

**INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION**

**INDEPENDENT REVIEW PANEL**

ICDR No. 01-16-0000-7056

In the Matter of an Independent Review Process

Between:

**AMAZON EU S.A.R.L.,  
Claimant,**

**-and-**

**INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS,  
Respondent.**

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**ORDER NO. 3: DENYING AMAZON’S OBJECTIONS TO REDACTIONS  
OF CERTAIN PORTIONS OF THE HEARING TRANSCRIPT AND  
EXHIBITS**

By letter brief dated May 26, 2017, Claimant Amazon EU S. a. r. l. (“Amazon”) objected to certain proposed redactions contained in the transcript of the hearing conducted on May 1-2, 2017. By letter brief dated June 1, 2017, ICANN responded to and opposed Amazon’s objections to the redactions.

All of the redactions involve explicit references to or information contained in certain exhibits, seven in total, that prior to the hearing were designated either CONFIDENTIAL or HIGHLY CONFIDENTIAL under a stipulated Protective Order entered by the Panel on January 4, 2017. Amazon br., Ex. 1. The Protective Order, titled Joint Stipulation Against Unauthorized Use or Disclosure of Confidential Information (“Joint Stipulation”), set forth the criteria for confidentiality designations. Thus, it permitted either party to designate certain documents

produced to the other in pre-hearing discovery as either “CONFIDENTIAL” based on a good faith belief that such document, *inter alia*, contained non-public “confidential or proprietary information or contained information covered by a legitimate privacy right or interest” or “HIGHLY CONFIDENTIAL” based on a good faith belief that the disclosure of same “would result in a serious competitive disadvantage to the producing party or otherwise seriously harm the producing Party.” Ex. 1, paras. 1 and 3. The parties stipulated that CONFIDENTIAL and HIGHLY CONFIDENTIAL documents or information derived from them is to be redacted from transcripts of, *inter alia*, the IRP hearing. Ex. 1, para. 9. In making designations, both parties were to have due regard for ICANN’s commitment to operate “to the maximum extent feasible in an open and transparent manner”, as provided for under Article III, Sections 3.1 and 3.2 of its By-Laws. Ex., para. 7.

The Joint Stipulation further provided for a procedure for the non-designating party to challenge or object to the producing party’s classification before this Panel, but required that it do so within five days after conferring with the other party concerning its objection. Ex. 1, para. 6. No challenge or objection was filed with this Panel by either party until Amazon’s challenge of May 26, 2017, well after the confidentiality designations had been made as to the seven exhibits in question.

Amazon contends that the redactions and, therefore, the underlying seven exhibits, must be disclosed, pursuant to transparency obligations of ICANN’s By-Laws. In addition, Amazon cites to ICANN’s Publication Practices (Amazon br., Ex. 2) as further support for its position. Among other things, chapter III relates to ICANN’s Documentary Information Disclosure Policy – Defined Conditions of Disclosure (“DIDP”). Chapter IV relates to Independent Review Process Materials. Amazon argues that the redactions are inconsistent with ICANN’s transparency obligations under the By-Laws and the provisions of the DIDP.

ICANN argues, in essence, that Amazon agreed to the criteria for confidentiality designations in the Joint Stipulation. It also contends that in the context on an IRP, such confidentiality protections may be, and in this case, were necessary to the full exchange of relevant documents. While ICANN has a commitment to transparency, its By-Laws and the DIDP recognize that there are situations where non-disclosure is appropriate.

Having reviewed and considered the letter briefs, the Joint Stipulation, the seven exhibits designated CONFIDENTIAL or HIGHLY CONFIDENTIAL, the redactions of limited portions of the hearing transcript, including the testimony of Akram Atallah and closing argument of counsel and colloquy between counsel and the Panel relating to the CONFIDENTIAL or HIGHLY CONFIDENTIAL exhibits, and ICANN’s Publication Practices, and for the reasons set forth below, the Panel declares that Amazon’s objections to the redactions are not well taken. They are, therefore, denied.

Six of the exhibits used by Amazon in its examination of Mr. Atallah and in closing argument were and are designated as Confidential (two were downgraded from Highly Confidential to Confidential at or near the time of the hearing) and one is still designated Highly Confidential. Upon review, the underlying exhibits appear to have been appropriately designated in the first instance, based upon the criteria agreed to by parties in their Joint Stipulation. (Ex. 1,

paras. 1, 3). The designations appear to have been made in good faith by ICANN, and there is no evidence to the contrary. Moreover, notwithstanding ICANN's transparency commitment, both ICANN's By-Laws and its Publication Practices recognize that there are situations where non-public information, e.g., internal staff communications relevant to the deliberative processes of ICANN and sensitive private communications between ICANN and government officials may contain information that is appropriately protected against disclosure. See, e.g., Ex. 2, Chapter III, first and second bullets.

Based on our review, the redactions of hearing transcript appear to be directly related to information contained in the exhibits designated Confidential or Highly Confidential and, therefore, those portions of the transcript are properly redacted, pursuant to the Joint Stipulation. Ex. 1, para. 6; see also, Ex. 2, Chapter IV.C.

In light of our ruling, we do not reach ICANN's argument that Amazon has waived its objections to some or all of the exhibits and to redactions from the transcript containing information revealed in those exhibits.

After conferring with his co-Panelists, the Chair was authorized to sign this Order on behalf of the entire Panel.

SO ORDERED this 7th day of June, 2017



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Robert C. Bonner  
Chair and on behalf of the Panel