

To: Michael Palage

Date: 8 May 2024

Re: Request No. 20240408-1

This is in response to your request for documentary information (Request), which was submitted on 8 April 2024 through the Internet Corporation for Assigned Names and Numbers' (ICANN) Documentary Information Disclosure Policy (DIDP). For reference, the Request is attached to the email forwarding this Response.

Items Requested

Your Request seeks the disclosure of “the signed annual certification from ICM Registry that they are in compliance with their obligations under Article 3.1(h) of their registry agreement” for the .XXX generic top-level domain. Your Request further requests that ICANN confirm that it has timely received complete annual certifications from ICM Registry since the execution of the .XXX registry agreement (.XXX RA) if the certificates cannot be disclosed.

Response

The DIDP is a mechanism, developed through community consultation, to ensure that information contained in documents concerning ICANN, and within ICANN org's possession, custody, or control, that are not already publicly available is made available to the public unless there is a compelling reason for confidentiality. (See <https://www.icann.org/resources/pages/didp-2023-01-24-en>.) This Response was prepared in accordance with the Process for Responding to ICANN's DIDP Requests. (See <https://www.icann.org/en/system/files/files/didpresponse-process-21jan23-en.pdf>).

As part of its commitment to transparency, ICANN makes available a comprehensive set of materials on its website as a matter of course, including, but not limited to, information for and about generic top-level domain (gTLD) registry operators (<https://www.icann.org/resources/pages/registries/registries-en>), gTLD registry agreements (<https://www.icann.org/en/registry-agreements>) and related materials (<https://www.icann.org/en/registry-agreements/related-materials>), information about advisories, consensus policies, and temporary policies (<https://www.icann.org/resources/pages/advisories-policies-2017-10-04-en>), registry resources (<https://www.icann.org/resources/pages/registry-resources-2017-09-22-en>), and services for registry operators (<https://www.icann.org/resources/pages/registry-operator-services-2017-10-04-en>).

Your Request seeks the disclosure of documentary information relating to the .XXX gTLD. Specifically, you seek disclosure of the fulfillment of the .XXX gTLD registry

operator's obligations under Article 3.1(h) of the .XXX RA. Alternatively, you request that ICANN confirm that it has timely received complete annual certifications from ICM Registry since the execution of the .XXX RA if the certificates cannot be disclosed. Article 3.1(h) of the .XXX RA provides:

Certification. Every six months during the first year of the Term of this Agreement and annually thereafter, Registry Operator shall deliver to ICANN a certification executed by the chief executive officer of Registry Operator certifying as to Registry Operator's compliance in all material respects with the terms of this Agreement (including the Appendices hereto). Such certification shall be accompanied by a non-confidential summary of the nature and quantity of complaints received and processed by Registry Operator in the previous reporting period in form and substance reasonably acceptable to ICANN, based on the most recent audit conducted by the International Foundation for Online Responsibility ("IFFOR") Ombudsman pursuant to Registry Operator's Compliance Reporting System in effect on the date hereof. In connection with such audit, Registry Operator shall ensure that the IFFOR Ombudsman conducts such audits quarterly for the first year and thereafter annually during the Term of this Agreement and delivers its findings or results of such audit in writing to Registry Operator. Registry Operator shall not amend its Compliance Reporting System to provide for less frequent IFFOR Ombudsman audits without ICANN's written consent.

(.XXX RA, <https://www.icann.org/en/registry-agreements/xxx/xxx-registry-agreement-31-3-2011-en>.) The .XXX RA was entered into between ICANN and ICM Registry LLC (ICM) on 31 March 2011. ICM, the registry operator of the .XXX gTLD, is owned by GoDaddy Inc. As a preliminary matter, your Request seeks the disclosure of documents spanning over 13 years, during which various systems were retired and replaced. Locating these documents require considerable time and resources. After investing significant time and resources, ICANN has located the certifications responsive to your Request for 2011 through 2023, except for 2017. The certifications include confidential information that is subject to the following DIDP Defined Condition of Nondisclosure.

- Information provided to ICANN by a party that, if disclosed, would or would be likely to materially prejudice the commercial interests, financial interests, and/or competitive position of such party or was provided to ICANN pursuant to a nondisclosure agreement, nondisclosure provision within an agreement, or separate designation of confidentiality.

ICANN will publish the non-confidential portions of the certifications for 2011 through 2016 and 2018 through 2023 on the ICANN website by 31 May 2024. For 2017, ICANN has located the correspondence confirming that the certification was timely received, but ICANN has not been able to locate the actual certification. ICANN will publish the non-confidential portion of this certification if and when it is located.

Public Interest in Disclosure of Information Subject to DIDP Defined Conditions of Nondisclosure

Notwithstanding the applicable DIDP Defined Condition of Nondisclosure identified in this Response, ICANN has considered whether the public interest in disclosure of the additional documentary information subject to these conditions at this point in time outweighs the harm that may be caused by such disclosure. ICANN has determined that there are no current 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 <https://www.icann.org/resources/pages/didp-2023-01-24-en>. 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. ICANN hopes this information is helpful. If you have any further inquiries, please forward them to didp@icann.org.