**Request Under ICANN’s Documentary Information Disclosure Policy (DIDP)**

Applicant: Noncommercial Users Stakeholders Group (NCSG)

Contact E-mail:

Date of Request:

The Noncommercial Users Stakeholders Group (NCSG), with over 400 members the largest and most diverse member of ICANN’s Generic Names Supporting Organization (GNSO), applauds recent statements by ICANN Board members and staff that recognize the vital importance of accountability and transparency to ICANN’s central mission. Indeed, these issues are ones that have been integral to ICANN since it was created nearly sixteen years ago.

Article 4 of ICANN’s Articles of Incorporation requires ICANN to act through “open and transparent processes”. Article 7 of the Affirmation of Commitments requires ICANN “to adhere to transparent and accountable budgeting processes, fact-based policy development, cross-community deliberations, and responsive consultation procedures that provide detailed explanations of the basis for decisions.” ICANN is required by its corporate Bylaws to use “open and transparent policy development mechanisms” (Bylaws, article 1, section 2(7)) and “to operate to the maximum extent feasible in an open and transparent manner” (Bylaws, article III, section 1 (1)).

To meet these obligations ICANN has established a Documentary Information Disclosure Policy (DIDP) that requires it to “ensure that information contained in documents concerning ICANN’s operational activities, is made available to the public unless there is a compelling reason for confidentiality”. We note that under the DIDP ICANN is required to supply “information not already publicly available” to any member of the public so requesting it no later than 30 days from ICANN’s receipt of the information request.

ICANN has recently opened a comment period on a proposed Bylaws change regarding Board consideration of GAC Advice. This proposal has generated a great deal of discussion in the noncommercial community. We are in need of further information, information not yet made public via the ICANN website, in order to fully discharge our duties as representatives of noncommercial individuals and organizations worldwide within the GNSO.

Recognizing the hierarchical importance of any change to ICANN’s Bylaws, the NCSG respectfully requests that the following information be provided to it without delay per the terms of the DIDP:

1. All communication in any form between individual members of ICANN’s Board or staff and GAC representatives, or other government officials acting as GAC representatives, concerning the proposed Bylaw change that would raise the Board threshold for overriding GAC advice from a simple majority to 2/3 of Board members;

2. All communication in any form between the ICANN Board or staff and the GAC concerning the proposed Bylaw change that would raise the Board threshold for overriding GAC advice from a simple majority to 2/3 of Board members;

3. All GAC communications and record of deliberations, in all forms, both internal and /or external, concerning the proposed Bylaw change that would raise the Board threshold for overriding GAC advice from a simple majority to 2/3 of Board members;

4. All Board communications and record of deliberations, in all forms, both internal and /or external, concerning the proposed Bylaw change that would raise the Board threshold for overriding GAC advice from a simple majority to 2/3 of Board members;

5. All Board communications and record of deliberations, in all forms, both internal and/or external, related to the Board’s decision that the higher 2/3 threshold would be applied in the event ICANN determined that it wanted to act “inconsistently with GAC advice prior to the posting for and consideration of public comments on the required Bylaws revision”;

6. All BGRI communications and record of deliberations, in all forms, both internal and / or external, concerning the proposed Bylaw change that would raise the Board threshold for overriding GAC advice from a simple majority to 2/3 of Board members;

7. All ATRT1 communications specifically and directly related to increasing the Board threshold for overriding GAC advice;

8. All ATRT2 communications specifically and directly related to increasing the Board threshold for overriding GAC advice.

The information requested does not appear to be publicly available. Nor does the requested information meet any of the Defined Conditions of Nondisclosure (DCND):

1. The information requested was not “provided by or to a government or international organization”. The GAC is neither a government nor an international government but rather is an advisory committee set up under ICANN and thus is subject to the transparency requirements contained in ICANN’s Bylaws and in the Affirmation of Commitments;

2. The information requested is not “likely to compromise the integrity of ICANN’s deliberative and decision making process”. Indeed, it is important to remember that what is at issue here is a change to ICANN’s bylaws, the fundamental governing document of this corporation. It is absolutely essential that ICANN’s obligation to being transparent and open, per its Bylaws and contained within the Affirmation of Commitments, are met in this instance so we in the NCSG can properly carry out our role in the Bylaws revision process;

3. The information requested is not likely to compromise the integrity of the deliberative process within or between ICANN or its various constituencies. Indeed, as noted above full disclosure will enhance such processes;

4. The information requested does not pertain to “personnel, medical, contractual, remuneration” issues or touch upon anything that would compromise personal privacy;

5. The information requested will not prejudice any parties commercial, financial, or competitive interest;

6. The information requested does not concern confidential business information and/or internal policies and procedures. The Bylaws are public and are the base governing document for the corporation and not a set of confidential internal policies or procedures;

7. The information requested if disclosed will not endanger the life, health or safety of any individual nor prejudice the administration of justice;

8. The information requested is not subject to attorney-client prvilege;

9. We are not requested any drafts of forms of communication;

10. The information requested is not, in any way, related to the security or stability of the internet;

11. The information requested does not contain trade secrets or financial information;

12. This DIDP request is reasonable, is not excessive or overly burdensome, compliance is feasible and the request is made in good faith.

If despite the foregoing, ICANN deems the information we have requested to fall into one of the classifications covered by the DCND the information should still be made public per paragraph 14 of the DCND. The public interest in transparent processes during deliberations concerning a change in ICANN’s fundamental governing document, its Bylaws, certainly outweighs any minor harm disclosure may theoretically cause. There is no “compelling reason” here to deny us the documents we need so we can better represent noncommercial users within ICANN.

Thank you for your consideration of our Request.

Sincerely,