

To: George Kirikos

Date: 10 July 2018

Re: Request No. 20180610-1

This is in response to your request for documentary information (Request), which was submitted on 10 June 2018 through the Internet Corporation for Assigned Names and Numbers' (ICANN organization) Documentary Information Disclosure Policy (DIDP). For reference, a copy of your Request is attached to the email forwarding this Response.

Items Requested

Your Request seeks the following documentary information related to the Section 3.7 Appeal Process of the Generic Names Supporting Organization (GNSO) Working Group Guidelines that you filed relating to the International Governmental Organization, International Nongovernmental Organization (IGO-INGO) Access to Curative Rights Working Group (WG) (hereinafter the IGO-INGO Curative Rights WG):

1. The recordings/transcripts and all related documents (including any emails) of the call between the IGO-INGO Curative Rights WG Co-Chairs, Phil Corwin and Petter Rindforth, and Heather Forrest (GNSO Council Chair) that took place within days following the 20 February 2018 between you and Ms. Forrest regarding the Kirikos Appeal.
2. Recordings/transcripts and all related documents (including any emails) of another call that took place between the IGO-INGO Curative Rights WG Co-Chairs and Ms. Forrest, Ms. Kawaguchi, and ICANN org prior to the issuance of a "Summary Report", as was discussed at paragraphs 10-12 ("Error #3") of the document in A] above.
3. All other documents and recordings (including emails) between ICANN org, GNSO Council members and the IGO-INGO Curative Rights WG Co-Chairs relating to the handling of the Kirikos Appeal.
4. All documents and recordings (including emails) between ICANN org and IGO-INGO Curative Rights WG Co-Chairs relating to an anonymous survey held in October 2017.

Response

- A. Background on Section 3.7 Appeal Process of the GNSO Working Group Guidelines and the IGO-INGO Curative Rights WG**

1. The GNSO Working Group Guidelines (Guidelines)

The Guidelines were developed as a part of the [GNSO Improvement Process](#), which seek to improve the structure and operations of the GNSO. (See https://gns0.icann.org/sites/default/files/filefield_16387/gns0-working-group-guidelines-final-10dec10-en.pdf at pg. 3.) The Guidelines, as approved by the GNSO Council (see <https://gns0.icann.org/en/council/resolutions#20110316-1>), bring together all the different elements of the WG process; it addresses what should be considered in creating, chartering, staffing, and instructing/guiding a WG to accomplish the desired outcome, and; secondly, what guidance should be provided to a WG on elements such as structure, decision-making, tasking, reporting, and delivering the outcome(s) as chartered. (See *id.*; see also <https://www.icann.org/resources/pages/gns0-wg-guidelines-2011-01-18-en>.)

The Guidelines are intended to inform the (potential) members of WGs that have been created or are in the process of being created by the GNSO or another Chartering Organization to achieve or accomplish one or more objectives or outcomes. (See Guidelines at § 1.3, pg. 4.)

Section 3.7 of the Guidelines, at pages 18-19, sets forth an appeal process for WG members (the Appeal Process). Specifically, Section 3.7 provides:

[a]ny WG member that believes that his/her contributions are being systematically ignored or discounted or wants to appeal a decision of the WG or CO should first discuss the circumstances with the WG Chair. In the event that the matter cannot be resolved satisfactorily, the WG member should request an opportunity to discuss the situation with the Chair of the Chartering Organization or their designated representative.

In addition, if any member of the WG is of the opinion that someone is not performing their role according to the criteria outlined in section 2.2. of this document, the same appeals process may be invoked.

2. The IGO-INGO Curative Rights WG

In June 2014, the GNSO Council launched the PDP and tasked the WG “to determine whether, in order to address the specific needs and circumstances of international governmental organizations (IGOs) and international non-governmental organizations (INGOs): (1) the curative rights protection mechanisms currently in place for both existing and new generic top level domains (gTLDs) should be amended and, if so, in what respects; or (2) a separate, narrowly-tailored dispute resolution procedure modeled on the existing curative rights protection mechanisms should be developed.” (<https://gns0.icann.org/sites/default/files/file/field-file-attach/igo-ingo-crp-access-initial-19jan17-en.pdf> at Pg. 3.) On 25 June 2014, the GNSO chartered the IGO-INGO Curative Rights WG. (See *id.*)

In December 2017, the IGO-INGO Curative Rights WG Co-Chairs decided that “a second poll [would] be sent to all WG members. The purpose of this poll is to assist the co-chairs in determining the level of support/opposition that each option enjoys. This poll will ask all WG members to designate one of the six options as their preferred choice for addressing the IGO immunity issue. WG members will also be provided with means to add comments regarding that preferred choice, as well as each of the other five options. These comments can indicate support or opposition for each of the options, as well as whatever additional views a WG members wishes to provide. Responses to this poll will be anonymous, although any WG member will be free to share his/her response on the WG email list....The aggregated results of the poll, as well as all comments, will be shared with all WG members and will be included as a section of [the WG’s] Final Report.” (See email from M. Wong, dated 18 December 2017, <https://mm.icann.org/pipermail/gns0-igo-ingo-crp/2017-December/001005.html>.)

On 19 December 2017, you invoked a GNSO Guidelines Section 3.7 Appeal Process relating to the IGO-INGO Curative Rights WG’s Co-Chairs’ decision to initiate an anonymous poll (Kirikos Appeal). (See email from G. Kirikos, dated 19 Dec 2017, <https://mm.icann.org/pipermail/gns0-igo-ingo-crp/2017-December/001005.html>.)

On 21 December 2017, you requested that Heather Forrest, the GNSO Council Chair, intervene in the Kirikos Appeal “to ensure that the long-established ICANN transparency requirements are followed going forward.” (See email from G. Kirikos, dated 21 December 2017, <https://mm.icann.org/pipermail/gns0-igo-ingo-crp/2017-December/001023.html>.) On that same day, the Co-Chairs of the IGO-INGO Curative Rights WG, Phil Corwin and Petter Rindforth, responded to your Appeal Process request. The Co-Chairs noted that Section 3.7 requires that any WG member who believes that his/her contributions are being systematically ignored or discounted should first discuss the circumstances with the WG Chair(s).

As the co-chairs of this Working Group, we therefore invite you to do a call with us in early January 2018. The call will be recorded and, given the nature of the matters that you have raised on the mailing list concerning our handling of the Working Group’s progress toward a consensus call, the ICANN Ombudsman will be invited to sit in on the call.

Concurrently, we will be consulting the GNSO Council on the questions that you and other Working Group members have asked regarding Working Group consensus calls.

(See <https://mm.icann.org/pipermail/gns0-igo-ingo-crp/2017-December/001025.html>.)

On 11 January 2018, a call was conducted regarding the Kirikos Appeal in accordance with Section 3.7 of the Guidelines. The following individuals attended: Terri Agnew (scribe), Steve Chan (ICANN org), Phil Corwin (IGO-INGO Curative Rights WG Co-Chair), Paul Keating (IGO-INGO Curative Rights WG member), George Kirikos (Appellant), Petter Rindforth (IGO-INGO Curative Rights WG Co-Chair), Paul

Tattersfield (IGO-INGO Curative Rights WG member), Herb Waye (ICANN Ombudsman), and Mary Wong (ICANN org). (See <https://community.icann.org/display/gnsoicrmpdp/2018-01-11+Discussion+Call>.) A transcript and recording of this call is available on the IGO-INGO Curative Rights WG wiki page at <https://community.icann.org/display/gnsoicrmpdp/2018-01-11+Discussion+Call>. Shortly before the call, you submitted a 12 page document in support of the appeal. (<https://community.icann.org/display/gnsoicrmpdp/2018-01-11+Discussion+Call?preview=/79429635/79431258/GK%20appeal%20document%20-%2011%20Jan%202018.pdf>.) The parties agreed that the Co-Chairs would provide a response to the submission by 16 January 2018 and that another call would be convened for 18 January 2018. (<https://community.icann.org/display/gnsoicrmpdp/2018-01-11+Discussion+Call?preview=/79429635/79429639/transcript%20Discussion%20George%E2%80%99s%20appeal%20under%20section%203%207%20GNSO%20WG%20guidelines%20%2011%20Jan%202018.pdf>.)

On 16 January 2018, the IGO-INGO Curative Rights WG Co-Chairs provided a response to your written submission. (<https://mm.icann.org/pipermail/gnso-igo-ingo-crp/attachments/20180116/c00a5074/WGCo-ChairsResponsetoGeorgeKirikos-16Jan2018-0001.pdf>.)

On 18 January 2018, a second call took place regarding the Kirikos Appeal. The same participants from the 11 January 2018 call were in attendance. (<https://community.icann.org/display/gnsoicrmpdp/2018-01-18+Discussion+Call>.) The recording and transcript of this call is available at <https://community.icann.org/display/gnsoicrmpdp/2018-01-18+Discussion+Call>.

On 1 February 2018, the IGO-INGO Curative Rights WG Co-Chairs distributed the [Co-Chairs' Summary, Statement, and Proposed Next Steps](#). (See <https://mm.icann.org/pipermail/gnso-igo-ingo-crp/2018-February/001079.html>.) On that same day, you responded to the Co-Chairs. (See <https://mm.icann.org/pipermail/gnso-igo-ingo-crp/2018-February/001080.html>.)

On 12 February 2018, you submitted a formal written reply to the 16 January 2018 statement from the Co-Chairs. (See <https://mm.icann.org/pipermail/gnso-igo-ingo-crp/attachments/20180212/54044f71/igo-appeal-section37-reply-20180212-final-0001.pdf>.)

On 20 February 2018, a third call took place regarding the Kirikos Appeal as another step pursuant to the Section 3.7 Guidelines. The following individuals were in attendance: Steve Chan (ICANN org), Heather Forrest (GNSO Council Chair), Susan Kawaguchi (GNSO Council Liaison to the IGO-INGO Curative Rights WG), George Kirikos (Appellant), Paul Tattersfield (IGO-INGO Curative Rights WG member), Herb Waye (ICANN Ombudsman), and Mary Wong (ICANN org). The recording and transcript of this call is available at <https://community.icann.org/display/gnsoicrmpdp/2018-02-20+Discussion+Call>.

On 1 March 2018, an informal call was conducted between the leadership of the GNSO Council and the leadership IGO-INGO Curative Rights WG. The following people attended the call: Donna Austin (GNSO Council Vice-Chair), Steve Chan, Phil Corwin, Rafik Dammak (GNSO Council Vice-Chair), Heather Forrest, Susan Kawaguchi, Petter Rindforth, and Mary Wong. The primary purpose of the call was to discuss ways to reach some level of consensus within the IGO-INGO Curative Rights WG for the Final Report.

B. Your Request

1. Item No. 1

Item 1 seeks the disclosure of “[t]he recordings/transcripts and all related documents (including any emails) of the call between the IGO PDP co-chairs (Phil and Petter) and Heather Forrest (GNSO Council Chair) that took place within days following the February 20, 2018 call [that you] had with Ms. Forrest in relation to the Section 3.7 appeal.”

As discussed above, an informal call took place on 1 March 2018 between the leadership of the GNSO Council and the leadership IGO-INGO Curative Rights WG. The primary purpose of the call was to discuss ways to reach some level of consensus within the IGO-INGO Curative Rights WG for the Final Report. The call was neither recorded nor transcribed and therefore, there are no documents responsive to this portion of your request.

As part of ICANN org’s processing of your Request in line with the [DIDP Response Process](#), ICANN org has identified the following categories of documentary information that may be responsive to Item 1: ICANN org notes and written exchanges relating to the call. These documents are subject to the following DIDP [Defined Conditions of Nondisclosure](#) (Nondisclosure Conditions) and are therefore not appropriate for disclosure:

- 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.
- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.

2. Item No. 2

Item 2 seeks the disclosure of “[r]ecordings/transcripts and all related documents (including any emails) of another call that took place between the co-chairs of the PDP and Ms. Forrest and Ms. Kawaguchi (and ICANN staff) prior to the issuance of a ‘Summary Report’, as was discussed at paragraphs 10-12 (“Error #3”) of the document in A] above. This was requested on April 19th: <https://mm.icann.org/pipermail/gnso-igo-ingo-crp/2018-April/001117.html>.”

On 13 April 2018, Susan Kawaguchi, the GNSO Council Liaison to IGO-INGO Curative Rights WG issued a document titled “Summary Report from the GNSO Council Liaison on the Current Status of Consultations with the IGO-INGO Curative Rights PDP Working Group” (Summary Report). (See <https://mm.icann.org/pipermail/gnso-igo-ingo-crp/2018-April/001111.html>; and <https://mm.icann.org/pipermail/gnso-igo-ingo-crp/attachments/20180413/6218af56/SummaryReportRecommendedNextStepsfortheCurativeRightsPDP-12April2018-0001.pdf>.) On 26 April 2018, you provided a response to this Summary Report (the Response to the Summary Report). (See “Everything Wrong with the Summary Report from the Liaison”, *available at* <https://mm.icann.org/pipermail/gnso-igo-ingo-crp/2018-April/001139.html> and <https://mm.icann.org/pipermail/gnso-igo-ingo-crp/attachments/20180426/a1b4e83f/igo-summaryreport-response-20180426-final-0001.pdf>.) In Section C., Error #3 of the Response to the Summary Report, you noted that “another meeting was held between [Ms. Forrest and Ms. Kawaguchi] and the Co-Chairs prior to the Summary Report being completed, which was private and not recorded.” (See <https://mm.icann.org/pipermail/gnso-igo-ingo-crp/attachments/20180426/a1b4e83f/igo-summaryreport-response-20180426-final-0001.pdf> at pg. 3.) This request seeks the disclosure of “[r]ecordings/transcripts and all related documents (including any emails)” associated with this call.

The call referenced in the Response to Summary Report took place on 9 April 2018 between Steve Chan, Phil Corwin, Heather Forrest, Susan Kawaguchi, Petter Rindforth, and Mary Wong. This was an informal touch base call among the leadership of the GNSO Council, the leadership of the IGO-INGO Curative Rights WG, and ICANN org for the purpose of agenda planning, which included discussions on how to reach consensus within the IGO-INGO Curative Rights WG for the Final Report. This call was neither recorded nor transcribed. Therefore, there are no items responsive to this portion of your request.

As part of ICANN org’s processing of your Request in line with the [DIDP Response Process](#), ICANN org has identified the following categories of documentary information that may be responsive to Item 2 that are subject to the Nondisclosure Conditions below: emails circulated in preparation for the call, ICANN org notes, and action items taken down from the call. These documents are subject to the following Nondisclosure Conditions and are therefore not appropriate for disclosure:

- 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.

- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.

3. Item No. 3

Item 3 seeks the disclosure of “[a]ll other documents and recordings (including emails) between ICANN Staff, GNSO Council members and the IGO PDP co-chairs relating to the handling of the Section 3.7 appeal.”

Section 4.1 of the GNSO WG Guidelines declares “[t]here is a presumption of full transparency in all WGs”; and section 2.1.4.1. states in relevant part that

all Working Groups are normally expected to operate under the principles of transparency and openness, which means, inter alia, that mailing lists are publicly archived, meetings are normally recorded and/or transcribed, and SOIs are required from Working Group participants and will be publicly available.

(See https://gns0.icann.org/sites/default/files/filefield_16387/gns0-working-group-guidelines-final-10dec10-en.pdf at pg. 8 and 18.) In accordance with the GNSO Guidelines, the GNSO makes available, amongst other things, all email archives, mp3's, recordings, chat history and transcripts associated with regularly scheduled WG calls, background documents, resolutions and other relevant documents as a matter of course. (See ICANN GNSO webpage, <https://gns0.icann.org/en/group-activities/active/igo-ingo-crp-access>; and IGO-INGO Curative Rights WG's Community wiki, [https://community.icann.org/di\\$isplay/gnsoicrmpdp](https://community.icann.org/di$isplay/gnsoicrmpdp).)

As part of ICANN org's processing of your Request in line with the [DIDP Response Process](#), ICANN org has identified the following categories of documentary information that may be responsive to Item 3 that are subject to the Nondisclosure Conditions below: reports, draft reports, notes and internal updates from ICANN org; correspondence between WG Chair and Co-chairs and ICANN org on how to address issues of disagreements, as well as substantive and procedural handling of the appeal. These documents are subject to the following Nondisclosure Conditions are therefore not appropriate for disclosure:

- 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.

- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.
- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.

4. Item 4

Item 4 seeks the disclosure of “all documents and recordings (including emails) between ICANN Staff and IGO PDP co-chairs relating to the anonymous survey held in October 2017 [which] predate the actual filing of the Section 3.7 appeal (but are critical in understanding how we got there).”

Information responsive to this Item is set forth in the email archives of the IGO-INGO Access to Curative Rights Protection Mechanism WG page at <https://mm.icann.org/pipermail/gnso-igo-ingo-crp/>.

ICANN org has identified other categories of documentary information that may be responsive to Item 4 that are subject to the Nondisclosure Conditions below: ICANN org reports and analysis prepared for the GNSO Council Leadership Team and the Council Liaison to the WG; draft emails and correspondences pertaining to the anonymous poll; discussions between the WG Chair, Co-Chairs and ICANN staff regarding the poll including, but not limited to, suggestions on conducting the poll, a draft preview of the poll, justifications for the poll, and recommendations for poll’s wording and format. These documents are subject to the following Nondisclosure Conditions are therefore not appropriate for disclosure:

- 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.
- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to

compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.

- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.

Notwithstanding the applicable Nondisclosure Conditions identified in this Response, ICANN org has also considered whether the public interest in disclosure of the information subject to these nondisclosure conditions at this point in time outweighs the harm that may be caused by such disclosure. ICANN org has determined that there are no current circumstances for which the public interest in disclosing the requested information outweighs the harm that may be caused by the requested disclosure.

About DIDP

ICANN org'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.