



Sivasubramanian M &lt;isolatedn@gmail.com&gt;

---

**Written Notice to ICANN invoking the cooperative engagement process on the issues concerning the Nameshop new gTLD application for .Internet**

---

**Sivasubramanian M** <isolatedn@gmail.com>  
To: independentreview@icann.org

Wed, Jul 15, 2015 at 12:42 AM

**Written Notice to ICANN invoking the cooperative engagement process on the issues concerning the Nameshop new gTLD application for .Internet**

*Nameshop deems the following provisions of the ICANN Bylaws violated in the evaluation of its new gTLD application, especially in the evaluation of the Change Request and the Application Support Request.*

*Section 2 Core Values:*

*5. Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment.*

*6. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.*

ICANN's new gTLD program has not been designed to promote a competitive environment nor achieved any significant changes to the status quo of a market share in the order of 90% by of the gTLD space by the top 5 domain names, with at least 75% held by domain companies based in the United States. Of the 1930 applications for new gTLD, 902 applications came from 21 large enterprises who applied for between 10 and 307 applications each. Europe and America accounted for 1586 applications. Applications from Developing countries were so few as reflected by the fact that ICANN received a total of 3 requests for applicant support from Developing country applications from out of a total of 1930 applicants. While the applicant does not allege any intent on the part of ICANN to maintain the status quo, it is pointed out that the Bylaw article 5 and 6 of Section 2 is contravened in the design and implementation of the new gTLD program, resulting in the absence of due attention to the application from Nameshop, a small business applicant from outside the Domain Name system.

ICANN's arbitrary decision related to the Nameshop application for Applicant support is in contravention of these provisions. Of the total 1930 applications, three were for applicant support, of which the Nameshop application confirmed to all the criteria laid down for applicant support. The SARP panel denied the application without any rationale or explanation. This amounts to an unwillingness to promote a competitive environment in the Domain Name market place.

*8. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.*

Nameshop applied for the string .IDN, which happens to be a three character country code which ICANN "will not allow". This was mentioned ambiguously in the Applicant Guide Book (AGB), as it was not part of the section on prohibited strings or reserved strings, but mentioned in a section titled "Geographic Names Review", easily mistaken to be a section pertaining to applications for "Geographic" Names such as a country or city name, for instance for .nyc or .berlin. ( Applications for Geographic Names are one of the three broad classes of new gTLDs applied for in this application round, the other two being generic Names including brand names and Internationalized Domain Names) The ambiguity is evident from the fact that another major applicant missed these instructions for three of their applications, and that ICANN accepted and retained this application for .IDN without noticing the error for nearly three months until the applicant pointed out the error to request the same name allowed or a change permitted. Subsequently the change process was announced, Nameshop applied for the string change to .Internet in tune with the criteria for change as laid down. After acknowledging the change request and intimating its intent to process the change request, ICANN denied the change request, first without explanations, and when pressed for rationale, made an ex-post facto rule to the change process that string change requests are not to be accepted, then came up with contrary explanation that typographical or 'minor' string change requests were the only string change requests accepted, and then expressed concerns that other applicants might ask for changes to strings if there were a precedent and with then again with more contradictory positions on the Change Request without any neutrality or objectivity in violation of all documentary practices. The Change Request process amended the rules of the Applicant Guide Book, and as an amendment, the rules laid down for the Change process became legally part of the Application process. ICANN conveniently distorted the process to unfairly treat the nameshop application for .Internet.

*9. Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.*

The application for .IDN with the string change request to .Internet was an application in global public interest, though not filed as a "Community TLD application". The larger purpose of the TLD application was to offer the string as an ASCII layer for the IDN domain names to render the IDN domain names acceptable beyond their language space. This presented a natural solution to the problem of Universal Acceptance both as a widely debated machine-level problem as well as as a human level problem of trust in domain strings that are unfamiliar to those outside the language space. The new gTLD evaluation process has not consulted the IDN working groups, community or the Universal Acceptance group on the possible merits of the Nameshop gTLD application for .Internet as a solution it presents to Universal Acceptance problem and the IDN implementation issues.

*Article III, Section 6 :*

*the Board may act only by a majority vote of all members of the Board.*

This article is contravened in the new gTLD decisions due to the fact that a disproportionately large number of Board Members recused themselves declaring conflict of interest. Decisions were primarily made by the new gTLD program Committee, not by the majority of the Board. This contravention affected the Board positions or the absence of Board positions on the Nameshop gTLD application.

*Section 3. NON-DISCRIMINATORY TREATMENT :*

*ICANN shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition.*

The applicant requests the panel to examine how and why the applicant was singled out in ICANN's decision for applicant support and in its decision for the string .Internet. In particular, the string change request was denied arbitrarily, without citing the rationale. The decision was without substantial and reasonable cause, and in its quest for justifications of its arbitrary, unfair decisions attempted to create ex-post facto rules concerning the nature of change permitted or not permitted. Also, by expressing exaggerated administrative concerns that contravened the principles of severability, ICANN has treated the nameshop application inequitably and in a singular manner.

*Section 2. RECONSIDERATION*

- 1. ICANN shall have in place a process by which any person or entity materially affected by an action of ICANN may request review or*

*reconsideration of that action by the Board [contravened by obstructions placed in the Board Reconsideration process and in the Ombudsman process]*

The reconsideration processes, even including the IRP process are severely restricted processes. Both the Ombudsman and the Board Reconsideration process, were limited to review of whether a certain process was followed, (not even without any distinction to a process recorded as followed from a process actually followed in spirit) and refused to look into the substantive evaluation issues concerning the evaluation of the application, nor to the principles of natural justice. The nameshop reconsideration requests to the Ombudsman and the Board Reconsideration process were almost stone walled the applicant from seeking redressal to the unfair treatment of the Applicant support and change requests.

The string applied for by the Change Request process, .Internet is a valuable string that ICANN appears inclined to eject out of this round post-facto to the next round for various reasons not part of the established process, and not in the spirit of the framework laid down by the Applicant Guide Book read together with the criteria for the Change Request process.

*3 d. conduct whatever factual investigation is deemed appropriate;*

In the case of the Nameshop application, ICANN has avoided a fair evaluation of the application and blocked factual investigation of the issues presented by the applicant in the application process and while seeking redressals. ICANN has blatantly refused to answer pointed questions that were inconvenient for the Executive or Board to answer.

*3 e request additional written submissions from the affected party, or from other parties;*

There are no parties affected by the Nameshop application or change request or applicant support request. The treatment of the nameshop application does not point to any instance of request form ICANN for written submissions from other parties who may be concerned with the potential global interest benefit arising out to the Nameshop application.

**ICANN's treatment of Applicant's efforts to resolve the issues by**

**appeal to the new gTLD Staff, Program Committee, Executive and Board till date:**

While refusing to address concerns expressed by the applicant, ICANN has misleadingly stated on record, to create an appearance of having followed due process: "it's been adequately and clearly addressed in responding correspondence multiple times" which is contrary to truth. What is true is that I as an applicant have addressed multiple communication, some of which were acknowledged as received, some partially responded to, and on occasions when ICANN responded, the response did not address any of the concerns/questions that were uncomfortable for ICANN to address and answer. It was also not right to have remarked that "the message being received is not what the person wants to hear". In truth, when there were partial responses, the messages received, were evasive on the core issues, self-contradictory, mixed and grossly unfair. If a process is seen on record to have been followed, it is only made to appear as followed or recorded as followed for the sake of documentation. There are several instances of this in the treatment of the Nameshop application.

By ICANN starting a change request process, it has legally become a part of the application process. The request to change the string from .IDN to .INTERNET confirmed to the criteria laid down for change, ICANN accepted the request, revealed the string, but denied the change request without any rationale. This has blocked the Nameshop new gTLD application from proceeding beyond the String Change evaluation process, ICANN has acted willfully, unfairly and arbitrarily; Multiple mixed messages were delivered as slipshod responses to the questions on the absence of rationale in your Change decision and the SARP panel decision; Part of your responses pointed to arbitrary ex-post facto rule making the Change Request decision as well as the Applicant Support decision which coincided with the change decision to strengthen ICANN's ability to deny fair evaluation.

It perpetuates the geographical and commercial status quo of the DNS business environment to deny fair evaluation of the new gTLD application for this valuable string - .Internet, perceptibly because Nameshop, the applicant is a small company from outside the DNS sphere, from a developing country. Further, the reconsideration request to the Board and the appeal to the Ombudsman were handled in such a manner so as to raise a stone wall on the applicant's progress in ways that are intriguing. Notably, the reconsideration processes reeked of barriers that protect the status quo.

The delay experienced has been damaging while there are no prevailing rules about the string .INTERNET even on the second level, as pointed out in multiple correspondences earlier and as evident from the TLD-like global deployment of the domain name Internet.org. The delays and hurdles for

.Internet happens to be allow room for other actors to gain significant advantage. This raises antitrust questions.

This TLD application from India, from a Proprietary firm, is driven more by a strong inclination to serve the Internet on a broader social enterprise model, even though I have not chosen to classify the application as a Community TLD. There is an innovative idea of operating this TLD to help maintain the Internet as a global, unified space, and a commitment to operate it with fair business standards without detriment to existing accepted business models. ICANN appears not to have taken note of these core components, nor placed it for the attention of working groups such as the Universal Acceptance Working group or Public Interest Commitment working group.

**An abbreviated summary of the timeline of issues** ( as published in <http://nameshop.in>) not sufficiently addressed or evaded by ICANN follows as part of this communication as Annexure.

March 1, 2012 Nameshop files the gTLD application for .IDN as an ASCII string, (later changed to the string .Internet ) with the purpose of building global Trust over IDN domains and to make IDN web spaces accessible across their local scripts. This would contribute to the Internet Community's efforts to keep the Internet as One Internet as a global space. The TLD idea also happens to present a unique to solution to the Universal Acceptance problem on a still unexplored level of human acceptance. Apart from the Public Interest component of this purpose, the applicant commits to give away at least one quarter of the income from the TLD year after year for the good of the Internet.

July 18, 2012 The applicant notices that the applied for string is an aplha3 country code and find a limitation ambiguously mentioned in the Applicant Guide Book (AGB). Three character country codes were not listed as prohibited or restricted in the section III 3.1 nor under section but was mentioned only under 2.2.1.4 which was titled "Geographic Names Review" which appear pertinent only for TLD applications for Geographic Names. This ambiguity is evident from the fact that the applicant process accepted the application for the string even after special attention to the string applied for, and also evident from the fact that there were there other applications for geographic names, not noticed as out of order by the new gTLD process for about 3 months.

July 18, 2012 Nameshop, by a letter, sought to to be allowed to change to another string of three or more ASCII characters that is not reserved, not a country or territory name, not contentious but represents the purpose of this TLD

Sep 6, 2012 ICANN announced the Change process

Sep 30, 2012 Application to change the string to .Internet, which represents the purpose of the gTLD idea, not a reserved string, not an applied for string, not a country or territory name, was submitted, confirming to all the criteria laid down.

Sep, 30, 2012 Nameshop made Public Interest Commitments ahead of the PIC process. Nameshop's commitments included a) management of the TLD with advice from the Internet Community b) allocation of 25% of income by proper accounting conventions, year after year, for the good of the Internet, to be managed by a Foundation to set up and managed independently, whether or not ICANN has a process in place for these commitments.

Nov, 1, 2012 String Change Request Acknowledged by the Chief Strategy Officer of ICANN, with the assurance that "ICANN takes all change requests seriously and will review your request carefully against the criteria published"

Feb 5, 2013 ICANN announces the Public Interest Commitment process, nameshop reaffirmed its commitments.

Feb 19, 2013 ICANN arbitrarily denied the string change requested without assigning reasons.

Feb 27, 2013 By a letter to the CEO and Board, Nameshop appealed against the arbitrariness of the change decision, and showed that the change request was fair, in order, and confirmed to each of the criteria, criterion by criterion. Nameshop's Appeal to the Chair and CEO and the Board new gTLD Program Committee to reverse the Change Request Decision. The letter pointed out that the changed string is not reserved, not a country or territory name, not an already applied for string, so, uncontentious, and the string represents the purpose of this TLD.

Feb 28, 2013 While the letter to the CEO and Board was not answered directly, the very next day there was a communication posted on the CRM by ICANN intimating that the Applicant fee was being returned on account of the "withdrawn" application, which apparently indicated a certain degree of urgency on the part of ICANN to forcefully close the application. In this case (no 19693 at the CRM), new gTLD attached a note, "This is to CONFIRM that the REFUND of the WITHDRAWN application has been released and processed" I pointed out that the application was never withdrawn, nor a refund was requested. Then the "mix up" was acknowledged and the wire transfer process stopped.

Mar 11, 2013 In an unexplained decision that in effect strengthened and complicated ICANN's arbitrary position on the Nameshop Application with its change request, ICANN's SARP panel arbitrarily denied Applicant Support support, which was technically of the effect of forcing the application out of the current gTLD round.

March 12, 2013 Nameshop wrote to ICANN that it would appeal against the SARP panel decision

March 12, 2013 ICANN once again asked Nameshop to take a refund. Applicant pointed out that the application is still under process.

March 19, 2013 ICANN wrote to Nameshop to say that SARP panel decision was not subject to appeal, directed the applicant to go through the reconsideration process.

March 19, 2013 Nameshop files a formal request for reconsideration on Board Inaction and Staff Action/Inaction pertaining to Nameshop's Change Request and Applicant Support request. There were two matters presented for reconsideration together, as both affect the new gTLD application from Nameshop in such a way that the entire application was blocked from making timely progress. One pertained to Staff AND Board Inaction on the Applicant's appeal against the unexplained decision on the Nameshop Change Request; another pertained to the Staff Action/Inaction leading to the SARP panel decision on Applicant Support, also unexplained and non-specific on the rationale for the ruling, but both are cases where both Staff Action/Inaction could be only a partial cause, with Board Inaction broadly resulting in the adversity suffered.

April 6, 2013 The applicant had a meeting with the new gTLD staff during the ICANN meeting at Beijing.

April 9, 2013 At the Governmental Advisory Committee meeting, a GAC members sought clarification, "for example" on the Nameshop Application. Staff answered the GAC with a remark .IDN was not allowed, .Internet is not considered, the online information was to be so updated that they expected the Applicant to withdraw. The members of the Board present at the meeting did not intervene to correct this misinformation to the GAC.

April 9, 2013 The applicant wrote a letter to CEO asking him to make corrective statements, not to show a wrong status online, not to psychologically force the applicant to withdraw the application.

April 11, 2013 At the Beijing ICANN Pubic Board Meeting, ICANN Board Governance Committee Chair mentioned about the limitations of the

Reconsideration process during the Board meeting and directs new gTLD reconsideration requests to the Ombudsman who has a wider scope

April 12, 2013 Based on the suggestion from the Beijing ICANN Board meeting, the applicant met with the ICANN Ombudsman who says he wouldn't proceed on the issue while it is under the BGC Reconsideration process.

April 15, 2013 Applicant writes to the Ombudsman via the Ombudsman Case System

May 1, 2013 Board Governance Committee conveys its decision to deny the reconsideration request 13-2, first by the thin and untenable claim that the reconsideration request was not within 30 days from the DATE OF THE CHANGE REQUEST DECISION, and then by not taking note of the grounds stated with an observation on record that Nameshop has not stated proper grounds. The Reconsideration request on "inaction" on Nameshop's letter of appeal, inaction being an ongoing 'process' not pinpointed to any particular point of time. This was brushed aside with a callous remark "That some members of the Board received communications from Nameshop regarding the "appeal" does not create Board action or inaction on an item." The BCG declined to reconsider both the Change Request Decision and the Applicant Support Decision, conveniently citing one decision in support of its decision not to reconsider the other decision.

May 7 2013 Nameshop formally files a complaint with the Ombudsman (Case No 13-00128)

May 15 2013 Ombudsman sends a draft decision for the applicant's initial comments. The Ombudsman's 'draft' decision rushes to be negative and reads like a legal justification of ICANN actions with a recommendation that as an applicant, Nameshop should "accept the decisions" by ICANN. Throughout the course of these issues, it is a situation of Staff unwillingness to correct a wrong decision by a subcommittee or External Consultants, Board refusal to interfere in Staff decision, BCG's unwillingness to acknowledge a gap in Board Governance and now the Ombudsman does not want to look at any of the above. . Ombudsman also remarks about his Jurisdictional and other limitations including limitations of his role.

May 16, 2013 Applicant wrote to the Board new gTLD program committee, presenting the rationale to return the BGC recommendations. Nameshop stated that the new gTLD program visibly and blatantly discriminates against the Nameshop application with its request for .INTERNET. Nameshop asked the new gTLD Program Committee pointedly if ICANN has unstated reasons and unwritten rules related to the generic string .Internet. The resolution was adopted without taking into consideration or referring to the rationale

presented in the nameshop letter to the Program Committee presenting the rationale to reject the BGC recommendation.

May 18, 2013 Board new gTLD Program Committee adopts the BGC recommendations without any response to the Nameshop letter. Request 13-2 was denied recording stated grounds as unstated. BGC concluded that the Reconsideration Request 13-2 challenges: (i) an "appeal" process that does not exist; ii) the substantive decisions taken within the New gTLD Program and not the process (which is the only concern of the reconsideration processes, perhaps on the non-sequitur 'rationale' that if a process is recorded as followed the decision must be fair ? )

May 22, 2013 The applicant sent a letter that conveyed that Nameshop would go through all available processes, and that the issue is with the Ombudsman, so new gTLD is not to consider the options exhausted, so new gTLD staff was not to rush to close the application or force the applicant to do so. A request was also made for a review of earlier requests at the CRM to the CEO by email on April 9 to be conservative as also update the status suitably to reflect the Reconsideration request and the BCG decision, also indicating that the matter is placed for the Ombudsman's attention, indicating that the applicant is challenging the decisions and reference Applicant's letter to the Board new gTLD program Committee dated May 16, 2013.

May 23, 2013 Applicant responds to the draft decision emphasizing that "The issue presented for the Board Reconsideration and to the Ombudsman is this: ICANN tries to suppress the application for a legitimate and valuable gTLD string, .INTERNET, for unstated reasons, in ways and methods unbecoming of its own high standards of Governance. ICANN perhaps has unstated reasons and unwritten rules related to this generic string, and not finding any reasons within the published guidelines or the available process, attempts to find circumlocutory arguments to suppress this application. Even on its contention that it followed the due process, if a process is seen on record to have been followed, it is only made to appear as followed or recorded as followed for the sake of documentation.

May 23, 2013 Ombudsman responds by pointing out a clause in the ByLaws that restrain the scope of the Ombudsman's powers. "The charter of the Ombudsman shall be to act as a neutral dispute resolution practitioner for those matters for which the provisions of the Reconsideration Policy set forth in Section 2 of Article IV or the Independent Review Policy set forth in Section 3 of Article IV have not been invoked."

May 23, 2013 The applicant writes to the Ombudsman to point out that the issue was brought to the Ombudsman's office based on the directions from the

ICANN Beijing Board meeting, the process was already midway at the Ombudsman's office, already progressed to a draft decision; The Accountability and Review process can not toss this issue out of reconsideration process to the Ombudsman and at the same time limit the Ombudsman's Office from acting upon the issue. As mentioned earlier, throughout the process of the the Nameshop's requests for review, it has been a situation of ICANN's unwillingness to review unfair and prejudicial decisions within ICANN.

June 10, 2013 The applicant calls the Ombudsman with prior appointment by email. Ombudsman wanted the email messages of May 23 to be sent again

June 12, 2013 Ombudsman writes to confirm his draft decision of May 15 conveying that he has "reviewed the report (draft decision) and have not changed my decision on the result"

July 15, 2013 Washington Internet Daily article by Dugie Standeford is published with the tile "Applicant for .internet brands ICANN denial arbitrary. Others say the decision was correct". This factual report includes views from some Domain Industry participants, and the views happen to be one sided and prejudicial.

April 2013 - till date The applicant had followed up on this issue by various communication to the President and Staff of the new gTLD program, to the CEO and Board, sent updates to the At-Large Advisory Committee, wrote to the Accountability Review Committees, met with the new gTLD Staff during every ICANN meeting, mostly informal, on applicant's request. It appeared perceptible that ICANN is reluctant to allow the string change that Nameshop merited as per criteria for the Change Request process, possibly because it would open up demands from other quarters to an extent that the process would not handle; ICANN wouldn't speak of the unspoken reasons for delaying the string .Internet despite it being unreserved, despite it being used extensively on the second level; Compromises such as taking the application to the next round are unfair in view of the fact that the valuable string .Internet has been revealed as applied for by the Change process and in view of the business advantages and the time already lost; ICANN's response has been mixed and inconsistent, characterized by a typical "Business" corporation's supercilious legal posture of organizational might on issues raised by relatively powerless customers. ICANN has refused to admit error or wrongdoing, however blatant and glaring they are. The posture adopted would suit a commercial corporation's legal posture towards a helpless customer rather than a global public interest non-profit Organization's posture towards an applicant with a purposeful application from a developing country. The applicant, primarily a Community participant in the ICANN process above his role an Applicant, who believes that ICANN serves the Internet well, is unwilling to escalate this issue beyond internal avenues but reiterates his promise that the

string .Internet would serve not only the applicant, but also ICANN and the Internet well, and hopes that ICANN would recognize the public interest, resolve the issue internally and process the application for .Internet without further delay.

**Additional Information and Arguments:**

The applicant is in a position to present additional information or clarifications concerning the various merits of the Nameshop application, the public interest component and commitments during the IRP hearing.

Thank you.  
Sivasubramanian M  
Proprietor  
Nameshop  
<http://nameshop.in>

[Sivasubramanian M](#)