

**ARIF HYDER ALI**

Contact Information  
Redacted

1 April 2019

**VIA E-MAIL**

ICANN  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094  
didp@icann.org

**Re: Request for Documents pursuant to ICANN's Documentary Information Disclosure Policy**

Dear ICANN:

We write on behalf of our client, Afilias Domains No. 3 Limited (“**Afilias**”), regarding the recent update to the Independent Review Process-Implementation Oversight Team’s (“**IRP-IOT**”) website.<sup>1</sup> Prior to this most recent update, the last update to the IRP-IOT’s website had been made on 20 December 2018. No emails, meeting transcripts or other communications were posted for either January or February 2019.

We write to request (1) documents from ICANN related to the IRP-IOT’s activities during January and February 2019 and (2) additional “off-list correspondence” generated by and among IRP-IOT members, pursuant to ICANN’s Documentary Information Disclosure Policy (“**DIDP**”). The requested documents are pertinent to ongoing accountability proceedings relating to the .WEB gTLD initiated by Afilias.

ICANN is obligated by its Bylaws to maintain “open and transparent processes.”<sup>2</sup> The Bylaws require that ICANN (1) “[e]mploy open, transparent and bottom-up, multistakeholder policy development processes”<sup>3</sup> and (2) to “operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed

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<sup>1</sup> See “March 2019 Archives by date” ICANN (last visited 27 March 2019), *available at* <https://mm.icann.org/pipermail/iot/2019-March/date.html>; Email from D. McAuley to Members of the IRP-IOT (6 March 2019), *available at* <https://mm.icann.org/pipermail/iot/2019-March/000489.html>.

<sup>2</sup> ICANN Bylaws (18 June 2018), Art. 1, Sec. 1.2(a).

<sup>3</sup> *Id.*, Art. 1, Sec. 1.2(a)(iv).

to ensure fairness.”<sup>4</sup> The DIDP was created pursuant to these transparency obligations in order “to ensure that information contained in documents concerning ICANN's operational activities, and within ICANN's possession, custody, or control, is made available to the public unless there is a compelling reason for confidentiality.”<sup>5</sup>

Pursuant to the DIDP, Afiliis requests that ICANN disclose the following documents:

1. All communications, including email correspondence, between members of the IRP-IOT between 20 December 2018 and 1 April 2019;
2. All communications, including email correspondence, concerning David McAuley's absence from the IRP-IOT, as referenced in Malcolm Hutty's 6 March 2019 email to David McAuley;<sup>6</sup>
3. All IRP-IOT meeting transcripts for any meetings of the IRP-IOT that were held between 20 December 2018 and 1 April 2019; and
4. All “off-list correspondence” collected in response to Afiliis' 21 December 2018 DIDP Request. In its Response to that DIDP Request, ICANN represented the following:

ICANN org has also conducted a search for communications responsive to this request that were exchanged outside of the [iot@icann.org](mailto:iot@icann.org) listserv. To date, ICANN org has reviewed

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<sup>4</sup> *Id.*, Art. 3, Sec. 3.1.

<sup>5</sup> See ICANN DIDP, <https://icann.org/resources/pages/didp-2012-02-25-en>. In responding to a request submitted pursuant to the DIDP, ICANN adheres to its *Process for Responding to ICANN's Documentary Information Disclosure Policy (DIDP) Requests*.

<sup>6</sup> Malcolm Hutty told David McAuley that it was “Good to have you back” on 6 March 2019. See Email from M. Hutty to D. McAuley (6 March 2019), available at <https://mm.icann.org/pipermail/iot/2019-March/000490.html>. The IRP-IOT's posted correspondence, though, provides no further insight regarding McAuley's departure from and return to the IRP-IOT – which would explain the delay in his posting the draft letter to ICANN regarding the nature of ICANN Staff participation in the IRP-IOT. See IRP-IOT Meeting #45 Transcript (13 Dec. 2018), p. 12, available at [https://community.icann.org/download/attachments/99485223/IRP-IOT\\_13Dec2018\\_FINAL-en%5B1%5D.pdf?version=2&modificationDate=1545064924000&api=v2](https://community.icann.org/download/attachments/99485223/IRP-IOT_13Dec2018_FINAL-en%5B1%5D.pdf?version=2&modificationDate=1545064924000&api=v2) (containing statement by McAuley that he would post the draft letter to ICANN before January 2019); Email from D. McAuley to Members of the IRP-IOT (6 March 2019) (posting the draft letter to ICANN).


the majority of the emails collected in response to this request and has begun publishing responsive emails on the IRP-IOT community wiki page under “Off-List Correspondences” . . . ICANN org will continue its review of these emails to determine if additional documents should be publicly disclosed and if so, will post these documents on the IRP-IOT community wiki page on a rolling basis.<sup>7</sup>

ICANN has failed to make any update the “Off-List Correspondences” section of the IRP-IOT community wiki page and should do so now.

There are no compelling reasons as to why the requested documents should not be made available to Afiliias and posted publicly on the IRP-IOT wiki page. Indeed, the IRP-IOT’s consistent practice is to publicly post all of its meeting minutes and internal communications in furtherance of ICANN’s transparency obligations. In addition, the requested documents are relevant to the “important issues” for the global Internet community that were recognized by the Procedures Officer appointed in the *Afiliias Domains No. 3 Limited v. ICANN* Independent Review Process. We trust, therefore, that ICANN will agree with us that disclosure of the requested documents is required in the interests of transparency and to maintain the legitimacy of ICANN’s procedures.

We reserve the right to request additional documents based on the provision of the above documents.

Sincerely,



Arif Hyder Ali

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<sup>7</sup> DIDP Response to Request No. 20181221-1 (20 Jan. 2019), pp. 8-9, *available at* <https://www.icann.org/en/system/files/files/didp-20181221-1-ali-response-20jan19-en.pdf>.