

## Response to Documentary Information Disclosure Policy Request

To: Mr. Flip Petillion, Crowell & Moring LLP

Date: 27 April 2013

Re: Request No. 20130328-1

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Thank you for your Request for Information dated 28 March 2013 (the “Request”), which was submitted through the Internet Corporation for Assigned Names and Numbers’ (ICANN) Documentary Information Disclosure Policy (DIDP). For reference, a copy of your Request is attached to the email forwarding this Response.

### Items Requested

In summary, the Request seeks “all documents directly and indirectly relating to (1) the standard used to determine whether gTLD strings are confusingly similar and (2) the specific determination that “.hotels” and “.hoteis” are confusingly similar.” The Request identified certain specific categories of documents, including:

- a. Reports of the String Similarity Panel detailing findings related to strings determined to be confusingly similar and considered for inclusion in contention sets, including analysis and reasons for finding of “sufficient[] dissimilar[ity]” or particular findings relating to “.hotels” and “.hoteis.” (Items 1, 2)
- b. Reports to the ICANN Board on the findings of the String Similarity Panel. (Item 3)
- c. Research reports, studies, surveys, polls, or similar materials created to evaluate whether gTLD strings were likely to create confusion, as well as instructions, work plans and scope of work descriptions or similar materials that include discussions of standards uses in evaluating string similarity or potential consumer confusion. (Items 4, 6)
- d. Documentation of any algorithm created to evaluate similarity between gTLD strings. (Item 5)
- e. Reports describing the selection criteria and/or the composition for the String Similarity Panel. (Item 7)

### Response

An independent String Similarity Panel (SSP), coordinated by InterConnect Communications, in partnership with the University College London, performed the string similarity review specified at Section 2.2.1.1 of the Applicant Guidebook, available at <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>. The Applicant Guidebook sets out detail regarding the string similarity review, including the review methodology. The SSP is responsible for the development of its own process

documentation and methodology for performing the string similarity review, and is also responsible for the maintenance of its own work papers. Many of the items that are sought from ICANN within the Request are therefore not in existence within ICANN and cannot be provided in response to the DIDP Request. ICANN will, however, shortly be posting the SSP's String Similarity Process and Workflow on the New gTLD microsite, likely at <http://newgtlds.icann.org/en/announcements-and-media/announcement-26feb13-en>.

The report of the SSP regarding contention sets is already publicly posted at <http://newgtlds.icann.org/en/announcements-and-media/announcement-26feb13-en>. ICANN is not in possession of the SSP's work papers, or other documentation containing further detail regarding findings for the strings at issue in your Request, or "analysis or reasons leading to the conclusion that [strings] were sufficiently dissimilar." To the extent that the New gTLD Program Committee (which stands in the stead of the Board on matters relating to the New gTLD Program) received any reporting regarding the findings of the SSP, those documents have already been evaluated for publication and are provided in the Board Briefing Material accompanying the New gTLD Program Committee minutes, at <http://www.icann.org/en/groups/board/meetings>.

Some of the documents already identified in this DIDP Request also meet the Request for research reports, studies, or other documentation evaluating the potential similarity of strings, or discussing standards for the evaluation of string similarity (item c above). To the extent ICANN has any other documentary information that falls within this category of information, those documents are not appropriate for public disclosure through the DIDP, as set forth below.

ICANN has already publicly announced that it identified the SWORD algorithm, available at <https://icann.sword-group.com/algorithm/>, to assist in evaluation of string similarity. The SWORD algorithm is not proprietary to or defined by ICANN, nor are the details of the SWORD algorithm available from ICANN. It is the work of an external company (SWORD). To the extent that ICANN has details of the SWORD algorithm, ICANN cannot distribute the proprietary information of a third party. In the event that the SSP may have utilized different algorithms in performing its work, ICANN does not maintain documentation related any other algorithms.

ICANN's scope of work and selection criteria for the SSP are set forth in the expressions of interest document that is publicly available at <http://archive.icann.org/en/topics/new-gtlds/eoi-string-sim-31jul09-en.pdf>. InterConnect Communications, in partnership with the University College London, the entities selected to perform the SSP work, were responsible for the compilation of the panel membership. The documentation received by ICANN in response to the expressions of interest, to the extent that it is responsive to your Request, is not appropriate for public disclosure due to the expectations of confidentiality that accompany such proposals.

The following Defined Conditions for Nondisclosure are applicable to this Request:

- 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 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.
- Confidential business information and/or internal policies and procedures.
- 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.
- Trade secrets and commercial and financial information not publicly disclosed by ICANN.

Although some of your analysis regarding the Conditions for Nondisclosure might have been relevant in a different context, such an analysis cannot be undertaken without reference to the documentation at issue. For example, ICANN cannot violate contractual conditions that require ICANN to maintain items as confidential solely because the Request proffers that no such conditions apply. Similarly, ICANN does not release draft documentation – particularly if draft documentation was shared for the purpose of facilitating deliberations or decision making – because drafts are not reliable sources for information on what actually occurred or standards that were actually applied. There are no particular circumstances here for which public interest in disclosing information subject to any of the Defined Conditions for Nondisclosure above outweighs the harm that may be caused to ICANN, its contractual relationships and its contractors deliberative processes by the requested disclosure.

### **About DIDP**

ICANN’s DIDP is limited to requests for information already in existence within ICANN that is not publicly available. In addition, the DIDP sets forth Defined Conditions of Nondisclosure. To review a copy of the DIDP, which is contained within the ICANN Accountability & Transparency: Framework and Principles please see <http://www.icann.org/en/about/transparency/didp>. ICANN makes every effort to be as responsive as possible to the entirety of your Request.

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