

## Response to Documentary Information Disclosure Policy Request

To: Don C. Moody, on behalf of Donuts, Inc. and its subsidiary Foggy Sunset, LLC

Date: 21 October 2015

Re: Request No. 20150921-1

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Thank you for your Request for Information dated 21 September 2015 (Request), which was submitted through the Internet Corporation for Assigned Names and Numbers' (ICANN's) Documentary Information Disclosure Policy (DIDP) on behalf of Donuts, Inc. and its subsidiary Foggy Sunset, LLC (collectively, "Donuts"). For reference, a copy of your Request is attached to the email forwarding this Response.

### **Items Requested**

Your Request seeks documentary information relating to the Community Priority Evaluation (CPE) of Asia Spa and Wellness Promotion Council Limited's (ASWPC's) application for the .SPA gTLD (Application ID: 1-1309-81322) and requests disclosure of:

- (1) "All letters of support or opposition submitted to ICANN concerning the AWSPC community application for .SPA."
- (2) "All documents evidencing the date on which each of the letters responsive to Request No. 1 was submitted to ICANN and became part of the public record for the .SPA CPE decision."
- (3) "All documents that evidence or reflect the action taken by the EIU or anyone acting on its behalf to verify each of the letters responsive to Request No. 1, in accordance with the process established by EIU for doing so at page 5 of its August 7, 2014 CPE process document."
- (4) "All documents that state, reflect or refer to the basis (if any) upon which the EIU relied, if it did, on any letter responsive to Request No. 1 not publicly submitted to or for ICANN or the EIU on or before February 17, 2015."
- (5) "All correspondence and communications between ICANN and the EIU regarding: (i) the AWSPC community application for .SPA; (ii) support for or opposition to the application; and/or (iii) the EIU's evaluation of the application for community priority."
- (6) "All correspondence and communications between ICANN and the Government of Belgium, and/or the City of Spa, regarding .SPA."

- (7) “Documents sufficient to identify all persons, whether ICANN staff, Board members or otherwise, who participated in the correspondence and communications referenced in Request No. 6.”
- (8) “Any and all drafts of the EIU’s CPE report concerning .SPA.”

## Response

CPE is a method to resolve string contention. The standards governing CPE are set forth in Module 4.2 of the New gTLD Applicant Guidebook (Guidebook), and are available at <http://newgtlds.icann.org/en/applicants/agb>. CPE will occur only if a community-based applicant in contention selects CPE, and after all applications in the contention set have completed all previous stages of the gTLD evaluation process. (See Guidebook, § 4.2.) CPEs are performed by independent CPE panels that are coordinated by the Economist Intelligence Unit (EIU), an independent, third party provider, which contracts with ICANN to perform that coordination role. (See *id.*; see also, CPE webpage at <http://newgtlds.icann.org/en/applicants/cpe>.) The CPE panel’s role is to determine whether a community-based application fulfills the community priority criteria. (See *id.*) The Guidebook, the CPE Panel Process Document, and the CPE Guidelines (all of which can be accessed at <http://newgtlds.icann.org/en/applicants/cpe>) set forth the guidelines, procedures, standards and criteria applied to CPEs, and make clear that the EIU and its designated panelists are the only persons or entities involved in the performance of CPEs.

As part of the evaluation process, the CPE panels review and score a community application submitted to CPE against the following four criteria: (i) Community Establishment; (ii) Nexus between Proposed String and Community; (iii) Registration Policies; and (iv) Community Endorsement. An application must score at least 14 out of a possible 16 points to prevail in CPE; a high bar because awarding priority eliminates all non-community applicants in the contention set as well as any other non-prevailing community applicants. (See Guidebook at § 4.2; see also, CPE webpage at <http://newgtlds.icann.org/en/applicants/cpe>.)

To provide transparency of the CPE process, ICANN has established a CPE webpage on the New gTLD microsite, at <http://newgtlds.icann.org/en/applicants/cpe>, which provides detailed information about CPEs. In particular, the following information can be accessed through the CPE webpage:

- CPE results, including information regarding the Application ID, string, contention set number, applicant name, CPE invitation date, whether the applicant elected to participate in CPE, and the CPE status. (<http://newgtlds.icann.org/en/applicants/cpe#invitations>).
- CPE Panel Process Document (<http://newgtlds.icann.org/en/applicants/cpe/panel-process-07aug14-en.pdf>).
- EIU Contract and Statement of Work Information (SOW) (<http://newgtlds.icann.org/en/applicants/cpe/eiu-contract-sow-information-08apr15-en.zip>).

- CPE Guidelines (<http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>).
- Draft CPE Guidelines (<http://newgtlds.icann.org/en/applicants/cpe/guidelines-16aug13-en.pdf>).
- Community Feedback on Draft CPE Guidelines (<http://newgtlds.icann.org/en/applicants/cpe#invitations>).
- Updated CPE Frequently Asked Questions (<http://newgtlds.icann.org/en/applicants/cpe/faqs-10sep14-en.pdf>).
- CPE Processing Timeline (<http://newgtlds.icann.org/en/applicants/cpe/timeline-10sep14-en.pdf>).

Items 1 through 4 seek documents relating to “letters of support or opposition submitted to ICANN concerning the AWSPC community application for .SPA” and the EIU’s consideration of such letters. Letters in support of or in opposition to an application are publicly posted on the application webpage and the Correspondence webpages. In this instance, letters regarding ASWPC’s application for .SPA are available at <https://gtdresult.icann.org/application-result/applicationstatus/applicationdetails/123>, <https://www.icann.org/resources/pages/correspondence-2012-09-24-en> and <http://newgtlds.icann.org/en/program-status/correspondence>. Your Request in fact identifies and provides links to the requested support letters.

With respect to the EIU’s “actions taken...to verify” or reliance upon such letters, in accordance with the CPE Panel Process Document, the CPE Panel reviews documents and communications, including letters of support or opposition, that are publicly available through a number of resources, such as: (a) the AWSPC’s application for .SPA available at <https://gtdresult.icann.org/application-result/applicationstatus/applicationdetails/123>; (b) the Correspondence webpages available at <https://www.icann.org/resources/pages/correspondence-2012-09-24-en> and <http://newgtlds.icann.org/en/program-status/correspondence>; (c) the Applicant Comment Forum available at <https://gtdcomment.icann.org/comments-feedback/applicationcomment/viewcomments>; and (d) the Objection Determinations webpage available at <http://newgtlds.icann.org/en/program-status/odr/determination>. (See CPE Panel Process Document at Pg. 2, <http://newgtlds.icann.org/en/applicants/cpe/panel-process-07aug14-en.pdf>.) As further noted in the CPE Panel Process Document, the EIU reviews ICANN’s public correspondence page on a regular basis for recently received correspondence to assess whether it is relevant to an ongoing evaluation. If it is relevant, the EIU provides the public correspondence to the evaluators assigned to the evaluation of a particular application. (See *id.* at Pg. 5.)

To help assure independence of the process and evaluation of CPEs, ICANN (either Board or staff) is not involved with the CPE Panel’s verification of letters of support or opposition, evaluation of criteria, scoring decisions, or underlying analyses. The coordination of the CPE Panel, as explained in the CPE Panel Process Document, is entirely within the work of the EIU’s team. As stated in the CPE Process Document, “[t]he Panel Firm’s Project Manager is notified by ICANN that an application is ready for CPE, and the application ID and public comment delivered to the EIU. The EIU is

responsible for gathering the application materials and other documentation, including letter(s) of support and relevant correspondence, from the public ICANN website.” (See CPE Process Document, Pg. 2, <http://newgtlds.icann.org/en/applicants/cpe/panel-process-07aug14-en.pdf>.) ICANN does not have, nor does it collect or maintain, the work papers of the individual CPE panels (including the .SPA CPE Panel) that contain the information called for within Items 3 and 4. The end result of the CPE Panel’s analysis is the CPE Report, which explains the CPE Panel’s determinations, scoring, and, in this instance, also includes a Summary of Review & Verification of Support/Opposition Materials as of 22 May 2015. (See <https://www.icann.org/sites/default/files/tlds/spa-cpe-1-1309-81322-en.pdf>.) Based on the foregoing, to the extent that ICANN has documentation responsive to Items 1 thru 4, such documents are either already public or subject to certain of the Defined Conditions for Nondisclosure set forth in the DIDP:

- 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.
- Confidential business information and/or internal policies and procedures.
- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.

Item 5 seeks correspondence between ICANN and the EIU regarding AWSPC’s .SPA application. As noted above, except for the notice of commencement of CPE and the public comments submitted on the Application Comments page relating to the application, ICANN (either Board or staff) is not involved with the CPE Panel’s verification of letters of support or opposition, evaluation of criteria, scoring decisions, or underlying analyses. As stated in the CPE Process Document, along with the notice to commence CPE, ICANN delivers to the EIU the public comment(s), if any, received on the application. (See CPE Process Document, Pg. 2, <http://newgtlds.icann.org/en/applicants/cpe/panel-process-07aug14-en.pdf>.) In the case of AWSPC’s application for .SPA, one comment was submitted to the Application Comment Forum (available at <https://gldcomment.icann.org/applicationcomment/viewcomments>) and, therefore, that comment was provided to the EIU in conjunction with the notice to commence CPE. In response to this DIDP Request, ICANN will provide the email notification to begin CPE

of the community application for .SPA that was sent from ICANN staff to the EIU on 26 February 2015 and the public comment that was provided to the EIU relating to AWSPC's application. To the extent that ICANN has communications with persons from the EIU who are not involved in the scoring of a CPE, but otherwise assist in a particular CPE (as anticipated in the CPE Panel Process Document), those documents are subject to the following Defined Conditions of Nondisclosure set forth in the DIDP:

- 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.
- Confidential business information and/or internal policies and procedures.
- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.

Items 6 and 7 seek the correspondence “between ICANN and the Government of Belgium, and/or the City of Spa, regarding .SPA,” and “[d]ocuments sufficient to identify all persons... who participated in the correspondence.” As noted above, ICANN publicly posts correspondence that it receives regarding applications on its Correspondence webpages, available at <https://www.icann.org/resources/pages/correspondence-2012-09-24-en> and <http://newgtlds.icann.org/en/program-status/correspondence>, which includes, in this instance, correspondence with the Government of Belgium or City of Spa regarding the .SPA gTLD. Your Request in fact already identifies the seven correspondence items responsive to Item 6, which also clearly identify the senders and recipients of each correspondence item:

- <https://www.icann.org/resources/correspondence/lanotte-to-chehade-crocker-2013-07-01-en>
- <https://www.icann.org/en/system/files/correspondence/laurent-to-chehade-crocker-06mar14-en.pdf>
- <https://www.icann.org/en/system/files/correspondence/atallah-to-laurent-13mar14-en.pdf>
- <https://www.icann.org/en/system/files/correspondence/lanotte-to-chehade-crocker-20mar14-en.pdf>
- <https://www.icann.org/en/system/files/correspondence/willett-to-lanotte-30apr14-en.pdf>

- <https://www.icann.org/en/system/files/correspondence/lanotte-to-chehade-crocker-01jul14-en.pdf>
- <https://www.icann.org/en/system/files/correspondence/chehade-to-lanotte-03oct14-en.pdf>

ICANN has no documentary information responsive to this request other than what has already been published.

Item 8 seeks disclosure of “[a]ny and all drafts of the EIU’s CPE report concerning .SPA.” Such documents are not appropriate for disclosure through the DIDP and are subject to a specific Defined Condition for Nondisclosure as set forth in the DIDP:

- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.

For each of the items identified above as subject to Defined Conditions of Nondisclosure, ICANN has determined that there are no particular circumstances for which the public interest in disclosing the information outweighs the harm that may be caused to ICANN, its contractual relationships, and its contractors’ deliberative processes by the requested disclosure.

### **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 your 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](mailto:didp@icann.org).

**Attachment**

**Subject:** Notification to begin evaluation of Application 1-1309-81322 (.SPA)

**Date:** Thursday, February 26, 2015 at 10:28:19 AM Pacific Standard Time

**From:** Jared Erwin Contact Information Redacted

**To:** EIU Contact Information Redacted

**CC:** Christopher Bare Contact Information Redacted , Russ Weinstein Contact Information Redacted

Hi EIU Contact Information Redacted

This email serves as the EIU's notification that evaluation can begin on application 1-1309-81322 (Asia Spa and Wellness), community applicant for SPA. As per other evaluations, the following are in scope:

- Application questions 1-30a
- Application comments (these have been loaded into the external share drive for your retrieval—There was only one comment for this application)
- Correspondence
- Objection outcomes
- Outside research (as necessary)

The CPE micro site (<http://newgtlds.icann.org/en/applicants/cpe>) will be updated later today to reflect that evaluation is now in progress for this applicant.

Please let me know if you have any questions.

Best,  
Jared

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**Jared Erwin**

Operations Specialist

Global Domains Division

Internet Corporation for Assigned Names and Numbers (ICANN)

Contact Information Redacted



**Attachment**

tasApplicationId	tld	name	affiliation	email	comment_id	subject	comment	created
1-1309-81322	SPA	AIM - European Brands Association	AIM - European Brands Association	marie.pattullo@aim.be	zu2rvg5w	Avoiding bad faith registrations	<p>While supporting enhanced fair competition, we call on the evaluators to ensure the maintenance of a clean Internet space by impressing on the new registries the importance of not accepting second level names within their gTLDs that may be confusingly similar to third party trade marks, especially from applicants believed to be registering in bad faith. To avoid consumer confusion and the wasted resources of needless dispute resolution procedures, legal actions and defensive registrations (none of which benefit consumers), as well as proving to the entire community that the registries do wish to act in good faith in a clean space, we request that new registries develop "blocked" lists of brand names that should not be registered absent evidence of good faith. Such lists could take the form of "white lists" at the second level that could only be lifted if requested by and for the brand owner.</p>	8/7/12 14:29