

Reconsideration Request Form

Version of 1 October 2016

Submission Date: Sep 21, 2018

1. Requestor Information

Name: DotKids Foundation (New gTLD Applicant: 1-1309-46695)

Address: Contact Information Redacted

Email: Contact Information Redacted

Phone Number (optional):

(Note: ICANN will post the Requestor's name on the Reconsideration Request page at <https://www.icann.org/resources/pages/accountability/reconsideration-en>. Requestor's address, email and phone number will be removed from the posting.)

2. Description of specific action you are seeking to have reconsidered.

(Provide as much detail as available, such as date of Board meeting, reference to Board resolution, etc. You may provide documents. All documentation provided will be made part of the public record.)

On Aug 27, 2018 (case number 00901528), DotKids Foundation, as a Support-Approved Candidate (SAC), inquired and requested for the process to apply for financial support for later stages in the new gTLD process.

On Aug 28, 2018, ICANN rejected the request, indicating that ICANN is unable to provide such financial assistance.

3. Date of action/inaction:

(Note: If Board action, this is the date on which information about the challenged Board action is first published in a resolution, unless the posting of the resolution is not accompanied by a rationale. In that instance, the date is the date of the initial posting of the rationale.)

Aug 28, 2018

4. On what date did you become aware of the action or that action would not be taken?

(Provide the date you learned of the action/that action would not be taken. If more than thirty days has passed from when the action was taken or not taken to when you learned of the action or inaction, please provide discussion of the gap of time.)

Aug 28, 2018

5. Describe how you believe you are materially and adversely affected by the action or inaction:

As a Support-Approved Candidate (SAC), DotKids Foundation is by definition financially needy. Therefore, without a proper process for DotKids Foundation to make full use of the financial support as an SAC, means that DotKids Foundation, a non-profit community organization, will be facing contention auction against other for-profit companies, without adequate financial means that otherwise could have been provided for in the financial support program upon the full implementation of the JAS report.

6. Describe how others may be adversely affected by the action or inaction, if you believe that this is a concern.

The JAS Final Report specifically recommended that: "Support Should Be Offered from the First Round Onward" and went on to explain the importance of properly implementing the financial support program for ICANN and the new gTLD process. As such, without the full implementation of the financial support program (beyond merely the reduction of application fees), the integrity of the entire new gTLD program is adversely affected.

7. Detail of the ICANN Action/Inaction – Required Information

Please provide a detailed explanation of the facts as you understand they were provided to the Board or the ICANN organization (acting through its staff) prior to the action/inaction and the reasons why ICANN's action or inaction was: (i) contrary to ICANN's Mission, Commitments, Core Values and/or established ICANN policy(ies); (ii) taken or refused to be taken without consideration of material information; or (iii) taken as a result of ICANN's reliance on false or inaccurate relevant information..

If your request is in regards to an ICANN action or inaction that you believe is contrary to established ICANN policy(ies), the policies that are eligible to serve as the basis for a Reconsideration Request are those that

are approved by the ICANN Board (after input from the community) that impact the community in some way. When reviewing Board or staff action, the outcomes of prior Reconsideration Requests challenging the same or substantially similar action/inaction as inconsistent with established ICANN policy(ies) shall be of precedential value.

If your request is in regards to an action or inaction taken or refused to be taken without consideration of material information, please provide a detailed explanation of the material information not considered by the ICANN. If that information was not presented to the ICANN, provide the reasons why you did not submit the material information before ICANN acted or failed to act. "Material information" means facts that are material to the decision.

If your request is in regards to an action or inaction that you believe is taken as a result of ICANN's reliance on false or inaccurate relevant information, provide a detailed explanation as to whether an opportunity existed to correct the material considered by the Board or Organization. If there was an opportunity to do so, provide the reasons that you did not provide submit corrections before the action/failure to act.

Reconsideration Requests are not meant for those who believe that ICANN made the wrong decision when considering the information available. There has to be identification of material information that was in existence of the time of the decision and that was not considered by ICANN in order to state a Reconsideration Request. Similarly, new information – information that was not yet in existence at the time of the decision – is also not a proper ground for reconsideration.

Reconsideration Requests are not available as a means to seek review of country code top-level domain ("ccTLD") delegations and re-delegations, issues relating to Internet numbering resources, or issues relating to protocol parameters.

Please keep this guidance in mind when submitting requests.

Provide the Required Detailed Explanation here:

(You may attach additional sheets as necessary.)

ICANN's premature rejection of the request stating that it is "unable to provide such financial assistance" and that "additional funding past evaluations ... is currently out of scope" goes against the community developed final report by the Joint Working Group Applicant Support (JAS):

<https://newgtlds.icann.org/en/applicants/candidate-support/jas-wg-materials>

On Mar 12, 2010, the ICANN Board resolved (2010.03.12.47) to request stakeholders to work to develop a sustainable approach to providing support to applicants requiring assistance in applying for and operating new gTLDs:

<https://www.icann.org/resources/board-material/resolutions-2010-03-12-en>

On Sep 13, 2011, the Joint Working Group Applicant Support (JAS) issued its final report: <http://dakar42.icann.org/meetings/dakar2011/presentation-jas-final-report-13sep11-en.pdf>

On Oct 28, 2011, the ICANN Board resolved (2011.10.28.21) to take the JAS WG Final Report seriously and to oversee the scoping and implementation of the recommendations arising out of that Report, as feasible:

<https://www.icann.org/resources/board-material/resolutions-2011-10-28-en#2>

On Dec 8, 2011, the ICANN Board further resolved (2011.12.08.01) to finalize the implementation plan in accordance with the proposed criteria and process for the launch of the Applicant Support Program in January 2012, and resolved (2011.12.08.02) to approve the fee reduction to \$47,000 Applicant Support candidates that qualify according to the established criteria:

<https://www.icann.org/resources/board-material/resolutions-2011-12-08-en#1.1>

In the Rationale for Resolutions 2011.12.08.01 – 2011.12.08.03, it is specifically noted that *“Note: This process does not follow all JAS recommendations. In particular, the JAS recommendations state that the \$2MM seed fund should not be used for fee reductions. The JAS intended the \$2MM and other funds raised be paid out to needy and worthy applicants to help build out registries.”*

It is understood that in 2011 when the board resolved on the issue, there was time pressure to allow for the implementation of part of the JAS Final Report (in particular application fee reduction and processes for evaluating and approving support candidates). Therefore some other parts were not considered at that time (including the second part in “Cost Reduction”, “Staggered Fees” and “Funds and Foundations”).

It is now 2018 more than 7 years since the completion of the JAS Final Report. Therefore the excuse for time pressure to roll out the program is no longer tenable. ICANN must therefore properly address the remainder of the JAS Final Report (even if it may be the case that it is eventually found infeasible to implement the remainder of the recommendations).

In particular to include considerations for the remainder of the JAS recommendations, such as:

- “to provide further funding opportunities for Support-Approved Candidates in the later stages of the process” (for example, including but not limited to string contention)
- “fees for Support-Approved Candidates be staggered. Instead of paying the entire fee upon acceptance of the application, a Candidate meeting the criteria established for support could pay the fee incrementally” (for example, including but not limited to string contention fees, auction fees and other ICANN fees)
- “Further adjustments to financial requirements might include, for example,

a reduction in basic registry-service-related expenses through modifications to certain guidelines such as the continuity instrument or other adjustments” (for example, including but not limited to accountability measures, string contention fees, etc.)

The summary rejection of the request by DotKids Foundation, as a Support Approved Candidate is inappropriate. DotKids Foundation has patiently waited for ICANN to continue and uphold its commitment to take the JAS Final Report seriously and to consider the feasibility of implementation of all aspects of the report. The ICANN Board has not rejected the remaining recommendations of the JAS Final Report nor suggested that it will not further consider the remaining recommendations of the report as time permits.

Furthermore, it is apparent that the budget allocation from ICANN already committed has not been depleted yet, and can be used for addressing the remaining recommendations of the JAS Final Report for Support Approved Candidates.

Therefore, ICANN must, seriously consider the remaining recommendations of the JAS Final Report as it has committed in its own resolutions.

Until such considerations are complete and either ICANN rejects some or all of the remaining recommendations of the JAS Final Report, and/or completes the implementation of a process and mechanism for Support Approved Candidates to apply and make use of such funds, ICANN should not push the DotKids Foundation application forward hastily.

Such forceful push of DotKids Foundation’s community not-for-profit application, as a Support Approved Candidate into an auction with for-profit conglomerates, without having fully considered and implemented the JAS Final Report recommendations, is against the principles by which the Applicant Support Program was committed to and developed, and certainly against ICANN’s core value to ascertain the global public interest.

8. What are you asking ICANN to do now?

(Describe the specific steps you are asking ICANN to take. For example, should the action be reversed, cancelled or modified? If modified, how should it be modified?)

To proceed to take the remainder of the JAS Final Report recommendations seriously, and to oversee the scoping and implementation of the remaining recommendations (including “Cost Reductions” – Further adjustments to financial requirements might include, for example, a reduction in basic registry-service-related expenses through modifications to certain guidelines such as the continuity instrument or other adjustments, “Staggered Fees” and “Funds and Foundations”) arising out of that Report, as feasible.

NOTE: This Reconsideration Request does not request that ICANN implement the above financial support as presented in the Joint Applicant Support (JAS) report directly, but rather request that ICANN initiate and complete the process for such consideration, and if found feasible, cause for such implementation process be put in place.

And to place the DotKids Foundation application on hold, as a Support-Approved Candidate (SAC), who is in need of financial support for later stages in the new gTLD process, until such implementation process for financial assistance is complete and an SAC can request and apply for them appropriately.

9. Please state specifically the grounds under which you have the standing and the right to assert this Reconsideration Request, and the grounds or justifications that support your request.

(Include in this discussion how the action or inaction complained of has resulted in material harm and adverse impact. To demonstrate material harm and adverse impact, the Requestor must be able to demonstrate well-known requirements: there must be a loss or injury suffered (financial or non-financial) that is a directly and causally connected to ICANN's action or inaction that is the basis of the Reconsideration Request. The Requestor must be able to set out the loss or injury and the direct nature of that harm in specific and particular details. The relief requested must be capable of reversing the harm alleged by the Requestor. Injury or harm caused by third parties as a result of acting in line with the ICANN's decision/act is not a sufficient ground for reconsideration. Similarly, injury or harm that is only of a sufficient magnitude because it was exacerbated by the actions of a third party is also not a sufficient ground for reconsideration.)

Without ICANN considering seriously and implementing all the JAS Final Report recommendations, as feasible, the DotKids Foundation, as a Support Approved Candidate is unable to apply and request for the otherwise could be available financial assistance to support its application through the new gTLD process.

As a not-for-profit initiative, it will be very difficult for the DotKids Foundation to compete in a capital/market driven auction (not to mention our strong belief that the interests of kids and the children community should not be put on the auction block in any case), especially if it is pushed forward before ICANN has fully considered and implemented the JAS Final Report recommendations.

As the entity directly affected by ICANN action/inaction, DotKids Foundation have the standing and the right to assert this Request for Reconsideration.

10. Are you bringing this Reconsideration Request on behalf of multiple persons or entities? (Check one)

Yes

No

10a. If yes, is the causal connection between the circumstances of the Reconsideration Request and the harm substantially the same for all of the Requestors? Explain.

N/A

Do you have any documents you want to provide to ICANN?

If you do, please attach those documents to the email forwarding this request. Note that all documents provided, including this Request, will be publicly posted at <https://www.icann.org/resources/pages/accountability/reconsideration-en> .

No

Terms and Conditions for Submission of Reconsideration Requests

The Board Governance Committee has the ability to consolidate the consideration of Reconsideration Requests if: (i) the requests involve the same general action or inaction; and (ii) the Requestors are similarly affected by such action or inaction.

The Board Governance Committee may dismiss a Reconsideration Requests if: (i) the Requestor fails to meet the requirements for bringing a Reconsideration Request; or (ii) it is frivolous.

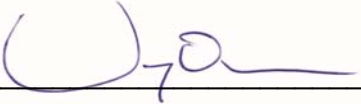
Hearings are not required in the Reconsideration Process, however Requestors may request a hearing. The BGC retains the absolute discretion to determine whether a hearing is appropriate, and to call people before it for a hearing.

For all Reconsideration Requests that are not summarily dismissed, except where the Ombudsman is required to recuse himself or herself and Community Reconsideration Requests, the Reconsideration Request shall be sent to the Ombudsman, who shall promptly proceed to review and consider the Reconsideration Request. The BGC shall make a final recommendation to the Board with respect to a Reconsideration Request following its receipt of the Ombudsman's evaluation (or following receipt of the Reconsideration Request involving those matters for which the Ombudsman recuses himself or herself or the receipt of the Community Reconsideration Request, if applicable).

The final recommendation of the BGC shall be documented and promptly (i.e., as soon as practicable) posted on the ICANN Website and shall address each of the arguments raised in the Reconsideration Request. The Requestor may file a 10-page (double-spaced, 12-point font) document, not including exhibits, in rebuttal to the BGC's recommendation within 15 days of receipt of the recommendation, which shall also be promptly (i.e., as soon as practicable) posted to the ICANN Website and provided to the Board for its evaluation; provided, that such rebuttal shall: (i) be limited to rebutting or contradicting the issues raised in the BGC's final recommendation; and (ii) not offer new evidence to support an argument

made in the Requestor's original Reconsideration Request that the Requestor could have provided when the Requestor initially submitted the Reconsideration Request.

The ICANN Board shall not be bound to follow the recommendations of the BGC. The ICANN Board's decision on the BGC's recommendation is final and not subject to a Reconsideration Request.



Signature

Edmon Chung, as Primary Contact of the
DotKids Foundation application for ".kids",
On behalf of DotKids Foundation

__Sep 21, 2018__

Date