

To: Michael Palage

Date: 14 September 2023

Re: Request No. 20230815-1

This is in response to your request for documentary information (Request), which was submitted on 15 August 2023 pursuant to the Internet Corporation for Assigned Names and Numbers' (ICANN) 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 multiple categories of documents. The specific requests are stated in full below and without modification; your request is also attached to this Response.

1. Item No. 1:
 - a. Any documents related to specific work has ICANN Org and Verisign did “with the ICANN community and within ICANN processes” to develop “best practices” for registry operators to address Security Threats.
 - b. Any documents that either ICANN Org or Verisign developed and made public in connection with registry operator “best practices”.
 - c. Any documents related to “new or enhanced contractual obligations”?
 - d. Any documents related to the meetings (at least monthly) between itself and Verisign involving subject matter experts relating to Security Threats?
 - e. Any documents related to the “appropriate tools, methods and metrics, make available technical expertise, and identify funding sources where appropriate, to develop measurement and mitigation criteria for Security Threats targeting or otherwise leveraging the DNS and/or broader DNS ecosystem” prepared by either ICANN or Verisign.
 - f. Any published communications (produced at least twice annually) available the “to provide education about methods to help DNS stakeholders mitigate Security Threats.”
 - g. Copies of the annual Confirmation letter(s) of the ICANN Officer confirming “ICANN has incurred costs up to or in excess of the Payment Amount in conducting SSR Activities during the then- expiring SSR Period.”
 - h. Any documents related to the detailed accounting of how these \$4 million dollars were spent.

2. Item No. 2:

- a. Any documents related to the annual aggregate fees received by ICANN Org from Verisign in connection with this provision of the .NET registry agreement (current and past agreements).
- b. Any documents related to the “special restricted fund for developing country Internet communities to enable further participation in the ICANN mission by developing country stakeholders”
- c. Any documents related to the “special restricted fund to enhance and facilitate the security and stability of the DNS” including any .NET supply chain security issues, e.g Article 21 of NIS 2.0.
- d. The .NET agreement contains a provision that “ICANN will not be required to segregate funds for any such purpose or establish separate accounts for such funds.” Can ICANN Org provide any documents provided by or to its auditors or the Board Finance Committee on why the excessive \$4 million dollars Verisign pays in connection with .COM (see Request #1 above) appears to be accounted for differently in the ICANN Annual Budget as opposed to the excessive \$6 million that Verisign is paying ICANN Org in connection with .NET?
- e. Any documents in ICANN Org’s possession on why it believes imposing fees in excess of \$6 million dollars above the baseline registry agreement on Verisign does not constitute “arbitrarily, unjustifiably, or inequitably” actions.

3. Item No. 3:

- a. A copy of the document which Goran read in response to my question posed to him at ICANN75 public forum.
- b. Any meeting invitations between ICANN Org and the contracting parties at or before ICANN75.
- c. Any documents exchanged between and Contracting Parties and ICANN Org following the May 2022 Internet & Jurisdiction (I&J) involving: DNS Abuse; Security Threats (as defined in the ICANN Org and Verisign Letter of Intent); contract negotiations; and any GNSO policy development in the area of DNS Abuse.
- d. Any list (email, Skype, etc) of contracting parties engaged in these negotiations pre July 2022.
- e. The readout of the I&J May event identified Trusted Notifier as being a topic of discussion during this event. In 2018 Verisign and the NTIA entered into amendment 35 to the cooperative agreement which stated in relevant part that “NTIA looks forward to working with Verisign and other

- ICANN stakeholders in the coming year on trusted notifier programs to provide transparency and accountability in the .com top-level domain.”
- f. Can ICANN Org provide any documents related to discussions it held with any contracting parties regarding a Trusted Notifier Program since 2018.
 - g. Can ICANN Org provide any documents (e.g. talking points) provided to it by contracting parties in advance or at the ICANN75 annual meeting in relation to any of the subject matter covered by the DIDP request?
4. Item No. 4 – “Can ICANN please make available the Zoom recordings from the ICANN Contracting party summit held in Los Angeles, California on November 1st thru the 4th”?

Response

The DIDP is a mechanism, developed through community consultation, to ensure that information contained in documents concerning ICANN, and within ICANN's possession, custody, or control, that are not already publicly available is made available to the public unless there is a compelling reason for confidentiality. (See <https://www.icann.org/resources/pages/didp-2023-01-24-en>.)

As part of its commitment to transparency, ICANN makes available a comprehensive set of materials on its websites as a matter of course, including, but not limited to, financial information (<https://www.icann.org/en/about/financials>), information related to ICANN's Domain Name System (DNS) Security Threat Mitigation Program (<https://www.icann.org/dns-security-threat>), information for and about generic top-level domain registry operators (<https://www.icann.org/resources/pages/registries/registries-en>), information for registrars (<https://www.icann.org/resources/pages/registrars-0d-2012-02-25-en>) and registrants (<https://www.icann.org/registrants>), correspondence (<https://www.icann.org/resources/pages/correspondence>), blogs (<https://www.icann.org/en/blogs>) and announcements (<https://www.icann.org/en/announcements>), major agreements and related reports (<https://www.icann.org/resources/pages/agreements-en>), public comment proceedings (<https://www.icann.org/en/public-comment>), and material information relating to the Generic Names Supporting Organization (<https://gns0.icann.org>).

This Response was prepared in accordance with the Process for Responding to ICANN's DIDP Requests. (See <https://www.icann.org/en/system/files/files/didp-response-process-21jan23-en.pdf>). As a preliminary matter, the Request is extremely overbroad in scope and time, and does not attempt to limit the information sought in any meaningful way. The Request consists of four main items with multiple sub-parts that overlap in subject matters and seek many of the same documents. As discussed in further detail below, many of the documents requested are already publicly available. ICANN is not required under the DIDP to provide documentary information in response to requests if such responsive documents are already publicly available. Further, ICANN is not required under the DIDP to create or compile summaries of any documented information. (<https://www.icann.org/resources/pages/didp-2023-01-24-en>).

The Request is contrary to the intent of the DIDP, which is designed to make documents related to ICANN available unless there is a compelling reason for confidentiality. The DIDP is not a mechanism for making broad documentary information requests that have already been published, nor is it intended to facilitate litigation-style discovery. ICANN further notes that the Request contains statements that are not substantiated by any evidence and appear to be argumentative in nature. ICANN's Response should not be construed as an agreement with or endorsement of such assertions. Additionally, to the extent that the Request is intended to include documents that are in the custody, possession, or control of a third party and not ICANN, such information is beyond the scope of this Response.

Item No. 1

Item No. 1, consisting of eight sub-parts as stated in full above, seeks the disclosure of documents related to efforts by ICANN and Verisign, Inc. (Verisign), the operator of the .COM and .NET top-level domains, to mitigate Domain Name System (DNS) security threats in line with the binding Letter of Intent (LOI) that was executed on 27 March 2020 as part of Amendment 3 to the .COM Registry Agreement (RA).¹ (See <https://www.icann.org/en/registry-agreements/details/com#amendments>; <https://itp.cdn.icann.org/en/files/registry-agreements/com/com-loi-27mar20-en.pdf>.) As many of the sub-parts overlap in subject matter and seek many of the same documents, they will be addressed together under their respective categories below.

Amendment 3 to the .COM RA and the LOI contain commitments by ICANN and Verisign to mitigate DNS security threats. Specifically, Amendment 3 includes certain obligations that directly relate to the mitigation of DNS security threats. The requirements are based on [Specification 11, Sections 3A and 3B](#) of the Base RA, which obligate the registry operator to: (i) require its accredited registrars to include in their registration agreements provisions prohibiting domains from being used to perpetrate DNS security threats; and (ii) at least once a month conduct scans of its zone to identify domains being used to perpetrate DNS security threats. In addition to the contractual requirements in Amendment 3, the LOI sets forth a framework between ICANN and Verisign to work together on additional initiatives related to enhancing the security, stability, and resiliency of the DNS. (See <https://itp.cdn.icann.org/en/files/registry-agreements/com/com-loi-27mar20-en.pdf>. See also, <https://itp.cdn.icann.org/en/files/registry-agreements/com/com-decision-document-27mar20-en.pdf>; [---

¹ Amendment 3 and the Letter of Intent \(LOI\) arose from obligations in amendment \[No. 1 to the .COM RA \\(Amendment 1\\), dated 20 October 2016\]\(#\). Amendment 1 required the parties to cooperate and negotiate in good faith to amend the .COM RA if and when the Department of Commerce and Verisign made changes to the Cooperative Agreement, to ensure those changes were reflected in the .COM RA and to amend the terms to preserve and enhance the security and stability of the Internet or the .COM TLD. \(See Decision Paper for .COM Amendment No. 3 and Letter of Intent, <https://itp.cdn.icann.org/en/files/registry-agreements/com/com-decision-document-27mar20-en.pdf>.\) Amendment 3 and the LOI were the result of bilateral negotiations between ICANN and Verisign, and were published for public comment. \(<https://www.icann.org/en/public-comment/proceeding/proposed-amendment-3-to-the-com-registry-agreement-03-01-2020>.\)](https://www.icann.org/en/blogs/details/icann-decides-on-com-</p></div><div data-bbox=)

[amendment-and-proposed-binding-letter-of-intent-between-icann-and-verisign-27-3-2020-en.](#)) The LOI also provides that Verisign will contribute US\$20 million over five years, beginning on 1 January 2021, to support ICANN's initiatives to preserve and enhance the security, stability, and resiliency of the DNS. This includes activities related to root server system governance, mitigation of DNS security threats, promotion and/or facilitation of Domain Name System Security Extensions (DNSSEC) deployment, the mitigation of name collisions, and research into the operation of the DNS (collectively "SSR Activities"). (See *id.*)

On 1 July 2023, the LOI was amended to apply to the .NET RA in addition to the .COM RA as part of the .NET RA renewal. (See First Amendment to LOI, <https://itp.cdn.icann.org/en/files/registry-agreements/multiple/verisign-loi-amendment-1-01-07-2023-en.pdf>. See also, Decision Paper re 2023 .NET RA, <https://itp.cdn.icann.org/en/files/registry-agreements/net/net-decision-paper-2023-agreement-29-06-2023-en.pdf>.)

Item No.1 and its sub-parts seek documents relating to the following categories: (i) mitigation efforts to address DNS security threats, and (ii) funding provided by Verisign to ICANN to support SSR Activities.

- Documents relating to mitigation efforts to address DNS security threats (Item Nos. 1(a), (b), (c), (d), (e) and (f))

As noted above, as part of its commitment to transparency, ICANN makes available a comprehensive set of materials on its websites as a matter of course, which includes information relating to mitigation efforts undertaken by ICANN and Verisign to address DNS abuse, and which are responsive to these requests. While ICANN is not required under the DIDP to respond to requests seeking documentary information that is already publicly available, for your convenience, ICANN notes that documentary information responsive can be found at the following webpages: [ICANN's Domain Name System \(DNS\) Security Threat Mitigation Program webpage](#), [registry operators webpage](#), [registrars webpage](#), [correspondence](#), [blogs](#), [announcements](#), [major agreements and related reports](#), [public comment proceedings](#), [material information relating to the GNSO](#), ICANN DNS Symposium webpages for ([2023](#), [2022](#), [2021](#)), [Domain Abuse Activity Reporting webpage](#), [Special Interest Forums on Technology webpage](#), [Security Response Waiver Requests for Registry Operators webpage](#).

- Documents relating to funding provided by Verisign to support SSR Activities Item Nos. 1(g) and (h)

These items seek "copies of the annual Confirmation letter(s) of the ICANN Officer confirming 'ICANN has incurred costs up to or in excess of the Payment Amount in conducting SSR Activities during the then- expiring SSR Period' (Item No. 1(g)) and "any documents related to the detailed accounting of how these \$4 million dollars were spent" (Item No. 1(h)). To date, ICANN has sent two letters to Verisign in accordance with the LOI, one in December 2021 and another in December 2022, confirming that

ICANN incurred costs in excess of US\$4 million conducting security, stability and resiliency activities during the period of January through December of that respective year. These letters are responsive to Item No. 1(g) and will be published on the [correspondence webpage](#) by the end of the month. Please keep a lookout for the publication of those letters. As it relates to Item No. 1(h), the information responsive to this request is has already been published on the financial information webpage, including, but not limited to, the following:

- [ICANN FY22-FY26 Operating and Financial Plan and FY22 Operating Plan and Budget](#)
- [ICANN FY22 Budget](#)
- [ICANN's FY22 Consolidated Audited Financial Statements](#)
- [ICANN FY23 – FY27 Operating and Financial Plan and FY23 Operating Plan](#)
- [ICANN FY23 Budget](#)

To the extent that there are additional ICANN-internal documents responsive to Item Nos. 1(a) through 1(h) that have not been published, such as meeting notes, draft documents, or emails, 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.
- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.
- 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 that, if disclosed, could be harmful to an ongoing deliberative or decision-making process, or are subject to another Condition for Non-Disclosure.
- Materials, including but not limited to, trade secrets, commercial and financial information, confidential business information, and internal policies and procedures, the disclosure of which could materially harm ICANN's financial or business interests or the commercial interests of its stakeholders who have

those interests. Where the disclosure of documentary information depends upon prior approval from a third party, ICANN will contact the third party to determine whether they would consent to the disclosure in accordance with the DIDP Response Process.

Item No. 2

Item No. 2, consisting of five sub-parts as stated in full above, seeks the disclosure of documents relating to the registry level transaction fees under the .NET generic top-level domain (.NET RA) between ICANN and Verisign. For the sub-parts that overlap in subject matter and seek many of the same documents, they will be addressed together under their respective categories below.

Item No. 2(a) asks for “documents related to the annual aggregate fees received by ICANN Org from Verisign in connection with this provision of the .NET registry agreement (current and past agreements).” This request is overbroad, seeking documents spanning an 18-year period since the .NET RA was first executed in 2005 to the present, which imposes an unreasonable burden on ICANN. Information responsive to this request can be found in the Funding by Source Reports, from 2012 to the present, that are available on the [financial webpage](#), and the .NET Monthly Registry Reports, from January 2009 to the present, that are available at <https://www.icann.org/resources/pages/net-2014-03-04-en>.

Item Nos. 2(b) and (c) seek documents related to the special restricted funds “for developing country Internet communities to enable further participation in the ICANN mission by developing country stakeholders” and “to enhance and facilitate the security and stability of the DNS” specified under Section 7.2(a) of the .NET RA. Item No. 2(d) seeks documents on how the accounting for the funding received from Verisign under the LOI to support SSR Activities is different from the accounting for the registry-level transaction fee under the .NET RA.

Section 7.2. of the .NET RA provides, in relevant part,

(a) Registry-Level Transaction Fee and Sync Transaction Fee.
Registry Operator shall pay ICANN a Registry-Level Transaction Fee in an amount equal to US\$0.75 for each annual increment of an initial or renewal domain name registration and for transferring a domain name registration from one ICANN accredited registrar to another during the calendar quarter to which the Registry-Level Transaction Fee pertains. ICANN intends to apply this fee to purposes including: (a) a special restricted fund for developing country Internet communities to enable further participation in the ICANN mission by developing country stakeholders, (b) a special restricted fund to enhance and facilitate the security and stability of the DNS, and (c) general operating funds to support ICANN's mission to ensure the stable and secure operation of the DNS; provided, that ICANN will not be required to segregate funds for any such purpose or establish separate accounts for such funds.

Documentary information responsive to these requests can be found on pages 12-13 of the published [Report of Public Comment Proceed for the 2017 .NET RA renewal](#) and in the financial reports for each fiscal year published on the [financial information webpage](#).

To the extent that there are additional ICANN-internal documents responsive to Item Nos. 2(a) through 2(d) that have not been published, such as drafts documents or emails, 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.
- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.
- 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 that, if disclosed, could be harmful to an ongoing deliberative or decision-making process, or are subject to another Condition for Non-Disclosure.
- Materials, including but not limited to, trade secrets, commercial and financial information, confidential business information, and internal policies and procedures, the disclosure of which could materially harm ICANN's financial or business interests or the commercial interests of its stakeholders who have those interests. Where the disclosure of documentary information depends upon prior approval from a third party, ICANN will contact the third party to determine whether they would consent to the disclosure in accordance with the DIDP Response Process.

Item No. 2(e) assumes facts that are not substantiated by any evidence and is argumentative in nature. As such, there are no documents responsive to this request.

Item No. 3

Item No. 3, consisting of six sub-parts as stated in full above, seeks the disclosure of documents related to discussions between ICANN org and contracted parties on a path

forward to address DNS abuse between May to July 2022. As many of the sub-parts overlap in subject matter and seek many of the same documents, they will be addressed together under their respective categories below.

Item No. 3(a) requests that ICANN provide a “copy of the document which Göran [Marby] read in response to my question posed to him at ICANN75 public forum.” Item Nos. 3(b), (c), (d), and (f) seek the disclosure of documents, meeting invitations, and communication list relating to the discussions by contracted parties on a path forward to address DNS abuse between May to July 2022. With respect to Item No. 3(a), the transcript and recording of Mr. Marby’s response to the question that you raised during the ICANN75 public forum has been published at <https://archive.icann.org/meetings/icann75/meetings/LEnbxWoFzXwoxNdRa.html>. For additional ICANN-internal documents responsive to Items 3(a), (b), (c), (d), and (f), that have not been published, such as drafts documents, meeting invitations, or emails, 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.
- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.
- 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 that, if disclosed, could be harmful to an ongoing deliberative or decision-making process, or are subject to another Condition for Non-Disclosure.
- Materials, including but not limited to, trade secrets, commercial and financial information, confidential business information, and internal policies and procedures, the disclosure of which could materially harm ICANN's financial or business interests or the commercial interests of its stakeholders who have those interests. Where the disclosure of documentary information depends upon prior approval from a third party, ICANN will contact the third party to

determine whether they would consent to the disclosure in accordance with the DIDP Response Process.

Item 3(e) asks ICANN to provide documents related to “discussions it held with any contracting parties regarding a Trusted Notifier program since 2018.” The Trusted Notifier Pilot Program is a program intended to curb illegal online sales of unapproved opioids. Under the program, the National Telecommunications and Information Administration and the U.S. Food and Drug Administration will work with Neustar, Verisign, and Public Interest Registry to suspend the domain names of websites found to be illegally selling unapproved opioids. (<https://www.ntia.gov/press-release/2020/commerce-department-announces-ntia-pilot-program-hhs-fda-fight-illegal-online>). ICANN is not part of the Trusted Notifier Pilot Program and does not have any documents responsive to this request.

Item No. 4

This item asks ICANN to produce the Zoom recordings from the ICANN Contracted Parties Summit that was held from 1-4 November 2022 (2022 CP Summit). The Summit is intended to give contracted parties a platform for engaging in candid conversations about issues of mutual interest and importance. It is not intended to serve as a typical ICANN public meeting. (See <https://www.icann.org/cpsummit>). The aim of the Summit is to facilitate an environment conducive to honest dialogue. In alignment with this purpose, the 2022 CP Summit planning committee, which is composed of registrar and registry operator volunteers and supported by ICANN org staff, requested that the recordings from the 2022 CP Summit be shared exclusively with contracted parties and not be made publicly available. This approach was agreed to in advance of the 2022 CP Summit to foster a safe environment for open and honest dialogue, particularly on topics like DNS abuse and other challenges unique to contracted parties. Additionally, there were concerns that publishing the recordings could expose discussions about DNS abuse mitigation measures, thereby potentially creating vulnerabilities for the parties involved. Participation in the 2022 CP Summit was done under this understanding that the recordings would not be published publicly. The recordings of the sessions were provided to the primary and secondary contacts for registrars and registry operators following the 2022 CP Summit. Accordingly, the materials responsive to this request are subject to the following Nondisclosure Conditions and are therefore not appropriate for disclosure:

- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.
- Materials, including but not limited to, trade secrets, commercial and financial information, confidential business information, and internal policies and procedures, the disclosure of which could materially harm ICANN's financial

or business interests or the commercial interests of its stakeholders who have those interests. Where the disclosure of documentary information depends upon prior approval from a third party, ICANN will contact the third party to determine whether they would consent to the disclosure in accordance with the DIDP Response Process.

Public Interest in Disclosure of Information Subject to Nondisclosure Conditions

Notwithstanding the applicable Nondisclosure Conditions identified in this Response, ICANN 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 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's DIDP is limited to requests for documentary information already in existence within the organization that is not publicly available. In addition, the DIDP sets forth Defined Conditions of Nondisclosure. To review a copy of the DIDP, please see <https://www.icann.org/resources/pages/didp-2023-01-24-en>. ICANN makes every effort to be as responsive as possible to the entirety of a Request. As part of its accountability and transparency commitments, ICANN continually strives to provide as much information to the community as is reasonable. ICANN hopes this information is helpful. Please forward any further inquiries to didp@icann.org.