Response to Documentary Information Disclosure Policy Request

To: Mr. Michael Palage

Date: 26 May 2010

Re: Request No. 20100427-1

Thank you for your Request for Information dated 27 April 2010 (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.

As a preliminary matter, 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, which is contained within the ICANN Accountability & Transparency: Framework and Principles, please see http://www.icann.org/transparency/acct-trans-frameworks-principles-10jan08.pdf. ICANN responds only to those portions of your Request seeking documentary information.

Items Requested

Request 1: Request that ICANN publish on the Registry Services Evaluation Process (RSEP) web page the criteria ICANN staff has employed over the last four years in analyzing funnel requests, relating to the aspect of the funnel request stating: "In the event ICANN reasonably determines during the 15 calendar day "preliminary determination" period that the Registry Service might raise significant competition issues, ICANN shall refer the issue to the appropriate governmental competition authority or authorities with jurisdiction over the matter."

Response:

Please see http://www.icann.org/en/registries/rsep/prelim-competition-issues-en.htm on the Registry Services Evaluation Process portion of ICANN's website, describing how ICANN assesses each RSEP Request to make a preliminary determination of whether the proposed Registry Service could raise significant competition issues and the reference to the appropriate governmental competition authority or authorities. From the general RSEP page, at http://www.icann.org/en/registries/rsep/, you can access links describing other facets of the RSEP process.

Request 2: Request that ICANN public publish on the New gTLD Program web page (http://www.icann.org/en/topics/new-gtld-program.htm) the "new Project Plan" referenced in the preliminary minutes of the 22 April 2010 Board meeting.

Response:

As part of the planned release of New gTLD-related documentation in advance of the ICANN international meeting in Brussels, ICANN has been in preparations to post the New gTLD

project plan. All of the New gTLD-related documents to be posted will be posted in accordance with the Board-approved document posting deadlines.

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

Subject: Request under ICANN Documentary Information Disclosure Policy
Date: Tuesday, April 27, 2010 4:55 AM
From: Michael D. Palage <michael@palage.com>
To: John Jeffrey <jeffrey@icann.org>, "didp@icann.org" <didp@icann.org>
Cc: Rod Beckstrom <rod.beckstrom@icann.org>, Peter Dengate Thrush <barrister@chambers.gen.nz>, "janis.karklins@icann.org" <janis.karklins@icann.org>

John Jeffrey
ICANN's General Counsel and Secretary
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292-6601

Re: Request under ICANN Documentary Information Disclosure Policy

Dear John,

In your capacity as general counsel I submit the following request for documents in accordance with ICANN's Document Information Disclosure Policy available online at http://www.icann.org/en/transparency/didp-en.htm.

Document Request #1 (ICANN's Funnel Request Process for Referral to Appropriate Governmental Competition Authority)

I am currently a participant in ICANN's Vertical Integration Working Group, and have recently co-authored a joint proposal which incorporates an element from ICANN's existing registry agreements as well as an element from the document recently prepared by the economic experts retained by ICANN on the Vertical Integrated issue. I am specifically referring to that aspect of the funnel request which states in relevant part that:

"In the event ICANN reasonably determines during the 15 calendar day "preliminary determination" period that the Registry Service might raise significant competition issues, ICANN shall refer the issue to the appropriate governmental competition authority or authorities with jurisdiction over the matter"

To date ICANN has incorporated this funnel request concept into every ICANN sponsored gTLD registry agreement covering over 110 million second level domain name under management. I therefore respectfully request in accordance with ICANN Documentary Information Disclosure Policy that ICANN publish on the Registry Services Evaluation Process web page (http://www.icann.org/en/registries/rsep/) the criteria ICANN staff has employed over the last four years in analyzing the 35 plus funnel requests that have been processed.

Additionally, I would like ICANN to address or provide any documentation in how they go about determining the "appropriate governmental competition authority" when a gTLD Registry Operator is incorporated in one country but uses a network of 900 ICANN accredited registrars around the world that may provide domain name registration services in each country in the world?

If ICANN does not have a documented process and instead has relied upon one-off factual determinations by ICANN staff, can ICANN answer the question of whether they intend to provide a documented process before an unlimited number of gTLD are added to the root?

If ICANN does intend on providing clear documentation on how funnel requests are processed, specifically in connection with the internal processes by which matters are referred to the "appropriate governmental competition authority", can ICANN commit to consulting with all impacted parties, including but not limited to existing registry operators/sponsors, the GNSO and the GAC?

Document Request #2 (ICANN's New gTLD Project Plan)

During the public forum at ICANN's annual meeting in Seoul, there were numerous calls from ICANN stakeholders for ICANN to adopt a Project Management Plan in connection with the new gTLD process (http://sel.icann.org/meetings/seoul2009/transcript-public-forum-29oct09-en.txt). It appears based upon the preliminary minutes in connection with the April 2010 ICANN Board meeting, that ICANN has produced a "new Project Plan" (http://www.icann.org/en/minutes/resolutions-22apr10-en.htm). I therefore respectfully request in accordance with ICANN Documentary Information Disclosure Policy that ICANN public publish on the New gTLD Program web page (http://www.icann.org/en/topics/new-gtld-program.htm) this "new Project Plan."

I have submitted this request to obtain an answer well in advance of the Brussels' meeting and look forward to your prompt response.

Best regards,

Michael D. Palage

cc: Rod Beckstrom, ICANN President & CEO
Peter Dengate Thrush, ICANN Chairman
Janis Karklins, Chairman of the Governmental Advisory Committee, Ambassador of

Latvia to France

` ICANN Correspondence (http://www.icann.org/correspondence)