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By E-mail to: didp@icann.org

Internet Corporation for Assigned Names and Numbers (ICANN)

4676 Admiralty Way, Suite 330

Marina del Rey, CA 90292-6601

Re: DIDP Request

Dear ICANN:

I am writing on behalf of the members of the Internet Commerce Association (ICA) to initiate a disclosure request pursuant to ICANN's Documentary Information Disclosure Policy (DIDP) in regard to a matter with reserved funding in the Draft FY 13 Operating Plan and Budget.

ICA is a not-for-profit trade association representing the domain name industry, including domain registrants, domain marketplaces, and direct search providers. Its membership is composed of domain name registrants who invest in domain names (DNs) and develop the associated websites, as well as the companies that serve them. Professional domain name registrants are a major source of the fees that support registrars, registries, and ICANN itself. ICA members own and operate approximately ten percent of all existing Internet domains on behalf of their own domain portfolios as well as those of thousands of customers.

Description of request

The ICA is hereby requesting information from ICANN relating to the \$175,000 earmark in the Proposed FY 13 Operating Budget for the purpose of convening two “Summits” to address reconfiguration of the Uniform Rapid Suspension (URS) rights protection mechanism required for all new gTLDs that shall be delegated to the root under the now ongoing application and evaluation process for new gTLDs.

This request is made pursuant to ICANN’s DIDP. As stated on the portion of ICANN’s website explaining its commitment to transparency, the DIDP “is intended to ensure that information contained in documents concerning ICANN’s operational activities, and within ICANN’s possession, custody, or control, is made available to the public unless there is a compelling reason for confidentiality.” (<http://www.icann.org/en/about/transparency/didp>) We have reviewed ICANN’s website and can find none of the information that might be divulged in response to this request, so we are seeking its disclosure through the DIDP process; nor do we believe that any significant portion of the materials requested would fall within the “Defined Conditions for Nondisclosure” recited on that webpage. In addition, while we oppose the holding of URS Summits or any other non-standard process for “reconfiguration” of URS policy absent a fuller explanation and consensus approval by the ICANN community, if such process is indeed undertaken those participating in it would require much of the information we are hereby requesting in order to make fully informed decisions.

Because the receipt of information in response to this reasonable request may be the basis of important interaction between ICA and other concerned community members with members of the ICANN Board and staff at the upcoming public meeting in Prague, and because the Board will be finalizing the FY 13 Budget immediately after such interaction (including comments received during the Public Forum to be held in Prague), we urge that even if our request cannot be fully accommodated within 30 calendar days of receipt, that all such responsive information that can be made available within that standard response time is in fact made available as soon as possible so that we and others may be provided with the maximum amount of factual background to inform our remarks, activities, and interactions in Prague.

Our request is as follows:

1. Please identify all ICANN staff members in addition to Senior Vice President for Stakeholder Relations Kurt Pritz, as well as any Board members, who have played any non-clerical role whatsoever in URS implementation activities since approval of the new gTLD program by the ICANN Board at the Public Meeting held in Singapore in June 2011.

2. Please provide all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication between all such ICANN staff and Board members referenced in and identified in response to the question above, as well as all such interchanges between all such ICANN staff and Board members with staff and officers of the World Intellectual Property Organization (WIPO), members of ICANN's Intellectual Property Constituency (IPC), staff and officers of Nominet and the ICM Registry, and with staff or members of any other organizations as well as with discrete individuals, and between such ICANN staff and Board members with additional members of the ICANN Board of Directors or of its New gTLD Program Committee, which were produced in furtherance of or in the course of URS implementation steps undertaken to date, that relate to:
 - a. The quite apparent decision that was made to conduct such implementation to date through consultation with select individuals and organizations rather than through the formation of an open and transparent Implementation Advisory Group (IAG) or similar entity such as that established and operating for the Trademark Clearinghouse.
 - b. All information, data, and analysis conveyed between or prepared by any and all of the above referenced individuals and organizations that led to or is a basis for the assertion that "there is a significant gap between the features specified for the URS procedure and the desired cost" and that "the implementation will not attain the cost target of \$300-\$500 in URS fee per case"; this assertion is the basis for the Budget request for \$175,000 to facilitate a process for URS reconfiguration. In particular, we are seeking information, data and analysis that identifies with specificity those elements of the current URS model and related policy that would make the "cost target" difficult or impossible to achieve.
 - c. All information, data, and analysis conveyed between or prepared by any and all of the above referenced individuals and organizations that led to the policy/implementation decision that maintenance of the "cost target" was such a paramount objective that it requires URS "reconfiguration" -- as opposed to the alternate policy/implementation decision that the URS policy elements, having emerged from a protracted and contentious multi-stakeholder process, and having been subject to repeated Board review including consideration of multiple changes requested by the GAC, should be preserved and that the benchmark cost of a URS complainant filing should represent the cost of implementing the existing URS model as determined by competitive bids in response to a RFP.
 - d. All information, data, and analysis conveyed between or prepared by any and all of the above referenced individuals and organizations that relates to the timing, location, organization, and scope of the effort of; dedicated staff resources required for; and potential participants in any URS

“Summit” or other meeting, event, or process that may utilize any portion of the \$175,000 “placeholder” funding allocation set forth for this purpose in the FY 13 Budget. In particular, we are seeking information, data, and analysis in regard to the potential composition of and selection process for the “community group” which is contemplated to undertake the reconfiguration effort.

- e. All information, data, and analysis conveyed between or prepared by any and all of the above referenced individuals and organizations that relates to the requirements that may be specified in a Request for Proposals (RFP) for potential URS arbitration providers, including whether such providers shall be required to enter into a contractual relationship with ICANN.

Relevant Background Information

ICA has been participating in and monitoring the activities of the Trademark Clearinghouse IAG since its formation last year. Anticipating that a similar IAG would be established for the URS, we asked ICANN staff in public session at the October 2011 Dakar meeting when such implementation would commence and were told that it would be initiated the following month; that assertion was not borne out. Similarly, we raised the same question with more urgency at the March 2012 San Jose meeting and were told that a request for proposals (RFP) for URS providers would be issued the following month; again, no such action was taken.

It is now apparent, based on a staff statement quoted in its entirety below, that “Implementation work [has been] conducted on the URS to date” but that ICANN staff have only communicated with and have chosen to involve only selected organizations and individuals. We are unsure when this URS implementation process began or the identities of all the organizations and individuals it has involved and our request is meant in part to fill in those blanks, as well as to provide us with an informed understanding of what the “Summit” process might entail.

The materials on which we base this understanding and analysis are as follows:

- At page 59 the Draft FY 13 Budget contains the following provision:

24. Uniform Rapid Suspension (URS) – \$175K

*At present there is a significant gap between the features specified for the URS procedure and the desired cost. In order to bridge this gap we will: hold two summit sessions to **reconfigure the URS** to arrive at a **lower cost model** (one session in FY12 budget and another in this FY13 plan), conduct a process to*

develop and finalize URS Model in consultation with current UDRP providers and community members; and **conduct RFP** based on URS Model and select URS providers. The goal is have a URS program in place and providers contracted and onboard by June 2013. (Emphasis added)

- Following the publication of the Proposed Budget the GNSO Council, apparently concerned that “reconfiguration” of the URS might intrude upon its gTLD policymaking role, requested a fuller explanation of the “Summits” from ICANN staff in advance of its May 10th meeting. In response, Kurt Pritz, ICANN’s Senior Vice President for Stakeholder Relations, sent an e-mail to the Council providing this explanation of the Summits line item in the Budget (<http://gnso.icann.org/mailing-lists/archives/council/msg13030.html>):

Uniform Rapid Suspension:

*There is a budget line item identified as "URS Summit" **Implementation work conducted on the URS to date** indicates that the the implementation will not attain the cost target of \$300-\$500 in URS fee per case. **This is based on discussions with WIPO staff, direct communication with the IPC, and examples understood from the ICM registry and Nominet.** Because the fee target is a primary goal of the URS, additional work and study should be undertaken to determine if amendments to the program might attain the fee goal and retain the safeguards and other features of the program. This study must be undertaken by a **community group**. While the **scope of the effort** is not yet defined, it was necessary to reserve resources for the work in the ICANN's FY13 budget. **The line item in the budget is the placeholder for those resources while the best way to accomplish the work can be designed.** Again, the work will be done through a bottom-up, community discussion similar to the the work done to create and review the URS in the first instance. The timing of the budgeting process required that we create the line item before planning for this work could be drafted and worked through the community. (Emphasis added)*

Conclusion

The current model of the URS contained in the new gTLD Applicant Guidebook represents the result of a long and arduous process conducted within and by the full ICANN multi-stakeholder community. We believe that URS reconfiguration undertaken to realize a single URS policy goal may require the sacrifice or diminution of other important policy elements, including adequate due process for registrants/respondents, and should be undertaken only with the full understanding and concurrence of the community that created the current model. We are also extremely concerned that the URS implementation process undertaken to date has not been transparent (indeed, the

fact that implementation was underway was not even revealed until publication of the Proposed FY 13 Budget) nor has it been open to all interested and implicated parties. The request we have made for the documents described above is being submitted for the purpose of gathering the maximum amount of available information within ICANN's possession and control that may shed light on the URS implementation process undertaken to date and the potential paths forward.

Thank you for considering our request for the above referenced and described information contained in documents within ICANN's possession, custody or control. We look forward to reviewing whatever information may be provided in response to this request.

Sincerely,

Philip S. Corwin

Counsel, Internet Commerce Association