To: JP Voilleque on behalf of ICANNWiki

Date: 7 January 2022

Re: Request No. 20211210-1

This is in response to your request for documentary information (Request), which was submitted on behalf of the ICANNWiki on 10 December 2021 through the Internet Corporation for Assigned Names and Numbers' (ICANN organization or ICANN org) Documentary Information Disclosure Policy (DIDP). For reference, the Request is attached to the email forwarding this Response.

Items Requested

Your Request seeks the disclosure of the following documentary information related to ICANN org's Contractual Compliance Audit Program:

1. A copy of the updated contractual compliance policy as amended and announced in March 2007;

2. Any records of public comments received as a result of the announcement of the new policy;

3. Any public-facing announcements, commentaries, or advisories that explained or postulated the legal basis for ICANN's right to audit;

4. Any published correspondence exchanged with SOs, ACs and stakeholder groups regarding the policy shift, advice or advocacy regarding such a shift, and any other related material; and

5. Any records of public meetings, teleconferences, board or board committee meetings or other events of public record that included discussions of this policy shift.

In addition to these requested items, you also noted that transcripts from the ICANN28 public meeting in Lisbon are no longer accessible and requested that ICANN restore the link for the transcripts.

Response

I. <u>Background Information</u>

The goal of ICANN's Contractual Compliance function 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.) In

furtherance of this goal, ICANN's Contractual Compliance function has implemented various programs, including the audit program. (*See* https://www.icann.org/resources/compliance-programs.) The audit program seeks 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.) It is the means by which ICANN org enhances community transparency through fact based and measurable reporting while proactively addressing any potential deficiencies. (*id.*)

On 25 March 2007, ICANN org updated its contractual compliance program to include, amongst other things, regular registrar and registry contractual compliance audits. (*See* https://www.icann.org/en/system/files/newsletters/contractual-compliance-audit-report-18oct07-en.pdf at page 4.). On 18 October 2007, ICANN org completed and published its first Semi-Annual Contractual Compliance Audit Report for public comment ("2007 Audit Report"). (See https://www.icann.org/en/public-comment/proceeding/contractual-compliance-report-18-10-2007.) The 2007 Audit Report summarized ICANN org's audit activities from January through September 2007 and detailed amongst other things, scope and objectives of the audit, summary of audit findings, observations and conclusions. (See https://www.icann.org/en/announcements/details/icann-publishes-2007-semi-annual-contractual-compliance-audit-report-18-10-2007-en; and https://www.icann.org/en/system/files/newsletters/contractual-compliance-audit-report-18oct07-en.pdf.) The 2007 Audit Report received one comment from Danny Younger. (See https://forum.icann.org/lists/compliancecomments/.).

In 2012, ICANN org initiated the Three-Year Audit Program with the goal to audit all ICANN-accredited registrars and generic top-level domain (gTLD) registries operating pursuant to a registry agreement with ICANN org that were launched before 2013. (*See* https://www.icann.org/resources/pages/compliance-past-audits-2015-12-04-en.) Under the Program, each registry and registrar are to be randomly selected for audit over a three-year period; in year one (2012), one third of the registry and registrar agreements from a complete list are randomly selected and audited; in year two (2013), another one third from the remaining list are randomly selected and audited; and in year three (2014), the remaining one third of all agreements are to be audited. (*Id.*) In an effort to promote awareness and knowledge of the provisions and test steps in the audit plan, ICANN org has published the ICANN Three Year Audit Plan Guide – Registrar, ICANN Three Year Audit Plan Guide – Registry, and ICANN Three Year Audit Plan Guide – Policies. (*Id.*) In July 2014, ICANN org also launched the New Registry Agreement Audit Program to test compliance with terms of the New Registry Agreement and ICANN Temporary and Consensus Policies. (See https://www.icann.org/en/system/files/files/contractual-compliance-ra-audit-report-2014-03feb15-en.pdf at page 2.) ICANN org followed the Three-Year Audit Program and the New Registry Agreement Audit Program and audited all the registries and registrars by 2018. (*See* 2012 Audit Report, 2013 Audit Report, 2014 Audit Reports, 2015 Audit Reports, 2016 Audit Reports, and 2017 Audit Reports).

In 2019, ICANN org informed the Registrar Stakeholder Group (RrSG) and the Registry Stakeholder Group (RySG) of the org's approach to the selection auditees, including the set of criteria to select auditees before each audit cycle. At the beginning of each audit cycle, ICANN org issues a pre-audit notification to the selected contracted parties (auditees). (*See* https://www.icann.org/en/system/files/files/audit-phases-timeline-01aug17-en.pdf.) Once the auditees are selected, ICANN org determines the applicable audit plans to execute based on the auditees' existing obligations with ICANN org. (*See* ICANN Audit Program Plan Guide, https://www.icann.org/resources/pages/audits-2012-02-25-en.)

ICANN org developed an audit program plan guide based on each auditees' agreement with ICANN. (*See* https://www.icann.org/resources/pages/audits-2012-02-25-en.) Auditees that are current signatories to the 2013 Registrar Accreditation Agreement are to be audited under the 2013 Registrar Accreditation Agreement Audit Plan. Similarly, auditees that are current signatories to the New Registry Agreement are to be audited under the New Registry Agreement Audit Plan; and auditees that are current signatories to a legacy registry agreement are to be audited under the Legacy Registry Agreement Audit Plan.

In addition to these audits, ICANN org has also developed the Domain Name System (DNS) Security threats-focused Registry Audit and the Domain Name System (DNS) Security threats-focused Registrar Audit which focus on DNS security following concerns raised by the ICANN community about behaviors that threaten the stability, security and resiliency of the DNS. (*See* https://www.icann.org/en/system/files/files/contractual-compliance-registry-operator-audit-report-17sep19-en.pdf at page 2.)

II.   Your Request

The DIDP is a mechanism, developed through community consultation, to ensure that information contained in documents concerning ICANN org's operational activities, and within ICANN org's possession, custody, or control, is made available to the public unless there is a compelling reason for confidentiality. (*See* https://www.icann.org/resources/pages/didp-2012-02-25-en.)

Consistent with its commitment to operating to the maximum extent feasible in an open and transparent manner, ICANN org has published process guidelines for responding to requests for documents submitted pursuant to the DIDP (DIDP Response Process). In responding to this Request, ICANN org followed the DIDP Response Process and consulted with ICANN personnel and conducted interviews and a reasonable search for responsive documentary information. ICANN org has evaluated responsive documentary information and considered whether any responsive documents that are not already public are subject to any of the Defined Conditions for Nondisclosure (Nondisclosure Conditions) under the DIDP, and whether the public interest outweighs the potential harm in disclosure of the documents that are subject to one or more DIDP

Nondisclosure Conditions. (*See* https://www.icann.org/resources/pages/didp-2012-02-25-en.)

As part of its commitment to transparency, ICANN org makes available a comprehensive set of materials on its website as a matter of course, including, information about the ICANN Contractual Compliance Audit Program on the audit webpage at https://www.icann.org/resources/pages/audits-2012-02-25-en. The documentary information responsive to your Request can be found on the webpage. Specifically, the following information, among others, are published on the audit webpage: audit program phases & timeline, audit program frequently asked questions, audit outreach sessions by calendar year, audit reports by calendar year, and past audit programs, audit program dashboard.

Item No. 1

Item No. 1 asks ICANN org to provide a copy of the updated contractual compliance policy as amended and announced in March 2007.

ICANN org did not update its contractual compliance policy in 2007; rather, the org updated its contractual compliance program to include regular registrar and registry contractual compliance audits. As noted above, On 18 October 2007, ICANN org completed and published its first Semi-Annual Contractual Compliance Audit Report for public comment ("2007 Audit Report"). The 2007 Audit Report summarized ICANN org's audit activities from January through September 2007 and detailed amongst other things, scope and objectives of the audit, summary of audit findings, observations and conclusions. (See https://www.icann.org/en/announcements/details/icann-publishes-2007-semi-annual-contractual-compliance-audit-report-18-10-2007-en; and https://www.icann.org/en/system/files/newsletters/contractual-compliance-audit-report-18oct07-en.pdf.) No other documents exist that are responsive to this request.

Item No. 2

Item No. 2 asks ICANN org to provide any records of public comments received as a result of the announcement of the new policy.

As noted above, when ICANN org completed and published 2007 Audit Report for public comment, the report received one comment. The comment is published at https://forum.icann.org/lists/compliancecomments/.

Item No. 3

Item No. 3 asks ICANN org to provide any public-facing announcements, commentaries, or advisories that explained or postulated the legal basis for ICANN's right to audit.

As noted above, ICANN org developed an audit program plan guide based on each auditees' agreement with ICANN. Auditees that are current signatories to the 2013 Registrar Accreditation Agreement are to be audited under the 2013 Registrar Accreditation Agreement Audit Plan. Similarly, auditees that are current signatories to the New Registry Agreement are to be audited under the New Registry Agreement Audit Plan; and auditees that are current signatories to a legacy registry agreement are to be audited under the Legacy Registry Agreement Audit Plan. Within each of the audit plans, ICANN org details the relevant Registrar Accreditation Agreement provisions and Registry Agreement provisions where these audit rights originate. As such, responsive documentary information pertaining to ICANN org's right to audit can be found in the following published documents on the audit webpage:

- 2009 Registrar Accreditation Agreement Audit Plan;
- 2013 Registrar Accreditation Agreement Audit Plan;
- New Registry Agreement Audit Plan; and
- Legacy Registry Agreement Audit Plan.

Item No. 4

Item No. 4 asks ICANN org to provide any published correspondence exchanged with SOs, ACs and stakeholder groups regarding the policy shift, advice or advocacy regarding such a shift, and any other related material

As noted above, beginning in 2019, ICANN org informed the RrSG and the RySG of the org's approach to the selection auditees, including the set of criteria to select auditees before each audit cycle. The discussions regarding the set of criteria took place during meetings with stakeholder groups, which were hosted by the stakeholder groups. ICANN org is not aware of any recordings or transcripts that exist for such meetings. If any recordings or transcripts exist, ICANN org is not in possession, custody, or control of them. Therefore, there is no documentary information in ICANN org's possession or control responsive to this portion of the request.

Item No. 5

Item No. 5 asks ICANN org to provide any records of public meetings, teleconferences, board or board committee meetings or other events of public record that included discussions of this policy shift.

Responsive documentation pertaining to records of public meetings, teleconferences, Board and Board committee meetings and other events can be found at the audit outreach sessions by calendar year webpage.

Transcripts from ICANN28

ICANN notes that link to the transcripts from the ICANN28 public meeting in Lisbon have now been restored and can be located at https://archive.icann.org/en/meetings/lisbon/container_captioning.htm.

About DIDP

ICANN org's DIDP is limited to requests for documentary information already in existence within ICANN org 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 org makes every effort to be as responsive as possible to the entirety of your Request. As part of its accountability and transparency commitments, ICANN org continually strives to provide as much information to the community as is reasonable. ICANN org hopes this information is helpful. If you have any further inquiries, please forward them to didp@icann.org.