

To: Flip Petillion on behalf of Namecheap Inc.

Date: 7 February 2020

Re: Request No. 20200108-1

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This is in response to your request for documentary information (Request), which was submitted on 8 January 2020 through the Internet Corporation for Assigned Names and Numbers' (ICANN organization or ICANN org) Documentary Information Disclosure Policy (DIDP). For reference, a copy of your Request is attached to the email forwarding this Response.

### **Items Requested**

Your Request seeks the disclosure of 34 categories of documentary information which are set forth below as they were presented in your Request.

#### Part 1:

Part 1 of your Request seeks "all documents directly and indirectly relating to the negotiations pertaining to the reassignment, renewal and amendments of the .ORG, .BIZ, and/or .INFO Registry Agreements, including but not limited to:"

1. An executed copy of all Registry Agreements (and amendments thereto) for the original gTLDs (.COM, .NET, .ORG) and the gTLDs that were delegated pursuant to ICANN Resolution 00.89 of 16 November 2000, including those agreements that have been terminated reassigned or renewed.
2. All correspondences between ICANN and the registry operators (and their representatives) in relation to the .ORG, .BIZ, and/or .INFO Registry Agreements.
3. All requests from the registry operators (and their representatives) in relation to the reassignment of the .ORG, .BIZ and/or .INFO Registry Agreements.
4. All requests from the registry operators (and their representatives) in relation to the renewal of the .ORG, .BIZ and/or .INFO Registry Agreements.
5. All requests from the registry operators (and their representatives) in relation to the modification of the price caps in the .ORG, .BIZ and/or .INFO Registry Agreements.
6. All requests from the registry operators (and their representatives) in relation to the removal of the price caps in the .ORG, .BIZ and/or .INFO Registry Agreements.

7. Any document showing the reasons for ICANN to accept to examine requests for such renewal, modification and removal.
8. Any document showing the reasons for ICANN to accept requests for such renewal, modification and removal.
9. Any document showing that ICANN has considered, and made a reasoned decision, as to the question whether the renewal of the .ORG registry agreement, including the removal of the price cap, is in line with the requirement for the .ORG registry fee charged to accredited registrars to be as low as feasible consistent with the maintenance of good quality service, as this requirement was laid out in the DNSO policy and in the request for proposals for reassignment of the .ORG gTLD, as imposed in 2002, never modified since, and still applicable in 2019.
10. All exchanges of communication between ICANN and the registry operators discussing such renewal, modification and removal.
11. All communications between ICANN staff and the ICANN Board in relation to the .ORG, .BIZ and/or .INFO Registry Agreements, including with regard to said renewal, modification and removal, the reasons to accept to examine said requests and the reasons to accept said requests.
12. All communications between ICANN staff and individual ICANN Board members in relation to the .ORG, .BIZ and/or .INFO Registry Agreements, including with regard to said renewal, modification and removal, the reasons to accept to examine said requests and the reasons to accept said requests.
13. All communications between ICANN staff in relation to the .ORG, .BIZ and/or .INFO Registry Agreements, including with regard to said renewal, modification and removal, the reasons to accept to examine said requests and the reasons to accept said requests.
14. All communications between ICANN Board members in relation to the .ORG, .BIZ, and/or .INFO Registry Agreements, including with regard to said renewal, modification and removal, the reasons to accept to examine said requests and the reasons to accept said requests.
15. All communications between ICANN staff or ICANN Board member and any other person or organization other than ICANN staff or ICANN Board members in relation to the .ORG, .BIZ and/or .INFO Registry Agreements, including with regard to said renewal, modification and removal, the reasons to accept to examine said requests and the reasons to accept said requests.
16. All documents related to the preparation of the Report of Public Comments for Proposed Renewal of .ORG, .BIZ and/or .INFO Registry Agreements, including summaries and analysis, including the documents exchanged between ICANN staff and ICANN Board, between ICANN Board members, and between ICANN

staff or ICANN Board members and any other person or organization other than ICANN staff or ICANN Board members.

17. Any and all authorizations granted by, and communications with, government officials in relation to the delegation, reassignment, renewal, amendments and/or operation of the .ORG, .BIZ and/or .INFO Registry Agreements.

#### Part 2:

Part 2 of your Request seeks “all documents directly and indirectly relating to economic studies, impact studies, and other studies ICANN has commissioned, examined and/or performed with respect to competition and/or pricing of TLDs (in particular original gTLDs (.COM, .NET, .ORG) and gTLDs that were delegated pursuant to ICANN Resolution 00.89 of 16 November 2000 (e.g., .BIZ, .INFO)), and with respect to vertical integration between registries and registrars, including but not limited to:”

1. The requests for proposals and expressions of interest for performing the studies.
2. The selection criteria of the service providers, performing the studies.
3. The draft reports of the studies.
4. The reasons given by the authors of the studies to change draft reports before issuing final studies.
5. The final studies.
6. The names and qualifications of the authors and participants of the studies.
7. The documentation on which the studies were based.
8. The contractual arrangement with the authors of the studies.
9. The price paid by ICANN for the studies.
10. Any document containing ICANN’s analysis and/or summary of these studies and of the comments made in response to these studies.
11. All communication between ICANN and the authors and participants of the studies.

#### Part 3:

Part 3 of your Request seeks “all documents directly and indirectly relating to the change of control of Public Interest Registry, including but not limited to:”

1. All correspondences between ICANN and Public Interest Registry, their representatives, their related companies and organizations relating to the change of control of Public Interest Registry.
2. All communications between ICANN staff and the ICANN Board in relation to the change of control of Public Interest Registry.
3. All communications between ICANN staff and individual ICANN Board members in relation to the change of control of Public Interest Registry.
4. All communications between ICANN staff in relation to the change of control of Public Interest Registry.
5. All communications between ICANN Board members in relation to the change of control of Public Interest Registry.
6. All communications between ICANN staff or individual ICANN Board members and any other person or organization other than ICANN staff or ICANN Board member.

## Response

### I. Background Information

ICANN org makes available all Registry Agreements (RAs) executed by ICANN org through the [Registry Agreements page](#) as a matter of course. Each top-level domain (TLD) has its own RA page detailing all RAs signed to date, including all appendices, amendments and renewals.

#### A. Historic .BIZ, .INFO and .ORG Registry Agreements

##### .BIZ Registry Agreement

On [11 May 2001](#) (2001 .BIZ RA), ICANN org entered into an RA with NeuLevel to operate the .BIZ generic top-level domain (gTLD). (See <https://www.icann.org/resources/agreement/biz-archive-2001-05-11-en>.) The 2001 .BIZ RA was amended on [18 June 2003](#). On [8 December 2006](#) (2006 .BIZ RA), ICANN org entered into an RA with NeuStar for the operation of the .BIZ gTLD which was subsequently amended on [27 April 2010](#) and renewed on [22 August 2013](#) (2013 .BIZ RA) and [30 June 2019](#) (2019 .BIZ RA).

##### .INFO Registry Agreement

On [11 May 2001](#) (2001.INFO RA), ICANN org entered into an agreement with Afilias under which Afilias would operate the .INFO gTLD. The 2001 .INFO RA was renewed on [8 December 2006](#) (2006 .INFO RA) and amended on [26 May 2010](#). The 2006 .INFO RA was subsequently renewed on [15 September 2010](#) (2010 .INFO RA), on [22 August 2013](#) (2013 .INFO RA) and [30 June 2019](#) (2019 .INFO RA).

## .ORG Registry Agreement

On 28 September 1999, ICANN org [announced](#) a tentative agreement with the United States Department of Commerce and Network Solutions, Inc. (NSI) on a series of agreements. (See <https://archive.icann.org/en/nsi/nsi-registry-agreement-04nov99.htm>.) After written and oral public comments, these agreements were [approved](#) by the ICANN Board on 4 November 1999. (*Id.*) One of these agreements was a registry agreement (RA) under which NSI would operate the registries for the .COM, .NET, and .ORG (gTLDs) according to the requirements stated in the RA and to be developed through the ICANN consensus-based process. (*Id.*)

On 25 May 2001, ICANN org terminated its agreement with NSI and entered into individual RAs with Verisign, Inc. for .COM, .NET and .ORG. (See <https://www.icann.org/resources/unthemed-pages/termination-nsi-agreement-2001-05-25-en>.) Beginning in April 2002, ICANN org engaged in a Request for Proposal (RFP) process to identify a successor operator for .ORG. (See <https://archive.icann.org/en/tlds/org/> and <https://archive.icann.org/en/tlds/org/rfp-20may02.htm>.) Associated documents regarding the RFP process and selection and approval of Public Interest Registry (PIR) as the successor operator for .ORG are available at the webpage entitled “[Materials on .org Reassignment](#).” On [2 December 2002](#), ICANN org entered into an RA with PIR for the operation of .ORG, which was subsequently renewed on [8 December 2006](#) (the 2006 .ORG RA), on [22 August 2013](#) (the 2013 .ORG RA) and on [30 June 2019](#) (the 2019 .ORG RA).

## **B. The 2006 .BIZ, .INFO and .ORG Renewals**

On 28 June 2006, ICANN org posted the .BIZ, .INFO and .ORG RAs for public comment. (See <https://www.icann.org/news/announcement-2-2006-06-27-en> and <https://www.icann.org/news/announcement-3-2006-07-28-en>.) Following a review of the public comments, ICANN org prepared a [Draft Summary of Public Comments on the Proposed .BIZ, .INFO, and .ORG Agreements](#) (Draft Summary) for the Board’s review. At the Board’s request, on 11 September 2006, the Draft Summary was posted for further public comment. (See <https://www.icann.org/news/announcement-2-2006-09-11-en>.) On 27 September 2006, the General Counsel and Secretary of ICANN issued a Secretary’s Notice requesting the registries (for .BIZ, .INFO and .ORG) to respond to the issues raised in the public comments. (See <https://www.icann.org/resources/board-material/secretarys-notice-2006-09-27-en>.) On 12 October 2006, ICANN org posted the registries’ responses to the public comments. (See <https://www.icann.org/news/announcement-2-2006-10-12-en>.) After having considered the public comments and the responses from the registries, the ICANN Board requested ICANN org to renegotiate the proposed agreements. (See <https://www.icann.org/resources/board-material/minutes-2006-10-18-en>.) On 24 October 2006, ICANN org posted the revised .BIZ, .INFO and .ORG RAs for public comment. (See <https://www.icann.org/news/announcement-2006-10-24-en>.) Having considered the revised 2006 .BIZ, .INFO and .ORG RAs, the public comments received, and the registry responses to the public comments, the ICANN Board approved the

2006 .BIZ, .INFO and .ORG RAs (as proposed and posted during the public comment period for the revised RAs). (See <https://www.icann.org/resources/board-material/minutes-2006-12-08-en>.)

### **C. The 2013 .BIZ, .INFO and .ORG Renewals**

On 3 June 2013, ICANN org posted for public comment the proposed 2013 .BIZ and .INFO RAs and on 21 June 2013, ICANN org posted for public comment the proposed 2013 .ORG RA. (See [.BIZ public comment proceeding](#), [.INFO public comment proceeding](#), and [.ORG public comment proceeding](#).) Following the close of the public comment period, ICANN org published a summary and analysis of the comments. (See <https://www.icann.org/en/system/files/files/report-comments-biz-renewal-13aug13-en.pdf>, <https://www.icann.org/en/system/files/files/report-comments-info-renewal-13aug13-en.pdf> and <https://www.icann.org/en/system/files/files/report-comments-org-renewal-13aug13-en.pdf>.) On 22 August 2013 approved the 2013 .BIZ RA, the 2013 .INFO RA, and the 2013 .ORG RA. (See <https://www.icann.org/resources/board-material/resolutions-2013-08-22-en>.)

### **D. The 2019 .BIZ, .INFO and .ORG Renewals**

The 2019 .BIZ, .INFO and .ORG RAs were the result of bilateral negotiations between ICANN org and Registry Services, LLC (.BIZ), Afiliat Limited (.INFO) and PIR (.ORG), respectively, and are based on the [base generic top level domain \(gTLD\) Registry Agreement](#) updated on 31 July 2017 (Base RA). (See Public Comments Proceedings for [.BIZ](#), [.INFO](#) and [.ORG](#).) In an effort to account for the specific nature of the .BIZ, .INFO and .ORG TLDs, relevant provisions in the 2013 .BIZ, .INFO and .ORG RAs have also been carried over to the 2019 .BIZ, .INFO and .ORG RAs. (*Id.*) As a result, the 2019 .BIZ, .INFO and .ORG RAs share similar terms, as well as differences with the 2013 .BIZ, .INFO and .ORG RAs and the Base RA. (*Id.*) A summary of these material differences are laid out in the [Proposed Renewal of the .biz Registry Agreement](#), the [Proposed Renewal of the .info Registry Agreement](#), and the [Proposed Renewal of .org Registry Agreement public comment proceeding](#). Following a review of the public comments of the .BIZ, .INFO and .ORG RA renewals, ICANN org published a summary and analysis of the public comments, and on 30 June 2019 executed the 2019 .BIZ RA, the 2019 .INFO RA, and the 2019 .ORG RA. (See [.BIZ Staff Report of Public Comment Proceeding](#), [.INFO Staff Report of Public Comment Proceeding](#), and [.ORG Staff Report of Public Comment Proceeding](#).)

### **E. Proposed Change of Control of PIR**

On 13 November 2019, the proposed acquisition of PIR by Ethos Capital was announced by PIR and the Internet Society (ISOC). (See <https://www.icann.org/news/blog/org-update>.) Under the [2019 .ORG RA](#), PIR must obtain ICANN's prior approval before any transaction that would result in a change of control of the registry operator. On 14 November 2019, PIR formally notified ICANN org

of the proposed transaction and sought the requisite approval from ICANN. (*Id.*) Typically, requests to ICANN for approval of a change of control are confidential. In this case, ICANN org asked PIR for permission to publish the notification, but PIR initially declined. (*Id.*)

On 9 December 2019, ICANN org sent PIR a Request for Additional Information to ensure that ICANN org has a full understanding of the proposed transaction. (See <https://www.icann.org/news/blog/org-update>.) Separately, on the same date, ICANN org also sent a letter to both PIR and ISOC asking them to: (1) reconsider publishing the 14 November 2019 notification to ICANN relating to the proposed transaction; and (2) consider publishing ICANN org's Request for Additional Information along with PIR's response. (See <https://www.icann.org/en/system/files/correspondence/jeffrey-to-sullivan-nevett-09dec19-en.pdf>.)

On 20 December 2019, PIR submitted confidential responses to the ICANN org's Request for Additional Information regarding the proposed acquisition of PIR by Ethos Capital. On 10 January 2020, ICANN org received a revised version of PIR's responses to the Request for Additional Information (Revised Submission). With the agreement of PIR, ISOC and Ethos Capital, ICANN org published the Revised Submission along with PIR's notification of the proposed transaction and ICANN org's Request for Additional Information. (See <https://www.icann.org/news/announcement-2020-01-11-en> and <https://www.icann.org/en/system/files/files/pir-isoc-ethos-capital-10jan20-en.pdf>.)

On 17 January 2020, ICANN org sent a letter to PIR confirming the agreement between ICANN org and PIR to extend the deadline to 17 February 2020 for ICANN org to provide or withhold consent to PIR's proposed change of control. (See <https://www.icann.org/en/system/files/files/icann-to-pir-17jan20-en.pdf>.)

On 23 January 2020, ICANN org received a request from the Office of the Attorney General of the State of California (CA-AGO) regarding the proposed transfer of PIR from ISOC to Ethos Capital in order to "analyze the impact to the nonprofit community, including ICANN." (See <https://www.icann.org/news/announcement-2020-01-30-en> and <https://www.icann.org/en/system/files/correspondence/ca-ago-to-icann-board-23jan20-en.pdf>.) On 30 January 2020, ICANN org sent a letter to PIR informing PIR about the CA-AGO's request for information and documents relating to the proposed transaction, providing notice to PIR (pursuant to the terms of the PIR RA) that the CA-AGO had requested certain confidential PIR documents, and requesting that PIR agree to extend ICANN's deadline to respond to PIR's proposed change of control. (See <https://www.icann.org/en/system/files/correspondence/jeffrey-to-nevett-30jan20-en.pdf>.) PIR's counsel responded to the letter on [30 January 2020](#).

## **F. The New gTLD Program and Studies on Pricing and Vertical Integration**

In 2005, ICANN org's Generic Names Supporting Organization (GNSO) undertook a policy development process to consider expanding the Domain Name System (DNS) by

introducing new gTLDs. (See <https://newgtlds.icann.org/en/about/program>.) In 2007, the GNSO concluded that “ICANN must implement a process that allows the introduction of new [gTLDs].” (See GNSO Final Report: Introduction of New Generic Top-Level Domains, 8 Aug. 2007, [https://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm#\\_Toc43798015](https://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm#_Toc43798015).) Accordingly, ICANN org established and implemented the New gTLD Program, “enabling the largest expansion of the [DNS].” (See <https://newgtlds.icann.org/en/about/program>.)

“An important element of ICANN [org’s] consideration of the introduction of new gTLDs was consumer benefit as well as pricing issues.” (See <https://www.icann.org/news/announcement-2009-03-04-en>.) In 2009, ICANN org commissioned and retained an independent third-party economist, Dennis W. Carlton, to prepare reports relating to competition and pricing issues for new gTLDs. (*Id.*) On 4 March 2009, ICANN org posted for public comment two preliminary reports prepared by Dennis W. Carlton, Professor of Economics at the University of Chicago entitled [Preliminary Report of Dennis Carlton Regarding Impact of New gTLDs on Consumer Welfare](#) and [Preliminary Analysis of Dennis Carlton Regarding Price Caps for New gTLD Internet Registries](#). On 17 April 2009, Dr. Michael Kende prepared a report on behalf of AT&T commenting on Professor Carlton’s two preliminary reports entitled [Assessment of ICANN Preliminary Reports on Competition and Pricing](#). (See <https://www.icann.org/news/announcement-2009-06-06-en>.) On 6 June 2009, ICANN org published the final reports by Professor Carlton relating to the introduction of new gTLDs for public comment. (*Id.*) The first report, entitled [Report of Dennis Carlton Regarding ICANN’s Proposed Mechanism for Introducing New gTLD](#) combines and updates Professor Carlton’s two preliminary reports from March 2009 that address ICANN org’s proposed mechanism for introducing new gTLDs. (*Id.*) The second report, entitled [Comments on Michael Kende’s Assessment of Preliminary Reports on Competition and Pricing](#) responds to Dr. Michael’s Kende’s submitted on 17 April 2009.

In the fall of 2009, ICANN org retained the services of economists, Michael Katz and from the University of California, Berkeley and Professor Greg Rosston from Stanford University to conduct further economic analysis. (See <https://www.icann.org/en/system/files/bm/rationale-economic-studies-21mar11-en.pdf> at pg. 3.) On 16 June 2010, ICANN org published the study entitled [An Economic Framework for the Analysis of the Expansion of the Generic Top-Level Domain Names](#) performed by Greg Rosston and Michael Katz for public comment. (See <https://www.icann.org/resources/pages/economic-framework-2010-06-16-en>.) On 3 December 2010, ICANN org posted a follow-up report by Greg Rosston and Michael Katz entitled [Economic Considerations in the Expansion of the Generic Top-Level Domain Names, Phase II](#) (see <https://www.icann.org/news/blog/new-gtld-economic-study>).

Pursuant to [Affirmation of Commitments \(AoC\)](#) and later ICANN’s [Bylaws](#), selected ICANN community members conducted the [Competition, Consumer Trust and Consumer Choice \(CCT\) Review](#). (See <https://community.icann.org/pages/viewpage.action?pageId=58727320>.) As part of the



CCT Review of the New gTLD Program, the ICANN Board adopted certain metrics recommended by an Implementation Advisory Group made up of ICANN community members. (See <https://www.icann.org/resources/board-material/resolutions-2015-02-12-en#1.e>.) Among the metrics were a subset of three identified as best being measured by an independent economic study. (See <https://www.icann.org/public-comments/competitive-effects-assessment-2015-09-28-en>.)

On 27 March 2014, the ICANN Board adopted resolutions [2014.03.27.22 – 2014.03.27.26](#) for the collection of benchmarking metrics for the New gTLD Program to support the future AoC CCT Review. [Resolution 2014.03.27.25](#) specifically asks ICANN org to commission an economic study with the aim of establishing a baseline of competitive effects in the domain name marketplace. (See <https://www.icann.org/public-comments/competitive-effects-assessment-2015-09-28-en>.) On 8 September 2014, ICANN org conducted an open Request for Proposals (RFP) for one or more provider(s) to conduct an economic study examining pricing trends and other competition indicators in the global DNS market. (See <https://www.icann.org/news/announcement-2014-09-08-en>.) In February 2015, ICANN org signed a contract with Analysis Group to conduct the study. (See <https://www.icann.org/news/announcement-2-2015-09-28-en>.) On 28 September 2015, ICANN org published [Phase I Assessment of the Competitive Effects Associated with the New gTLD Program](#) (Phase I Assessment) report for public comment. (See <https://www.icann.org/public-comments/competitive-effects-assessment-2015-09-28-en>.) The public comments were summarized and analyzed in ICANN org's [staff report](#) which also helped inform the design for the Phase II assessment report. On 11 October 2016, ICANN org published [Phase II Assessment of the Competitive Effects Associated with the New gTLD Program](#) (Phase II Assessment) report for public comment with an intent to solicit the public's input on both Analysis Group's methodology and findings, as well as provide the CCT-Review Team (CCT-RT) with these findings to consider in its analysis of the New gTLD Program's impact on competition in the domain name marketplace. (*Id.*) On 21 December 2016, ICANN published its [staff report](#) of the Phase II comments.

## **G. The New gTLD Program and Vertical Integration**

The issue of vertical integration of registries arose as a result of ICANN org's evaluation of the economic relationship between registries and registrars in developing the implementation details for the New gTLD Program as well as concerns expressed by members of the ICANN community. (See <https://gns0.icann.org/en/group-activities/inactive/2010/vertical-integration-wg> and [https://gns0.icann.org/sites/default/files/filefield\\_8013/report-04dec09-en.pdf](https://gns0.icann.org/sites/default/files/filefield_8013/report-04dec09-en.pdf) at pg. 4.) At the request of the ICANN community, ICANN org retained the research firm Charles River Associates (CRA) International, which delivered a report on 23 October 2008, commonly referred to as the [CRA Report](#). (See <https://gns0.icann.org/en/group-activities/inactive/2010/vertical-integration-wg>.) The CRA Report recommended that ICANN org consider changing its current practice of prohibiting structural and contractual separation between registries and registrars, and the functions that are

performed by these different participants in the distribution chain for domain name registration services. (See [https://gnso.icann.org/sites/default/files/filefield\\_8013/report-04dec09-en.pdf](https://gnso.icann.org/sites/default/files/filefield_8013/report-04dec09-en.pdf) at pg. 4.)

On 4 December 2009, the GNSO published an [Issues Report on Vertical Integration Between Registries and Registrars](#). On 28 January 2010, the GNSO Council approved a Policy Development Process (PDP) on the topic of vertical integration between registries and registrars and, on 10 March 2010, approved the Vertical Integration Working Group (Vertical Integration WG) [Charter](#). (See <https://gnso.icann.org/en/council/resolutions#20100310-1>.) The Charter states the Vertical Integration WG “shall evaluate and propose policy recommendations for new gTLDs and existing gTLDs” and expect “to define the range of restrictions on vertical separation that are currently in effect, to serve as a baseline to evaluate future proposals.” (See [Vertical Integration Working Group Charter](#).) Taking into consideration studies and having heard from industry participants about the possible benefits and detriments of choices related to the ownership integration or non-integration, on 23 July 2010, the Vertical Integration WG published its [Initial Report on Vertical Integration Between Registrars and Registries](#) (Initial Report) for [public comment](#). (See <https://community.icann.org/display/gnsovertint/Vertical+Integration+Resources>; and [https://gnso.icann.org/sites/default/files/filefield\\_12297/transcript-vertical-integration-economists-29apr10-en.pdf](https://gnso.icann.org/sites/default/files/filefield_12297/transcript-vertical-integration-economists-29apr10-en.pdf).) Following a review the comments, on 18 August 2010, the GNSO Council published a summary and analysis of the comments and a [Revised Initial Report on Vertical Integration Between Registrars and Registries](#). (See <https://forum.icann.org/lists/vi-pdp-initial-report/pdf/INqjfbciA.pdf>.)

On 9 November 2010, the Vertical Integration WG delivered to the GNSO Council its [Phase I Interim Report Vertical Integration Final](#) (Phase I Interim Report) describing the results of the first phase of its deliberations. (See <https://gnso.icann.org/en/council/resolutions#20101208-1>.) While the WG developed a number of proposals to address vertical integration for the New gTLD Program, it was unable to reach consensus as to which one to recommend for the first round of new gTLD applications. (See [Phase I Interim Report](#) pg. 3.)

In the absence of guidance or policy from the GNSO Council, the ICANN Board voted to generally allow new gTLD registry operators to own registrars and has opted not to create rules prohibiting registrars from applying for or operating new gTLD registries. (See <https://www.icann.org/news/announcement-2010-11-09-en>.)

## **II. Namecheap’s DIDP Request**

The DIDP is a mechanism, developed through community consultation, to ensure that information contained in documents concerning ICANN organization’s operational activities, and within ICANN org’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>.)

Consistent with its commitment to operating to the maximum extent feasible in an open and transparent manner, ICANN org has published process guidelines for responding to requests for documents submitted pursuant to the DIDP ([DIDP Response Process](#)). In responding to this DIDP, ICANN org followed the DIDP Response Process and upon receipt of the request consulted with ICANN personnel who may have responsive documentary information and searched for documents that may be responsive to the items requested. ICANN org has evaluated the responsive documentary information found to date, and considered whether any of those responsive documents that are not already public are subject to any of the Defined Conditions for Nondisclosure (Nondisclosure Conditions) under the DIDP, and whether the public interest outweighs the potential harm in disclosure of the documents that are subject to one or more DIDP Nondisclosure Conditions.

The DIDP is an example of ICANN's commitment to supporting transparency and accountability by setting forth a procedure through which documents concerning ICANN org's operational activities that are not already publicly available are made available unless there is a compelling reason for confidentiality. (See <https://www.icann.org/resources/pages/didp-2012-02-25-en>.) "The DIDP is not a litigation tool . . ." (see <https://www.icann.org/en/system/files/files/determination-despegar-online-et-al-11oct14-en.pdf>). Nevertheless, and contrary to the intent of the DIDP process, the Items sought in your DIDP Request are overly broad, vague and voluminous in nature, and the requests seek production of "all documents" or "all communications," which is "terminology typically used in discovery requests in litigation and wholly inapplicable in the DIDP context." (*Id.*) Neither the DIDP nor ICANN's Commitments and Core Values supporting transparency and accountability obligates ICANN org to make public every document in its possession.

Notwithstanding the questionable nature of your DIDP Request, ICANN org responds as follows.

#### Part 1: Item No. 1

Item No. 1 seeks "[a]n executed copy of all Registry Agreements (and amendments thereto) for the original gTLDs (.COM, .NET, .ORG) and the gTLDs that were delegated pursuant to ICANN Resolution 00.89 of 16 November 2000, including those agreements that have been terminated reassigned or renewed."

As a preliminary matter, it should be noted that [Resolution 00.89](#) did not delegate any gTLDs; instead, the resolution selected the proposals for negotiations toward appropriate agreements between ICANN org and the registry operator or sponsoring organization, or both: (i) JVTeam (.BIZ); (ii) Afilias (.INFO); (iii) Global Name Registry (.NAME); (iv) RegistryPro (.PRO); (v) Museum Domain Management Association (.MUSEUM); (vi) Société Internationale de Télécommunications Aéronautiques (.AERO); and (vii) Cooperative League of the USA dba National Cooperative Business Association (.COOP).

As stated above, ICANN org makes available all RAs executed by ICANN org through the [Registry Agreements page](#) as a matter of course. Each TLD has its own RA page detailing all RAs signed to date, including all appendices, amendments and renewals. Responsive documentation related to .COM, .NET, .ORG, .BIZ, .INFO, .NAME, .PRO, .MUSEUM, .AERO, .COOP can be located on the publicly available RA pages listed below:

- [.COM Registry Agreements](#);
- [.NET Registry Agreements](#);
- [.ORG Registry Agreements](#);
- [.BIZ Registry Agreements](#);
- [.INFO Registry Agreements](#);
- [.NAME Registry Agreements](#);
- [.PRO Registry Agreements](#);
- [.MUSEUM Registry Agreements](#);
- [.AERO Registry Agreements](#); and
- [.COOP Registry Agreements](#).

While the RAs included on the individual RA pages are not the executed RA's, the content of these RAs mirror the fully executed RAs with the exception of the relevant signatures, which ICANN org does not post.

#### Part 1: Item No. 2

Item No. 2 seeks “[a]ll correspondence between ICANN and the registry operators (and their representatives) in relation to the .ORG, .BIZ, and/or .INFO Registry Agreements.”

With regard to Part 1 Item No. 2, this request is exceedingly overbroad. The collective history of the .ORG, .BIZ and .INFO Registry Agreements spans more than two decades. As written, Item No. 2 seeks “[a]ll correspondence” between ICANN org and three different registry operators over the last twenty years, which is not a reasonable request. As such, it is subject to the following Nondisclosure Condition:

- Information requests: (i) which are not reasonable; (ii) which are excessive or overly burdensome; (iii) complying with which is not feasible; or (iv) are made with an abusive or vexatious purpose or by a vexatious or querulous individual.

Should the Requestor wish to clarify or narrow the scope of Item No. 2, ICANN org will consider the revised request. However, as currently written, Item No. 2 is so overbroad that ICANN org is not able to provide a further response at this time. In addition, Item No. 2 potentially seeks documents that are subject to the following Nondisclosure Conditions:

- 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.
- Confidential business information and/or internal policies and procedures.

Part 1: Item Nos. 3 through 6

Item No. 3 seeks “[a]ll requests from the registry operators (and their representatives) in relation to the reassignment of the .ORG, .BIZ and/or .INFO Registry Agreements.”

Item No. 4 seeks “[a]ll requests from the registry operators (and their representatives) in relation to the renewal of the .ORG, .BIZ and/or .INFO Registry Agreements.

Item No. 5 seeks “[a]ll requests from the registry operators (and their representatives) in relation to the modification of the price caps in the .ORG, .BIZ and/or .INFO Registry Agreements.”

Item No. 6 seeks “[a]ll requests from the registry operators (and their representatives) in relation to the removal of the price caps in the .ORG, .BIZ and/or .INFO Registry Agreements.”

With respect to Part 1 Item Nos. 3 through 6: Extensive information regarding the history of the .ORG, .BIZ and .INFO Registry Agreements is provided above in the Background section, including numerous links to publicly available information regarding the changes over time to the .ORG, .BIZ and .INFO Registry Agreements and the corresponding public comment periods. In addition, information regarding completed assignments of a registry agreement, if any, are available on the pertinent RA webpage and/or on the [RA Assignment webpage](#).

To the extent the Requestor is asking for “[a]ll requests from the registry operators,” Item Nos. 3 through 6 are so overbroad and vague that ICANN org is not able to provide a further response at this time. Should the Requestor wish to clarify or narrow the scope of Item Nos. 3 through 6, ICANN org will consider a revised request.

In addition, Item Nos. 3 through 6 potentially seek documents that are subject to the following Nondisclosure Conditions:

- 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.
- Confidential business information and/or internal policies and procedures.

Part 1: Item Nos. 7 and 8

Item No. 7 seeks “[a]ny document showing the reasons for ICANN to accept to examine requests for such renewal, modification and removal.”

Item No. 8 seeks “[a]ny document showing the reasons for ICANN to accept requests for such renewal, modification and removal.”

With respect to Part 1 Item Nos. 7 and 8: As currently written, it is unclear what documents are being requested. The use of the terms “to accept to examine,” “requests” and “such renewal, modification and removal” is vague and confusing; in fact, it is not clear what TLDs are being referenced. ICANN org has provided extensive information above in the Background section regarding the history, renewals and any modifications to terms within the .BIZ, .INFO and .ORG Registry Agreements, which should address Item Nos. 7 and 8. Should the Requestor wish to clarify or narrow the scope of Item Nos. 7 and 8, ICANN org will consider a revised request.

In addition, Item Nos. 7 and 8 potentially seek documents that are subject to the following Nondisclosure Conditions:

- 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.
- 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.
- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.

Part 1: Item No. 9

Item No. 9 seeks “[a]ny document showing that ICANN has considered, and made a reasoned decision, as to the question whether the renewal of the .ORG registry agreement, including the removal of the price cap, is in line with the requirement for the .ORG registry fee charged to accredited registrars to be as low as feasible consistent with the maintenance of good quality service, as this requirement was laid out in the DNSO policy and in the request for proposals for reassignment of the .ORG gTLD, as imposed in 2002, never modified since, and still applicable in 2019.”

As stated above, on [2 December 2002](#), ICANN org entered into an RA with PIR for the operation of .ORG, which was subsequently renewed on [8 December 2006](#) (the 2006 .ORG RA), on [22 August 2013](#) (the 2013 .ORG RA) and on [30 June 2019](#) (the 2019 .ORG RA). During each renewal, ICANN org made available all relevant documents, including redlines outlining the proposed changes to the RA for public comment; and, following each public comment period, ICANN org reviewed and analyzed the comments received and drafted a report of the public comments for Board consideration. As such, documents responsive to this item are listed below:

- [2001 .ORG Registry Agreement](#)
- [All document made available on the “Materials on .org Reassignment” page](#)
- [.ORG Reassignment: Request for Proposals](#)
- [2002 .ORG Registry Agreement](#)
- [Proposed 2006 .ORG RA](#)
- [Proposed 2006 .ORG Appendices](#)
- [Public comments received in response to the 2006 .ORG RA and Appendices](#)
- [Draft Summary of Public Comments on the Proposed .BIZ, .INFO, and .ORG Agreements](#)
- [ICANN Board’s Request for Information](#)
- [PIR’s Response to ICANN Board’s Request for Information](#)
- [Revised Proposed 2006 .ORG RA](#)
- [Public comments received in response to the Revised Proposed 2006 .BIZ, .INFO and .ORG RA](#)
- [Proposed Renewal of the 2013 .ORG RA](#)

- [Redline showing changes to the 2006 .ORG RA](#)
- [Proposed Renewal of the 2013 .ORG Appendices](#)
- [Redline showing changes from the 2006 .ORG RA](#)
- [Summary of Changes to the 2013 .ORG RA](#)
- [Public comments received in response to the Proposed 2013 .ORG RA and Appendices](#)
- [Proposed Renewal of the 2019 .ORG RA](#)
- [Redline showing changes compared to the Base gTLD RA \(.ORG\)](#)
- [Proposed Addendum to the 2019 .ORG RA](#)
- [Public comments received in response to the Proposed 2019 .ORG RA and Addendum](#)

To the extent there may be other documentary information responsive to Item No. 9 that has not already been made public, such documents are subject to the following Nondisclosure Conditions:

- 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 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.

#### Part 1: Item Nos. 10 through 15

Item No. 10 seeks “[a]ll exchanges of communication between ICANN and the registry operators discussing such renewal, modification and removal.”

Item No. 11 seeks “[a]ll communications between ICANN staff and the ICANN Board in relation to the .ORG, .BIZ and/or .INFO Registry Agreements, including with regard to said renewal, modification and removal, the reasons to accept to examine said requests and the reasons to accept said requests.”

Item No. 12 seeks “[a]ll communications between ICANN staff and individual ICANN Board members in relation to the .ORG, .BIZ and/or .INFO Registry Agreements, including with regard to said renewal, modification and removal, the reasons to accept to examine said requests and the reasons to accept said requests.”

Item No. 13 seeks “[a]ll communications between ICANN staff in relation to the .ORG, .BIZ and/or .INFO Registry Agreements, including with regard to said renewal, modification and removal, the reasons to accept to examine said requests and the reasons to accept said requests.”



Item No. 14 seeks “[a]ll communications between ICANN Board members in relation to the .ORG, .BIZ, and/or .INFO Registry Agreements, including with regard to said renewal, modification and removal, the reasons to accept to examine said requests and the reasons to accept said requests.”

Item No. 15 seeks “[a]ll communications between ICANN staff or ICANN Board member and any other person or organization other than ICANN staff or ICANN Board members in relation to the .ORG, .BIZ and/or .INFO Registry Agreements, including with regard to said renewal, modification and removal, the reasons to accept to examine said requests and the reasons to accept said requests.”

With respect to Part 1 Item Nos. 10 through 15: The requests as currently written are overbroad and vague, and it is unclear what documents and/or group of documents are being requested. The .ORG, .BIZ, and .INFO RAs went through several rounds of amendments and renewals dating back to 1999 for .ORG and 2001 for .BIZ and .INFO. As written, Item Nos. 10 through 15 seek “[a]ll communications” over the last twenty years with various registry operators and/or with various iterations of the ICANN Board and staff, which is not a reasonable request. As such, Item Nos. 10 through 15 are subject to the following Nondisclosure Condition:

- Information requests: (i) which are not reasonable; (ii) which are excessive or overly burdensome; (iii) complying with which is not feasible; or (iv) are made with an abusive or vexatious purpose or by a vexatious or querulous individual.

Should the Requestor wish to clarify or narrow the scope of Item Nos. 10 through 15, ICANN org will consider a revised request. However, given the vague references to “such” or “said” “renewal, modification and removal” and reasons “to accept to examine,” ICANN org is not able to provide a further response at this time. In addition, Item Nos. 10 through 15 potentially seek documents that are subject to the following Nondisclosure Conditions:

- 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.
- 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.
- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.

Part 1: Item No. 16

Item No. 16 seeks “[a]ll documents related to the preparation of the Report of Public Comments for Proposed Renewal of .ORG, .BIZ and/or .INFO Registry Agreements, including summaries and analysis, including the documents exchanged between ICANN staff and ICANN Board, between ICANN Board members, and between ICANN staff or ICANN Board members and any other person or organization other than ICANN staff or ICANN Board members.”

Responsive documents related to the preparation of the Report of Public Comments for Proposed Renewal of the 2006 .ORG, .BIZ and/or .INFO Registry Agreements are listed below:

- [Proposed 2006 .BIZ RA](#)
- [Proposed 2006 .BIZ Appendices](#)
- [Public comments received in response to the 2006 .BIZ RA and Appendices](#)
- [Proposed 2006 .INFO RA](#)
- [Proposed 2006 .INFO Appendices](#)
- [Public comments received in response to the 2006 .INFO RA and Appendices](#)
- [Proposed 2006 .ORG RA](#)
- [Proposed 2006 .ORG Appendices](#)
- [Public comments received in response to the 2006 .ORG RA and Appendices](#)
- [Draft Summary of Public Comments on the Proposed .BIZ, .INFO, and .ORG Agreements](#)
- [ICANN Board's Request for Information](#)
- [Afilias' Response to ICANN Board's Request for Information](#)
- [PIR's Response to ICANN Board's Request for Information](#)
- [Neulevel's Response to ICANN Board's Request for Information](#)
- [Revised Proposed 2006 .BIZ RA](#)
- [Revised Proposed 2006 .INFO RA](#)
- [Revised Proposed 2006 .ORG RA](#)
- [Public comments received in response to the Revised Proposed 2006 .BIZ, .INFO and .ORG RA](#)

Responsive documents related to the preparation of the Report of Public Comments for Proposed Renewal of the 2013 .ORG, .BIZ and/or .INFO Registry Agreements are listed below:

- [Proposed Renewal of the 2013 .BIZ RA](#)
- [Redline showing changes to the 2006 .BIZ RA](#)
- [Proposed Renewal of the 2013 .BIZ Appendices](#)
- [Redline showing changes from the 2006 .BIZ RA](#)
- [Summary of Changes to the 2013 .BIZ RA](#)
- [Public comments received in response to the Proposed 2013 .BIZ RA and Appendices](#)
- [Proposed Renewal of the 2013 .INFO RA](#)
- [Redline showing changes to the 2006 .INFO RA](#)
- [Proposed Renewal of the 2013 .INFO Appendices](#)
- [Redline showing changes from the 2006 .INFO RA](#)
- [Summary of Changes to the 2013 .INFO RA](#)
- [Public comments received in response to the Proposed 2013 .INFO RA and Appendices](#)
- [Proposed Renewal of the 2013 .ORG RA](#)
- [Redline showing changes to the 2006 .ORG RA](#)
- [Proposed Renewal of the 2013 .ORG Appendices](#)
- [Redline showing changes from the 2006 .ORG RA](#)
- [Summary of Changes to the 2013 .ORG RA](#)
- [Public comments received in response to the Proposed 2013 .ORG RA and Appendices](#)

Responsive documents related to the preparation of the Report of Public Comments for Proposed Renewal of the 2019 .ORG, .BIZ and/or .INFO Registry Agreements are listed below:

- [Base Generic Top-Level Domain \(gTLD\) RA](#)
- [Proposed Renewal of the 2019 .BIZ RA](#)
- [Redline showing changes compared to the Base gTLD RA \(.BIZ\)](#)
- [Proposed Addendum to the 2019 .BIZ RA](#)
- [Public comments received in response to the Proposed 2019 .BIZ RA and Addendum](#)
- [Proposed Renewal of the 2019 .INFO RA](#)
- [Redline showing changes compared to the Base gTLD RA \(.INFO\)](#)
- [Proposed Addendum to the 2019 .INFO RA](#)
- [Public comments received in response to the Proposed 2019 .INFO RA and Addendum](#)
- [Proposed Renewal of the 2019 .ORG RA](#)
- [Redline showing changes compared to the Base gTLD RA \(.ORG\)](#)
- [Proposed Addendum to the 2019 .ORG RA](#)

- [Public comments received in response to the Proposed 2019 .ORG RA and Addendum](#)

To the extent there may be other documentary information responsive to Item No. 16 that has not already been made public, such documents are subject to the following Nondisclosure Conditions:

- 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 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.
- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.

#### Part 1: Item No. 17

Item No. 17 seeks “[a]ny and all authorizations granted by, and communications with, government officials in relation to the delegation, reassignment, renewal, amendments and/or operation of the .ORG, .BIZ and/or .INFO Registry Agreements.”

As written, Item No. 17 is vague and overbroad in its request for “any and all” communications with “government officials” in relation to essentially all aspects of the .ORG, .BIZ and .INFO Registry Agreements over the past twenty years. To the extent such communications are publicly available, they would be located on the [ICANN Correspondence page](#). ICANN org will continue to review potentially responsive materials and consult with relevant personnel, as needed, to determine if additional documentary information is appropriate for disclosure under the DIDP. If it is determined that certain additional documentary information is appropriate for public disclosure, ICANN org will supplement this DIDP Response and notify the Requestor of the supplement.

In addition, Item No. 17 potentially seeks documents that are subject to the following Nondisclosure Conditions:

- Information provided by or to a government or international organization, or any form of recitation of such information, in the expectation that the information will be kept confidential and/or would or likely would materially prejudice ICANN's relationship with that party.
- 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.
- Information that relates in any way to the security and stability of the Internet, including the operation of the L Root or any changes, modifications, or additions to the root zone.

## Part 2

Part 2 of the Request seeks “all documents” “relating to economic studies, impact studies, and other studies ICANN has commissioned, examined and/or performed with respect to competition and/or pricing of”.COM, .NET, .ORG, .BIZ, .INFO, “and with respect to vertical integration between registries and registrars, including but not limited to”: “requests for proposals and expressions of interest”; “selection criteria of the service providers”; “draft reports”; reasons for changes to draft reports; “final studies”; “names and qualifications of the authors and participants”; “documentation on which the studies were based”; “contractual arrangements with the authors” and “price paid by ICANN”; “ICANN’s analysis and/or summary of these studies and of the comments made in response to these studies”; and “[a]ll communications between ICANN and the authors and participants of the studies.”

This request is overbroad and not reasonable. As such, Part 2 of the Request is subject to the following Nondisclosure Condition:

- Information requests: (i) which are not reasonable; (ii) which are excessive or overly burdensome; (iii) complying with which is not feasible; or (iv) are made with an abusive or vexatious purpose or by a vexatious or querulous individual.

Notwithstanding, ICANN org provides the following publicly available documentary information responsive to Part 2 of the Request. ICANN org has a set of [Procurement](#)

[Guidelines](#) to help ICANN org's management attain best purchasing practices, and to ensure that products and services are purchased with the correct specifications, at the appropriate level of quality, and for appropriate value. In accordance with procurement best practices, in certain circumstances, contracting directly with a vendor or service provider is appropriate for procurement decisions, such as:

- Emergency situations.
- Specialized professional services including, but not limited to, staff, audio-visual experts, lobbyists, advisors to CEO or departmental functions, law firms and economists.
- When small or less significant items are required in which the costs to implement competitive bidding outweigh the potential benefits.
- When there is a natural continuation of previous work carried out by the vendor or service provider, and in which competitive bidding would not improve value to ICANN.
- When there is only one potential provider or when the provider has a measurably superior capacity, expertise and/or knowledge, which might be subjectively determined.
- When the incumbent provider demonstrates a clear historic pattern of charging reasonable prices and providing consistently good quality service.

To the extent that "final studies" are the studies that are publicly posted on icann.org, responsive economic studies, impact studies and other studies ICANN org has commissioned, examined, and/or performed with respect to competition and/or pricing of TLDs and vertical integration between registries and registrars are listed below and further responsive information was provided above in the Background section:

- [Preliminary Report of Dennis Carlton Regarding Impact of New gTLDs on Consumer Welfare](#) by Professor Dennis Carlton dated 4 March 2009.
- [Preliminary Analysis of Dennis Carlton Regarding Price Caps for New gTLD Internet Registries](#) by Professor Dennis Carlton dated 4 March 2009.
- [Report of Dennis Carlton Regarding ICANN's Proposed Mechanism for Introducing New gTLD](#) by Professor Dennis Carlton dated 6 June 2009.
- [Comments on Michael Kende's Assessment of Preliminary Reports on Competition and Pricing](#) by Professor Dennis Carlton dated 6 June 2009.
- [An Economic Framework for the Analysis of the Expansion of the Generic Top-Level Domain Names](#) by Greg Rosston and Michael Katz dated 16 June 2010.
- [Economic Considerations in the Expansion of the Generic Top-Level Domain Names, Phase II](#) by Greg Rosston and Michael Katz dated 3 December 2010.
- [Phase I Assessment of the Competitive Effects Associated with the New gTLD Program](#) by Analysis Group dated 28 September 2015.
- [Phase II Assessment of the Competitive Effects Associated with the New gTLD Program](#) by Analysis Group dated 11 October 2016.
- [Revisiting Vertical Separation of Registries and Registrars](#) by CRA International dated 23 October 2008.

- [Issues Report on Vertical Integration Between Registries and Registrars](#) by ICANN org dated 11 December 2009.
- [Initial Report on Vertical Integration Between Registrars and Registries](#) by the Vertical Integration PDP Working Group dated 23 July 2010.
- [Revised Initial Report on Vertical Integration Between Registrars and Registries](#) by the Vertical Integration PDP Working Group dated 18 August 2010.
- [Phase I Interim Report Vertical Integration Final](#) by the Vertical Integration PDP Working Group dated 9 November 2010.

Responsive documentation relating to the names and qualifications of the authors and participants, as well as relevant documents on which the studies were based (Item Nos. 6 and 7) are included in and/or cited within the studies. To the extent there may be other responsive documentary information to Part 2 Item Nos. 6 and 7 of the Request that has not already been made public, such documents are subject to the Nondisclosure Conditions noted below.

Responsive documentation related to comments made in response to these studies and ICANN org's summary/analysis of these comments can be found at the following publicly available links:

- [Public Comments received in response to Professor Dennis Carlton's Preliminary Reports on Competition and Pricing](#)
- [Summary/Analysis of the comments received in response to Professor Dennis Carlton's Preliminary Reports on Competition and Pricing](#)
- [Public Comments received in response to Professor Dennis Carlton's two Final Reports of Competition and Pricing](#)
- [Public Comments received in response to Greg Rosston and Michael Katz's study entitled An Economic Framework for the Analysis of the Expansion of the Generic Top-Level Domain Names](#)
- [Summary/Analysis of the comments in response to Greg Rosston and Michael Katz's study entitled An Economic Framework for the Analysis of the Expansion of Generic Top-Level Domain Names](#)
- [Public Comments received in response to Greg Rosston and Michael Katz's report entitled Economic Considerations in the Expansion of the Generic Top-Level Domain Names, Phase II](#)
- [Summary/Analysis of the comments in response to Greg Rosston and Michael Katz's report entitled Economic Considerations in the Expansion of the Generic Top-Level Domain Names, Phase II](#)
- [Public comments received in response to Phase I Assessment of the Competitive Effects Associated with the New gTLD Program](#)
- [Report of public comments on Phase I Assessment of the Competitive Effects Associated with the New gTLD Program](#)
- [Public comments received in response to Phase II Assessment of the Competitive Effects Associated with the New gTLD Program](#)
- [Report of public comments on Phase II Assessment of the Competitive Effects Associated with the New gTLD Program](#)

To the extent there are any additional documents responsive to Part 2 of the Request that has not already been made public, such documents are subject to the following Nondisclosure Conditions:

- 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.
- 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 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.
- 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.

### Part 3

Part 3 of the Request seeks “all documents” “relating to the change of control of [PIR], including but not limited to:” all communications “between ICANN and [PIR]”; “between ICANN staff and the ICANN Board”; “between ICANN staff and individual ICANN Board members”; “between ICANN staff”; and “between ICANN Board members” “in relation to the change of control of [PIR].”

As previously stated, ICANN org makes available incoming and outgoing correspondence on the [ICANN Correspondence page](#) as a matter of course unless there is a compelling reason for confidentiality. Extensive information regarding the proposed change of control of PIR, and the relevant responsive communications are provided in the Background section.



Part 3, Item No. 6 seeks “[a]ll communications between ICANN staff or individual ICANN Board members and any other person or organization other than ICANN staff of ICANN Board member.” As written, Item No. 6 is vague, overly broad and unintelligible such that ICANN org is not able to provide a response to Item No. 6 at this time. Should the Requestor wish to clarify or narrow the scope of Item No. 6, ICANN org will consider the revised request. In addition, Item No. 6 potentially seeks documents that are subject to the Nondisclosure Conditions set forth below.

To the extent there may be other responsive documentary information to Part 3 of the Request that has not already been made public, such documents are subject to the following Nondisclosure Conditions:

- 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.
- 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.
- 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.
- Confidential business information and/or internal policies and procedures.
- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.

Notwithstanding the applicable Nondisclosure Conditions identified in this Response to all of the Items requested, 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 org's DIDP is limited to requests for documentary information already in existence within ICANN org 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 org makes every effort to be as responsive as possible to the entirety of your Request. As part of its accountability and transparency commitments, ICANN org 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](mailto:didp@icann.org).