

## Response to Documentary Information Disclosure Policy Request

To: Asvatha Babu on behalf of the Centre for Internet & Society

Date: 23 November 2016

Re: Request No. 20161024-9

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Thank you for your Request for Information dated 24 October 2016 (Request), which was submitted through the Internet Corporation for Assigned Names and Numbers (ICANN) Documentary Information Disclosure Policy (DIDP) on behalf of The Centre for Internet & Society (CIS) on 24 October 2016. For reference, a copy of your Request is attached to the email forwarding this Response.

### Items Requested

Your Request seeks the disclosure of documentary information relating to ICANN's process for verification of identity of bidders in the ICANN-facilitated auctions of last resort in the New gTLD Program. Specifically, you seek the following:

- 1) Documents showing the process followed by ICANN to verify the identity of all gTLD bidders.
- 2) Affidavits filed by ICANN regarding the identity of Nu Dot Co.
- 3) Any other documentation showing that ICANN was able to verify the identity of Nu Dot Co.

### Response

The ICANN-facilitated auctions in the New gTLD Program are a last resort “tie-breaker method for resolving string contention among the applications within a contention set, if the contention has not been resolved by other means.” (Applicant Guidebook (AGB), Module 4.3, <https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>.) The auction process is administered in accordance with Module 4.3 of the Applicant Guidebook (<https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>) as well as the Auction Rules (<https://newgtlds.icann.org/en/applicants/auctions/rules-03nov14-en.pdf>). Information about the auctions program are available on the New gTLD Program Auctions page at <https://newgtlds.icann.org/en/applicants/auctions>, including bidder information, auction proceeds information, auction schedule, and auction results.

#### Item 1

This item seeks documents showing the process followed by ICANN to verify the identity of all bidders in ICANN-facilitated auctions. As noted above, the auction process is administered in accordance with Module 4.3 of the Applicant Guidebook (<https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>) as well as the Auction Rules

(<https://newgtlds.icann.org/en/applicants/auctions/rules-03nov14-en.pdf>) and the Bidder Agreement (<https://newgtlds.icann.org/en/applicants/auctions/bidder-agreement-03apr14-en.pdf>). The Auction Rules set forth the process bidder verification. (See Auction Rules at pages 2-3, at <https://newgtlds.icann.org/en/applicants/auctions/rules-03nov14-en.pdf>. Moreover, the following documents also show the process followed by ICANN for bidder verification: New gTLD Auction Bidder Agreement (<https://newgtlds.icann.org/en/applicants/auctions/bidder-agreement-03apr14-en.pdf>), New gTLD Auction Bidder Agreement Supplement (<https://newgtlds.icann.org/en/applicants/auctions/bidder-agreement-supplement-24feb15-en.pdf>), Bidder Form (<https://newgtlds.icann.org/en/applicants/auctions/bidder-form-26feb14-en.pdf>), Bidder Designation Form (<https://newgtlds.icann.org/en/applicants/auctions/bidder-designation-form-26feb14-en.pdf>), and Bidder Auction Training Videos (<https://newgtlds.icann.org/en/announcements-and-media/video/tutorials/auctions>).

### Items 2 and 3

Items 2 and 3 seek the disclosure of all “[a]ffidavits filed by ICANN regarding the identity of Nu Dot Co” and “[a]ny other documentation showing that ICANN was able to verify the identity of Nu Dot Co.” As you may be aware, Nu Dot Co.’s participation in an ICANN-facilitated auction is the subject of ongoing litigation. All pleadings filed in the *Ruby Glen, LLC v. ICANN* matter, including affidavits regarding the identity of Nu Dot Co. have been published on ICANN’s Litigation page at <https://www.icann.org/resources/pages/ruby-glen-v-icann-2016-07-23-en>. To the extent that there are any other documents responsive to this request, they are subject to the following Defined Conditions of Nondisclosure and are therefore not appropriate for public dissemination:

- 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.

Notwithstanding the applicable Defined Conditions of Nondisclosure, ICANN also evaluated the documents subject to these conditions to determine if the public interest in disclosing them outweighs the harm that may be caused by such disclosure. 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 by the requested disclosure.

### **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, 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 ICANN.org, through which you can receive daily updates regarding postings to the portions of ICANN's website that are of interest.

We hope this information is helpful. If you have any further inquiries, please forward them to [didp@icann.org](mailto:didp@icann.org).