

Response to Documentary Information Disclosure Policy Request

To: Mr. Tim Ruiz, GoDaddy.com

Date: 5 June 2009

Re: Request No. 20090508-1

Thank you for your Request for Information dated 8 May 2009 (the "Request"), which has been re-directed and submitted through the Internet Corporation for Assigned Names and Numbers' (ICANN) Documentary Information Disclosure Policy (DIDP). For reference, a copy of your Request is attached to the email forwarding this Response.

As your Request seeks multiple items of information, this response addresses your Request in the order within which it was presented. For ease of reference and tracking, the responses will correspond to the same reference numbers used in the Request.

As a preliminary matter, 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/transparency/acct-trans-frameworks-principles-10jan08.pdf>. ICANN makes every effort to be as responsive as possible to the entirety of your Request.

Items Requested

1) Please post Form 990 for Fiscal Year Ending 30 June 2008.

- **Response to 1:**

ICANN's Form 990 for the Fiscal Year Ending 30 June 2008 was filed with the IRS on 14 May 2009 and is now posted on the ICANN website at <http://www.icann.org/en/financials/tax/us/fy-2008-form-990.pdf>.

2) Please provide details regarding the \$240,000 expenditure for Lobbying Activities as reported on Schedule A Part VI-B of Form 990 for Fiscal Year ending 30 June 2007. The Statement for expenditure on Schedule A says: "The organization hired a Government Affairs firm during the year ended June 30, 2007. As part of the services provided, the Government Affairs firm incurred \$240,000 of lobbying expenditures relating to direct lobbying with Federal legislators." Details would include the substance of the decision, legislation, campaign, or candidate that was being influenced and identification of the parties that were lobbied.

- **Response to 2:**

The publicly available information provided in ICANN's Form 990 already notes that that ICANN did not participate or intervene in any political campaign or on behalf of any elective public office candidate, and did not support or oppose any individual candidate for public office. The detailed information that is sought in this Request is

otherwise protected from disclosure under the following Defined Conditions of Nondisclosure:

- Trade secrets and commercial and financial information not publicly disclosed by ICANN.
- Confidential business information and/or internal policies and procedures.
- Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN deliberative and decision-making process by inhibiting the candid exchange of ideas and communications.

In addition, the potential harm in adopting a practice of disclosing ICANN's lobbying strategies greatly outweighs the public's interest in reviewing ICANN's lobbying efforts. Allowing public disclosure beyond that which is required under ICANN's obligations to the Internal Revenue Service will inhibit and impair ICANN's ability to undertake actions it deems necessary in fulfilling its mission and servicing the global Internet community. This harm/benefit analysis is also a sufficient justification for nondisclosure under the DIDP.

As a result, ICANN does not have further information to provide in response to this Request.

2a) Our request for this information is consistent with (i) Article 4 of the AOI which states in part (emphasis ours), "the Corporation shall operate for the benefit of the Internet community as a whole, ...and, to the extent appropriate and consistent with these Articles and its Bylaws, through open and transparent processes that enable competition and open entry in Internet-related markets;" (ii) Article 5 of the AOI sub-articles b and c; (iii) Article III section 1 of the Bylaws; and (iv) the right to confirm that lobbying activities undertaken have not violated Article II Section 3 of the Bylaws.

- **Response to 2a:**

This section does not request any items of information. ICANN notes that it is committed to operating in conformity with its Articles of Incorporation, its Bylaws, and with all applicable laws and regulations. If you are aware of anything to suggest that ICANN has not acted accordingly, please provide ICANN with documentation to that effect.

2b) In addition, the response to this request should clearly demonstrate:

- (i) whether the purpose of the expenditure qualifies as "influencing legislation" under section 4911(d)(1) of the Code;
- (ii) whether the expenditure was in excess of the lobbying ceiling amount of section 491(c)(2) of the Code;
- (iii) whether the money was used to participate in , or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office as prohibited in 501(c)(3); or
- (iv) why one or more of (i), (ii), or (iii) does not apply.

- **Response to 2b:**

Please see ICANN's response to Requests 2 and 2a. ICANN notes that it reports all amounts on its Form 990 in accordance with the requirements imposed by the Internal Revenue Code. Further, ICANN follows all applicable codes and practices in conducting its business as a not-for-profit, public benefit tax-exempt organization.

3) Please provide the same information and details as described in 2) for Lobbying Activities and expenditures for Fiscal Years ending 30 June 2008 and 30 June 2009.

- **Response to 3:**

As this Request seeks information identical to that requested under 2), please see ICANN's response to Requests 2, 2a and 2b. In addition, as ICANN's Fiscal Year ending 30 June 2009 is not yet completed, ICANN is further relieved from an obligation to respond to this Request pursuant to the following Defined Condition for Nondisclosure:

- Information requests: (i) which are not reasonable; . . . [or] (iii) complying with which is not feasible.

4) Please provide identification of the contributors redacted on Schedule B of Form 990 for Fiscal Year ending 30 June 2007. ICANN states that names and addresses were redacted for confidentiality.

- **Response to 4:**

ICANN can confirm that the contributions are from Country Code Top-Level Domain (ccTLD) operators. Following industry practice and IRS guidelines on publicly available versions of a Form 990, ICANN elects to redact confidential information regarding its contributors from the public versions of its Form 990 posted on ICANN's website or as available in the Guidestar system. The Internal Revenue Code creates a Nondisclosure of Contributors exception to the disclosure rules governing Form 990s. For more information about voluntary contributions from ccTLD managers, please see the documents available at the ccTLD Agreement page, available at <http://www.icann.org/en/ctlds/agreements.html>, identifying commitments made through the Accountability Frameworks Program.

4a) Our request for this information is consistent with: (i) the sections of the AOI and Bylaws as noted in 2a above, (ii) Article 5 of the AOI sub-article e; and (iii) Article III section 2(iv) of the Bylaws.

- **Response to 4a:**

This section does not request any items of information. ICANN notes that it is committed to operating in conformity with its Articles of Incorporation, its Bylaws, and all applicable laws and regulations.

4b) In addition, the response should indicate:

- (i) which, if any, of these contributions was deemed Charitable as defined in section 170(c) of the Code. And if one or more contributions were deemed Charitable, whether ICANN provided any form of assurance to the contributor(s) that such contributions would be used with the United States

or its possessions, as is required for deductible contributions under section 170(c) of the Code;

- (ii) whether any contributor was a Disqualified Person, Foundation Manager, or Government Official as defined in section 4946(a), (b), or (c) of the Code;
- (iii) whether any of the contributions made were for the purpose of funding lobbying activities, and if so, a description of those activities; and
- (iv) whether any of the contributions made were for the purpose of funding participation in, or intervention in any political campaign on behalf of (or in opposition to) any candidate for public office, and if so, identification of such campaign and candidate.

- **Response to 4b:**

Please see ICANN's response to Requests 4 and 4a. ICANN notes that it reports all amounts on its Form 990 in accordance with the requirements imposed by the Internal Revenue Code. Further, ICANN follows all applicable codes and practices in conducting its business as a not-for-profit, public benefit tax-exempt organization.

5) Please provide the same information and details as described in 4) for contributions for fiscal years ending 30 June 2008 and 30 June 2009.

- **Response to 5:**

As this Request seeks information identical to that requested under 4), please see ICANN's response to Requests 4, 4a and 4b. In addition, as ICANN's Fiscal Year ending 30 June 2009 is not yet completed, ICANN is further relieved from an obligation to respond to this Request pursuant to the following Defined Condition for Nondisclosure:

- Information requests: (i) which are not reasonable; . . . [or] (iii) complying with which is not feasible.

6) Statement 1-B of Form 990 for the Fiscal Year ending 30 June 2007 states that Dr. Paul Twomey was paid three bonuses totaling \$209,719 for service during 2004, 2005, and 2006. Please provide details on the criteria and/or goals that these bonuses were based on where, those criteria and/or goals involved policy related or other initiatives that were subject to bottom-up processes and/or community input or comment ("Applicable criteria")

- **Response to 6:**

The detailed information related specifically to Dr. Twomey's compensation that is sought in this Request is otherwise protected from disclosure under the following Defined Conditions of Nondisclosure:

- Personnel, medical, contractual, remuneration, and similar records relating to an individual's personal information, when the disclosure of such information would or likely would constitute an invasion of personal privacy.
- Confidential business information and/or internal policies and procedures.

Dr. Twomey's performance-related bonuses are tied directly to goals arising out of the corporation's operating and strategic plans, which are posted on ICANN's website. The ICANN Board of Directors evaluates Dr. Twomey's annual performance in meeting the goals set out for each period. Each director, including Dr. Twomey, is bound to comply with by ICANN's Conflicts of Interest Policy. The current version of ICANN's conflict of interest policy is available at <http://www.icann.org/en/committees/coi/coi-policy-04mar99.htm>. A revised version, which has been posted for public comment since 6 May 2009, can be found at <http://www.icann.org/en/committees/coi/coi-policy-06may09-en.pdf>.

6a) Our request for this information is consistent with: (i) the sections of the AOI and Bylaws as noted in 2a above; and (ii) the fact that as CEO Dr. Twomey is a voting Ex-Officio member of the Board of Directors. As such, Dr. Twomey's vote may influence the outcome for Board decisions regarding matters that were the basis of criteria and/or goals upon which his bonuses were based and may violate the last sentence of Article VI Section 6 of the Bylaws. For example, during the calendar year 2006 alone Dr. Twomey participated in votes on the following registry agreements: .com (28 Feb); .tel and .xxx (10 May); .asia (16 Oct); .biz, .info, and .org (8 Dec).

- **Response to 6a:**

This section does not request any items of information. Please see ICANN's response to Request 6 for more information regarding adherence to ICANN's Conflicts of Interest Policy.

6b) In addition, for bonuses paid based on Applicable Criteria that involved a Board decision in which Dr. Twomey participated please explain how such participation does not violate the last sentence of Article VI Section 6 of the Bylaws.

- **Response to 6b:**

Please see ICANN's response to Requests 6 and 6a. ICANN has not been made aware of any reason to believe that its Conflicts of Interest Policy has been violated by any member of ICANN's Board.

7) Please provide the same information and details as described in 6) for the \$148,000 in bonuses paid to Dr. Paul Twomey for Fiscal Year ending 30 June 2008. In addition, we request that any CEO bonuses based on Applicable Criteria be published publicly with, or as part of, the draft and final versions of the Operating Plan and Budget each Fiscal Year.

- **Response to 7**

As this Request seeks information identical to that requested under 6), please see ICANN's response to Requests 6, 6a and 6b.

Further, any comment on what should be included in the Operating Plan and Budget each Fiscal should be submitted in the applicable public comment forum. The public comment forum for FY10 Operating Plan and Budget can be found at <http://www.icann.org/en/public-comment/#draft-opplan-budget>.

8) For Fiscal Year ending 2007 \$6.7MM was spent for Professional and Technical Services. For those vendors who provided such services to Board and/or Staff that could possibly have affected either Board or Community decisions on policy issues, or issues related to strategic initiatives that directly involved or affected ICANN stakeholders please provide:

- (i) the identity of the vendor and the services provided;
- (ii) any known relationship between the vendor and any one of ICANN staff;
and
- (iii) any known relationship between the vendor and any member of the ICANN Board.

- **Response to 8:**

The detailed information that is sought in this Request is otherwise protected from disclosure under the following Defined Conditions of Nondisclosure:

- [C]ontractual . . . and similar records relating to an individual's personal information, when the disclosure of such information would or likely would constitute and invasion of personal privacy.
- Information provided to ICANN by a party that, if disclosed, would or would be likely to materially prejudice the commercial interests, financial interest, 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.
- Trade secrets and commercial and financial information not publicly disclosed by ICANN.

In addition, the subjective nature of the request "services . . . that could possibly have affected either Board or Community decisions . . . or affected ICANN stakeholders" renders this Request as excessive and overly burdensome, and complying with this request is not feasible, which is a separate grounds for nondisclosure.

ICANN's officers and employees are bound by operating within the mandates of ICANN's Bylaws and employment policies prohibiting self-dealing and ICANN's officers are further bound by the Conflicts of Interest Policy. Further, ICANN recently posted a revised Conflicts of Interest Policy for public comment, at <http://www.icann.org/en/committees/coi/coi-policy-06may09-en.pdf>, which encompasses additional ICANN employees. ICANN is not aware of any instances of undisclosed or improper relationships between a vendor and an ICANN staff and/or Board member.

8a) Our request for this information is consistent with: (i) the section so of the AOI and Bylaws as noted in 2a above; and (ii) the fact that a growing share of this expenses is for outsourced research, studies, and consulting to inform Board and Staff on policy and strategic initiatives that directly involve or affect ICANN stakeholders. Visibility in to the selection and vetting process for vendors providing these services is necessary to fully garner institutional confidence in ICANN.

The Board should also consider other steps to ensure ongoing transparency into these costs. For example, the Board should require and the Staff should post a Statement of Interest from any such vendor to ensure that there are no pre-existing commercial or personal relationships with key individuals on ICANN's Staff or Board that are involved in the selection process.

- **Response to 8a:**

This section does not request any items of information. ICANN takes note of the concerns expressed herein, and acknowledges that GoDaddy.com raised a similar suggestion within the public comment period on the Operating Plan/Budget, which is a more appropriate venue for the concerns stated herein.

8b) In addition, for any such relationships identified in either (ii) or (iii) of 8 please explain the involvement, if any, of the identified Staff and/or Board members in the selection process for the identified vendor.

- **Response to 8b:**

Please see ICANN's response to Request 8. Further, information publicly available through ICANN's Bylaws, Committee Charters, and Financial Information website page provide additional information on ICANN Staff and Board involvement in ICANN's vendor selection and contracting processes.

9) Please provide the same information and details as described in 8 for Professional and Technical Services for the Fiscal Years ending 30 June 2008 and 30 June 2009.

- **Response to 9:**

As this Request seeks information identical to that requested under 8), please see ICANN's response to Requests 8, 8a and 8b. In addition, as ICANN's Fiscal Year ending 30 June 2009 is not yet completed, ICANN is further relieved from an obligation to respond to this Request pursuant to the following Defined Condition for Nondisclosure:

- Information requests: (i) which are not reasonable; ... [or] (iii) complying with which is not feasible.

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