

Elements of Reconsideration Request 10-3 Required Under the Bylaws

(a) name, address, and contact information for the requesting party, including postal and e-mail addresses;

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(b) the specific action or inaction of ICANN for which review or reconsideration is sought;

Shortly after the 25 September 2010 ICANN Board meeting ICANN staff posted a set of “Adopted Resolutions” on the ICANN website which included the following:

High Security Zone (HSTLD) concept: The HSTLD concept is a voluntary concept being developed by a cross-stakeholder group including the financial services industry for use in TLDs wishing to provide services on a high-security basis. Thus, the development of the concept does not impact the launch of the gTLD application process. Any publication of this concept will be shared freely with other organizations that might be interested in development of such a concept.

ICANN will not be certifying or enforcing the HSTLD concept; ICANN is supporting the development of a reference standard for industry that others may choose to use as a certification standard of their own. ICANN will not endorse or govern the program, and does not wish to be liable for issues arising from the use or non-use of the standard.

Several days later, ICANN staff made an additional post on the ICANN Board minute’s webpage entitled “Preliminary Report” which included the identical text. When the ICANN staff posted the approved minutes from the 25 September 2010 meeting, there was again no change to this text. The only documents which appear to provide a foundation for a fact-based decision by the ICANN Board is in connection with the ICANN Staff briefing papers.

On page 32 of Board Briefing Material Package One, there is an accurate summary of the Advisory Group “continu[ing] to work” on the HSTLD designation, and of the current pending RFI process. On page 33 of this same document, ICANN staff state that the:

HSTLD program is not on the critical path to launch; it is voluntary, third-party operated initiative that will be an enhancement to the program. Thus, the timing for completion of the HSTLD program should not impact the launch of the gTLD

application process. Progress continues to be made, and a community decision can be implemented when made.

Based on the status of work in these areas, staff's recommendation is that the malicious conduct effort (including the areas mentioned above) should be considered complete.

As Chair of the HSTLD Advisory Group I believe the current majority position (but not consensus position) of the group is that the HSTLD designation is a voluntary program and that it is not on the critical path to launch. However, the statement regarding this being a third-party operated initiative is not an accurate statement. In fact, there is clear majority in support of ICANN retaining a continued oversight role of the control criteria, while allowing third-parties to do the validation/certification.

A more accurate view of the current majority view can be found on Page 36 of this same document, where it properly states: “[i]t is envisioned that ICANN’s role in the program is to work with the community to establish the program standards and criteria, and to help set, refine and manage the governance of the program. Actual assessment of the TLDs against the standards and criteria will be performed by independent entities.”

Under Paragraph Four of the Affirmation of Commitments (AoC) “ICANN commits to perform and publish analyses of the positive and negative effects of its decisions on the public, including any financial impact on the public, and the positive or negative impact (if any) on the systemic security, stability and resiliency of the DNS.”

Additional Paragraph Seven of the AoC requires ICANN to “adhere to transparent and accountable budgeting processes, **fact-based policy development**, cross-community deliberations, and responsive consultation procedures that **provide detailed explanations of the basis for decisions**, including how comments have influenced the development of policy consideration.” (emphasis added)

Therefore, I am respectfully asking for reconsideration on the following grounds:

- The ICANN Board improperly interfered with an ongoing community consensus initiative by passing an untimely resolution while the community was still working with staff on an agreed upon timeline for delivery;
- The ICANN Board in passing its resolution failed to provide and articulate a “fact based” analysis of its actions as required by Paragraphs four and seven in the AoC.

(c) the date of the action or inaction;

The first date of action was 25 September 2010 when the ICANN Board improperly intervened in an ongoing community bottom up consensus developing process with the issuance of its adopted resolution. ICANN's failure to provide a fact based analysis of its resolution as required by the AoC constitutes an ongoing inaction.

(d) the manner by which the requesting party will be affected by the action or inaction;

Simple Statement:

- The ICANN Board took action before the HSTLD Advisory Group had even completed its research or issued a final report.
- The ICANN Board has failed to honor its obligations set forth in the AoC to "publish analyses of the positive and negative effects of its decisions on the public."

Detailed Statement:

I have served as a Chair of ICANN's High Security Zone TLD Advisory Group since shortly after its inception. In this voluntary leadership position I have easily invested over one hundred hours of my time. Many other members of the HSTLD Advisory Group including ICANN staff and ICANN consultants have made similar investments in time. The stated goal that has guided the work of the Advisory Group for much of the last year is as follows:

*"The goal of the High Security Zone Top Level Domain Advisory Group is to bring together community representatives to evaluate **the viability of a voluntary program**, supporting control standards and incentives that could potentially be adopted to provide an enhanced level of trust and security over the baseline registration-authority controls." (Emphasis added)*

As part of the group's ongoing research into the "viability" of this program, the Advisory Group in coordination with ICANN staff is conducting a Request for Information (RFI) process, see <http://www.icann.org/en/announcements/announcement-22sep10-en.htm> .

During the consensus building efforts within the group over the past year there has been some heated debate among the participants about the voluntary nature of this program and whether it would be hard coded into any final Applicant Guidebook. As Chair I have made sure that all options have remained on the table until we completed our research and made a fact based recommendation as required by the Affirmation of Commitments. The current ongoing RFI solicitation is a key part of our work.

It is also important to note that the HSTLD Advisory Group has remained on track with the mutually agreed timeline established with ICANN staff. Therefore the ICANN Board's unilateral action in connection with the HSTLD Resolution before we were even able to complete our work is truly disappointing.

The ICANN Board' violation of the affirmation obligations set forth in the AoC not only affects me, but the ICANN entire multi-stakeholder community. The importance of the AoC and the obligations therein were recently highlighted in Rod Beckstrom's 15 November 2010 communication to Mr. Sha Zukang, Under-Secretary-General of the United Nations when he cited the AoC as a "significant achievement." Moreover, ICANN's failure to honor its obligations set forth in the AoC potential negatively impact the upcoming IANA rebid/renewal.

- (e) the extent to which, in the opinion of the party submitting the Request for Reconsideration, the action or inaction complained of adversely affects others;

ICANN created the HSTLD Advisory Group to address the concerns it had heard from the community regarding the need to mitigate malicious conduct. Therefore the ICANN Board's action in effectively walking away from the program ("ICANN will not endorse or govern the program") prior to any final report from the group adversely affects those for whom this group was originally created.

The ICANN Board's unilateral actions also have a chilling effect on future bottom up consensus efforts because participants have no basis to know when the ICANN Board will take such unilateral actions in the future.

For a more detailed explanation of how this adversely affects others, please refer to the 4 November 2010 communication from Leigh Williams to Rod Beckstrom, specifically Appendix K which references potential amendments to the US Cybersecurity Legislation directly related to the IANA renewal. Unfortunately it has been two weeks since this communication has been sent, but it has not yet appeared on the ICANN correspondence website, therefore I have attached a copy of this communication which I would like to make part of the record.

- (f) whether a temporary stay of any action complained of is requested, and if so, the harms that will result if the action is not stayed;

No stay is requested.

- (g) in the case of staff action or inaction, a detailed explanation of the facts as presented to the staff and the reasons why the staff's action or inaction was inconsistent with established ICANN policy(ies);

The HSTLD Advisory Group has had a very constructive relationship with ICANN staff and its consultants in connection with this project. This includes collaborating with ICANN policy, technical and legal staff regarding the drafting and issuance of the current RFI and other important milestone documents. Therefore it is puzzling why the Advisory Group was not consulted in connection with the Staff briefing paper presented to the Board, which effectively resulted in ICANN abandoning this initiative.

In an ongoing effort to foster a positive working relationship with ICANN staff, the HSTLD Advisory Group just met with ICANN senior staff and Deputy General Counsel to inquiry into the basis of the Board decision. While this was constructive, it still fails to meet the detailed analysis requirement set forth in the AoC.

- (h) in the case of Board action or inaction, a detailed explanation of the material information not considered by the Board and, if the information was not presented to the Board, the reasons the party submitting the request did not submit it to the Board before it acted or failed to act;

The "material" not considered is the final report that has not been prepared because of the outstanding RFI process underway that will allow the Advisory Group to eventually make a fact based recommendation as set forth in the Affirmation of Commitments.

- (i) what specific steps the requesting party asks ICANN to take-i.e., whether and how the action should be reversed, cancelled, or modified, or what specific action should be taken;

The ICANN Board should rescind/revoke the text from the 25 September 2010 Resolution relating to the HSTLD program and allow the bottom up consensus process to work. Following the timely receipt of our final report, the ICANN Board can make an informed fact based decision per the requirements of the Affirmation of Commitments.

If the ICANN Board fails to rescind/revoke the relevant text from the 25 September 2010 Resolution that it should honor its commitments set forth in the AoC and provide

(j) the grounds on which the requested action should be taken; and

The ICANN Board should allow the HSTLD Advisory Group to complete its report before taking any final action. However, if it intends to stand by its 25 September 2010 resolution it must “publish analyses of the positive and negative effects of its decisions on the public” as required by paragraph four of the AoC. If ICANN fails to honor the obligations set forth in the AoC, then ICANN should refrain from touting the execution of the AoC as a “significant accomplishment.”