To: Ephraim Percy Kenyanito on behalf of ARTICLE 19

Date: 10 July 2020

Re: Request No. 20200610-1

This is in response to your request for documentary information (Request), which was submitted on 10 June 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 the following documentary information in connection with Work Stream 2 (WS2) recommendations regarding improvements to the ICANN Office of the Ombuds (IOO).

1. Documents and exact details of budget in both staff time and resources to support the Implementation of Workstream 2 Recommendations earmarked for the ICANN Ombudsman for FY20 and FY21-25.

2. The documents and details of any engagement carried out towards amendments to the Ombudsman Framework and the Online Dispute Resolution Standards of Practice since the 2019 Board Resolution.

3. Whether the Ombudsman has defined timelines for its own handling of complaints and report against these on a quarterly and annual basis.

4. Whether the IOO has taken any steps toward ensuring that it has gender and, if possible, other forms of diversity within its staff resources in line with the recommendations.

5. The copy of the IOO officers employment contracts and if any changes have been made to strengthen independence of the office.

6. Whether the IOO and ICANN have established the Ombudsman Advisory Panel and details about them.

7. Documents and details of training and how frequent they are carried out to improve the capacity of the IOO.

8. Documents and details of any actions taken towards the revision of the exception for information requests which are "not reasonable, excessive or overly burdensome, not feasible, abusive or vexatious, or made by a vexatious or

querulous individual" so that either the Ombudsman or the Complaints Officer automatically reviews any decision to use this exception.

9. Documents and details of any actions taken towards boosting the Ombudsman's mandate regarding transparency to grant the office a stronger promotional role, including integrating the understanding of transparency and the DIDP into ICANN's broader outreach efforts, by publishing a list of the categories of information ICANN holds.

10. Any other steps undertaken to the implementation of Workstream 2 Recommendations Implementation to ensure a free, fair and impartial Ombudsman.

Response

I.   Background Information

     A. ICANN Office of the Ombuds (IOO)

The IOO is an accountability mechanisms established by the ICANN Bylaws to enable members of the ICANN community to bring issues forward in a non-adversarial manner and, to "facilitate the fair, impartial, and timely resolution of problems and complaints that affected members of the ICANN community." (*See* Bylaws, Art. 5 (effective 28 Nov. 2019.).) The Ombuds is an independent, impartial and neutral party who reports directly to the ICANN Board and is not a member of ICANN staff. (*See* https://www.icann.org/ombudsman.) The Ombuds is bounded by the ICANN Bylaws and the Ombuds Framework. (*Id.*) Article 5 of the Bylaws provides:

> The principal function of the Ombudsman shall be to provide an independent internal evaluation of complaints by members of the ICANN community who believe that the ICANN staff, Board or an ICANN constituent body has treated them unfairly. The Ombudsman shall serve as an objective advocate for fairness, and shall seek to evaluate and where possible resolve complaints about unfair or inappropriate treatment by ICANN staff, the Board, or ICANN constituent bodies, clarifying the issues and using conflict resolution tools such as negotiation, facilitation, and "shuttle diplomacy" to achieve these results.

(Bylaws, Art. 5, Sec. 5.2.) All matters brought before the IOO are responded to within 48 hours and all matters are treated as confidential. (*See* https://www.icann.org/en/system/files/files/annual-report-2019-30jun19-en.pdf, pg. 7.) Once a complaint is filed, the Ombuds shall use ADR techniques to facilitate the fair, independent, impartial, and timely resolution of complaints. (*See* Ombuds Framework, pg. 2.) The Ombuds shall have the power to make recommendations to the Board of Directors with respect to matters arising from complaints reviewed by the Ombuds. (*Id.* at pg. 3.) Where a recommendation has been made to the Board of Directors, the

Board shall respond to the Ombuds within 60 days following their next Board meeting following a recommendation. (*Id.*)

Every year, the IOO publishes an Annual Report containing a consolidated analysis of the year's complaints and resolutions, including a description of any trends or common elements of complaints received and recommendations for steps that could be taken to minimize future complaints. (*See* the latest IOO Annual Report from FY19.) The report also provides updates on the Ombuds' outreach activities, efforts on promoting and enforcing ICANN Expected Standards of Behavior and activities focusing on professional development. (*Id.*) All IOO Annual Reports available to date are available on the Ombudsman Annual Reports and Publications page.

B. The Cross Community Working Group on Enhancing ICANN Accountability's (CCWG-Accountability) Work Stream 2 (WS2) Recommendations

On 9 November 2019, the ICANN Board adopted the CCWG-Accountability WS2 – Final Report (WS2 Final Report) which contains nearly 100 individual recommendations across eight different topics including the IOO. (*See* WS2 Final Report, pgs. 3-4.) Section 5 of the WS2 Final Report sets forth the recommendations for improving the IOO. (*See id.* at pgs. 25-28.) These recommendations focus on five areas:

1. Clarity of roles and processes.
2. Standing and authority of the Ombuds.
3. Strengthening the independence of the office.
4. Strengthening the transparency of the office.
5. Clarity for when the Ombuds should get involved in items that are not yet deemed within the jurisdiction of the office.

In May 2018, the ICANN Board asked ICANN org to prepare an implementation assessment report prior to the Board's consideration of the WS2 consensus recommendations. (*See* Letter from Chalaby, Chair of ICANN Board, to CCWG-Accountability Co-Chairs, dated 14 May 2018, https://www.icann.org/en/system/files/correspondence/chalaby-to-rickert-et-al-14may18-en.pdf.) In response, ICANN org prepared the WS2 Implementation Assessment Report outlining the recommendations and considerations of efforts required from the community, Board, and ICANN org on the implementation for each of the WS2 recommendations. (*See* WS2 Implementation Assessment Report, pg. 4.)

On 9 November 2019, the Board adopted each of the consensus recommendations contained within the WS2 Final Report and directed the "ICANN President and CEO, or his designee(s), to proceed with the implementation of the WS2 Recommendations, including the considerations identified in the WS2 Implementation Assessment Report." (*See* Board Resolutions 2019.11.07.37 – 2019.11.07.41 and supporting rationale.) The Board further directed:

> [T]he ICANN President and CEO, or his designee(s), to start implementation on those recommendations provided in the WS2

Final Report that are possible to move forward without waiting for a budgeting cycle. This includes providing support as available to the ICANN community for those parts of the WS2 recommendations that are community driven in implementation. As much as possible, work should begin upon adoption of the WS2 recommendations.

[T]he ICANN President and CEO, or his designee(s), to provide regular implementation status reports to the Board, as committed in the WS2 Implementation Assessment Report.

[F]or all WS2 recommendations that are identified for the ICANN community, the Board directs the ICANN President and CEO, or his designee(s), to notify the relevant community groups of their adoption. The Board requests that all parts of the ICANN community that are responsible for implementation of recommendations participate in reaching a successful implementation.

(*Id.*)

C. Implementation of the WS2 Recommendations

Implementation of WS2 recommendations is a priority for ICANN org. As discussed in detail in ICANN org's response to your DIDP request on the implementation of WS2 recommendations ([DIDP Response 20200610-2](#)), which is incorporated herein by reference. ICANN org has put together an internal staff team focused on key areas of the recommendations to align with the planning function in an effort to identify the work underway, prioritize for the current operational period, and future planning and budgeting cycles, which are tied to the greater issue of [prioritizing implementation of all community-issued recommendations](#).

On 8 May 2020, ICANN org published a status update on the implementation efforts of the WS2 recommendations. (*See* Blog from T. Swinehart, dated 8 May 2020, https://www.icann.org/news/blog/moving-toward-implementation-next-steps-for-work-stream-2.) The update informed on the work that has been completed and noted areas in which the community plays an important role in prioritization, planning, and executing implementation work. (*See id.)*

II.   Your Request

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.

Item No. 1

Item No. 1 seeks "[d]ocuments and exact details of budget in both staff time and resources to support the Implementation of Workstream 2 Recommendations earmarked for the ICANN Ombudsman for FY20 and FY21-25." The implementation of the WS2 recommendations on improving the IOO falls within the overall budget for implementation of WS2 recommendations. This request falls under Item No. 3 of DIDP Request 20200610-2. The response is set forth in DIDP Response 20200610-2 and is incorporated herein by reference.

Item Nos. 2 through 6 and 10

Item Nos. 2 through 6 and 10 seek documents relating to the WS2 recommendations on improving the IOO. Specifically, these items seek documents relating to the following:

- documents and details of any engagement carried out towards amendments to the Ombudsman Framework and the Online Dispute Resolution Standards of Practice since the 2019 Board Resolution. (Item No. 2)

- defined timelines for handling of complaints and reports against these on a quarterly and annual basis. (Item No. 3)

- steps taken towards ensuring that the IOO has gender and, if possible, other forms of diversity within its staff resources in line with the WS2 recommendations. (Item No. 4)

- copies of the IOO officers' employment contracts and if any changes have been made to strengthen independence of the office. (Item No. 5)

- details about the establishment of the Ombudsman Advisory Panel. (Item No. 6)

- any other steps undertaken to the implementation of Workstream 2 Recommendations Implementation to ensure a free, fair and impartial Ombudsman. (Item No. 10)

As stated above, the ICANN Ombuds is an independent, impartial and neutral party that reports directly to the ICANN Board and is not a member of ICANN staff. The Ombuds is bounded by the ICANN Bylaws and the Ombuds Framework and acts as an informal dispute resolution office for the ICANN community. All complaints to the IOO are responded to within 48 hours and all matters are kept confidential. In some instances, additional investigation is needed to help the Ombuds conduct proper fact finding. With respect to Item No. 3, the ICANN Bylaws require that all complaints be resolved in a timely manner and as previously noted, the timelines for handling of complaints may vary depending on the nature of each complaint. Additional documentary information responsive to Item No. 3 can be located in the IOO Annual Reports on the Ombudsman Annual Reports and Publications page.

With respect to Item No. 4, the IOO recently made strides towards diversity enhancement through the appointment of an Adjunct Ombuds that brings gender diversity to the IOO. After a trial period covering three ICANN Public meetings, the Adjunct Ombuds continues to serve in her current role as the Adjunct Ombuds. (*See* https://www.icann.org/news/blog/update-from-the-office-of-the-ombudsman.) As for Item No. 5 which requests the employment contracts of the IOO, such responsive documents are 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 that, if disclosed, would or would be likely to endanger the life, health, or safety of any individual or materially prejudice the administration of justice.

With respect to Item Nos. 2, 6 and 10, the implementation work on those recommendations will be planned for the appropriate time in light of the other WS2 recommendations for the IOO. Currently, there are no documents in ICANN org's possession or control that are responsive to Item Nos. 2, 6 and 10.

Item No. 7
Item No. 7 seeks "[d]ocuments and details of training and how frequent they are carried out to improve the capacity of the IOO."

The current ICANN Ombuds is a member of three professional organizations that offer professional training and development: 1) the International Ombudsman Association (IOA); 2) the International Ombudsman Institute (IOI.); and 3) the Forum of Canadian Ombudsman (FCO). (*See* 2019 IOO Annual Report, pg. 18.) Each year, the Ombuds publishes an Annual Report containing a consolidated analysis of the year's complaints and resolutions. This report also includes, amongst other things, a summary of the Ombuds' professional training including conferences and programs that the IOO attended, facilitated, and completed. (*See* Ombudsman Annual Reports and Publications page.) Responsive documentation relating to the Ombuds training and frequency can be located in the Ombuds Annual Reports. (*See id.*)

Item Nos. 8 and 9
Item Nos. 8 and 9 seek the disclosure of documents relating the WS2 recommendations on improvements to ICANN Transparency, that include a recommendation of a specific role for the Ombuds outside of the IOO's normal activities. Specifically, Item No. 8 seeks "[d]ocuments and details of any actions taken towards the revision of the exception for information requests which are "not reasonable, excessive or overly burdensome, not feasible, abusive or vexatious, or made by a vexatious or querulous individual" so that either the Ombudsman or the Complaints Officer automatically reviews any decision to use this exception." Item No. 9 seeks "[d]ocuments and details of any actions taken towards boosting the Ombudsman's mandate regarding transparency to grant the office a stronger promotional role, including integrating the understanding of transparency and the DIDP into ICANN's broader outreach efforts, by publishing a list of the categories of information ICANN holds."

As Recommendation 5.11 of the WS2 Final Report notes, the two recommendations that arose out of the Transparency sub-group of WS2 should be "considered using the criteria in Recommendation [5.]11." Specifically, that recommendation sets out considerations for public consideration of the Ombuds' involvement in non-complaints work. Implementation efforts to evaluate the propriety of IOO's involvement in the transparency work has not yet commenced, therefore, there are no documents responsive to Item Nos. 8 and 9.

Public Interest in Disclosure of Information Subject to Nondisclosure Conditions

Notwithstanding the applicable Nondisclosure Conditions identified in this Response to all of the Items requested, ICANN org 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 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.