

## Staff Responses to ATRT questions

### 1. Reconsideration Requests

#### a. Questions from ATRT:

The ATRT requests that ICANN Staff compile a report on all instances where members of the ICANN Community have formally requested that the ICANN Board reconsider one or more of its decisions. The information required includes:

- (a) Date of Initial Request
- (b) Requestor
- (c) Topic or Decision
- (d) Reconsideration Activities of the Board
- (e) Resolution or Outcome
- (f) Date of Completion
- (g) Communication of Decision to Requestor
- (h) Publication of outcomes for review by the ICANN Community

The ATRT recognizes that some Reconsideration Request topics may involve sensitive topics, or that Requestors may have specifically asked that the specifics of their request remain confidential. In these cases, the ATRT asks Staff to prepare either (a) a summary report on the use of this mechanism or (b) redact identifying information from affected use cases.

#### b. Staff Response

##### Reconsideration Requests and Responses:

Since 1999, ICANN has received 44 Reconsideration Requests, and for each, the request (posted by date) along with the Recommendations in response, can be found at <http://www.icann.org/en/committees/board-governance/requests-for-reconsideration-en.htm>. In addition, any other supplemental materials submitted or considered by the Board committee handling the reconsideration are also posted there. Presently, ICANN uses the Reconsideration Request page as the main means of communication and publication of the outcomes of the Reconsideration Process. Depending on the nature of the recommendation, however, more community review/input may be necessary and/or requested. For example, as part of the Recommendation arising from Request 10-1, the Board Governance Committee (BGC) recommended a change to the ICANN Bylaws, which was approved by the Board on [25 June 2010](#). The proposed Bylaws amendment was [posted for public comment](#) prior to Board approval.

Until 3 February 2009, Reconsideration Requests were considered by a Board Reconsideration Committee. In 2009, the Reconsideration Committee was disbanded and the BGC was designated as the committee of the Board responsible

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for the Reconsideration Process. Since 2003, the Bylaws have called for an Annual Report to the Board on the numbers and natures of the Reconsideration Requests received each year, as well as descriptions of actions taken on the Requests. All available Annual Reports can be found at:

<http://www.icann.org/en/committees/board-governance/annual-reports-en.htm>.

As no Requests were received in 2003, no Annual Report was generated for that year. The Reconsideration Committee did not present a Report in 2005.<sup>1</sup> Since then, Annual Reports have been generated, even for those years where no Reconsideration Requests were received.

Board Actions:

For nearly all of the Reconsideration Requests before 2004, the date of Board Action (if taken) is identified on the Reconsideration Request page. Board Actions in furtherance of Recommendations on Reconsideration Requests since 2004<sup>2</sup> can be found at the following links:

1. <http://www.icann.org/en/minutes/rome-resolutions-06mar04.htm> (Request 04-1)
2. <http://www.icann.org/en/minutes/resolutions-15jul05.htm#p6> (Request 05-1)
3. <http://www.icann.org/en/minutes/minutes-31mar06.htm> (Requests 06-1 and 06-2)
4. <http://www.icann.org/en/minutes/minutes-10may06.htm> (Request 06-3)
5. <http://www.icann.org/en/minutes/resolutions-12mar10-en.htm#17> (Request 10-1), with adoption of Bylaws amendments at (<http://www.icann.org/en/minutes/resolutions-25jun10-en.htm#14>)

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<sup>1</sup> In 2005, there were two Reconsideration Requests: Request 05-1, filed by Bret Fausett and Request 05-2, filed by Edward Hasbrouck. Request 05-1 challenged the staff action of acting contrary to ICANN's Bylaws in the late posting of a preliminary report from the 3 May 2005 Board meeting. The Reconsideration Committee ("RC") recommended that the Board consider using real-time scribes for Board teleconferences. The Board considered that recommendation at its 15 July 2005 Board meeting and stated that "it would be beneficial for the public to be able to review transcriptions of all voting and Board member statements in connection with votes, consistent with procedures to protect confidential or privileged information." <http://www.icann.org/en/minutes/resolutions-15jul05.htm#p6>. Request 05-2 was based on staff not providing a journalist access to the telephonic Board meeting. As the requestor also submitted a complaint to the Ombudsman, the RC relied on the Ombudsman's evaluation in rejecting the Reconsideration Request.

<sup>2</sup> Board Action on Requests 02-5 and 02-6 can be found at <http://www.icann.org/en/minutes/minutes-02jun03.htm>.

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No Board action was taken where the recommendation from the Reconsideration Committee (or later the Board Governance Committee) was that none be taken. Further, no requests were submitted in 2003, 2007, 2008 or 2009.

The Bylaws governing the Reconsideration Process do not allow for the consideration of non-public information in the Reconsideration process.

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**2. Accountability Recommendations**

**a. Questions from ATRT**

The 2009 report entitled “Improving Institutional Confidence: The Way Forward” proposed two new methods of accountability for the ICANN Board. These include a Community Re-Examination Vote and the formation of a standing Independent Review Body. The ATRT requests that ICANN provide an update on the status of these recommendations, including:

- (a) Were the recommendations adopted?
- (b) If so, were they adopted in the state proposed in the report, or were modifications made?
- (c) If adopted, what is the procedure and time frame to implement these recommendations?
- (d) If adopted, how will ICANN communicate these changes to the larger community?
- (e) If the recommendations were not adopted, what is the reasoning that led to ICANN disregarding these recommendations?

**b. Staff Response**

In July 2009, ICANN posted for public comment proposed Bylaws amendments setting out the Community Re-Examination Vote and the modification of the Independent Review Process to create a standing Independent Review Body. See <http://www.icann.org/en/public-comment/public-comment-200909.html#iic-bylaws>. Both of these Bylaws changes were proposed through the Improving Institutional Confidence (IIC) report. To allow for community input on the formation of the recommendations, the public comment period remained open for four months.

ICANN’s Summary of Comments received is available at <http://forum.icann.org/lists/iic-proposed-bylaws/msg00020.html>. Most commenters were opposed to ICANN proceeding with the implementation of the new accountability mechanisms as drafted. There were various concerns raised, including a consensus that alterations of the current Independent Review Process would be premature prior to the resolution of the then-pending ICM Independent Review Proceeding, and an opportunity to evaluate the lessons to be learned from the inaugural use of the Independent Review mechanism. For the Community Re-Examination Vote, commenters raised multiple concerns, such as the binding nature of the process as well as the required thresholds for calls for Re-Examination. As noted in the Summary, no commenters were in support of the adoption of the proposed Bylaws as written.

Because of the strong community opposition to the proposals as drafted, staff recommended that no further implementation action be taken on the two

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accountability mechanisms until the recommendations and the processes to reach those recommendations could be revised. One of the intervening events – the action based on the Independent Review Panel’s Declaration in the ICM IRP – is still ongoing. Further, since the July 2009 posting of the proposed Bylaws, the Affirmation of Commitments was signed, and this review team was empanelled to review community engagement and inputs, among other topics. In light of the ATRT’s work, this review team may assist in identifying what additions or modifications to accountability mechanisms may be most beneficial and appropriate for the community.

ICANN strived for accountability to the community in *not* implementing the mechanisms that were clearly identified as deficient and lacking in transparency in process. ICANN has not “disregarded” the recommendations, but is instead listening to the community in terms of the proper consideration of these new accountability mechanisms.