

To: Altanovo Domains Limited

Date: 17February 2022

Re: Request No. 20220117-1

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This is in response to your request for documentary information (Request), which was submitted on 17 January 2022 through the Internet Corporation for Assigned Names and Numbers' (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 the *Afilias Domains No. 3 Limited v. Internet Corporation for Assigned Names and Numbers* Independent Review Process (*Afilias v. ICANN* IRP) regarding the .WEB string.

1. All documents reflecting or relating to (a) the analysis undertaken by ICANN of the IRP Panel's Final Decision and (b) the procedure for addressing the Final Decision.
2. All documents provided to members of the Board for the "consideration of the opinion of the Panel in [the] Final Decision" , including, without limitation, documents sufficient to show who prepared each such document and when it was provided to members of the Board.
3. All documents provided to members of the Board for (a) their consideration and pronouncement "upon the question of whether the DAA complied with the New gTLD Program Rules following the Claimant's complaints that it violated the Guidebook and Auction Rules and, as the case may be, (b) [their determination] whether by reason of any violation of the Guidebook and Auction Rules, NDC's application for .WEB should be rejected and its bids at the auction disqualified," including, without limitation, documents sufficient to show who prepared each such document and when it was provided to members of the Board.
4. All documents relating to .WEB that were considered, reviewed, presented to, or discussed by members of the Board at the Special Meeting held on 16 January 2022, including, without limitation, documents sufficient to show who prepared each such document and when it was provided to members of the Board.
5. All documents that ICANN considered to assess whether NDC violated the Guidebook and whether NDC should be disqualified as a result of such violation(s), and any list and/or summary of such documents.

6. All documents reflecting or relating to any discussion of .WEB at the Board's Special Meeting held on 16 January 2022, including, without limitation, any notes taken by any person attending the Special Meeting, and all draft and final agendas, presentation materials, and memoranda related to such discussion.
7. All documents reflecting or relating to any Board resolution(s) concerning .WEB (whether proposed or adopted) at the Board's Special Meeting held on 16 January 2022, including documents sufficient to show who prepared such resolution(s) and when such resolution(s) were provided to members of the Board, including all drafts of any such resolution(s).
8. All documents reflecting or relating to any communications about .WEB between or among ICANN Board members and/or ICANN Staff following the IRP Panel's Final Decision.
9. All documents reflecting or relating to the scheduling and noticing of the Board's Special Meeting on 16 January 2022, including, without limitation, documents sufficient to show the date on which the Special Meeting was scheduled, and the date on which ICANN determined that the Special Meeting would be noticed.
10. All documents reflecting or relating to any analysis or consideration by ICANN of whether to maintain the DAA as confidential, including, without limitation, any communications about the purported confidentiality of the DAA between (a) ICANN and (b) Verisign and/or NDC.
11. All documents reflecting or relating to any communications between (a) ICANN and (b) Verisign and/or NDC concerning .WEB following the Final Decision and through the date of this DIDP Request.
12. All documents reflecting or relating to any consideration given by ICANN to (a) the letter from A. Ali to J. LeVee dated 28 May 2021; (b) the letter from A. Ali to M. Botterman dated 3 November 2021; (c) the request made in the email from A. de Gramont to E. Enson for confirmation that the 3 November 2021 and attachments were provided to the ICANN Board; (d) the letter from A. Ali to J. LeVee dated 20 December 2021; and (e) the letter from A. Ali to J. LeVee dated 12 January 2022, including, without limitation, documents sufficient to show whether each such letter or email was provided to anyone at ICANN, and if so, whether it was provided to anyone at ICANN outside its Legal Department.
13. All documents reflecting or relating to any consideration given by ICANN to the letter from S. Marenberg to M. Botterman dated 23 July 2021, including, without limitation, documents sufficient to show whether the letter was provided to anyone at ICANN, and if so, whether it was provided to anyone at ICANN outside its Legal Department.

14. All documents reflecting or relating to any communications between (a) Verisign and/or NDC and (b) ICANN concerning the “Blackout period” violations alleged by Verisign and/or NDC against Afilias.
15. All documents reflecting or relating to any investigation conducted by ICANN of the “Blackout period” violations alleged by Verisign and/or NDC against Afilias.
16. All documents reflecting or relating to any communications within ICANN (including, without limitation, any communications between ICANN Staff and the ICANN Board) concerning the “Blackout period” violations alleged by Verisign and/or NDC against Afilias, and all documents reflecting or relating to any consideration of such alleged violations.
17. All documents created by ICANN concerning or relating to the Final Decision, including, without limitation, all documents demonstrating any steps taken or recommendations made within ICANN concerning the violations of ICANN’s Articles and Bylaws, as determined by the IRP Panel.
18. Documents sufficient to show (a) the steps taken to respond to this DIDP request, (b) each person who was involved in responding to and collecting documents for this DIDP request, and (c) each person contacted for documents potentially responsive for this DIDP.

## Response

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, but not limited to, Board meeting agenda (<https://www.icann.org/resources/pages/agendas->

[2014-03-24-en](https://www.icann.org/resources/pages/resolutions-2014-03-24-en)), Board approved resolutions (<https://www.icann.org/resources/pages/resolutions-2014-03-24-en>), Board briefing materials (<https://www.icann.org/resources/pages/briefing-materials-2014-03-24-en>), Board preliminary reports (<https://www.icann.org/resources/pages/preliminary-reports-2014-03-24-en>), Board minutes (<https://www.icann.org/resources/pages/minutes-2014-03-24-en>), IRP documents (<https://www.icann.org/resources/pages/accountability/irp-en>), litigation documents (<https://www.icann.org/resources/pages/governance/litigation-en>), and correspondence (<https://www.icann.org/resources/pages/correspondence>). As discussed in detail below, many of the documentary information responsive to your Request have already been published on these webpages.

Item Nos. 1(a), 2, 3, 4, 6, 7, 8, 9, 17

These nine categories of documents, stated in full above, seek the disclosure of information relating to the ICANN Board's consideration of the IRP Panel's Final Determination in the *Afilias v. ICANN IRP* (Afilias IRP Final Declaration or Final Declaration). As many of these requests are overlapping and seek many of the same documents, they will be addressed together.

The Afilias IRP Final Declaration was issued on 20 May 2021, a corrected version was issued on 15 July 2021, and that version was deemed "final" as of 21 December 2021 when the Panel denied Afilias' subsequent challenge. (Board Resolutions 2022.01.16.12 – 2022.01.16.15, <https://www.icann.org/resources/board-material/resolutions-2022-01-16-en#2.b>.) Once the Afilias IRP Final Declaration was deemed "final" on 21 December 2021, the ICANN Board considered the Final Declaration at its next meeting, in accordance with the requirements set forth under Article 4, Section 4.3(x)(iii)(A) of the ICANN Bylaws. This Board meeting took place on 16 January 2022. At the meeting, Board took the following actions relating to the Afilias IRP Final Declaration.

Resolved (2022.01.16.13), the Board directs the President and CEO, or his designee(s), to take all steps necessary to reimburse Afilias in the amount of US\$450,000 in legal fees and US\$479,458.27 for its share of the IRP costs in furtherance of the Panel's Final Declaration.

Resolved (2022.01.16.13), the Board directs the President and CEO, or his designee(s), to take all steps necessary to reimburse Afilias in the amount of US\$450,000 in legal fees and US\$479,458.27 for its share of the IRP costs in furtherance of the Panel's Final Declaration.

Resolved (2022.01.16.14), further consideration is needed regarding the IRP Panel's non-binding recommendation that ICANN "stay any and all action or decision that would further the delegation of the .WEB gTLD until such time as the [ICANN] Board has considered the opinion of the Panel in this Final Decision, and, in particular (a) considered and pronounced upon the question of whether the DAA complied with the New gTLD Program Rules following [Afilias'] complaints that it violated the Guidebook and Auction Rules and, as the

case may be, (b) determined whether by reason of any violation of the Guidebook and Auction Rules, NDC's application for .WEB should be rejected and its bids at the auction disqualified."

Resolved (2022.01.16.15), the Board asks the Board Accountability Mechanisms Committee (BAMC) to review, consider, and evaluate the IRP Panel's Final Declaration and recommendation, and to provide the Board with its findings to consider and act upon before the organization takes any further action toward the processing of the .WEB application(s).

(Board Resolutions 2022.01.16.12 – 2022.01.16.15, available at <https://www.icann.org/resources/board-material/resolutions-2022-01-16-en#2.b>.)

Item Nos.1(a) and 17 seek documentary information reflecting the analysis undertaken by ICANN org of the Afiliis IRP Final Declaration and all documents created by ICANN org relating to the Final Declaration. Item Nos. 2, 3, 4, 6, 7, and 8 ask for documents provided to and considered by the Board at the 16 January 2022 meeting. The following documents contain information responsive to these items and have already been published on icann.org.

- “.WEB Independent Review Process Update”, Announcement, 25 May 2021, available at <https://www.icann.org/en/announcements/details/web-independent-review-process-update-25-5-2021-en>.
- ICANN’s Response to Afiliis’ Article 33 Application, available at <https://www.icann.org/en/system/files/files/irp-afiliis-icann-response-article-33-application-06aug21-en.pdf>.
- Board Resolutions 2022.01.16.12 – 2022.01.16.15, available at <https://www.icann.org/resources/board-material/resolutions-2022-01-16-en - 2.b>
- Preliminary Report of the 16 January 2022 Board Meeting, available at <https://www.icann.org/resources/board-material/prelim-report-2022-01-16-en>.

Additionally, the minutes of the 16 January 2022 Board meeting and the briefing materials regarding the Afiliis IRP Final Declaration that were prepared by ICANN org and provided to the Board for consideration will be published at <https://www.icann.org/resources/pages/2022-board-meetings> once the minutes have been approved by the Board. To the extent that there are additional ICANN-internal documents responsive to this item, such documents are subject to the following Nondisclosure Conditions and are therefore not appropriate for disclosure:

- 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 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.

#### Item Nos. 1(b) and 9

Item No. 1(b) asks for the procedure for addressing the Final Declaration. Information responsive to this item can be found in Article 4, Section 4.3(x)(iii)(A) of the ICANN Bylaws, which provides that “[w]here feasible, the Board shall consider its response to IRP Panel decisions at the Board's next meeting, and shall affirm or reject compliance with the decision on the public record based on an expressed rationale.” (ICANN Bylaws, Art. 4, Sec. 4.3(x)(iii)(A), <https://www.icann.org/resources/pages/governance/bylaws-en/#article4>.)

Item No. 9 asks for documents reflecting or relating to the scheduling of the 16 January 2022 Board Meeting. The Afilias IRP Final Declaration was deemed “final” on 21 December 2021, immediately before the ICANN org year-end shut down. The 16 January Board meeting was noticed on 10 January 2021, which was the first practicable opportunity to notice a Board meeting upon the org’s and Board’s return from the shut down and previously scheduled holiday vacations. Contrary to the assertion in the request, the Board meeting was properly notice in accordance with Article 3, Section 3.4 of the ICANN Bylaws. (See ICANN Bylaws, Art. 3, Sec. 3.4 (“At least seven days in advance of each Board meeting (*or, if not practicable, as far in advance as practicable*), a notice of such meeting, and, to the extent know, an agenda for the meeting shall be posted.”) (emphasis added).) The document responsive to this request is published at <https://www.icann.org/resources/board-material/agenda-2022-01-16-en>. To the extent that there are additional ICANN-internal documents responsive to this item, such documents are subject to the following Nondisclosure Conditions and are therefore not appropriate for disclosure:

- 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 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.

### Item No. 5

Item No. 5 asks ICANN org to provide “[a]ll documents that ICANN considered to assess whether [Nu Dotco, LLC] NDC violated the [New gTLD Applicant] Guidebook and whether NDC should be disqualified as a result of such violation(s), and any list and/or summary of such documents.”

As discussed above, on 16 January 2022, in Resolutions 2022.01.16.14 and 2022.01.16.15, the ICANN Board asked the BAMC to review, consider, and evaluate the IRP Panel's Final Declaration and “non-binding recommendation that ICANN ‘stay any and all action or decision that would further the delegation of the .WEB gTLD until such time as the [ICANN] Board has considered the opinion of the Panel in this Final Decision, and, in particular (a) considered and pronounced upon the question of whether the DAA complied with the New gTLD Program Rules following [Afilias'] complaints that it violated the Guidebook and Auction Rules and, as the case may be, (b) determined whether by reason of any violation of the Guidebook and Auction Rules, NDC's application for .WEB should be rejected and its bids at the auction disqualified.” (Resolutions 2022.01.16.14 – 2022.01.16.15, <https://www.icann.org/resources/board-material/resolutions-2022-01-16-en#2.b>.) The following documents contain information responsive to this request:

- Board Resolutions 2022.01.16.12 – 2022.01.16.15, available at <https://www.icann.org/resources/board-material/resolutions-2022-01-16-en - 2.b>
- Preliminary Report of the 16 January 2022 Board Meeting, available at <https://www.icann.org/resources/board-material/prelim-report-2022-01-16-en>.

Additionally, the minutes of the 16 January 2022 Board meeting and the briefing materials regarding the Afilias IRP Final Declaration that were prepared by ICANN org and provided to the Board for consideration will be published at <https://www.icann.org/resources/pages/2022-board-meetings> once the minutes are approved by the Board. To the extent that there are additional ICANN-internal documents responsive to this item, such documents are subject to the following Nondisclosure Conditions and are therefore not appropriate for disclosure:

- 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 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.

With respect to the request for “any list and/or summary of such documents,” no such document exists that is responsive to this item. Additionally, under the DIDP, ICANN org is not required to create or compile summaries of any documented information.

#### Item No. 10

Item No. 10 ask ICANN provide “[a]ll documents reflecting or relating to any analysis or consideration by ICANN of whether to maintain the DAA as confidential, including, without limitation, any communications about the purported confidentiality of the DAA between (a) ICANN and (b) Verisign and/or NDC.” A letter from Verisign attaching the DAA between Verisign and NDC was provided to counsel for the Requestor in discovery during the *Afilias v. ICANN* IRP. To the extent that there are ICANN-internal documents responsive to this item, such documents are subject to the following Nondisclosure Conditions and are therefore not appropriate for disclosure:

- 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 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.
- 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.

#### Item No. 11

This items asks for documents reflecting any communications between ICANN and Versign and/or NDC concerning .WEB following the Final Determination through the date of this Request. Information responsive to this item has been published at <https://www.icann.org/en/system/files/correspondence/marenberg-to-botterman-23jul21-en.pdf>.

#### Item Nos. 12 and 13

Item No. 12 asks for the following:

All documents reflecting or relating to any consideration given by ICANN to (a) the letter from A. Ali to J. LeVee dated 28 May 2021; (b) the letter from A. Ali to M. Botterman dated 3 November 2021; (c) the request made in the email from A.



de Gramont to E. Enson for confirmation that the 3 November 2021 and attachments were provided to the ICANN Board; (d) the letter from A. Ali to J. LeVee dated 20 December 2021; and (e) the letter from A. Ali to J. LeVee dated 12 January 2022, including, without limitation, documents sufficient to show whether each such letter or email was provided to anyone at ICANN, and if so, whether it was provided to anyone at ICANN outside its Legal Department.

Item No. 13 asks ICANN org to provide “documents reflecting or relating to any consideration given by ICANN to the letter from S. Marenberg to M. Botterman dated 23 July 2021, including, without limitation, documents sufficient to show whether the letter was provided to anyone at ICANN, and if so, whether it was provided to anyone at ICANN outside its Legal Department.”

These requests seek the disclosure of documentary information subject to the following Nondisclosure Conditions and are not appropriate for disclosure:

- 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 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.

It should be noted that the correspondence referenced in Item Nos. 12(b) and No. 13 have been published on the ICANN Correspondence page at <https://www.icann.org/en/system/files/correspondence/ali-to-botterman-03nov21-en.pdf> and <https://www.icann.org/en/system/files/correspondence/marenberg-to-botterman-23jul21-en.pdf>.

#### Item Nos. 14, 15, and 16

These items seek the disclosure of documentary information concerning the “Blackout period” violations alleged by Verisign and/or NDC against Afilias, including communications between Verisign and/or NDC and ICANN (Item No. 14), investigations conducted by ICANN (Item No. 15), and communications within ICANN (Item No. 16), and documents reflecting any consideration by ICANN org of the alleged violations (Item No. 16).

With respect to Item No. 14, information responsive this item has been published at <https://www.icann.org/en/system/files/correspondence/marenberg-to-botterman-23jul21-en.pdf>, and <https://www.icann.org/resources/pages/irp-afilias-v-icann-2018-11-30-en>.

With respect to Item Nos. 15 and 16, ICANN org conducted a thorough search for documents responsive to the requests in accordance with the [DIDP Response Process](#). ICANN org is not in possession, custody or control of any documents responsive to these items because no such documents exist.

#### Item No. 17

Item No. 17 seek the disclosure of “[d]ocuments sufficient to show (a) the steps taken to respond to this DIDP request, (b) each person who was involved in responding to and collecting documents for this DIDP request, and (c) each person contacted for documents potentially responsive for this DIDP.”

With respect to Item 17(a), in responding to this DIDP Request, ICANN org followed the DIDP Response Process, published at <https://www.icann.org/en/system/files/files/didp-response-process-29oct13-en.pdf>. For Items 17(b) and 17(c), to the extent that there are any documents responsive to these items, such as email communications, notes, calendar invitations, such documents are subject to the following Nondisclosure Conditions and are therefore not appropriate for disclosure.

- 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 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.

#### 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. ICANN org hopes this information is helpful. If you have any further inquiries, please forward them to [didp@icann.org](mailto:didp@icann.org).