

# Weil, Gotshal & Manges LLP

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BY E-MAIL

September 4, 2014

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Internet Corporation for Assigned Names and Numbers  
Attn: Cherine Chalaby  
Chair, ICANN New gTLD Program Committee (NGPC)  
12025 Waterfront Drive, Suite 30  
Los Angeles, CA 90094-2536  
Email: didp@icann.org

## **Re: DIDP Request for ICANN's Contract with the Economist Intelligence Unit for Performing Community Priority Evaluations**

Dear Mr. Chalaby:

On behalf of Dot Registry, LLC ("Dot Registry"), I request the documents described below, pursuant to ICANN's Documentary Information Disclosure Policy ("DIDP").

### **Background**

Dot Registry is the sole community applicant for .corp, .inc, .llc and .llp and is in string contention with non-community-based applicants for each string. Accordingly, ICANN invited Dot Registry to apply for, and Dot Registry requested and paid a total of \$66,000 for, Community Priority Evaluations ("CPEs") for each of the strings .inc, .llc and .llp. The Economist Intelligence Unit ("EIU") performed the CPEs and ultimately awarded each of Dot Registry's applications the same non-passing score. After reviewing the CPE Reports issued by the EIU for .inc, .llc and .llp, Dot Registry filed Reconsideration Requests with the ICANN Board Governance Committee ("BGC") relating to each of the three strings. The BGC subsequently denied the Reconsideration Requests.

## **Requested Documents**

Dot Registry requests that ICANN produce a copy of the contract between ICANN and the EIU, which serves as the sole evaluator for CPEs. The contract is not publicly available as of the date of this letter, does not meet any defined conditions for non-disclosure and is a proper subject for a DIDP Request.

## **Rationale**

To the extent that ICANN deems that any of the information in the contract falls into one of the defined conditions for non-disclosure, ICANN should nonetheless disclose the information, as the public interest in disclosing the information outweighs any harm that might be caused by disclosure. As the beneficiaries of the contract between ICANN and the EIU, the Internet community, new gTLD applicants and, in particular, community applicants (who must pay a \$22,000 fee per gTLD application in order to be evaluated by the EIU), are entitled to understand the contractual framework and obligations that govern ICANN's relationship with the EIU as an independent evaluator and the contractual obligations the EIU is subject to while conducting CPEs.

The need for this disclosure is especially pressing in light of the EIU's appointment as the *sole evaluator* for CPEs, in contravention of ICANN's original plan to contract with at least two evaluators for each category of review to provide "an alternate channel to avoid conflicts of interest" and to "ensure quality and value" through "continued competition among service providers."<sup>1</sup> ICANN's final decision to appoint only the EIU to perform CPEs makes disclosure of the terms of the agreement of particular importance.

Unless ICANN provides the requested document, the Internet community will have no way to evaluate whether the contract between the EIU and ICANN holds both parties to the policies established by ICANN in the gTLD Applicant Guidebook and to the general principles enumerated in ICANN's Bylaws, including transparency, accountability, good faith and fair dealing. Furthermore, future CPE applicants will have no reliable baseline to measure whether the contract requires the EIU to implement the criteria set forth in the gTLD Applicant Guidebook and whether the conditions of ICANN's contract with the EIU have been met in any particular CPE. This could result in arbitrary and non-transparent application of ICANN's policies by the EIU, an inability for any community applicant to pass the unpredictable CPE requirements, and most egregiously, a complete inability for community applicants to hold the EIU accountable to ICANN's policies.

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<sup>1</sup> Michael Salazar, Program Director for the New gTLD Program, "Preparing Evaluators for the New gTLD Application Process," ICANN New gTLDs (22 November 2011) available at <http://newgtlds.icann.org/en/blog/preparing-evaluators-22nov11-en>.

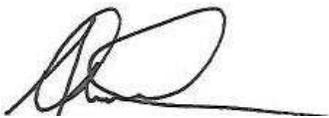
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Because ICANN is tasked through its Bylaws and Articles of Incorporation with operating in a transparent and accountable manner and with ensuring that its policies and practices are followed in a similar manner by its affiliated bodies, Dot Registry urges ICANN to provide a copy of ICANN's contract with the EIU, as outlined in this DIDP request.

Dot Registry reserves all of its rights at law and in equity, including, but not limited to, its right to obtain this or other information from ICANN.

Sincerely,

A handwritten signature in black ink, appearing to read 'Arif H. Ali', with a long horizontal line extending to the right.

Arif H. Ali

cc: Shaul Jolles