

To: Flip Petillion on behalf of Travel Reservations SRL, Spring McCook, LLC, Minds + Machines Group Limited, Famous Four Media Limited, dot Hotel Limited, Radix FZC, dot Hotel Inc., and Fegistry, LLC

Date: 17 July 2017

Re: Request No. 20170614-1

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Thank you for your request for documentary information dated 14 June 2017 (Request), which was submitted through the Internet Corporation for Assigned Names and Numbers (ICANN) Documentary Information Disclosure Policy (DIDP) on behalf of Travel Reservations SRL, Spring McCook, LLC, Minds + Machines Group Limited, Famous Four Media Limited, dot Hotel Limited, Radix FZC, dot Hotel Inc., and Fegistry, LLC (the Requestors). For reference, a copy of your Request is attached to the email transmitting this Response.

### **Items Requested**

Your Request seeks the disclosure of the following documentary information relating to the Board initiated review of the Community Priority Evaluation (CPE) process (the Review):

- 1) The way in which FTI Consulting has been selected to perform the review;
- 2) The names and curricula vitae of the FTI individuals involved in the review;
- 3) The documents which have been or will be shared with the reviewers;
- 4) A list of documents which have been, or will be, requested by the reviewers;
- 5) The criteria and standards which will be used to perform the review;
- 6) Any other means which ICANN and/or the reviewers are using, or will use, to ensure a consistent and predictable outcome and scoring.

### **Response**

Community Priority Evaluation (CPE) is a method to resolve string contention for new gTLD applications. CPE occurs if a community application is both in contention and elects to pursue CPE. The evaluation is an independent analysis conducted by a panel from the CPE provider. The CPE panel's role is to determine whether a community-based application fulfills the community priority criteria. (See Applicant Guidebook, § 4.2; see *also*, CPE webpage at <http://newgtlds.icann.org/en/applicants/cpe>.) As part of its process, the CPE provider reviews and scores a community applicant that has elected CPE against the following four criteria: Community Establishment; Nexus between Proposed String and Community; Registration Policies, and Community Endorsement. An application must score at least 14 out of 16 points to prevail in a community priority evaluation; a high bar

because awarding priority eliminates all non-community applicants in the contention set as well as any other non-prevailing community applicants. (See *id.*)

At various times in the implementation of the New gTLD Program, the ICANN Board has considered aspects of the CPE process. Recently, the Board discussed certain concerns that some applicants have raised with the CPE process, including issues that were identified in the Final Declaration from the Independent Review Process (IRP) proceeding initiated by Dot Registry, LLC. (See Dot Registry IRP Final Declaration at <https://www.icann.org/en/system/files/files/irp-dot-registry-final-declaration-redacted-29jul16-en.pdf>.) The Board decided it would like to have some additional information related to how the ICANN organization interacts with the CPE provider, and in particular with respect to the CPE provider's CPE reports. On 17 September 2016, the Board directed the President and CEO, or his designee(s), to undertake a review of the process by which the ICANN organization has interacted with the CPE provider. (See <https://www.icann.org/resources/board-material/resolutions-2016-09-17-en>.)

Further, as Chris Disspain, the Chair of the Board Governance Committee (BGC), stated in his [letter of 26 April 2017 to concerned parties](#), including the Requestors, during its 18 October 2016 meeting, the BGC discussed potential next steps regarding the review of pending Reconsideration Requests pursuant to which some applicants are seeking reconsideration of CPE results. Among other things, the BGC noted that certain complainants have requested access to the documents that the CPE panels used to form their decisions and, in particular, the independent research that the panels conducted. The BGC decided, as part of the President and CEO's review, to request from the CPE provider the materials and research relied upon by the CPE panels in making determinations with respect to certain pending CPEs to help inform the BGC's determinations regarding certain recommendations or pending Reconsideration Requests related to CPE. (See Letter from Chris Disspain to Concerned Parties, 26 April 2017, <https://www.icann.org/en/system/files/correspondence/disspain-letter-review-new-gtld-cpe-process-26apr17-en.pdf>; see also, Minutes of BGC 18 October 2016 Meeting, <https://www.icann.org/resources/board-material/minutes-bgc-2016-10-18-en>.)

As described in the [Community Priority Evaluation Process Review Update, dated 2 June 2017](#), in November 2017, ICANN undertook the process to find the most qualified evaluator for the review. FTI Consulting, Inc.'s (FTI) Global Risk and Investigations Practice (GRIP) and Technology Practice was chosen to assist in the CPE review following consultation with various candidates. FTI was selected because it has the requisite skills and expertise to undertake this investigation. FTI's GRIP and Technology Practice teams provide a multidisciplinary approach to business-critical investigations, combining the skill and experience of former prosecutors, law enforcement officials and regulators with forensic accountants, professional researchers, anti-corruption investigators, computer forensic, electronic evidence and enterprise data analytic specialists. On 13 January 2017, FTI signed an engagement letter to perform the review.

As described in the [Community Priority Evaluation Process Review Update, dated 2 June 2017](#), the scope of the review consists of: (1) review of the process by which the ICANN organization interacted with the CPE provider related to the CPE reports issued by the CPE provider; (2) review of the consistency in which the CPE criteria were applied; and (3) review of the research process undertaken by the CPE panels to form their decisions and compilation of the reference materials relied upon by the CPE panels to the extent such reference materials exist for the evaluations which are the subject of pending Reconsideration Requests.

The review is being conducted in two parallel tracks. The first track focuses on gathering information and materials from the ICANN organization, including interviews and document collection. This work was completed in early March 2017. The second track focuses on gathering information and materials from the CPE provider. This work is still ongoing. Once the underlying information and data collection is complete, FTI anticipates that it will be able to inform ICANN of its findings within two weeks. (See [Community Priority Evaluation Process Review Update, dated 2 June 2017](#).)

#### Items 1, 2, and 5

Items 1, 2, and 5 request information relating to the review of the CPE process initiated by the ICANN Board (Review). ICANN's DIDP is intended to ensure that documentary 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. The DIDP is limited to requests for documentary information already in existence within ICANN that is not publicly available. As such, requests for non-documentary information are not appropriate DIDP requests. Notwithstanding this requirement, ICANN organization has provided significant information about the Review which are responsive to these items in the [26 April 2017 update from the Chair of the Board of the Governance Committee](#) and [2 June 2017 Community Priority Evaluation Process Review Update](#).

#### Items 3, 4, and 6

Items 3, 4, and 6 seek the disclosure of overlapping categories of documents and information relating to the Review. Specifically, Item 3 requests the disclosure of "documents which have been or will be shared with the reviewers." Item 4 requests the disclosure of "[a] list of documents which have been, or will be, requested by the reviewers." Item 6 seeks the disclosure of "[a]ny other means which ICANN and/or the reviewers are using, or will use, to ensure a consistent and predictable outcome and scoring." As noted above, to the extent that these items seek the disclosure of non-documentary information regarding the Review, such requests for information are not appropriate DIDP requests.

As detailed in the and [2 June 2017 Community Priority Evaluation Process Review Update](#), the Review is being conducted in two parallel tracks. The first track focuses on gathering information and materials from ICANN organization, including interviews and document collection. This work was completed in early March 2017. As part of the first track, ICANN provided FTI with the following materials:

- New gTLD Applicant Guidebook, <https://newgtlds.icann.org/en/applicants/agb>
- CPE reports, <https://newgtlds.icann.org/en/applicants/cpe#invitations>
- All public comments received on the applications that underwent evaluation, which are publicly available at <https://gtldresult.icann.org/application-result/applicationstatus> for each respective application.
- CPE Panel Process Document, <http://newgtlds.icann.org/en/applicants/cpe/panel-process-07aug14-en.pdf>
- EIU Contract and SOW Information, <http://newgtlds.icann.org/en/applicants/cpe/eiu-contract-sow-information-08apr15-en.zip>
- CPE Guidelines, <https://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>
- Updated CPE FAQs, <https://newgtlds.icann.org/en/applicants/cpe/faqs-10sep14-en.pdf>
- CPE Processing Timeline, <https://newgtlds.icann.org/en/applicants/cpe/timeline-10sep14-en.pdf>
- CPE webpage and all materials referenced on the CPE webpage, <https://newgtlds.icann.org/en/applicants/cpe>
- Reconsideration Requests related to CPEs and all related materials, including BGC recommendations or determinations, Board determinations, available at <https://www.icann.org/resources/pages/accountability/reconsideration-en>, and the applicable BGC and Board minutes and Board briefing materials, available at <https://www.icann.org/resources/pages/2017-board-meetings>
- Independent Review Process (IRP) related to CPEs and all related materials, available at <https://www.icann.org/resources/pages/accountability/irp-en>, Board decisions related to the IRP and the corresponding Board minutes and Board briefing materials, available at <https://www.icann.org/resources/pages/2017-board-meetings>
- Board Resolution 2016.09.17.01, <https://www.icann.org/resources/board-material/resolutions-2016-09-17-en>
- Minutes of 17 September 2016 Board meeting, <https://www.icann.org/resources/board-material/minutes-2016-09-17-en>

- Briefing materials related to Board Resolution 2016.09.17.01, <https://www.icann.org/en/system/files/bm/briefing-materials-1-redacted-17sep16-en.pdf>
- Minutes of 18 October 2016 BGC meeting, <https://www.icann.org/resources/board-material/minutes-bgc-2016-10-18-en>
- New gTLD Program Implementation Review regarding CPE, <https://www.icann.org/en/system/files/files/program-review-29jan16-en.pdf> at section 4.1
- Correspondence between the ICANN organization and the CPE provider regarding the evaluations, including any document and draft CPE reports that were exchanged.

With the exception of the correspondence between the ICANN organization and the CPE provider regarding the evaluations, all materials provided to the evaluator are publicly available. Regarding the correspondence between the ICANN organization and the CPE provider, these documents are not appropriate for disclosure for the same reasons identified in ICANN's response to the DIDP previously submitted by the Requestors. Rather than repeating those here, see ICANN's [Response to DIDP Request 20140804-1](#). The second track of the review focuses on gathering information and materials from the CPE provider. As noted the [Community Priority Evaluation Process Review Update, dated 2 June 2017](#), this work is still ongoing.

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 circumstances for which the public interest in disclosing the information at this time 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 ICANN.org, through which you can receive daily updates regarding postings to the portions of ICANN's website that are of interest. We hope this information is helpful. If you have any further inquiries, please forward them to [didp@icann.org](mailto:didp@icann.org).