

Response to Documentary Information Disclosure Policy Request

To: Padmini Baruah

Date: 1 October 2015

Re: Request No. 20150901-4

Thank you for your Request for Information dated 1 September 2015 (Request), which was submitted through the Internet Corporation for Assigned Names and Numbers' (ICANN's) 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 references a registrar's obligation, under the 2013 Registration Accreditation Agreement, "to maintain an abuse contact to receive reports of abuse, and to take prompt action to investigate and respond to reports of such abuse," and requests disclosure of:

- (1) "Reports of illegal activity submitted to these contacts in the past year (2014-2015)"; and
- (2) "Records relating to the action taken by the registrars that have been submitted to ICANN over the past year."

Response

The 2013 Registrar Accredited Agreement (RAA) requires ICANN-accredited registrars to provide abuse contact information and take steps to investigate reports of abuse. This includes:

1. Maintaining an abuse contact to receive abuse reports involving domain names sponsored by the registrar, including reports of illegal activity, and publishing an email address to receive reports on the home page of the registrar's website;
2. Taking reasonable and prompt steps to investigate and respond appropriately to any reports of abuse;
3. Establishing and maintaining a dedicated abuse point of contact to receive reports of illegal activity and review such reports within 24 hours of submission. This includes a dedicated email address and telephone number that is monitored 24 hours a day, seven days a week;
4. Publishing on the registrar's website a description of its procedures for the receipt, handling, and tracking of abuse reports; and

5. Providing an abuse email address and telephone number in Whois results.

(See <https://www.icann.org/resources/pages/abuse-2014-01-29-en>.) Specifically, Section 3.18 of the RAA provides:

3.18 Registrar's Abuse Contact and Duty to Investigate Reports of Abuse.

3.18.1 Registrar shall maintain an abuse contact to receive reports of abuse involving Registered Names sponsored by Registrar, including reports of Illegal Activity. Registrar shall publish an email address to receive such reports on the home page of Registrar's website (or in another standardized place that may be designated by ICANN from time to time). Registrar shall take reasonable and prompt steps to investigate and respond appropriately to any reports of abuse.

3.18.2 Registrar shall establish and maintain a dedicated abuse point of contact, including a dedicated email address and telephone number that is monitored 24 hours a day, seven days a week, to receive reports of Illegal Activity by law enforcement, consumer protection, quasi-governmental or other similar authorities designated from time to time by the national or territorial government of the jurisdiction in which the Registrar is established or maintains a physical office. Well-founded reports of Illegal Activity submitted to these contacts must be reviewed within 24 hours by an individual who is empowered by Registrar to take necessary and appropriate actions in response to the report. In responding to any such reports, Registrar will not be required to take any action in contravention of applicable law.

3.18.3 Registrar shall publish on its website a description of its procedures for the receipt, handling, and tracking of abuse reports. Registrar shall document its receipt of and response to all such reports. Registrar shall maintain the records related to such reports for the shorter of two (2) years or the longest period permitted by applicable law, and during such period, shall provide such records to ICANN upon reasonable notice.

(<https://www.icann.org/resources/pages/approved-with-specs-2013-09-17-en#raa>.)

Item No. 1

ICANN currently has over 1,700 accredited registrars, each with a Registrar Accreditation Agreement in effect. Item No. 1 asks ICANN to disclose reports of illegal activity that have been submitted to over 1,700 accredited registrars' abuse contacts in 2014-2015. As stated in the Section 3.18.3, these records are maintained by the registrar, not ICANN. Section 3.18.3 further states that a registrar is not required to automatically provide these records to ICANN but rather upon request by ICANN. As such, ICANN does not maintain, in the normal course of business, reports of complaints that are

submitted directly to a registrar's abuse contact, except when reports were obtained during the course of a contractual compliance investigation of an abuse complaint as discussed in further detailed below.

ICANN's DIDP 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>.) Accordingly, a threshold consideration in responding to a DIDP request, then, is whether the documents requested are in ICANN's possession, custody or control. Under the DIDP Policy, 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>.)

For the reasons stated, except for reports of illegal activity that may have been obtained during the course of a contractual compliance investigation of an abuse complaint, ICANN does not have documents responsive to this Item. With respect to any reports that may have been collected as part of an abuse complaint investigation, they are not appropriate for disclosure for the reasons explained below.

Item No. 2

This request seeks disclosure of records submitted to ICANN regarding the registrars' actions related to abuse complaints. The ICANN Contractual Compliance Complaint Program processes complaints received by ICANN on registry operators and accredited registrars that may be in violation of the Registry Agreement, Registrar Accreditation Agreement, and/or the consensus policies. (See <https://www.icann.org/compliance/complaint>.) The Complaint Program also investigates complaints initiated by ICANN itself, following active monitoring. As set forth on the Contractual Compliance Complaint Program page, there are many different types of complaints that ICANN processes, including abuse complaints. (See <https://www.icann.org/compliance/complaint>; <https://www.icann.org/resources/pages/abuse-2014-01-29-en>; <https://forms.icann.org/en/resources/compliance/complaints/registrars/standards-complaint-form>.)

As part of an investigation of an abuse complaint, ICANN may request that the registrar provide the reports of illegal activity. Such documentation and communications, however, are not appropriate for public disclosure through the DIDP. It is essential for ICANN to have the ability to communicate with its contracted parties on compliance-related complaints and investigations in a way that encourages the open exchange of information with those contracted parties. As a result, and particularly when a formal contractual compliance enforcement process has not been initiated, documentation of ICANN's investigatory communications with its contracted parties fall within 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.
- 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.

Notwithstanding the above, if a formal contractual compliance enforcement process has been initiated relating to an abuse complaint and resulted in a breach, information about that abuse complaint may be included in the breach notice. All breach notices are public and can be found at <https://www.icann.org/resources/pages/notices-2012-02-25-en>. Further, ICANN publishes monthly reports summarizing the complaints received by ICANN (which include complaint type volume, informal and formal process volume, and turnaround time) relating to both registrars and registries, including abuse complaints. These monthly reports are available on ICANN's website, through the Contractual Compliance Performance Reports available at: <https://features.icann.org/compliance>. Further information summarizing and explaining the most common complaints received by ICANN is also publicly available on ICANN Contractual Compliance Outreach webpage, available at <https://www.icann.org/resources/compliance/outreach>.

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.