

## Response to Documentary Information Disclosure Policy Request

To: Padmini Baruah

Date: 1 October 2015

Re: Request No. 20150901-1 (Registry Audits) and  
Request No. 20150901-2 (Registrar Audits)

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Thank you for your Requests for Information dated 1 September 2015 (the Request), which were submitted through the Internet Corporation for Assigned Names and Numbers' (ICANN's) Documentary Information Disclosure Policy (DIDP) on behalf of The Centre for Internet & Society (CIS). For reference, a copy of your Requests are attached to the email forwarding this Response.

### **Items Requested**

Your Requests seek the disclosure of the documentary information relating to ICANN Contractual Compliance's Audit Program. Specifically, your first Request seeks the following documents regarding registry audits (Registry Audit Request):

1. Copies of the registry contractual compliance audit reports for all the audits carried out as well as external audit reports from the last year (2014-2015).
2. A generic template of the notice served by ICANN before conducting such an audit.
3. A list of the registries to whom such notices were served in the last year.
4. An account of the expenditure incurred by ICANN in carrying out the audit process.
5. A list of the registries that did not respond to the notice within a reasonable period of time.
6. Reports of the site visits conducted by ICANN to ascertain compliance.
7. Documents which identifies [*sic*] the registry operators who had committed material discrepancies in the terms of the contract.
8. Documents pertaining to the actions taken in the event that there was found to be some form of contractual non-compliance.

Your second Request seeks the following documentary information about registrar audits (Registrar Audit Request).

- A. Copies of the registrar contractual compliance audit reports for all the audits carried out as well as external audit reports from the last year (2014-2015).
- B. A generic template of the notice served by ICANN before conducting such an audit.
- C. A list of the registrars to whom such notices were served in the last year.
- D. An account of the expenditure incurred by ICANN in carrying out the audit process.
- E. A list of the registrars that did not respond to the notice within a reasonable period of time.
- F. Reports of the site visits conducted by ICANN to ascertain compliance.
- G. Documents which identify the registrars who had committed material discrepancies in the terms of the contract.
- H. Documents pertaining to the actions taken in the event that there was found to be some form of contractual non-compliance.
- I. A copy of the registrar self-assessment form which is to be submitted to ICANN.

## **Response**

Both of your Requests seek documentary information about the ICANN's Contractual Compliance Audit Program. As a preliminary manner, many of the items in the Requests are similar or concern overlapping issues and responses. As such, both Requests are addressed in this Response.

ICANN's contractual compliance goal is to ensure that ICANN's contracted parties fulfill the requirements set forth in their agreements with ICANN. (See <https://www.icann.org/resources/pages/compliance-2012-02-25-en>.) In furtherance of this goal, the Contractual Compliance Department has implemented the following programs: Approach & Process, gTLD Registries, ICANN Accredited Registrars, Audit, and General Questions. (See <https://www.icann.org/resources/compliance-programs>.) The Contractual Compliance Department undertakes various activities to ensure compliance with contractual obligations; some of the activities are a result of complaints, some are monitoring and others are audit-related. The Overall Contractual Compliance Approach, as well as the Informal Resolution Process and Formal Resolution Process are described at <https://www.icann.org/en/system/files/files/overall-03oct14-en.pdf>, <https://www.icann.org/en/system/files/files/informal-resolution-03oct14-en.pdf>, and <https://www.icann.org/en/system/files/files/formal-resolution-19jun13-en.pdf>, respectively.

You referenced ICANN’s President and CEO’s, Fadi Chehade, speech at the opening ceremony for ICANN 51 and his testimony before the House Committee on Energy and Commerce hearing on “Internet Governance Progress after ICANN 53” and attributed the following statements to Mr. Chehade: “Mr. Chehade made it clear that ICANN ‘enforced contracts’ with and that ‘regular audits of about 40000 complaints’ were being conducted to that effect.” (Registry Audit Request at 1 (emphasis in original).) This attribution is not accurate. Mr. Chehade did not testify that audits of 40,000 complaints were underway. He testified that:

[W]e are committed and we are enforcing the processes that the multi-stakeholder community has asked us in the contract to do. We are doing that. And we are doing that with a large team of compliance folks. We have now over 40,000 complaints that are being processed in less than 10 days. All of them. There is a tremendous amount of work going there.

(Hearing before House Committee on Energy and Commerce, 8 July 2015, at 1:00:34, <http://energycommerce.house.gov/hearing/internet-governance-progress-after-icann-53>.) He further testified:

When we receive complaints—and I just mentioned that we process thousands, tens of thousands of complaints—we act upon them. We reach out to the registrars and registries. We let them know that we have a complaint and we make sure that they follow what’s in the contract.

(*Id.* at 1:04:30.)

Mr. Chehade’s statement referenced complaints, not audits. The Contractual Compliance Complaint Program is different from the Audit Program. The Complaint Program processes complaints received by ICANN on registry operators and accredited registrars that may be in violation of the Registry Agreement, Registrar Accreditation Agreement, and/or the consensus policies. (See <https://www.icann.org/compliance/complaint>.) The Complaint Program also investigates complaints initiated by ICANN itself, following active monitoring. As set forth on the Contractual Compliance Complaint Program page, there are many different types of complaints that ICANN processes. (See <https://www.icann.org/compliance/complaint>.)

The Contractual Compliance Audit Program’s objective is to ensure that contracted parties, registrars and registries comply with their agreements and the consensus policies. (See <https://www.icann.org/resources/pages/audits-2012-02-25-en>.) The goal of the Audit Program is:

- To allow ICANN to first identify and inform the contracted parties of any contractual compliance deficiencies found.
- Properly manage and help remediate any deficiencies found

This process will ensure all contracted parties align and comply with their contractual obligations, including all consensus policies that are incorporated by reference into each of the contracts. (*See id.*)

To date, ICANN has completed the Three Year Audit Program (*see* [https://www.icann.org/resources/pages/audits-2012-02-25-en#Three-Year\\_Audit\\_Program](https://www.icann.org/resources/pages/audits-2012-02-25-en#Three-Year_Audit_Program)) and the New Registry Agreement Audit Program (*see* [https://www.icann.org/resources/pages/audits-2012-02-25-en#The\\_New\\_Registry](https://www.icann.org/resources/pages/audits-2012-02-25-en#The_New_Registry)).

The [Three-Year Audit Program](#), was initiated in 2012 and ran for a three-year period. The goal was to audit and baseline the ICANN-accredited registrars and the generic Top-Level Domains (TLDs) that were launched before 2013, identify deficiencies and ensure that as many as possible are remediated and report back to the community. Registries and registrars were randomly selected for audit over a three-year period:

- Year one (2012) – one third (1/3) of the Registry and Registrar agreements from a complete list were randomly selected and audited.
- Year two (2013) – another one third (1/3) from the remaining list were randomly selected and audited.
- Year three (2014) – the remaining one third of all agreements (1/3) were audited.

The scope of the Three Year Audit Program was:

- All ICANN-accredited registrars on the 2001 and 2009 RAAs
- gTLD registries with which ICANN has contracts that launched before the year 2013: .aero, .asia, .biz, .cat, .com, .coop, .jobs, .info, .mobi, .museum, .name, .net, .org, .post, .pro, .tel, .travel, and .xxx.
- Note that all agreements within scope incorporate by reference the ICANN consensus policies.

(*See* <https://www.icann.org/resources/pages/audits-2012-02-25-en>.)

The scope of the New Registry Audit Program includes gTLDs that signed the July 2013 base registry agreement as amended from time to time, including all its Specifications and Public Interest Commitments. (*See* <https://www.icann.org/en/system/files/files/registry-agmt-audit-12may14-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 detailed information about the Contractual Compliance Programs on the Contractual Compliance webpage at <https://www.icann.org/resources/pages/compliance-2012-02-25-en>, including the Audit Program.

Many of the documents responsive to your Requests can be found by accessing the Contractual Compliance webpage. Specifically, ICANN has published the following information about the Contractual Compliance Audit Program:

- Background information regarding the Audit Program:  
<https://www.icann.org/resources/pages/audits-2012-02-25-en>
- ICANN Three Year Audit Plan Guide – Registrar:  
<https://www.icann.org/en/system/files/files/plan-guide-registrars-25oct12-en.pdf>
- ICANN Three Year Audit Plan Guide – Registry:  
<https://www.icann.org/en/system/files/files/plan-guide-registries-25oct12-en.pdf>
- ICANN Three Year Audit Plan Guide – Policies:  
<https://www.icann.org/en/system/files/files/plan-guide-policies-25oct12-en.pdf>
- Audit Program Frequently Asked Questions:  
<https://www.icann.org/resources/pages/faqs-2012-10-31-en>
- Three Year Audit Pre-Audit Notifications:
  - Year 1 Registrar Pre-Audit Notification:  
<https://www.icann.org/en/system/files/files/notification-registrar-13nov12-en.pdf>
  - Year 1 Registry Pre-Audit Notification:  
<https://www.icann.org/en/system/files/files/notification-registry-13nov12-en.pdf>
  - Year 2 Registrar Pre-Audit Notification:  
<https://www.icann.org/en/system/files/files/notification-registrar-01oct13-en.pdf>
  - Year 2 Registry Pre-Audit Notification:  
<https://www.icann.org/en/system/files/files/notification-registry-01oct13-en.pdf>
  - Year 3 Registrar Pre-Audit Notification:  
<https://www.icann.org/en/system/files/files/notification-registrar-06oct14-en.pdf>
  - Year 3 Registry Pre-Audit Notification:  
<https://www.icann.org/en/system/files/files/notification-registry-06oct14-en.pdf>
- New Registry Agreement Audit Program:  
[https://www.icann.org/resources/pages/audits-2012-02-25-en#The\\_New\\_Registry](https://www.icann.org/resources/pages/audits-2012-02-25-en#The_New_Registry)
- New Registry Agreement Pre-Audit Notification:  
<https://www.icann.org/en/system/files/files/notification-registry-01jul14-en.pdf>
- Registrar Audit Notification Template:  
<https://www.icann.org/en/system/files/files/registrar-audit-notification-template-30sep15-en.pdf>

- Registry Audit Notification Template: <https://www.icann.org/en/system/files/files/registry-audit-notification-template-30sep15-en.pdf>
- Audit Reports for 2006 - 2015: <https://www.icann.org/resources/compliance-reporting-performance>

### Registry Audit Request

Item No. 1 seeks copies of the registry audit reports from 2014 to 2015. The following reports, published on the Contractual Compliance Reports page, are responsive to Item No. 1: 2014 Contractual Compliance Annual Report

(<https://www.icann.org/en/system/files/files/annual-2014-13feb15-en.pdf>), 2014

Contractual Compliance New Registry Agreement Audit Report

(<https://www.icann.org/en/resources/compliance/reports/contractual-compliance-ra-audit-report-2014-03feb15-en.pdf>), 2014 Contractual Compliance Year Three Audit Program

Report (<https://www.icann.org/en/resources/compliance/reports/contractual-compliance-audit-report-2014-13jul15-en.pdf>) and Monthly Reports for 2014

(<https://www.icann.org/resources/pages/update-2013-03-15-en>). These reports contain detailed information regarding the 2014 audits, including audit scope, key findings, key recommendations, and the entities that were audited.

Individual contracted party audit reports are confidential and will not be published. If a contracted party reaches the enforcement phase per process, ICANN will issue a notice of breach in which the outstanding issues are noted. (See Audit FAQ, Question 10, <https://www.icann.org/resources/pages/faqs-2012-10-31-en>.)

These individual contracted party audit reports are subject to the following DIDP Defined Conditions of Nondisclosure:

- 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.
- 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.
- Confidential business information and/or internal policies and procedures.

Item No. 2 asks for a generic template of the notice served by ICANN before conducting an audit. The pre-audit notifications for the Three Year Audit Program and the New Registry Agreement Audit Program are available on the Audit Program page at

[https://www.icann.org/resources/pages/audits-2012-02-25-en#The\\_New\\_Registry](https://www.icann.org/resources/pages/audits-2012-02-25-en#The_New_Registry). In responding to this request and as part of our commitment to transparency and accountability, ICANN has published templates of Registrar and Registry audit notifications on the Audit page. (See Registrar Audit Notification Template at <https://www.icann.org/en/system/files/files/registrar-audit-notification-template-30sep15-en.pdf>; Registry Audit Notification Template at <https://www.icann.org/en/system/files/files/registry-audit-notification-template-30sep15-en.pdf>.)

Item No. 3 seeks a list of registries that received an audit notice. This information is set forth on Appendix A in the 2014 Contractual Compliance New Registry Agreement Audit Report at <https://www.icann.org/en/system/files/files/contractual-compliance-ra-audit-report-2014-03feb15-en.pdf>, and Appendix B of the 2014 Contractual Compliance Year Three Audit Program Report at <https://www.icann.org/en/system/files/files/contractual-compliance-audit-report-2014-13jul15-en.pdf>.

Item No. 4 asks for an account of the expenditure by ICANN in carrying out the audit process. As set forth in the FY15 Adopted Operating Plan and Budget, the Contractual Compliance budget for audits for FY15 was:

- New Registry Agreement Audit: US\$0.2M
- Three Year Audit Program: US\$0.6M

(See <https://www.icann.org/en/system/files/files/adopted-opplan-budget-fy15-01dec14-en.pdf>.) The Contractual Compliance Audit Program budget for FY16 for both audits is US\$0.8M. (See <https://www.icann.org/en/system/files/files/adopted-opplan-budget-project-fy16-25jun15-en.pdf>.) To the extent that there are other documents responsive to this request, such as invoices from ICANN's Contractual Compliance Audit Partner, KPMG, such documents are subject to the following DIDP Defined Conditions of Nondisclosure and are not appropriate for disclosure:

- 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.

Item No. 5 ask for a list of registries that did not respond to the audit notice within a reasonable time period. All registries who were served with an audit notice also referred to as Request For Information (RFI) for the year 2014 audit responded in a timely manner. Thus, there are no documents responsive to this Item.

Item No. 6 seeks the disclosure of reports of site visits conducted by ICANN to ascertain compliance. ICANN did not conduct any site visits during the 2014 audit. Thus, there are no documents responsive to this Item.

Item Nos. 7 and 8 request “[d]ocuments that identifies [*sic*] the registry operators who had committed material discrepancies in the contract” and the documents pertaining to the actions taken in the event some form of non-compliance was identified during the audit. The 2014 Contractual Compliance New Registry Agreement Audit Report includes a discussion of the deficiencies identified in audits under “Key Audit Findings”. As noted in the Report “[a]ll registries addressed the deficiencies during the remediation phase.” (<https://www.icann.org/en/resources/compliance/reports/contractual-compliance-ra-audit-report-2014-03feb15-en.pdf> )

The 2014 Contractual Compliance Year Three Audit Program Report contains a discussion regarding the Registry Audit Program and provides:

For the Registries, five were selected in the Year Three Audit. All five participating Registries were issued an Observation Report. An Observation Report is defined as a report of findings based on review, which relies upon the Registry to take appropriate action towards remediation (i.e., not requiring ICANN to confirm the actions have been implemented).

(<https://www.icann.org/en/system/files/files/contractual-compliance-audit-report-2014-13jul15-en.pdf>.) As noted above, the registries that were selected to participate in the 2014 audit are identified in Appendix B.

The names of the contracted party associated with these discrepancies are confidential, subject to the following DIDP Defined Conditions for Nondisclosure, and are therefore not appropriate for disclosure. Likewise, the audit reports for these individual registries are confidential and are subject to the same DIDP Defined Conditions for Nondisclosure,

- 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.
- 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.
- Confidential business information and/or internal policies and procedures.

#### Registrar Audit Request

Item A requests copies of the registrar contractual compliance audits for the 2014-2015 audit period. As noted in our response to Item No. 1 of the Registry Audit Request

above, the following reports, published on the Contractual Compliance Reports page, are responsive to your Request: 2014 Contractual Compliance Annual Report (<https://www.icann.org/en/system/files/files/annual-2014-13feb15-en.pdf>), 2014 Contractual Compliance Year Three Audit Program Report (<https://www.icann.org/en/resources/compliance/reports/contractual-compliance-audit-report-2014-13jul15-en.pdf>) and Monthly Reports for 2014 (<https://www.icann.org/resources/pages/update-2013-03-15-en>). These reports contain detailed information regarding the 2014 audits, including audit scope, key findings, key recommendations, and the entities that were audited. For the reasons stated above, individual contracted party audit reports for each registrar are confidential and will not be published online. If a contracted party reaches the enforcement phase per process, ICANN will issue a notice of breach in which the outstanding issues are noted. (See Audit FAQ, Question 10, <https://www.icann.org/resources/pages/faqs-2012-10-31-en>.) These reports are subject to the following DIDP Defined Conditions of Nondisclosure:

- 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.
- 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.
- Confidential business information and/or internal policies and procedures.

Item B asks for a generic template of the notice served by ICANN before conducting such an audit. This question has been addressed in response to Item No. 2.

Item C asks for a list of registrars who received audit notices for the 2014-2015 audit year. This list appears on Appendix A of the 2014 Contractual Compliance Year Three Audit Program Report at <https://www.icann.org/en/system/files/files/contractual-compliance-audit-report-2014-13jul15-en.pdf>.

Item D asks for an account of the expenditure incurred by ICANN in carrying out the audit process. This question has been addressed in response to Item No. 4 above.

Item E asks for a list of registrars that did not respond to audit notices for the 2014-2015 audit year. Page 6 of the 2014 Contractual Compliance Year Three Audit Program Report identifies the registrars that received a breach notice during the RFI phase of the audit. (See <https://www.icann.org/en/system/files/files/contractual-compliance-audit-report-2014-13jul15-en.pdf>.) The breach notices, available at <https://www.icann.org/resources/pages/notices-2012-02-25-en#notices-2014>, identify the

reasons for the breach, including whether the breach is due to a failure to timely respond to the audit notices. To the extent that there is other information responsive to this request, such documents are subject to the following DIDP Defined Conditions of Nondisclosure and are not appropriate for disclosure:

- 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.
- 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.
- Confidential business information and/or internal policies and procedures.

Item F seeks the disclosure of site visit reports for the 2014 audit. ICANN did not conduct any site visits during the 2014 audit. Thus, there are no documents responsive to this Item.

Items G and H ask for documents that identify the registrars that “committed material discrepancies in the terms of the contract.” Page 7 of the 2014 Contractual Compliance Year Three Audit Program Report identifies the registrars that received a breach notice during the Remediation phase of the audit. (See <https://www.icann.org/en/system/files/files/contractual-compliance-audit-report-2014-13jul15-en.pdf>.) The breach notices, available at <https://www.icann.org/resources/pages/notices-2012-02-25-en#notices-2014>, identify the reasons for the breach, including whether the registrar has been deemed noncompliant with its contractual obligations and the specific provisions of the Registrar Agreement at issue. To the extent that there are other documents responsive to these requests, such documents are subject to the following DIDP Defined Conditions of Nondisclosure and are not appropriate for disclosure:

- 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.
- 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.

- Confidential business information and/or internal policies and procedures.

Item I asks for a copy of the registrar self assessment form which is to be submitted to ICANN. The Registrar Self-Assessment Certification form is available at <https://www.icann.org/resources/pages/ceo-certification-2014-01-29-en>.

### **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).