

Response to Documentary Information Disclosure Policy Request

To: Ms. Mary Blasy

Date: 13 March 2013

Re: Requests No. 20130211-1

Thank you for your Request for Information dated 5 February 2013 (the "Requests"), which was submitted through the Internet Corporation for Assigned Names and Numbers' (ICANN) Documentary Information Disclosure Policy (DIDP). For reference, the substance of your request is set forth in this Response.

Your Request

"On June 23, 2012, the ICANN Board adopted a resolution renewing an exclusive .com registry agreement with Verisign. Copies of public comments to the proposed 2012 .com registry renewal with Verisign demonstrate ICANN received negative feedback concerning Verisign's pricing policies, in particular the regular and automatic price increases built into the prior agreement with Verisign.

"Verisign has since stated publicly that the U.S. Department of Commerce and the U.S. Department of Justice were involved in a review of that contract renewal process which we understand ultimately resulted in the implementation of a six year moratorium on price increases for the .com registry in late fall 2012.

"I have reviewed the public-available ICANN Board Minutes and Packages and ICANN's correspondence for the time period between June 23, 2012 and when the U.S. Departments of Commerce and Justice eventually signed off on the .com registry renewal agreement with Verisign in the fall of 2012, but did not identify any materials addressing ICANN's involvement in this review process, much less correspondence with the U.S. Departments of Commerce and Justice concerning those departments' oversight of the 2012 .com registry renewal process.

"I hereby request that copies of the following be made available to me either electronically or for copying:

"1) All communications with Verisign (and any of its employees, officers, directors, agents or attorneys) concerning the 2012 renewal of the .com registry agreement to the extent those communications address pricing;

"2) All communications with the U.S. Departments of Commerce and Justice concerning the 2012 .com registry renewal process;

"3) All internal ICANN documents, memoranda, reports and other analysis conducted by or for ICANN concerning the 2012 .com registry agreement renewal with Verisign to the extent those documents address pricing."

Response:

As you note within your Request, ICANN has already published various points of information relating to the renewal of the .COM Registry Agreement, including the posting of a draft for public comment, the summary and analysis of the public comments received, and the briefing materials provided to the Board in advance of its June 2012 approval of the renewal agreement. Various postings, including the March 2012 announcement of the public comment forum, make clear ICANN's limitations in addressing the pricing provision as part of the renewal process. See <http://www.icann.org/en/news/announcements/announcement-27mar12-en.htm>, which states "Registry services pricing: Both the current .com registry agreement and the proposed renewal agreement permit Verisign to increase the price it charges registrars for domain name registrations four times during the six-year term with each increase being no greater than 7%. This provision was substantially negotiated between Verisign on the one hand, and the U.S. Department of Justice and the U.S. Department of Commerce, on the other. The current agreement (Section 4.2) specifies that the pricing and renewal provisions (among others) are not subject to change through the agreement renewal process." Documents publicly available from sources other than ICANN set out the United States government's role in oversight of the pricing provisions with the .COM Registry Agreement. (See, e.g., the Department of Commerce's Fact Sheet on the Renewal of the .COM Agreement, at http://www.ntia.doc.gov/files/ntia/publications/icanncom_fact_113006.pdf.)

For item No. 1 of your Request (ICANN communications with Verisign concerning the 2012 renewal of the .com registry agreement, specifically relating to the pricing provisions), other than the documentation that is already publicly available, the documented communications exchanged between ICANN and Verisign in furtherance of the negotiation and the renewal of the Registry Agreement were conducted with an expectation of confidentiality. This confidentiality allows for candid exchanges of information to facilitate negotiations and the renewal, until such time as it is agreed that an initial or subsequent version of the agreement will be made public. As a result, to the extent that there are additional documents within ICANN that are responsive to this portion of your Request, those items are within the following Defined Conditions for Nondisclosure within 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.
- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.

For Item No. 2 of your Request (All communications with the U.S. Departments of Commerce and Justice concerning the 2012 .com registry renewal process), to the extent that any such communications occurred and are documented, those documents are within the following Defined Condition for Nondisclosure:

- Information provided by or to a government or international organization, or any form of recitation of such information, in the expectation that the information will be kept confidential and/or would or likely would materially prejudice ICANN's relationship with that party.

For Item No. 3 of this Request (internal ICANN documents addressing the pricing provision within the .COM renewal), some of this information is already publicly available in the public comment posting and the posted Board briefing materials referenced in your Request. Further internal documentation on the renewal is subject to the following Defined Conditions for Nondisclosure:

- 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 subject to the attorney– client, attorney work product privilege, or any other applicable privilege, or disclosure of which might prejudice any internal, governmental, or legal investigation.
- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.

For each of the items identified above as subject to Defined Conditions for 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 and its contracted parties in revealing information provided in confidence as part of negotiations and renewal. Such a release would impair ICANN's ability to have candid discussions regarding the negotiation of its agreements.

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, 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.

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