May 9, 2016

Dear Mr. Schreiber:

On May 7, 2016 you posted an email to the RPM Review Working Group (RPM WG) under the subject heading of “RPM Group <> Re: DomainNameWire ~ CentralNic to nuke a handful of pseudo-domain names”. That email contained the following statements:

* Greg and Phil, let me be candid with you both.    Now that You’re being **FUNDED BY** revenues in large measure by ICANN’s .COM Domain Name Registrants to go Globe-trotting, I vigorously encourage you to stop being the batmen [soldier-servants] to CentralNic’s ***“handful of pseudo-domain names”*** [Quote from Domain Name Wire] and serve the needs of the .COM Registrant’s.
* Greg & Phil, I expect you both to take you’re ~ funded ~ leadership role’s seriously; and press ICANN to enforce the RAA on CentralNic. Further, I expect you both to deploy you’re given powers within ICANN; and to successfully petition the United States Justice Department to ask ICANN Et Al to answer the “Questions Presented” in SCOTUS 14-1480, as linked.
* Should you opt not to help enforce the ACPA law, I will consider that as Collaboration with CentralNic, going forward.

At the outset, we wish to make several things clear:

* While Greg Shatan is a valued member of the RPM WG and Chair of the Intellectual Property Constituency (IPC), he is not one of the Co-Chairs. The preliminary work plan for the WG is developed by the Co-Chairs in consultation with staff and is then presented to the full WG for discussion, possible modification, and acceptance. Mr. Shatan has no greater or lesser status than any other WG Member.
* Your statement that Mr. Shatan, Mr. Corwin, and other members of the ICANN community who receive partial ICANN funding support for their travel to and work at ICANN meetings are engaged in “Globe-trotting” disrespectfully denigrates their voluntary participation and mischaracterizes their participation, which generally consists of 10-12 hour work days following long travel.
* Accusing Mr. Shatan and Mr. Corwin of being the “the batmen [soldier-servants]” for CentralNic is not only a false charge but is, in our view, a violation of the [ICANN Expected Standards of Behavior](https://www.icann.org/resources/pages/expected-standards-2012-05-15-en), which requires that “Those who take part in ICANN multi-stakeholder process…undertake to… treat each other with civility both face to face and online…Act in a reasonable, objective and informed manner when participating in policy development and decision-making processes…Act fairly and in good faith with other participants in the ICANN process”.
* In regard to your request that Mr. Shatan and Mr. Corwin “successfully petition the United States Justice Department to ask ICANN Et Al to answer the “Questions Presented” in SCOTUS 14-1480, as linked” we again point out that Mr. Shatan holds no leadership position within this WG, and that Mr. Corwin has no power as a Co-Chair to initiate legal actions of any kind on its behalf.
* As for the statement, “Should you opt not to help enforce the ACPA law, I will consider that as Collaboration with CentralNic, going forward”, we again point out that no member of this WG, including the Co-Chairs, has any power or authority to act outside the Charter authorizing it and limiting the scope of its inquiry. Therefore, this WG has no authority to bring any action to enforce the U.S. law known as the Anti-Cybersquatting Consumer Protection Act (ACPA). Further, the implied threat to impugn the integrity of any member of this WG as a “collaborator” with CentralNic if they do not take the action you wish is an uncivil and unfair coercive act that is likewise in violation of the Expected Standards of behavior.

Based upon your remarks made on the WG call of Wednesday, May 4th – and noting that Co-Chair Philip Corwin engaged in a good faith dialogue with you on that call in an attempt to discern the precise nature of your grievance -- the Co-Chairs have initiated a review of CentalNic’s Dispute Resolution Policy (DRP) to determine whether its consideration would fall within the Charter for this WG and, if so, whether any related discussion would be appropriate in either phase I or 2 of our Work Plan. We have not yet reached a conclusion on that matter – and we will not be swayed to reach any particular conclusion by coercive threats or name-calling initiated by any member of this WG.

In the course of our initial inquiry we have found that you initiated pro se litigation against CentralNic, ICANN, Verisign, and other parties in 2012, and that this litigation was dismissed by the U.S. District Court, which also denied your request for reconsideration. The Fourth Circuit Court of Appeals likewise denied your appeal of that decision.

We also observe that on March 29th you received a Private Warning from then Interim Chair Philip Corwin regarding a post you had made to this WG’s email list. For the sake of full transparency we are now appending the text of that warning to this communication so that all WG members are aware of your past behavior.

As stated above, the Co-Chairs are reviewing CentralNic’s DRP to determine whether any review of it fits within this WG’s Charter. And, as stated above, the timing and substance of our preliminary conclusions, which will be shared with the members of this WG, will not be influenced by denigrating comments or coercive threats.

**You should regard this letter as constituting a Public Warning that, in the unanimous view of the Co-Chairs, statements made by you on the RPM WG email list have been in violation of ICANN’s Expected Standards of Behavior and are disruptive to the orderly process of this WG. Therefore, any further conduct of this type will result in your immediate and permanent expulsion from the membership of this WG and the loss of your ability to participate in its meetings or post to its email list.**

**You have now been warned for the second time. We urge you to conduct yourself in an acceptable manner.**

Sincerely,

Philip Corwin

J. Scott Evans

Kathy Kleiman

Addendum: The Co-Chairs further note that on May 8th you sent an additional email to the WG, under the subject heading of “RPM Group <> Re: DomainNameWire ~ CentralNic to nuke a handful of pseudo-domain names”. The Co-Chairs find that email to also contain statements that are also in violation of the Expected Standards of Behavior and are disruptive to the orderly process of this WG. However, as that email was sent prior to our issuance and your receipt of this Public Warning it shall not result in additional disciplinary action.

Text of March 29th Private Warning

Dear Graham:

This is a private response solely between you and I.

I am Interim Chair of this Working Group and am charged with overseeing its formation and initial organization. In case you are not familiar I am a member of the BC and one of its GNSO Councilors; within the BC I represent the Internet Commerce Association, which is composed primarily of domain investors and companies that provide services to them.

The Charter of this WG can be found at <http://gnso.icann.org/en/drafts/rpm-charter-26feb16-en.pdf>. Its purpose to is to review the performance of, and to consider potential procedural; and substantive alterations, of the new gTLD RPMs and, after that, the UDRP.

Aside from the fact that the WG has yet to even begin its work, the two posts you have placed on its mailing list today are not directly related to its work.

In addition, your assertion that “BC Committees are overwhelmingly fortified by people who's primary employment is by R[r]egistry / R[r]egistrar groups” is factually incorrect. In fact, I chair the BC’s Credentials Committee and we do not accept any entity which is an ICANN contracted party or that derives a substantial portion of its income from contracted parties. Additionally, the BC’s membership is irrelevant to the task before this WG.

Further, your statement that “Should either Brian, or the ADR Forum take issue with my questions, they're encouraged to express their thoughts in this WG sphere, where I'll gladly engage.” Is not acceptable because this WG email list is for the reasoned discussion of the WG’s efforts to review the RPMs and UDRP, and not for discussion of your substantially unrelated grievances.

And lastly, your statement that “Brian Winterfeldt will be contending with individualized mention, as he's earlier been apprised”, in my opinion violates ICANN’s Expected Standards of Behavior and, if you pursue that course, will be disruptive to our work.

Whatever dispute you have with Brian or his clients, pursue it elsewhere and not on this WG’s mailing list.

FYI, the GNSO Working Group Guidelines call for the Chair (which is me at present) to enforce the Expected Standards of Behavior. It also provides that:

*"The Chair, in consultation with the Chartering Organization liaison(s), is empowered to restrict the participation of someone who seriously disrupts the Working Group. Any such restriction will be reviewed by the Chartering Organization. Generally, the participant should first be warned privately, and then warned publicly before such a restriction is put into place. In extreme circumstances, this requirement may be bypassed."*

I believe that any further postings of the type you have made threaten to seriously disrupt this WG and distract it from its primary task. **Therefore, this is your private warning that such posts will not be tolerated.**

If you persist in this behavior I will issue one public warning, and any further posts after that which are not relevant to our work and that seek to import an external dispute into our workspace, will leave me with no alternative but to restrict your further participation, subject to GNSO review. I hope there is no need to do so, but if that does occur you will have a right of appeal to the Chair of the GNSO.

If you have any questions please get back to me.

You have been warned.

Sincerely,

Philip