

Subject: [DIDP] ICOMP DIDP Request Letters
Date: Thursday, March 20, 2014 9:42:28 AM Pacific Daylight Time
From: secretariat, icomp Contact Information Redacted
To: didp@icann.org <didp@icann.org>
Category: DIDP

Dear Mr Chehadé,

On behalf of Lord Watson, Chairman of the Initiative for a Competitive Online Marketplace (ICOMP), please find attached two separate requests from ICOMP, pursuant to ICANN's Documentary Information Disclosure Policy, requesting the disclosure of documents relating to the application by Charleston Road Registry, a wholly owned subsidiary of Google, for the .search gTLD and proceedings related thereto.

Original copies of these requests have also been sent via the post.

Kind regards,

Jon

Jonathan Zokay
ICOMP Secretariat

Burson-Marsteller UK
Contact Information Redacted

March 20, 2014

VIA EMAIL (didp@icann.org) AND FIRST-CLASS MAIL

Mr. Fadi Chehadé
President and CEO
ICANN
12025 Waterfront Drive
Suite 300
Los Angeles, CA 90094-2536

Re: Initiative for a Competitive Online Marketplace Request Pursuant to ICANN
Documentary Information Disclosure Policy

Dear Mr. Chehadé:

Initiative for a Competitive Online Marketplace (“ICOMP”) submits this request for information and documents pursuant to ICANN’s Documentary Information Disclosure Policy (“DIDP”).

ICANN’s Disclosure Policy

ICANN’s Articles of Incorporation require ICANN to act “through open and transparent processes.” Articles of Incorporation, Art. 4. To that end, ICANN adopted the DIDP “to ensure that information contained in documents concerning ICANN’s operational activities, and within ICANN’s possession, custody, or control, is made available to the public **unless there is a compelling reason** for confidentiality.” ICANN Documentary Information Disclosure Policy, <http://www.icann.org/en/about/transparency/didp> (emphasis added). Absent “a compelling reason,” ICANN must disclose “information not already publicly available.” *Id.*

Background to Request

The chronology below provides background information relevant to ICOMP’s request:

- March 13, 2013: ICOMP files a Community Objection against the application of Charleston Road Registry, a wholly owned subsidiary of Google, Inc. (collectively, “Google”) for the



.search gTLD (Appl. No. 1-1141-50966) (the “Google .search application”), No. EXP 451/ICANN/68 (the “ICOMP .search Community Objection”).

- April 6, 2013: While the ICOMP .search Community Objection is pending, Google files a proposal to amend the objected-to .search application to include a “dotless domain” functionality (<https://gtldresult.icann.org/application-result/applicationstatus/applicationchangehistory/1319>).
- August 12, 2013: ICOMP makes an additional submission to its ICOMP .search Community Objection that explains why the proposed “dotless domain” functionality presents a material detriment to the Internet’s security and stability.
- September 15, 2013: According to a communication to ICOMP and Google from the Expert Panel appointed by the International Centre for Expertise (“ICE”) of the International Chamber of Commerce (“ICC”), the Expert Panel’s decision on the ICOMP .search Community Objection (“Expert Determination”) is due to ICE on this date.
- December 20, 2013: While the ICOMP .search Community Objection is pending, ICANN approves and posts Google’s application change request to amend numerous sections and subsections of the objected-to .search application. None of the proposed amendments deletes the proposed dotless domain functionality.
- January 13, 2014: While the ICOMP .search Community Objection is pending, ICANN posts Google’s application change request to amend the objected-to .search application to delete the dotless domain functionality.
- February 4, 2014: The Expert Panel signs the Expert Determination on ICOMP’s .search Community Objection. The Expert Determination denies ICOMP’s .search Community Objection based, in part, “on the understanding that . . . the ‘.search’-domain **will not be a dotless domain**,” Expert Determination at 27 (emphasis added), and after noting that “a ‘dotless’ domain . . . is more problematic,” *id.* at 17. Indeed, the Expert Panel concludes that ICOMP did not sufficiently demonstrate “a future adverse impact of awarding ‘.search’ . . . **except for the ‘dot-less’ feature.**” *Id.* at 28 (emphasis added).
- February 5, 2014: ICE releases to the parties and posts publicly the Expert Determination on ICOMP’s .search Community Objection. As of this date, Google’s .search application remains in Initial Evaluation.

www.i-comp.org

ICOMP members include:



- February 7, 2014: ICANN issues its Initial Evaluation Report for the amended Google .search application, which passes Initial Evaluation. The 30-day comment period on the January 13 application change request has not yet closed.

Information Requested

ICOMP respectfully requests that ICANN produce, in accordance with the DIDP, all documents¹ directly or indirectly relating to ICANN's communications², prior to February 7, 2014, with Google regarding the Expert Determination, the ICOMP .search Community Objection, or ICANN's evaluation of Google's .search application and any application change requests or amendments thereto, including but not limited to:

1. All communications between ICANN and Google relating to the Expert Determination or the ICOMP .search Community Objection.
2. All documents in ICANN's possession or control concerning communications between ICANN and Google relating to the Expert Determination or the ICOMP .search Community Objection.
3. All communications between ICANN and Google relating to ICANN's evaluation of Google's .search application or any application change requests or amendments thereto.
4. All documents in ICANN's possession or control concerning communications between ICANN and Google relating to ICANN's evaluation of Google's .search application of any application change requests or amendments thereto.
5. All documents in ICANN's possession or control concerning any communications between Google and the Expert Panel relating to Google's .search application or any application change requests or amendments thereto, or to the ICOMP .search Community Objection.

The requested information is properly requested under the DIDP because it is not publicly available and does not meet any of the defined conditions of non-disclosure. To the extent any of the requested documents do contain information that falls within the defined conditions of non-disclosure, such information could be redacted from those documents, provided that the basis for the redaction is clearly identified.

¹ "Document" is defined broadly herein to mean anything that contains information and includes, without limitation, papers (whether handwritten or typed), e-mails, facsimiles, transcripts, memoranda, correspondence, notes, calendar entries, and reports.

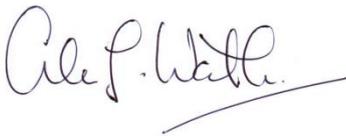
² "Communication" is defined broadly herein to mean any transmittal of information in the form of facts, ideas, inquiries or otherwise, whether written or oral.



Pursuant to the DIDP, “ICANN will respond, to the extent feasible, to reasonable requests within 30 calendar days of receipt of the request.” ICANN Documentary Information Disclosure Policy, <http://www.icann.org/en/about/transparency/didp>. ICOMP requests that ICANN respond to this request as soon as possible.

Thank you for your consideration. If you have any questions or wish to discuss any of the points raised herein, please feel free to contact the ICOMP Secretariat at icomp.secretariat@bm.com.

Respectfully submitted,



Lord Alan Watson
ICOMP Chairman

www.i-comp.org

ICOMP members include:



March 20, 2014

VIA EMAIL (didp@icann.org) AND FIRST-CLASS MAIL

Mr. Fadi Chehadé
President and CEO
ICANN
12025 Waterfront Drive
Suite 300
Los Angeles, CA 90094-2536

Re: Initiative for a Competitive Online Marketplace Request Pursuant to ICANN
Documentary Information Disclosure Policy

Dear Mr. Chehadé:

Initiative for a Competitive Online Marketplace (“ICOMP”) submits this request for information and documents pursuant to ICANN’s Documentary Information Disclosure Policy (“DIDP”).

ICANN’s Disclosure Policy

ICANN’s Articles of Incorporation require ICANN to act “through open and transparent processes.” Articles of Incorporation, Art. 4. To that end, ICANN adopted the DIDP “to ensure that information contained in documents concerning ICANN’s operational activities, and within ICANN’s possession, custody, or control, is made available to the public **unless there is a compelling reason** for confidentiality.” ICANN Documentary Information Disclosure Policy, <http://www.icann.org/en/about/transparency/didp> (emphasis added). Absent “a compelling reason,” ICANN must disclose “information not already publicly available.” *Id.*

Background to Request

The chronology below provides background information relevant to ICOMP’s request:

- March 13, 2013: ICOMP files a Community Objection against the application of Charleston Road Registry, a wholly owned subsidiary of Google, Inc. (collectively, “Google”) for the



.search gTLD (Appl. No. 1-1141-50966) (the “Google .search application”), No. EXP 451/ICANN/68 (the “ICOMP .search Community Objection”).

- April 6, 2013: While the ICOMP .search Community Objection is pending, Google files a proposal to amend the objected-to .search application to include a “dotless domain” functionality (<https://gtldresult.icann.org/application-result/applicationstatus/applicationchangehistory/1319>).
- August 12, 2013: ICOMP makes an additional submission to its ICOMP .search Community Objection that explains why the proposed “dotless domain” functionality presents a material detriment to the Internet’s security and stability.
- September 15, 2013: According to a communication to ICOMP and Google from the Expert Panel appointed by the International Centre for Expertise (“ICE”) of the International Chamber of Commerce (“ICC”), the Expert Panel’s decision on the ICOMP .search Community Objection (“Expert Determination”) is due to ICE on this date.
- December 20, 2013: While the ICOMP .search Community Objection is pending, ICANN approves and posts Google’s application change request to amend numerous sections and subsections of the objected-to .search application. None of the proposed amendments deletes the proposed dotless domain functionality.
- January 13, 2014: While the ICOMP .search Community Objection is pending, ICANN posts Google’s application change request to amend the objected-to .search application to delete the dotless domain functionality.
- February 4, 2014: The Expert Panel signs the Expert Determination on ICOMP’s .search Community Objection. The Expert Determination denies ICOMP’s .search Community Objection based, in part, “on the understanding that . . . the ‘.search’-domain **will not be a dotless domain**,” Expert Determination at 27 (emphasis added), and after noting that “a ‘dotless’ domain . . . is more problematic,” *id.* at 17. Indeed, the Expert Panel concludes that ICOMP did not sufficiently demonstrate “a future adverse impact of awarding ‘.search’ . . . **except for the ‘dot-less’ feature.**” *Id.* at 28 (emphasis added).
- February 5, 2014: ICE releases to the parties and posts publicly the Expert Determination on ICOMP’s .search Community Objection. As of this date, Google’s .search application remains in Initial Evaluation.

www.i-comp.org

ICOMP members include:



- February 7, 2014: ICANN issues its Initial Evaluation Report for the amended Google .search application, which passes Initial Evaluation. The 30-day comment period on the January 13 application change request has not yet closed.

Information Requested

ICOMP respectfully requests that ICANN produce, in accordance with the DIDP, all documents¹ directly or indirectly relating to ICANN's communications², prior to February 7, 2014, with the Expert Panel regarding the Expert Determination, the ICOMP .search Community Objection, or ICANN's evaluation of Google's .search application and any application change requests or amendments thereto, including but not limited to:

1. All communications between ICANN, on the one hand, and ICC, ICE or the Expert Panel, on the other hand, relating to the Expert Determination or the ICOMP .search Community Objection.
2. All documents in ICANN's possession or control concerning communications between ICANN, on the one hand, and ICC, ICE or the Expert Panel, on the other hand, relating to the Expert Determination or the ICOMP .search Community Objection.
3. All communications between ICANN, on the one hand, and ICC, ICE or the Expert Panel, on the other hand, relating to ICANN's evaluation of Google's .search application or any application change requests or amendments thereto.
4. All documents in ICANN's possession or control concerning communications between ICANN, on the one hand, and ICC, ICE or the Expert Panel, on the other hand, relating to ICANN's evaluation of Google's .search application or any application change requests or amendments thereto.
5. All documents identifying the dates on which ICANN became aware of the proposed or actual contents or reasoning of, or the proposed or final decision reached in, the Expert Determination.

The requested information is properly requested under the DIDP because it is not publicly available and does not meet any of the defined conditions of non-disclosure. To the extent any of the requested documents do contain information that falls within the defined conditions of non-

¹ "Document" is defined broadly herein to mean anything that contains information and includes, without limitation, papers (whether handwritten or typed), e-mails, facsimiles, transcripts, memoranda, correspondence, notes, calendar entries, and reports.

² "Communication" is defined broadly herein to mean any transmittal of information in the form of facts, ideas, inquiries or otherwise, whether written or oral.

www.i-comp.org

ICOMP members include:

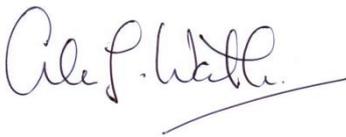


disclosure, such information could be redacted from those documents, provided that the basis for the redaction is clearly identified.

Pursuant to the DIDP, "ICANN will respond, to the extent feasible, to reasonable requests within 30 calendar days of receipt of the request." ICANN Documentary Information Disclosure Policy, <http://www.icann.org/en/about/transparency/didp>. ICOMP requests that ICANN respond to this request as soon as possible.

Thank you for your consideration. If you have any questions or wish to discuss any of the points raised herein, please feel free to contact the ICOMP Secretariat at 0207 300 6190.

Respectfully submitted,



Lord Alan Watson
ICOMP Chairman

www.i-comp.org

ICOMP members include:

