

## ICM REGISTRY PREVAILS OVER ICANN IN THE FIRST EVER INDEPENDENT REVIEW PROCESS

**Washington, D.C. – 22 February 2010:** In the first test of ICANN’s Independent Review Process, a panel of highly regarded international jurists has determined, in a majority decision, that ICANN’s handling of ICM Registry’s application to run the .xxx top level domain violated ICANN’s Bylaws and Articles of Incorporation, as well as international and California law. ICANN and ICM were notified of the decision by the American Arbitration Association’s International Center for Dispute Resolution on 19 February 2010.

The Independent Review Panel, which was constituted pursuant to ICANN’s Bylaws, found that the ICANN Board’s vote on ICM’s application on 1 June 2005 reflected the Board’s determination that the application “met the required sponsorship criteria,” and that reconsideration of that finding by the Board was “not consistent with the application of neutral, objective and fair documented policy,” as required by ICANN’s Bylaws. The Panel found “grounds for questioning the neutral and objective performance of the Board” during the registry agreement negotiations with ICM, and further suggested that the Board, motivated in part, by “[t]he *volte face* in the position of the United States Government” had breached “its obligation not to single out ICM Registry for disparate treatment.”

Additionally, the Panel declared unequivocally that, in light of its founding history and global responsibilities, ICANN must operate in conformity with relevant principles of international law. The Panel determined that within an IRP, the actions of ICANN’s Board must be reviewed objectively and should not be afforded special deference. As a result of all of these holdings in ICM’s favor, the Panel declared ICM the prevailing party in the dispute and assigned responsibility to ICANN to pay approximately \$480,000 to cover the costs of the process.

ICM’s Chairman, Stuart Lawley, described the decision as “a victory for ICM Registry and for the ICANN model of private sector management of the Domain Name System.” According to Lawley “ICANN established the review process as part of its system of accountability to all

Internet stakeholders. As an aggrieved party, we invoked ICANN's procedures, expended a lot of resources, and fought hard for our rights. The Panel took its job very seriously. The Panelists studied everything that the parties submitted and listened to the witnesses very carefully during the course of a week long hearing in Washington, D.C. And they have now issued a detailed ruling in ICM's favor. We believe that ICANN's new leadership has the vision to embrace the decision as an opportunity to strengthen the ICANN model and comply with the rule of law. We commit to working with them in partnership and cooperation to that end. We are eager to execute a registry agreement, complete the build out of our business, and implement the vision that started all of this over 6 years ago. Too much time has been lost and resources wasted—from both sides—already.”

Observers have called the result a “landmark” decision and are hopeful that the Board will seize this opportunity to demonstrate its commitment to accountability and to evaluate its policies and procedures to ensure that future decision-making is conducted in conformity with the letter and spirit of ICANN's limited technical mission. The ICANN Board is expected to consider the decision during its meetings in Nairobi, Kenya in early March. ICM is hopeful that the ICANN Board will demonstrate that it respects the results of the process it has created by awarding ICM Registry a contract to operate the .xxx domain. The good faith participation of both parties in the Independent Review Process, the distinguished nature of the Panel, and the carefully considered and reasoned decision all represent great progress in ICANN's procedures for accountability and transparency, but the true test will be ICANN's response to the rule of law. ICANN cannot expect to retain the respect of the internet community if it disregards the Panel's holdings or takes no action to remedy its past failures. Any attempt by ICANN to evade the results of the Panel's review will demonstrate that, whatever ICANN's aspirations may be, it is not, in fact, committed to accountability and transparency. Such a result would be a far greater loss for ICANN than the Panel's rejection of its arguments.

The reviewing Panel consisted of three jurists with extraordinary credentials and expertise. Jan Paulsson, selected by ICM Registry, is a highly regarded expert in international arbitration who

is president of both the London Court of International Arbitration and the World Bank Administrative Tribunal, and was recently appointed the Michael Klein Distinguished Scholar Chair at the University of Miami Law School. Dickran M. Tevrizian, Jr., who ICANN selected to serve on the panel, was a United States District Judge for the Central District of California. Stephen M. Schwebel, selected by Mr. Paulsson and Judge Tevrizian to chair the Panel, is an international law expert who served on the International Court of Justice from 1981 to 2000, including as its president from 1997 – 2000. Judge Schwebel authored the declaration, which was supported by Mr. Paulsson in its entirety. Judge Tevrizian dissented from the majority opinion.

ICM were represented in the Independent Review Process by Crowell & Moring LLP, a Washington, D.C.-based international law firm. ICANN were represented by Jones Day. ICM's witnesses included Stuart Lawley, J. Beckwith Burr, Dr. Elizabeth Williams, Professor Milton Mueller and Professor Jack Goldsmith. ICANN's witnesses were Dr. Vinton Cerf, Dr. Paul Twomey, Dr. Alejandro Pisanty and Professor David Caron.

The Panel's ruling can be found at [www.icmregistry.com/irp](http://www.icmregistry.com/irp)