

To: Michael Palage

Date: 2 November 2019

Re: Request No. 20191003-1

This is in response to your request for documentary information (Request), which was submitted on 3 October 2019 through the Internet Corporation for Assigned Names and Numbers' (ICANN organization or ICANN org) Documentary Information Disclosure Policy (DIDP). For reference, a copy of your Request is attached to the email forwarding this Response.

Items Requested

Your Request seeks the disclosure of the following documents and answers in connection with ICANN org's Amended and Restated Articles of Incorporation (Amended Articles) as approved on 9 August 2016. The questions and requests are laid out as they were presented in your Request.

Question #1: With ICANN's amendment/restatement of the Articles of Incorporation in 2016, can you confirm that ICANN org is bound by the obligations set forth in the California Corporate Flexibility Act of 2011?

Request #1: Under ICANN org's amended/restated articles of incorporation the charitable and public purpose of ICANN org is defined as "lessening the burdens of government and promoting the global public interest in the operational stability of the Internet by carrying out the mission set forth in the bylaws of the Corporation." In connection with this "first" purpose, could ICANN org please provide any documentation in which it has specifically identified/enumerated how it is "lessening the burdens of government."

Request #2: [C]ould ICANN org identify any documentation on how this list of burden lessening activities is maintained.

Request #3: In connection with the "second" purpose, e.g. Global Public Interest (GPI), the articles of incorporation state that the "determination of such global public interest shall be made by the multistakeholder community through an inclusive bottom-up multistakeholder community process[]" [c]ould ICANN provide any document in connection with the current stated GPI and point to any specific mechanism by which the ICANN community can contribute to this.

Question #2: It appears that the Specific, Measurable, Attainable, Results-oriented, and Time bound (SMART) operating goals and plans enumerated under the “Evolving ICANN’s Multistakeholder Model” be equated, in part or in whole, to the Global Public Interest (GPI) obligations set forth in the Articles of Incorporation. Can ICANN org confirm that the output of the initiative is intended to be formally included in the GPI?

Under California law, two statutory obligations of a Public Benefit Corporation are: 1) Third-Party Assessment. Standard and 2) Annual Benefit Report.

Request #4: Could ICANN org provide any and all documentation in connect with the third-party assessment standard that ICANN org is being measured against.

Request #5: Could ICANN org provide all relevant Annual Benefit Reports produced by ICANN org under this statutory obligation.

Response

The DIDP is a mechanism, developed through community consultation, to ensure that information contained in documents concerning ICANN organization’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 DIDP, ICANN org followed the DIDP Response Process and upon receipt of the request consulted with ICANN personnel who have knowledge regarding the information responsive to this request. After identifying the relevant documents responsive to the request, ICANN org reviewed the documents and prepared the following response.

Question No. 1

Question No. 1 asks ICANN org to confirm if the org “is bound by the obligations set forth in the California Corporate Flexibility Act of 2011” under the Amended Articles. ICANN org is a Not-for-Profit Public Benefit Corporation governed by both the Nonprofit Corporation Law and the Nonprofit Public Benefit Corporation Law. ICANN org is neither organized under, nor bound by the California Corporate Flexibility Act of 2011, which governs flexible business corporations. As such, there are no documents in ICANN org’s possession, custody, or control that are responsive to this question. Please note, as explained above, the DIDP is a mechanism developed for accessing documentary information, not for confirmation of questions; however, given that the bulk

of your requests are premised on the California Corporate Flexibility Act, ICANN org is providing the requested clarification.

Requests Nos. 1, 2, and 3

Request Nos. 1 through 3 reference Article 2, Section II of the Amended Articles. Request Nos. 1 and 2 ask ICANN org to (1) “provide any documentation in which it has specifically identified/enumerated how it is ‘lessening the burdens of government’” (Request No. 1), and (2) “identify any documentation on how this list of burden lessening activities is maintained.” (Request No. 2.) Request No. 3 asks ICANN org to “provide any document in connection with the current stated [Global Public Interest] GPI and point to any specific mechanism by which the ICANN community can contribute to this.” (Request No. 3.)

Article 2.II of the Amended Articles states:

This Corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for charitable and public purposes. The Corporation is organized, and will be operated, exclusively for charitable, educational, and scientific purposes within the meaning of § 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), or the corresponding provision of any future United States tax code. Any reference in these Articles to the Code shall include the corresponding provisions of any future United States tax code. In furtherance of the foregoing purposes, and in recognition of the fact that the Internet is an international network of networks, owned by no single nation, individual or organization, the Corporation shall, except as limited by Article IV hereof, pursue the charitable and public purposes of lessening the burdens of government and promoting the global public interest in the operational stability of the Internet by carrying out the mission set forth in the bylaws of the Corporation (“Bylaws”). Such global public interest may be determined from time to time. Any determination of such global public interest shall be made by the multistakeholder community through an inclusive bottom-up multistakeholder community process.

(Amended Articles, <https://www.icann.org/resources/pages/governance/articles-en>).

The charitable and public purposes of the lessening of the burdens of government and promoting the global public interest have been part of ICANN org’s governing documents since its initial incorporation, and are included in the original Articles of Incorporation, effective 21 November 1998. (See <https://www.icann.org/resources/pages/articles-2012-02-25-en>.) ICANN org’s charitable purpose is ingrained across all of its work, and as such, aside from historical documentation relating to ICANN org’s tax-exempt status (see <https://www.icann.org/resources/files/irs-favorable-determination-letter-2008-09-19-en>), there are no specific individual documents that exist within ICANN org that codify or detail this work as requested. Moreover, as discussed above, because ICANN org is

not bound by the California Corporate Flexibility Act of 2011, ICANN org is not obligated to and does not maintain an annual benefit report that identifies with specificity its burden lessening activities.

With respect to Request No. 3, discussions on the topic of the “public interest within ICANN’s remit” and potential definitions of this term have been ongoing for years. In preparation for the IANA Stewardship Transition and the related accountability enhancements, the ICANN community asked for specific reference to be included in the Amended Articles that affirms ICANN org’s multistakeholder community’s role in determining the global public interest served through ICANN org’s actions. The trajectory of the community work is available through the dedicated community webpage entitled [Exploring the Public Interest Within ICANN’s Remit](#), which includes, amongst other things, research related to how the term “public interest” is understood and applied, and recent dialogues and sessions surrounding the topic. Community members interested in participating and contributing to these discussions are encouraged to join the [Public Interest mailing list](#).

As part of its Board priorities, the ICANN Board is active in trying to further the global public interest definitional work through facilitating community conversations on a potential framework to be used to determine the global public interest for any individual proposal or recommendation that comes up to the Board. On 17 and 19 September 2019, the ICANN Board led community webinars that discussed ICANN Board’s [proposed GPI framework](#). Associated recordings of these two webinars are available through the ICANN org website at <https://www.icann.org/resources/pages/2019-board-meetings>. The broad community consultation on the proposed framework will continue to take place over the next few months to allow for inputs from all interested parties in the ICANN community. Towards the later stages of the consultation, ICANN org will provide an opportunity for community feedback through an [ICANN Public Comment Proceeding](#) on the proposed framework for determining the global public interest.

Question No. 2

Question No. 2 states “[i]t appears that the Specific, Measurable, Attainable, Results-oriented, and Time bound (SMART) operating goals and plans enumerated under the “Evolving ICANN’s Multistakeholder Model” be equated, in part or in whole, to the Global Public Interest (GPI) obligations set forth in the Articles of Incorporation. Can ICANN org confirm that the output of the initiative is intended to be formally included in the GPI?”

The “Evolving ICANN’s Multistakeholder Model” work is one of the ways that the ICANN Board is preparing the org to deliver on strategic objective 2 of the approved [ICANN Strategic Plan for fiscal years 2021 to 2025](#). As appropriate, if the work performed in furtherance of strategic objective 2 assists ICANN org’s multistakeholder community in defining aspects of the global public interest the outcomes of that work will be included. The SMART formation is a guide to how the work is defined and organized and does not impact the global public interest. The “Evolving ICANN’s Multistakeholder Model” [public consultation process](#) is ongoing and next steps regarding the process are available through the icann.org website located at

<https://www.icann.org/news/blog/next-steps-in-evolving-icann-s-multistakeholder-model-developing-a-work-plan-for-2021-2025>.

Request Nos. 4 and 5

Requests Nos. 4 and 5 seek documentary information relating to two statutory obligations of a Public Benefit Corporation. These obligations are: 1) Third-Party Assessment Standard, and 2) Annual Benefit Report. Request No. 4 asks ICANN org to “provide any and all documentation in connect with the third-party assessment standard that ICANN org is being measured against.” (Request No. 4.) Request No. 5 asks ICANN org to “provide all relevant Annual Benefit Reports produced by ICANN org under this statutory obligation.” (Request No. 5.)

As discussed in response to Question No. 1, ICANN org is organized as a Non-For-Profit Public Benefit Corporation, which is a separate and distinct corporate form from a Public Benefit Corporation. The two types of entities are governed by different statutory requirements. Accordingly, ICANN org is not obligated to produce a Third-Party Assessment Standard or an Annual Benefit report that are required by Public Benefit Corporations. As such, neither the reports nor the associated documents requested here exist within ICANN org.

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