To: Ephraim Percy Kenyanito on behalf of ARTICLE 19

Date: 10 July 2020

Re: Request No. 20200610-2

This is in response to your request for documentary information (Request), which was submitted on 10 June 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 the following documentary information regarding the implementation of Work Stream 2 (WS2) recommendations:

1. Documents and details of all communication carried out since November 2019 between the Empowered Community and ICANN org as regards to implementation of WS2 recommendations.

2. Documents and exact details of budget in both staff time and resources to support the Implementation of Work Stream 2 recommendations earmarked to the entire ICANN Community for FY20 and FY21-25.

3. Documents and details of actions taken towards supporting the Board in its diversity tracking and reporting.

4. Documents and details of actions taken towards supporting each diversity assessment, and to execute on each SO/AC or other group's objectives and strategies through tool development and other means.

5. Documents and details of any actions towards incorporating the guidelines for individuals acting in "Good Faith" into the Expected Standards of Good Behavior.

6. Documents and details of any action taken towards developing practices to document how ICANN balances the core value of respecting human rights amongst and against the other core values when developing corporate or operational policies and executing its operations.

7. Documents and details of implementation of the recommendations provided in May 2019 under the ICANN Human Rights Impact Assessment.

8. Documents and details of the frequency of ICANN org human rights impact assessment and budgetary allocation to ensure this is achieved.

9. Actions taken towards ICANN applying for and using best efforts to secure an OFAC license if the other party is otherwise qualified to be a registrar (and is not individually subject to sanctions).

10. Documents and details of any actions taken towards contractual amendments to the base Registry Agreement and model Registrar Accreditation Agreement towards implementation of the Recommendations for jurisdiction of settlement of dispute issues.

11. Documents and details of any tools developed by ICANN org to remind registrars to understand the applicable laws under which they operate and to accurately reflect those laws in their customer relationships.

12. Documents and details of any actions taken towards pursuing one or more OFAC "general licenses".

13. Documents and details of any work carried out with the ICANN Board to make sure there is an appropriate division of responsibility to implement the recommendations, while respecting the independence of the Ombudsman's work on investigations and dispute resolution.

14. Documents and details of any actions taken by ICANN org to provide a summary of where current ICANN org tracking of services exist, and details of any work undertaken to identify any additional Service Level Agreements (SLAs) and the measurements that should be applied.

15. Documents and details of any actions undertaken since November 2019 to implement the recommendations on increasing staff accountability.

16. Documents and details of steps undertaken towards publishing for Public Comment an updated DIDP that reflects the totality of the recommendations for review as a unified operational policy, rather than presenting a series of individual recommendations for review.

17. Documents and details of any changes to ICANN's Hotline Policy inline with the recommendations on improving ICANN transparency.

18. Documents and details of any changes to ICANN's procurement processes and procedures inline with the recommendations on improving ICANN transparency.

Response

I. Background Information

    A. Background on the Cross Community Working Group on Enhancing ICANN's Accountability (CCWG-Accountability), Work Stream 1 (WS1). and Work Stream 2 (WS2)

On 14 March 2014, the National Telecommunications and Information Administration of the United States Department of Commerce (NTIA) announced its intention to transition the stewardship of the IANA Functions to the global multistakeholder community (the IANA Stewardship Transition). (*See* https://www.ntia.doc.gov/press-release/2014/ntia-announces-intent-transition-key-internet-domain-name-functions.) In response to community concerns that the IANA Stewardship Transition would end the perceived historical backstop of the U.S. Government as it related to ICANN, the ICANN community launched, in December 2014, a Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability), a parallel effort to the work of the IANA Stewardship Transition proposal development. The CCWG-Accountability divided its work into two phases. The first phase, or WS1, focused on mechanisms enhancing ICANN accountability that must be in place or committed to, within the time frame of the IANA Stewardship Transition. (*See* https://community.icann.org/display/WEIA/Charter.) The second phase, or WS2, focused on addressing accountability topics for which a timeline for developing solutions and full implementation may extend beyond the IANA Stewardship Transition. (See *id.*)

The first phase of the work culminated with the CCWG-Accountability handing in its Supplemental Final Proposal on Work Stream 1 Recommendations (WS1 Final Report) on 23 February 2016 for approval by the Chartering Organizations and ICANN Board. These recommendations were approved by the ICANN Board on 10 March 2016 and incorporated into the ICANN Bylaws effective 1 October 2016. (*See* https://www.icann.org/resources/board-material/resolutions-2016-05-27-en#1.a.)

Included in the WS1 Final Report, the CCWG-Accountability laid out the requirement for WS2 as follows:

> *Work Stream 2: Focused on addressing accountability topics for which a timeline for developing solutions and full implementation may extend beyond the IANA Stewardship Transition.*
>
> *Any other consensus items that are not required to be in place within the IANA Stewardship Transition timeframe can be addressed in Work Stream 2. There are mechanisms in Work Stream 1 to adequately enforce implementation of Work Stream 2 items, even if they were to encounter resistance from ICANN Management or others.*

(*See* WS1 Final Report, pg. 8.) The report also cited specific topics for consideration in WS2. (*Id.* at Recommendation 12, pgs. 47-48.) These topics were incorporated into Section 27.1 of the ICANN Bylaws, which defined the scope of WS2 as well as the ICANN Board's obligations in considering the WS2 consensus recommendations.

B.   The WS2 Recommendations

The CCWG-Accountability began its WS2 effort in June 2016. (*See* WS2 Final Report, pg. 7.) The work was organized into the topics identified in Section 27.1 of the ICANN Bylaws: Diversity, Guidelines for Good Faith Conduct, Human Rights, Jurisdiction, Ombuds, Reviewing the CEP, SO/AC Accountability, Staff Accountability, and Transparency.[1] (*See id.*)

In July 2018, the CCWG-Accountability submitted to the Chartering Organizations the WS2 Final Report. (*See* https://www.icann.org/resources/board-material/resolutions-2019-11-07-en#2.c.) Upon approval by the Chartering Organizations, the CCWG-Accountability Co-Chairs submitted the WS2 Final Report to the ICANN Board for approval on 9 November 2018. (*See* https://www.icann.org/resources/board-material/resolutions-2019-11-07-en#2.c.)

The WS2 Final Report contains nearly 100 individual recommendations and "is a significant undertaking that will require a detailed implementation plan and will take a number of years to complete." (*See* WS2 Final Report, pg. 17.) The "prioritization and funding for implementation of recommendations is beyond the scope and capacity of WS2 and rests with ICANN (Board and Organization) and the community. (*Id.* at pg. 4.)

In May 2018, the ICANN Board asked ICANN org to prepare an implementation assessment report prior to the Board's consideration of the WS2 consensus recommendations. (*See* Letter from Chalaby, Chair of ICANN Board, to CCWG-Accountability Co-Chairs, dated 14 May 2018, https://www.icann.org/en/system/files/correspondence/chalaby-to-rickert-et-al-14may18-en.pdf.) In response, ICANN org prepared the WS2 Implementation Assessment Report outlining the recommendations and considerations of efforts required from the community, Board, and ICANN org on the implementation for each of the WS2 recommendations. (*See* WS2 Implementation Assessment Report, pg. 4.)

On 9 November 2019, the Board adopted each of the consensus recommendations contained within the WS2 Final Report and directed the "ICANN President and CEO, or his designee(s), to proceed with the implementation of the WS2 Recommendations, including the considerations identified in the WS2 Implementation Assessment Report." (*See* Board Resolutions 2019.11.07.37 – 2019.11.07.41 and supporting rationale.) The Board further directed:

> [T]he ICANN President and CEO, or his designee(s), to start
> implementation on those recommendations provided in the WS2
> Final Report that are possible to move forward without waiting for
> a budgeting cycle. This includes providing support as available to

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[1] While the Cooperative Engagement Process (CEP) was identified in Section 27.1 of the ICANN Bylaws as a topic appropriate for WS2, it was later determined that this topic was better suited for coordination with the work on updating ICANN's Independent Review Process (IRP), as opposed to handling with WS2. (*See* https://www.icann.org/public-comments/ccwg-acct-ws2-final-2018-03-30-en.) By agreement with the CCWG-Accountability and the community group supporting the updates to the IRP, the CEP was removed from WS2.

the ICANN community for those parts of the WS2
recommendations that are community driven in implementation.
As much as possible, work should begin upon adoption of the
WS2 recommendations.

[T]he ICANN President and CEO, or his designee(s), to provide
regular implementation status reports to the Board, as committed
in the WS2 Implementation Assessment Report.

[F]or all WS2 recommendations that are identified for
the ICANN community, the Board directs the ICANN President
and CEO, or his designee(s), to notify the relevant community
groups of their adoption. The Board requests that all parts of
the ICANN community that are responsible for implementation of
recommendations participate in reaching a successful
implementation.

(*Id.*)

C.   Implementation of the WS2 Recommendations

The implementation of nearly 100 recommendations contained in the WS2 Final Report
is a significant undertaking that will require coordination between ICANN org, Board and
community. The WS2 Implementation Assessment Report provided an overview of the
factors relating to the implementation of all recommendations, including roles of
ICANN org, the Board, and the community as well as any dependencies that may affect
implementation.

Understanding that some of the recommendations are specifically addressed to the
community, while others require community work in the initial phases, ICANN org began
to implement some of the recommendations that did not have community
dependencies. For example, ICANN org implemented several recommendations on the
transparency of Board deliberations, which focused on the types of information that was
redacted from Board materials and whether such information should be reviewed for
disclosure at a later time. Following these recommendations, ICANN org made updates
to the ICANN Publication Practices and Guidelines for the Posting of Board Briefing
Materials, created a redaction register to track redactions of board resolutions, minutes,
and briefing materials, and an alignment document for ICANN's Document Information
Disclosure Policy.

Since the Board's adoption of the WS2 recommendations, internal staff changes and
reorganization across a number of ICANN's internal functions has resulted in
adjustments to the internal staff team supporting the implementation work. The internal
team is working to develop the more detailed implementation plan, in coordination with
the Planning function, in an effort to identify the work underway, prioritize for the current
operational period, and future planning and budgeting cycles, which are tied to the
greater issue of prioritizing implementation of all community-issued recommendations.
(*See* WS2 Implementation Assessment Report.)

On 8 May 2020, ICANN org published a status update on the implementation efforts of the WS2 recommendations. (*See* Blog from T. Swinehart, dated 8 May 2020, https://www.icann.org/news/blog/moving-toward-implementation-next-steps-for-work-stream-2.) The update informed on the work that has been completed and noted areas in which the community plays an important role in prioritization, planning, and executing implementation work. (*See id.*) The update noted that:

> [A] significant part of the remaining recommendations apply to the community, such as those relating to Supporting Organization and Advisory Committee accountability. Other recommendations require community input before ICANN org can begin implementation. For example, community agreement on diversity definitions is needed so relevant data can be captured and reported uniformly across the ICANN community. Community guidance on "reasonable best efforts" to implement the diversity recommendations, and an initial diversity assessment of objectives and strategies for achieving diversity criteria are also required.

> ICANN org looks forward to working with the community to prioritize its workload to ensure that WS2 implementation does not negatively impact other priorities. Detailed planning and determination of how WS2 can be consolidated with existing efforts will be an important first step for the community to take. In the meantime, ICANN org is committed to working with the community to align WS2 with relevant annual planning and budgeting cycles. This will help prioritize WS2 implementation as part of the overall workload for the community, Board, and org and facilitate effective resource allocation.

(*Id.*)

II.   Your 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 and conducted a reasonable search for responsive documentary information. ICANN org has evaluated responsive documentary information and considered whether any 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.

Item No. 1
Item No. 1 seeks "[d]ocuments and details of all communication carried out since November 2019 between the Empowered Community and ICANN org as regards to implementation of Work Stream 2 recommendations."

The Empowered Community (EC) is the mechanism through which ICANN's Supporting Organizations (SOs) and Advisory Committees (ACs) can organize under California law to legally enforce community powers. The community powers and rules that govern the EC are defined in the ICANN Articles of Incorporation and Bylaws. The powers and rights of the EC are laid out in Article 6.2 of the ICANN Bylaws. To date, the WS2 implementation has not implicated or triggered any of the EC's powers. As such, there are no documents responsive to this item that exist. To the extent that future implementation work may result in revisions to the ICANN Bylaws which may implicate or trigger the EC's powers (or other events that trigger the EC's powers), there may be appropriate communications with the EC at that time.

Item No. 2
Item No. 2 seeks "[d]ocuments and exact details of budget in both staff time and resources to support the Implementation of Work Stream 2 recommendations earmarked to the entire ICANN Community for FY20 and FY21-25."

As part of its commitment to accountability and transparency, ICANN org makes available a comprehensive set of financial materials on its website as a matter of course. The documents containing information responsive to this item are currently available on ICANN org's financials webpage, at https://www.icann.org/resources/pages/governance/current-en. For FY20, responsive documentation regarding the budget and staff time devoted to WS2 implementation efforts can be located in the FY20 Adopted Budget by Portfolio and Project under section 5.2.1 titled "Enhancing ICANN Accountability – WS2 Total".   For FY21, responsive documentation regarding the cost of implementing WS2 and other Board-approved recommendations can be found both in the ICANN Adopted FY21-25 Operating Plan and FY21 Operating Plan in the Accountability Reviews section beginning on page 301 and in the ICANN FY21 Adopted Budget in section 7.2 Expenses by Functional Activity. Please reference the Accountability Reviews costs on line 34 of the Expenses by Functional Activity excel document.

For FY21-25 generally, some of the work of CCWG-Accountability WS2 will fall under the operating initiative to "evolve and strengthen the multistakeholder model to facilitate diverse and inclusive participation in policymaking" as indicated in the ICANN Operating and Financial Plans for FY21-25 (*see* pgs. 25, 188-190, 243) while other parts of the work will be integrated into the work of existing ICANN org departments in furtherance of other operative initiatives (i.e. recommendations related to improvements for the

Ombuds and recommendations related to staff accountability will have implications on the budget allocated to various functions) (*see* pgs. 124-125, 158-160). The budget associated with the various operating initiatives as outlined in the Highlights of the Adopted FY21-25 Operating and Financial Plan and FY21 Operating Plan and Budget are summarized on page 13. In addition to the budgeted amount outlined in the various operating initiatives, the CCWG-Accountability WS2 efforts has also been identified as a key project with potentially unforeseen expenses that may require contingency funds.[2] (*See* Highlights of the Adopted FY21-25 Operating and Financial Plan and FY21 Operating Plan and Budget, pg. 22.) As such, additional budget may be allocated from contingency. ICANN org expects WS2 implementation to be a key topic in the engagement with the community as the org embarks on the FY22 budget and planning process later this year.

To the extent that there are any drafts documents relating to implementation planning surrounding these WS2 recommendations within ICANN org's possession or control, such documents are subject to the following Nondisclosure Conditions and are not appropriate for disclosure:

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

- 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.

Item Nos. 3 and 4

Item Nos. 3 and 4 seek the disclosure of documents related to the WS2 recommendations on diversity. Specifically, these items ask for documentary information of "actions taken towards supporting the Board in its diversity tracking and reporting" (Item No. 3) and "actions taken towards supporting each diversity assessment, and to execute on each SO/AC or other group's objectives and strategies through tool development and other means" (Item No. 4).

As noted in Annex 1 to the WS2 Final Report, ICANN has made an effort to ensure global diversity at various levels in its staff, community, and Board. Since its inception in 1998, the ICANN Bylaws mandate diversity among ICANN Board of Directors and some of its constituent bodies to ensure inclusiveness and representation of the global Internet community. The CCWG-Accountability noted in the WS2 Final Report that diversity within ICANN org refers to: "the creation/existence of an inclusive environment in various aspects of stakeholder representation and engagement throughout all levels of the staff, community, and Board." (*See* WS2 Final Report, pg. 8.) To achieve this, the recommendations proposed three areas of focus with roles for the community, Board and ICANN org: agreement on the elements of diversity; measuring and promoting diversity; and ongoing support for assessing and reporting on diversity. (*See id.* at pgs. 18-20 & Annex 1.)

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[2] It should be noted that contingency expenses represent an amount of budgeted expenses unallocated to specific activities or functions.

As a preliminary matter, ICANN org currently produces several reports that capture diversity data, though not necessarily all of the elements noted in the diversity recommendations are reflected in those reports. These reports, which contain information responsive to Item Nos. 3 and 4, include:

- ICANN "By the Numbers" & Technical Data Reports from ICANN Public Meetings.
- Gender Diversity and Participation Survey Report.
- Age Diversity and Participation Survey Report.
- Exploring the Public Interest within ICANN's Remit Home Dashboard.
- Capacity Development Community Survey;
- ICANN's Accountability Indicators which shows geographic distribution in participation in ICANN meetings and programs (i.e. Fellowship, NextGen); and
- The ICANN "CEO Report" which contains factors such as geographic distribution, age, and gender balance.

The WS2 Implementation Assessment Report provides that the implementation of the WS2 diversity recommendations are dependent on several implementation considerations:

> A core implementation consideration will be the establishment of a shared understanding of the attributes for each of the diversity elements, with an agreed-upon set of definitions. Community agreement on definitions for elements identified in this recommendation relating to diversity is needed so that data can be captured and reported uniformly across ICANN.

> The implementation of the diversity recommendations is also contingent upon the Board's adoption of these definitions so that they can be applied uniformly and consistently across ICANN org and community.

(*See* WS2 Implementation Assessment Report, pg. 7.) Once the uniform definitions for diversity have been finalized, it is estimated that it will take six to 18 months to implement these recommendations. (*See id.* at pg. 10.) Currently, the implementation work resides with the community to develop proposed uniform definitions to be applied for the diversity elements. Further, as discussed in the WS2 Implementation Assessment Report, the SO/AC will need to first undertake an initial diversity assessment and determine objectives and strategies for achieving their diversity criteria, including reporting out on a regular basis. The SO/AC will also need to consider what they wish to revise from current charters and practices in order to support a uniform approach to data collection and reporting across ICANN. (*See id.* at pg. 8.) As such, there are no documents beyond those identified in the foregoing paragraph in ICANN org's possession or control that are responsive to Item Nos. 3 and 4.

Item No. 5

Item No. 5 seeks "[d]ocuments and details of any actions towards incorporating the guidelines for individuals acting in 'Good Faith' into the Expected Standards of Good Behavior."

As discussed in the WS2 Implementation Assessment Report, the implementation of the Guidelines for Good Faith is dependent on several implementation considerations:

> Full implementation is reliant upon each the Decisional Participants further developing their internal processes to better embrace and reference these guidelines. While work has begun on this, further community work will assist in clarifying the impact on ICANN org resources both in the conduct of the work and the implementation.

> * * *

> The recommendations on this topic are focused on SO/AC or other group efforts and do not require an independent implementation effort from ICANN org. It is anticipated, however, that ICANN org resources will be needed by the Community to support the implementation of these recommendations.

> The actual timing, scope, and duration of the implementation will have to be determined by the Decisional Participants in the Empowered Community. Once this has been decided, ICANN org will be in a position to estimate resources and costs to support the SO/AC or other group efforts to implement these recommendations.

(*See* WS2 Implementation Assessment Report*,* pgs. 12-13.) This implementation work currently resides with the community. As such, there are no documents within ICANN org's possession or control that are responsive to this item.

Item Nos. 6, 7 and 8

Item Nos. 6 through 8 seek the disclosure of documents relating to the implementation of the WS2 recommendation for a Framework of Interpretation (FOI) for Human Rights. Specifically, Item No. 6 seeks documents regarding "any action taken towards developing practices to document how ICANN balances the core value of respecting human rights amongst and against the other core values when developing corporate or operational policies and executing its operations." Item No. 7 seeks documents relating to the "implementation of the recommendations provided in May 2019 under the ICANN Human Rights Impact Assessment." Item No. 8 seeks documents regarding the "frequency of ICANN org human rights impact assessment and budgetary allocation to ensure this is achieved."

With ICANN's October 2016 Bylaws change, a core value was added to uphold that "within the scope of its Mission and other Core Values, [ICANN will] respect internationally recognized human rights as required by applicable law." (the "Human

Rights Core Value"). This core value is in addition to the seven other core values as well as the six commitments also found in the ICANN Bylaws. The ICANN Bylaws dictate the balancing work required:

> The Commitments and Core Values are intended to apply in the broadest possible range of circumstances. The Commitments reflect ICANN's fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN's activities. The specific way in which Core Values are applied, individually and collectively, to any given situation may depend on many factors that cannot be fully anticipated or enumerated. Situations may arise in which perfect fidelity to all Core Values simultaneously is not possible. Accordingly, in any situation where one Core Value must be balanced with another, potentially competing Core Value, the result of the balancing must serve a policy developed through the bottom-up multistakeholder process or otherwise best serve ICANN's Mission.

(Bylaws, Art. 2, Sec. 1.2(c).) The Human Rights Core Value came into effect with the Board's approval of the WS2 Final Report, as that Final Report included a consensus recommendation for a Framework of Interpretation (FOI) to guide how the Human Rights Core Value could be interpreted and applied to ensure that ICANN accomplishes its Mission consistent with its core values and operates within law applicable to its operations. Currently, further implementation work on incorporating the FOI into community processes and procedures resides with the community.

It should be noted that, independent of the FOI (and independent of WS2), ICANN org commissioned and released in May 2019 a Human Rights Impact Assessment (HRIA) report on its daily operations.

ICANN org's work in implementing the HRIA recommendations was the subject of a recent blog by Sally Costerton, Sr. Advisor to President & SVP, Global Stakeholder Engagement. As one of the recommendations within the HRIA included planning for future cadences of repeating an HRIA, ICANN org will continue to update the community on the plans for implementation of that recommendation. As noted in the blog, "[t]here is additional work to be done which will be going to the pipeline and prioritized along with other community-driven objectives. About half of the remaining recommendations are in progress, with the rest under consideration. In the meantime, ICANN org will continue to enhance its daily operational activities to best meet international standards and best practices in the spirit of the HRIA recommendations." (Blog from S. Costerton, dated 2 July 2020, https://www.icann.org/news/blog/status-of-icann-org-s-human-rights-impact-assessment-recommendations-implementation.)

To the extent that there are any drafts or other documents relating to implementation planning surrounding these WS2 recommendations, or the implementation of the HRIA,

within ICANN org's possession or control, such documents are subject to the following Nondisclosure Conditions and are not appropriate for disclosure:

- Internal information that, if disclosed, would or would 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.

Item Nos. 9, 10, 11 and 12
Item Nos. 9 through 12 seek documents relating to the WS2 recommendations on Jurisdiction. Specifically, these items seek documents relating to the following:

- actions taken towards ICANN applying for and using best efforts to secure an OFAC license if the other party is otherwise qualified to be a registrar (and is not individually subject to sanctions). (Item No. 9)

- actions taken towards contractual amendments to the base Registry Agreement and model Registrar Accreditation Agreement towards implementation of the Recommendations for jurisdiction of settlement of dispute issues. (Item No. 10)

- tools developed by ICANN org to remind registrars to understand the applicable laws under which they operate and to accurately reflect those laws in their customer relationships. (Item No. 11)

- actions taken towards pursuing one or more OFAC "general licenses." (Item No. 12)

With respect to Item Nos. 9 and 11, as discussed in the WS2 Implementation Assessment Report, ICANN org currently works with the registry and registrar applicants regarding their applications and keeps applicants apprised of trade regulation or sanction issues that are identified as their applications are processed. As contemplated in the recommendations, as long as the person or entity is not on the Specially Designated Nationals (SDN) list, ICANN org already seeks licenses to do business with those persons or entities as necessary under law. For example, ICANN org has and will continue to seek licenses, when necessary, for Domain Name System (DNS) management efforts and supporting travelers, subject to the same restriction that the person or entity not be on the SDN list. The number of individual licenses that ICANN has had to seek over the past few years across all areas of operation is under

10. (*See* WS2 Implementation Assessment Report, pg. 18.) The documents responsive to these items are subject to the following Nondisclosure Conditions, and are therefore not appropriate for disclosure:

- 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.

- 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.

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

With respect to Item No. 10, which relates to WS2 recommendations on Choice of Law and Choice of Venue and proposes amendments to the Registrar Accreditation Agreement (RAA) and Registry Agreements (RA) that address choice of law, the CCWG-Accountability notes in Recommendation 4.2 that "it cannot require ICANN to make amendments to the RA or the RAA. Rather, this recommendation suggests possible changes to the RA and RAA for study and consideration by ICANN the organization, the GNSO, and the contracted parties." (*See* WS2 Implementation Assessment Report, pg. 18.) As discussed in the WS2 Implementation Assessment Report, any changes will need contracted party agreement before ICANN org implementation. Therefore, implementation consideration and planning are dependent on contracted parties' interest in initiating an amendment to the contracts. ICANN org cannot require the contracted parties to enter into a negotiation, and the

recommendation is not recommending opening negotiations. As noted in the WS2 Implementation Assessment Report, "ICANN org is prepared to engage in these discussions and will encourage the contracted parties to hold this conversation and undertake the study as soon as feasible. If the contracted parties are not ready to move forward at this time on negotiation of the topics within this recommendation, ICANN org will make sure that these items remain on the list of topics for negotiation as soon as feasible." (*See* WS2 Implementation Assessment Report, pgs. 19-20.) Additionally, the Generic Names Supporting Organization (GNSO) Council has an ongoing policy development process on the Subsequent Procedures for New generic Top-Level Domains (gTLDs), which will frame the policy recommendations for future rounds of new gTLDs. Some of the recommendations regarding impacts on gTLD registry applicants, including potential changes to the base RA, might be impacted by that policy development work. Currently, there are no documents in ICANN org's possession or control that are responsive to Item No. 10.

With respect to Item No. 12, ICANN org noted during the development of recommendation 4.1.4 that there is no application process to request a general license. A general license requires a change in regulation by the U.S. Department of the Treasury or a change in legislation. Licenses of this scope are typically not developed for a single entity. The potential effort in seeking such a regulatory or legislative action could risk ICANN's not-for-profit status, in that there are limits imposed on the resources that ICANN may devote to lobbying activities. Further, there is no guarantee of success from any such lobbying effort or expense. Therefore, the WS2 Implementation Assessment Report provides:

> These issues will be more fully laid out in the feasibility study requested in the WS2 report. ICANN org is committed to implementing the recommendation and moving forward with the identified study. The results are expected to provide information to the ICANN community, Board, and org on the feasibility of moving forward to such action, potential costs, likelihood of success, and, if appropriate, other alternatives that might achieve some of the same goals. The results of this study will be shared with the community for advice on how to proceed. The study may reveal one or more paths to achieving the WS2's stated outcomes, and then there will be a need to collectively review that study to determine if any of those paths are feasible or appropriate for ICANN.

To the extent that there are any drafts documents relating to implementation planning surrounding these WS2 recommendations within ICANN's possession or control, such documents are subject to the following Nondisclosure Conditions and are not appropriate for disclosure:

- 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.

Item No. 13

Item No. 13 seeks "[d]ocuments and details of any work carried out with the ICANN Board to make sure there is an appropriate division of responsibility to implement the recommendations, while respecting the independence of the Ombudsman's work on investigations and dispute resolution." This item falls within the scope of your DIDP Request 20200610-1, seeking 10 categories of documents relating to the WS2 recommendations on improvements to the ICANN Office of the Ombuds (IOO). ICANN org's Response to DIDP 20200610-1 is incorporated herein by reference.

The IOO is an independent, impartial and neutral party that reports directly to the ICANN Board and is not a member of ICANN staff. The IOO is bounded by the ICANN Bylaws and the Ombuds Framework and acts as an informal dispute resolution office for the ICANN community.

The CCWG-Accountability WS2's recommendations for improving the ICANN Office of the Ombuds focused on five area: 1) clarity of roles and processes; 2) standing and authority of the Ombuds; 3) strengthening the independence of the office; 4) strengthening the transparency of the office; and 5) clarity for when the Ombuds should get involved in items that are not yet deemed within the jurisdiction of the office.

The Ombuds currently provides Annual Reports on activities, and the ICANN Ombuds page provides additional information on activities related to its focus areas. Work has already occurred to meet some of the WS2 recommendations. For example, the IOO recently made strides towards diversity enhancement through the appointment of an Adjunct Ombuds that brings gender diversity to the office. ICANN org is working closely with the Board and Ombuds to make sure there is an appropriate division of responsibility to implement the recommendations, while respecting the independence of the Ombuds' work on investigations and dispute resolution. To the extent that there are any drafts documents relating to implementation planning surrounding these WS2 recommendations within ICANN org's possession or control, such documents are subject to the following Nondisclosure Conditions and are not appropriate for disclosure:

- Internal information that, if disclosed, would or would 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.

Item Nos. 14 and 15
Item Nos. 14 and 15 seek the disclosure of documents relating to the implementation of the WS2 recommendations to increase staff accountability. Specifically, Item No. 14 asks for documents relating to "any actions taken by ICANN org to provide a summary of where current ICANN org tracking of services exist, and details of any work undertaken to identify any additional Service Level Agreements (SLAs) and the measurements that should be applied." Item No. 15 seeks "[d]ocuments and details of any actions undertaken since November 2019 to implement the recommendations on increasing staff accountability."

As outlined in the WS2 Implementation Assessment Report, ICANN org has already undertaken significant work on transparency of policies and procedures, reporting on ICANN org activities, and service to the community. For example, the following ICANN org policies are publicly available:

- Anonymous Hotline
- Confidentiality
- Conflict of Interest
- Employee Conduct & Work Rules
- Equal Employment
- Fraud
- Open Door
- Outside Business Interest
- Prohibition of Workplace Harassment
- Board Code of Conduct
- Privacy Policy

ICANN org currently conducts and supports accountability surveys such as Gender Diversity and Participation, Age Diversity and Participation, and Capacity Development. Other surveys include post-participation and alumni program surveys, including the recent ATRT3 Accountability and Transparency Review survey for accountability feedback, and the IANA Customer Engagement Survey. Community consultations are also important data-collecting processes (e.g., Fellowship and NextGen consultations)

wherein community groups participate in the consultation survey and provide feedback on the program.

Over the years, ICANN org has also provided updates on departmental and organizational level performance through [ICANN Annual Report](#), [ICANN Organization Reports to the Board](#), [ICANN President's Corner](#), [Accountability and Transparency Review (ATRT)](#), [GDD Satisfaction Survey](#), [Action Request Register (ARR)](#), [Complaints Office Report](#), [Contractual Compliance Performance Reports](#) and [ICANN's Accountability Indicators](#).

As a next step, ICANN org is working on a summary of where ICANN org tracking of services exist, and once this summary is compiled and developed, ICANN org will work with the community to identify any additional Service Level Agreements (SLAs) that might be appropriate and, if so, the measurements that should be applied. Documents responsive to the current work relating to the tracking of services 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 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.

Item No. 16
Item No. 16 seeks "[d]ocuments and details of steps undertaken towards publishing for Public Comment an updated DIDP that reflects the totality of the recommendations for review as a unified operational policy, rather than presenting a series of individual recommendations for review."

The CCWG-Accountability WS2's recommendations on the DIDP focus both on updating the DIDP with specific modifications, as well as procedural enhancements such as how ICANN responds to DIDP requests are documented. In addition, this set of recommendations (as modified through implementation guidance set out in Annex 9 of the Report) includes proactive disclosure of information on high value contracts held by ICANN, as well as a requirement to regularly review the DIDP. It should be noted that the operation of the DIDP already takes into account many of the improvements to documentation and implementation that the CCWG WS2 recommended. For example, ICANN org already publishes on its [DIDP page](#) a list of categories of information and relevant links to documents that ICANN org makes available as a matter of course.

Even so, ICANN org continues to provide narrative responses to DIDP requests with references and targeted links to information where relevant. If a portion of a request seeks information not available through the DIDP, ICANN org still responds to that portion as well as all other portions of the request.

As noted in the WS2 Implementation Assessment Report, ICANN org plans to publish for Public Comment an updated DIDP that reflects the totality of the recommendations for review as a unified operational policy, rather than presenting a series of individual recommendations for review. ICANN org also has work underway updating and documenting internal practices to better define the types of documents that are expected to exist, and how those documents will be accessed and considered when responding to a DIDP request. Responsive documentary information surrounding these efforts are subject to the following Nondisclosure Conditions:

- Internal information that, if disclosed, would or would 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.

Item No. 17
Item No. 17 seeks "[d]ocuments and details of any changes to ICANN's Hotline Policy inline with the recommendations on improving ICANN transparency."

In March 2016, in response to a recommendation from the second Accountability and Transparency Review, NAVEX Global conducted a review of ICANN org's Anonymous Hotline Policy and Procedures and identified recommendations for possible improvements to enhance the Anonymous Hotline to a best practice reporting mechanism. The CCWG-Accountability WS2's recommendations on improving ICANN's Anonymous Hotline considered and adopted almost all of the recommendations from NAVEX Global. ICANN org made various modifications to the Anonymous Hotline Policy and Procedures to meet the recommendations and modifications proposed by NAVEX. Following the recommendations provided in the WS2 Final Report, ICANN org will evaluate whether additional efforts are required and assess the proposed two-year cycle of review and make a determination based on costs and resources if content development is necessary given the volume of reported calls. Once updated and available, ICANN org will post a redacted version of the updated Anonymous Hotline Policy and Procedures.

Item No. 18
Item No. 18 seeks "[d]ocuments and details of any changes to ICANN's procurement processes and procedures inline with the recommendations on improving ICANN transparency."

There are no recommendations in the WS2 Final Report that directly necessitate changes to ICANN's procurement processes and procedures. Instead, the WS2 Implementation Assessment Report interprets recommendation 8.1.16 which states "[w]henever possible, ICANN's contracts should either be proactively disclosed or available for request under the DIDP" as a request for open contracting which will require revising the procurement processes and additional and ongoing resources and staff to support the new reporting requirements. As part of its commitment to transparency, ICANN org annually discloses in its tax return (the "form 990") all contractors it paid $1,000,000 or more over the fiscal year, as opposed to disclosing only the top five vendors as required for compliance with U.S. tax code. Other relevant reports that provide information related to this recommendation are as follows:

- On ICANN org's relationship with governments, ICANN org's Charter on Government Engagement Approach
- ICANN Lobbying Disclosures & Contribution Reports
- ICANN org's CEO and GSE/GE reports
- ICANN org's Legislative and Regulatory Reports

ICANN org's most updated procurement guidelines are available here. Currently, there are no documents in ICANN org's possession or control that are responsive to this request.

Public Interest in Disclosure of Information Subject to Nondisclosure Conditions

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.