

## Response to Documentary Information Disclosure Policy Request

To: Kevin Murphy

Date: 26 August 2015

Re: Request No. 20150727-1

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Thank you for your Request for Information dated 27 July 2015 (Request), which was submitted through the Internet Corporation for Assigned Names and Numbers' (ICANN's) Documentary Information Disclosure Policy (DIDP). For reference, a copy of your Request is attached to the email forwarding this Response.

### Items Requested

You request the following documents relating to the Independent Review Process (IRP) matter of DotConnectAfrica Trust (DCA Trust) v. ICANN:

- “1) Every document, unredacted, that was filed by ICANN, DCA Trust, the IRP panel and any third party in the IRP proceedings of DCA Trust v. ICANN (ICDR #50 2013 001083).
- 2) Every exhibit, unredacted, that was filed as evidence in this case by either party.
- 3) Unredacted transcripts and/or audio/video recordings of all in-person, online or telephonic hearings that took place in this case.”

### Response

The Independent Review Process (IRP) is a mechanism provided by Article IV, Section 3 of the ICANN Bylaws by which “[a]ny person materially affected by a decision or action of the Board that he or she asserts is inconsistent with the Articles of Incorporation or Bylaws may submit a request for independent review of that decision or action.” Bylaws, Art. IV, § 3 at <https://www.icann.org/en/about/governance/bylaws#IV>. As part of our commitment to accountability and transparency, ICANN publishes documents that are filed in IRPs on the ICANN IRP page at <https://www.icann.org/resources/pages/accountability/irp-en>.

The *DCA Trust v. ICANN IRP* (DCA Trust IRP) concerns DCA Trust's application for the .AFRICA gTLD and ICANN's decision that the DCA Trust's application should not proceed pursuant to consensus advice from the Governmental Advisory Committee (GAC) that it should not proceed. ICANN has published the documents filed in the DCA Trust IRP identified in your Request on the DCA Trust IRP page at <https://www.icann.org/resources/pages/dca-v-icann-2013-12-11-en>. Specifically, with

respect to Item No. 1, ICANN has published the documents that were filed by the parties and the IRP Panel. In addition, today we published on the DCA Trust IRP page the only document submitted to the DCA Trust IRP Panel by a third party, ZA Central Registry, regarding its request to attend the DCA Trust IRP hearing. *See* <https://www.icann.org/en/system/files/correspondence/za-central-registry-to-irp-panel-redacted-11may15-en.pdf>.

With respect to Item No. 2 seeking all exhibits that were filed as evidence in the matter, ICANN has published on the DCA Trust IRP page all exhibits filed as evidence in the DCA Trust IRP. *See* <https://www.icann.org/resources/pages/dca-v-icann-2013-12-11-en>

Likewise, with respect to Item No. 3, ICANN has published on the DCA Trust IRP page all transcripts and audio/video recordings of in-person, online or telephonic hearings that took place in the DCA Trust IRP. *See* <https://www.icann.org/en/system/files/files/transcript-hearing-redacted-23may15-en.pdf>.

Your Request also asks that the documentary information responsive to Item Nos. 1 through 3 be provided in unredacted format.

As you may know, on 31 July 2015, following the receipt of authorization from third parties to release certain information that they had designated confidential during the DCA Trust IRP, ICANN posted a version of the DCA Trust IRP Final Declaration with significantly fewer redactions than the initially published version, all of which identify the basis for the redactions. *See* <https://www.icann.org/en/system/files/files/final-declaration-2-redacted-09jul15-en.pdf>. At that same time, ICANN also posted the transcript of the hearing proceedings with limited redactions, all of which also identify the basis for the redactions. *See* <https://www.icann.org/en/system/files/files/transcript-hearing-redacted-23may15-en.pdf>. Some of the following information that remains redacted in those documents, and/or may be contained in the additional documents for which you seek unredacted versions through your DIDP Request, is subject to certain DIDP Defined Conditions of Nondisclosure:

Categories of redacted information

- Confidential contact information
- Confidential application information
- Information designated as confidential by InterConnect Communications
- Information designated as confidential by the GAC
- Information that was never provided in the IRP in unredacted form because it was non-responsive to document requests

DIDP Defined Conditions of 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.

- 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 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.
- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.

Notwithstanding the above, in response to DIDP requests, we evaluate whether the public interest in disclosing documentary information meeting one or more conditions for non-disclosure outweighs the harm that may be caused by such disclosure. Further, with respect to this particular matter, we have also been evaluating whether responsive documentary information initially designated as confidential in the DCA Trust IRP, and therefore redacted before posting, could be disclosed as a result of our obtaining authorization from DCA Trust and third parties to publicly release information found in the DCA Trust IRP Final Declaration, or whether additional consultation with third parties is required before disclosure.

Following our evaluation referenced above, we have determined that to the extent additional information warrants disclosure and can be released without further consultation with third parties ICANN will publish that unredacted information no later than 31 August 2015. We will send you an email notification upon that publication. To the extent that disclosure of some information designated as confidential by third parties may be warranted and requires further consultation with third parties, or consultation with other third parties not previously consulted, ICANN has already initiated that consultation process. ICANN will publish such further unredacted information promptly upon, and to the extent that we receive, authorization from the relevant parties to release the information, and will send you an email notification upon that publication.

### **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](mailto:didp@icann.org).