



SENT VIA EMAIL

September 22, 2016

Internet Corporation for Assigned Names and Numbers (“ICANN”)
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536
Email: didp@icann.org

Re: Document Information Disclosure Policy Request (“DIDP”) relating to ICANN Board Meetings on August 9, 2016 and on September 15-17, 2016

Dear ICANN:

As the CEO of Dot Registry, LLC (“Dot Registry”), I request the documents and information described below, pursuant to ICANN’s Documentary Information Disclosure Policy (“DIDP”).

Background

Dot Registry is the sole community applicant for .corp, .inc, .llc, and .llp new generic Top-Level Domains (“gTLDs”). Accordingly, ICANN invited Dot Registry to apply for, and Dot Registry requested and paid a total of \$66,000 for, Community Priority Evaluations (“CPEs”) for the .inc, .llc, and .llp gTLD applications. The Economist Intelligence Unit (“EIU”) performed the CPEs and ultimately awarded each of Dot Registry’s applications the same non-passing score. After reviewing the CPE Reports issued by the EIU for .inc, .llc, and .llp, Dot Registry filed three Reconsideration Requests¹ with the ICANN Board Governance Committee (“BGC”). The BGC subsequently denied all of these Reconsideration Requests. As specified in Article IV, Section 3 of the ICANN Bylaws, prior to initiating an Independent Review Process (“IRP”), Dot Registry attempted to engage with ICANN to enter into a period of Cooperative Engagement (“CEP”)² for the purpose of resolving or narrowing the issues that were being contemplated to be file for Independent Review Process (“IRP”). ICANN failed to respond to Dot Registry’s CEP requests despite ICANN Staff opening Dot Registry’s CPE request email dozens of times. Dot Registry was forced into filing an IRP to timely preserve its procedural rights. After Dot Registry filed for IRP, but before the full IRP Panel was convened, ICANN proceeded to schedule an auction to resolve string contentions for .inc, .llc, and .llp. Dot Registry was forced to request an International Centre for Dispute Resolution (“ICDR”) Emergency Panelist to preserve the *status quo* during the pendency of the IRP. The ICDR Emergency Panelist granted Dot Registry’s request for emergency relief and ordered ICANN to immediately stop the process of auctioning off .inc, .llc, and .llp to the highest bidder. The full IRP Panel was then convened and the parties

¹ See Reconsideration Requests 14-30 (.LC), 14-32 (.INC), and 14-33 (.LLP)

<https://www.icann.org/resources/pages/accountability/reconsideration-en>

² Cooperative Engagement Process – Requests for Independent Review 11 April 2013, <https://www.icann.org/en/system/files/files/cep-11apr13-en.pdf>

presented their merits of the case. On March 29, 2016, the IRP Panel held a final hearing, via live videoconference in Washington, D.C. and Los Angeles, CA. The IRP Panel requested both parties to submit supplemental briefs, post IRP hearing, no later than April 8, 2016. On July 29, 2016, pursuant to ICANN Bylaws, Article IV, Section 3.18, the IRP Panel declared Dot Registry as the prevailing party and required ICANN to pay Dot Registry's ICDR fees totaling \$235,294.37³. On August 9, 2016, the ICANN Board accepted the IRP Panel's Declaration by passing three resolutions⁴. On September 15, 2016, the ICANN Board held a regular meeting in Brussels, Belgium to provide further consideration of the *Dot Registry, LLC, v. ICANN* matter. The ICANN Board adopted resolution 2016.09.15.15⁵ directing the ICANN Board Governance Committee ("BGC") to re-evaluate Dot Registry's Reconsideration Requests 14-30, 14-32, and 14-33 in light of the IRP Panel Majority's Final Declaration in the Dot Registry IRP and the issues it identified with respect to the BGC's actions in evaluating these Reconsideration Requests. On September 17, 2016, the ICANN Board held another separate regular meeting in Brussels, Belgium to discuss a President and CEO Review of New gTLD Community Priority Evaluation Report Procedures⁶. The ICANN Board passed resolution 2016-09-17-01⁷ calling for the ICANN CEO or his designee(s) to undertake an independent review of the process by which ICANN staff interacted with the CPE provider, both generally and specifically with respect to the CPE reports issued by the CPE Provider.

Requested Documents

Dot Registry respectfully requests that ICANN produce:

- 1) a list of all people present and in attendance at the August 9, 2016, September 15, 2016, and September 17, 2016 ICANN Board meetings;
- 2) a list of all Board members who voted on resolutions 2016.08.09.11, 2016.80.09.12, 2016.08.09.13 at the August 9, 2016 meeting, resolution 2016.09.15.15 at the September 15, 2016 meeting, and resolution 2016.09.17.01 at the September 17, 2016 Board meeting;
- 3) any and all ICANN Board Briefing materials related to the Board's deliberations on the *Dot Registry, LLC v. ICANN* IRP determination;
- 4) any and all communications between the ICANN Board, ICANN staff, and the ICANN CEO related to the September 17, 2016 ICANN Board meeting agenda item "*President and CEO Review of New gTLD Community Priority Evaluation Report Procedures;*"
- 5) Any and all documents or communications about ICANN's scope, purpose, timing, methodology, and/or intentions about or related to the ICANN "*President and CEO Review of New gTLD Community Priority Evaluation Report Procedures;*" and
- 6) Any and all documents or communications regarding how the ICANN President and CEO, or his designee(s), intends to perform an independent evaluation of the CPE Provider's CEP reports when they are employees of ICANN and not independent.

This DIDP Request is in the public interest as this impacts applicants beyond Dot Registry. The

³ July 29, 2016 Final Declaration, Dot Registry, LLC v. ICANN IRP, <https://www.icann.org/resources/pages/dot-registry-v-icann-2014-09-25-en>

⁴ See August 9, 2016 Special Meeting of the ICANN Board, Section 2.g, Resolutions 2016.08.09.11, 2016.08.09.12, and 2016.08.09.13 at <https://www.icann.org/resources/board-material/resolutions-2016-08-09-en#2.g>

⁵ See September 15, 2016 Regular Meeting of the ICANN Board, Section 2.e, <https://www.icann.org/resources/board-material/resolutions-2016-09-15-en> and

⁶ See September 17, 2016 ICANN Board Regular Meeting Agenda <https://www.icann.org/resources/board-material/agenda-2016-09-17-en>

⁷ <https://www.icann.org/resources/board-material/resolutions-2016-09-17-en>

above requested information is currently not publicly available as of the date of this letter, does not meet any defined conditions for non-disclosure, and is a proper subject for a DIDP Request.

Rationale

To the extent that ICANN deems that any of the information falls 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. As a harmed party to the *Dot Registry, LLC v. ICANN* IRP, we are entitled to understand the Board's considerations in this matter as a matter of accountability and transparency.

The need for this disclosure is especially pressing in light of the Board's recent re-appointment of the BGC to re-evaluate Dot Registry's three Reconsideration Requests. As stated by ICANN's Counsel, Jeffrey LeVee, on Pages 166 – 167 of the *Dot Registry, LLC v. ICANN* IRP Hearing Transcript:

“The BGC has made it clear that it is not conducting a substantive review on the merits...It's not the Board Governance Committee's mandate. They don't have the expertise to do that, and a substantive review of any of these things, including CPE reviews, would require the Board Governance Committee to have the sort of expertise that it expressly decided to outsource. That's the purpose of having a different company, an outside vendor do the CPE reviews.”

Unless ICANN provides the requested documents, the Internet community will have no way to evaluate whether the ICANN is held to the policies established in the gTLD Applicant Guidebook and to the general mandated principles enumerated in ICANN's Articles of Incorporation and Bylaws, including transparency, accountability, good faith and fair dealing. Because ICANN is tasked through its Bylaws and Articles of Incorporation with operating in a transparent and accountable manner, and with ensuring that its policies and practices are followed in a similar manner by its affiliated bodies, Dot Registry urges ICANN to provide the material requested, as outlined in this DIDP request.

Dot Registry reserves all of its rights at law and in equity, including, but not limited to, its right to obtain this or other information from ICANN.

DOT REGISTRY, LLC

Sincerely,



Shaul Jolles,
Chief Executive Officer