

## Response to Documentary Information Disclosure Policy Request

To: Michael Palage

Date: 25 October 2016

Re: Request No. 20160925-1

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Thank you for your Request for Documentary Information dated 25 September 2016 (Request), which was submitted pursuant to the Internet Corporation for Assigned Names and Numbers (ICANN) Documentary Information Disclosure Policy (DIDP). Because your Request was submitted as part of an email that contained matters other than a DIDP request, the Request will not be published separately, but is set forth verbatim below. This Response will be published as a Request and Response to DIDP Request No. 20160925-1.

### Items Requested

Your Request seeks the disclosure of “all related documents in connection with [the 8 February 2005 Special Meeting of the Board], as well as all communications to external third parties as a result of any actions taken at this Board meeting.”

### Response

A principal element of ICANN’s approach to transparency and information disclosure is the commitment to make publicly available on its website a comprehensive set of materials concerning ICANN’s operational activities as a matter of course. As a result, many of the items sought in the Request are already publicly available on ICANN’s website.

The Special Meeting of the Board on 8 February 2005 was regarding “Litigation matters” as noted on the Board Meetings webpage (<https://www.icann.org/resources/pages/2005-2012-02-25-en>), and included discussion of the then-pending litigation involving ICANN and Verisign, Inc. (Verisign). The Minutes of the 8 February 2005 Board meeting are available at <https://www.icann.org/resources/board-material/minutes-2005-02-08-en>.<sup>1</sup> As noted in the Minutes, the agenda and matters discussed in this Board meeting are not appropriate for publication pursuant to Article III, Section 5.3 of the then-applicable version of the Bylaws (available at <https://www.icann.org/resources/pages/bylaws-2004-04-19-en>).

Subsequent to the 8 February 2005 Board meeting, a vast amount of information, communications, and documents have been publicly posted on ICANN’s website regarding the litigation between Verisign and ICANN, including the proposed and revised settlement agreement, the public comments on the settlement agreement and proposed .COM Registry Agreement, ICANN press releases, as well as correspondence.

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<sup>1</sup> ICANN also notes that the Requester was a member of the ICANN Board at the time of the 8 February 2005 Board meeting.

Such information, communications, and documents are publicly available at the following links (and through additional online searches), each of which contain additional links to further related and responsive information:

- <https://archive.icann.org/en/topics/verisign-settlement.htm>
- <https://www.icann.org/news/announcement-2005-10-24-en>
- <https://www.icann.org/news/announcement-2006-01-29-en>
- <https://www.icann.org/en/system/files/files/sclavos-to-cerf-18feb06-en.pdf>
- <https://www.icann.org/news/announcement-2006-02-28-en>
- <https://www.icann.org/resources/pages/2005-2012-10-11-en>
- <https://www.icann.org/resources/pages/2006-2012-10-11-en>

In addition, the Agenda, Minutes, Voting Transcript, Joint Statement from Affirmative Voting Board Members, and Individual Statements from Board Members for the 28 February 2006 Special Meeting of the Board, wherein the Board discussed and approved the settlement agreements with Verisign, are available at <https://www.icann.org/resources/pages/2006-2012-02-25-en>.

To the extent there are other documents that may be responsive to your Request, they are subject to 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.
- 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.

Notwithstanding the applicable Defined Conditions of Nondisclosure identified in this Response, ICANN also evaluated the documents subject to these conditions to determine if the public interest in disclosing them outweighs the harm that may be caused by such disclosure. ICANN has determined that there are no particular 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 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](mailto:didp@icann.org).