Response to Documentary Information Disclosure Policy Request

To: Jeffrey S. Smith on behalf of Commercial Connect, LLC

Date: 15 December 2015

Re: Request No. 20151117-1

Thank you for your Request for Information dated 17 November 2015 (Request), which was submitted through the Internet Corporation for Assigned Names and Numbers' (ICANN's) Documentary Information Disclosure Policy (DIDP) on behalf of Commercial Connect, LLC (Requester). For reference, a copy of your Request is attached to the email forwarding this Response.

Items Requested

Your Request seeks the following documentary information:

1. Please provide documentation that approved any new Policies and Procedures at ICANN that contradict the Summary – Principles, Recommendations & Implementation Guidelines in the Final Report from ICANN Generic Names Supporting Organization dated August 8, 2007 - http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm.

2. Documentation that led to the decision of only allowing three strings to be reconsidered at ICDR along with documents approving this decision and method of informing all of the entities that complained of inconsistent results and biased treatment.

3. Documentation that led to the appeals policy for the ICDR Name Similarity issues and the method of informing all of the entities that complained of inconsistent results and biased treatment.

4. Documentation on what led to the decision that applications are subject to name similarity instead of the actual string along with the documents approving this new policy along with the method of informing contention set owners and objectors.

5. Documentation on decisions made on how contention sets will be considered and performed at auction along with documents approving this new policy along with the method of informing contention set owners.

6. All letters and correspondence and communications pertaining to the instructions given to the Name Similarity panel as well as letters and objections to the determination of the Name similarity panel along with responses along with discussions and communication related to dealing the issue.

7. Policies and communications that led to the decision to reduce the allowable time allowed to submit a motion for reconsideration along with documents approving this new policy.

8. Audio Recording of Public Forum meeting on November 15th or 16th, 2000 in Marina del Ray, California which is missing from posted archives - http://wilkins.law.harvard.edu/misc/Static/icann/icann-111400&start=0-30-06&end=3-46-12.rm along with the board statements for that group of meetings.

Response

As a preliminary matter, please note that many of the items in the Request are based upon certain facts that are presumed to exist that are actually not in existence. Further, many of the items requested are based on your contentions, rather than based in fact, and thus the documents requested do not exist.

Item No. 1

Item No. 1 asks for "documentation that approved any new Policies and Procedures at ICANN that contradict the Summary – Principles, Recommendations & Implementation Guidelines in the Final Report from ICANN Generic Names Supporting Organization dated August 8, 2007 - http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm" (GNSO Final Report). The policy development process (PDP) for the introduction of new generic top-level domains began in 2005 and ended on 8 August 2007 when the Generic Names Supporting Organization (GNSO) published the Final Report. (*See* http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm.) The GNSO Final Report sets forth the principles, recommendations, and implementation guidelines for the introduction of new generic top-level domains. On 28 June 2008, the ICANN Board adopted 19 specific GNSO policy recommendations for implementing new gTLDs set forth in the GNSO Final Report. (http://www.icann.org/en/groups/board/documents/resolutions-26jun08-en.htm#_Toc76113171.) After approval of the policy, ICANN undertook an open, inclusive, and transparent implementation process to address stakeholder concerns, including consultation with the Governmental Advisory Committee (GAC), culminating in the Board's approval of the Applicant Guidebook (AGB) and the launch of the New gTLD Program in June 2011. The AGB documents how ICANN has *implemented* the GNSO policy recommendations on new gTLDs. In response to Item No. 1, ICANN is not aware of any documents that approved any new Policies and Procedures that contradict the GNSO Final Report.

Item Nos. 2 and 3

Item Nos. 2 and 3 ask for documents relating to the String Confusion Objection (SCO) Final Review Mechanism established by the New gTLD Program Committee (NGPC) on 12 October 2014. Specifically, Item No. 2 requests documentation "that led to the decision of only allowing three strings to be reconsidered at ICDR along with documents approving this decision and method of informing all of the entities that complained of

inconsistent results and biased treatment." Item No. 3 requests "documentation that led to the appeals policy for the ICDR Name Similarity issues and the method of informing all of the entities that complained of inconsistent results and biased treatment." As a preliminary matter, based upon the context of the request, it appears that Item No. 3 refers to the SCO Final Review Mechanism. The International Centre for Dispute Resolution (ICDR) was the contracted Dispute Resolution Service Provider for the SCO process, not for the String Similarity Review. (*See* http://newgtlds.icann.org/en/program-status/odr.)

The SCO Final Review Mechanism was established after consultation with the community, to address certain perceived inconsistent and unreasonable SCO expert determinations. (*See* https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-10-12-en#2.b.) In Resolutions 2014.10.12.NG02 – 2014.10.12.NG03, the NGPC directed the President and CEO to take all steps necessary to:

> establish processes and procedures, in accordance with this resolution and related rationale, pursuant to which the International Centre for Dispute Resolution (ICDR) shall establish a three-member panel to re-evaluate the materials presented, and the Expert Determinations, in the two objection proceedings set out in the chart above under the "SCO Expert Determinations for Review" column [.CAM/.COM, .通販/.SHOP] and render a Final Expert Determination on these two proceedings….

(NGPC Resolution 2014.10.12.NG03, *available at* https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-10-12-en#2.b.) As specified in Resolutions 2014.10.12.NG02 – 2014.10.12.NG03, the SCO Final Review Mechanism was limited to two SCO Expert Determinations that the NGPC identified as not being in the best interest of the New gTLD Program and the Internet community: *VeriSign v. United TLD Holdco Ltd*. (.CAM/.COM) and *Commercial Connect v. Amazon EU S.a.r.l.* (.SHOPPING/.通販). The NGPC also identified the SCO Expert Determinations for .CAR/.CARS as not in the best interest of the New gTLD Program and the Internet community. However, because the parties in the .CAR/.CARS contention set resolved their contending applications prior to the approval of the Final Review Mechanism, that SCO Determination was not part of Final Review Mechanism. (*See id.*)

In limiting the SCO Final Review Mechanism to these two expert determinations, the NGPC considered whether it was appropriate to expand the scope of the proposed review mechanism to include other Expert Determinations such as some resulting from Community and Limited Public Objections, as well as other SCO Expert Determinations, and possibly singular and plural versions of the same string. The NGPC specifically determined that it would not be appropriate to expand the scope of the proposed review to other Expert Determinations because "[a]pplicants have already taken action in reliance on many of the Expert Determinations, including signing Registry Agreements, transitioning to delegation, withdrawing their applications, and requesting refunds. Allowing these actions to be undone now would not only delay consideration of all

applications, but would raise issues of unfairness for those that have already acted in reliance on the Applicant Guidebook." (*Id.*) The NGPC concluded that "to promote the goals of predictability and fairness, establishing a review mechanism more broadly may be more appropriate as part of future community discussions about subsequent rounds of the New gTLD Program." (*Id.*)

The NGPC considered several significant factors as part of its consideration of the SCO Final Review Mechanism, and had to balance its consideration with other factors. The factors and documentation significant to the NGPC's consideration of the SCO Final Review Mechanism, which are responsive to Item Nos. 2 and 3, include, but is not limited, to the following, all of which have been published on ICANN's website:

- NGPC meeting on 16 November 2013
  - Minutes, *available at* https://www.icann.org/resources/board-material/resolutions-new-gtld-2013-11-16-en.

- NGPC meeting on 30 January 2014
  - Agenda, *available at* https://www.icann.org/resources/board-material/agenda-new-gtld-2014-01-30-en.
  - Approved Resolutions, *available at* https://www.icann.org/en/groups/board/documents/resolutions-new-gtld-30jan14-en.htm.
  - Minutes, *available at* https://www.icann.org/en/groups/board/documents/minutes-new-gtld-30jan14-en.htm.
  - Briefing Materials, *available at* https://www.icann.org/en/system/files/bm/briefing-materials-1-30jan14-en.pdf.

- NGPC meeting on 5 February 2015
  - Agenda, *available at* https://www.icann.org/resources/board-material/agenda-new-gtld-2014-02-05-en.
  - Approved Resolutions, *available at* https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-02-05-en.
  - Minutes, *available at* https://www.icann.org/en/groups/board/documents/minutes-new-gtld-05feb14-en.htm.

- NGPC meeting on 22 March 2015
  - Agenda, *available at* https://www.icann.org/resources/board-material/agenda-new-gtld-2014-03-22-en.
  - Approved Resolutions, *available at* https://www.icann.org/en/groups/board/documents/resolutions-new-gtld-22mar14-en.htm.

- Minutes, *available at* https://www.icann.org/en/groups/board/documents/minutes-new-gtld-22mar14-en.htm.
- Briefing materials, *available at* https://www.icann.org/en/system/files/bm/briefing-materials-1-22mar14-en.pdf; https://www.icann.org/en/system/files/bm/briefing-materials-8-22mar14-en.pdf.

- NGPC meeting on 6 June 2014
  - Agenda, *available at* https://www.icann.org/resources/board-material/agenda-new-gtld-2014-06-06-en.
  - Approved Resolutions, *available at* https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-06-06-en.
  - Minutes, *available at* https://www.icann.org/resources/board-material/minutes-new-gtld-2014-06-06-en.
  - Briefing materials, *available at* https://www.icann.org/en/system/files/bm/briefing-materials-1-06jun14-en.pdf.

- NGPC meeting on 8 September 2014
  - Agenda, *available at* https://www.icann.org/resources/board-material/agenda-new-gtld-2014-09-08-en.
  - Approved Resolutions, *available at* https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-09-08-en.
  - Minutes, *available at* https://www.icann.org/resources/board-material/minutes-new-gtld-2014-09-08-en.
  - Briefing materials, *available at* https://www.icann.org/en/system/files/bm/briefing-materials-1-08sep14-en.pdf; https://www.icann.org/en/system/files/bm/briefing-materials-2-08sep14-en.pdf.

- NGPC meeting on 12 October 2014
  - Agenda, *available at* https://www.icann.org/resources/board-material/agenda-new-gtld-2014-10-12-en.
  - Approved Resolutions, *available at* https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-10-12-en.
  - Minutes, *available at* https://www.icann.org/resources/board-material/minutes-new-gtld-2014-10-12-en.
  - Briefing materials, *available at* https://www.icann.org/en/system/files/bm/briefing-materials-1-redacted-12oct14-en.pdf; https://www.icann.org/en/system/files/bm/briefing-materials-2-redacted-12oct14-en.pdf.

- Public comment forum, *available at* https://www.icann.org/public-comments/sco-framework-principles-2014-02-11-en.
  - Announcement of Proposed Review Mechanism to Address Perceived Inconsistent Expert Determination on SCO, *available at* https://www.icann.org/news/announcement-2014-02-11-en.
  - Report of Public Comments, *available at* https://www.icann.org/en/system/files/files/report-comments-sco-framework-principles-24apr14-en.pdf.
  - Comments Forum, *available at* http://forum.icann.org/lists/comments-sco-framework-principles-11feb14/.
  - Proposed Review Mechanism to Address Perceived Inconsistent Expert Determination on SCO: Framework Principles, *available at* http://newgtlds.icann.org/en/program-status/odr/proposed-sco-framework-principles-11feb14-en.pdf.

- New gTLD Applicant Guidebook, Module 4, *available at* http://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf.

- Reconsideration Request 13-9, *available at* https://www.icann.org/resources/pages/13-9-2014-02-13-en.

- BGC Recommendation on Reconsideration Request 13-9, *available at* https://www.icann.org/en/system/files/files/recommendation-amazon-10oct13-en.pdf.

- Minutes of BGC 10 October 2013 meeting, *available at* https://www.icann.org/en/groups/board/documents/minutes-bgc-10oct13-en.htm.

- Reconsideration Request 13-10, *available at* https://www.icann.org/resources/pages/13-10-2014-02-13-en.

- BGC Recommendation on Reconsideration Request 13-10, *available at* https://www.icann.org/en/groups/board/governance/reconsideration/13-10/recommendation-commercial-connect-10oct13-en.pdf.

- Procedures for Final Review of Perceived Inconsistent or Unreasonable String Confusion Expert Determination, *available at* https://www.adr.org/aaa/faces/rules/searchrules/rulesdetail?doc=ADRSTAGE2029667&_afrLoop=1776945079778462&_afrWindowMode=0&_afrWindowId=eishnlo3k_172#%40%3F_afrWindowId%3Deishnlo3k_172%26_afrLoop%3D1776945079778462%26doc%3DADRSTAGE2029667%26_afrWindowMode%3D0%26_adf.ctrl-state%3Deishnlo3k_232.

- Final Determination for Verisign, Inc. v. United TLD Holdco, Ltd, *available at* https://www.adr.org/cs/idcplg?IdcService=GET_FILE&dDocName=ADRSTAGE2033504&RevisionSelectionMethod=LatestReleased.

- Final Determination for Commercial Connect LLC vs. Amazon EU S.a.r.l., *available at* https://www.adr.org/cs/idcplg?IdcService=GET_FILE&dDocName=ADRSTAGE2032886&RevisionSelectionMethod=LatestReleased.

- String Confusion Objection Expert Determinations:
  - *Verisign vs. United TLD Holdco, Ltd*, ICDR Case No. 50 504 229 13, *available at* http://newgtlds.icann.org/sites/default/files/drsp/25sep13/determination-2-1-1255-75865-en.pdf.
  - *Verisign vs. dot Agency Limited*, ICDR Case No. 50 504 226 13, *available at* http://newgtlds.icann.org/sites/default/files/drsp/25sep13/determination-1-1-882-71415-en.pdf.
  - *Verisign vs. AC Webconnecting Holding B.V.*, ICDR Case No. 50 504 224 13, *available at* http://newgtlds.icann.org/sites/default/files/drsp/25sep13/determination-2-1-1234-83704-en.pdf.
  - *Commercial Connect LLC v. Amazon EU S.a.r.l.*, ICDR Case No. 50 504 261 13, *available at* http://newgtlds.icann.org/sites/default/files/drsp/25sep13/determination-1-1-1318-15593-en.pdf.
  - *Commercial Connect LLC v. Top Level Domain Holdings Limited*, ICDR Case No 50 504 T 00258 13, *available at* http://newgtlds.icann.org/sites/default/files/drsp/25sep13/determination-1-1-994-1450-en.pdf.
  - *Charleston Road Registry v. Koko Castle, ICDR Case No. 50 504 00233 13, available at* http://newgtlds.icann.org/sites/default/files/drsp/25sep13/determination-1-1-1377-8759-en.pdf.
  - *Charleston Road Registry v. Uniregistry Corp*, ICDR Case No. 50 504 T 00238 13, *available at* http://newgtlds.icann.org/sites/default/files/drsp/25oct13/determination-1-1-845-37810-en.pdf.
  - *Charleston* Road Registry v. DERCars, ICDR Case No. 50 504 T 234 13, *available at* http://newgtlds.icann.org/sites/default/files/drsp/14oct13/determination-1-1-909-45636-en.pdf.

- Letter from Statton Hammock to Cherine Chalaby, 24 October 2014, *available at* https://www.icann.org/en/system/files/correspondence/hammock-to-chalaby-24oct14-en.pdf.

- Letter from Christine Willett to Statton Hammock, 8 September 2014, *available at* https://www.icann.org/en/system/files/correspondence/willett-to-hammock-08sep14-en.pdf.

- Letter from Statton Hammock to Cherine Chalaby, 12 August 2014, *available at* https://www.icann.org/en/system/files/correspondence/hammock-to-chalaby-12aug14-en.pdf.

- Letter from Peter Young to Cherine Chalaby, 19 November 2013, *available at* https://www.icann.org/en/news/correspondence/young-to-chalaby-19nov13-en.

- Letter from Statton Hammock to Cherine Chalaby, 4 November 2013, *available at* https://www.icann.org/en/system/files/correspondence/hammock-to-chalaby-04nov13-en.pdf.

- Letter from Shweta Sahjwani, et al. to Cherine Chalaby, 1 November 2013, *available at* https://www.icann.org/en/news/correspondence/sahjwani-et-al-to-chalaby-et-al-01nov13-en.

- Letter from Peter Young to Cherine Chalaby, 9 September 2013, *available at* https://www.icann.org/en/news/correspondence/young-to-chalaby-09sep13-en.

With respect to the request for documentation of how the parties subject to the SCO Final Review Mechanisms were informed of Resolutions 2014.10.12.NG02 – 2014.10.12.NG03, in addition to the above mentioned documents, ICANN provided notice to the relevant parties via email. In further response this request, attached is a copy of the notification that was sent to Commercial Connect on 11 November 2014 via a case in the Customer Portal. Additionally, attached to this response is the email notification to Commercial Connect regarding the status of the .SHOP contention set following the issuance of the Final Determination Report from the Final Review Panel. Similar notifications were sent to the other relevant parties subject to the SCO Final Review Mechanism. However, those notifications constitute confidential communications with other applicants, and are subject to the following Defined DIDP Conditions of Nondisclosure 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.

- 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.

Item No. 4

Item No. 4 seeks documentation relating to the String Similarity Review process. Specifically, the request asks for "[d]ocumentation on what led to the decision that applications are subject to name similarity instead of the actual string along with the documents approving this new policy along with the method of informing contention set owners and objectors." As a preliminary matter, this item appears to be conflating two different processes in the New gTLD Program – the String Similarity Review process and the String Confusion Objection process. As described in more detailed below, the String Similarity Review process "involves a preliminary comparison of each applied-for gTLD string against existing TLDs, Reserved Names [ ], and other applied-for strings. The objective of this review is to prevent user confusion and loss of confidence in the DNS resulting from delegation of many similar strings." (AGB, Module 2.2.1.1, *available at* http://newgtlds.icann.org/en/applicants/agb/evaluation-procedures-04jun12-en.pdf.) A String Similarity Panel conducts the review. There are no objectors involved in the process.

The criteria and review methodology for the String Similarity Review process is set forth in Module 2.2.1 of the AGB. As stated in Module 2.2.1.1.1,

> The String Similarity Panel's task is to identify visual string similarities that would create a probability of user confusion. The panel performs this task of assessing similarities that would lead to user confusion in four sets of circumstances, when comparing:
>
> - Applied-for gTLD strings against existing TLDs and reserved names;
> - Applied-for gTLD strings against other applied-for gTLD strings;
> - Applied-for gTLD strings against strings requested as IDN ccTLDs; and
> - Applied-for 2-character IDN gTLD strings against: o Every other single character. o Any other 2-character ASCII string (to protect possible future ccTLD delegations).

(*Id.*) With respect to the similarity review to other applied-for gTLD strings (string contention sets), Module 2.2.1.1.1. further states:

> Similarity to Other Applied-for gTLD Strings (String Contention Sets) – All applied-for gTLD strings will be reviewed against one another to identify any similar strings. In performing this review, the String Similarity Panel will create contention sets that may be used in later stages of evaluation. A contention set contains at least two applied-for strings identical or similar to one another. Refer to Module 4, String Contention Procedures, for more information on contention sets and contention resolution. ICANN will notify applicants who are part of a contention set as soon as the String Similarity review is completed. (This provides a longer period for contending applicants to reach their own resolution

> before reaching the contention resolution stage.) These contention sets will also be published on ICANN's website.

(*Id.*)

The String Confusion Objection process is a dispute resolution procedure triggered by a formal objection to an application by a third party. As set forth in Module 3 of the AGB, one of the grounds for a formal objection is a String Confusion Objection, whereby the objector contends that the applied-for gTLD string is confusingly similar to an existing TLD or to another applied-for gTLD string in the same round of applications. The standards for an SCO is set forth in Module 3.5.1 of the AGB:

> A DRSP panel hearing a string confusion objection will consider whether the applied-for gTLD string is likely to result in string confusion. String confusion exists where a string so nearly resembles another that it is likely to deceive or cause confusion. For a likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.

(AGB, Module 3, *available at* http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf.) As set forth in the New gTLD Dispute Resolution Procedure (the Procedure), available at http://newgtlds.icann.org/en/applicants/agb/dispute-resolution-procedure-04jun12-en.pdf, dispute resolution proceedings, including SCO proceedings are administered by a Dispute Resolution Service Provider (DRSP) in accordance with the Procedure and the applicable DRSP Rules.

The information responsive to Item No. 4 have already been published on ICANN's website. The AGB, including Modules 2 and 3, was developed through many years of extensive consultation with the community. All nine versions of the AGB, including eight versions of Modules 2 and 3, have been published on the ICANN New gTLD microsite at http://newgtlds.icann.org/en/about/historical-documentation, http://newgtlds.icann.org/en/about/historical-documentation/matrix-module-2 and http://newgtlds.icann.org/en/about/historical-documentation/matrix-module-3, respectively. Likewise, the public comments forums for the different drafts of the AGB are available at http://newgtlds.icann.org/en/about/historical-documentation/matrix-comment-forums. The public comment summaries and analyses for the different drafts of the AGB are available at http://newgtlds.icann.org/en/about/historical-documentation/matrix-comment-summaries-analyses.

With respect to the method by which ICANN notifies applicants and contention set members of the statuses of their applications, ICANN individually notifies applicants when there is a change in the status of their applications. Likewise, ICANN individually notifies contention members when there is a change in the status of the contention set. Additionally, as described in the Update on Application Status and Contention Sets

Advisory, available at http://newgtlds.icann.org/en/applicants/advisories/application-contention-set-14mar14-en, ICANN publishes updates to application statuses (on the Application Status page at https://gtldresult.icann.org/application-result/applicationstatus) and contention set (on the Contention Set Status page at https://gtldresult.icann.org/application-result/applicationstatus/stringcontentionstatus) statuses to reflect various New gTLD Program processes, including ICANN Evaluation, GAC Advice, Objections and Dispute Resolution, Community Priority Evaluation, and Auctions. ICANN also updates contention sets as the result of these processes. (*See id.*)

With respect to the request for documentary information relating to notices to objectors, it appears that this request relates to the SCO process. As noted above, the SCO process is administered by the ICDR. As specified in the Procedure and the ICDR Supplementary Procedures for String Confusion Objections (Rules), available on the New gtLD microsite at http://newgtlds.icann.org/en/applicants/agb/icdr-rules-10jan12-en.pdf and on the ICDR's website at https://www.adr.org/cs/idcplg?IdcService=GET_FILE&dDocName=ADRSTG_017409&RevisionSelectionMethod=LatestReleased, all communications with the parties to the objection proceedings are conducted by the ICDR. ICANN is not a party to the proceedings. The ICDR copies ICANN on its notification to the parties of the expert determination. Once an objection proceeding has concluded and the expert determination has been published to the ICDR's website and ICANN's website, ICANN will notify the applicant and respective contention set owners, as appropriate, of the statuses of their applications in the manner described in the foregoing paragraph to the extent that there is a change in status based upon the expert determination. Note that ICANN began updating application and contention set statuses on 14 March 2014, and began notifying impacted applicants at this time. (*See* announcement at http://newgtlds.icann.org/en/announcements-and-media/announcement-15mar14-en). The Applicant Advisory explaining this process was updated on 4 September 2014 to reflect modifications that were made to the process. (*See* http://newgtlds.icann.org/en/applicants/advisories/application-contention-set-14mar14-en).

Item No. 5

Item No. 5 asks for documents on "decisions made on how contention sets will be considered and performed at auction along with documents approving this new policy along with the method of informing contention set owners." As described in Module 4.3 of the AGB, an ICANN facilitated auction is a last resort for resolving string contention sets among applicants if the contention set has not been resolved by other means. The auction procedures are set forth in Module 4.3.1 of the AGB at http://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf. The Auction webpage on the New gTLD microsite contains auction resources documents that contain information responsive to Item No. 5, including the following documents:

- Bidder Auction Training Videos, *available at* http://newgtlds.icann.org/en/announcements-and-media/video/tutorials/auctions.

- New gTLD Auction Schedule as of 18 November 2015, *available at* http://newgtlds.icann.org/en/applicants/auctions/schedule-18nov15-en.pdf.
- New gTLD Auction Rules v.2014.11.03, *available at* http://newgtlds.icann.org/en/applicants/auctions/rules-03nov14-en.pdf.
- New gTLD Auction Rules: Indirect Contention Edition v.2015.02.24, *available at* http://newgtlds.icann.org/en/applicants/auctions/rules-indirect-contention-24feb15-en.pdf.
- Auction Date Advancement/Postponement Request Form, *available at* http://newgtlds.icann.org/en/applicants/auctions/date-advancement-postponement-form-02jun14-en.pdf.
- New gTLD Auction Bidder Agreement v.2014.04.03, *available at* http://newgtlds.icann.org/en/applicants/auctions/bidder-agreement-03apr14-en.pdf.
- New gTLD Auction Bidder Agreement Supplement (for Indirect Contention), *available at* http://newgtlds.icann.org/en/applicants/auctions/bidder-agreement-supplement-24feb15-en.pdf.
- Bidder Form v.2014.02.26, *available at* http://newgtlds.icann.org/en/applicants/auctions/bidder-form-26feb14-en.pdf.
- Bidder Designation Form v.2014.02.26, *available at* http://newgtlds.icann.org/en/applicants/auctions/bidder-designation-form-26feb14-en.pdf.
- Anticipated timeline for an Auction, *available at* http://newgtlds.icann.org/sites/default/files/timeline-25aug14-en.pdf.
- Auction Results Page, *available at* https://gtldresult.icann.org/application-result/applicationstatus/auctionresults.
- Auction Proceeds Page, *available at* http://newgtlds.icann.org/en/applicants/auctions/proceeds.
- Indirect Contention Deck, *available at* http://newgtlds.icann.org/en/applicants/auctions/indirect-contention-03dec14-en.pdf.
- Updated Indirect Contention Deck, *available at* http://newgtlds.icann.org/en/applicants/auctions/indirect-contention-08dec15-en.pdf.

In particular, the New gTLD Auction Rules v.2014.11.03, *available at* http://newgtlds.icann.org/en/applicants/auctions/rules-03nov14-en.pdf and New gTLD Auction Rules: Indirect Contention Edition v.2015.02.24, *available at* http://newgtlds.icann.org/en/applicants/auctions/rules-indirect-contention-24feb15-en.pdf, contain specific information about how direct and indirect contention sets will be resolved including details on how applicants within contention sets will be informed.

Contrary to the characterization in your request, these rules are not "new policy", but rather, implementation rules that were developed with consultation from the community. Specifically, public comment periods were held for both the direct and indirect contention set rules. (*See* https://www.icann.org/public-comments/new-gtld-auction-rules-2013-12-17-en; https://www.icann.org/public-comments/new-gtld-auctions-

indirect-contention-2014-11-14-en.) In fact, we note that Commercial Connect participated in the public comment forum for the indirect contention set auction rules. (*See* Comment submitted by Commercial Connect, *available at* http://forum.icann.org/lists/comments-new-gtld-auctions-indirect-contention-14nov14/msg00006.html*;* Report of Public Comments, *available at* https://www.icann.org/en/system/files/files/report-comments-new-gtld-auctions-indirect-contention-24feb15-en.pdf.)

Item No. 6

Item No. 6 requests "[a]ll letters and correspondence and communications pertaining to the instructions given to the Name Similarity panel as well as letters and objections to the determination of the Name similarity panel along with responses along with discussions and communication related to dealing the issue." Information responsive to the request for information pertaining to instructions given to the String Similarity Panel has been published on the New gTLD microsite, including the following documents:

- Module 2 of the AGB, *available at* http://newgtlds.icann.org/en/applicants/agb/evaluation-procedures-04jun12-en.pdf.
- String Similarity New gTLD Evaluation Panel – Process Description, *available at* http://newgtlds.icann.org/en/program-status/evaluation-panels/geo-names-similarity-process-07jun13-en.pdf.
- Evaluation Panels Selection Process, including the String Similarity Panel, *available at* http://newgtlds.icann.org/en/about/evaluation-panels-selection-process.
- Evaluation Panels Selection Process web page, *available at* http://newgtlds.icann.org/en/about/evaluation-panels-selection-process, including the following information:
    - Call for Expressions of Interest – String Similarity Panel Criteria, *available at* https://archive.icann.org/en/topics/new-gtlds/eoi-string-sim-31jul09-en.pdf;
    - Questions and Answers Session, *available* at http://www.icann.org/en/topics/new-gtlds/eoi-q-and-a-27aug09-en.pdf;
    - Respondents' Conference Call Q&A Transcript, *available at* http://www.icann.org/en/topics/new-gtlds/transcript-eoi-11aug09-en.pdf.
- Advisory on Preparing Evaluators for the New gTLD Application Process, *available at* http://newgtlds.icann.org/en/blog/preparing-evaluators-22nov11-en.

To the extent that there are any additional documents responsive to this item, said documents are subject to the following DIDP Defined Conditions of Nondisclosure and are 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 Directors,

ICANN Directors' Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.

- 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.

With respect to the request for "letters and objections to the determination of the Name similarity panel along with responses along with related discussions and communication", the responsive documents are available on ICANN's website through the Reconsideration page, the DIDP page, the Independent Review Process page, and Correspondence page. Specifically, the following documents relate to letters or objections that have been submitted to ICANN regarding the determination of the String Similarity Panel and related discussions:

- Reconsideration Request 13-5: Booking.com B.V, *available at* https://www.icann.org/resources/pages/13-5-2014-02-12-en, including the following documents:
  - Reconsideration Request 13-5, *available at* https://www.icann.org/en/groups/board/governance/reconsideration/13-5/request-booking-28mar13-en.pdf.
  - Revised Reconsideration Request 13-5, *available at* https://www.icann.org/en/groups/board/governance/reconsideration/13-5/request-booking-07jul13-en.pdf; attachments 1-2, *available at* https://www.icann.org/en/groups/board/governance/reconsideration/13-5/request-attachment-booking-1-07jul13-en.pdf; and attachments 3-8, *available at* https://www.icann.org/en/groups/board/governance/reconsideration/13-5/request-attachment-booking-2-07jul13-en.pdf.
  - Board Governance Committee (BGC) Recommendation on Request 13-5, *available at* https://www.icann.org/en/groups/board/governance/reconsideration/13-5/recommendation-booking-01aug13-en.pdf.
  - New gTLD Program Committee Action (NGPC) Adopting Recommendation of the BGC on Request 13-5, *available at*

https://www.icann.org/en/groups/board/documents/resolutions-new-gtld-10sep13-en.htm#2.b.

- Minutes of the BGC 1 August 2013 meeting, *available at* https://www.icann.org/en/groups/board/documents/minutes-bgc-01aug13-en.htm.
- Minutes of the NGPC 10 September 2013 meeting, *available at* https://www.icann.org/resources/board-material/minutes-new-gtld-2013-09-10-en.
- Briefing Materials of the NGPC 10 September 2013 meeting, *available at* https://www.icann.org/en/groups/board/documents/briefing-materials-1-10sep13-en.pdf and https://www.icann.org/en/groups/board/documents/briefing-materials-2-10sep13-en.pdf.
- DIDP Request 20130328-1 and Response to Request 20130328-1, *available at* https://www.icann.org/resources/pages/20130328-1-2014-02-18-en.
- *Booking.com B.V. v. ICANN* Independent Review Process (IRP) matter, and associated documents, *available at* https://www.icann.org/resources/pages/booking-v-icann-2014-03-25-en.
- Board Consideration of the IRP Panel's Final Declaration in the *Booking.com B.V. v. ICANN* IRP, *available at* https://www.icann.org/resources/board-material/resolutions-2015-04-26-en#2.b.
- Minutes of the Board 26 April 2015 Meeting, *available at* https://www.icann.org/resources/board-material/minutes-2015-04-26-en.
- Briefing materials of the Board 26 April 2015 Meeting, *available at* https://www.icann.org/en/system/files/bm/briefing-materials-1-redacted-26apr15-en.pdf and https://www.icann.org/en/system/files/bm/briefing-materials-3-26apr15-en.pdf.

To the extent that there are any additional documents responsive to this item, said documents are subject to the following DIDP Defined Conditions of Nondisclosure and are 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 Directors, ICANN Directors' Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.

- 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.

Item No. 7

This item seeks documents that "led to the decision to reduce the allowable time allowed to submit a motion for reconsideration along with documents approving this new policy." In December 2012, the Board approved the an amendment to Article IV, Section 2 ICANN Bylaws, to amend, among other things, the timing for Reconsideration Request submissions from thirty (30) to fifteen (15) days. The Bylaws revisions came into effect in April 2013. (*See* https://www.icann.org/resources/board-material/resolutions-2012-12-20-en#2.c.)

This revision was adopted to give effect to the recommendations from the Accountability Structure Expert Panel (ASEP), which was convened to meet the Accountability and Transparency Review Team 1's (ATRT1) Recommendations 23 and 25, recommending that ICANN retain independent experts to review ICANN's accountability structures and the historical work performed on those structures. (*See* ATRT1 Final Report, *available at* https://www.icann.org/en/system/files/files/final-recommendations-31dec10-en.pdf.) ICANN convened the ASEP, comprised of three international experts on issues of corporate governance, accountability and international dispute resolution, which after research and review of ICANN's Reconsideration and Independent Review processes and multiple opportunities for public input, produced a report in October 2012. (*See* ASEP Report, *available at* https://www.icann.org/en/system/files/files/report-26oct12-en.pdf.) Among the recommendations by the ASEP was a recommendation to modify the time limits for submissions of Reconsideration Requests. (*See id.* at pgs. 10, 17.)

The ASEP report was posted for public comment, along with proposed Bylaws revisions to address the recommendations within the report. (*See* https://www.icann.org/resources/pages/asep-recommendations-2012-10-26-en; https://www.icann.org/news/announcement-2012-10-26-en/; http://forum.icann.org/lists/asep-recommendations/; https://www.icann.org/en/system/files/files/report-comments-asep-recommendations-12dec12-en.pdf; and https://www.icann.org/en/system/files/files/proposed-bylaw-revision-reconsideration-26oct12-en.pdf.) No comments were submitted regarding the ASEP's recommendation on the change to the timing of the Reconsideration Request submissions or the proposed corresponding Bylaws revisions. (*See* http://forum.icann.org/lists/asep-recommendations/; https://www.icann.org/en/system/files/files/report-comments-asep-recommendations-12dec12-en.pdf.)

As noted in the Rationale for Resolution 2013.04.11.06 approving the Bylaws revisions, "[t]he revisions are geared towards instituting more predictability into the processes, and certainty in ICANN's decision making, while at the same time making it clearer when a

decision is capable of being reviewed." (https://www.icann.org/resources/board-material/resolutions-2013-04-11-en#1.d.rationale.)

Item No. 8

This item asks for the audio recording of Public Forum of the ICANN07 meeting held in Marina De Rey, California from 13-16 November 2000 as well as the "board [sic] statements for that group of meetings." The Public Forum took place over the course of two days, from 15-16 November 2000.

The audio and video recordings for the Public Forum that are responsive to your request are available at the following links:

- http://wilkins.law.harvard.edu/misc/Static/icann/icann-111501.rm
- http://wilkins.law.harvard.edu/misc/Static/icann/icann-111501b.rm
- http://wilkins.law.harvard.edu/misc/Static/icann/icann-111600.rm

Please note that these are links to archived recordings that will require downloading.

It is unclear as to what documents you seek in the request for "board [sic] statements for that group of meetings." To the extent this seeks documentary information regarding the Board's Second Annual Meeting and Organizational Meeting held on 16 November 2000, such information has been published and are available at the following links:

- Planning Details, *available at* https://www.icann.org/mdr2000/.
- Preliminary Report of Board's Second Annual Meeting, 16 November 2000, *available at* https://www.icann.org/minutes/prelim-report-16nov00.htm#SecondAnnualMeeting.
- Minutes of Board's Second Annual Meeting, 16 November 2000, *available at* https://www.icann.org/minutes/minutes-annual-meeting-16nov00.htm.
- Preliminary Report of Board's Organizational Meeting, 16 November 2000, *available at* https://www.icann.org/minutes/prelim-report-16nov00.htm#OrganizationalMeeting.
- Minutes of Board's Organizational Meeting, 16 November 2000, *available at* https://www.icann.org/minutes/minutes-organizational-meeting-16nov00.htm.

About DIDP
ICANN's DIDP is limited to requests for documentary 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, please see http://www.icann.org/en/about/transparency/didp. ICANN makes every effort to be as responsive as possible to the entirety of the Request. As part of its accountability and transparency commitments, ICANN continually strives to provide as much information to the community as is reasonable. We encourage you to sign up for an account at MyICANN.org, through which you can receive daily updates regarding postings to the portions of ICANN's website that are of interest because, as we continue to enhance our reporting mechanisms, reports will be posted for public access.

We hope this information is helpful. If you have any further inquiries, please forward them to didp@icann.org.

Attachment

Case 144610

Created By Juan Trinidad, 11/11/2014 6:14 PM

Subject: String Confusion Objection Expert Determination Review

Dear Jeffrey Smith,

This is a notification in reference to the String Confusion Objection Expert Determination for "Commercial Connect LLC (Objector) v. Amazon EU S.à r.l. (Applicant for .通販)."

On 12 October 2014, the New gTLD Program Committee (NGPC) passed a resolution requesting review of this Expert Determination (2014.10.12.NG03: https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-10-12-en#2.b).

Accordingly, ICANN is working on the implementation of the resolution, and we will notify you about next steps when they become available.

Thank you for your participation in the New gTLD Program. Should you have any questions about this message, please contact us at newgtld@icann.org.

Sincerely,

Trang Nguyen

Director, Operations

Global Domains Division

Internet Corporation for Assigned Names and Numbers (ICANN)

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Case 178202

Created By Jared Erwin, 8/28/2015 11:08 PM

Subject: Contention Set Notification .SHOP/.SHOPPING/.xn--gk3at1e

Dear Jeff Smith,

Based on the determination rendered by the final review panel in The Procedures for Final Review of Perceived Inconsistent or Unreasonable String Confusion Expert Determinations, your contention set has been updated to reflect this determination. See here to find more information on the determination: https://newgtlds.icann.org/en/program-status/odr/determination. Please see the contention set status page for the updated contention set information and image (https://gtldresult.icann.org/application-result/applicationstatus/stringcontentionstatus).

This notification is purely informational and no action is required of you at this time. Should you have any questions, please submit a new case to newgtld@icann.org.

Thank you and best regards,

New gTLD Operations