

# JONES DAY

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March 30, 2012

*VIA EMAIL*

Contact Information Redacted

**Re: *Employ Media LLC v. Internet Corporation for Assigned Names and Numbers  
ICC 17917/VRO:***

Dear Contact:

On behalf of the Internet Corporation for Assigned Names and Numbers ("ICANN"), I write in response to your 19 March 2012 letter regarding preparation of the Terms of Reference for the arbitration in the above-referenced matter. In this letter, ICANN provides the following information to assist the Arbitral Tribunal in drafting the Terms of Reference in accordance with Article 18 of the ICC Rules.

**Article 18(1)(a): "[The Terms of Reference shall include] the full names and descriptions of the parties."**

**Response:** Respondent Internet Corporation for Assigned Names and Numbers  
4676 Admiralty Way #330  
Marina del Rey, California 90292

**Article 18(1)(b): "[The Terms of Reference shall include] the addresses of the parties to which notifications and communications arising in the course of the arbitration may be made."**

**Response:** Counsel for Respondent, ICANN  
Jeffrey A. LeVee, Esq.  
Eric P. Enson, Esq.  
Cindy Reichline, Esq.  
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**Article 18(1)(c): "[The Terms of Reference shall include] a summary of the parties' respective claims and of the relief sought by each party with an indication to the extent possible of the amounts claimed or counterclaimed."**

**Response:**

Pursuant to a series of agreements with the United States Department of Commerce, ICANN, a not-for-profit public benefit corporation organized under California law in 1998, is responsible for coordinating the Internet's Domain Name System ("DNS"). There are several types of Top Level Domains ("TLDs") within the Internet's DNS. Existing Generic TLDs have been subdivided into two types, "unsponsored" TLDs or "sponsored" TLDs. Generally speaking, unsponsored TLDs, such as .COM, .NET and .INFO, operate for the benefit of the global Internet community as a whole – virtually anyone can register a domain name within an unsponsored TLD. Sponsored TLDs are specialized TLDs created to serve the defined needs of a specific "community." On 5 May 2005, Claimant, Employ Media, LLC ("Employ Media"), entered into a Registry Agreement with ICANN, under which Employ Media would serve as the Registry Operator of the .JOBS sponsored TLD, which was proposed by Employ Media in order to serve the needs of the international human resource management community.

Because .JOBS is a sponsored TLD, the Registry Agreement and the .JOBS Charter, place several restrictions on who can register domain names within .JOBS and how websites within .JOBS may be used. Based on the specific intent behind creation of .JOBS, the .JOBS Registry Agreement contractually requires Employ Media to limit domain name registrations within .JOBS to individual human resource managers seeking to promote employment opportunities *within their own organizations*. But Employ Media has violated these contractual terms by permitting the creation of job "bulletin boards" within .JOBS, thereby allowing entities to promote employment opportunities *outside of their own organizations*. Accordingly, in February 2011, ICANN served Employ Media with a "Notice of Breach" letter informing Employ Media that it must cure its contractual violations or face termination. Rather than complying with its contractual duties, Employ Media filed this action seeking to set aside ICANN's Notice of Breach letter.

ICANN respectfully requests a finding from the Arbitral Tribunal that:

- (a) ICANN's Notice of Breach letter was appropriate;

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- (b) ICANN may proceed to terminate the Registry Agreement with Employ Media;
- (c) All relief sought by Employ Media is denied; and
- (d) ICANN shall recover all costs and reasonable attorneys' expended in defending this matter, as provided in Section 5.1(b) of the Registry Agreement.

ICANN does not accept any claim, whether of fact or law, asserted by Employ Media and reserves all rights to challenge such claims.

**Article 18(1)(d): "[The Terms of Reference shall include] unless the Arbitral Tribunal considers it inappropriate, a list of issues to be determined."**

**Response:**

Reserving all rights to supplement, amend and/or alter this response, ICANN respectfully requests that the Arbitral Tribunal determine the issues relevant to the request for relief set forth in ICANN's response on Article 18(1)(c).

**Article 18(1)(e): "[The Terms of Reference shall include] the full names, descriptions and addresses of the arbitrators."**

**Response:**

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**Article 18(1)(f): "[The Terms of Reference shall include] the place of the arbitration."**

Pursuant to the terms of the Registry Agreement between ICANN and Employ Media, which contains the relevant arbitration agreement between the parties, the Claimant has stated that the appropriate place of arbitration is Los Angeles, California. ICANN agrees that the appropriate place for the arbitration is Los Angeles, California.

**Article 18(1)(g): "[The Terms of Reference shall include] particulars of the applicable procedural rules and, if such is the case, reference to the power conferred upon the Arbitral Tribunal to act as *amiable compositeur* or to decide *ex aequo et bono*."**

Reserving all rights to supplement, amend and/or alter this response, ICANN respectfully requests that the Arbitral Tribunal utilize electronic communications / submissions and telephonic hearings, where possible, in order to resolve this matter quickly and efficiently. ICANN further requests that this matter proceed without costly discovery, in that virtually all materials and documents relevant to this dispute are publicly available on ICANN's website pursuant to ICANN's internal practices and procedures. ICANN also requests that the Arbitral Tribunal apply and utilize California contract law to resolve this matter in that ICANN is a California not-for-profit corporation and the contract at issue was negotiated, executed and performed by ICANN in California. Finally, ICANN requests that the Arbitral Tribunal determine the issues relevant to this matter through presentations by counsel and testimony by affidavit, rather than through costly and cumbersome live presentations of witnesses.

ICANN respectfully submits that the power conferred upon the Arbitral Tribunal in the Registry Agreement does not allow the Arbitral Tribunal to act as *amiable compositeur* or to decide the issues *ex aequo et bono*.

Should you have any questions or require further information from ICANN, please let me know. Thank you.

Sincerely,



Eric P. Enson

cc: Arif Ali, Esq.

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George Ruttinger, Esq.  
Jeffrey A. LeVee, Esq.