

## Response to Documentary Information Disclosure Policy Request

To: Mr. Garth Bruen

Date: 7 March 2013

Re: Requests No. 20130205-1, 20130205-2, 20130205-3, 20130205-4, 20130205-5, 20130205-6, 20130205-7, 20130205-8 and 20130205-9

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Thank you for your Requests for Information dated 5 February 2013 (the "Requests"), which were submitted through the Internet Corporation for Assigned Names and Numbers' (ICANN) Documentary Information Disclosure Policy (DIDP). For reference, a copy of your Requests are attached to the email forwarding this Response.

### Items Requested

For each of the nine Requests, each referencing tickets submitted in mid-2011 through the Whois Data Problem Reporting Service (WDPRS), the same points of information were requested:

1. Correspondence from ICANN, manual and automatic, to Registrar [] including dates, concerning the listed tickets.
2. Ticket details including notes entered by staff as well as system generated logs, including dates, concerning the listed tickets.
3. Correspondence from Registrar [] to ICANN, including dates, detailing inquiry results as provided by Registrar [] showing contact attempts via email, phone, postal mail to the registrant concerning the listed tickets.
4. DNS records indicating status changes in the zone files, with date of changes, for the domains cited in the listed tickets
5. ICANN internal communications and memos concerning the listed tickets especially the documented reasoning why [] was not issued a breach notice for failing to respond to the listed ticket

### Response:

The majority of items for which you seek documents (1, 2, and 3) are – to the extent they exist within ICANN – documentation of ICANN's work in furtherance of its contractual compliance process. It is essential for ICANN to have the ability to communicate with its contracted parties on compliance-related complaints and investigations in a way that encourages the open exchange of information with those contracted parties. As a result, and particularly when the formal Contractual Compliance enforcement process has not been initiated, documentation of ICANN's investigatory communications with its contracted parties typically fall within the following Defined Conditions for Nondisclosure:

- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with

which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.

- Information provided to ICANN by a party that, if disclosed, would or would be likely to materially prejudice the commercial interests, financial interests, and/or competitive position of such party or was provided to ICANN pursuant to a nondisclosure agreement or nondisclosure provision within an agreement.

Specific tickets within ICANN's Contractual Compliance systems are currently where communications between ICANN and registrars on those specific issues are logged. As a result, the ticket logs (including the communications between ICANN and the registrars named in your Requests) are not appropriate for disclosure through the DIDP. To the extent that documented communication about the tickets referenced in your Requests occurred outside of the ticketing system between ICANN and the referenced registrars, those off-ticket communications are also subject to the same Defined Conditions for Nondisclosure.

To the extent that any documents exist that relate to item 5 above (ICANN's internal communications on the specific tickets) those documents are also subject to Defined Conditions for Nondisclosure, including:

- Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including internal documents, memoranda, and other similar communications to or from ICANN Directors, ICANN Directors' Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.
- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.
- Confidential business information and/or internal policies and procedures.
- Information subject to the attorney-client, attorney work product privilege, or any other applicable privilege, or disclosure of which might prejudice any internal, governmental, or legal investigation.
- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.

These internal communications appear both within the specific tickets, as well as off-ticket. In general, ICANN's deliberative process in proceeding through the Contractual Compliance enforcement stages on specific tickets is not appropriate for public disclosure for the same reason that ICANN does not release communications between ICANN and the contracted

parties on specific tickets. It is essential for ICANN to have the ability to conduct its compliance-related complaint investigations in a way that encourages the open exchange of information and informal resolution of those complaints.

Notably, your history of communication with ICANN's Contractual Compliance Department on these specific tickets has generated some internal communications as the Department prepares responses to the follow-up inquiries you have submitted that seek much of the same information sought within your DIDP Requests. The internal exchange of draft documents and reports that were ultimately submitted to you in response to those inquiries is not subject to disclosure under the DIDP pursuant to the conditions listed above. As the finalized responses (which appear to include reference to the tickets identified in your Requests) have already been provided to you, ICANN is not providing those documents to you with this DIDP Response.

For each of the items identified above as subject to Defined Conditions for Nondisclosure, ICANN has determined that there are no particular circumstances for which the public interest in disclosing the information outweighs the harm that may be caused to ICANN's internal Contractual Compliance processes by the requested disclosure. Further, the enhanced level of Contractual Compliance Department reporting that exists today demonstrates far greater transparency into the Department's operations than ever before, which also mitigates against the value of releasing information regarding internal investigations of tickets submitted over 18 months ago.

In reference to Item 4 identified above (DNS records documenting the status changes in zone files for each of the referenced domain name registrations), zone file data is publicly available (subject to contractual conditions) from Registry Operators. For example, information on Verisign's zone file access program is available at [http://www.verisigninc.com/en\\_US/products-and-services/domain-name-services/registry-products/tld-zone-access/index.xhtml](http://www.verisigninc.com/en_US/products-and-services/domain-name-services/registry-products/tld-zone-access/index.xhtml). The DIDP is available for information related to ICANN's operational activities that is not already publicly available.

### **About DIDP**

ICANN's DIDP is limited to requests for information already in existence within ICANN that is not publicly available. In addition, the DIDP sets forth Defined Conditions of Nondisclosure. To review a copy of the DIDP, which is contained within the ICANN Accountability & Transparency: Framework and Principles please see <http://www.icann.org/en/about/transparency/didp>. ICANN makes every effort to be as responsive as possible to the entirety of your Request.

We hope this information is helpful. If you have any further inquiries, please forward them to [didp@icann.org](mailto:didp@icann.org).