

Response to Documentary Information Disclosure Policy Request

To: Padmini Baruah on behalf of the Centre for Internet & Society

Date: 21 May 2016

Re: Request No. 20160423-5

Thank you for your Request for Information dated 23 April 2016 (Request), which was submitted through the Internet Corporation for Assigned Names and Numbers (ICANN) Documentary Information Disclosure Policy (DIDP) on behalf of The Centre for Internet & Society (CIS). For reference, a copy of your Request is attached to the email forwarding this Response.

Items Requested

Your Request seeks the disclosure of statistics relating to ICANN's DIDP responses. Specifically, your Request states: "I therefore request ICANN to provide me with accurate statistics on the DIDP. I am attaching the link to my research here: <https://docs.google.com/spreadsheets/d/1M1gWBpa7tlxGPMWyB6xJryddahyZzjVIarSz0RJswDM/edit#gid=0>."

Response

A principal element of ICANN's approach to transparency and information disclosure is the commitment to make publicly available a comprehensive set of materials concerning ICANN's operational activities. In addition to ICANN's practice of making many documents public as a matter of course, the DIDP was created in 2008 as part of ICANN's Accountability & Transparency Frameworks and Principles (see <https://www.icann.org/en/system/files/files/acct-trans-frameworks-principles-10jan08-en.pdf>), and is "intended to ensure that information contained in documents concerning ICANN's operational activities, and within ICANN's possession, custody, or control, are 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>.) The DIDP is a voluntary program created by ICANN, and developed over two years of community consultation and input, as part of ICANN's efforts to foster its bottom-up decision-making process and multistakeholder model, as well as to support ICANN's commitment to transparent, accountable operations.

Recognizing that transparency must be balanced with the harm that may be caused by the disclosure of certain information, ICANN, through consultation with the community and consistent with state-sponsored programs similar to ICANN's DIDP, developed the DIDP Defined Conditions of Nondisclosure (Nondisclosure Conditions) as a guidepost for the disclosure of documentary information. (See <https://www.icann.org/resources/pages/didp-2012-02-25-en>.) Notwithstanding the above, information that falls within any of the Nondisclosure Conditions may still be made public if ICANN determines, under the particular circumstances, that the public interest

in disclosing the information outweighs the harm that may be caused by such disclosure.

Your request seeks the disclosure of statistics relating to ICANN's responses to DIDP requests. As noted above, the DIDP is intended to ensure that information contained in existing documents concerning ICANN's operational activities, and within ICANN's possession, custody, or control, is made publicly available unless there is a compelling reason for confidentiality. Thus, a threshold consideration in responding to a DIDP request is whether the documents requested exist and are in ICANN's possession, custody or control. Under the DIDP, where the responsive document does not exist, ICANN shall not be required to create or compile summaries of any documented information. (See <https://www.icann.org/resources/pages/didp-2012-02-25-en>.) Nevertheless, ICANN is in the process of conducting a statistical analysis of its DIDP responses. ICANN will be finalizing and posting its summary of that analysis in the coming weeks, and will notify the Requester when that information is publicly posted. To the extent there are other documents that may be responsive to the Request, they are subject to the following DIDP Defined Conditions for Nondisclosure:

- 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.
- 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.

With respect to the research summary that you provided in your DIDP Request and that you presented at the Non Commercial Users Constituency (NCUC) Session, held on 8 March 2016 at ICANN55 (referenced in your Request), while it is not within the parameters of a DIDP request or response for ICANN to review your research "for accuracy" as you request in your presentation, ICANN does note several discrepancies with the information and/or characterizations provided in your summary. In several instances, your characterizations of "no" or "partly" disclosed are either mistaken, do not acknowledge the information and documents identified as publicly posted, do not take into consideration the nature of the requests and the existence (or lack thereof) of responsive documents, and/or do not consider the balancing required between the public benefit and the potential harm of requested disclosures. For example, with respect to Response No. 20130507-1, the request asked that ICANN update its Board Finance Committee (BFC) webpage with current BFC meeting minutes and that ICANN publish the Form 990 for the period ending on 30 June 2012. In response, ICANN indicated that the BFC webpage had been updated to reflect all current minutes that had been approved by the BFC, and informed the requester that the IRS Form 990 would be posted, as ICANN does annually, as soon as practicable once it had been submitted to the IRS. The Form 990 was subsequently posted on ICANN's financials page. Nevertheless, this response is marked as "no" in your summary, even though the requested documents were

published on ICANN's website. Similarly, with respect to Response No. 20090403-1, the request sought documentation relating to the appointment of ICANN Ombudsman Frank Fowle. In response, ICANN advised the requester that the requested information had already been published on ICANN's website, and provided the requester with links to the requested information. Nevertheless, this response is marked as "no" in your summary, even though ICANN had already published the requested information. These are only two, of numerous examples, wherein the characterizations listed in your summary do not seem to comport with the information that ICANN provided in its DIDP responses.

In addition, your presentation at the ICANN55 NCUC Session seemed, at its core, to be a request that the DIDP process be included in Work Stream 2 of the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability). Please note that the CCWG-Accountability has already identified a review of the DIDP as being part of its Work Stream 2. An initial kickoff meeting for Work Stream 2 was held in March 2016 at ICANN55, and further planning work will continue on 26 June 2016 to scope out Work Stream 2 efforts, including the DIDP review.

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 encourage you to sign up for an account at MyICANN.org, through which you can receive daily updates regarding postings to the portions of ICANN's website that are of interest because, as we continue to enhance our reporting mechanisms, reports will be posted for public access.

We hope this information is helpful. If you have any further inquiries, please forward them to didp@icann.org.