

October 23, 2018

Samantha Eisner
Deputy General Counsel
Internet Corporation for Assigned Names and Numbers

Co-chairs, GNSO-RPM Working Group, and GNSO Liason
(Phil Corwin, Brian Beckham, Kathy Kleiman, Paul McGrady)

Dear Ms. Eisner et al:

I am counsel to George Kirikos, along with Robin Gross. Mr. Kirikos is growing increasingly concerned at what appears to be a campaign of intimidation targeting him, being run by certain ICANN community members. This campaign will not succeed, and Mr. Kirikos requires that it cease immediately.

Mr. Kirikos is being singled out for adverse treatment, because certain community members dislike the content of his communications. However, Mr. Kirikos has not done anything wrong, other than actively participate in the GNSO-RPM-WG, and express opinions and ideas that are opposed by some members.

From our review of the correspondence, it appears that:

- On 14 May 2018, ICANN staff, on behalf of the co-chairs of the GNSO-RPM-WG, sent an ex parte communication soliciting a complaint by Mr. Shatan, as a result of certain communications from Mr. Kirikos.
- On 10 July 2018, via ICANN Staff, the co-chairs of the GNSO-RPM-WG sent Mr. Kirikos a complaint from Greg Shatan, involving Section 3.4 of the Working Group Guidelines and ICANN's Expected Standards of Behavior.
- Mr. Kirikos responded on 10 July 2018, noting he was given only 10 days to respond to the complaint, whereas Mr. Shatan was given 2 months. Mr. Kirikos also noted that he was entitled to all prior unseen documents which were alluded to in the complaint, and that Mr. Corwin and Mr. Beckham were required to recuse themselves.
- Mr. Kirikos added in a separate email on 15 July 2018 that, due to the precise language of Section 3.4 of the Working Group Guidelines, Mr. Shatan lacked a basis to initiate any complaint under that section against Mr. Kirikos.
- Mr. Kirikos was provided with a previously undisclosed e-mail on 20 July 2018, but was told that Mr. Corwin and Mr. Beckham would not recuse themselves. Mr. Kirikos was

told that the process would continue, disagreeing with Mr. Kirikos' analysis of Section 3.4.

- On 24 July 2018, Mr. Kirikos noted he had retained counsel, to deal with the matter going forward.
- On 1 August 2018, Ms. Gross and I submitted procedural concerns on Mr. Kirikos' behalf and invoked a Section 3.7 appeal.
- On 17 August 2018, the Co-Chairs claimed that Mr. Kirikos was in default for failing to provide a response on the merits by their asserted "deadline" of 12 August 2018.
- On 20 August 2018, Mr. Shatan (who is himself a lawyer) objected to Mr. Kirikos' use of counsel, and also expressed concerns about ex parte communications. (On 21 October 2018, we learned that Mr. Shatan had apparently already objected to the Co-Chairs prior to this 20 August 2018 email, but ironically via an ex parte communication.)
- On 21 August 2018, we denied any use of ex parte communications ourselves, and escalated the previously-invoked Section 3.7 appeal to the GNSO Chair, given that our 1 August 2018 email had been apparently ignored by the working group Co-Chairs.
- On 26 August 2018, Mr. Kirikos was advised that the Co-Chairs would be seeking guidance from GNSO Council leadership, the Ombudsman, and ICANN Legal on how best to proceed.
- Mr. Kirikos heard absolutely nothing further with respect to this complaint, or his procedural concerns, until it made its way onto the agenda of ICANN63.
- On 21 October 2018, Mr. Corwin made a one-sided presentation of the matter, before GNSO Council and the public, which contained inaccurate statements regarding the dispute. For example, Mr. Corwin claimed that Mr. Kirikos started the April 2018 email chain and was off-topic, when in fact the relevant email chain had been started by ICANN Staff (regarding Nominations in March 2018) and Mr. Kirikos' posts were on-topic. The public and GNSO Council was told that there were 5 complaints against Mr. Kirikos, although he had only ever heard of the one from Mr. Shatan. Mr. Kirikos has never been the subject of any adverse determination.
- At ICANN63, the matter was apparently discussed between Heather Forrest, Donna Austin, Rafik Dammak and the Co-Chairs. They referred the matter of the participation of counsel to you in your capacity as Deputy General Counsel of ICANN.
- You reached out to Mr. Kirikos and Mr. Shatan, and indicated that if they were in Barcelona, you were available to meet in person to provide information or discuss.
- Mr. Kirikos is not in Barcelona. He is not sure whether Mr. Shatan is in Barcelona, or whether he has met with you.
- On 23 October 2018, Mr. Corwin, in his capacity as Co-Chair (rather than in a personal capacity), sent an email to the working group mailing list accusing Mr. Kirikos of inappropriate conduct by his use of the word "wishlists". The common meaning of the

term is “a list of desired things or occurrences.” Mr. Kirikos later pointed out in a response the same day that the word had already been used by others in that PDP and within the ICANN community. Mr. Corwin singled Mr. Kirikos out for disparate treatment.

In short, Mr. Kirikos has strong concerns that whatever process ICANN purports to operate with respect to Mr. Shatan’s complaint, it will not be fairly or neutrally adjudicated. We have previously argued for the recusal in prior letters, and the subsequent events reinforce our position.

With respect to the purported complaint based on the Expected Standards of Behavior, it is clear from the circumstances surrounding their adoption that they were never intended to be enforceable as law. The Minutes of the 25 June 2016 ICANN Board Meeting that adopted the current Expected Standards of Behaviour clearly state that:

The Board notes that the Expected Standards of Behavior are meant to be high level, and general statements about how ICANN (Internet Corporation for Assigned Names and Numbers) participants should treat each other, and they are **admittedly not meant to be formal policies of conduct with defined actionable consequences.** (emphasis added).¹

In other words, Mr. Shatan, the Co-Chairs, and ICANN are relying on non-binding standards, using a flawed process, that (months after it commenced) has not resolved the issues of conflicts of interest, right to counsel or ex parte communications. The subject of the complaint is non-violent, non-threatening speech. No one has been harmed, no one’s participation rights have been curtailed, and Mr. Shatan appears to be as active as ever in ICANN and GNSO related matters, debating with Mr. Kirikos as recently as this weekend.

On behalf of Mr. Kirikos, we demand that ICANN put an end to this campaign to silence him, which appears in the guise of an uncertain and unfair process.

Finally, we would ask that you do not communicate with our client directly regarding this matter, and instead all parties concerned direct any further correspondence to counsel, myself and Ms. Gross.

We look forward to hearing from you.

Yours very truly,

Andrew Bernstein

cc: Greg Shatan
Robin Gross

¹ Source: <https://www.icann.org/resources/board-material/minutes-2016-06-25-en#2.f> Also see the sixth page of the attached annotated PDF excerpt of a printout of those minutes (numbered "Page 40 of 44").