

Response to Documentary Information Disclosure Policy Request

To: Padmini Baruah

Date: 1 October 2015

Re: Request No. 20150901-3

Thank you for your Request for Documentary Information dated 1 September 2015 (the Request), which was 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 Request is attached to the email forwarding this Response.

Items Requested

Your Request seeks the disclosure of “copies of documents showing action taken by ICANN stemming from discrepancies in contractual compliance y [*sic*] Verisign, as revealed from the aforementioned audits.”

Response

As a preliminary manner, your Request refers to comments made during a hearing of the House Committee on Energy and Commerce on “Internet Governance Progress After ICANN 53” on 8 July 2015 regarding “contractual compliance having an effect on the kind of content that was on the Internet (such as child pornography, IP violations and so on), and how ‘ICANN is working to address concerns’.” You attributed the following statement to ICANN’s President and CEO’s, Fadi Chehade: “Mr. Chehadi [*sic*] *has* stated clearly that in the event that there is a complaint, ICANN reaches out to the Registries and Registrars and follows it up.” This attribution does not include the full context of Mr. Chehade’s testimony on this issue. Mr. Chehade testified:

It is important to note that ICANN is not a regulator. We administer contracts. This is the model we work with. If it’s in the contract, we are making sure that it’s followed. Our contracts [] do call for registries and registrars to work within the law. So, if the law is broken in the hundreds of jurisdictions that we are engaged in here and that is made clear, our registries and registrars, per our contracts with them must comply. And they do. Now when we receive complaints and I just mentioned that we process thousands – tens of thousands of complaints, we act upon them. We let them know we have a complaint and we make sure they follow what is in the contract. We are doing this actively.... And we will continue investing to make sure our job begins and stops with what’s in the contract and making sure that people comply with that.”

(Hearing before House Committee on Energy and Commerce, 8 July 2015, at 1:03:45, <http://energycommerce.house.gov/hearing/internet-governance-progress-after-icann-53>.)

Your Request further states that “[w]e believe that it is likely to have contributed to a situation which has resulted in disagreement between the registry operators and ICANN, the outcomes of which are necessarily to be put into the public domain.” (Request at 1.) It is unclear what you believe “is likely to have contributed to a situation which has resulted in disagreement between the registry operators and ICANN, the outcomes of which are necessarily to be put into the public domain.” Accordingly, we have no basis upon which to address this comment.

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.

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) and the New Registry Agreement Audit Program (see 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. 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
- 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>

Your Request asks for copies of documents showing action taken by ICANN stemming from discrepancies in contractual compliance by Verisign based on the audits.

Information regarding the TLDs that were audited as part of the Three Year Audit Program is available on the Audit Reports page at <https://www.icann.org/resources/pages/compliance-reports-2015-04-15-en>. These reports contain detailed information regarding the 2014 audits, including audit scope, key findings, key recommendations, and the entities that were audited. As identified in Appendix B of the 2012 Contractual Compliance Year One Audit Program Report, the following TLDs were selected for auditing: DotAsia Organisation Limited (.ASIA), Telnic Limited (.TEL), Public Interest Registry (.ORG), Verisign (.NET), Afiliias

(.INFO), and Employ Media LLC (.JOBS). (See <https://www.icann.org/en/system/files/files/registrar-registry-audit-2012-25jun13-en.pdf>.) As noted on page 5 of the Report, five of the six Registries that were selected participated in the Year One audit.¹ Page 5 also provides “[a]ll 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.” (See <https://www.icann.org/en/system/files/files/registrar-registry-audit-2012-25jun13-en.pdf>.) The identity of the Registries that participated and the Registry that elected to not participate in the audit, as well as all audit reports issued, including the Observation 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>.) Breach notices are available at <https://www.icann.org/resources/pages/notices-2012-02-25-en>.

The 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.

Similarly, the TLDs that were selected to participate in the Year Two and Year Three Audits are identified in Appendix B of the 2013 Contractual Compliance Year Two Audit Program Report (<https://www.icann.org/en/system/files/files/registrar-registry-audit-2013-07jul14-en.pdf>) and 2014 Contractual Compliance Year Three Audit Program Report (<https://www.icann.org/en/system/files/files/contractual-compliance-audit-report-2014-13jul15-en.pdf>), respectively. For Year Two, the Registries that participated were: SITA (.AERO), Neustar, Inc. (.BIZ), Verisign (.COM), mTLD Ltd. (.MOBI), Registry Services Corporation (.PRO), and ICM Registry, LLC (.XXX). As noted on Page 5 of the Report, all six Registries participated in the audit and all six registries received an Observation Report. (See <https://www.icann.org/en/system/files/files/registrar-registry-audit-2013-07jul14-en.pdf>.)

¹ For the TLDs that were launched before 2013, participation in the audit program was voluntary per their registration agreements.

For Year Three, the Registries that participated in the audit were: Fundació puntCAT (.CAT), DotCooperation LLC (.COOP), Museum Domain Management Association International (.MUSEUM), Universal Postal Union (.POST), and Tralliance Registry Management Company LLC (.TRAVEL). (See <https://www.icann.org/en/system/files/files/contractual-compliance-audit-report-2014-13jul15-en.pdf>.) As noted on page 9 of the Report, all five Registries participated in the Year Three Audit and all five were issued Observation Reports. (<https://www.icann.org/en/system/files/files/contractual-compliance-audit-report-2014-13jul15-en.pdf>.)

The TLDs that were selected for audit in 2014 under the New Registry Audit Program are identified in Appendix A of 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>.

The individual contracted party audit reports for the 2013 and 2014 audits 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.

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.