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AT-LARGE ADVISORY COMMITTEE

ALAC Statement on Proposed Revisions to the ICANN Documentary Information Disclosure Policy

Introduction

On 21 October 2021, Public Comment opened for the [Proposed Revisions to the ICANN Documentary Information Disclosure Policy](#). On the same day, an At-Large [workspace](#) was created for the statement. Jonathan Zuck, Co-Chair of the At-Large Consolidated Policy Working Group (CPWG) and ALAC Vice Chair for Policy, indicated there was an end user interest in responding to this Public Comment. The CPWG decided it would be in the interest of end users to develop an ALAC statement on the Public Comment, and Hadia Elminiawi and Alan Greenberg, volunteered to form a small drafting team for the ALAC statement on the ICANN DIDP.

On [01 December 2021](#), the topics for At-Large consideration with regards to the Public Comment were presented to the CPWG. Liz Le, ICANN Associate General Counsel, presented on the Public Comment. Jonathan Zuck indicated that an ALAC statement to the CPWG would be drafted on the consensus points, and called for additional feedback from contributors to the drafting team. ICANN Policy staff in support of the At-Large community created a Google Doc for drafting purposes, and shared the draft statement to its [workspace](#) and on the weekly [CPWG agenda](#).

On [08 December 2021](#), Hadia Elminiawi presented end user points for consensus on the ALAC statement. The CPWG provided final input on the At-Large points of consensus. Jonathan Zuck and Alan Greenberg coordinated to draft the ALAC statement.

On 13 December 2021, the ALAC statement was finalized. The ALAC Chair, Maureen Hilyard, requested that the statement be transmitted to the ICANN Public Comment process, copying the ICANN staff member responsible for this topic, with a note that the statement is pending ALAC ratification.

On 16 December 2021, staff confirmed the online vote resulted in the ALAC endorsing the statement with 15 votes in favor, 0 votes against, and 0 abstentions. Please note 100% (15) of the 15 ALAC Members participated in the poll. The ALAC Members who participated in the poll are (alphabetical order by first name): Carlos Aguirre, Dave Kissoondoyal, Gregory Shatan, Holly Raiche, Joanna Kulesza, Jonathan Zuck, Laura Margolis, Marita Moll, Matthias Hudobnik, Maureen Hilyard, Naveed Bin Rais, Pari Esfandiari, Raymond Mamattah, Sarah Kiden, and Sindy Obed. You may view the result independently under: <https://www.bigpulse.com/pollresults?code=1344449tNyKmtSUWq3qQQbsMcvU>

ALAC Statement on Proposed Revisions to the ICANN Documentary Information Disclosure Policy

The ALAC thanks ICANN for the opportunity to provide a statement on the Proposed Revisions to the ICANN Documentary Information Disclosure Policy (DIDP).

Bearing in mind the interests of the Internet end users around the world, and the importance of transparency as a prerequisite for trust, the ALAC would like to comment on two main points:

1. The mechanism for requestor review of ICANN DIDP responses
2. New DIDP conditions for nondisclosure

The mechanism for requestor review of ICANN DIDP responses

To make the communication between ICANN and the public more effective, and to demonstrate the importance of public requests, there needs to be a clear and credible mechanism through which requestors seek review of ICANN DIDP responses. Therefore, the ALAC supports the proposal of having the Ombuds take on this role. In addition, should the Ombuds or the ICANN Complaints Officer be designated as a potential recourse against an unsatisfactory DIDP response, this must be noted in the DIDP response and in the policy itself.

New DIDP conditions for nondisclosure

The new paragraph reads:

“Materials, including but not limited to, trade secrets, commercial and financial information, confidential business information, and internal policies and procedures, the disclosure of which could materially harm ICANN’s financial or business interests or the commercial interests of its stakeholders who have those interests. Where the disclosure of documentary information depends upon prior approval from a third party, ICANN org will contact the third party to determine whether they would consent to the disclosure in accordance with the DIDP Response Process.”

This first sentence of this new paragraph essentially grants ICANN the right to refuse any and all requests. It is reasonable to reject requests for truly confidential information and for releasing information held by ICANN under nondisclosure agreements. But rejecting a request because it includes commercial or financial information or documents an internal policy makes a mockery of this DIDP policy. Similarly, information legitimately held by ICANN related to its stakeholders, which was not obtained under nondisclosure conditions, should not be withheld. It may be awkward for ICANN to release material that could cause harm, but the DIDP exists to ensure that ICANN is transparent. ICANN should not cover up its errors or poor judgement.

The ALAC stresses the importance of information disclosure in establishing the trust and ensuring that ICANN can serve the global public interest as the steward of the Internet’s unique identifiers system. The ALAC finds that the conditions set forth for nondisclosure allow information to be held for no credible reason, which undermines the main purpose of the DIDP in facilitating transparency and access to information. The ALAC is of the view that all legally releasable information that takes into consideration the values and expectations of stakeholders should be available to the public, either through the ICANN website or DIDP policy.

The ALAC agrees with nondisclosure conditions that limit disclosure, such as information requests:

- (i) Which are excessive or overly burdensome
- (ii) Complying with which is not feasible; or
- (iii) Are made with an abusive, vexatious or querulous purpose

Finally, the ALAC stresses on the importance of information disclosure in establishing the trust and support of Internet end users in ICANN.

The ALAC recommends ICANN to:

- Allow Ombuds to oversee the mechanism for requestor review of ICANN DIDP responses.
- Document within the DIDP Policy any available recourse if a DIDP is not fully satisfied.
- Revise the first sentence of the new paragraph related to conditions for nondisclosure. ICANN must evaluate whether to release material, but the DIDP exists to ensure that ICANN is transparent.