did not include adequate safeguards and protection of
23 competition and intellectual property and other rights. Among other things, granting ICM a
24 monopoly over the .XXX TLD has allowed it to:

25 a. Extort and attempt to extort substantial sums from members of the adult
26 entertainment industry and others, including YouPorn, to protect their existing websites,
27 trademarks and other intellectual property, whether they intend to operate websites within
28 the .XXX TLD or block such sites.

1 b. Require persons registering websites for the .XXX TLD to pay money to
2 IFFOR, an organization controlled by ICM and its principals, even if the registrants do not
3 agree with IFFOR's viewpoints.

4 c. Unlawfully tie products and services together in violation of law, such as by
5 requiring that any registrant either purchase or block all websites in which it had any
6 affirmative or defensive interest, rather than choosing to purchase and operate some and
7 block others.

8 d. Require registrants to give up legal rights and claims they may have against
9 ICM as a condition of registering or blocking a website.

10 60. ICANN's Articles of Incorporation and Bylaws require that it proceed in a fair and
11 open manner. ICANN acted inconsistently with and violated its Articles of Incorporation and
12 Bylaws when, in approving the .XXX TLD, it among other things:

13 a. Disregarded the criteria it had set out for sTLDs like .XXX, and approved
14 the .XXX TLD and ICM as registry operator of the .XXX TLD over the strong opposition
15 of the adult entertainment industry, the community which ICM contended was the sponsor
16 of the .XXX TLD, and approved the .XXX TLD even after it had become clear that ICM
17 had not met and could not meet the sponsorship criteria for sTLDs.

18 b. Prevented a fair hearing and inquiry into ICM's claims of sponsorship by
19 allowing ICM not to disclose the identities of its supposed supporters.

20 c. It failed to take heed of complaints by members of the adult entertainment
21 industry, members of GAC and others warning of the dangers of proceeding with the
22 .XXX TLD and naming ICM as the registry operator for .XXX.

23 d. It gave ICM a permanent monopoly over the .XXX TLD without
24 considering other candidates for registry operator and without making provision for
25 considering other potential registry operators at the end of the initial term of the .XXX
26 Registry Agreement.

1 **VII. YOUPORN IS ENTITLED TO THE REQUESTED RELIEF**

2
3 61. As a result of ICANN’s failures to comply with and violations of its Articles of
4 Incorporation and Bylaws as alleged herein, and reserving its rights to amend or supplement this
5 Request and the relief sought hereby, YouPorn is entitled to the following relief:

- 6 a. A declaration that ICANN’s approval of the .XXX TLD violated and was
7 inconsistent with ICANN’s Articles of Incorporation and Bylaws;
- 8 b. A declaration that ICANN’s administration of the process whereby it
9 selected a registry operator for the .XXX TLD violated and was inconsistent with
10 ICANN’s Articles of Incorporation and Bylaws;
- 11 c. A declaration that ICANN’s approval of the application of ICM Registry
12 LLC (“ICM”) to serve as the registry operator for the .XXX TLD violated and was
13 inconsistent with ICANN’s Articles of Incorporation and Bylaws;
- 14 d. A declaration that ICANN’s agreement with ICM concerning the terms and
15 conditions on which ICM is to act as the registry operator for the .XXX TLD violates and
16 is inconsistent with ICANN’s Articles of Incorporation and Bylaws;
- 17 e. A declaration that ICANN must reconsider its decision regarding approval
18 of the .XXX TLD for use in the DNS in a manner consistent with its Articles of
19 Incorporation and Bylaws;
- 20 f. A declaration that ICANN’s decision approving ICM as registry operator
21 for the .XXX TLD and the agreement between ICANN and ICM setting out the terms and
22 conditions on which ICM would act as the registry operator for the .XXX TLD are void;
- 23 g. A declaration that should ICANN, after reconsideration consistent with its
24 Articles of Incorporation and Bylaws, determine to allow the .XXX TLD to be used in the
25 DNS, it must reconsider who should be allowed to act as the registry operator for the
26 .XXX TLD in a process administered in a manner consistent with ICANN’s Articles of
27 Incorporation and Bylaws;

1 h. A declaration that ICANN has failed to take action to rescind or enforce the
2 .XXX Registry Agreement, and the appendices and amendments thereto, in the face of
3 multiple serious breaches of same by ICM, and must, to comply with its articles and
4 bylaws, seek such relief immediately;

5 i. Declare that ICANN must upon the expiration of the initial term of the ICM
6 registry agreement either allow open and for competition for the .XXX registry and/or
7 upon any renewal of the ICM registry agreement, negotiate conditions and terms that
8 provide adequate protections for free and fair competition, trademarks, other name and
9 intellectual property rights in connection with the operation of the .XXX TLD;

10 j. Require that ICANN adopt "Consensus Policies" binding on ICM that
11 protect competition, trademarks and other name and intellectual property rights in
12 connection with the operation of the .XXX TLD and other TLDs;

13 k. A declaration that ICANN must compensate YouPorn for the costs incurred
14 by YouPorn in bringing this Independent Review Proceeding; and

15 l. Such other declarations and such other relief as the Panel may consider
16 appropriate.

17 62. YouPorn therefore requests that the Panel make the declarations and grant the relief
18 specified above.

19
20 **IV. INDEPENDENT REVIEW PROCEDURAL ELECTIONS AND PROPOSAL**
21 **REGARDING PANEL SELECTION AND LOCATION OF PROCEEDINGS**
22

23 63. The ICDR does not maintain a panel of neutrals under contract for the ICANN
24 Independent Review Process. Accordingly, YouPorn proposes that the parties agree to waive the
25 requirement in Article IV, Section 3(4) of the Bylaws that the arbitrators be under contract with or
26 nominated by the IRP provider.
27

1 64. Pursuant to Article IV, Section 3(6) of the Bylaws, YouPorn hereby elects that the
2 Panel be composed of three (3) members, each of whom shall be impartial and independent of the
3 parties.

4 65. Pursuant to Article IV, Section 3(7) of the Bylaws, YouPorn proposes the
5 following methodology for constituting the Panel: each party shall appoint one panelist. The two
6 panelists so appointed, and in consultation with the parties, shall jointly select the third panelist,
7 who shall serve as the Chairperson of the Panel.

8 66. YouPorn proposes that YouPorn and ICANN make their panelist appointment
9 within twenty (20) days of ICANN's agreement to the Panel appointment procedure set forth
10 herein. The two co-panelists shall select the Chairperson of the Panel within twenty (20) days of
11 their appointment. In the event that YouPorn or ICANN fails to make its panelist appointment
12 within the time period indicated, the ICDR shall make the appointment of YouPorn or ICANN's
13 panelist and the Chairperson of the Panel within thirty (30) days of the date on which said party
14 should have made its panelist appointment. In the event that the two party-appointed panelists fail
15 to agree on the identity of the third arbitrator, that appointment shall be made by the ICDR, in
16 accordance with its established procedures.

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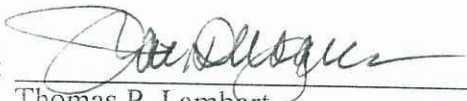
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67. Pursuant to Article 13 of the ICDR Rules, YouPorn proposes that the place of the IRP be Los Angeles, CA, United States of America.

Respectfully submitted,

DATED: November 16, 2011

MITCHELL SILBERBERG & KNUPP LLP
THOMAS P. LAMBERT
JEAN PIERRE NOGUES
KEVIN E. GAUT

By: 
Thomas P. Lambert
Jean Pierre Nogues
Kevin E. Gaut
Attorneys for Claimant
Manwin Licensing International S.à.r.l.

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the county of Los Angeles, State of California. I am over the age of 18
4 and not a party to the within action. My business address is Mitchell Silberberg & Knupp LLP,
11377 West Olympic Boulevard, Los Angeles, California 90064-1683.

5 On November 16, 2011, I served a copy of the foregoing document(s) described as
6 **NOTICE OF INDEPENDENT REVIEW and REQUEST OF MANWIN LICENSING**
7 **INTERNATIONAL S.A.R.L., FOR INDEPENDENT REVIEW PROCEEDING** on the
interested parties in this action at their last known address as set forth below by taking the action
described below:

8 Internet Corporation for Assigned Names and
9 Numbers
10 4676 Admiralty Way
11 Suite 330
12 Marina Del Rey, CA 90292-6601

13 **BY PERSONAL DELIVERY:** I placed the above-mentioned document(s) in sealed
14 envelope(s), and caused personal delivery by **FIRST LEGAL SUPPORT SERVICES** of
the document(s) listed above to the person(s) at the address(es) set forth above.

15 I declare under penalty of perjury under the laws of the State of California that the above is
16 true and correct.

17 Executed on November 16, 2011, at Los Angeles, California.

18 _____
19 Bertha A. García
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California.

I am over the age of 18, and not a party to the within action; my business address is **FIRST LEGAL SUPPORT SERVICES**, 1511 West Beverly Blvd., Los Angeles, CA 90026.

On November 16, 2011, I served the foregoing document(s) described as **NOTICE OF INDEPENDENT REVIEW and REQUEST OF MANWIN LICENSING INTERNATIONAL S.A.R.L., FOR INDEPENDENT REVIEW PROCEEDING** which was enclosed in sealed envelopes addressed as follows, and taking the action described below:

Internet Corporation for Assigned Names and Numbers
4676 Admiralty Way
Suite 330
Marina Del Rey, CA 90292-6601

BY PERSONAL SERVICE: I hand delivered such envelope(s):

to the addressee(s);

to the receptionist/clerk/secretary in the office(s) of the addressee(s).

by leaving the envelope in a conspicuous place at the office of the addressee(s) between the hours of 9:00 a.m. and 5:00 p.m.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 16, 2011, at Los Angeles, California.

Printed Name

Signature