

To: John Baird

Date: 19 November 2020

Re: Request No. 20201020-1

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This is in response to your request for documentary information (Request), which was submitted on 20 October 2020 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 “an electronic copy of the ICANN Contractor Consulting Agreement.”

### **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 and conducted 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>.)

Your Request seeks the disclosure of “an electronic copy of the ICANN Contractor Consulting Agreement.” As part of its Commitment and Core Values supporting transparency and accountability, ICANN org makes available a series of ICANN's major agreements, including, but not limited to, [ccTLD Agreements](#), [Base Registry Agreement and fully executed Registry Agreements](#), the current [Registrar Accreditation Agreement](#) and [archived Registrar Accreditation Agreements](#), [Partnership Memorandums of Understanding](#), and early “Transition Agreements” including the Memorandum of

Understanding/Joint Project Agreement with U.S. Department of Commerce and related amendments, the various IANA Functions Contracts, the Root-Nameserver Agreement, and the InterNic Agreement, as well as early “Implementation Agreements” including the IETF/ICANN Memorandum of Understanding Concerning the Technical Work of the IANA and related Supplemental Agreements. (See <https://www.icann.org/resources/pages/agreements-en>.)

ICANN org contracts with vendors and individuals in its normal course of business. These contractual obligations are memorialized in different contractor consulting or vendor agreements. These agreements may be initially based on ICANN org’s or the vendor’s template agreement and are then negotiated and customized to reflect the engagement. To date, ICANN org has not had a practice of publishing its Contractor Consulting Agreements or other vendor agreements as they often include personal information of the contracted party, pricing and terms related to a service, confidential business information of the contracted party and other confidential information, and are therefore subject to the following Nondisclosure Conditions:

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

However, as part of the [\*Dot Registry, LLC v. ICANN Independent Review Process\*](#), ICANN org was required to produce a fully executed and redacted copy of its 2011 agreement with the Economist Intelligence Unit (EIU) for the performance of the Community Priority Evaluation. A copy of ICANN’s agreement with the EIU can be located [here](#).

In addition, as reflected on the [ICANN IPv6 webpage](#), ICANN org added an IPv6 provision to its Contractor Consulting Agreement as part of its role in supporting the [IPv6 Initiative](#), which in substance states the following about IPv6 compliance:

To the extent the Services and/or Deliverables include development or provision of (i) website design, hosting, implementation and/or programming, and/or (ii) software and/or devices that support network or Internet connectivity, Contractor warrants and represents that all such Services and Deliverables will be fully compliant with the Internet Engineering Task Force (IETF) Internet Protocol, Version 6 Specification, sometimes referred to as the IPv6 Specification and, in addition, will be fully backward-compatible with the Internet Engineering Task

Force (IETF) Internet Protocol, Version 4 Specification, sometimes referred to as the IPv4 Specification, including without limitation having the capabilities: (a) to create or receive, process, and send or forward (as appropriate) IPv6 packets in mixed IPv4/IPv6 environments, and (b) to interoperate with other IPv6 compliant software, devices and websites on networks supporting only IPv4, only IPv6, or both IPv4 and IPv6. The expectation is that any networked application or service developed for ICANN would operate irrespective of whether such services were accessed using IPv4 or IPv6.

(See <https://www.icann.org/resources/pages/ipv6-initiative-2017-02-28-en>.) All other Contractor Consulting Agreements and/or provisions responsive to this Request that have not been made public, are subject to the above Nondisclosure Conditions, and are therefore not appropriate for disclosure.

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

Notwithstanding the applicable Nondisclosure Conditions identified in this Response ICANN org has considered whether the public interest in disclosure of the additional documentary information subject to these conditions at this point in time outweighs the harm that may be caused by such disclosure. ICANN org 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 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](mailto:didp@icann.org).