

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

NETSPHERE, INC.,	§	
MANILA INDUSTRIES., INC., AND	§	
MUNISH KRISHNAN	§	
	§	
PLAINTIFFS,	§	
	§	
V.	§	CIVIL ACTION NO. 3:09-CV-0988-F
	§	
JEFFREY BARON AND	§	
ONDOVA LIMITED COMPANY,	§	
	§	
DEFENDANTS.	§	

**THE RECEIVER’S RESPONSE TO ICANN’S LATEST  
NOTICE TO THE COURT AND REQUEST FOR FINDING OF CONTEMPT**

ICANN did not comply with the various Court Orders to stop the UDRP proceeding against funnygames.com (the “ICAAN UDRP”). In fact, ICANN did not even make a good-faith attempt to comply. Having given ICANN numerous opportunities, and with ICANN thumbing its nose at the Court, the Court should hold ICANN in contempt.

**A. ICANN did not comply with the various Court Orders.**

The Court repeatedly ruled that ICANN has the authority, if it so chose to use it, to stop the ICANN UDRP. [Docket Nos. 724, 726, 731, and 738.] The Court has also repeatedly ordered ICANN to utilize this authority to actually stop the ICANN UDRP. [*Id.*] Despite being given a number of opportunities to comply with the Orders, ICANN has failed to do so. Specifically, ICANN has not stopped the ICANN UDRP and admits as much. [Docket Nos. 728, 737, 741.] Thus, ICANN should be held in contempt of the Court’s Orders.

**B. ICANN did not make even a good-faith attempt to comply with the Court Orders.**

ICANN has repeatedly argued (unpersuasively and incorrectly) that it lacks the authority to stop the ICANN UDRP. [*Id.*] Assuming, *arguendo*, that ICANN were correct and the Court simply misunderstood the law or forgot to review the ICANN declaration (as ICANN strangely suggests), were ICANN to instruct WIPO to stop the ICANN UDRP, WIPO would presumably disregard the instruction anyway. Thus, ICANN's efforts in that hypothetical case would prove futile, but no harm to ICANN would occur.

So, in an effort to show this Court a good-faith attempt to comply with the Court Orders, one would assume that ICANN would have simply sent a letter to WIPO instructing WIPO to stop the ICANN UDRP (and not care whether WIPO would follow or disregard the instruction). But ICANN did not act in good faith. Instead, ICANN sent a letter to WIPO not instructing it to do anything, but merely "notifying WIPO of the Court's order that ICANN 'stay and abate' the UDRP proceeding on www.funnygames.com." [Docket No. 741, at Exhibit 1 (letter from ICANN to WIPO).]

Furthermore, in the ICANN letter, ICANN also "requests" that WIPO keep ICANN informed of some items. [*Id.*] Can ICANN make a request like that to WIPO without the authority to enforce that request? Apparently, ICANN believes so! So, if that were the case, why couldn't ICANN have likewise "requested" that WIPO stay and abate the ICANN UDRP? The answer is because ICANN wrongly believes it appropriate merely to respond to a Federal District Court, "I would prefer not to." (*See generally*, Herman Melville, Bartleby, the Scrivener: A Story of Wall-street, Melville House Publishing, Brooklyn, New York, 2010 reprint). This demonstrates ICANN's failure to act in good faith and further supports why the Court should hold ICANN in contempt.

Respectfully submitted,

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**ATTORNEYS FOR THE RECEIVER,  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served via the Court's ECF system on all counsel of record on December 19, 2011.

/s/ Peter L. Loh  
Peter L. Loh