

Response to Documentary Information Disclosure Policy Request

To: Donuts, Inc.; FairWinds Partners, LLC; Fegistry LLC; Famous Four Media Limited; Minds + Machines; and Radix FZC

Date: 3 September 2014

Re: Request No. 20140804-1

Thank you for your Request for Information dated 4 August 2014 (the “Request”), which was submitted through the Internet Corporation for Assigned Names and Numbers’ (“ICANN’s”) Documentary Information Disclosure Policy (“DIDP”). For reference, a copy of your Request is attached to the email forwarding this Response.

Items Requested

In summary, the Request seeks all communications relating to the creation of the Community Priority Evaluation (“CPE”) report (the “Report”) approving the community application for .HOTEL submitted by HOTEL Top-Level-Domain S.a.r.l. (“Hotel TLD”) and relating to the appointment of the CPE Panel that produced the Report. The Request identified certain specific categories of documents, including:

1. All correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication (“Communications”) between individual member [*sic*] of ICANN’s Board or any member of ICANN Staff and the Economist Intelligence Unit or any other organization or third party involved in the selection or organization of the CPE Panel for the Report, relating to the appointment of the Panel that produced the Report, and dated within the 12 month period preceding the date of the Report;
2. The curriculum vitae (“CVs”) of the members appointed to the CPE Panel;
3. All Communications (as defined above) between individual members of the CPE Panel and/or ICANN, directly relating to the creation of the Report; and
4. All Communications (as defined above) between the CPE Panel and/or Hotel TLD or any other party prior with a material bearing on the creation of the Report.

Response

The Community Priority Evaluation (“CPE”) standards set forth in Section 4.2 of the Applicant Guidebook (“Guidebook”) available at <http://newgtlds.icann.org/en/applicants/agb>. CPEs are performed by an independent community panel that is coordinated by the Economist Intelligent Unit (“EIU”), an independent, third-party company that contracts with ICANN to perform that coordination role. The CPE Panel Process Document (at <http://newgtlds.icann.org/en/applicants/cpe>) and the CPE Guidelines (at

<http://newgtlds.icann.org/en/applicants/cpe>) provide more information on the CPE process.

To help assure independence of the process and evaluation, ICANN (either Board or staff) is not involved with the selection to the CPE panel of the two individual evaluators that perform the scoring in each CPE process (the “CPE Panel”), nor is ICANN provided with information about who the evaluators on any individual panel may be. The coordination of the CPE Panel as explained in the CPE Panel Process Document, is performed entirely within the EIU. ICANN therefore does not have any CVs for the CPE Panel as requested in Item 2. Similarly, ICANN does not have documentation regarding the appointment of the specific CPE Panel for the .HOTEL CPE as requested in Item 1. To the extent that ICANN has documentation with the EIU for the performance of its role as the coordinating firm as it relates to the .HOTEL CPE, those documents are subject to certain of the Defined Conditions of Nondisclosure set forth in the DIDP:

- 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 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.
- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.

Item 3 seeks all Communications (as defined in the Request) between ICANN and the individual members of the CPE Panel relating to the creation of the Report. Because of the EIU's role as the panel firm, ICANN does not have any communications (nor does it maintain any communications) with the evaluators that identify the scoring for any individual CPE. As a result, ICANN does not have documents of this type. To the extent that ICANN has communications with persons from EIU who are not involved in the scoring of a CPE, but otherwise assist in a particular CPE, (as anticipated in the CPE

Panel Process Document), those documents are subject to the following Defined Conditions of Nondisclosure set forth in the DIDP:

- 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.
- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.

Item 4 seeks all Communications between the CPE Panel and Hotel TLD or any other party bearing on the creation of the Report. In order to maintain the independence and neutrality of the CPE Panels as coordinated by the EIU, ICANN has limited the ability for requesters or other interested parties to initiate direct contact with the panels – the CPE Panel goes through a validation process regarding letters of support or opposition (as described in the CPE Panel Process document) but that is the extent of direct communications that the CPE Panel is expected to have. For process control purposes, from time to time ICANN is cc'd on the CPE Panel's verification emails. These validation emails are not appropriate for disclosure pursuant to the following Defined Conditions of Nondisclosure set forth in the DIDP:

- 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.

In making its evaluation, the CPE Panel considers the application materials and other documentation, including letter(s) of support and relevant correspondence, from the public ICANN website and/or ICANN's New gTLD microsite, available at <http://newgtlds.icann.org/en/>. Correspondence regarding New gTLD applications is available at <http://newgtlds.icann.org/en/program-status/correspondence>, specific instances of correspondence regarding .HOTEL's CPE are available at <https://www.icann.org/en/system/files/correspondence/levy-to-willett-03mar14-en.pdf>,

<https://www.icann.org/en/system/files/correspondence/sahjwani-to-chalaby-willett-04mar14-en.pdf>, and <https://www.icann.org/en/system/files/correspondence/patetta-to-icann-05mar14-en.pdf>. In addition, the public is permitted to post comments regarding any New gTLD application on the New gTLD microsite. Several such comments were posted regarding .HOTEL and are available at <https://gtldcomment.icann.org/applicationcomment/viewcomments>, and the CPE Panel was obligated to take those into account. Similarly, the application that the CPE was based upon is available at <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1165>, with any updates available at <https://gtldresult.icann.org/application-result/applicationstatus/applicationchangehistory/1562>.

Although your analysis in the Request concluded that no Conditions for Nondisclosure should apply, ICANN must independently undertake the analysis of each Condition as it applies to the documentation at issue, and make the final determination as to whether any Nondisclosure Conditions apply. Here, for example, ICANN cannot violate contractual conditions that require ICANN to maintain items as confidential solely because the Request proffers that no such conditions apply. Similarly, ICANN does not release draft documentation – particularly if draft documentation was shared for the purpose of facilitating deliberations or decision making – because drafts are not reliable sources of information regarding what actually occurred or standards that were actually applied.

For each of the items identified above as subject to Defined Conditions of Nondisclosure, ICANN has determined that there are no particular circumstances for which the public interest in disclosing the information outweighs the harm that may be caused to ICANN, its contractual relationships and its contractors’ deliberative processes by the requested disclosure.

About DIDP

ICANN’s DIDP is limited to requests for 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 please see <https://www.icann.org/resources/pages/didp-2012-02-25-en>. ICANN makes every effort to be as responsive as possible to the entirety of your Request.

We hope this information is helpful. If you have any further inquiries, please forward them to didp@icann.org.