

## Response to Documentary Information Disclosure Policy Request

To: Flip Petillion

Date: 5 July 2015

Re: Request No. 20150605-1

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Thank you for your request dated 5 June 2015 (the “Request”), which was submitted pursuant to the Internet Corporation for Assigned Names and Numbers’ (ICANN) Documentary Information Disclosure Policy (DIDP) on behalf of Travel Reservations SRL (formerly, Despegar Online SRL), Donuts, Inc. (and its subsidiary applicant Spring McCook, LLC), Minds + Machines Group Limited (formerly, Top Level Domain Holdings Limited) and Radix FZC (and its subsidiary applicant DotHotel Inc.). For reference, a copy of your Request is attached to the email forwarding this Response.

### **Items Requested**

Your Request seeks the disclosure of the following information regarding the data exposure issue in the New gTLD Applicant and GDD (Global Domains Division) portals first reported on 1 March 2015:

1. What was the precise nature of the security issue?
2. When did the security issue occur?
3. How could the security issue occur?
4. How could the security issue have been avoided?
5. How was the security issue discovered?
6. Who raised the security issue?
7. How did the security issue come to ICANN’s attention?
8. What actions did ICANN take after being informed of the security issue?
9. How does ICANN enforce the portal’s terms and conditions in case of obvious breach?
10. What are the concrete actions that ICANN took vis-à-vis D. Krischenowski?

You also requested a copy of the terms and conditions to which D. Krischenowski agreed and the correspondence with D. Krischenowski and his legal counsel.

## Response

ICANN's DIDP is limited to requests for documentary information already in existence within ICANN that is not publicly available. Simple requests for non-documentary information are not appropriate DIDP requests. Nevertheless, the majority of your questions (Items 1, 2, 3, 5, 6, 7, and 8) have been addressed by the public announcements and Q&A published on the New gTLD microsite and have been readdressed below. (See <http://newgtlds.icann.org/en/announcements-and-media/announcement-01mar15-en>, <http://newgtlds.icann.org/en/announcements-and-media/announcement-02mar15-en>, <http://newgtlds.icann.org/en/announcements-and-media/announcement-2-02mar15-en>, <http://newgtlds.icann.org/en/announcements-and-media/announcement-30apr15-en>, and <http://newgtlds.icann.org/en/announcements-and-media/announcement-27may15-en>.)

On 27 February 2015, ICANN received notice of a potential security issue affecting the New gTLD Applicant and GDD (Global Domains Division) portals. Upon notification, ICANN confirmed the reported issue and immediately took the portals offline to address the issue. (See <https://www.icann.org/news/announcement-2015-03-01-en>.) Under certain circumstances, an authenticated portal user could potentially view data of, or related to, other users. Access to, and data in, these portals is limited to New gTLD Program applicants and New gTLD registry operators. These portals contain information from applicants to ICANN's New gTLD Program and new gTLD registry operators. No other systems were affected. The portals' configuration was updated to address the issue and the portals were restored on 2 March 2015. (See <https://www.icann.org/news/announcement-3-2015-03-02-en>.)

ICANN conducted an in depth forensic investigation into whether any data was exposed to an unauthorized user. Two consulting firms reviewed and analyzed all log data going back to the activation of the New gTLD Applicant portal on 17 April 2013 and the activation of the GDD portal on 17 March 2014. The results of the investigation indicate that the portal users were able to view data that was not their own. Based on the investigation to date, the unauthorized access resulted from advanced searches conducted using the login credentials of 17 users, which exposed 330 advanced search result records, pertaining to 96 applicants and 21 registry operators. These records may have included attachment(s). These advanced searches occurred during 36 user sessions out of a total of nearly 595,000 user sessions since April 2013. Based on the information that ICANN has collected to date, our investigation leads us to believe that over 60 searches, resulting in the unauthorized access of more than 200 records, were conducted using a limited set of user credentials. The remaining user credentials, representing the majority of users who viewed data, were either used to:

- Access information pertaining to another user through mere inadvertence and the users do not appear to have acted intentionally to obtain such information. These users have all confirmed that they either did not use or were not aware of having access to the information. Also, they have all confirmed that they will not use any such information for any purpose or convey it to any third party; or

- Access information of an organization with which they were affiliated. At the time of the access, they may not have been designated by that organization as an authorized user to access the information.

(See <https://www.icann.org/news/announcement-2015-05-27-en>.)

Following the conclusion of the first phase of its forensics investigation, ICANN contacted the users who appear to have viewed information that was not their own and required that they provide an explanation of their activity. ICANN also asked them to certify that they will delete or destroy all information obtained and to certify that they have not and will not use the data or convey it to any third party. (See <https://www.icann.org/news/announcement-2015-04-30-en>.) ICANN also informed the parties whose data was viewed and provided them with information regarding the date(s) and time(s) of access and what portion(s) of their data was seen. (See *id.*)

On 27 May 2015, ICANN additionally provided the affected parties with the name(s) of the user(s) whose credentials were used to view their information without their authorization or by individuals that were not officially designated by their organization to access certain data and any explanation(s) and/or certification(s) that the user(s) provided to ICANN regarding the unauthorized access. (See <https://www.icann.org/news/announcement-2015-05-27-en>.)

With respect to Items 4, 9 and 10, these questions seek information that are not only beyond the scope of DIDP requests as noted above, but are also subject to the following DIDP Defined Conditions of 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.

With respect to your requests for the terms and conditions to which D. Krischenowski agreed, all New gTLD Applicant portal users are subject to the TLD Application System Terms of Use, available at <http://newgtlds.icann.org/en/applicants/tas/terms>, and the TLD Terms and Conditions, available at <http://newgtlds.icann.org/en/applicants/agb/terms>. All GDD portal users are subject to the attached Authorized User Terms and Conditions that appear when the user logs in to the portal for the first time.

With respect to your request for correspondence with D. Krischenowski and his legal counsel, this request calls for documents that are subject to the following DIDP Defined Conditions of 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.
- 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 or nondisclosure provision within an agreement.
- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.
- 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.

### **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, which is contained within the ICANN Accountability & Transparency: Framework and Principles 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).

# ICANN GDD Portal

## AUTHORIZED USER TERMS AND CONDITIONS

### Portal Account

To access this portal and the services it provides (the “Portal”), a point of contact will be designated as the “Authorized User” and provided login credentials (user name and password). The Authorized User will be the individual previously designated by you as your point of contact, and ICANN will use that information to create the profile and login credentials for the Authorized User. Notwithstanding the foregoing, the entity for which the Authorized User represents is and remains responsible for all activity that takes place within the Portal. If at any time or for any reason it is desired or required to change the Authorized User, it is your responsibility to promptly notify ICANN of the change. You are responsible for keeping your account information and password confidential and are responsible for all activity that occurs under your Portal account. The Portal requires Authorized Users to sign in each time, and to acknowledge they accept these “Authorized User Terms and Conditions” (“Terms and Conditions”). On the first instance of access for any individual Authorized User (i.e., an individual under unique login credentials), the Authorized User will be required to read, acknowledge and expressly accept these Terms and Conditions. This information will be tracked. In the event the Terms and Conditions change, or in the event a new Authorized User accesses the Portal, acceptance of the Terms and Conditions will again be required. Failure to do so will prevent Authorized User access to the Portal.

### Authorized User Provided Content

Authorized Users may post, upload and/or otherwise provide information, data or content (“User Content”) through the Portal. You are solely responsible for any User Content you provide and for any consequences thereof. You represent that you have the right to post any User Content which you post to the Portal, and that such User Content, or its use by us as contemplated, does not violate these terms and conditions, applicable law, or the intellectual property, publicity or privacy rights of others and is provided only with express written consent from any individual or entity of which the information relates. Except to the extent ICANN may review User Context for thoroughness and/or completeness, ICANN does not otherwise monitor, review, or edit User Content except to the extent expressly requested by you. ICANN reserves the right to remove or disable access to any User Content for any or no reason, including, but not limited to, User Content that, in ICANN’s sole discretion, violates these terms and conditions. ICANN may take these actions without prior notification to you. Removal or disabling of access to User Content shall be at our sole discretion, and we do not promise to remove or disable access to any specific User Content.

### Personal Information

ICANN will use the User Content for the purposes for which it was voluntarily provided to us by you, and/or otherwise in accordance with its privacy policy. Do not provide sensitive information through the Portal. Click [here](#) for our Privacy Policy. By using this Portal, you consent to such processing and you warrant that all User Content provided by you is accurate.

### Disclaimer of Warranties; Limitation of Liability

YOU EXPRESSLY AGREE THAT YOUR USE OF THE PORTAL AND ITS SERVICES IS AT YOUR OWN RISK, AND IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. TO THE FULL EXTENT PERMISSIBLE BY APPLICABLE LAW, ICANN MAKES NO, AND HEREBY DISCLAIMS ALL, REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE AVAILABILITY, OPERATION AND USE OF THE PORTAL OR ANY REPORTS, INFORMATION, CONTENT, MATERIALS OR SERVICES ON OR ACCESSED VIA THE PORTAL, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. IN ADDITION, ICANN DOES NOT REPRESENT OR WARRANT THAT THE INFORMATION ACCESSIBLE VIA THE PORTAL IS ACCURATE, COMPLETE OR CURRENT, AND ICANN IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS THEREIN OR FOR ANY ADVERSE CONSEQUENCES RESULTING FROM YOUR RELIANCE ON SUCH INFORMATION OR ANY OTHER ASPECT OF THE PORTAL. FURTHER, ICANN MAKES NO REPRESENTATIONS OR WARRANTIES THAT THE PORTAL WILL BE UNINTERRUPTED, SECURE, OR FREE OF ERRORS, VIRUSES, OR OTHER HARMFUL COMPONENTS.

IN NO EVENT SHALL ICANN OR ANY OF ITS AFFILIATES OR LICENSORS OR THE MEMBERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR REPRESENTATIVES OF ICANN AND ITS AFFILIATES AND LICENSORS (ICANN AND ALL SUCH PERSONS, COLLECTIVELY, THE "ICANN PARTIES") BE LIABLE TO YOU OR ANY THIRD PARTY FOR DAMAGES OF ANY KIND ARISING OUT OF THE USE OF, ACCESS TO, RELIANCE ON, INABILITY TO USE OR IMPROPER USE OF THE PORTAL OR ANY USER CONTENT (INCLUDING, BUT NOT LIMITED TO, ANY DIRECT, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOSS OF PROFITS, GOODWILL OR REVENUE, BUSINESS INTERRUPTION, OR LOSS OF DATA), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE.

CERTAIN STATE LAWS DO NOT PERMIT LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN TYPES OF DAMAGES, AND THUS SOME OR ALL OF THE DISCLAIMERS, EXCLUSIONS OR LIMITATIONS ABOVE MAY NOT APPLY TO YOU.

### **Indemnification**

You agree to indemnify and hold the ICANN Parties harmless from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses of any nature whatsoever (including without limitation reasonable attorneys' fees, disbursements and court costs) arising from or in connection with (i) your use of the Portal, or any reports, content, information, materials or services contained, displayed or available therein; (ii) your violation of these Terms and conditions; (iii) your violation of any rights of any third party; and/or (iv) ICANN's reliance upon the User Content provided.

### **Modification or Discontinuance of the Portal by ICANN**

At any time, without notice to you, and for any or no reason, ICANN may modify or discontinue the Portal or any content or aspect thereof. ICANN shall in no way be held liable for any consequence that results from ICANN's decision to modify or discontinue providing the Portal or any content or aspect thereof.

### **Governing Law**

The laws of the State of California will govern these terms and conditions and your use of the Portal, without giving effect to any principles of conflicts of laws. You agree that any action arising out of these terms and conditions or your use of the Portal shall be brought in state or federal court in Los Angeles, California, and you consent to the jurisdiction of such courts.

**Miscellaneous**

If any portion of these terms and conditions is deemed unlawful, void or unenforceable, that portion will be deemed severable and will not affect the validity or enforceability of the remaining provisions. These terms and conditions set forth the entire understanding between you and ICANN with respect to the subject matter hereof and supersede any prior or contemporaneous communications, representations, or agreements, whether oral or written, between you and ICANN with respect to such subject matter.

**I have read this Agreement and agree to the terms and conditions.**

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