

**DETERMINATION
OF THE BOARD GOVERNANCE COMMITTEE (BGC)
RECONSIDERATION REQUEST 15-15**

30 NOVEMBER 2015

The Requester, The Centre for Internet & Society, seeks reconsideration of ICANN staff's response to two requests submitted by the Requester pursuant to ICANN's Document Information Disclosure Policy ("DIDP") for: (a) documents which represent ICANN's "efforts to implement the NETmundial Principles within its working," and (b) the "raw data" underlying ICANN's income statements from 1999-2011.¹

I. Brief Summary.

On 22 July 2015, the Requester submitted two DIDP requests. The first DIDP request sought "[r]aw data with respect to granular income/revenue statements of ICANN from 1999-2011."² The second DIDP request sought "all existing documents within ICANN which represent its efforts to implement the NETmundial Principles within its working," as well as "all the documents which were modified as the result of ICANN's support of the NETmundial Initiative."³ ICANN responded to both DIDP requests on 21 August 2015. The Requester now claims that ICANN staff improperly determined that some of the documents sought by the Requester were beyond the scope of the DIDP, or were subject to the DIDP's Defined Conditions for Nondisclosure.

The Requester's claims are unsupported. The Requester does not identify any misapplication of policy or procedure by ICANN staff. Rather, the Requester simply disagrees

¹ The Requester's Reconsideration Request addresses two DIDP requests, both filed on 22 July 2015.

² DIDP Request No. 20150722-2, Pg. 1, *available at* <https://www.icann.org/en/system/files/files/didp-request-20150722-2-redacted-22jul15-en.pdf> ("Second Financial Data DIDP Request").

³ DIDP Request No. 20150722-1, Pg. 2, *available at* <https://www.icann.org/en/system/files/files/didp-request-20150722-1-redacted-22jul15-en.pdf> ("Second NETmundial DIDP Request").

with the substance of the DIDP Responses. Substantive disagreements with a DIDP response, however, are not proper bases for reconsideration. Because the Requester has not shown that ICANN staff acted in contravention of established policy or procedure, the BGC concludes that Request 15-15 be denied.

II. Facts.

A. Background Facts.

1. Requester's DIDP Requests for Financial Information.

On 22 December 2014, the Requester submitted a DIDP request seeking the disclosure of detailed reports of ICANN's income and revenue from domain names for the years 1999 to 2014 similar to the report for FY14 that ICANN had previously provided to CIS in response to an informal request ("First Financial Data DIDP Request").⁴ In part in response to the Requester's DIDP request, and as part of its commitment to transparency and accountability, ICANN committed to prepare and publish in due course revenue reports by source for FY12, FY13 and FY14, and for future years going forward ("First Financial Data DIDP Response"). These reports provide a detailed summary of the income and revenues received from each legal entity and individual.⁵ The reports for FY13 and FY14 have since been published on ICANN's Financials page.⁶ ICANN is in the process of preparing and publishing a "Revenue Detail By Source" report for FY12 and FY15 that has just closed.⁷

⁴ See DIDP Request No. 20141222-1, Pg. 2, available at <https://www.icann.org/en/system/files/files/cis-request-22dec14-en.pdf> ("First Financial Data DIDP Request").

⁵ See Response to DIDP Request No. 20141222-1, Pg. 2, available at <https://www.icann.org/en/system/files/files/cis-response-21jan15-en.pdf> ("First Financial Data DIDP Response").

⁶ See FY13 Revenue detail by Source, available at <https://www.icann.org/en/system/files/files/fy2013-revenue-source-01may15-en.pdf>; see also FY14 Revenue detail by Source, available at <https://www.icann.org/en/system/files/files/fy2014-revenue-source-01may15-en.pdf>.

⁷ See First Financial Data DIDP Response, Pg. 2.

In response to the Requester's DIDP request, ICANN also noted that additional documents responsive to the request were already publicly available on the Financials page in the Operating Plan and Budget, Audited Financial Statements, Annual Reports, Federal and Tax Filings, ccTLD Contributions Report and Financial Analysis for 1999 to the present. ICANN further explained that some documents were not appropriate for public disclosure because they were subject to certain of the DIDP's Defined Conditions for Nondisclosure.⁸ In particular, regarding the Requester's request for detailed financial information for the years FY99 through FY11, ICANN stated that it "[did] not have this data in the same format, as the data is stored on a different system than the data for the years 2012 to the present. It would be extremely time consuming and overly burdensome to cull through the raw data in order to compile the reports for the prior years."⁹

On 22 July 2015, the Requester submitted a second DIDP request seeking the same information requested in its prior DIDP Request. Specifically, Requester sought the disclosure of ICANN's financial information, namely the "raw data with respect to granular income/revenue statements of ICANN from 1999-2011 ("Second Financial Data DIDP Request")."¹⁰ On 21 August 2015, ICANN responded to the Financial Data DIDP request ("Second Financial Data DIDP Response").¹¹ ICANN provided the Requester with links to all publicly available documents responsive to the Financial Data DIDP Request, including financial materials for each fiscal year from FY99 through FY15.¹² In response to Requester's request for "raw data" from FY99 through FY11, ICANN again informed Requester that it would be

⁸ See First Financial Data DIDP Response, Pg. 2.

⁹ *Id.*

¹⁰ DIDP Request No. 20150722-2, Pgs. 1-2, available at <https://www.icann.org/en/system/files/files/didp-request-20150722-2-redacted-22jul15-en.pdf> ("Second Financial Data DIDP Request").

¹¹ Response to DIDP Request No. 20150722-2, Pg. 1 available at <https://www.icann.org/en/system/files/files/didp-response-20150722-2-21aug15-en.pdf> ("Second Financial Data DIDP Response").

¹² *Id.*, Pgs. 1-2.

“extremely time consuming and overly burdensome to produce,” given that data from FY99 through FY11 is stored on a different system and thus would be difficult and burdensome to access.¹³ ICANN also noted that the current request for “raw data” was subject to the DIDP Defined Conditions for Nondisclosure.¹⁴

2. Requester’s DIDP Requests for Information Regarding NETmundial.

On 27 December 2014, the Requester submitted a DIDP request seeking documents related to ICANN internal measures to implement the NETmundial Outcome Document and the NETmundial Principles, as well as information about mechanisms or other changes within ICANN in recognition of the NETMundial Principles (“First NETmundial DIDP Request”).¹⁵

In its response to the Requester’s DIDP Request, ICANN provided a detailed explanation of the NETMundial Principles and NETmundial Initiative (“First NETmundial DIDP Response”):

ICANN is one of just many participants in the Internet governance world, and ICANN is not the home for implementation of the NETmundial Principles or the evolution of multistakeholder participation in Internet governance. The NETmundial Initiative has been developed – external to ICANN - “to provide an open, generative, and collaborative space, inviting permission-less innovation to build and deliver distributed Internet governance enablers and solutions for distributed Internet governance,” particularly for those who embrace and uphold the NETMundial Principles (See <https://www.netmundial.org/principles>.)¹⁶

ICANN also explained the relationship between ICANN and the NETmundial Initiative:

“Although ICANN is one of the founding members of the Initiative, the NETmundial Initiative is

¹³ *Id.*, Pg. 2.

¹⁴ *Id.*, Pg. 2.

¹⁵ See DIDP Request No. 20141228-1, available at <https://www.icann.org/en/system/files/files/cis-netmundial-request-28dec14-en.pdf> (“First NETmundial DIDP Request”).

¹⁶ Response to DIDP Request No. 20141228-1, Pg.1, available at <https://www.icann.org/en/system/files/files/cis-netmundial-response-27jan15-en.pdf> (“First NETmundial DIDP Response”).

not a part of ICANN.”¹⁷ ICANN also directed the Requester to all responsive documents, which have been published on ICANN’s and NETmundial’s websites.¹⁸

On 22 July 2015, the Requester submitted a second DIDP request setting forth the same request as found the First NETmundial DIDP Request for documents that represent ICANN’s “efforts to implement the NETmundial Principles within its working” (“Second NETmundial DIDP Request”).¹⁹ On 21 August 2015, ICANN responded to the Second NETmundial DIDP Request (“Second NETmundial DIDP Response”).²⁰ ICANN provided links to all publicly available documents responsive to the NETmundial DIDP Request, including statements by Fadi Chehadé, ICANN President and CEO, discussing efforts across the Internet community to implement the NETmundial Principles.²¹ Once again, ICANN explained that because “ICANN is not the home for implementation of the NETmundial Principles,” documents addressing NETmundial principles did not concern ICANN’s operational activities and, as such, were beyond the scope of the DIDP.²² ICANN reminded the Requester that many of the NETmundial Principles are “high-level statements that permeate through the work of any entity,” and that “many of the Principles are embodied in ICANN’s Core Values as set forth in Article 1, Section 2 of ICANN’s Bylaws.”²³ ICANN referenced relevant documents that have been published on

¹⁷ *Id.*

¹⁸ *See id.* at Pg. 2.

¹⁹ *See* DIDP Request No. 20150722-1, Pgs. 1-2, *available at* <https://www.icann.org/en/system/files/files/didp-request-20150722-1-redacted-22jul15-en.pdf> (“Second NETmundial DIDP Request”).

²⁰ *See* Response to DIDP Request No. 20150722-1, *available at* <https://www.icann.org/en/system/files/files/didp-response-20150722-1-21aug15-en.pdf> (“Second NETmundial DIDP Response”).

²¹ *Id.*, Pgs. 1-2.

²² *Id.*

²³ *Id.* (*citing* <https://www.icann.org/resources/pages/governance/bylaws-en/#I>).

ICANN’s website.²⁴ ICANN further cited to certain DIDP Defined Conditions for Nondisclosure applicable to the Second NETmundial DIDP Request.²⁵

On 8 September 2015, the Requester filed the instant Reconsideration Request (“Request”), seeking reconsideration of both the Second Financial Data DIDP Response and the Second NETmundial DIDP Response.²⁶

B. Relief Requested.

Requester asks that ICANN “provide [it] with the information [it] earlier sought in the interest of [its] research as the internet community as a whole.”²⁷ Specifically, the Requester asks that ICANN produce: (a) information regarding ICANN’s implementation of the NETmundial Principles, and (b) raw financial data for FY99 through FY11.²⁸

III. Issues.

In view of the claims set forth in Request 15-15, the issues are whether ICANN staff violated established policy or procedure by:

1. determining that certain documents sought in the Financial Data DIDP Request were subject to the DIDP Defined Conditions for Nondisclosure.
2. determining that ICANN not the home for the implementation of the NETmundial Principles and, consequently, that certain documents sought in the NETmundial DIDP Request fell outside the scope of the DIDP.

IV. The Relevant Standards for Evaluating Reconsideration Requests and Responding to DIDP Requests.

A. Reconsideration Requests

²⁴ *Id.*

²⁵ *Id.*, Pgs. 2-3.

²⁶ See Request, § 3, Pg. 1, available at <https://www.icann.org/en/system/files/files/reconsideration-15-15-cis-redacted-08sep15-en.pdf>.

²⁷ *Id.*, § 9, Pg. 3.

²⁸ *Id.*, §§ 8-9, Pgs. 2-3.

ICANN’s Bylaws provide for reconsideration of a Board or staff action or inaction in accordance with specified criteria.²⁹ Dismissal of a request for reconsideration of staff action or inaction is appropriate if the BGC concludes, and the Board agrees to the extent that the BGC deems that further consideration by the Board is necessary, that the requesting party does not have standing because the party failed to satisfy the reconsideration criteria set forth in the Bylaws.

B. Documentary Information Disclosure Policy (DIDP).

ICANN considers the principle of transparency to be a fundamental safeguard in assuring that its bottom-up, multistakeholder operating model remains effective and that outcomes of its decision-making are in the public interest and are derived in a manner accountable to all stakeholders. A principal element of ICANN’s approach to transparency and information disclosure is the commitment to make publicly available a comprehensive set of materials concerning ICANN’s operational activities. In that regard, ICANN has identified many categories of documents that are made public as a matter of due course.³⁰ In addition to ICANN’s practice of making many documents public as a matter of course, the DIDP allows community members to request that ICANN make public documentary information “concerning

²⁹ Bylaws, Art. IV, § 2. Article IV, § 2.2 of ICANN’s Bylaws states in relevant part that any entity may submit a request for reconsideration or review of an ICANN action or inaction to the extent that it has been adversely affected by:

- (a) one or more staff actions or inactions that contradict established ICANN policy(ies); or
- (b) one or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board’s consideration at the time of action or refusal to act; or
- (c) one or more actions or inactions of the ICANN Board that are taken as a result of the Board’s reliance on false or inaccurate material information.

³⁰ See ICANN Documentary Information Disclosure Policy, *available at* <https://www.icann.org/resources/pages/didp-2012-02-25-en>.

ICANN’s operational activities, and within ICANN’s possession, custody, or control,” that is not already publicly available.³¹

In responding to a request for documents submitted pursuant to ICANN’s DIDP, ICANN adheres to the “Process For Responding To ICANN’s Documentary Information Disclosure Policy (DIDP) Requests” (“DIDP Response Process”).³² The DIDP Response Process provides that following the collection of potentially responsive documents, “[a] review is conducted as to whether any of the documents identified as responsive to the Request are subject to any of the [Nondisclosure Conditions] identified [on ICANN’s website].”³³

Per the DIDP, ICANN reserves the right to withhold documents if they fall within any of the Nondisclosure Conditions, which include, among others: (i) “[i]nternal information that, if disclosed, would or would be likely to compromise the integrity of ICANN’s deliberative and decision-making process [...]”; (ii) “[i]nformation exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates [...]”; and (iii) “[c]onfidential business information and/or internal policies and procedures.”³⁴ In addition, ICANN may refuse “[i]nformation requests: (i) which are not reasonable; (ii) which are excessive or overly burdensome; (iii) [where compliance] is not feasible; or (iv) [which] are made with an abusive or vexatious purpose or by a vexatious or querulous individual.”³⁵

The DIDP Response Process also provides that “[t]o the extent that any responsive documents fall within any [Nondisclosure Conditions], a review is conducted as to whether,

³¹ *Id.*

³² See DIDP Response Process, available at <https://www.icann.org/en/system/files/files/didp-response-process-29oct13-en.pdf>.

³³ *Id.*; see also “Nondisclosure Conditions,” available at <https://www.icann.org/resources/pages/didp-2012-02-25-en>.

³⁴ See <https://www.icann.org/resources/pages/didp-2012-02-25-en>.

³⁵ *Id.*

under the particular circumstances, the public interest in disclosing the documentary information outweighs the harm that may be caused by such disclosure.”³⁶ It is within ICANN’s discretion to determine whether the public interest in the disclosure of responsive documents that fall within one of the Nondisclosure Conditions outweighs the harm that may be caused by such disclosure.³⁷

V. Analysis and Rationale.

The Requester does not identify any misapplication of policy or procedure by ICANN staff. Rather, the Requester simply disagrees with ICANN staff’s determination that certain requested documents were beyond the scope of the DIDP or were subject to DIDP Defined Conditions for Nondisclosure. Substantive disagreements with a DIDP response, however, are not proper bases for reconsideration.

A. ICANN Staff Adhered to Established Policies and Procedures in Responding to the Second Financial Data DIDP Request.

The Requester acknowledges that it would be “extremely time consuming and overly burdensome to access and review all of ICANN’s financial data for FY99 thru FY11,” but nonetheless contends that the requested data should be produced because, in the Requester’s view, “the public interest ought to override such considerations.”³⁸ This statement merely reflects the Requester’s disagreement with the merits of ICANN’s application of the DIDP Defined Conditions for Nondisclosure. It does not demonstrate how ICANN’s Response to the Second Financial Data DIDP Request violated any established policy or procedure.

As discussed above, one of the DIDP Conditions for Nondisclosure is “[i]nformation requests: (i) which are not reasonable; (ii) which are excessive or overly burdensome; (iii)

³⁶ See <https://www.icann.org/en/system/files/files/didp-response-process-29oct13-en.pdf>.

³⁷ *Id.*

³⁸ Request, § 8, Pg. 3.

complying with which is not feasible.”³⁹ Pursuant to the DIDP Response Process, “a review is conducted [by ICANN] as to whether the documents identified as responsive to the Request are subject to any of the [DIDP Defined Conditions for Nondisclosure] identified [on ICANN’s website].”⁴⁰

In responding to the Requester’s Second Financial Data DIDP Request, ICANN searched for and evaluated the existence of documents responsive to the Request. ICANN’s revenue results from accreditation, application and transaction-based fees invoiced to registrars, from annual and transaction-based fees invoiced to registries, from contributions made by country code top-level domain managers (mainly voluntary), and from a few sponsorship contributions (from sponsors at ICANN meetings). The number of individual parties invoiced as a result of the revenue types described above varies between 700 and 2500 over the past five years (FY11 to FY15). The number of invoices issued per year varies from approximately 10,000 to 20,000 over the same period of time (including credit memos). As explained in the First and Second Financial Data DIDP Responses, ICANN does not produce and publish, in the normal course of business, revenue reports that break down the revenues received from each legal entity and individual for each fiscal year. ICANN staff noted in the Responses that while the DIDP Guidelines do not obligate ICANN to create or compile summaries of any documented information, as part of its commitment to accountability and transparency, ICANN did undertake the effort to prepare and publish the requested reports for FY13 and FY14, and will prepare and

³⁹ See <https://www.icann.org/resources/pages/didp-2012-02-25-en>.

⁴⁰ See Process For Responding To ICANN’s Documentary Information Disclosure Policy (DIDP) Requests, available at <https://www.icann.org/en/system/files/files/didp-response-process-29oct13-en.pdf>; see also <https://www.icann.org/resources/pages/didp-2012-02-25-en>.

publish the requested reports for FY12 and FY15, and that ICANN will also prepare and publish these similar reports on a going forward basis.⁴¹

With respect to the reports for FY99 through FY11, ICANN advised that it does not have the data for these years in the same format as the more recent years because the data is stored on a different system than the data for the years 2012 to the present. ICANN changed accounting systems in FY11, and thus, the old system – and the information contained therein – has been archived.

Accessing and compiling the requested information from the archives would require ICANN to: (1) restore the data files for both ICANN’s accounting ledger and billing information (which comprise two different modules); (2) convert those data files into usable formats; (3) review all files to identify the responsive data; (4) convert the pertinent data into a spreadsheet format; (5) reconcile the invoiced amounts with the accounting records for each registrar, registry, and sponsor; and (6) reconcile the new itemized accounting records with ICANN’s financial statements. Completing this complex process for a *single fiscal year* could take an ICANN employee working full time as much as two full months. The Requester asks ICANN to undertake this onerous process for *thirteen* fiscal years, which could require ICANN to devote more than two years of employee time to this project. The out-of-pocket cost of this exercise would be extraordinarily high – in addition to two years of employee salary, ICANN would incur significant expense in accessing and restoring the relevant data from the archives. In finding it would be both “extremely time consuming” and “extremely burdensome” for ICANN to devote such resources to produce data responsive to the Second Financial Data DIDP Request, ICANN staff properly applied the DIDP Defined Conditions for Nondisclosure. Additionally, ICANN

⁴¹ See First Financial Data DIDP Response, Pg. 1, Second Financial Data DIDP Response, Pg. 1.

noted in its Responses that much of the information requested is publicly available on the Financials webpage, just not in the format requested by the Requester.

ICANN must independently undertake the analysis of each DIDP Nondisclosure Condition as it applies to the documentation at issue, and make the final determination as to whether any DIDP Defined Conditions for Nondisclosure apply.⁴² In conformance with the publicly posted DIDP Response Process, ICANN undertook such analysis, as noted above, and articulated its conclusions in the Second Financial Data DIDP Response. While the Requester may not agree with ICANN's determination that certain DIDP Defined Conditions for Nondisclosure apply here, the Requester identifies no policy or procedure that ICANN staff violated in making its determination, and the Requester's substantive disagreement with that determination is not a basis for reconsideration.

The DIDP states that if documents have been identified within the DIDP Defined Conditions for Nondisclosure, they "may still be made public if ICANN determines, under the particular circumstances, that the public interest in disclosing the information outweighs the harm that may be caused by such disclosure."⁴³ Here, the Requester "opine[s] that the public interest ought to override" the harm that would befall ICANN if it was to respond to the overly burdensome Second Financial Data DIDP Request.⁴⁴ The Requester's opinion, however, is not evidence that ICANN staff acted improperly. In accordance with the DIDP Response Process, ICANN staff conducted a review of all responsive documents that fell within the DIDP Defined Conditions for Nondisclosure, and determined that the potential harm outweighed the public

⁴² See <https://www.icann.org/en/system/files/files/didp-response-process-29oct13-en.pdf>.

⁴³ See <https://www.icann.org/resources/pages/didp-2012-02-25-en>.

⁴⁴ Request, § 8, Pg. 3.

interest in the disclosure of those documents.⁴⁵ However, when the gTLD program began in 2012, ICANN staff determined that the public’s interest in this information outweighed the potential harms, and agreed to produce these reports on a going forward basis. ICANN staff arrived at the opposite conclusion for information pre-dating 2012, because this obsolete data was less valuable and substantially more cumbersome to produce. The Requester identifies no policy or procedure that ICANN staff violated in determining that the harm that may be caused by the disclosure of such documents outweighed the public interest in disclosure.

B. ICANN Staff Adhered to Applicable Policies and Procedures in Responding to the Second NETmundial DIDP Request.

In the Second NETmundial DIDP Request, the Requester sought the disclosure of documents concerning ICANN’s “efforts to implement the NETmundial Principles within its working.”⁴⁶ In seeking reconsideration, the Requester disagrees with ICANN staff’s determination that the requested documents do not relate to ICANN’s operational activities, and as such, fell outside the scope of the DIDP.⁴⁷ The Requester, however, does not identify any policy or procedure that ICANN staff violated in responding to the Second NETmundial DIDP Request. As such, reconsideration is not appropriate.

ICANN’s DIDP process is designed 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.”⁴⁸ Insofar as the NETmundial DIDP Request seeks information pertaining to implementation of the

⁴⁵ See <https://www.icann.org/en/system/files/files/didp-response-process-29oct13-en.pdf>.

⁴⁶ Second NETmundial DIDP Request, Pg. 2.

⁴⁷ Request, § 8, Pgs. 2-3.

⁴⁸ <https://www.icann.org/resources/pages/didp-2012-02-25-en> (emphasis added).

NETmundial Principles, that information does not directly concern ICANN’s operational activities and, consequently, falls outside the scope of the DIDP.

As detailed in the First and Second NETmundial DIDP Responses, the NETmundial Principles was created during the Global Multistakeholder Meeting on the Future of Internet Governance in São Paulo, Brazil on 23-24 April 2014. This was a two-day meeting organized in partnership by the Brazilian Internet Steering Committee (CGI.br) and 1/Net and brought together 1,480 stakeholders from 97 regions together (including remote participation), including ICANN, to work towards developing principles for Internet governance and to create a proposed roadmap for the future of the Internet governance ecosystem.⁴⁹ At the end of the meeting, The NETmundial Multistakeholder Statement of São Paulo was issued following bottom-up participation of stakeholders in the meeting. This is a non-binding statement that sets forth recommendations for “Internet Governance Principles” and a “Roadmap for the future evolution of the Internet Governance Ecosystem.”⁵⁰

As noted in the Second NETmundial DIDP Response, many of the NETmundial Principles are high-level statements that permeate through the work of any entity – particularly a multistakeholder entity like ICANN – that is interested in the upholding of the inclusive, multistakeholder process within the Internet governance framework.⁵¹ For example, ICANN’s mission is dedicated to the security, stability and resiliency of the Internet DNS, and documents regarding that work are available throughout ICANN’s website. Late last year, ICANN also announced a donation to support the Internet Governance Forum (<https://www.icann.org/resources/press-material/release-2014-12-18-en>), the strengthening of

⁴⁹ See First NETmundial DIDP Response, Pg. 1.

⁵⁰ See *id.*

⁵¹ See Second NETmundial DIDP Response, Pgs. 1-2.

which was called for in the NETmundial statement. However, as noted in its Response, ICANN is not the home for implementation of the NETmundial Principles.⁵²

Further, the NETmundial Initiative “identified a set of common principles and important values that contribute [to] an inclusive, multistakeholder, effective, legitimate, and evolving Internet governance framework.”⁵³ ICANN was built upon these same principles, long before the NETmundial Initiative came to fruition. When two organizations work in parallel to achieve common ends, policy similarities are inevitable. For example, one of ICANN’s Core Values is “[r]especting the creativity, innovation, and flow of information,”⁵⁴ while NETmundial’s Internet Governance Principles acknowledge that “[e]veryone has the right to freedom of opinion and expression.”⁵⁵ However, the Requester seems to confuse ICANN’s and NETmundial’s common *purposes* with a common operational *structure*.

As explained in the Second NETmundial DIDP Response, ICANN and NETmundial are legally and functionally distinct:

The NETmundial Initiative has been developed – external to ICANN – and its mission is “to provide a platform that helps catalyze practical cooperation between all stakeholders in order to address Internet issues and advance the implementation of the NETmundial Principles [...] and Roadmap” Although ICANN is one of the founding members of the NETmundial Initiative, it is not a part of ICANN.⁵⁶

Although ICANN is one of the founding members of the NETmundial Initiative, there is no operational overlap between ICANN and the NETmundial Initiative. For example, NETmundial has its own council⁵⁷ and schedule of events.⁵⁸ ICANN is just one of many participants in the

⁵² See *id.* at Pg. 2.

⁵³ NETmundial DIDP Response, Pgs. 2-3 (*citing* <http://netmundial.br/wp-content/uploads/2014/04/NETmundial-MultistakeholderDocument.pdf>.)

⁵⁴ <https://archive.icann.org/en/annualreport/annual-report-bw2-2008-en.pdf>.

⁵⁵ <http://netmundial.br/wp-content/uploads/2014/04/NETmundial-Multistakeholder-Document.pdf>.

⁵⁶ Second NETmundial DIDP Response, Pg. 1.

⁵⁷ See <https://www.netmundial.org/council>.

⁵⁸ See <https://www.netmundial.org/events>.

Internet governance realm, and ICANN is not the home for implementation of the NETmundial Principles. Accordingly, ICANN staff determined that documents concerning the implementation of the NETmundial Principles do not concern ICANN’s operational activities, and thus fall outside the scope of the DIDP.

Furthermore, the Requester presents no evidence that ICANN has undertaken any specific actions to implement the NETmundial Principles, as distinct from ICANN’s pre-existing and ongoing dedication to the security, stability and resiliency of the Internet domain name system. For example, as noted in ICANN’s Second NETmundial DIDP Response, Objective 4.3 of ICANN’s Five Year Strategic Plan includes the following key success factor that references the NETmundial Principles:

Demonstrate leadership by implementing best practices in multistakeholder mechanisms within the distributed Internet governance ecosystem while encouraging all stakeholders to implement the principles endorsed at NETmundial.⁵⁹

ICANN endeavors to implement best practices of multistakeholder Internet governance, many of which are encompassed by the NETmundial principles. There is, however, no concerted and directed effort within ICANN to implement the NETmundial Principles *as defined* by the NETmundial Initiative. Accordingly, there are no documents within ICANN “represent[ing] its efforts to implement the NETmundial Principles within its working.”⁶⁰

While the Requester may not agree with ICANN’s determination that the requested information does not concern ICANN’s operational activities, or does not exist, the Requester identifies no policy or procedure that ICANN staff violated in making its determination, and the Requester’s substantive disagreement with that determination is not a basis for reconsideration.

⁵⁹ See Second NETmundial DIDP Response, Pg. 2; *ICANN Strategic Plan for fiscal years 2016 – 2020*, available at <https://www.icann.org/en/system/files/files/strategic-plan-2016-2020-10oct14-en.pdf>.

⁶⁰ Second NETmundial DIDP Request, Pg. 2.

VI. Determination.

Based on the foregoing, the BGC concludes that the Requester has not stated proper grounds for reconsideration, and therefore denies Reconsideration Request 15-15. There is no indication that: (i) ICANN staff violated established policy or procedure by determining that certain documents sought in the Second Financial Data DIDP Request were subject to DIDP Defined Conditions for Nondisclosure; or (ii) ICANN staff violated established policy or procedure by determining that certain documents sought in the Second NETmundial DIDP Request fell outside the scope of the DIDP. If the Requester believes it has somehow been treated unfairly in the process, the Requester is free to ask the Ombudsman to review this matter.

In terms of the timing of the BGC's recommendation, Section 2.16 of Article IV of the Bylaws provides that the BGC shall make a final determination or recommendation with respect to a reconsideration request within thirty days, unless impractical.⁶¹ To satisfy the thirty-day deadline, the BGC would have to have acted by 8 October 2015. However, due to the timing of the BGC's meetings in September, October, and November, and the travel schedules of the BGC as a result of the ICANN 55 Public Meeting, the first practical opportunity for the BGC to consider Request 15-15 was 30 November 2015.

⁶¹ *Id.*, Art. IV, § 2.16.