

ARIF HYDER ALI

Contact Information Redacted

17 January 2022

VIA E-MAIL

ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094
didp@icann.org

Re: Request for Documents under ICANN's Documentary Information Disclosure Policy

Dear ICANN:

We write on behalf of Altanovo Domains Limited (**Altanovo**), f/k/a Afilius Domains No. 3 Limited (**Afilius**), to request documents pursuant to ICANN's Documentary Information Disclosure Policy.

As of the submission of this letter, ICANN has provided us with no information as to the Special Meeting that we understand was held by ICANN's Board of Directors (the **Board**) on 16 January 2022 to address the Final Decision of the IRP Panel in *Afilius Domains No. 3 Limited v. Internet Corporation for Assigned Names and Numbers*, ICDR Case No. 01-18-0004-2702 (*Afilius v. ICANN*). Accordingly, we have no information concerning whether ICANN intends to keep the .WEB contention set on-hold; nor has ICANN informed Altanovo that it intends to take the .WEB contention set off-hold. For the avoidance of doubt—and pursuant to what ICANN represented to the *Afilius v. ICANN* Panel as its long-standing procedure—ICANN should keep the .WEB contention set on-hold until the resolution of this ICANN accountability mechanism (and any additional accountability mechanisms that Altanovo may decide to commence regarding .WEB).

Background to the Instant Request

As you are aware, on 20 May 2021, the Panel in *Afilius v. ICANN* issued its Final Decision. Among other things, the IRP Panel:

- Declared that ICANN's Staff violated ICANN's Articles and Bylaws by "failing to pronounce on the question of whether the Domain Acquisition Agreement entered into between Nu Dotco, LLC (**NDC**) and Verisign Inc. (**Verisign**) on 25 August 2015, as amended and supplemented by the 'Confirmation of Understanding' executed by these same parties on 26 July 2016 (**DAA**), complied with the New

gTLD Program Rules following Claimant's [*i.e.*, Afilias'] complaints that it violated the Guidebook and Auction Rules, and, while these complaints remained unaddressed, by nevertheless moving to delegate .WEB to NDC in June 2018, upon the .WEB contention set being taken 'off hold'; ..."

- Declared that ICANN's Board violated ICANN's Articles and Bylaws when the Board, "having deferred consideration of the Claimant's complaints about the propriety of the DAA while accountability mechanisms in connection with .WEB remained pending, nevertheless (i) fail[ed] to prevent the Staff, in June 2018, from moving to delegate .WEB to NDC, and (ii) fail[ed] itself to pronounce on these complaints ...";
- Declared that in violating its Articles and Bylaws as set forth above, ICANN "violated its commitment to make decisions by applying documented policies objectives and fairly;"
- Declared that in communicating (and failing to communicate) with Afilias about how it was dealing with Afilias' complaints, ICANN "violated its commitment to operate in an open and transparent manner and consistent with procedures to ensure fairness"¹

Following the Panel's Final Decision, we have written numerous communications to ICANN, (a) asking that ICANN disclose key information from *Afilias v. ICANN* on its website (including, for example, the transcript of the merits hearing, the DAA, and the Final Decision in unredacted form) so that the Internet Community can properly understand the Final Decision and the issues at stake; and (b) requesting basic information as to when and how ICANN intends to consider the Final Decision.² No one has responded to any of these communications. ICANN simply ignored our request that it provide advance notice to us (as well as to Verisign and NDC) of any Board meeting to consider the Final Decision (just as ICANN ignored all our other requests). We therefore learned of the Special Meeting only after ICANN posted a notice of the meeting on its website late in the evening

¹ *Afilias v. ICANN*, ICDR Case No. 01-18-0004-2702, Final Decision (20 May 2021), ¶¶ 413(1)-(3).

² *See, e.g.*, Letter from A. Ali to J. LeVee (28 May 2021); Letter from A. Ali to the ICANN Board (3 Nov. 2021) (which was sent to J. LeVee, asking him to forward the letter and attachments to the Board); Email from A. de Gramont to E. Enson (16 Dec. 2021) (requesting confirmation that ICANN had forwarded A. Ali's 3 November 2021 letter to the Board); Letter from A. Ali to J. LeVee (20 Dec. 2021); Letter from A. Ali to J. LeVee (12 January 2022).

of 10 January 2022—in violation of the Bylaws’ requirement that ICANN provide notice “[a]t least seven days in advance of each Board meeting . . .”³

Accordingly, we are now requesting ICANN to produce the following documents pursuant to its Documentary Information Disclosure Policy (**DIDP**). All capitalized terms in the requests have the same meaning as stated above.

Document Requests

1. All documents reflecting or relating to (a) the analysis undertaken by ICANN of the IRP Panel’s Final Decision and (b) the procedure for addressing the Final Decision.
2. All documents provided to members of the Board for the “consideration of the opinion of the Panel in [the] Final Decision”,⁴ including, without limitation, documents sufficient to show who prepared each such document and when it was provided to members of the Board.
3. All documents provided to members of the Board for (a) their consideration and pronouncement “upon the question of whether the DAA complied with the New gTLD Program Rules following the Claimant’s complaints that it violated the Guidebook and Auction Rules and, as the case may be, (b) [their determination] whether by reason of any violation of the Guidebook and Auction Rules, NDC’s application for .WEB should be rejected and its bids at the auction disqualified,”⁵ including, without limitation, documents sufficient to show who prepared each such document and when it was provided to members of the Board.
4. All documents relating to .WEB that were considered, reviewed, presented to, or discussed by members of the Board at the Special Meeting held on 16 January 2022, including, without limitation, documents sufficient to show who prepared each such document and when it was provided to members of the Board.

³ Bylaws, Sec. 3.4.

⁴ *Afilias v. ICANN*, ICDR Case No. 01-18-0004-2702, Final Decision (20 May 2021), ¶ 413(5).

⁵ *Id.*

5. All documents that ICANN considered to assess whether NDC violated the Guidebook and whether NDC should be disqualified as a result of such violation(s), and any list and/or summary of such documents.
6. All documents reflecting or relating to any discussion of .WEB at the Board's Special Meeting held on 16 January 2022, including, without limitation, any notes taken by any person attending the Special Meeting, and all draft and final agendas, presentation materials, and memoranda related to such discussion.
7. All documents reflecting or relating to any Board resolution(s) concerning .WEB (whether proposed or adopted) at the Board's Special Meeting held on 16 January 2022, including documents sufficient to show who prepared such resolution(s) and when such resolution(s) were provided to members of the Board, including all drafts of any such resolution(s).
8. All documents reflecting or relating to any communications about .WEB between or among ICANN Board members and/or ICANN Staff following the IRP Panel's Final Decision.
9. All documents reflecting or relating to the scheduling and noticing of the Board's Special Meeting on 16 January 2022, including, without limitation, documents sufficient to show the date on which the Special Meeting was scheduled, and the date on which ICANN determined that the Special Meeting would be noticed.
10. All documents reflecting or relating to any analysis or consideration by ICANN of whether to maintain the DAA as confidential, including, without limitation, any communications about the purported confidentiality of the DAA between (a) ICANN and (b) Verisign and/or NDC.
11. All documents reflecting or relating to any communications between (a) ICANN and (b) Verisign and/or NDC concerning .WEB following the Final Decision and through the date of this DIDP Request.
12. All documents reflecting or relating to any consideration given by ICANN to (a) the letter from A. Ali to J. LeVee dated 28 May 2021; (b) the letter from A. Ali to M. Botterman dated 3 November 2021; (c) the request made in the email from A. de Gramont to E. Enson for confirmation that the 3 November 2021 and attachments were provided to the ICANN Board; (d) the letter from A. Ali to J. LeVee dated 20 December 2021; and (e) the letter from A. Ali to J. LeVee

dated 12 January 2022, including, without limitation, documents sufficient to show whether each such letter or email was provided to anyone at ICANN, and if so, whether it was provided to anyone at ICANN outside its Legal Department.

13. All documents reflecting or relating to any consideration given by ICANN to the letter from S. Marenberg to M. Botterman dated 23 July 2021, including, without limitation, documents sufficient to show whether the letter was provided to anyone at ICANN, and if so, whether it was provided to anyone at ICANN outside its Legal Department.
14. All documents reflecting or relating to any communications between (a) Verisign and/or NDC and (b) ICANN concerning the “Blackout period” violations alleged by Verisign and/or NDC against Afiliias.
15. All documents reflecting or relating to any investigation conducted by ICANN of the “Blackout period” violations alleged by Verisign and/or NDC against Afiliias.
16. All documents reflecting or relating to any communications within ICANN (including, without limitation, any communications between ICANN Staff and the ICANN Board) concerning the “Blackout period” violations alleged by Verisign and/or NDC against Afiliias, and all documents reflecting or relating to any consideration of such alleged violations.
17. All documents created by ICANN concerning or relating to the Final Decision, including, without limitation, all documents demonstrating any steps taken or recommendations made within ICANN concerning the violations of ICANN’s Articles and Bylaws, as determined by the IRP Panel.
18. Documents sufficient to show (a) the steps taken to respond to this DIDP request, (b) each person who was involved in responding to and collecting documents for this DIDP request, and (c) each person contacted for documents potentially responsive for this DIDP.

Please do not hesitate to contact me if you have any questions concerning the requests above. Altanovo reserves all rights in connection with these matters.

Sincerely,

A handwritten signature in black ink, appearing to be 'Arif Hyder Ali', written in a cursive style.

Arif Hyder Ali
Counsel for Altanovo Domains Limited,
f/k/a Afilias Domains No. 3 Limited