

To: Edgar Lavarello and Mike Rodenbaugh on behalf of Dot Hotel Limited and Domain Ventures Partners PCC Limited

Date: 5 March 2021

Re: Request No. 20210204-1

This is in response to the request for documentary information that was included as part of the [Reconsideration Request 12-1](#) you submitted on 4 February 2021. Your documentary request seeks documents related to the Internet Corporation for Assigned Names and Numbers' (ICANN org) approval of a change of control request from the registry operators owned and controlled by Afilias, Inc. (Afilias), namely Afilias Limited, Dot Global Domain Registry Ltd., Monolith Registry LLC, and Global Website TLD Asia Limited. Your request will be addressed under ICANN's Documentary Information Disclosure Policy (DIDP). For reference, the requested items are attached to the email forwarding this Response.

Items Requested

The items requested are as follows:

1. Provide complete, published rationale for the Resolution of Dec. 17, 2020 to essentially approve the Afilias acquisition by Donuts, including identification of all materials relied upon by the Board and/or Staff in evaluating the transaction, publication of all communications between Board, Staff and/or outside advisors relating to the transaction, and publication of all communications regarding the transaction between ICANN on the one hand, and Afilias, Donuts and/or Ethos Capital on the other hand.
2. Provide complete, published rationale as to the basis for allowing Donuts to own or control two applications in the same gTLD [generic top-level domain] contention set for the .hotel string.

Response

I. Background Information

On 17 December 2020, ICANN org consented to a change of control request from Afilias, related to its proposed merger with Donuts, Inc. (Donuts). As a result of the proposed merger, Afilias (and certain of its subsidiaries, including its registry operators) became subsidiaries of Donuts. (See <https://donuts.news/donuts-inc-to-acquire-afilias-inc>.) Under Section 7.5 of the Registry Agreements for the top-level domains operated by Afilias, each registry operator must seek ICANN org's consent of this change of control. (See Base Registry Agreement, Sec. 7.5,

<https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-31jul17-en.html>.)

The ICANN [Change of Control Guide](#) provides that parties interested in initiating a change of control request must complete a submission in accordance with Section 7.9 of the Base Registry Agreement. (See Base Registry Agreement, Sec. 7.9, <https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-31jul17-en.html>.) Once a submission is received, ICANN org will review the submission and all supporting documents and may, in accordance with Section 7.5(b) of the Base Registry Agreement, request additional information. (See *id.* at Sec. 7.5, <https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-31jul17-en.html>.) ICANN org's change of control review process includes an assessment of key issues related to the continued security and stability of the affected top-level domains and ongoing compliance with registry operator policies which may include a review of financial resources, operational and technical capabilities, the transaction structure, and entity and individual background screenings. (See *id.*; see also Change of Control Guide, <https://www.icann.org/en/system/files/files/change-of-control-guide-13dec17-en.pdf>.)

Following the completion of ICANN org's due diligence of the Afilias change of control request, and a briefing to the ICANN Board, ICANN org consented to the request.

II. Your Request

Introduction

The DIDP is a mechanism, developed through community consultation, to ensure that information contained in documents concerning ICANN org's 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 the relevant portions of Reconsideration Request 21-1 seeking documentary information, ICANN org followed the DIDP Response Process. ICANN org consulted with ICANN personnel, conducted interviews and performed a reasonable search for responsive documentary information. ICANN org 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 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. (See <https://www.icann.org/resources/pages/didp-2012-02-25-en>.)

Item No. 1

Item No. 1 asks ICANN org to provide the rationale for the Resolution of the 17 December 2020 Board meeting “to essentially approve the Afilias” change request “including identification of all materials relied upon by the Board and/or Staff in evaluating the transaction, publication of all communications between Board, Staff and/or outside advisors relating to the transaction, and publication of all communications regarding the transaction between ICANN on the one hand, and Afilias, Donuts and/or Ethos Capital on the other hand.”

With respect to your request regarding the 17 December 2020 Board meeting, ICANN org makes available, as a matter of due course, on the ICANN website the resolutions taken, preliminary report, minutes, and the Board briefing materials for each Board meeting in accordance with the [ICANN Bylaws](#) and ICANN’s [Guidelines for the Posting of Board Briefing Materials](#). (See <https://www.icann.org/resources/pages/2020-board-meetings>; <https://www.icann.org/resources/pages/resolutions-2014-03-24-en>; <https://www.icann.org/resources/pages/preliminary-reports-2014-03-24-en>; <https://www.icann.org/resources/pages/minutes-2014-03-24-en>; and <https://www.icann.org/resources/pages/briefing-materials-2014-03-24-en>.) ICANN org has already published all materials for the 17 December 2020 Board meeting.

As reflected in the Approved Resolutions, Preliminary Report, and Minutes for the 17 December 2020 Board meeting, which are published on the ICANN website, the Board discussed the Afilias change of control request at the meeting but did not take a resolution on the matter. (See [Approved Resolutions](#), [Preliminary Report](#), and [Minutes](#), 17 Dec. 2020 Special Meeting of the ICANN Board.) The published Board materials state:

No Resolutions were taken. The Chair stated that the Afilias change of control approval request has been discussed by the Board, and that the ICANN President and CEO, or his designee(s), has the support of the Board to move forward on the request.

(See [Preliminary Report](#) and [Minutes](#), 17 Dec. 2020 Special Meeting of the ICANN Board.) As the Board did not take a resolution on the matter, there is no corresponding rationale. Nor were there briefing materials submitted to the Board for the 17 December 2020 meeting onto this matter. ICANN org has published all materials responsive to this part of Item No. 1.

With respect to the remaining portion of Item No. 1 seeking the disclosure of “all materials relied upon by the Board and/or Staff in evaluating the transaction, publication of all communications between Board, Staff and/or outside advisors relating to the transaction, and publication of all communications regarding the transaction between ICANN on the one hand, and Afilias, Donuts and/or Ethos Capital on the other hand,” ICANN org has identified the following responsive documentary information. ICANN org maintains a [webpage titled “Assignment: Change of Control of Registry Operator”](#),

which contains information and [how to guide for submitting a change of control request](#) (Change of Control Guide) and a [workflow of a change of control process](#) that includes processes taken by ICANN org in evaluating the change of control request. As discussed above and in accordance with Section 7.5 of the [Base Registry Agreement](#), ICANN org's change of control review process includes an assessment of key issues related to the continued security and stability of the affected top-level domains and ongoing compliance with registry operator policies which may include a review of financial resources, operational and technical capabilities, the transaction structure, and entity and individual background screenings. Documents published on the [Assignment: Change of Control of Registry Operator webpage](#) are responsive to Item No. 1.

To the extent that there are additional documents responsive to this part of Item No. 1, such documents are subject to the below list of DIDP Conditions for Nondisclosure and are therefore not appropriate for disclosure. These documents include information disclosures from Afiliias and Donuts, internal analysis documents, email communications between ICANN org and outside counsel, email communications between ICANN org and Afiliias and Donuts, email communications from ICANN org to the ICANN Board regarding status and information updates, internal email communications between ICANN org, and briefing materials submitted to the ICANN Board for informational purposes.

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.
- 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.
- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.
- Trade secrets and commercial and financial information not publicly disclosed by ICANN.

Item No. 2

Item 2 asks ICANN org to “[p]rovide complete, published rationale as to the basis for allowing Donuts to own or control two applications in the same gTLD contention set for the .hotel string.”

Dot Hotel Limited is one of seven applications for the .HOTEL gTLD from the 2012 new gTLD round. (See <https://gtldresult.icann.org/applicationstatus/contentionsetdiagram/51>.) Of the seven applications, six were standard applications and one was a community application. (See *id.*) Spring McCook LLC, a subsidiary of Donuts, submitted a standard application for the .HOTEL string; HOTEL Top-Level-Domain S.a.r.l. (HTLD) submitted a community application with Afiliias as the backend provider of the registry services for the TLD. (See <https://gtldresult.icann.org/applicationstatus/applicationdetails:downloadapplication/1562?t:ac=1562>.) HTLD participated in Community Priority Evaluation (CPE) and prevailed. As a result, HTLD prevailed in the .HOTEL contention set. (See [.HOTEL New gTLD Program Community Priority Evaluation Report](#), and [ICANN’s Response to Request for Independent Review Process](#), at pg. 7.) The .HOTEL contention set is currently on hold pending resolution of an accountability mechanism.

There are no documents responsive to Item No. 2 of your request within ICANN org’s possession, custody, or control.

Public Interest in Disclosure of Information Subject to Conditions for Nondisclosure

Notwithstanding the applicable Conditions for Nondisclosure identified in this Response, ICANN org has considered whether the public interest in disclosure of the additional documentary information subject to these conditions at this point in time outweighs the harm that may be caused by such disclosure. ICANN org has determined that there are no current circumstances for which the public interest in disclosing the information outweighs the harm that may be caused by the requested disclosure.

About DIDP

ICANN’s DIDP is limited to requests for documentary information already in existence within ICANN org that is not publicly available. In addition, the DIDP sets forth Defined

Conditions for 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.