

Response to Documentary Information Disclosure Policy Request

To: David Maher, GNSO Registries Stakeholder Group

Date: 7 September 2012

Re: Request No. 20120808-1

Thank you for your Request for Information dated 8 August 2012 (the "Request"), which was submitted through the Internet Corporation for Assigned Names and Numbers' (ICANN) Documentary Information Disclosure Policy (DIDP). The Request is set out in full in an attachment to this Response.

Summary of Items Requested:

The Request seeks five main categories of documents:

- 1) Executed contracts for the provision of Trademark Clearinghouse services;
- 2) Documents on cost and financial models regarding the operation of the Trademark Clearinghouse;
- 3) Documents related to claims of ownership of intellectual property rights made by bidders responding to the RFI, and any analysis of those claims;
- 4) Requirements/functional specification or technical specification documents; and
- 5) A log identifying documents not produced.

Response:

Regarding item 1, the agreement for operation of the Trademark Clearinghouse has not been executed by the parties to date. Feedback from the community regarding the publication of the agreement was noted, and a public posting of the agreement, or at least substantial portions of it, is foreseen once the agreement is finalized. The intention to post the agreement was confirmed at the recent Trademark Clearinghouse session held in Brussels at the end of August.

A consulting agreement was executed to enable Deloitte (the vendor selected to operate the Trademark Clearinghouse) to create a project plan and begin the work while negotiating the main agreement with ICANN for operation of the Clearinghouse. This consulting agreement – as it does not set out the terms and conditions for the operation of the Trademark Clearinghouse and is solely to guide the conduct of the parties as the final contract is finalized – is subject to the following conditions of non-disclosure set forth in the DIDP:

- 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.

Regarding item 2, to the extent that ICANN has documents that are not already publicly available and that discuss cost and financial models for the operation of the Trademark Clearinghouse, those documents are not subject to disclosure under the DIDP. For example,

to the extent that responses to the RFI included costs or financial projections, those materials were provided in confidence to ICANN from the bidders and are subject to the conditions of non-disclosure set out below. The RFI is available at <http://archive.icann.org/en/topics/new-gtlds/trademark-clearinghouse-rfi-03oct11-en.pdf>. ICANN has not undertaken independent cost or financial modeling work on the Trademark Clearinghouse. The conditions for non-disclosure applicable to this item are:

- 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.
- Trade secrets and commercial and financial information not publicly disclosed by ICANN.

Regarding item 3, to the extent that bidders made claims of ownership of intellectual property rights associated with the proposed operation of the Trademark Clearinghouse, those materials are subject to the same conditions of non-disclosure identified in conjunction with item 2. Issues regarding claims of ownership of intellectual property rights arising out of the operation of the Trademark Clearinghouse are part of the ongoing negotiations with Deloitte for inclusion within the finalized agreement, and ICANN explained above that the agreement is anticipated for publication.

Regarding item 4, a requirements document regarding the TMCH is in production, and its development has been guided by the implementation model developed with community input (see draft implementation model at <http://newgtlds.icann.org/en/about/trademark-clearinghouse>). The technical specifications continue to be a point of discussion within the ICANN community, and the published draft implementation model is the most complete source of information regarding the development of technical specifications that has taken place. A draft of the requirements document will be made publicly available on or before the date that the agreement for the operation of the Trademark Clearinghouse is posted.

Regarding item 5, as ICANN has previously explained, the DIDP states “ICANN shall not be required to create or compile summaries of any documented information.” The creation of the requested log falls into this compilation activity, and ICANN will not be creating the requested log. ICANN notes that in addition to the Defined Condition of Non-Disclosure identified above, the additional Defined Conditions of Non-Disclosure are applicable to this Request:

- 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.

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/transparency/acct-trans-frameworks-principles-10jan08.pdf>. 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.