

THE .JOBS CHARTER COMPLIANCE COALITION

Attention: John Bell
Chairman & CEO, Boxwood Technology
Executive Plaza III
11350 McCormick Road, Suite 101
Hunt Valley, MD 21031

November 4, 2010

Mr. Dennis Jennings, Chair
Ms. Rita Rodin
Mr. Ray Plzak
Mr. Ram Mohan
Internet Corporation for Assigned Names and Numbers
Board Governance Committee
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292-6601
USA

Re: Reconsideration 10-2; .JOBS Charter Compliance Coalition

Dear Mr. Chairman and Members of the Committee:

The .JOBS Charter Compliance Coalition (the “Coalition”) has reviewed the Board briefing materials (“Board Materials”) and minutes (“Minutes”) for the August 5, 2010 meeting of the ICANN Board of Directors in which the Board approved the .JOBS Phased Allocation Program (the “Program”). The Materials and Minutes, which ICANN released on October 28, 2010, definitively support the Coalition’s request for reconsideration and demonstrate that the Board approved the Program without considering material information in ICANN’s possession. Just as the summary and analysis of the public comments (the “Comments Summary”) failed to acknowledge either the nature or the source of objections to the Program, the Board Materials either ignored or dismissed the concerns and rights of third parties who would be affected by the .JOBS expansion. Finally, the Minutes unquestionably demonstrate the ICANN Staffs’ failure to look behind Employ Media’s unsupported assertions about the Program, despite the serious deficiencies identified by members of the Coalition and others, in particular comments regarding the .JOBS expansion plan that: (i) described the deficiencies in the review of the Phased Allocation Program by the .JOBS PDP Council operated by the Society for Human Resources Management (“SHRM”); and (ii) clearly explained that Employ Media’s request for a “new registry service” was not designed and could not be implemented in a manner consistent with the .JOBS Charter.

The ICANN Staffs’ reliance on Employ Media’s unsupported assertions, and its failure to undertake even modest diligence with respect to third party objections deprived the Board of critical information bearing directly on its decision to approve Employ Media’s Phased

Allocation Program. The Board Governance Committee (“BGC”) should not compound this failure by accepting at face value Employ Media’s responses to questions posed by the Board Governance Committee, which consist of conclusory statements and “yes” or “no” responses where a more substantive answer is clearly required, or the answers misrepresent and/or omit information that is essential to the Committee’s analysis of the Coalition’s pending Reconsideration Request 10-2.

Below we discuss the newly available information in the Materials and Minutes that evidences the complete absence of any analysis – either by ICANN or the PDP Council – as to whether or not the Program could or would be consistent with the .JOBS Charter. We also attach an analysis of Employ Media’s responses to the BGC’s questions.

1. The Staff told the Board of Directors that the .JOBS PDP Council – not ICANN - was responsible for examining whether or not the Phased Allocation Program would comply with the .JOBS Charter.

According to the Minutes, when one Board member expressed his concern that Phased Allocation Program amounted to “unfairly changing the overall bargain that led to the creation of the sTLD,” the ICANN Staff responded as follows:

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.

As the ICANN Staff member noted, Employ Media’s Registry Agreement does provide a process for changing .JOBS policies and procedures. Nonetheless, while it may be appropriate for ICANN to rely on agreed-upon processes in such cases, ICANN must at a minimum ensure that the process was actually followed - particularly where major deficiencies have been identified in public comments.¹ In this case the .JOBS PDP Council did not authorize Employ Media to seek to amend the Charter.² ICANN had a duty to determine whether or not the amendment sought by Employ Media was within the bounds of the authority granted by the PDP Charter. At the very least, ICANN should have confirmed that the PDP Council had in fact considered this question and made a determination that the Program was consistent with the Charter.

Unfortunately, neither the Minutes nor the Materials reflect any review of whether or not the Employ Media proposal was consistent with the authority granted by the .JOBS PDP Council.

¹ See, e.g., Comments of Monster Worldwide (July 15, 2010) at 4 (“*The PDP Council appears to have focused on a very narrow question: “If done the right way, would the use of non-‘companyname’ domains of .jobs be of benefit for the human resource community?”*”)

² See, PDP Council Resolution of June 3, 2010. <http://www.icann.org/en/registries/rsep/jobs-proposal-09jun10-en.pdf>

When ICANN Board members attempted to explore this issue, they were summarily informed that the Phased Allocation Program did not modify the Charter, and that the amendment simply changed the names that can be registered, leaving the “universe of registrants” unchanged. The Staff did not inform the Board that Coalition members provided abundant evidence of Employ Media’s intent to permit registrations by employment service providers in violation of the Charter.³ Rather, the Staff repeated Employ Media’s promise to comply with the Charter and stated that registrants would be limited to “hiring managers and the entities that employ people.”⁴ In fact, numerous commenters provided references to Employ Media statements reflecting its intention to permit registrations not permitted by the Charter. Either the Staff was misinformed about Employ Media’s plans, or it accepted Employ Media’s argument that any employer can register a name in .JOBS name for any purpose. If the latter is the case, one must ask both (i) what purpose is served by the .JOBS Charter, and (ii) why the Board was not made aware of this interpretation.

2. The .JOBS PDP Council said that ICANN – not the Council – was responsible for determining whether or not the Phased Allocation Program complies with the .JOBS Charter.

While the Staff assumed that the .JOBS PDP Council had made a determination that the Program was consistent with the Charter, the PDP Council decided that contract compliance matters associated with the change were not within its remit and simply authorized Employ Media to seek a change to the extent it was consistent with the .JOBS Charter. The [minutes of the PDP Council from 3 June 2010](#) could not be clearer: The PDP Council never considered whether or not the proposed change constituted a Charter amendment and instead limited its review to whether or not the proposal was “in the interests of” human resource management professionals. According to the PDP Council minutes:

Member #7 then stated that he/she joined this Council to handle a specific purpose...to represent the interests of the members of the international human resource management community. He /she feels comfortable that the Council has done a good job on this issue. Council Member #7 believes that the Council members have sought to understand the technical issues involved. *He/she has set aside all contractual issues and has focused on his role to render a decision for the above-described purpose.*

Council Member #3 believed that he/she was *not called upon to serve on the Council as a technical or legal expert, but rather, to vote upon whether or not this amendment is a*

³ See, e.g., Comments of IAIEWS (July 15, 2010) at 7 (“Indeed, the materials submitted with Employ Media’s request make clear that the purpose of the request is to expand the Sponsored Community to be served by .jobs to include online employment web site services providers by simply “routing around” the protections built into the .jobs Registry Agreement to prevent “abusive registration activities and other activities that affect the legal rights of others.”)

⁴ Members of the Coalition noted that the Phased Allocation Program would – contrary to Mr. Pritz’s assertion – fundamentally alter the nature of .JOBS registrants. See, e.g., IAIEWS Comments (July 15, 2010) at 6-7 (“Employ Media is “seeking to make fundamentally different kinds of second level registrations available for registrations by fundamentally different kinds of registrants via RFP, auction, and on a first-come first-serve basis. Under the so-called Phased Allocation Program, Employ Media would permit unspecified “interested” third parties to register “non-companyname” strings including, without limitation, “industry and occupational domains, geographic domains, dictionary term domains’ along with two-character domains.”)

benefit to the HR profession. Council Member #9 agreed with Council Member #3 that he/she is *solely looking at this role as to whether this benefits the HR profession.*

Although this glaring deficiency in the review process was clearly identified by members of the Coalition in the public comment period,⁵ the Staff never brought this to the Board's attention.

3. Employ Media was permitted to determine, in its sole discretion, whether or not the Phased Allocation Program would comply with the .JOBS Charter.

Because the PDP Council declined to consider whether or not the Program was consistent with the .JOBS Charter and ICANN conducted no diligence on this issue, the ICANN Board's approval of the Charter expansion rested entirely on the Staffs' recitation of unverified assertions made by Employ Media. For example, the Comments Summary dismisses the Charter compliance question by quoting Employ Media's entirely conclusory statement in its comments that:

[T]here was no change to the .JOBS Charter or to the .JOBS community in its proposal. The definition and scope of the .JOBS community is not changed in any way by the RSEP request – it is neither being broadened or restricted, and remains unchanged since the inception of .JOBS.

The Comments Summary dismisses hundreds of comments by reciting inaccuracies and half-truths supplied by Employ Media that mischaracterized companies opposed to the .JOBS expansion – including the American Society of Association Executives, the American Hospital Association, the Newspaper Association of America, and Monster Worldwide – as a bunch of sore losers that were afraid of a little competition.⁶ Likewise, the Board Materials incorporate Employ Media's mischaracterization of opponents as disgruntled members of the .JOBS sponsored community: "EmployMedia acknowledges that it has a diverse community with widely differing views on the proposal"⁷ despite abundant evidence on the record to the contrary.⁸

⁵ See, e.g., Comments of Monster Worldwide (July 15, 2010) at 4 ("*Neither the Council nor SHRM fully explored the implications of providing Employ Media with such sweeping authority over the process, and certainly no detailed discussions were held regarding appropriate contractual or Charter limitations.*")

⁶ The Comment Summary quotes wholesale from Employ Media's Filing: "*A number of opponents to the .JOBS RSEP proposal are operators of fee-based job boards, many of which have a .COM domain name that incorporates an occupational, industry or geographical identifier. While they claim that the addition of occupation, industry and geographical identifiers at the second level within the .JOBS sTLD will lead to increased confusion within the marketplace, it is hard to reconcile this argument to ICANN's extensive public policy work and implementation plan in connection with the new gTLD process. The same fundamental economic basis for going forward with the whole new gTLD initiative also applies to this .JOBS RSEP request; these issues should not be re-debated and should not delay or deny approval of the .JOBS RSEP request.*"

⁷ <http://www.icann.org/en/minutes/board-briefing-materials-1-05aug10-en.pdf>

⁸ See, e.g. Comments of IAIEWS (July 15, 2010) at 1 ("*IAIEWS membership is limited to (a) operators of employment-related websites - excluding sites operated by direct employers for their own recruiting purposes and executive search/staffing firms, as well as (b) companies that provide products and services to such website operators. Neither human resources professionals employed in corporate human resources ("HR") departments nor executive search/staffing firms are eligible for membership in IAIEWS.*")

4. The Staff failed to answer Board questions that went directly to the question of whether or not the Phased Allocation Program modified the .JOBS Charter.

Despite the fact that members of the Coalition specifically described the limited analysis conducted by the PDP Council and the ways in which the Phased Allocation Program would violate the .JOBS Charter, the Staff failed to bring this to the Board's attention – either in the Comments Summary, in the Board Materials, or, as reflected in the Minutes, during the Board meeting. Notwithstanding its claim to have "read carefully the comments made by the firms opposed to the amendment," the Staff failed to bring material information to the attention of the Board, summarily dismissed the concerns of entities that opposed the .JOBS expansion, and urged the Board to defer to SHRM and the PDP Council, which – as Coalition members pointed out - had never considered whether the Program could be implemented under the .JOBS Charter.

Nothing in the Comment Summary, the Materials, or the Minutes suggest that the ICANN Staff seriously considered whether or not the Phased Allocation Process was consistent with the .JOBS Charter or investigated the merits of concerns expressed by participants in ICANN's public comment process. There is no evidence that Employ Media's plan, described in the RSEP Proposal, to create a "self-managed class of domains registered in Employ Media's name" was either scrutinized or explained by the Staff. Similarly, the Staff not attempt to reconcile the Charter restrictions with Employ Media's reference to the possible registration of "independent job site operators" that would use the .JOBS TLD to "expan[d] . . . their product and service offerings in new/innovative ways."

Board attempts to examine the underlying facts were likewise ignored. The Minutes show that Harald Alvestrand received no answer to his request for clarification on a question that goes to the very heart of the Coalition's concerns as to "who will be operating the regional and occupational registrations." Rather than answer the question, the Staff described the RFP, auction, and other processes Employ Media planned to use to allocate second level registrations.

The deficiencies in the review the .JOBS Phased Allocation Program were summed up by Mr. Silber, who explained his decision to abstain despite the fact that he had "no principled objection to policy development in the sponsored gTLDs" by pointing out that the registry services request "purports to extend one element of the Charter - namely the names that can be registered - but not the pool of registrants." Describing the information vacuum in which the Board approved the Program and which is the basis for the Coalition's request for reconsideration, Mr. Silber stated "*I do not believe that this has been sufficiently explored for me to support the resolution and yet have no objective indicator of potential negative impact to oppose it.*"

5. The Coalition has met the standard for reconsideration under the Bylaws.

The Board of Directors voted to approve the .JOBS expansion without considering material information that was clearly on the record and in ICANN's possession. The standard for reconsideration under the ICANN Bylaws may be narrow, but the Board Materials and the Minutes released last week remove any doubt that the Coalition's request meets that standard. Simply put, the Board was told that registration in .JOBS would continue to be limited to

“human resources managers,” “hiring managers,” and “qualified” employers. Meanwhile, however, the public comments contained abundant evidence of Employ Media’s plan to expand the universe of potential registrants in .JOBS to “any business” for any purpose. Employ Media’s responses to the BGC’s questions, as the attached analysis shows, do nothing to correct the record and either fail to supply or misrepresent material information that could and should have been provided to the Board prior to its approval of the .JOBS expansion.

Approval of the Employ Media’s Phased Allocation Program reflects either a misunderstanding of the proposal or a willingness to render the .JOBS Charter meaningless. The Coalition’s Reconsideration Request must be granted if the Board is to fulfill its duty to make informed decisions taking into account material information in ICANN’s possession. Unless it is willing to change “the overall bargain that led to the creation of the sTLD,” the Board must act to ensure that Employ Media’s operation of .JOBS is faithful to the sTLD’s Charter.

Sincerely,

A handwritten signature in blue ink, appearing to read "JBH", is centered on the page.

John Bell
Chairman

Coalition Analysis of Employ Media's Responses to the BGC's Questions

Reconsideration 10-2

I. INTRODUCTION

The .JOBS Charter Compliance Coalition (the "Coalition") has reviewed the 25 October 2010 submission of Employ Media, which purports to answer the questions posed by the ICANN Board Governance Committee ("BGC") on 18 October 2010. Employ Media has yet to respond to the questions posed earlier by the Coalition in a submission dated 14 October 2010.

As set forth in greater detail below, many of the answers provided by Employ Media are unsupported, conclusory statements that merely recite the question posed by the BGC and give a simple "yes" or "no" response where a more substantive answer is clearly required. In other instances, Employ Media misrepresents and/or omits information that is essential to the BGC's analysis of the Coalition's pending Reconsideration Request 10-2. More importantly, Employ Media was required to provide this *material information* to the Board before it voted on the proposed Phased Allocation Program (the "Program"). In fact, the questions posed by the BGC belatedly seek critical information known only by Employ Media that should have been disclosed to the Board before it voted 11-1 to approve the Program on 5 August 2010.

II. ICANN ACCOUNTABILITY AND THE BOARD'S DUTY OF INQUIRY

ICANN is "committed to very high standards of accountability and transparency." *See* ICANN Management Operating Principles at p. 15. ICANN's bylaws incorporate core values that should guide the decisions of the ICANN Board, including "[e]mploying open and transparent policy development mechanisms that . . . promote *well-informed decisions*" Article I, Section 2.7. Furthermore, the bylaws mandate that actions by the Board are subject to reconsideration where such actions are "taken *without consideration of material information*" Article IV, Section 2. Because Employ Media, the proponent of the Program, failed to disclose critical materials and information, the Board action on 5 August 2010 was taken "without consideration of material information."

In order to fulfill its fiduciary duty of inquiry, the Board must be "*sufficiently informed* to make decisions on behalf of [ICANN]." *See* ICANN Management Operating Principles at p. 18. Employ Media's continuing failure to disclose material information prevented the Board from meeting the standard of scrutiny required to reach a well-informed decision with respect to the Program. These non-disclosures prevented the Board from being sufficiently informed about the broad implications of the proposed Program, which was necessary to satisfy the Board's duty of inquiry. Accordingly, the Coalition requests that the BGC require Employ Media to account for its statements, positions and plans relating to the Program and its effect on the .JOBS Charter ("Charter").

III. SIGNIFICANT ISSUES NOT ADDRESSED BY EMPLOY MEDIA

As part of requiring Employ Media to provide complete and substantial answers to the questions posed by the BGC and the Coalition, the following issues, among others, should be addressed by the BGC before it can render a decision on the pending Reconsideration Request:

- **Charter Interpretation.** As the Registry Operator of the .JOBS TLD, Employ Media must state unequivocally its position on the .JOBS Charter language rather than offer empty recitations that it will abide by the Charter. Specifically, Employ Media must clearly state whether or not it still believes that “any party” can register for a second-level domain name in the .JOBS TLD. If its answer is no, Employ Media must then explain its position regarding which class of persons and/or entities are restricted from registering domain names under the Charter. In addition, Employ Media must indicate whether or not it agrees that the term “human resource management” as defined in the Charter is limited to those persons who work in the human resource function within their respective companies or organizations.
- **Employ Media’s Relationship With DirectEmployers.** Despite the BGC’s and the Coalition’s best efforts, Employ Media still refuses to explain the extent of its relationship with DirectEmployers Association (“DirectEmployers”) despite the materiality of this information to the BGC’s current review. For example, Employ Media still has not disclosed its involvement with DirectEmployers’ planned “Dot Jobs Universe” set forth on the universe.jobs website. Under this plan, Employ Media and DirectEmployers have publicly stated intent to operate a “universe” of job boards, under the authority of the recent amendment to the Registry Agreement, when such a “universe” is clearly inconsistent with the Charter. The Coalition strongly suspects that Employ Media failed to disclose the continued existence of this plan to the Board prior to the 5 August 2010 vote on the Program, and Employ Media plainly ignores the BGC’s current request to provide this information. Moreover, Employ Media misrepresents the extent of its involvement in the creation of the “White Paper” of DirectEmployers located on the universe.jobs website.
- **Circumvention of the Charter Through “Self-Managed” Plans.** In its Registry Services Evaluation Process proposal dated 9 June 2010 (“RSEP Proposal”), Employ Media states that it intends to solicit plans under the Program “which may create a *self-managed class of domains registered in Employ Media’s name.*” Presumably, in this “self-managed” scenario, Employ Media would register the domain names itself, and permit third parties to “use” the domains even if those third parties could not register them consistent with the Charter. There is no indication that the ICANN Staff provided the Board with any analysis of this critical issue, or that the Board considered this material issue -- prior to the 5 August 2010 vote. The Coalition therefore requests that the BGC scrutinize this proposal and require Employ Media to explain how it plans to register and administer these “self-managed” plans in compliance with the Charter.

IV. COALITION RESPONSES TO EMPLOY MEDIA'S ANSWERS

The following section sets forth the Coalition's responses to the answers provided by Employ Media to the thirteen questions posed by the BGC:

Question #1: Do you confirm that the amendments approved by the ICANN Board on 5 August 2010 do not change the Charter of the JOBS sTLD? If not, please explain how you believe the .JOBS Charter was changed.

Employ Media Answer: Employ Media confirms that the amendments approved by the ICANN Board on 5 August 2010 do not change the Charter of the .JOBS sTLD.

Question #2: At the time of the 5 August 2010 Board meeting, did Employ Media intend to allow registrations in the .JOBS sTLD from persons or entities not meeting the .JOBS Charter registration requirements? If so, please explain your reasoning for this intent and state whether an expression of this intent was available to the Board before it took its action on 5 August 2010 relating to amendment of the .JOBS Registry Agreement.

Employ Media Answer: At the time of the 5 August 2010 Board meeting, Employ Media did NOT intend to allow registrations in the .JOBS sTLD from persons or entities not meeting the .JOBS Charter registration requirements. Further, Employ Media has NO intention to allow registrations in the .JOBS sTLD from persons or entities not meeting the .JOBS Charter registration requirements.

Coalition Response: These superficial answers to Questions 1 and 2 are simply indicative of Employ Media's ongoing refusal to provide the Board with material information regarding the seminal issue of how Employ Media believes its planned implementation of the Program is consistent with the Charter. Simply put, Employ Media must explain specifically which persons or entities are eligible under the terms of the Charter to register domain names in the .JOBS TLD.

Question #3: Prior to the Board's 5 August 2010 action, did Employ Media make any representations to the public regarding availability of registrations in the .JOBS sTLD? If so, what was the substance of these representations, and please state whether these representations were available to the Board before it took its action on 5 August 2010 relating to amendment of the JOBS Registry Agreement.

Employ Media Answer: Specifically with respect to the availability of registrations in the .JOBS sTLD, Employ Media has made various representations to the public at various times. After all, it is our responsibility as registry operator to market and allocate domains. However, all such representations have always been consistent, to the best of our knowledge, with the terms of Employ Media's registry agreement with ICANN, as well as the statements contained in Employ Media's RSEP.

Coalition Response: Employ Media plainly ignores the BGC’s request to provide a meaningful answer regarding the substance of the representations it made to the public about the availability of registrations in the .JOBS sTLD. Instead of accepting its frivolous answer, Employ Media should be made to explain the basis for the numerous public representations it made prior to the Board meeting on 5 August 2010.

Among the material public representations not disclosed to the Board by Employ Media in its answer above –or prior to its 5 August 2010 vote is the following statement posted by Employ Media on the *Employ Media* [website](#) on April 23, 2010, when the PDP Council was still debating whether or not to approve the Phased Allocation Program:

DirectEmployers Association stands ready to submit its .jobs proposal for certain industry, occupation, and geographic type names, operated previously as a beta test in the latter half 2009, upon being notified of permission by Employ Media to do so.

In addition, the [universe.jobs](#) website also quotes the *Chairman of Employ Media* as follows:

We believe in the vision of the Internet becoming the dominant medium to easily connect employers and job seekers. The .jobs TLD working with DirectEmployers Association can accomplish this worldwide. We have a great plan, and with DirectEmployers Association, the right ingredients to facilitate the elusive direct connection that can finally unleash the Internet’s greatest strength to the online employment sector.

The [universe.jobs](#) website goes on to say that “.jobs and DirectEmployers Association have formed an alliance to activate, manage and complete the build-out of all .jobs domains... a.k.a. The Dot Jobs Universe.”

The Coalition requests that the BGC demand that Employ Media describe and explain these and all of its public representations by answering the following questions:

- Did it disclose its alliance with DirectEmployers Association to the Board prior to the 5 August 2010 meeting?
- If it did not, why did it fail to disclose the ongoing alliance to the Board?
- Explain why it linked to DirectEmployer’s .JOBS proposal on its website prior to the Board’s approval of the Program.
 - Did it post any other RFP applicant’s responses on [www.goto.jobs](#)?
 - Explain why posting DirectEmployers’ RFP response on Employ Media’s website does not, at a minimum, create the perception that one of the RFP applicants is favored by Employ Media.

- Were other applicants to the .JOBS RFP process notified of Employ Media’s alliance with DirectEmployers Association to “build out” the .JOBS domain?
- If DirectEmployers is a possible/putative successful applicant of the RFP process, explain how it qualifies as a person engaged in human resource management practices, defined in the Charter as “the organizational function that focuses on the management and direction of people. ... those persons who deal with the human element in an organization – people as individuals and groups, their recruitment, selection, assignment, motivation, compensation, utilization, services, training, development, promotion, termination and retirement.”

Question #4: Do you confirm that Employ Media will only allow persons or entities identified in the Charter to register names in the .JOBS sTLD? If not, please explain your reasoning for allowing such persons or entities to register names in the JOBS sTLD, and state whether an expression of this reasoning was available to the Board before it took its action on 5 August 2010 relating to amendment of the .JOBS Registry Agreement.

Employ Media Answer: The .JOBS Charter states that “[t]he following persons may request registration of a second-level domain within the .JOBS TLD: members of SHRM; or persons engaged in human resource management practices that meet any of the following criteria: (i) possess salaried-level human resource management experience; (ii) are certified by the Human Resource Certification Institute; (iii) are supportive of the SHRM Code of Ethical and Professional Standards in Human Resource Management...”

Employ Media confirms that we will only allow persons identified in the Charter to request registration of names in the .JOBS sTLD.

Coalition Response: Employ Media’s response to this question raises a serious concern and appears to be setting the stage for an end run around the Charter’s intent to limit registrants to certain persons. This construction logically follows from statements made by Employ Media in its RSEP Proposal.

In the RSEP Proposal, Employ Media states that it intends to solicit plans under the Program “*which may create a self-managed class of domains registered in Employ Media’s name.*” In response to a question regarding objections from the ICANN community to the Program, Employ Media states in its Application that “[p]eople may interpret Employ Media’s implementation as a registry operator of certain types of proposals (*such as a self-managed class of domain names*) to be of potential impact to one or more of the remaining overarching issues to ICANN’s new gTLD process (such as Vertical Integration).”

The obvious concern here is that Employ Media, utilizing the subterfuge of a “self-managed class of domains” to be used by persons who need not “request registration,” will circumvent the

clear limitations of the Charter and enlist “any company”⁹ that would otherwise not qualify as a potential registrant for domain names in the .JOBS TLD. To this end, the Coalition requests that the BGC seek greater clarity from Employ Media on this issue. Specifically, the BGC should obtain from Employ Media answers to the following questions:

- What does Employ Media mean in its RSEP Proposal when it refers to a “self-managed class of domain names?”
- Describe how this proposed plan for a self-managed class of domain names would be compliant with the .JOBS Charter.
- Explain how Employ Media’s registration of tens of thousands of second level domains in its own name, which are then operated by third parties, is consistent with ICANN’s current policies on registry/registrar separation and the use of ICANN accredited registrars.

Question #5: In Employ Media's Registry Request, it stated: “Independent job site operators in other TLD’s may be affected by the introduction. Some have indicated a positive interest to submit an RFP if such were made available. Others have indicated that the proposed registry service could enable an expansion of their product and service offerings in new/innovative ways.” Please identify all “independent job site operators” that are referred to in this statement, and whether each is a member of the Sponsored Community sufficient to register names in the JOBS sTLD.

Employ Media Answer: Records of all independent job site operators who indicated interest, either positive or negative, were not formally maintained. Many such communications were informal in nature, and there were no commercial, legal or RSEP-related imperatives that required the allocation of internal resources so that formal records could be maintained on a consistent basis.

Coalition Response: Employ Media avoids answering this direct question from the BGC, asserting that it cannot provide the name of a single interested independent job site operator since it didn’t maintain “formal records.” This is yet another example of Employ Media’s non-disclosure to the Board leading up to the 5 August 2010 vote. Moreover, it demonstrates Employ Media’s continued unwillingness to give the Board material information, which only it has, relating to the planned implementation of the Program.

The questions from the BGC correctly seek to understand whether these so-called “independent site operators” qualify as registrants under the language of the Charter. Since Employ Media does not identify a single independent job site operator, it fails to provide the BGC with the material information necessary to determine whether such operators are disqualified from

⁹ According to the [minutes of the .JOBS PDP Council 9 April 2010](#), “Employ Media stated that it could register names because it believes it complies as a member of the human resources community and complies with the SHRM Code of Ethics as well. Employ Media also responded that *any company* or member of SHRM can acquire a domain name” in the .JOBS TLD. Employ Media also asserted that the .JOBS Charter is meant for “*any business*” to acquire a domain name.”

registering for domain names in the .JOBS TLD under the restrictive language of the Charter. Accordingly, the Coalition requests that the BGC insist that Employ Media identify these “independent job site operators” and further posit the following questions:

- Are these independent job site operators persons engaged in “human resource management,” who are defined in the Charter as persons who work in the “human resource function within their respective companies or organizations?”
- If not, please explain how this use of .JOBS registrations would comply with the .JOBS Charter restrictions.
- Does Employ Media consider DirectEmployers to be one of these so-called “independent job site operators”?
 - Does Employ Media consider DirectEmployers to be a person engaged in “human resources management” as described in the Charter?
- Does Employ Media consider Jobcentral.com, which is operated by DirectEmployers, a job site?
 - Do the products and services available on Jobcentral.com constitute “human resource management” as defined in the Charter?

Question #6: Please identify when the White Paper available at <http://www.universe.jobs/pdfs/wp-dotjobs-tld.pdf> was produced. Did any employees or officers of Employ Media participate in the drafting of the White Paper? Please also state whether this White Paper was available to the Board before it took its action on 5 August 2010 relating to amendment of the .JOBS Registry Agreement.

Employ Media Answer: The White Paper currently available at <http://www.universe.jobs/pdfs/wp-dotjobs-tld.pdf> and dated on its face “August 2010” was not drafted by Employ Media. To Employ Media's knowledge, no employee or officer of Employ Media participated in the drafting of the White Paper. To Employ Media's knowledge, the White Paper was drafted by Direct Employers Association. Employ Media does not know when the White Paper was produced. Employ Media has no knowledge as to whether the White Paper was available to the Board before it took its action on 5 August 2010.

However, Employ Media is aware that a document produced by DirectEmployers Association and called a "White Paper" has been publicly available at www.universe.jobs since early 2010. This white paper (the "Earlier White Paper") was referenced by at least Monster Worldwide in Monster's 15 July 2010 correspondence posted to ICANN's public comment board. As such, there can be no doubt that the Earlier White Paper was available to the Board before it took its action on 5 August 2010 relating to amendment of the .JOBS Registry Agreement.

While Employ Media has no direct knowledge, it is possible that the current White Paper is a later version, or revision, of the Earlier White Paper. Employ Media had the opportunity to review portions of the Earlier White Paper and comment on such, but did not participate in the drafting of same and had no control as to whether such comments were taken into account in any posted version of the Earlier White Paper.

The White Paper referenced in the above question is merely one third-party's position with regard to a proposal; it does not speak for Employ Media, or in any way bind Employ Media, or control how Employ Media will act.

Coalition Response: The statements made by Employ Media in its answer strain credulity and are internally inconsistent. As an initial matter, Employ Media misrepresents the extent of its involvement in the presentation of the White Paper on the universe.jobs website. In its answer, Employ Media fails to disclose that a prior version of the White Paper dated May 2010 (during the exact period in which the PDP Council was considering the proposed expansion), which proposes a “build-out” of the .JOBS top-level domain, *contains a quote from Employ Media CEO Tom Embrescia.*

“We believe in the vision of the Internet becoming the dominant medium to easily connect employers and job seekers. The .jobs TLD working with DirectEmployers Association can accomplish this worldwide. We have a great plan, and with DirectEmployers Association, the right ingredients to facilitate the elusive direct connection that can finally unleash the Internet's greatest strength to the online employment sector.”

It seems incredible that Employ Media would have no editorial input in a document that contained a quote from its CEO, or that it would permit its CEO to be quoted in support of a proposal that it did not endorse. This quote was subsequently removed from the “current” version of the White Paper dated August 2010 -- another fact that Employ Media fails to disclose. Interestingly, the universe.jobs website contained an RFP response from DirectEmployers *before* the RFP was even issued. The Coalition has attached the May 2010 and August 2010 versions of the White Paper to this submission as Exhibits 1 and 2.

Second, Employ Media alleges in its answer that it did not participate in drafting the White Paper, yet it subsequently acknowledges later in its answer that it was given an opportunity to review and provide comments to earlier drafts of the May 2010 White Paper. In addition to this contradictory statement, Employ Media then fails to reveal what these comments entailed. This less than forthright response begs the following questions: (1) what was the extent of Employ Media's relationship with DirectEmployers relating to the drafting, review and revisions of the White Paper; and (2) what was the level of interaction between Employ Media and DirectEmployers with regard to the plan to “build out” the .JOBS TLD both before and after the Board's 5 August 2010 vote.

Third, Employ Media attempts to evade responsibility for providing material information relating to a Program that it proposed to the Board. Employ Media apparently contends that it was not obligated to disclose its involvement with the White Paper to the Board because the White Paper was located on the universe.jobs website. In essence, Employ Media unreasonably asserts that it

was incumbent on the Board and/or others affected by the Program to search alleged “third party” websites for evidence of a pre-existing arrangement for implementation of the Phased Allocation Program that would have had a direct bearing on the Board’s vote. The Coalition submits that this position is merely indicative of the wholly incomplete nature of Employ Media’s disclosures to the Board prior to the vote on the Program.

In light of Employ Media’s evasive and misleading response to Question #6, the Coalition requests that the BGC seeks answers to the following questions:

- Why didn’t you provide the Board with all versions of the White Paper?
- Why didn’t you disclose to the Board your involvement in the drafting/comments to any version of the White Paper?
- Which representatives/employees/agents of Employ Media provided comments to the White Paper – both verbally and in written form – to DirectEmployers?
- Which representatives/employees/agents of DirectEmployers interacted with Employ Media to receive its comments to the White Paper – both verbally and in written form?
- Why did Employ Media permit a quote from its CEO Tom Embrescia to be included in the May 2010 White Paper?
 - How did DirectEmployers have an RFP response drafted *before* the RFP for the .JOBS TLD was even issued?
 - When and why was Mr. Embrescia’s quote subsequently redacted from the White Paper? Describe in detail Employ Media’s involvement in, and the reasoning for, the redaction of the Embrescia quote from the White Paper.
- Does the website www.universe.jobs contain the entirety of DirectEmployers’ RFP response?
- Describe in detail Employ Media’s participation in, and/or affiliation with, the website www.universe.jobs and the related “Dot Jobs Universe” described therein.
- Explain why [Employ Media’s RFP](#) did not ask RFP applicants to include a proposed purchase price or any other information regarding proposed economic terms between Employ Media and the applicant.
 - Explain why DirectEmployers’ RFP response -- which is publicized by Employ Media on www.goto.jobs -- does not include a proposed purchase price or any other information regarding proposed economic terms between Employ Media and DirectEmployers.
 - Is there (or was there) an agreement or understanding between Employ Media and DirectEmployers that contains those provisions? If so, please provide a

description of such agreements and/or understandings and furnish a copy of any documents relating to same.

- Is (or was) there an agreement or understanding between Employ Media and DirectEmployers regarding the “Dot Jobs Universe”? If so, please provide a description of such agreements and/or understandings and furnish a copy of any documents relating to same.

Question #7: Please state whether all material information regarding the vote of the Society for Human Resource Management (“SHRM”) Policy Development Council to propose an amendment to the .JOBS Registry Agreement was available to the Board before it took its action on 5 August 2010 relating to amendment of the JOBS Registry Agreement.

Employ Media Answer: To Employ Media's knowledge, all material information regarding the vote of the Society for Human Resource Management ("SHRM") Policy Development Council to propose an amendment to the .JOBS Registry Agreement was available to the Board before it took its action on 5 August 2010 relating to amendment of the .JOBS Registry Agreement.

Coalition Response: Despite Employ Media’s unsupported (and contradicted) contention that the necessary materials was available to the Board, its answer does not indicate whether or not Employ Media actually made the materials available to the Board. Moreover, the governing standard under the ICANN bylaws is whether the Board considered all material information. (See Article IV, Section 2.2). The public record clearly demonstrates that although the public comments cited the underlying concerns at stake and provided such materials as were reasonably available to them, the ICANN Staff’s summary to the Board was insufficient, such that the Board (1) was prevented from properly considering the significant issues given the dearth of information provided by Employ Media; and (2) could not properly discharge its duty of inquiry. In fact, the ICANN staff’s Summary and Analysis of Comments for Phased Allocation in .JOBS, which formed the basis for the Board’s consideration of the Program, parroted the same conclusory assertions that Employ Media states in its answers herein: “Employ Media informed ICANN that it did not view the proposal as a change to the Charter for the sTLD or the policy-making process set forth in Appendix S.” No further analysis of this claim was provided by the ICANN staff, notwithstanding that many commenters indicated that the Program could not be implemented consistent with the Charter.

Question #8: Please identify when the Registry Services Evaluation Process proposal (“RSEP Proposal”) was drafted and who took part in drafting the proposal.

Employ Media Answer: The RSEP Proposal was drafted over an extended period of time prior to its submission to ICANN, and was drafted by Employ Media staff in cooperation and consultation with ICANN staff.

Coalition Response: The Coalition requests that the BGC demand that Employ Media respond fully to Question #8 and provide specific answers to the following questions:

- Provide the specific dates relating to the drafting of the RSEP Proposal.

- Provide a complete list of the names of Employ Media personnel and representatives that participated in any manner to the drafting of the RSEP Proposal.
- Provide a complete list of the names of ICANN staff, personnel and representatives that cooperated and consulted with Employ Media in formulating the draft of the RSEP Proposal.

Question #9: Please state whether Employ Media took any steps to prevent or interfere with any entity or person’s ability to state its position, or provide information, to the Board regarding amendment of the .JOBS Registry Agreement before or during the 5 August 2010 Board meeting.

Employ Media Answer: Employ Media did not take any steps to prevent or interfere with any entity or person’s ability to state its position, or provide information, to the Board regarding amendment of the .JOBS Registry Agreement before or during the 5 August 2010 Board meeting.

Coalition Response: The Coalition requests that the BGC provide the basis, if any, for the premise of the question regarding whether Employ Media took any steps to prevent or interfere with any entity or person's ability to state its position, or provide information, to the Board regarding amendment of the .JOBS Registry Agreement before or during the 5 August 2010 Board meeting.

Question #10: Please state whether Employ Media was involved in creating or managing a coordinated response to the RSEP Proposal during the public comment period, which is available at [http://www.icann.org/en/public-comment/public-comment-201007-en.htm# jobs-phased-allocation](http://www.icann.org/en/public-comment/public-comment-201007-en.htm#jobs-phased-allocation).

Employ Media Answer: Employ Media was not involved in creating or managing a coordinated response to the RSEP Proposal during the public comment period, which is available at <http://www.icann.org/en/publiccomment/public-comment-201007-en.htm#jobs-phased-allocation>. Several entities did approach Employ Media and ask what they could say in support of the RSEP Proposal, and Employ Media did suggest in the ordinary course of business language which could be used to voice their support. However, this is by no means a managed or coordinated response as exemplified by the Coalition, whose actions included drafting form letters, engaging at least one Washington, D.C. law firm intimately familiar with ICANN public comment forums, soliciting funding to pay such lawyers, and performing email blasts to spread misinformation and encourage negative posts. Employ Media took no such similar actions.

Coalition Response: The extent of Employ Media’s relationship with DirectEmployers, addressed by the BGC in Question #6 but never responded to by Employ Media, is the issue here. As set forth in the Reconsideration Request, several versions of the same response in favor of Employ Media’s Phased Allocation Program were provided by members of the Advisory Council listed on the “Dot Jobs Universe” [website](#) operated jointly by Employ Media and DirectEmployers. As set forth in Attachment 2 to the Reconsideration Request, 11 of the 35 comments in favor of the proposal came from the Dot Jobs Advisory Council, including

representatives from InterContinental Hotels Group, Xerox, Qwest, Newell Rubbermaid and ConocoPhillips. The representatives of these companies never disclosed to ICANN that they were members of the Dot Jobs Universe Advisory Council when they submitted their comment letters in support of the Program. In addition, it does not appear that the ICANN Staff informed the Board of this fact. Given Employ Media's interaction with DirectEmployers regarding the drafting/comment process of DirectEmployers' White Paper and the fact that an officer of DirectEmployers is a member of the PDP Council that approved the Program, it is highly implausible that Employ Media did not have any communications with DirectEmployers regarding managing a positive response to the RSEP Proposal during the public comment period. In any event, Employ Media appears determined not to provide any detail regarding this relationship to the BGC, just as it failed to disclose these details to the Board prior to the 5 August 2010 vote.

Question #11: At the time of the 5 August 2010 Board action, did Employ Media have any intention of registering names under the Phased Allocation Plan to any entity other than Employ Media? If so, please state whether Employ Media expressed this intent to the Board before it took its action on 5 August 2010 relating to amendment of the .JOBS Registry Agreement.

Employ Media Answer: At the time of the 5 August 2010 Board action, Employ Media did NOT have any intention of registering names under the Phased Allocation Plan to any entity other than Employ Media.

Coalition Response: The Coalition requests that the BGC ask Employ Media the following questions with regard to this issue:

- Has Employ Media (regardless of intent) registered names, or does it plan to register names, under the Phased Allocation Plan to any entity other than Employ Media?
- Has Employ Media registered names to DirectEmployers?
- Has Employ Media registered, or does it plan to register names to itself for use by another entity?
- Is it your intent under the Phased Allocation Plan to permit persons and entities that are not eligible under the Charter to register domain names within the .JOBS TLD?
- Explain how the .JOBS Charter permits Employ Media's registration of tens of thousands of second level domains, to be operated by itself or third parties as multi-employer jobs boards.

Question #12: At the time of the 5 August 2010 Board action, did Employ Media have any intention to license the use of .JOBS names registered to Employ Media to persons or entities that would not qualify for registration under the .JOBS sTLD Charter? If so, please state whether Employ Media expressed this intent to the Board before it took its action on 5 August 2010 relating to amendment of the .JOBS Registry Agreement.

Employ Media Answer: At the time of the 5 August 2010 Board action, Employ Media did NOT have any intention to license the use of .JOBS names registered to Employ Media to persons or entities that would not qualify for registration under the .JOBS sTLD Charter.

Coalition Response: The Coalition requests that the BGC ask Employ Media the following questions with regard to this issue:

- Has Employ Media (regardless of intent) licensed or otherwise permitted the use of .JOBS names registered to Employ Media to persons, companies or entities that would not qualify for registration under the .JOBS sTLD Charter, or does it plan to license the use of .JOBS names registered to Employ Media to such persons or entities?
 - Has Employ Media licensed or otherwise permitted the use of .JOBS names registered to Employ Media to *any* person, company or entity, or does it plan to license the use of .JOBS names registered to Employ Media to any persons, companies or entities?
 - Does Employ Media believe it can license or otherwise permit the use of .JOBS names registered to Employ Media to persons or entities that would not qualify for registration under the .JOBS sTLD Charter? If so, explain how this is compliant with the Charter.
- Has Employ Media licensed or otherwise permitted the use of .JOBS names registered to Employ Media to DirectEmployers?
 - Does Employ Media believe that DirectEmployers qualifies for registration under the .JOBS sTLD Charter? If so, provide a detailed explanation for this position.

Question #13: Has Employ Media solicited participation in the Phased Allocation Process from companies or entities that do not qualify for registration under the .JOBS sTLD Charter? If so, please explain Employ Media's reasoning for doing so.

Employ Media Answer: Employ Media confirms that to the best of its knowledge, it has not solicited participation in the Phased Allocation Process from companies or entities that do not qualify for registration under the .JOBS sTLD Charter.

Coalition Response: The Coalition requests that the BGC ask Employ Media the following questions with regard to this issue:

- What due diligence did Employ Media perform to determine that it had not solicited participation in the Phased Allocation Process from persons, companies or entities that do not qualify for registration under the .JOBS sTLD Charter?
- Has Employ Media solicited participation in the Phased Allocation Process from any person, company or entity?

- Has Employ Media solicited the participation of DirectEmployers in the Phased Allocation Process?
- Has Employ Media interacted with DirectEmployers with regard to the Phased Allocation Process?
 - If so, please provide a complete explanation as to the extent of your involvement with DirectEmployers.
 - If so, explain how this is compliant with the Charter. Specifically, is it Employ Media's position that DirectEmployers qualifies as a registrant under the Charter? Why or why not?