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December 2, 2010

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Dear John:

Last Tuesday, 23 November 2010, you invited the Coalition to make a 10-minute oral presentation to the members of the Board Governance Committee (“BGC”), followed by a ten-minute question and answer period, on Sunday morning, 5 December 2010, in Cartagena, Colombia. You also stated that you were extending this same invitation to representatives of Employ Media. Finally, you indicated that following the presentations the BGC would decide upon its final recommendation to the Board regarding the Coalition’s pending Reconsideration 10-2.

Given our discussions over the past many weeks, the proposal for a 10-minute presentation to the BGC on a Sunday morning in South America is both unexpected and unsettling. Although you indicated this meeting was intended to help the BGC clarify the information on the record in this matter, a 10-minute presentation followed by a brief question and answer period will clearly not permit any meaningful discussion regarding the material information that the BGC must evaluate in order to render a final recommendation to the Board. Accordingly, in considering this proposed meeting, the Coalition must assume the BGC is fully acquainted with the record in this proceeding, has no substantive areas on which it requires clarification, but is affording the parties a pro forma opportunity to be heard.

If, on the other hand, the BGC is not fully up to speed on the substance of the pending Reconsideration and/or requires substantive clarification on one or more of the important issues at stake, then the Coalition ***strongly objects*** to this ad hoc, eleventh-hour proposal to meet for twenty minutes in Cartagena for the reasons set forth below.

First, given the substance of the pending Reconsideration request -- in particular the Coalition’s demonstration that the Board failed to consider material information in large part as a result of the ICANN Staff’s failure to accurately summarize public comments from members of the

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Coalition and others regarding Employ Media's plans to massively expand and fundamentally alter the nature of the .JOBS sponsored top level domain -- any substantive discussion with affected parties should occur in a setting that permits meaningful participation by affected parties and affords them a reasonable opportunity to address the relevant facts at issue in this case, the Coalition's submissions in support of its request for reconsideration, and the non-answers the BGC received from Employ Media and the Society for Human Resources Management ("SHRM") in response to the BCG's questions. The Coalition encompasses a range of interested parties, and meaningful participation by these parties would require them to travel to South America, which is unreasonably burdensome and unnecessarily expensive. In addition, the short notice of the request -- initially proposed on the Tuesday before Thanksgiving -- does not provide the Coalition with adequate time to prepare, travel and provide its presentation in a distant venue where the resources at the Coalition's disposal are severely limited.

Second, based on our communications since October, we understood that you intended to schedule a meeting during which the Coalition would have an opportunity to discuss the issues set forth in the Reconsideration request in light of suggestions from Employ Media that the Coalition's concerns reflected a lack of understanding about the Phased Allocation Program. This expectation was summarized in my letter to you dated 15 November 2010 -- which was drafted at your request. In that letter, the Coalition formally solicited ICANN's assistance in facilitating such a meeting and agreed to extend the 20 November 2010 deadline under which the BGC was to reach its decision on Reconsideration 10-2. It is my understanding that you and Gary Anderson specifically discussed holding the meeting in New York City or Washington, D.C., supplemented by videoconference as necessary to accommodate the relevant parties (Coalition members, Employ Media, SHRM, and ICANN staff) and the members of the BGC. In the course of these discussions and exchanges, Cartagena was never raised as a possible location for the proposed meeting.

To be clear, the Coalition's objection is not intended to delay the Reconsideration process. The Coalition has been prepared to schedule a meeting for well over a month since you first raised the prospect. In contrast to SHRM, which declined to participate in a discussion of the matter promptly after receiving a copy of the Coalition's request, the Coalition has been most interested in meeting with the BGC and all interested parties to ensure that the BGC hears all relevant information and has all of its questions answered.

Third, a 10-minute presentation followed by a brief question and answer period is unlikely to provide meaningful clarification of the material information that the BGC must evaluate in order to render a final recommendation to the Board. There are numerous substantive and procedural issues that support the reversal of the Board's vote that the Coalition simply cannot address in such a brief amount of time. The Coalition's submissions demonstrate, among other things, that the Board approved the Phased Allocation Program without considering material information

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that was on the record and in the possession of ICANN at the time of the Board vote. The Coalition's submissions demonstrate, in fact, that the Board approved the Phased Allocation Program in reliance upon the work of the .JOBS PDP Council managed by SHRM, which has been shown to be a fatally flawed process in which members of the SHRM PDP Council – including members with clear conflicts of interest - forthrightly abdicated any responsibility for considering whether or not the Phased Allocation Program was, or could be implemented, consistent with the .JOBS Charter.¹ Notwithstanding the numerous comments ICANN received that raised Charter compliance concerns, the record makes quite clear that the question of Charter compliance was left entirely and exclusively to Employ Media. Similarly, in approving the .JOBS Phased Allocation Program, the Board relied on representations by staff that it would not involve any change in the universe of qualified registrants, which has been shown to be utterly untrue.² Finally, the responses provided by Employ Media and SHRM to the questions posed by the BGC either fail to provide or misrepresent the material information that Employ Media should have furnished to the Board in advance of the 5 August 2010 vote, and Employ Media has simply ignored the questions submitted by the Coalition. On any one of these bases alone, the Coalition has met the standard for reconsideration under ICANN's bylaws and reversal of the Board's vote is warranted.

¹ The Board minutes from 5 August 2010 state that “Kurt Pritz explained the approach that was taken when Employ Media approached ICANN with this request. Kurt noted that ICANN pointed to the policy-making authority that the sponsored TLD has in the Registry Agreement – here by the Society of Human Resource Managers (SHRM). The proposal was put in front of the policy making body of SHRM, and was approved by a vote of 7-1. Kurt reported that the design has been for ICANN to delegate certain policy-making authority to the sponsoring organization and not to get between the sponsoring organization and the sTLD with regard to if the actions of the policy-making body are appropriate or not.” In fact, however, as the PDP minutes state, the SHRM PDP Council made no such determination, formally resolving instead that “... it is the sole obligation and responsibility of Employ Media to implement the Proposed Amendment in a manner that complies with the .jobs Charter, with all ICANN rules and regulations, and with all applicable laws and regulations.”

² The Board minutes from 5 August 2010 reflect Mr. Jennings' understanding that registrants will still be required to verify that they are an “employer organization,” which Mr. Pritz confirmed, saying registrants must still be “hiring managers and the entities that employ people.” But this is clearly not the case. For example, on 21 October 2010, the Coalition submitted evidence to the BGC that Employ Media had permitted LawETech, a web hosting company, to register and operate www.nativeamerican.jobs as a job board service previously located at www.ndianjobs.com, in violation of the rights of the operator of nativeamericanjobs.com, a member of the Assiniboine Sioux tribe, who has for over ten years operated a job board for diversity & indigenous employment opportunities.

Additionally, and despite assurances that the Phased Allocation Program would not be launched during the pendency of this Reconsideration, the Coalition has learned that Employ Media has been secretly awarding second level registrations to entities other than employer organizations under the Phased Allocation Program. For example, Employ Media recently informed disABLEDperson, Inc., which provides disability non-discrimination legal advice and employment services for disabled veterans and others, that it has been awarded www.disabled.jobs and www.dofdav.jobs.

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Fourth, the BGC must uphold its fiduciary duty of inquiry before it makes a final recommendation to the Board. The Coalition previously demonstrated that the Board was poorly served by ICANN Staff in connection with the deliberative process that resulted in the approval of the Program, and the recently released Board briefing materials and minutes clearly demonstrate the following major deficiencies in the Board’s approval of the Program:

- the Board’s failure to consider material information in ICANN’s possession, including comments submitted by entities opposed to the .JOBS expansion which described how the Program violated the JOBS Charter, and the Board’s complete reliance on the Staff’s obviously inadequate summary and analysis of those comments;
- the ICANN Staff’s absolute reliance on Employ Media’s unsupported representations regarding the Program, and the Board’s failure to conduct adequate due diligence of Employ Media’s planned implementation; and
- the Board’s reliance on the Staff’s inaccurate assertions that Employ Media had followed the PDP process, and its failure to even consider whether the Program was compliant with the .JOBS Charter in light of SHRM’s refusal to do so.

In order “to be sufficiently informed to make decisions on behalf of [ICANN],” the Directors serving on the BGC must scrutinize the material information in their possession before reaching a decision on the Reconsideration Request. *See* ICANN Management Operating Principles at p. 18. As stated in my 15 November 2010 letter, the Coalition was amenable to a reasonable extension of the deadline for the BGC’s recommendation so that a more comprehensive and productive meeting with adequate notice could be scheduled in a location convenient to all the parties involved. It would be inappropriate to use the extension to place the Coalition at a significant procedural and substantive disadvantage and to impose unnecessary burdens on its members.

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To date, the Coalition has relied upon ICANN’s internal accountability mechanisms to correct the Board’s failure to satisfy its duty of inquiry with respect to the .JOBS expansion and its acquiescence to Employ Media’s proposed abuse of its delegated authority under the .JOBS Charter. In keeping with this approach, the Coalition assumes that the BGC is fully acquainted with the record in this proceeding, has no substantive areas on which it requires clarification. Accordingly the Coalition has asked me to represent it in Cartagena on Sunday morning on that basis and to ensure that the meeting in Cartagena does not turn into a “speed trial” on Reconsideration 10-2.

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The Coalition expressly reserves the right to pursue all available means and to seek all available remedies, including, but not limited to, injunctive relief, monetary damages, and appropriate review to protect the rights of Coalition members and the interests of the Internet community as a whole in the integrity of the ICANN process.

Best regards,



J. Beckwith Burr

cc: Dennis Jennings
Rita Rodin Johnston
Ray Plzak
Gary Rubin
Henry Hart
John Bell
Peter Weddle
Gary Anderson
Tom Embrescia
Ray Fassett
John Bell, Chairman & CEO, Boxwood Technology
Anthony Burke, CEO AHA Solutions, Inc.
John Graham, CEO, ASAE & The Center for Association Leadership
Richard Wahlquist, CEO American Staffing Association
Kevin Knapp, Chief Financial Officer, CareerBuilder LLC
Randy Bennett, Senior Vice President, Newspaper Association of America
Joe Shaker, Jr., Vice President, Shaker Recruitment Advertising & Communications
Peter Weddle, CEO, International Association of Employment Web Sites
Members of the International Association of Employment Web Sites:
AccountingJobsToday.com
Adicio, Inc.
American Association of Physics Teachers
American Physical Society
Science and Technology of Materials, Interfaces, and Processing
IEEE Computer Society

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Colorado Hospital Association
Dice Holdings, Inc.
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HigherEdJobs.com
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