

INDEPENDENT REVIEW PROCESS
INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

ICDR Case No. 01-14-0001-5004

In the matter of an Independent Review

DOT REGISTRY, LLC,

Claimant

And

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS,

Respondent

PROCEDURAL ORDER NO. 6

Independent Review Panel:

June 12, 2015

The Honorable Charles N. Brower

Mark Kantor

M. Scott Donahey, Chair

The Panel reminds the parties that the only document request issued to date was issued by the Panel. The Panel regards the categories of documents it requested to be relevant, and it is the Panel's view of relevancy that controls, not that of the parties. To summarize the Panel's previous request, the panel called for the production of:

" . . . all non-privileged communications and other documents within ICANN's possession, custody, or control referring to or describing:

- (a) The engagement by ICANN of the EIU to perform Community Priority Evaluations.
- (b) The work done and to be done by the EIU with respect to the Determination of the ICANN Board of Governance Committee on Dot Registry's Reconsideration Request.
- (c) Consideration by ICANN of the work performed by the EIU in connection with Dot Registry's application.

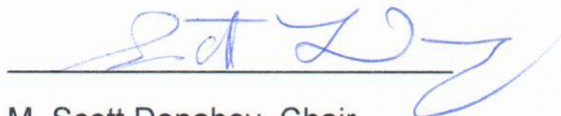
To be clear, the Panel regards the Board of Governance Committee (the BGC") to be within the Panel's document production order, whether or not it is the full Board. The Panel did not limit our directive to the Board. Rather, the Panel requested all responsive ICANN documents, not solely Board documents. Among other matters, our requests covered, to the extent that they are not covered by a privilege recognized by the applicable laws, the following: "communications between members of the Board of Governance Committee, ICANN Staff, and The Economist Intelligence Unit ("EIU") asking questions pertinent to Dot Registry's complaints, including inquiring into the EIU's purported research, scoring matrices and review of letters of support and opposition; responsive communications from the EIU detailing the purported research, scoring matrices, and thoroughness of review; internal communications within ICANN and within the BGC discussing and considering the thoroughness of the EIU's work on Dot Registry's Community Priority Evaluations ("CPEs"); and deliberative documents for the BGC's meetings, resulting in drafts of the BGC Declaration that denied Dot Registry's Reconsideration Requests."

At the present time, the Panel is not seeking documents which fall outside of the ambit of the above referenced and clarified requests. However, the Panel has already determined that the documents it requested are relevant. Otherwise, it would not have requested them. A party may not decline to produce a document that falls within the Panel's request on the basis that the party regards that document not to be "relevant."

Therefore, the Panel orders as follows:

1. ICANN will produced all documents called for by the Panel's requests set out in paragraph 2 of Amended Procedural Order No. 2, dated March 26, 2015, and those documents included in the clarification above, to the extent that those documents are not covered by a privilege recognized by the applicable laws.
2. To the extent that ICANN withholds documents that are covered by the Panel's requests on the basis that ICANN asserts that a document is covered by a privilege recognized by the applicable laws, ICANN shall reference the document in a Privilege Log, which describes as to each document withheld the type of document, the general subject matter thereof, the date on which it was created, the authors of the document, all parties who were intended to be recipients of the document, and the legal privilege being claimed, referencing the law that recognizes such claim of privilege.
3. Any additional non-privileged documents covered by the Panel's requests and the Privilege Log described in numbered paragraph 2, above, shall be produced to the panel with copies to Dot Registry no later than June 19, 2015.
4. Accompanying the production called for in paragraph 3, above, ICANN will provide the Panel with a signed attestation that it has produced all non-privileged documents called for by paragraph 2 of Amended Procedural Order No. 2 and any additional documents called for by the clarifications contained in this Procedural Order No. 6.
5. Dot Registry's request to expand the page limit of its written submission beyond that set out in paragraph 1 of Procedural Order No. 4, dated May 27, 2015 is denied, with the following understanding: a) the page limitation set out therein does not apply to appended evidentiary submissions; b) either the Panel may require or a party may request additional submissions to address open issues or those which require additional elucidation.

On behalf of the Panel



M. Scott Donahey, Chair