

*Petillion*

# **Annex 1**

8 January 2020

ICANN

Attn: DIDP team, Ms. AmyStathos, Mr. John Jeffrey  
12025 Waterfront Drive, Suite 3000  
Los Angeles, CA 90094-2536, USA

**By email:** [didp@icann.org](mailto:didp@icann.org)

**Cc:** Contact Information Redacted

Dear Madam,

Dear Sir,

## **Re: Request for Document Disclosure**

Pursuant to ICANN's Document Information Disclosure Policy (DIDP), on behalf of Namecheap, Inc. (Namecheap), we hereby request the documents described below.

### **1. Relevant Background**

Namecheap is an ICANN-accredited registrar with an important client base of domain name holders in the .ORG, .BIZ and .INFO gTLDs. Namecheap has been challenging ICANN's decisions with respect to the renewal of the .ORG, .BIZ and .INFO Registry Agreements, the removal of the price caps for these gTLDs, and Namecheap is challenging ICANN's actions and inactions with respect to the change of control of the registry operator for .ORG. It is unclear how ICANN has balanced the competing interests of the relevant stakeholders in its actions and inactions pertaining to .ORG, .BIZ and .INFO Registry Agreements that greatly impact the position of the registrars and registrants, such as Namecheap and their customers, as well as all Internet users.

## 2. Information Requested

Namecheap respectfully requests that ICANN produce all documents directly and indirectly relating to the negotiations pertaining to the reassignment, renewal and amendments of the .ORG, .BIZ and/or .INFO Registry Agreements, including but not limited to:

1. An executed copy of all Registry Agreements (and amendments thereto) for the original gTLDs (.COM, .NET, .ORG) and the gTLDs that were delegated pursuant to ICANN Resolution 00.89 of 16 November 2000, including those agreements that have been terminated, reassigned or renewed;
2. All correspondence between ICANN and the registry operators (and their representatives) in relation to the .ORG, .BIZ and/or .INFO Registry Agreements;
3. All requests from the registry operators (and their representatives) in relation to the reassignment of the .ORG, .BIZ and/or .INFO Registry Agreements;
4. All requests from the registry operators (and their representatives) in relation to the renewal of the .ORG, .BIZ and/or .INFO Registry Agreements;
5. All requests from the registry operators (and their representatives) in relation to the modification of the price caps in the .ORG, .BIZ and/or .INFO Registry Agreements;
6. All requests from the registry operators (and their representatives) in relation to the removal of the price caps in the .ORG, .BIZ and/or .INFO Registry Agreements;
7. Any document showing the reasons for ICANN to accept to examine requests for such renewal, modification and removal;
8. Any document showing the reasons for ICANN to accept requests for such renewal, modification and removal;
9. Any document showing that ICANN has considered, and made a reasoned decision, as to the question whether the renewal of the .ORG registry agreement, including the removal of the price cap, is in line with the requirement for the .ORG registry fee charged to accredited registrars to be as low as feasible consistent with the maintenance of good quality service, as this requirement was laid out in the DNSO policy and in the request for proposals for reassignment of the .ORG gTLD, as imposed in 2002, never modified since, and still applicable in 2019;
10. All exchanges of communication between ICANN and the registry operators discussing such renewal, modification and removal;

11. All communications between ICANN staff and the ICANN Board in relation to the .ORG, .BIZ and/or .INFO Registry Agreements, including with regard to said renewal, modification and removal, the reasons to accept to examine said requests and the reasons to accept said requests;
12. All communications between ICANN staff and individual ICANN Board members in relation to the .ORG, .BIZ and/or .INFO Registry Agreements, including with regard to said renewal, modification and removal, the reasons to accept to examine said requests and the reasons to accept said requests;
13. All communications between ICANN staff in relation to the .ORG, .BIZ and/or .INFO Registry Agreements, including with regard to said renewal, modification and removal, the reasons to accept to examine said requests and the reasons to accept said requests;
14. All communications between ICANN Board members in relation to the .ORG, .BIZ and/or .INFO Registry Agreements, including with regard to said renewal, modification and removal, the reasons to accept to examine said requests and the reasons to accept said requests;
15. All communications between ICANN staff or ICANN Board member and any other person or organisation other than ICANN staff or ICANN Board members in relation to the .ORG, .BIZ and/or .INFO Registry Agreements, including with regard to said renewal, modification and removal, the reasons to accept to examine said requests and the reasons to accept said requests;
16. All documents related to the preparation of the Report of Public Comments for Proposed Renewal of .ORG, .BIZ and/or .INFO Registry Agreements, including summaries and analysis, including the documents exchanged between ICANN staff and the ICANN Board, between ICANN staff and individual ICANN Board members, between ICANN staff, between ICANN Board members, and between ICANN staff or ICANN Board members and any other person or organisation other than ICANN staff or ICANN Board members; and
17. Any and all authorisations granted by, and communications with, government officials in relation to the delegation, reassignment, renewal, amendments and/or operation of the .ORG, .BIZ and/or .INFO Registry Agreements.

Namecheap further respectfully requests that ICANN produce all documents directly and indirectly relating to all economic studies, impact studies, and other studies ICANN has commissioned, examined and/or performed with respect to competition and/or pricing of TLDs (in particular original gTLDs (.COM, .NET, .ORG) and gTLDs that were delegated pursuant to ICANN Resolution 00.89 of 16 November 2000 (e.g., .BIZ, .INFO)), and with respect to vertical integration between registries and registrars, including but not limited to:

1. The requests for proposals and expressions of interest for performing the studies;
2. The selection criteria of the service providers, performing the studies;
3. The draft reports of the studies;
4. The reasons given by the authors of the studies to change draft reports before issuing final studies;
5. The final studies;
6. The names and qualifications of the authors and participants of the studies;
7. The documentation on which the studies were based;
8. The contractual arrangements with the authors of the studies;
9. The price paid by ICANN for the studies;
10. Any document containing ICANN's analysis and/or summary of these studies and of the comments made in response to these studies; and
11. All communications between ICANN and the authors and participants of the studies.

Namecheap also respectfully requests that ICANN produce all documents directly and indirectly relating to the change of control of Public Interest Registry, including but not limited to:

1. All correspondence between ICANN and Public Interest Registry, their representatives, their related companies and organisations relating to the change of control of Public Interest Registry;
2. All communications between ICANN staff and the ICANN Board in relation to the change of control of Public Interest Registry;
3. All communications between ICANN staff and individual ICANN Board members in relation to the change of control of Public Interest Registry;
4. All communications between ICANN staff in relation to the change of control of Public Interest Registry;

5. All communications between ICANN Board members in relation to the change of control of Public Interest Registry; and
6. All communications between ICANN staff or ICANN Board members and any other person or organisation other than ICANN staff or ICANN Board member.

The information requested herein is not publicly available and is therefore a proper subject for a DIDP Request.

The information does not meet any of the defined conditions for nondisclosure:

- The information was not, or ought not to be, provided by or to a government or international organisation in the expectation that the information will be kept confidential;
- The information would not materially prejudice ICANN's relationship with a government or international organisation;
- The information is not likely to compromise the integrity of ICANN's deliberative or decision-making process. Indeed, ICANN is required by its Articles of Incorporation and Bylaws to “*operate to the maximum extent feasible in an open and transparent manner*”, including by “*employing open and transparent policy development mechanisms*”, providing “*detailed explanations of the basis for decisions*” and “*making decisions by applying documented policies neutrally and objectively*”. Without full transparency, ICANN would seriously compromise the integrity of its deliberative and decision-making processes. Disclosing the requested information can only improve ICANN's deliberative and decision-making processes. As a result, there can be no reasonable justification for refusing to publish the requested documents;
- The information is not likely to compromise the integrity of the deliberative or decision-making process between ICANN and its constituencies or other entities, for the same reasons as noted above;
- The information is unrelated to any personnel, medical, contractual, remuneration, or similar records relating to an individual's personal information; at most some of the information requested may relate to payments made by ICANN to service providers that have a reasonable opportunity to offer their services via an organisation or company;
- The information is not likely to impermissibly prejudice any parties' commercial, financial, or competitive interests. Additionally, to the extent that any of the requested documents contain such information, and the information is unrelated to the .ORG and/or .INFO Registry Agreements, such information can be redacted before the publication of the documents;
- The information is not confidential business information or internal policies or procedures and cannot be qualified as such in a contractual context without violating ICANN's transparency obligations;

- The information will not endanger the life, health, or safety of any individual nor prejudice the administration of justice;
- The information is not subject to attorney-client privilege;
- The information is not drafts of communications;
- The information is not related in any way to the security or stability of the Internet;
- The information is not trade secrets or financial information;
- The information request is reasonable, not excessive or overly burdensome, compliance is feasible, and there is no abuse.

Moreover, to the extent any of the information does fall into one of the defined conditions for non-disclosure, ICANN should nonetheless disclose the information, as the public interest in disclosing the information outweighs any harm that might be caused by disclosure. Indeed, there can be no harm from disclosing the information, as the ICANN community is entitled to know the standards by which ICANN (together with any consultants) makes decisions that determine the control over internet resources as crucial as TLDs that were delegated in an environment with very few competitors to companies and organisations that have been able to profit from a first-mover advantage. ICANN's transparency obligation, described by ICANN's own Bylaws and Articles of Incorporation, requires publication of information related to the process, facts, and analysis used by (individual members of) ICANN's Staff and Board in making those decisions.

Finally, unless the requested information is published, the ICANN community will have no way to evaluate whether ICANN has met its obligations to act fairly, for the benefit of the community, and in accord with its own policies.

### **3. Conclusion**

In short, because there is no "compelling reason for confidentiality" and numerous compelling reasons for publications, and because publication is required by ICANN's own Bylaws and Articles of Incorporation, Namecheap urges publication of the requested information, including in particular the specific documents described above.

Yours sincerely,

  
Flip Petillion

  
Jan Janssen\*