

Response to Documentary Information Disclosure Policy Request

To: Padmini Baruah on behalf of the Centre for Internet & Society

Date: 14 May 2016

Re: Request No. 20160423-3

Thank you for your Request for Information dated 23 April 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). 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 the audits of compliance of registrars and registry operators conducted by ICANN Contractual Compliance as referenced in ICANN's former CEO and President during his speech at the Welcome Ceremony of ICANN 51. Specifically, your Request seeks the following items:

- “[T]he composition of the audit board(s), internal as well as external, including the names and designations of the members, as well as the basis of their appointment”; and
- “[C]opies of the audit reports from the last year (2014-2015).”

Response

In his speech at the Welcome Ceremony of the ICANN 51 Public Meeting in Los Angeles, California, on 13 October 2014, ICANN's former CEO and President stated:

Let me go to operations excellence. Now this is an area where admittedly I will tell you we have more work to do. But let me at least highlight a few things and tell you what we are going to do more. The thing I'm most proud of is that middle number which I shouldn't be proud of, you should be proud of because we now do a thorough audit of compliance of all of our registries and registrars. And this is the second year we do it. And, remarkably, not surprisingly, 98% of registries and registrars are fully compliant with their contracts. This independent audit shows what many of us know, that this is a good industry. This is an industry that is operating in the best public interest. We should celebrate that. We should put that up and make sure people understand. When a few bad actors sully the image of this industry, we should know there are few and that our compliance department will be

looking for these so that they do not make the rest of our industry look bad. Our industry is performing very well, and the numbers are in -- this year 98% in full compliance of our contractual commitments....

(Transcript of Welcome Ceremony, President's Opening Session, pp. 5-6, available at <https://la51.icann.org/en/schedule/mon-welcome/transcript-president-opening-13oct14-en.pdf>.)

Your Request seeks documentary information regarding the audits of compliance of registrars and registry operators conducted by ICANN Contractual Compliance referenced in Mr. Chehadé's speech. CIS previously requested the same documentary information in Request Nos. 20150901-1 (<https://www.icann.org/en/system/files/files/didp-request-20150901-1-01sep15-en.pdf>) 20150901-2 (<https://www.icann.org/en/system/files/files/didp-request-20150901-2-01sep15-en.pdf>) and 20150901-5 (<https://www.icann.org/en/system/files/files/didp-request-20150901-5-01sep15-en.pdf>.) The documents responsive to this Request are set forth in ICANN's Responses to Request Nos. 20150901-1 (<https://www.icann.org/en/system/files/files/didp-response-20150901-1-response-20150901-2-cis-ry-rr-audits-01oct15-en.pdf>), 20150901-2 (<https://www.icann.org/en/system/files/files/didp-response-20150901-1-response-20150901-2-cis-ry-rr-audits-01oct15-en.pdf>), and 20150901-5 (<https://www.icann.org/en/system/files/files/didp-response-20150901-5-cis-auditor-appt-01oct15-en.pdf>).

As set forth in our previous responses to aforementioned requests, ICANN's contractual compliance goal is to ensure that ICANN's contracted parties fulfill the requirements set forth in their agreements with ICANN. (See <https://www.icann.org/resources/pages/compliance-2012-02-25-en>.) The Contractual Compliance Audit Program's objective is to ensure that contracted parties, registrars and registries comply with their agreements and the consensus policies. (See <https://www.icann.org/resources/pages/audits-2012-02-25-en>.) The goal of the Audit Program is:

- To allow ICANN to first identify and inform the contracted parties of any contractual compliance deficiencies found.
- Properly manage and help remediate any deficiencies found

This process will ensure all contracted parties align and comply with their contractual obligations, including all consensus policies that are incorporated by reference into each of the contracts. (See *id.*)

As part of its commitment to transparency, ICANN makes available a comprehensive set of materials on its website as a matter of course, including detailed information about the Contractual Compliance Programs on the Contractual Compliance webpage at <https://www.icann.org/resources/pages/compliance-2012-02-25-en>, including the Audit Program.

Many of the documents responsive to your Request can be found by accessing the Contractual Compliance webpage. Specifically, ICANN has published the following information about the Contractual Compliance Audit Program:

- Background information regarding the Audit Program:
<https://www.icann.org/resources/pages/audits-2012-02-25-en>
- ICANN Three Year Audit Plan Guide – Registrar:
<https://www.icann.org/en/system/files/files/plan-guide-registrars-25oct12-en.pdf>
- ICANN Three Year Audit Plan Guide – Registry:
<https://www.icann.org/en/system/files/files/plan-guide-registries-25oct12-en.pdf>
- ICANN Three Year Audit Plan Guide – Policies:
<https://www.icann.org/en/system/files/files/plan-guide-policies-25oct12-en.pdf>
- Audit Program Frequently Asked Questions:
<https://www.icann.org/resources/pages/faqs-2012-10-31-en>
- Three Year Audit Pre-Audit Notifications:
 - Year 1 Registrar Pre-Audit Notification:
<https://www.icann.org/en/system/files/files/notification-registrar-13nov12-en.pdf>
 - Year 1 Registry Pre-Audit Notification:
<https://www.icann.org/en/system/files/files/notification-registry-13nov12-en.pdf>
 - Year 2 Registrar Pre-Audit Notification:
<https://www.icann.org/en/system/files/files/notification-registrar-01oct13-en.pdf>
 - Year 2 Registry Pre-Audit Notification:
<https://www.icann.org/en/system/files/files/notification-registry-01oct13-en.pdf>
 - Year 3 Registrar Pre-Audit Notification:
<https://www.icann.org/en/system/files/files/notification-registrar-06oct14-en.pdf>
 - Year 3 Registry Pre-Audit Notification:
<https://www.icann.org/en/system/files/files/notification-registry-06oct14-en.pdf>
- New Registry Agreement Audit Program:
https://www.icann.org/resources/pages/audits-2012-02-25-en#The_New_Registry
- New Registry Agreement Pre-Audit Notification:
<https://www.icann.org/en/system/files/files/notification-registry-01jul14-en.pdf>

- Registrar Audit Notification Template: <https://www.icann.org/en/system/files/files/registrar-audit-notification-template-30sep15-en.pdf>.
- Registry Audit Notification Template: <https://www.icann.org/en/system/files/files/registry-audit-notification-template-30sep15-en.pdf>
- Audit Reports for 2006 - 2015: <https://www.icann.org/resources/compliance-reporting-performance>

Specifically, with respect to Item 1, as stated in our Response to Request No. 20150901-5, the Audit Program is managed by ICANN, with the assistance of ICANN's Contractual Compliance Audit Partner, KPMG. KPMG's role as the Contractual Compliance Audit Partner is to assist with the collection and evaluation of documentation; KPMG does not directly contact any of the contracting parties. (See audit notices (<https://www.icann.org/en/system/files/files/registrar-audit-notification-template-30sep15-en.pdf>, <https://www.icann.org/en/system/files/files/registry-audit-notification-template-30sep15-en.pdf>) and on the Contractual Compliance Conflict Risk Mitigation webpage (<https://www.icann.org/resources/pages/conflict-risk-mitigation-2013-02-06-en>.)

The documents responsive to Item 1 have been published on ICANN's website and were identified in our Response to Request No. 20150901-5. As explained therein, the methodology, approach, and Request for Proposal (RFP) to select a third-party audit partner were designed and approved in late May 2012. The RFP was a directed RFP since the specific skillset and capabilities required for this service was found in only certain potential vendors in the marketplace during a pre-selection process. The RFP was released to five pre-selected third-party firms on 13 June 2012. ICANN identified the five audit firms based on the following criteria: knowledge of ICANN, global presence, size, expertise, and reputation. ICANN followed its normal procurement process: RFP issued, Question & Answer, Proposal Analysis, Scorecard Ratings Methodology. The RFP period closed on 27 July 2012. (See <https://www.icann.org/resources/pages/governance/rfps-en>.) A cross-functional steering committee was formed to evaluate and rank the firms. KPMG was then selected as ICANN's Contractual Compliance Audit Partner based on the steering committee's evaluation and consultation with the ICANN executive management team. (See <https://www.icann.org/resources/pages/audits-2012-02-25-en>.)

With respect to Item 2 seeking the disclosure of audit reports from 2014-2015, these reports are published on the Contractual Compliance Audits Reports webpage at <https://www.icann.org/resources/pages/compliance-reports-2015-04-15-en> for 2015 and at <https://www.icann.org/resources/pages/compliance-reports-2014-2015-01-30-en> for 2014. To the extent that this request seeks the audit reports for the individual registrars and registries, these reports are confidential and are subject to the same DIDP Defined Conditions for Nondisclosure and are therefore not appropriate for disclosure:

- 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.

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, its contractual relationships, and its contractors' deliberative processes 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 MyICANN.org, through which you can receive daily updates regarding postings to the portions of ICANN's website that are of interest because, as we continue to enhance our reporting mechanisms, reports will be posted for public access.

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