To: Ivan Castaño on behalf of the Government of Colombia

Date: 23 April 2019

Re: Request No. 20180402-1

This is in response to your request for documentary information (Request), which was submitted on 2 April 2019 through the Internet Corporation for Assigned Names and Numbers' (ICANN org) Documentary Information Disclosure Policy (DIDP) on behalf of the Colombian government. For reference, a copy of your Request is attached to the email forwarding this Response.

Items Requested

Your Request seeks the disclosure of the following documentary information related to Specification 13 (.Brand TLD Provisions) and Specification 11 (Public Interest Commitments) of the New gTLD Registry Agreement:

1. [A]ny documents in connection with requests and/or ICANN Org responses regarding Registry Operators seeking to amend Specification 13…To be clear, the Colombian government is not seeking the identity of any Registry Operator, it is just trying to understand the substantive discussions that ICANN Org has had with other contracting parties to determine the latitude which ICANN Org may have to accommodate Amazon's [corporation] proposal; and

2. [A]ll documents in connection with ICANN Org communication with interested Registry Operator(s) regarding any proposed changes to the [Public Interest Commitments] (PIC) Specification.

Response

I. Background Information

   A. The New gTLD Program

In 2005, ICANN's Generic Names Supporting Organization (GNSO) began a policy development process to consider the introduction of new generic top-level domains (gTLDs), based on the results of trial rounds conducted in 2000 and 2003. (*See* http://newgtlds.icann.org/en/about/program.) In 2008, the ICANN Board adopted 19 specific GNSO policy recommendations for implementing new gTLDs, with certain allocation criteria and contractual conditions. (*Id.*) After approval of the policy, ICANN undertook an open, inclusive, and transparent implementation process to address stakeholder concerns, such as the protection of intellectual property and community interests, consumer protection, and DNS stability. (*Id.*) This work included public consultations, review, and input to multiple draft versions of the Applicant Guidebook.

(*Id.*) In June 2011, ICANN's Board of Directors approved the Applicant Guidebook and authorized the launch of the New gTLD Program. (*Id.*) The application window opened on 12 January 2012. In October 2013, the first new gTLDs were delegated. (*Id.*)

The new gTLD Registry Agreement (RA) is the formal written and binding agreement between the applicant and ICANN org that sets forth the rights, duties, liabilities and obligations of the applicant as a Registry Operator. (*See* https://newgtlds.icann.org/en/applicants/agb/base-agreement-contracting.) This is the document that will be entered into by successful applicants and ICANN org before proceeding to the next phase of delegation and will contain the rights and obligations of each new gTLD Registry Operator. (Applicant Guidebook, Module 5, § 5.1:Transition to Delegation, https://newgtlds.icann.org/en/applicants/agb/transition-delegation-04jun12-en.pdf.)

       B.   Specification 11: Public Interest Commitments

Each new gTLD application includes statements of intent regarding applicant plans for operation of the proposed new gTLD registry. (*See* https://www.icann.org/resources/pages/base-agreement-2013-02-05-en.) Outside of community-based applications, there are no mechanisms for requiring these plans and objectives to be incorporated into the RA. (*Id.*) In its Toronto Communiqué, the ICANN Governmental Advisory Committee (GAC) advised the ICANN Board that "it is necessary for all of these statements of commitment and objectives to be transformed into binding contractual commitments, subject to compliance oversight by ICANN." (*See* https://gac.icann.org/advice/communiques/public/gac-45-toronto-communique.pdf.) In response to the GAC, the Public Interest Commitments Specification (Specification 11), was developed in consultation with the community and incorporated into the RA as a mechanism to transform application statements into binding contractual commitments, as well as give applicants the opportunity to voluntarily submit to heightened public interest commitments. (*See* https://www.icann.org/resources/pages/base-agreement-2013-02-05-en.)

The purpose of Specification 11 is to ensure new gTLD Registry Operators use only Registrars that have signed the 2013 Registrar Accreditation Agreement, allow Registry Operators to commit to certain statements made by the Registry Operators in their gTLD applications, and specify additional public interest commitments, transforming such commitments into binding contractual obligations. (*See* https://www.icann.org/resources/pages/base-agreement-2013-02-05-en.)

Applicants are required to submit their PIC Specifications to ICANN org. (*See* https://newgtlds.icann.org/en/applicants/agb/base-agreement-specs-pic-faqs.) Once submitted, the PIC specifications will be posted on the new gTLD microsite at https://gtldresult.icann.org/applicationstatus/viewstatus for public consultation. During the application process, applicants have the ability to request changes to their submitted PIC Specification prior to contracting via the change request process. (*See* http://newgtlds.icann.org/en/applicants/global-support/change-requests.) Once the

PIC Specifications are incorporated into Specification 11 of the fully executed RA, the change request process no longer applies. (*Id.*)

C. Specification 13: .Brand TLD Provisions

On 26 March 2014, the New gTLD Program Committee (NPGC) of the ICANN Board adopted Resolutions 2014.03.26.NG01 – 2014.03.26.NG02 which added Specification 13 to the RA for Brand category applicants. Specification 13 was drafted with input from the community and provides the following modifications to the RA for those applicants that qualify as a .Brand TLD. (*See* https://newgtlds.icann.org/en/announcements-and-media/announcement-14apr14-en; and https://newgtlds.icann.org/en/applicants/agb/base-agreement-contracting/specification-13-applications.)

- The TLD string is identical to the textual elements protectable under applicable law, of a registered trademark valid under applicable law;

- Only Registry Operator, its Affiliates or Trademark Licensees are registrants of domain names in the TLD and control the DNS records associated with domain names at any level in the TLD;

- The TLD is not a Generic String TLD (as defined in Specification 11); and

- Registry Operator has provided ICANN with an accurate and complete copy of such trademark registration.

In 2014, ICANN org engaged in bilateral negotiations with the Registries Stakeholder Group (RySG) regarding certain proposed changes to the then existing base Registry Agreement. (*See* https://www.icann.org/resources/board-material/resolutions-2017-05-18-en#2.a.) Following two public comment periods and achieving the required voting threshold, the ICANN Board, on 18 May 2017, directed the President and CEO, or his designee(s) to finalize and execute the Global Amendment to the base RA (the 2017 Global Amendment) which included several updates to Specification 13. (*See* https://www.icann.org/resources/board-material/resolutions-2017-05-18-en#2.a.) The 2017 Global Amendment became effective on 31 July 2017 and is applicable to all Registry Agreements that are identified in Schedule A of the 2017 Global Amendment. (*See* https://www.icann.org/resources/pages/global-amendment-base-new-gtld-registry-agreement-2017-01-23-en#background.) The current version of the base New gTLD RA along with Specification 13 is available on the ICANN Registry Agreements webpage.

Any Registry Operator wishing to qualify as a .Brand TLD and receive a Specification 13 to its RA may submit an application for Specification 13 to ICANN org. (*See* https://newgtlds.icann.org/en/applicants/agb/base-agreement-contracting#spec13.) All Specification 13 applications are posted for comment on the Specification 13 webpage at https://newgtlds.icann.org/en/applicants/agb/base-agreement-contracting/specification-13-applications for 30 days. All input receive will be

considered by ICANN org in determining whether a Specification 13 application should be granted. The posting of an application for public comment does not mean and should not be construed as a determination by ICANN org that the TLD meets the criteria to be qualified as a .Brand TLD. (*See* https://newgtlds.icann.org/en/applicants/agb/base-agreement-contracting/specification-13-applications.) Even if no public comments are received objecting to the designation of a TLD as a .Brand TLD, ICANN org will review the application and may determine that the TLD does not qualify as a .Brand TLD. (*Id.*)

ICANN org makes available information on the Specification 13 webpage:

- Process for Specification 13, https://newgtlds.icann.org/en/applicants/agb/base-agreement-spec-13-application-form-15jul14-en.pdf;

- Specification 13 FAQ, https://newgtlds.icann.org/en/applicants/agb/base-agreement-spec-13-faqs-15jul14-en.pdf;

- The current form of Specification 13, effective 31 July 2017, https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-specification-13-31jul17-en.pdf; and

- Specification applications for current Registry Operators, comments submitted, and status of the applications, https://newgtlds.icann.org/en/applicants/agb/base-agreement-contracting/specification-13-applications.

II.   Items Requested

The DIDP is a mechanism, developed through community consultation, to ensure that information contained in documents concerning ICANN org's operational activities, and within ICANN's possession, custody, or control, is made available to the public unless there is a compelling reason for confidentiality. (*See* https://www.icann.org/resources/pages/didp-2012-02-25-en.) DIDP requests are responded to in accordance with the DIDP Response Process. Under the DIDP Response Process, DIDP responses are provided within 30 calendar days upon receipt of a DIDP request. (*See* https://www.icann.org/resources/pages/didp-2012-02-25-en.) If that time frame will not be met, ICANN org will inform the requester in writing as to when a response will be provided. (*Id.*) Given the sensitive nature of the current Request, ICANN org has made considerable effort to meet its obligations to respond to the Request well before the 30-day deadline, which expires on 2 May 2019.

Item 1
Item 1 seeks the disclosure of "any documents in connection with requests and/or ICANN Org responses regarding Registry Operators seeking to amend Specification 13." The Request further notes that the Requestor is not seeking the identity of any Registry Operator.

In accordance with the DIDP Response Process, in responding to this item, ICANN org conducted interviews of relevant staff members and conducted an organization wide search for documents responsive to this item. Aside from the 2017 Global Amendment to the base New gTLD RA, which included, among other things, certain changes to Specification 13 that applied to all gTLDs that have been approved for Specification 13 and that are identified in Schedule A of the 2017 Global Amendment, ICANN org has not received requests from any Registry Operator to amend Specification 13 since it was approved by the Board on 16 March 2014. As such, there are no documents responsive to this item.

Item 2
Item 2 seeks the disclosure of "all documents in connection with ICANN Org communication with interested Registry Operator(s) regarding any proposed changes to the PIC Specification."

In accordance with the DIDP Response Process, in responding to this item, ICANN org conducted interviews of relevant staff members and conducted an organization wide search for documents responsive to this item. Following the due diligence review of potentially responsive documents, ICANN org has determined there is one request from a Registry Operator to amend its Specification 11 that is responsive to this item. While ICANN org cannot disclose details of the Registry Operator's request to amend its Specification 11 and ICANN org's response for the reasons set forth below, ICANN org notes that it was unable to proceed with the request at the time and deferred the request. The documents regarding the Registry Operator's request to amend its Specification 11 are subject to the following DIDP Conditions of Nondisclosure (Nondisclosure Conditions) and are therefore not appropriate for disclosure:

- 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.

- 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.

- 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.

Notwithstanding the applicable Nondisclosure Conditions identified in this Response, ICANN org has considered whether the public interest in disclosure of the information

subject to these conditions at this point in time outweighs the harm that may be caused by such disclosure. ICANN org has determined that there are no current circumstances for which the public interest in disclosing the information outweighs the harm that may be caused by the requested disclosure.

About DIDP

ICANN's DIDP is limited to requests for documentary 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, 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. As part of its accountability and transparency commitments, ICANN continually strives to provide as much information to the community as is reasonable. We hope this information is helpful. If you have any further inquiries, please forward them to didp@icann.org.