

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

AFILIAS DOMAINS NO. 3 LIMITED,

Claimants

v.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS,

Respondent

ICDR Case No. _____

WITNESS STATEMENT OF JONATHAN M. ROBINSON

27 September 2018

I. Personal and Professional Background

1. My full name is Jonathan Mark Robinson. I am a citizen of the United Kingdom, and I reside in Cambridge, U.K. Currently, I am the Executive Chairman of Afilias plc (“**Afilias**”), one of the larger domain name registry operators on the Internet. I obtained this position after serving on Afilias’ Board of Directors (the “**Board**”) because of my experience with Afilias and as an entrepreneur focusing on business development in the domain name industry.

2. I have worked in the domain name industry for over twenty years—since before the Internet Corporation for Assigned Names and Numbers (“**ICANN**”) was incorporated and began managing the domain name system (“**DNS**”). In 1991, I graduated from the University of Cape Town with a Ph.D. in Materials Engineering and a BSc in Physics. After receiving my degrees, I continued to work in academia for several years. I held research positions at the Imperial College in London from 1993-1994 and at the Rolls Royce Technology Centre at the University of Cambridge from 1994-1997. Through my research, which focused on the development of aerospace materials, I was first exposed to technical networks, out of which the modern Internet was born. As I used these networks for my research, I grew excited about their potential beyond academia, causing me to change the focus of my career.

3. My interest in this networking technology led me to co-found NetBenefit in 1995, while I was still working as a Research Fellow at the University of Cambridge. During the late 1990s, it was difficult for companies to establish a presence on the Internet because all of the commercially available generic domain names were supplied by a single entity: Network Solutions, Inc. (“**NSI**”). This meant that there was no innovation in the supply chain. I co-founded NetBenefit in order to create innovation in that chain by helping consumers establish an Internet

presence. NetBenefit (subsequently named Group NBT) still provides online brand protection, domain name management, and domain name acquisition services.¹

4. In 1997, I turned my full attention to NetBenefit and served in a variety of executive roles from May 1997 to June 2009, including ultimately its Chief Operating Officer and main board director. As NetBenefit's Chief Operating Officer,² I was responsible for all areas of the company's (1) product management and associated strategic planning; (2) fulfilment operations and industry policy issues; and (3) acquisition integration projects. As a consequence of these responsibilities and my own personal interest in the burgeoning domain name industry, I have paid close attention to developments in the DNS and, in particular, the debates surrounding the U.S. government's decision to give ICANN the authority to coordinate and manage the DNS, including the introduction of competition for the provision and supply of domain names.

5. Concurrent with my position at GroupNBT, and then until May 2011, I served as a member-elected, non-executive director on Nominet UK's ("**Nominet**") Board of Directors. Nominet operates several registries. While serving a second term on Nominet's Board of Directors, I co-founded two businesses more or less simultaneously in January 2011: IPRota Ltd. ("**IPRota**") and Ipracon Ltd. ("**Ipracon**"). IPRota was a private company that provided services relating to the protection of intellectual property rights within the domain name industry, specifically focusing on launching new generic top-level domains ("**gTLDs**"). I served as the Managing Director of IPRota until it was dissolved following its members' voluntary liquidation. Ipracon is a private company set up for me to provide consultancy services in areas related to

¹ NetBenefit is presently known as NetNames.

² I resigned from my position as Chief Operating Officer in June 2009 to pursue other opportunities in the domain name industry.

domain names. Through my position with Ipracon, I now provide consultancy services to Afilias regarding its gTLDs.

6. Throughout most of my career in the domain name industry, from my time as a NetBenefit executive to my current position with Ipracon, I have remained engaged with Afilias. I served as one of Afilias' non-executive directors for over eleven years, from September 2003 to September 2014. As a non-executive director, I reviewed and supported Afilias' continued work in the DNS and pursuit of .WEB. In September 2014, I accepted the offer to become Afilias' Executive Chairman—a position that I still hold today.

II. Involvement with ICANN Governance and Policy-Making

7. As a result of my professional focus on the domain name industry, I followed the events that led to the establishment of ICANN and, thereafter, have closely followed and participated in ICANN's policy-making and activities.

8. I became directly and formally involved with ICANN and its policy-making processes when I joined ICANN's Generic Names Supporting Organization ("GNSO") Council (the policy-making body of the GNSO) as a representative of the Registries Stakeholder Group in 2011. Through my work with the GNSO, I gained first-hand knowledge of ICANN's practices, policies, and procedures.

9. The GNSO is one of ICANN's three supporting organizations. Its primary function is to develop and recommend changes to ICANN's policies concerning gTLDs. In fulfilling this function, the GNSO adheres to ICANN's Core Values, including fairness (*e.g.*, concerning the allocation and operation of gTLDs), and the introduction and promotion of competition for the provision and supply of domain names.

10. I was elected Chair of the GNSO Council in October 2012, a position that I maintained through two additional one-year terms until October 2015. During my tenure as Chair,

the GNSO worked on developing policies relevant to several significant issues, including (1) the introduction of new gTLDs to the DNS pursuant to the New gTLD Program; (2) the transition of stewardship to ICANN of the Internet Assigned Numbers Authority (“IANA”) function; and (3) the re-establishment, re-assertion, and re-focus of the GNSO Council’s essential role and function as manager of policy development for gTLDs.³

11. I have twice been recognized by ICANN for my significant contributions as a leader within the ICANN Community. First, I received the 2014 ICANN Leadership Award for improving the effectiveness of ICANN’s multi-stakeholder model, which included improving communications channels within ICANN.⁴ Second, I became the first and only repeat recipient of this award in 2016 for my work co-chairing the IANA Stewardship Transition working group.⁵ Through my experience with the GNSO and ICANN, I have learned first-hand and at close quarters about ICANN and its management of the DNS.

III. ICANN’s Primary Mandate Is to Introduce and Promote Competition for the Provision and Supply of Generic Domain Names

12. When ICANN assumed management responsibility for the DNS in 1998, the DNS was controlled by a monopolist: NSI. NSI was the sole source of generic domain names by virtue

³ Jonathan Robinson, Candidate Statement for GNSO Chair (28 Sep. 2012), [Ex. JMR-1], pp. 2-3 (“The fundamental job of the GNSO Council Chair is to ensure that the Council is and remains as productive and effective as possible. ... [W]e should measure our success by the productive and effective output of the Council.”); Jonathan Robinson, Candidate Statement for GNSO Chair (8 Nov. 2013), [Ex. JMR-2], p. 1; Jonathan Robinson, Candidate Statement for GNSO Chair (3 Oct. 2014), [Ex. JMR-3], p. 1.

⁴ ICANN, *News Release: Jonathan Robinson Recognized with 2014 ICANN Leadership Award* (13 Oct. 2014), available at <https://www.icann.org/news/announcement-2014-10-13-en> (last accessed on 12 July 2018), [Ex. JMR-4].

⁵ Afilias, *News Release: Afilias Chairman Jonathan Robinson Wins ICANN’s 2016 Leadership Award at ICANN 57* (7 Nov. 2016), available at <https://afilias.info/news/2016/11/07/afilias-chairman-jonathan-robinson-wins-icann%E2%80%99s-2016-leadership-award-icann-57> (last accessed on 12 July 2018), [Ex. JMR-5].

of an agreement with the U.S. government.⁶ If users, whether individuals or businesses, wanted to own and operate a website (or email) on the Internet with a gTLD, their only option was to purchase a domain name from NSI.

13. When the United States Department of Commerce opened the Internet for commercialization, persons and entities began claiming their own online spaces by purchasing the rights to domain names from NSI. Although domain name registration was originally a free service, NSI soon imposed a registration fee of USD 100 on all two-year domain name registration contracts and an annual USD 50 renewal fee. The NSI registration and renewal fees vastly exceeded NSI's costs, earning the company enormous profits.

14. At the time, only a few gTLDs were commercially available. NSI permitted the purchase of domain names under the .COM, .ORG, .NET, .EDU, and .GOV. gTLDs. Of these five gTLDs, two were restricted to members of specific communities⁷ and two were intended for specialized uses.⁸ Thus, only .COM was broadly available to most users, corporate and individual alike. Consumers consequentially demanded .COM domain names and, as a result, “.COM” developed a universal appeal, and by default became a domain extension synonymous with the Internet and recognizable to all Internet users.

15. Given .COM's broad availability and its uniquely strong association with the Internet, most of the domain names obtained during the 1990s were .COMs. However, there were consequences of this sudden growth in gTLD domain name registrations: .COM was established

⁶ Registry operators own the right to operate specific TLDs, and provide domain name registration services relating to those TLDs; they also keep a database of all the second-level domain names registered for each TLD. Registrars sell the rights to second-level domain names for registry operators' TLDs to the public.

⁷ .EDU was reserved for universities and .GOV was reserved for the United States federal government.

⁸ .ORG was intended for use by the not-for-profit sector, while .NET was intended for behind-the-scenes internal networking applications.

as the most popular gTLD due to its generic appeal and the lack of viable alternative gTLDs; and, as the .COM registry grew, the lack of a viable competitor allowed NSI to exploit domain name registrants.

16. NSI's exploitation of its monopoly position was roundly condemned within the Internet community. At the time, several working groups advocated for changing the governance and operation of the DNS to promote competition to NSI. Ultimately, the U.S. government determined that the best way to introduce a competitive environment within the DNS would be to privatize it.⁹

17. Following many proposals that were developed within the Internet community, the U.S. government ultimately entrusted ICANN, a newly formed non-profit organization, to manage the DNS. Pursuant to its Memorandum of Understanding ("MOU") with the U.S. government, ICANN was specifically required to "[c]ollaborate on the design, development and testing of a plan for creating a process that will consider the possible expansion of the number of gTLDs."¹⁰ ICANN's original Articles of Incorporation required ICANN to operate for the benefit of the Internet community as a whole, through "open and transparent processes that enable competition."¹¹ ICANN's 2002 redrafted Bylaws expanded on this concept, identifying the

⁹ NTIA, Improvement of Technical Management of Internet Names and Addresses; Proposed Rule [Docket No. 980212036-8036-01] (20 Feb. 1998), *available at* <https://www.ntia.doc.gov/federal-register-notice/1998/improvement-technical-management-internet-names-and-addresses-proposed-> (last accessed on 23 Sep. 2018), [Ex. JMR-6].

¹⁰ ICANN, Memorandum of Understanding between the U.S. Department of Commerce and Internet Corporation for Assigned Names and Numbers (25 Nov. 1999), *available at* <https://www.icann.org/resources/unthemed-pages/icann-mou-1998-11-25-en> (last accessed on 14 Feb. 2018), [Ex. JMR-7], Art. V(C)(9).

¹¹ ICANN, Articles of Incorporation of Internet Corporation for Assigned Names and Numbers (as revised on Nov. 21, 1998), *available at* <https://www.icann.org/resources/pages/articles-2012-02-25-en> (last accessed on 26 Sep. 2018), [Ex. JMR-8], Art. 2(III).

introduction and promotion of competition as one of ICANN's Core Values.¹² Even after the termination of the MOU in 2016, promoting competition in the domain space has been a lodestar of ICANN's policymaking and program activities.

18. Given the circumstances that led to its foundation, ICANN's mandate to promote competition had but one practical meaning: break NSI's monopoly. My understanding of ICANN's competition mandate has not changed.

19. In order to realize its mandate, ICANN needed to introduce competition at both the registrar (retail) level, where domain names were purchased by users, as well as the registry (wholesale) level. Registries, however, are fundamentally different from registrars; while registrants can purchase a specific domain name from different registrars, registrars cannot purchase a specific domain name from different registries.

20. ICANN's initial strategy was to separate the wholesale registry function from the retail registrar function. ICANN (with the backing of the U.S. government) therefore required that NSI open its registrar business to competition, executing registry agreements with NSI that required that NSI provide registrars with equal access to its registries.¹³ These actions led to the establishment of dozens of registrars and, today, the retail side of the business is competitive.

21. However, despite ICANN's success in promoting competition among registrars, ICANN's objective of creating a competitive environment in the DNS remained unfulfilled due to the continuing monopoly at the wholesale registry level, which is now controlled by VeriSign, Inc. ("**VeriSign**"). Creating competition at the wholesale registry level is challenging because

¹² ICANN, Bylaws for Internet Corporation for Assigned Names and Numbers (15 Dec. 2002), *available at* <https://www.icann.org/resources/unthemed-pages/bylaws-2002-12-15-en> (last accessed on 10 Sep. 2018), [Ex. JMR-9], Art. I, Sec. 2(6).

¹³ ICANN, Registry Agreement between Internet Corporation for Assigned Names and Numbers and Network Solutions, Inc. (10 Nov. 1999), *available at* <https://archive.icann.org/en/nsi/nsi-registry-agreement-04nov99.htm> (last accessed on 14 May 2018), [Ex. JMR-10].

VeriSign continues to dominate registrations of generic domain names. Consumers still flock to .COM, which continues to grow despite the introduction of new gTLDs and the increasing lack of attractive short .COM domain names. .NET, the second largest gTLD and also controlled by VeriSign, is only 11% of .COM's size. Collectively, .COM and .NET account for more than 78% of all generic domain name registrations.

22. For this reason, the U.S. government has, since March 1999, required that ICANN cap the price at which NSI/VeriSign was allowed to sell .COM domain names to registrars. The continued imposition of a price cap on .COM confirms that, even following the opening of the retail registrar level to competition, market forces were unable to set prices at competitive levels. In sum, absent a price cap, the government feared that NSI/VeriSign would be able to charge exploitative prices to registrars, which in turn would pass on some or all of those overcharges to consumers.

23. VeriSign acquired NSI for USD 21 billion in 2000, significantly more than the USD 4.7 million price at which NSI had been acquired a mere five years earlier. VeriSign subsequently sold off its registrar business for USD 100 million, a sum that reflected the comparative worth between the registrar business and the retained registry monopoly. Even after VeriSign was forced to surrender the right to operate the .ORG registry, VeriSign continued to control more than 75% of all new registrations in the DNS and the wholesale price of .COM has remained capped by the U.S. government. These facts have not changed over the years. VeriSign's .COM and .NET registries are the company's "cash cow," and it has been evident to the market and the Internet community for many years that VeriSign's strategy has been to aggressively protect its .COM and .NET business by selling off other business and going to great lengths to ensure that the renewals of its .COM and .NET registry agreements with ICANN are not in any way compromised.

24. ICANN has sought to create competition at the wholesale registry level by adding new gTLD registries to the root. Indeed, ICANN's New gTLD Program was part of ICANN's founding mandate.¹⁴ In ICANN's view, expanding consumer choice of gTLD registries would encourage innovation and competition. I understand that the gTLD Program is discussed more fully in other witness statements.

IV. .WEB's Ability to Compete with VeriSign's Monopoly

25. .WEB is largely considered to be the only new gTLD that can possibly compete with .COM. .WEB has the capability to compete with both .COM and .NET for new registrations, which will, over time, I believe, erode VeriSign's market position.

26. VeriSign's current market position is largely the product of the network effects surrounding .COM. During the ".COM boom" in the 1990s, companies believed that they needed to have a .COM domain name to successfully market themselves on the Internet. These ".COMs" included ".COM" into their brand names—*e.g.*, "Amazon.com"—as part of their advertising strategy, thereby associating ".COM" (*i.e.*, the Internet) with their unique brand. This also helped to steer users to their websites, since their brand name was also their domain name. At the time, everyone wanted to be a .COM because everyone was buying .COMs and, for many, the Internet had become synonymous with .COM.

27. That is no longer the case. .COM continues to dominate the Internet name space simply as a legacy of history and lack of competitive alternatives. The .COM boom reached its zenith a generation ago and, for many, the term "web" is now the preferred reference for the Internet. Users "surf the web," moving from one "website" to another, either by entering a "web

¹⁴ See NTIA, Statement of Policy on the Management of Internet Names and Addresses [Docket No. 980212036-8146-02] (5 June 1998), *available at* <https://www.ntia.doc.gov/print/federal-register-notice/1998/statement-policy-management-internet-names-and-addresses> (last accessed on 23 Sep. 2018), [Ex. JMR-11], p. 12.

address” into their browser or doing a “web search.” The “web” has become a worldwide proxy for the Internet and is synonymous with being online.

28. In implicit recognition of this shift away from “.COM,” companies no longer brand themselves as “.COM Companies.” Even the previous “.COM Companies” have removed all trace of “.COM” from their brand—*i.e.*, “Amazon.com” has changed its brand to simply “Amazon.”

29. Moreover, unlike .COM which still retains to some extent its commercial heritage, .WEB has a clear, natural, pre-existing network effect that crosses all boundaries, whether geographic or otherwise. .WEB is simply the most global, most generic gTLD. This is why .WEB has the potential to compete on even terms with VeriSign for new registrations. I firmly believe that the term “web” occupies the mindshare of the coming generations as synonymous with the Internet, making it uniquely suited for use as a gTLD. There is not another word or name in the world that has an equivalent potential.

30. No other gTLD, existing or otherwise, therefore has the same ability to unseat .COM as .WEB. This is clear upon a close examination of other alternatives, particularly .NET, .INFO, .WEBS, and country-code TLDs (“ccTLDs”):

- a. **.NET:** .NET has always been controlled by NSI/VeriSign, which has historically marketed .NET in accordance with its original function—for internal and external networks. Today, most businesses still use .NET for their internal networks even if they have a .COM for their public websites. In recent years, VeriSign has sought to market .NET as overflow for .COM, due to the increasing scarcity of short domain names in the .COM registry. But this effort comes at a time when VeriSign has chosen to price .NET at a premium to .COM. Due to VeriSign’s failure to capitalize on .NET’s close association with another common term for the Internet—largely to avoid cannibalizing its .COM cash cow—VeriSign has hobbled the ability of .NET to compete with .COM, as it is broadly seen as a technical gTLD and not suitable for most purposes.
- b. **.INFO:** .INFO is the most successful of the new gTLDs introduced to date, thanks in large part to the significant marketing effort Afiliias undertook to promote the registry. .INFO, however, faces certain hurdles to compete with VeriSign. First, while the term “info” is somewhat generic, it has a specific meaning that is narrower in focus than “web,” “net,” or “com.” Moreover,

“info” is not specifically associated with the Internet: users do not associate “info” with the Internet to the extent that they do with “web,” “net,” or “com.” Furthermore, gTLDs consisting of more than three characters still run into usability issues on the DNS. Afilias experienced this first hand with .INFO. Some vendors’ systems have trouble accepting .INFO because it is not a three-letter gTLD; for instance, some electronic device browsers will not accept four-letter gTLDs when they are typed in the browser address bar, and will instead treat the correctly typed address as a search query.

- c. **.WEBS:** Like .INFO, .WEBS faces hurdles to compete with VeriSign. First, users do not commonly refer to the Internet as “the webs:” the plural version of “web” loses that immediate association with the Internet and, along with that association, its competitive appeal. .WEBS also has the same technical problem as .INFO, as it is also a four-letter gTLD.
- d. **ccTLDs:** ccTLDs are insufficiently global and are used for complementary purposes to .COM. By their very structure, ccTLDs are local in nature and are used either by local entities to highlight their nationality or otherwise as one of a plethora of ccTLDs by global brands which seek to form a local (and often a language) relationship with a particular jurisdiction. Website operators generally do not use ccTLDs to appeal to global audiences the way that gTLDs are. There are a few notable exceptions to this rule, where a handful of ccTLDs have been used as de facto gTLDs. The most successful of these is .CO, which despite being the ccTLD for Colombia is being used to refer to “company.” But .CO and other “generic ccTLDs” are significantly less generic than either .COM, .NET, or .WEB and lack the close association with the Internet that is unique to these three gTLDs.

31. Therefore, I believe that .WEB is the best and closest potential competitor for VeriSign. If .WEB were introduced as a competitor to VeriSign, new registrants would have the opportunity to choose between two registry operators offering competitively priced three-letter gTLDs with generic and recognizable names that are closely associated with the Internet—VeriSign (.COM/.NET) and Afilias (.WEB)—rather than being forced to register a generic domain name with VeriSign. I believe that it is because of the competitive potential of .WEB and its ability to eat away at .COM’s monopoly that VeriSign pursued .WEB’s acquisition. However, I do not believe that VeriSign intends to market and exploit .WEB in any serious way, and certainly not in a way that would challenge .COM. VeriSign has no incentive to do so, and every incentive to do just the opposite.

32. In its 2012 .WEB application, Afilias reiterated the unique competitive potential of .WEB. First, Afilias noted that .WEB was truly generic and capable of use by any website:

The .WEB TLD will be positioned to become one of the most-used, professional Internet spaces available. . . . The domain[] can be used for any purpose, including for business use, for personal use and[,] by organizations. There are no content or use restrictions for this TLD.¹⁵

33. Afilias further observed that .WEB also had a unique association with the Internet, which is prized by users: “And nothing is as synonymous with the ‘Internet’ or ‘net’ as the word ‘web.’”¹⁶ For these reasons, Afilias urged that .WEB would provide global competition for VeriSign:

[T]he .WEB TLD provides an excellent opportunity for companies who elect to participate in the domain to separate themselves from the rest of the .com and .net pack.¹⁷

34. Afilias was not alone in its assessment of .WEB’s competitive potential. Other applicants agreed that .WEB was the most generic and global gTLD. And, given .WEB’s inherent association with “the web,” other applicants also predicted that .WEB would compete strongly with VeriSign, which has controlled the .COM and .NET registries since 2000:

- a. **Charleston Road Registry Inc. (Google, Inc.):** “The proposed gTLD will provide the marketplace with a new all-purpose gTLD for second-level domain names[:] .web. The mission of this gTLD is to act as an alternative to current gTLDs, in particular .com and .net. This mission will enhance consumer choice by providing new availability in the second-level domain space and increasing competition among generic gTLDs. . . . Charleston Road Registry believes in the commercial viability of alternatives to existing gTLDs such as .com and

¹⁵ ICANN, New gTLD Application Submitted to ICANN by Afilias Domains No. 3 Limited, Application ID: 1-1013-6638 (13 June 2012), [Ex. JMR-12], p. 7.

¹⁶ *Id.*

¹⁷ *Id.* at pp. 7-8.

.net. The proposed gTLD [.WEB] will provide the marketplace with opportunities for differentiation not currently available in the gTLD space.”¹⁸

- b. **Schlund Technologies GmbH:** “With a TLD as concise and memorable as .WEB, Internet users will have a truly unburdened space to create an online entity devoid of associations with a commercial enterprise. Despite its broad use, the .com extension has a market perception of domains with a business or commercially focused purpose. With a .WEB domain, the average consumer has an option to create content, host mail servers or provide other services with a name that does not carry images of a business. For the online-only retailer, there will exist the opportunity to create a brand without a brick-and-mortar expectations. Overall, the vast and Internet-focused character of .WEB adds a universally understandable new home for domains. . . . Schlund Technologies GmbH intends for .WEB to be one of the most recognizable and useful TLDs on the Internet. .WEB will be positioned as not simply an alternative to existing generic gTLDs, but as an expanded option beyond existing opportunities to develop an Internet identity and presence.”¹⁹
- c. **NU DOT CO LLC:** “The mission of .WEB is to provide the internet community at-large with an alternative ‘home domain’ for their online presence. . . . Providing access to additional high-value second level domain names (i.e. shorter and more memorable) will provide an opportunity for new entrants to compete effectively for internet users’ finite attention. The domain’s coherent and consistent branding will assist registrants in developing meaningful emotional connection with users, allowing them to further differentiate themselves as premium destinations. These marketing efforts along with the initial adoption of key industry players, should reinforce the implicit attribution of ‘cutting-edge’ and ‘innovativeness’ upon its registrants.”²⁰
- d. **Web.com Group, Inc.:** “In looking to expand the gTLD landscape beyond the existing robustness of gTLD offerings, an easy-to-remember and intuitively logical gTLD such as .web is a relevant addition. Consumers will instantly understand that a .web domain is an Internet website thereby ensuring quick adoption by users. Due to its ubiquitous nature, .web will compete directly with all gTLDs, both existing ones and others to be approved by ICANN. It has universal appeal to anyone looking to operate on the World Wide Web.”²¹

¹⁸ ICANN, New gTLD Application Submitted to ICANN by Charleston Road Registry Inc., Application ID: 1-1681-58699 (13 June 2012), [Ex. JMR-13], pp. 6, 8.

¹⁹ ICANN, New gTLD Application Submitted to ICANN by Schlund Technologies GmbH, Application ID: 1-1013-77165 (13 June 2012), [Ex. JMR-14], p. 7.

²⁰ ICANN, New gTLD Application Submitted to ICANN by Nu Dot Co. LLC, Application ID: 1-1296-36138 (13 June 2012), [Ex. JMR-15], p. 6.

²¹ ICANN, New gTLD Application Submitted to ICANN by Web.com Group, Inc., Application ID: 1-1009-97005 (13 June 2012), [Ex. JMR-16], p. 7.

- e. **DotWeb Inc. (Radix FZC):** “The mission/purpose of .web is first choice. Domain name first choice, once again - globally. Some registrants got their first choice of a .com name. Many did not. When the .com registry gained its momentum selling names early on, the North American market and particularly the United States were the first and primary purchasers of .com names. They got their first choice. And many global registrants who came after did not. . . . Country code top-level domains (ccTLD) are an option, however a ccTLD such as Germany (.DE) or Japan (.JP) brings the impression that the website is tied to the country or region, but not truly global. Hence the need for .web – a truly generic top level domain that means the same in Shanghai, Munich, Sao Paulo, Mumbai, Johannesburg, Tokyo and your city. The mission of .web is to give international registrants the same opportunity the North American market had - to get their unique name in a truly global name space – with nothing added – just trusted and secure access to the web.”²²

35. Industry observers have also recognized .WEB’s ability to compete with .COM:

- a. “Is it likely that .web will be a standout among new TLDs? Here are a few points that may indicate .web is poised to gain traction relative to other recently introduced TLDs. . . . We’re already used to using the term ‘web’ for internet-related activities. We refer to online properties as ‘websites’ or ‘web pages’ and the talent who create them are ‘web designers’ and ‘web developers.’ We use ‘web servers’ and ‘web browsers’ and even ‘web apps.’ The common references make a transition to a .web domain a natural activity for a mass online and mobile audience.”²³
- b. “.WEB is a different animal.WEB is what we call a ‘super generic’ and arguably the best new TLD alternative to .COM. It is a word that is commonly used with intuitive meaning. .WEB could make a serious dent to .COM over the long run.”²⁴
- c. “[.WEB] is both most sufficiently generic, sufficiently catchy, sufficiently short and of sufficient semantic value to provide a real challenge to .com.”²⁵

²² ICANN, New gTLD Application Submitted to ICANN by DotWeb Inc., Application ID: 1-956-26846 (13 June 2012), [Ex. JMR-17], p. 7.

²³ Derek Vaughn, *InetServices, Industry Insights & News: Inside the High Stakes Auction for .WEB* (25 July 2017), available at <https://www.inetservices.com/blog/inside-the-high-stakes-auction-for-web/> (last accessed on 23 Sep. 2018), [Ex. JMR-18], p. 2.

²⁴ Peter Lamantia, “.WEB Acquired for \$135 Million. Too much? How does it compare?,” *Authentic Web*, available at <https://authenticweb.com/brand-tlds-digital-strategies/dot-web-acquired-for-135-million/> (last accessed on 23 Sep. 2018), [Ex. JMR-19], p. 2.

²⁵ Kevin Murphy, “.Verisign likely \$135 million winner of .web gTLD,” *Domain Incite* (1 Aug. 2016), available at <http://domainincite.com/20820-verisign-likely-135-million-winner-of-web-gtld> (last accessed on 23 Sep. 2018), [Ex. JMR-20], p. 2.

- d. “.web is widely considered [to be] the gTLD with the most potential out of 1,930 applications for new domain extensions ICANN received to battle .com and .net for widespread adoption.”²⁶
- f. “.web is the one domain that could unseat .com.”²⁷

V. VeriSign’s Acquisition of NDC’s Application

36. VeriSign did not apply for .WEB in the 2012 new gTLD round. Instead, VeriSign limited its participation in the New gTLD Program to acquire non-Latin character analogues for .COM and .NET and TLDs associated with its trademarks. This did not strike me as strange. After all, the entire purpose of New gTLD Program was to create competition for VeriSign, not to allow VeriSign to acquire additional gTLDs to strengthen its market position. Applying for a gTLD like .WEB would have raised more questions about VeriSign’s already dominant market position—and whether VeriSign was seeking to make that position even more impenetrable through the acquisition of the gTLD best able to compete against .COM.

37. If VeriSign had applied for new gTLDs in 2012, I believe that VeriSign would have drawn significant scrutiny from ICANN, from its Government Advisory Committee, and from the broader Internet community as a whole. Applying for .WEB, the closest and best potential competitor to VeriSign, would have intensified what was already a rigorous Evaluation and Objection Period. Therefore, it seemed obvious to me that VeriSign would not seek to acquire its best and closest potential competitor.

²⁶ Cybele Negris, “How a \$135 million auction affects the domain name industry and your business,” *BIV* (10 Aug. 2016), available at <https://biv.com/article/2016/08/how-135-million-auction-affects-domain-name-indust> (last accessed on 23 Sep. 2018), [Ex. JMR-21], p. 2.

²⁷ “The Next Big Domain Extension” in *This Week in SEO 60: Brands, Domains, and Youtube*, available at <https://supremacyseo.com/TWS60> (last accessed on 23 Sep. 2018), [Ex. JMR-22], p. 3.

38. But, as we now know, instead of subjecting itself to scrutiny and likely criticism by submitting an application for .WEB, VeriSign decided to skirt the process and secretly pursued a deal with one of the .WEB contention set members, NU DOT CO LLC (“NDC”), to acquire .WEB.

39. In my view, NDC and VeriSign conspired to subvert the rules, policies, and principles that underlie ICANN’s New gTLD Program. The rules pursuant to which the New gTLD Program operates are contained in the gTLD Applicant Guidebook (the “**Guidebook**”). The Guidebook is also a statement of ICANN policy, as it is based on the 19 policy recommendations prepared for the ICANN Board by the GNSO concerning the operation of the New gTLD Program. In short, therefore, the Guidebook reflects ICANN’s efforts, to the best extent possible, to set forth a comprehensive set of objectives, rules, processes, and policies by which new gTLDs would be added to the DNS.

40. Like any set of rules, the application of the Guidebook’s rules in the context of a particular set of facts may require a degree of interpretation. ICANN Staff, and ultimately the ICANN Board, must enforce the rules contained in the Guidebook in a manner consistent with the Bylaws and in conformity with relevant principles of international law and applicable local laws,²⁸ as well as the spirit and objectives of the New gTLD Program.

41. Once it became clear what had transpired, I would have expected ICANN to have determined that NDC violated the Guidebook in at least two ways. First, NDC violated the terms and conditions of the Guidebook by effectively selling its application to VeriSign. Even though NDC was presumably the entity that mechanically entered the bids at the .WEB auction, NDC was not bidding its money and did not incur any financial risk in the event it submitted a winning bid.

²⁸ ICANN, Bylaws for Internet Corporation for Assigned Names and Numbers (as amended 18 June 2018), available at <https://www.icann.org/resources/pages/governance/bylaws-en> (last accessed on 4 Sep. 2018), [Ex. JMR-23], Art. 1, Sec. 1.2(a).

It is my belief that NDC was paid by VeriSign for the service of entering bids on its behalf at auction.

42. Second, by failing to disclose this fundamental change to its application, NDC violated the Guidebook's requirement to promptly notify ICANN of any changes in circumstances that would render any of the information contained in the application to be untrue. And this was more than just a technical change in circumstances: following its agreement with VeriSign, the management of NDC no longer intended to operate a .WEB registry should it prevail at auction. NDC's management was now contractually obligated to do only one thing: surrender all rights in .WEB to VeriSign.

43. To-date, however, ICANN has done nothing to address these violations. Instead, ICANN is proceeding toward the delegation of .WEB to NDC—and therefore to VeriSign—as though none of this history and none of these events had ever taken place.

I affirm that the foregoing statement is true and correct to the best of my knowledge and belief.

A handwritten signature in black ink, appearing to read 'JMR', with a long horizontal line extending to the right from the end of the signature.

Jonathan M. Robinson

Dated: 27 September 2018

LIST OF EXHIBITS

Exhibit No.	Description
JMR-1	Jonathan Robinson, Candidate Statement for GNSO Chair (28 Sep. 2012)
JMR-2	Jonathan Robinson, Candidate Statement for GNSO Chair (8 Nov. 2013)
JMR-3	Jonathan Robinson, Candidate Statement for GNSO Chair (3 Oct. 2014)
JMR-4	ICANN, <i>News Release: Jonathan Robinson Recognized with 2014 ICANN Leadership Award</i> (13 Oct. 2014), available at https://www.icann.org/news/announcement-2014-10-13-en (last accessed on 12 July 2018)
JMR-5	Afilias, <i>News Release: Afilias Chairman Jonathan Robinson Wins ICANN's 2016 Leadership Award at ICANN 57</i> (7 Nov. 2016), available at https://afiliastech.com/news/2016/11/07/afiliastech-chairman-jonathan-robinson-wins-icann%E2%80%99s-2016-leadership-award-icann-57 (last accessed on 12 July 2018)
JMR-6	NTIA, Improvement of Technical Management of Internet Names and Addresses; Proposed Rule [Docket No. 980212036-8036-01] (20 Feb. 1998), available at https://www.ntia.doc.gov/federal-register-notice/1998/improvement-technical-management-internet-names-and-addresses-proposed- (last accessed on 23 Sep. 2018)
JMR-7	ICANN, Memorandum of Understanding between the U.S. Department of Commerce and Internet Corporation for Assigned Names and Numbers (25 Nov. 1999), available at https://www.icann.org/resources/unthemed-pages/icann-mou-1998-11-25-en (last accessed on 14 Feb. 2018)
JMR-8	ICANN, Articles of Incorporation of Internet Corporation for Assigned Names and Numbers (as revised on Nov. 21, 1998), available at https://www.icann.org/resources/pages/articles-2012-02-25-en (last accessed on 26 Sep. 2018)
JMR-9	ICANN, Bylaws for Internet Corporation for Assigned Names and Numbers (15 Dec. 2002), available at https://www.icann.org/resources/unthemed-pages/bylaws-2002-12-15-en (last accessed on 10 Sep. 2018)
JMR-10	ICANN, Registry Agreement between Internet Corporation for Assigned Names and Numbers and Network Solutions, Inc. (10 Nov. 1999), available at https://archive.icann.org/en/nsi/nsi-registry-agreement-04nov99.htm (last accessed on 14 May 2018)
JMR-11	NTIA, Statement of Policy on the Management of Internet Names and Addresses [Docket No. 980212036-8146-02] (5 June 1998), available at https://www.ntia.doc.gov/print/federal-register-notice/1998/statement-policy-management-internet-names-and-addresses (last accessed on 23 Sep. 2018)

Exhibit No.	Description
JMR-12	ICANN, New gTLD Application Submitted to ICANN by Afilias Domains No. 3 Limited, Application ID: 1-1013-6638 (13 June 2012)
JMR-13	ICANN, New gTLD Application Submitted to ICANN by Charleston Road Registry Inc., Application ID: 1-1681-58699 (13 June 2012)
JMR-14	ICANN, New gTLD Application Submitted to ICANN by Schlund Technologies GmbH, Application ID: 1-1013-77165 (13 June 2012)
JMR-15	ICANN, New gTLD Application Submitted to ICANN by Nu Dot Co. LLC, Application ID: 1-1296-36138 (13 June 2012)
JMR-16	ICANN, New gTLD Application Submitted to ICANN by Web.com Group, Inc., Application ID: 1-1009-97005 (13 June 2012)
JMR-17	ICANN, New gTLD Application Submitted to ICANN by DotWeb Inc., Application ID: 1-956-26846 (13 June 2012)
JMR-18	Derek Vaughn, <i>InetServices, Industry Insights & News: Inside the High Stakes Auction for .WEB</i> (25 July 2017), available at https://www.inetservices.com/blog/inside-the-high-stakes-auction-for-web/ (last accessed on 23 Sep. 2018)
JMR-19	Peter Lamantia, “.WEB Acquired for \$135 Million. Too much? How does it compare?,” <i>Authentic Web</i> , available at https://authenticweb.com/brand-tlds-digital-strategies/dot-web-acquired-for-135-million/ (last accessed on 23 Sep. 2018)
JMR-20	Kevin Murphy, “Verisign likely \$135 million winner of .web gTLD,” <i>Domain Incite</i> (1 Aug. 2016), available at http://domainincite.com/20820-verisign-likely-135-million-winner-of-web-gtld (last accessed on 23 Sep. 2018)
JMR-21	Cybele Negris, “How a \$135 million auction affects the domain name industry and your business,” <i>BIV</i> (10 Aug. 2016), available at https://biv.com/article/2016/08/how-135-million-auction-affects-domain-name-indust (last accessed on 23 Sep. 2018)
JMR-22	“The Next Big Domain Extension” in <i>This Week in SEO 60: Brands, Domains, and Youtube</i> , available at https://supremacyseo.com/TWS60 (last accessed on 23 Sep. 2018)
JMR-23	ICANN, Bylaws for Internet Corporation for Assigned Names and Numbers (as amended 18 June 2018), available at https://www.icann.org/resources/pages/governance/bylaws-en (last accessed on 4 Sep. 2018)