

To: Arif Ali on behalf of Afilias Domains No. 3 Ltd.

Date: 23 May 2018

Re: Request No. 20180423-1

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On 23 February 2018, you submitted a letter on behalf of Afilias Domains No. 3 Ltd. (Afilias or Requestor) pursuant to the Internet Corporation for Assigned Names and Numbers' (ICANN's) Documentary Information Disclosure Policy (DIDP) requesting documents regarding the .WEB contention set (DIDP Request 20180223-1). ICANN organization responded to DIDP Request 20180223-1 on 24 March 2018. On 23 April 2018, Afilias submitted a letter in response to ICANN's DIDP Response 20180223-1 in which Afilias: (a) proposed a confidentiality agreement governing Item Nos. 1, 4, 6, and 9(a-c, e) in the DIDP Request 20180223-1; and (2) "amended" Item Nos. 1, 4, 5, 6(a-b), and 9(a) in DIDP Request 20180223-1. For reference, a copy of your 23 April 2018 letter is attached to the email transmitting this Response.

As explained in ICANN organization's 27 April 2018 response email to you, the concept of a confidentiality agreement for the disclosure of documents through the DIDP runs afoul of the DIDP itself, which is to make *public* documents concerning ICANN organization's operations unless there is a compelling reason for confidentiality. (See ICANN Documentary Information Disclosure Policy, available at <https://www.icann.org/resources/pages/didp-2012-02-25-en>.) Moreover, your proposal is asking ICANN organization to treat Afilias differently than other requestors, and to act in a manner that is contrary to what is set forth in the DIDP Process, which would be in contravention of ICANN's Bylaws. The DIDP is limited to requests for documentary information already in existence within ICANN organization that is not publicly available. The DIDP is not a mechanism for one to make information requests or requests to obtain litigation-style discovery.

As further indicated in ICANN's 27 April 2018 response email, ICANN's DIDP Response 20180223-1 indicated that Item Nos. 5 and 6(a)-(b) were overbroad and vague, and that Requestor could further clarify or narrow the scope of those Items if it wished to do so. Afilias' 23 April 2018 letter, however, goes far beyond those parameters and, in many instances, broadens and/or fundamentally changes the requests contained in DIDP Request 20180223-1. As such, and as indicated in ICANN's 27 April 2018 email, ICANN organization will treat these "amended" requests as a new DIDP Request, with an effective submission date of 23 April 2018, and ICANN organization will respond through and in accordance with the DIDP Process.

### **Items Requested**

DIDP Request 20180423-1 seeks the disclosure of documentary information relating to the .WEB applications and the .WEB contention set as follows:

1. "All documents received from Ruby Glen, NDC, and Verisign, Inc. (Verisign) in response to ICANN's 16 September 2016 request for additional information" and "the responses from Ruby Glen, NDC, and

- Verisign, indicating whether they consent to the public disclosure of their responses to ICANN’s 16 September 2016 request for information”;
4. “NDC’s responses to Items 12 and 45 through 50 in its .WEB application, as well as any amendments, changes, revisions, supplements, or correspondence concerning those Items”;
  5. “[A]ny documents, analyses, or studies that contain information regarding potential competition, substitution, and interchangeability between or among .WEB and .COM, .NET, or other gTLDs”;
  6. The following documents:
    1. “[A]ll documents reflecting NDC’s board structure and any changes thereto since NDC submitted its .WEB application on 13 June 2012”;
    2. “[A]ll documents concerning any investigation or discussion related to NDC’s board structure and any changes thereto since NDC submitted its .WEB application on 13 June 2012”;
    3. “[D]ocuments sufficient to show the date on which ICANN first learned that Verisign was going to or had in fact funded NDC’s bids for the .WEB gTLD at the 28-28 [sic] July 2016 auction”; and
    4. “[D]ocuments sufficient to show the date on which ICANN first learned that NDC did not intend to operate the .WEB registry itself, but rather intended to assign the rights it acquired related to .WEB to a third party.”
  9. All documents relating to the Department of Justice, Antitrust Division’s (“DOJ”) investigation into Verisign becoming the registry operator for .WEB (“DOJ Investigation”), including:
    - a. document productions to the DOJ, “exclud[ing] those documents that ICANN has reasonably identified as already being in Afilias’ possession.”

## Response

### The New gTLD Program and String Contention

In 2012, ICANN opened the application window for the New Generic Top-Level Domain (gTLD) Program and created the new gTLD microsite (<https://newgtlds.icann.org/en/>), which provides detailed information about the Program. From the Program Status webpage of the new gTLD microsite (<https://newgtlds.icann.org/en/program-status>), people can access the public portions of each new gTLD application, including all of the .WEB applications, by clicking on “Current Application Status” and accessing the New gTLD Current Application Status webpage (<https://gtdresult.icann.org/application-result/applicationstatus/viewstatus>).

ICANN received seven applications for .WEB, which were placed into a contention set (see Applicant Guidebook (Guidebook), §1.1.2.10 (String Contention)). Module 4 of the Guidebook (String Contention Procedures) describes situations in which contention for applied-for new gTLDs occurs, and the methods available to applicants for resolving contention absent private resolution: “It is expected that most cases of contention will be resolved by the community priority evaluation, or through voluntary agreement among the involved applicants. Auction is a tie-breaker method for resolving string

contention among the applications within a contention set, if the contention has not been resolved by other means.” (Guidebook, § 4.3 (Auction: Mechanisms of Last Resort).)

Should private resolution not occur, the contention set will proceed to an auction of last resort governed by the Auction Rules that all applicants agreed to by applying. (Guidebook, § 1.1.2.10 (String Contention)). In furtherance of ICANN’s commitment to transparency, ICANN organization established the New gTLD Program Auctions webpage, which provides extensive detailed information about the auction process (<https://newgtlds.icann.org/en/applicants/auctions>.)

### Resolution of .WEB/.WEBS Contention Set

Following the procedures set forth in the Guidebook, ICANN organization scheduled an auction of last resort for 27 July 2016 to resolve the .WEB/.WEBS contention set (Auction). (See <https://newgtlds.icann.org/en/applicants/auctions/schedule-13mar18-en.pdf>.)

On or about 22 June 2016, Ruby Glen LLC (Ruby Glen) asserted that changes had occurred in NU DOT CO LLC’s (NDC’s) application for .WEB, in particular to NDC’s management and ownership, and asserted that the Auction should be postponed pending further investigation. (See <https://www.icann.org/en/system/files/files/litigation-ruby-glen-icann-memorandum-point-authorities-support-motion-dismiss-first-amended-complaint-26oct16-en.pdf>.)

ICANN organization investigated Ruby Glen’s assertions regarding NDC’s application. After completing its investigation, ICANN org sent a letter to the members of the contention set stating, among other things, that “in regards to potential changes of control of [NDC], we have investigated the matter, and to date we have found no basis to initiate the application change request process or postpone the auction.” (See <https://www.icann.org/en/system/files/correspondence/willett-to-web-webs-members-13jul16-en.pdf>.)

Ruby Glen then invoked one of ICANN’s accountability mechanisms by submitting a reconsideration request on an urgent basis (Request 16-9), seeking postponement of the Auction and requesting a more detailed investigation. (See <https://www.icann.org/en/system/files/files/reconsideration-16-9-ruby-glen-radix-request-redacted-17jul16-en.pdf>.) After carefully considering the information related to Request 16-9, on 21 July 2016 ICANN’s Board Governance Committee (BGC) denied Request 16-9. (See <https://www.icann.org/en/system/files/files/reconsideration-16-9-ruby-glen-radix-bgc-determination-21jul16-en.pdf>.)

The next day Ruby Glen sued ICANN org. (See <https://www.icann.org/en/system/files/files/litigation-ruby-glen-complaint-22jul16-en.pdf>.) At the same time, Ruby Glen applied for a temporary restraining order (TRO Application), seeking to stop ICANN org from conducting the Auction at the scheduled time. (See <https://www.icann.org/en/system/files/files/litigation-ruby-glen-ex-parte-application-tro-memo-points-authorities-22jul16-en.pdf>.) The Court denied the TRO Application (see <https://www.icann.org/en/system/files/files/litigation-ruby-glen-court-order-denying-plaintiff-ex-parte-application-tro-26jul16-en.pdf>) and the Auction took

place on 27 and 28 July 2016. NDC placed the winning bid. (See <https://gtldresult.icann.org/application-result/applicationstatus/auctionresults>.)

On 28 November 2016, the Court dismissed Ruby Glen’s complaint and entered judgment in ICANN organization’s favor. (See <https://www.icann.org/en/system/files/files/litigation-ruby-glen-judgment-28nov16-en.pdf>.) Ruby Glen appealed that decision, and the appeal is currently pending. (See <https://www.icann.org/en/system/files/files/litigation-ruby-glen-notice-appeal-regarding-dismissal-20dec16-en.pdf>.)

### DIDP Process and Responses

The DIDP exemplifies ICANN’s Commitments and Core Values supporting transparency and accountability by setting forth a procedure through which documents concerning ICANN organization’s operations and within ICANN organization’s possession, custody, or control that are not already publicly available are made available 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). (See <https://www.icann.org/en/system/files/files/didp-response-process-29oct13-en.pdf> (DIDP Response Process).) The DIDP Response Process provides that, following the collection of potentially responsive documents, “[a] review is conducted as to whether any of the documents identified as responsive to the Request are subject to any of the Defined Conditions for Nondisclosure identified [on ICANN organization’s website].” If ICANN organization concludes that a document falls within one of the Defined Conditions for Nondisclosure (Nondisclosure Conditions), “a review is conducted as to whether, under the particular circumstances, the public interest in disclosing the documentary information outweighs the harm that may be caused by such disclosure.”

The DIDP was developed as the result of an independent review of standards of accountability and transparency within ICANN, which included extensive public comment and community input. (See <https://www.icann.org/news/announcement-4-2007-03-29-en>; <https://www.icann.org/resources/pages/draft-mop-2007-2007-10-17-en>.) Following the completion of this review, ICANN organization sought public comment on the resulting recommendations, and summarized and posted publicly the community feedback. (See <https://www.icann.org/resources/pages/draft-mop-2007-2007-10-17-en>.) Based on the community’s feedback, ICANN organization proposed changes to its frameworks and principles to “outline, define and expand upon the organisation’s accountability and transparency” (see <https://www.icann.org/en/system/files/files/acct-trans-frameworks-principles-17oct07-en.pdf>), and sought additional community input on the proposed changes before implementing them (see <https://www.icann.org/resources/pages/draft-mop-2007-2007-10-17-en>).

Neither the DIDP nor ICANN’s Commitments and Core Values supporting transparency and accountability obligates ICANN organization to make public every document in its possession. As noted above, the DIDP sets forth Nondisclosure Conditions for which

other commitments or core values may compete or conflict with the transparency commitment. These Nondisclosure Conditions represent areas, vetted through public comment, that the community has agreed are presumed not to be appropriate for public disclosure. The public interest balancing test in turn allows ICANN organization to determine whether or not, under the specific circumstances, its commitment to transparency outweighs its other commitments and core values. Accordingly, ICANN organization may appropriately exercise its discretion, pursuant to the DIDP, in determining that certain documents are not appropriate for disclosure, without contravening its commitment to transparency. As the Amazon EU S.à.r.l. Independent Review Process Panel noted, “notwithstanding ICANN’s transparency commitment, both ICANN’s By-Laws and its Publication Practices recognize that there are situations where non-public information, e.g., internal staff communications relevant to the deliberative processes of ICANN . . . may contain information that is appropriately protected against disclosure.” (Amazon EU S.à.r.l. v. ICANN, Procedural Order (7 June 2017) (<https://www.icann.org/en/system/files/files/irp-amazon-procedural-order-3-07jun17-en.pdf>)).

ICANN’s Bylaws address the need to balance competing interests such as transparency and confidentiality, noting that “in any situation where one Core Value must be balanced with another, potentially competing Core Value, the result of the balancing test must serve a policy developed through the bottom-up multistakeholder process or otherwise best serve ICANN’s Mission.” (ICANN Bylaws, 22 July 2017, Art. 1, Section 1.2(c) (<https://www.icann.org/resources/pages/governance/bylaws-en/#article1>)).

#### DIDP Request 20180423-1

Afilias seeks the disclosure of documentary information concerning the .WEB applications and contention set, as set forth in Item Nos. 1, 4, 5, 6, and 9(a) of DIDP Request 20180423-1.

#### Item 1

Item 1 seeks “[a]ll documents received from Ruby Glen, NDC, and Verisign, Inc. (Verisign) in response to ICANN’s 16 September 2016 request for additional information” and “the responses from Ruby Glen, NDC, and Verisign, indicating whether they consent to the public disclosure of their responses to ICANN’s 16 September 2016 request for information.”

As indicated in ICANN’s 27 April 2018 response email, and pursuant to ICANN’s DIDP Response 20180223-1, ICANN organization consulted the relevant third parties and, with the exception of Afilias, all other parties indicated that their responses to ICANN’s 16 September 2016 request for information should remain confidential.

The documentary information received from NDC, Verisign, and Ruby Glen in response to ICANN organization’s 16 September 2016 request for information as well as their responses regarding the confidentiality of such information are subject to the following Nondisclosure Conditions:

- 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.

#### Item 4

Item 4 seeks “NDC’s responses to Items 12 and 45 through 50 in its .WEB application, as well as any amendments, changes, revisions, supplements, or correspondence concerning those Items.”

As you know, ICANN organization posts the public portions of each gTLD application and the public portions of any documents submitted with an application on the New gTLD Current Application Status webpage. (See <https://gtldresult.icann.org/application-result/applicationstatus/viewstatus>.) The public portions of the .WEB applications can be accessed through the links provided in DIDP Response 20180223-1. As stated in the Guidebook (Guidebook, Module 2 (Evaluation Questions and Criteria) (<https://newgtlds.icann.org/en/applicants/agb>)), certain applicant information is not appropriate for public posting and ICANN organization informed applicants that the following types of information would not be publicly posted:

- Personally identifying information (see Application Questions 6, 7, 11);
- An applicant’s Business ID, Tax ID, VAT registration number, or equivalent (see Application Question 10);
- Involvement of any individual identified in an application in civil or criminal legal proceedings, (see Application Question 11);
- Bank details related to wire transfer payment of the evaluation fee (see Application Question 12);
- For geographic names, letters of support or non-objection (see Application Question 21(b));
- Descriptions of the applicant’s intended technical and operational approach for those registry functions that are internal to the infrastructure and operations of the registry (see Application Questions 30(b) – 44);
- Financial information (see Application Question 45-50).

The materials requested in Item 4 comprise bank details and financial information submitted in response to Application Questions 12 and 45 through 50. Consistent with ICANN organization’s commitment to applicants that such information would remain

confidential, this information is not appropriate for disclosure under the DIDP and is subject to the following Nondisclosure Conditions:

- 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.
- 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.

#### Item 5

Item 5 seeks "any documents, analyses, or studies that contain information regarding potential competition, substitution, and interchangeability between or among .WEB and .COM, .NET, or other gTLDs."

To the extent Item 5 seeks materials concerning ICANN organization's review of how the New gTLD Program has impacted competition, consumer choice and consumer trust, ICANN organization has established a Competition, Consumer Trust & Consumer Choice Review webpage (<https://newgtlds.icann.org/en/reviews/cct>), which includes documentary information concerning, among other things, the extent to which the introduction of new gTLDs has promoted competition.

To the extent Item 5 seeks materials that overlap with the materials responsive to Item 9(a) ("document productions to the DOJ" in response to the DOJ CID), ICANN organization incorporates and refers Requestor to the response to Item 9(a) below and in DIDP Response 20180223-1.

Any further documents responsive to Item 5, if any, are subject to the following Nondisclosure Conditions:

- 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.

- 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.
- Confidential business information and/or internal policies and procedures.
- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.

#### Item 6

Item 6 seeks “(1) all documents reflecting NDC’s board structure and any changes thereto since NDC submitted its .WEB application on 13 June 2012; (2) all documents concerning any investigation or discussion related to NDC’s board structure and any changes thereto since NDC submitted its .WEB application on 13 June 2012; (3) documents sufficient to show the date on which ICANN first learned that Verisign was going to or had in fact funded NDC’s bids for the .WEB gTLD at the 28-28 July 2016 [sic] auction; and (4) documents sufficient to show the date on which ICANN first learned that NDC did not intend to operate the .WEB registry itself, but rather intended to assign the rights it acquired related to .WEB to a third party.” As an initial matter, Item 6 and each of its subparts do not concern ICANN’s operational activities and therefore are beyond the scope of the DIDP.

Item 6(1) requests “all documents reflecting NDC’s board structure and any changes thereto since NDC submitted its .WEB application on 13 June 2012.” Materials responsive to Item 6(1) are publicly available on ICANN’s website. Specifically, ICANN organization posts the public portions of each gTLD application and the public portions of any documents submitted with an application on the New gTLD Current Application Status webpage. (See <https://gtldresult.icann.org/application-result/applicationstatus/viewstatus>.) The public portions of NDC’s .WEB application identify, in response to Application Question 11, the names and position of all directors, officers, partners, and shareholders holding at least 15% of shares. This information is publicly available at <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1053>.

ICANN organization is not aware of any changes to NDC’s board structure since it submitted its .WEB application on 13 June 2012.

Any further documents responsive to Item 6(1), if any, are subject to the following Nondisclosure Conditions:

- 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.

Item 6(2) seeks “all documents concerning any investigation or discussion related to NDC’s board structure and any changes thereto since NDC submitted its .WEB application on 13 June 2012.” Materials responsive to Item 6(2) are publicly available on ICANN’s Litigation and Reconsideration Request webpages. (See <https://www.icann.org/resources/pages/governance/litigation-en>; and <https://www.icann.org/resources/pages/accountability/reconsideration-en>.) Specifically, documents filed with respect to Reconsideration Request 16-9 (initiated by Ruby Glen and Radix FZC) and the Ruby Glen litigation contain information regarding ICANN’s investigation of Ruby Glen’s allegations of a change of control or ownership of NDC. (See, for example, <https://www.icann.org/resources/pages/reconsideration-16-9-ruby-glen-radix-request-2016-07-18-en>; <https://www.icann.org/resources/pages/ruby-glen-v-icann-2016-07-23-en>; <https://www.icann.org/en/system/files/files/litigation-ruby-glen-declaration-willett-25jul16-en.pdf>; and <https://www.icann.org/en/system/files/files/litigation-ruby-glen-declaration-willett-exhibits-a-h-25jul16-en.pdf>.)

Any further documents responsive to Item 6(2) are subject to the following Nondisclosure Conditions:

- Information subject to the attorney-client, attorney work product privilege, or any other applicable privilege, or disclosure of which might prejudice any internal, governmental, or legal investigation.
- 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.
- 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.
- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.

With regard to Items 6(3) and 6(4), these requests seek “documents sufficient to show the date on which ICANN first learned that Verisign was going to or had in fact funded NDC’s bids for the .WEB gTLD at the 28-28 July 2016 [sic] auction”; and “documents sufficient to show the date on which ICANN first learned that NDC did not intend to operate the .WEB registry itself, but rather intended to assign the rights it acquired related to .WEB to a third party.” As an initial matter, the DIDP is limited to requests for documents concerning ICANN organization’s operations and within ICANN organization’s possession, custody, or control that are not already publicly available. The DIDP is not a mechanism for one to make information requests or to obtain litigation-style discovery. As such, Items 6(3) and 6(4) fall outside the scope of the DIDP. (See ICANN Documentary Information Disclosure Policy, *available at* <https://www.icann.org/resources/pages/didp-2012-02-25-en>.)

Notwithstanding the above, certain materials related to Items 6(3) and 6(4) are publicly available. Verisign issued a public statement regarding its agreement with NDC. (See “Verisign Statement Regarding .Web Auction Results,” available at <https://investor.verisign.com/news-releases/news-release-details/verisign-statement-regarding-web-auction-results>.)

Any further documents responsive to Items 6(3) and 6(4) are subject to the following nondisclosure conditions:

- Information subject to the attorney-client, attorney work product privilege, or any other applicable privilege, or disclosure of which might prejudice any internal, governmental, or legal investigation.
- 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.
- 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.
- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.

#### Item 9(a)

Item 9(a) seeks “[a]ll documents relating to the Department of Justice, Antitrust Division’s (“DOJ”) investigation into Verisign becoming the registry operator for .WEB (“DOJ Investigation”), including: (a) document productions to the DOJ,” “exclud[ing] those documents that ICANN has reasonably identified as already being in Afilias’ possession.” Item 9(a) in DIDP Request 20180423-1 is identical to Item 9(a) in the DIDP Request 20180223-1, except that it excludes documents in Afilias’ possession. ICANN organization’s response remains the same.

On 1 February 2017, DOJ issued a Civil Investigative Demand (CID) to ICANN in connection with DOJ’s investigation of Verisign’s proposed acquisition of NDC’s contractual rights to operate the .WEB gTLD. ICANN provided DOJ with information responsive to the CID.

With regard to Item 9(a), the vast majority of the documents provided to DOJ are publicly available materials. DIDP Response 20180223-1 (Attachment A) provided links to the vast amount of publicly available documents that ICANN organization provided to DOJ in response to the CID, and that response and attachment are incorporated here by reference. With respect to the non-public materials provided to DOJ, such materials are categorized as follows and are subject to various Nondisclosure Conditions:

- Confidential data reports, subject to the following Nondisclosure Conditions:
  - 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.
  - 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.
- Trade secrets and commercial and financial information not publicly disclosed by ICANN.
- Correspondence from, to, or among ICANN organization relating to .WEB, subject to the following Nondisclosure Conditions:
  - 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.
  - 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.
  - Trade secrets and commercial and financial information not publicly disclosed by ICANN.

Requestor recognizes that certain of these documents comprise correspondence to or from Requestor, which are already in Requestor's possession, custody, or control. In DIDP Response 20180223-1, ICANN organization indicated that, if Requestor considers its correspondence with ICANN organization to be appropriate for public disclosure, ICANN organization would supplement DIDP Response 20180223-1 and make such documents publicly available. In response, Requestor elected to exclude these documents from DIDP Request 20180423-1.

- Auction forms from .WEB applicants, subject to the following Nondisclosure Conditions:
  - 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.
  - 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.

- Trade secrets and commercial and financial information not publicly disclosed by ICANN.

Requestor recognizes that certain of these documents comprise auction forms Requestor submitted to ICANN organization, which are already in Requestor's possession, custody or control. In DIDP Response 20180223-1, ICANN organization indicated that, if Requestor considers its auction forms to be appropriate for public disclosure, ICANN organization would supplement DIDP Response 20180223-1 and make such documents publicly available. In response, Requestor elected to exclude these documents from DIDP Request 20180423-1.

- Self-Resolution notices regarding gTLDs other than .WEB, subject to the following Nondisclosure Conditions:
  - 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.
  - 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.
  - Trade secrets and commercial and financial information not publicly disclosed by ICANN.
- Draft Board materials, draft announcements, and other internal documents, subject to the following Nondisclosure Conditions:
  - 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.
  - 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.

- Confidential business information and/or internal policies and procedures.
- Information subject to the attorney–client, attorney work product privilege, or any other applicable privilege, or disclosure of which might prejudice any internal, governmental, or legal investigation.
- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.
- Trade secrets and commercial and financial information not publicly disclosed by ICANN.

### Public Interest in Disclosure of Information Subject to Nondisclosure Conditions

Notwithstanding the applicable Nondisclosure Conditions identified in this Response, ICANN organization has considered whether the public interest in disclosure of the information subject to these conditions at this point in time outweighs the harm that may be caused by such disclosure. ICANN organization has determined that there are no current circumstances for which the public interest in disclosing the information outweighs the harm that may be caused 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 organization makes every effort to be as responsive as possible to the entirety of your Request. As part of its accountability and transparency commitments, ICANN organization continually strives to provide as much information to the community as is reasonable. ICANN organization encourages you to sign up for an account at ICANN.org, through which you can receive daily updates regarding postings to the portions of ICANN organization’s website that are of interest. If you have any further inquiries, please forward them to [didp@icann.org](mailto:didp@icann.org).