

## Response to Documentary Information Disclosure Policy Request

To: John Bell, The .JOBS Charter Compliance Coalition

Date: 3 May 2012

Re: Request No. 20120403-1

---

Thank you for your Request for Information dated 3 April 2011 (the "Request"), which was submitted to ICANN for consideration under the Internet Corporation for Assigned Names and Numbers' (ICANN) Documentary Information Disclosure Policy (DIDP).

Your Request is attached to the email forwarding this response.

### **Items Requested:**

In summary, the Request seeks "documents, communications and information relating to the arbitration initiated by Employ Media LLC ("Employ Media") against the Internet Corporation for Assigned Names and Numbers ("ICANN") arising from the breach notice issued by ICANN on February 27, 2011."

Specifically, you request:

- The identify of the third arbitrator;
- Any and all prior and future non-privileged documents, materials or communications relating to the arbitration;
- The schedule for the arbitration proceedings;
- Disclosure of whether the arbitration will take place in a public venue; and
- Disclosure of whether there will be live testimony during the course of the arbitration hearing.

### **Response:**

Please see [en/news/litigation/employ-media-v-icann](http://en/news/litigation/employ-media-v-icann) for updated publicly available information on the Employ Media arbitration of its contractual dispute with ICANN. ICANN is still awaiting a finalized Terms of Reference for the proceeding, and will post the document once it is executed by all parties and arbitrators, as well as subsequent filings in the case.

As identified in your Request, there has been correspondence with the ICC International Court of Arbitration that has not been posted and are not subject to disclosure under the following Defined Conditions 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.

- 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, as well as proceedings of internal appeal mechanisms and investigations.
- 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.
- Information that, if disclosed, would or would be likely to endanger the life, health, or safety of any individual or materially prejudice the administration of justice.

The letters that have not been posted represent correspondence related to the identification of potential arbitrators and information provided by the parties to assist in an evaluation of the arbitrators' independence. ICANN is also redacting the names of the seated arbitrators at this time. The public interest in disclosing the identity of the arbitrators at this stage is far outweighed by the potential harm that could arise from the disclosure – harms including further delay of proceedings in the event of improper interference by third parties that may, among other things, try to contact the arbitrators after their names are released. That the parties have waived confidentiality claims regarding the information contained in the Request or the proceedings before the ICC does not require the release of information on those people hearing the claims.

Please note that as the DIDP is available for requests for documentation that already exist, it cannot be used to request future documents. However, ICANN has and will continue to post non-confidential submissions within the arbitration. Information on the schedule, witness lists and a hearing (if any) is not yet available. Please continue to review the arbitration page for further updates.

To the extent that other documents exist within ICANN that are responsive to your Request, particularly in relation to the broad category of “documents, materials or communications relating to the arbitration”, the following Defined Conditions for Nondisclosure apply:

- 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.
- 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.
- 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, as well as proceedings of internal appeal mechanisms and investigations.

- 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.

### **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/transparency/acct-trans-frameworks-principles-10jan08.pdf>. 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](mailto:didp@icann.org).