

Reconsideration Request Form

Version of 11 April 2013

ICANN's Board Governance Committee is responsible for receiving requests for reconsideration from any person or entity that has been materially affected by any ICANN staff action or inaction if such affected person or entity believes the action contradicts established ICANN policies, or by actions or inactions of the Board that such affected person or entity believes has been taken without consideration of material information. Note: This is a brief summary of the relevant Bylaws provisions. For more information about ICANN's reconsideration process, please visit <http://www.icann.org/en/general/bylaws.htm#IV> and <http://www.icann.org/en/committees/board-governance/>.

This form is provided to assist a requester in submitting a Reconsideration Request, and identifies all required information needed for a complete Reconsideration Request. This template includes terms and conditions that shall be signed prior to submission of the Reconsideration Request.

Requesters may submit all facts necessary to demonstrate why the action/inaction should be reconsidered. However, argument shall be limited to 25 pages, double-spaced and in 12 point font. *For all fields in this template calling for a narrative discussion, the text field will wrap and will not be limited. Please submit completed form to reconsideration@icann.org.*

1. Requester Information

Name: dot Rugby Limited
Address: Contact Information Redacted
Email: Contact Information Redacted
Phone Number (optional): Contact Information Redacted

(Note: ICANN will post the Requester's name on the Reconsideration Request page at <http://www.icann.org/en/committees/board-governance/requests-for-reconsideration-en.htm>. Requestors address, email and phone number will be removed from the posting.)

2. Request for Reconsideration of (check one only):

Board action/inaction
 Staff action/inaction

3. 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.)

Dot Rugby Limited (referred to as the "Requester") is seeking reconsideration of ICANN acceptance of the Expert Determination in respect of the community objection decision in the .RUGBY (CASE NO EXP/517/ICANN/132). We attach the decision as Annex 1 (referred to as the "Determination").

4. Date of action/inaction:

The Determination was forwarded to the Requester on 3rd February 2014 by the International Chamber of Commerce (referred to as the "ICC")

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

3rd February 2014

6. Describe how you believe you are materially affected by the action or inaction:

The Requester is one of three applicants for the .RUGBY gTLD, and was in a contention set with the International Rugby Board ("IRB") and Atomic Cross, LLC for the .RUGBY string (Application ID:1-1206-66762). IRB was also the Objector in the present case. The Determination will affect the Requester because according to the rules in the Applicant Guidebook, an application which is the subject of a successful community objection must be withdrawn. As the Objector was successful against the Requester and Atomic Cross (in the consolidated objection process), therefore the Objector will automatically be delegated the .RUGBY gTLD if a withdrawal is required from both parties.

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

Certain portfolio applicants (including the Requester) would be unfairly discriminated against if

this Determination was allowed to stand while the Objector would profit unequitably. Why should Dot Rugby and Atomic Cross (the other .RUGBY applicant) be required to withdraw on the grounds that they promoted (or would promote) multiple strings concurrently, when the Objector is making its application with another portfolio applicant, Top Level Domain Holdings ("TLDH") which structurally and in terms of its marketing efforts is equally promoting multiple strings.

8. Detail of Board or Staff Action – Required Information

Staff Action: If your request is in regards to a staff action or inaction, please provide a detailed explanation of the facts as you understand they were provided to staff prior to the action/inaction presented to the staff and the reasons why the staff's action or inaction was inconsistent with established ICANN policy(ies). Please identify the policy(ies) with which the action/inaction was inconsistent. The policies that are eligible to serve as the basis for a Request for Reconsideration are those that are approved by the ICANN Board (after input from the community) that impact the community in some way. When reviewing staff action, the outcomes of prior Requests for Reconsideration challenging the same or substantially similar action/inaction as inconsistent with established ICANN policy(ies) shall be of precedential value.

Board action: If your request is in regards to a Board action or inaction, please provide a detailed explanation of the material information not considered by the Board. If that information was not presented to the Board, provide the reasons why you did not submit the material information to the Board before it acted or failed to act. "Material information" means facts that are material to the decision.

If your request is in regards to a Board action or inaction that you believe is based upon inaccurate, false, or misleading materials presented to the Board and those materials formed the basis for the Board action or inaction being challenged, provide a detailed explanation as to whether an opportunity existed to correct the material considered by the Board. If there was an opportunity to do so, provide the reasons that you did not provide submit corrections to the Board before it acted or failed to act.

Reconsideration requests are not meant for those who believe that the Board 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 the Board in order to state a reconsideration request. Similarly, new information – information that was not yet in existence at the time of the Board decision – is also not a proper ground for reconsideration. Please keep this guidance in mind when submitting requests.

Provide the Required Detailed Explanation here:

ICANN has determined that the Reconsideration process can properly be invoked for challenges of third party's decisions where it can be stated that either the vendor failed to follow its

process in reaching the decision, or that ICANN staff failed to follow its process in accepting that decision (Recommendation of the Board Governance Committee (BGC) Reconsideration Request 13-5, August 1, 2013, page 4).

Failure to observe ICANN procedure and policy.

The new gTLD program included a dispute resolution procedure pursuant to which disputes between a person or entity who applies for a new gTLD and a person or entity who objects to that gTLD are resolved in accordance with the New gTLD Dispute Resolution Procedure (Article 1(b), New gTLD Dispute Resolution Procedure (referred to as the "**DRP**")).

Dispute resolution proceedings are required to be administered by a Dispute Resolution Service Provider (referred to as "**DRSP**") in accordance with the DRP and the applicable DRSP Rules¹. Any panel appointed by the DRSP is obliged to apply the standards that have been defined by ICANN². The DRP expressly provides that the Expert cannot change the DRP (to suit one of the parties) without the express approval of ICANN³.

In the present case of .RUGBY, as the Requester evidences below, the sole expert appointed to the Objection panel (referred to as the "**Expert**") and ergo, the DRSP has failed fundamentally and demonstrably to apply the standards "neutrally and objectively with integrity and fairness"⁴, as required by ICANN Bylaws, in reaching his decision in the Determination. Additionally, the Expert has breached the DRP itself by requiring in the course of the Determination that the Requester meet a case that was not in fact put to it by the Objector (who bears the burden of

¹ Article 1(c) of the DRP

² Article 20(a) of the DRP

³ Article 1(d) of the DRP

⁴ See ICANN Bylaws (11 Apr. 2013) Art. I, §2.8

proof), resulting in a fundamental violation of the applicable DRP. We provide full details of the failure to follow the DRP and the standards listed in the Applicant Guidebook at Point 10.

9. 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?)

1. The Expert fails to follow the required ICANN procedure and standards as stated at point 8, above.
2. The .RUGBY matter should go back to a freshly convened panel which the ICC must demonstrate has been given substantial training in the Applicant Guidebook processes and standards which would be able to apply those standards and protocols in a non-arbitrary way.

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

We rely on the following grounds to demonstrate standing and the right to assert this Request for Reconsideration. The following are well known requirements within ICANN Bylaws and the new gTLD application process.

a. Standing and Right

ICANN has determined that the Reconsideration process can properly be invoked for challenges of third party's decisions where it can be stated that either the vendor failed to follow its process in reaching the decision, or that ICANN staff failed to follow its process in accepting that decision (Recommendation of the Board Governance Committee (BGC) Reconsideration Request

13-5, August 1, 2013, page 4). As an applicant under the ICANN process directly affected by a vendor's action, we respectfully consider that we have the standing and the right to assert the Request.

b. Grounds/Justification

- (i) **As a party with standing in good faith, the Requester has the right to request that ICANN staff decline to accept the determination of the Expert on the grounds that the requisite ICANN standards, processes and policies have not been followed.** The Requester further relies on the guidance provided by the Recommendation of the Board Governance Committee (BGC) Reconsideration Request 13-10/10 October 2013, which state that where we can demonstrate there is a breach of policy or process, we can properly invoke Reconsideration:
- "ICANN have determined that the Reconsideration process can properly be invoked for challenges of the third-party DRSP's decisions where it can be stated that either the DRSP failed to follow the established policies or processes in reaching the decision or that ICANN staff failed to follow its policies or processes in accepting that decision (at page 5)".
 - "The Applicant Guidebook (Applicant Guidebook) sets out the standards used to evaluate and resolve objections". The requesting party must "establish any policy or process that either panel failed to follow (at page 10)."
- (ii) Further Under the ICANN Bylaws, all decisions should be made by applying documented policies "neutrally and objectively, with integrity and fairness⁵."
- (iii) The Determination of an Expert who as demonstrated below has clearly reached his

⁵ See ICANN Bylaws (11 Apr. 2013) Art. I, §2.8

decision without an appropriate understanding or observance of the DRP, must clearly be rejected as invalid.

(iv) The requisite ICANN standards, processes and policies have not been followed.

The Determination was made without applying documented policies “neutrally and objectively, with integrity and fairness⁶”, resulting in manifest unfairness and damage to the Objector.

Reconsideration requests are rarely granted by ICANN. However, if there is to be some measure of comfort by the Requester that the Determinations are applying ICANN processes and standards "neutrally and objectively, with integrity and fairness", the findings have to be grounded in rigorous and defensible reasoning. This was not the case in the Determination, as set out below.

The Expert gives three reasons for reaching the conclusion that the Requester was associated with gambling sufficiently to be likely to cause material harm.

Table 1: Summary of Objector's argument and Expert's finding in the Determination

No	Objector's argument	Expert's finding:	Requester's comment
(i)	. Requester as a portfolio applicant (DVP) cannot avoid cross promotion cross staffing and commingling of resources -	Determination Paragraph 74 Requester's lack of persuasive showing of effort to avoid cross promotion means that it is therefore engaging in cross-promotion.	The Objector itself is engaged is engaged with another portfolio applicant in a group structure, Mind and Machines/TLDH. Equally there will be "cross promotion, cross staffing and commingling of resources".
(ii)	Requester must have links with Gibraltar-based gambling companies because it is itself based in Gibraltar.	Determination Paragraph 74. Requester "carefully" mentions no links with Gibraltar companies, but is silent on its gambling links outside Gibraltar and this is enough to establish its links with global gambling companies	IRB's entire argument that Requester was fatally associated with gambling was purely and solely predicated on the assertion that the Requester's parent company was Gibraltar based. For the Expert to require more from the Requester is an ultra vires use of his ICANN powers.

⁶ See ICANN Bylaws (11 Apr. 2013) Art. I, §2.8

			In addition, the finding is utterly unfair. Unlike the Requester which has no involvement in gambling whatsoever, members of the IRB are already themselves actively engaged in global promotions. IRB's stated concerns about material harm are a thinly disguised sham.
(iii)	Acceptable Use Policy commits registrants to "use in applicable law" says nothing about conduct of DVP and affiliates	Determination Paragraph 75. Requester is silent on DVP conduct and this silence is enough for the Expert to conclude that DVP intends to enter into links with gambling companies.	Why would any Registry ever comment on its parent company? IRB's partners, TLDH and its affiliate Mind and Machines are affiliates and their Acceptable Use Policies do not mention each other. Manifestly unfair to find against other portfolio applicants when IRB's partner itself is engaging in cross promotion.

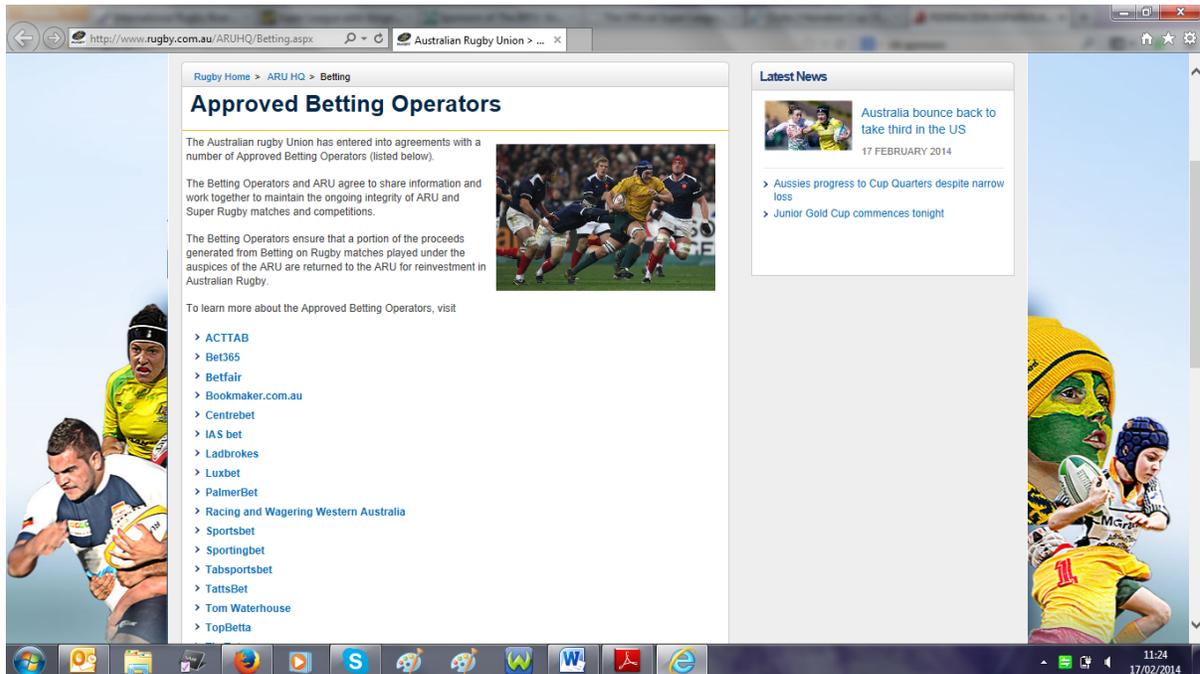
There is no other allegation made about the Requester's gambling links other than the foregoing, (i) to (iii). The finding at point (i) finds that Requester has failed "through no persuasive showing of any effort to avoid cross promotion cross staffing and commingling of resources". This is materially the same finding which was made in respect of the determination against Atomic Cross, which is owned by a second portfolio applicant, Donuts Inc. More significantly, as Top Level Domain Holdings ("TLDH") is both a portfolio applicant and the IRB partner, this is effectively the same criticism that can be levelled at the IRB. This is not a fair outcome for either Atomic Cross or the Requester.

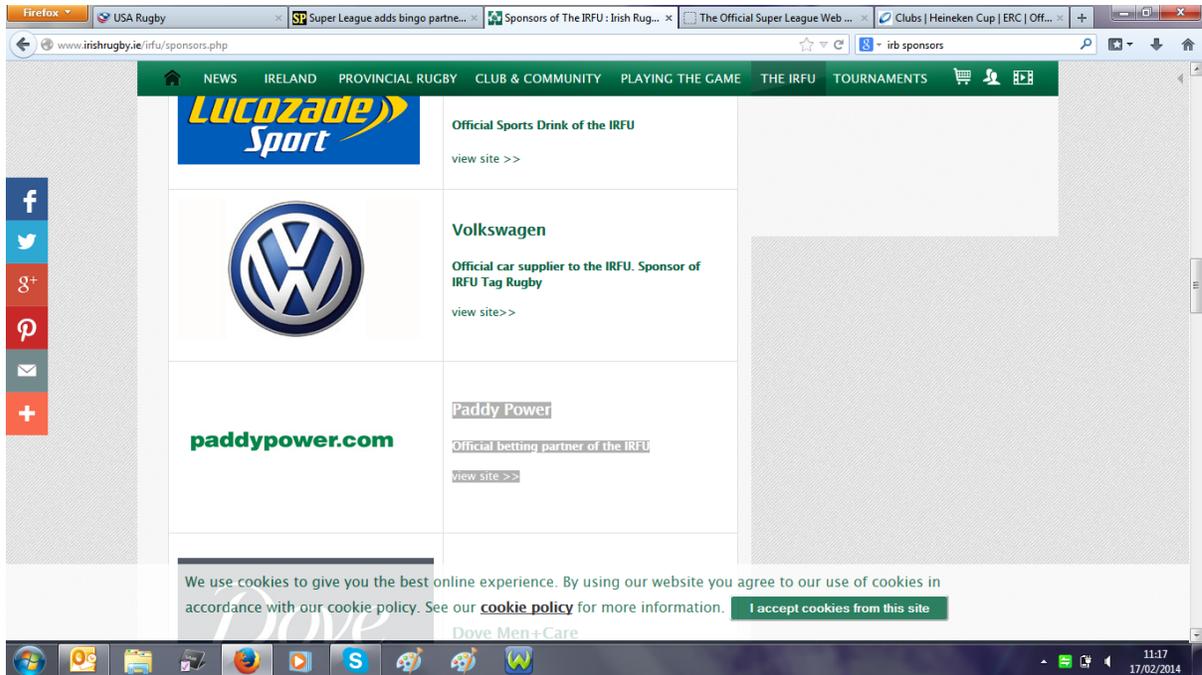
In addition, a portfolio applicant would have no more ability or control over the crossover between gambling and sport than any ICANN accredited Registrar would. On the websites of many registrars, "sporting" strings are advertised next to "gambling " strings, "financial" strings, "IPR strings" and so on, all using the same Registrar resources. If Registrars, part of the ICANN community, are freely able to cross-advertise and cross-market and co-mingle resources on multiple strings, why should portfolio applicants, equally meant to be part of the ICANN community, subject to strict licensing controls by ICANN and publicly accountable commitments under the PICDRP, be thus discriminated against. Equally, a single Registry Operator would be free to enter into any kind of "cross promotion cross staffing and commingling of resources"

after delegation of the string.

The second injustice in the finding at point (i) is that, unlike the Requester, members of the IRB are already actively engaged in promotions with gambling organisations. Some examples of screenshots are set out in Table 2:

Table 2 Screenshots on 17 February 2014 (i) Australian Rugby Union Website and (ii) Irish Rugby FU website:





The Australian Rugby Union is sponsored by at least independent gambling companies (see Table 2, above). Irish Rugby Football Union and Welsh Rugby Union are sponsored by well-known gambling company, Paddypower. Even at the level of the individual clubs, rugby is being sponsored by gambling companies. Gloucester Rugby Club "Picks New Official Betting Partner: The Betting Service Limited has created a customized website for Gloucester Rugby, where fans can enjoy online and mobile sports betting" (Source: www.blackjackchamp.com/...rugby-picks-new-official-betting-partner"). Connacht Rugby recently confirmed the appointment of social betting company, BragBet. (Source: "Connacht Rugby Announce Official Betting Partner www.rugby247.biz/component/...rugby-announce-official-betting-partner")

The Requester cannot be certain whether the Objector's sponsors took umbrage on finding out the strength of the Objector's feelings about being associated with gambling string on publication of the Objection, but perhaps the Objector might have taken care to inform its own members about the IRB's official view on the subject before making this anti-gambling stance the cornerstone of the entire Objection.

In any case, the Objector's ability to control gambling as the ICANN designated Registry Operator in the manner in which it desires, would be entirely compromised, as the Objector's

members have paid scant regard to the views of the Objector in practice.

It is apparent to the Requester, that the Objector's views on gambling, as presented in the Objection, are not consistent with the practice of its membership. To the objective observer, what the Objector's arguments relating to gambling are clearly a convenient sham, clearly designed to take control of the .RUGBY top level domain, with scant regard to the truth.

In addition, the fact of the IRB's current sponsorship by global gambling companies proves that the strong opposition to the string offered by the IRB members in its objectors can have nothing to do with the Requester's association with gambling. More so than either of the applicants, it is the Objector which, on its own arguments, is in danger of contaminating the neutrality and integrity of the .RUGBY string - by its known and very prominent association with gambling.

For the foregoing reasons, the finding by the Expert at point (i), is fundamentally unfair to the Requester.

Turning then to point (ii) of the Expert's reasoning. The compounding unfairness of the finding at (i) is that the ONLY evidence brought to substantiate the allegation of gambling association brought by the Objector was that the Requester happened to be based in Gibraltar. That is the sum total of the evidence which is brought to support the allegations made about gambling associations brought by the Objector. For that reason the Requester responded specifically and categorically about having no links with gaming companies in Gibraltar. It had no reason to go further (which it could obviously and quite simply had done) if the allegation had made about links outside Gibraltar.

For the Expert to require the Requester to widen the scope of its rebuttal to encompass companies outside Gibraltar - it would have required the Objector to have actually made the allegation in the first place. Without a shadow of a doubt, the allegation was never made. To be considered a fair, neutral and just outcome of the process, the Requester must actually be responding to the case against him, not to a case that was never made.

The burden of proof is the Objector's it is completely unfair to the Requester that it is being asked to provide a rebuttal to evidence that was not put forward by the Objector. That is an

ultra vires act by the Expert. In fact, for this reason alone the Objection should not be allowed to stand as being a fundamental and unconscionable breach of ICANN process.

At point (iii), the Expert finds that the Requester "says nothing about DVP and its Affiliates in its Acceptable Use Policy". Again, this fundamentally discriminates against Requester as part of a portfolio applicant. Why should the Acceptable Use Policy say anything about itself or the parent company at all in respect of gambling interests it does not have? We have not done a comprehensive sweep of the Acceptable Use Policies of the new gTLD strings. However, we note here that we have been unable to find a sample Acceptable Use Policy from IRB partner, TLDH in which TLDH sets out the non-involvement of TLDH in any of its portfolio Registries which it is actively promoting and cross-promoting on its site.

DVP is not and has never been a gambling company or has an interest in investing into gambling companies. It has no interest and is prohibited from investing into gambling companies, as a matter of law. A gambling string is NOT a gambling company, any more than an accounting string (such as .accountant) is an accountancy firm.

It could not have been a requirement of the application for a Registry Operator licence, that the ICANN process, or the applicable ICANN standard, required the Requester to mention its parent company and affiliates in its Acceptable Use Policy. Therefore the ICANN appointed Expert, on behalf of ICANN, should not say that the fact that the applicant has NOT mentioned this in the Acceptable Use Policy is sufficient grounds to prove that the Requester's parent intends to engage in gambling activities.

Conclusion

Knowing that there is no appeal from the Determination seems to have given the Expert, as it is apparent in other cases, the confidence to act with impunity in disregarding the fundamental principles of fairness and equality when trying to formulate arguments on which to pin his desired outcome. There are fundamentals of, fairness set out by ICANN policy, which must prevail, and which the Expert here seems to have disregarded at will. If ICANN allows such

gaping unfairness to stand, unchecked, it is one more sending the clear message to the ICANN community that it has no real interest in the principles of fairness and equality, and it, once more, will weaken the faith of the community in the rigour behind the process which all Requesters submitted to, at considerable expense, in good faith.

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

Yes
 No

11a. If yes, Is the causal connection between the circumstances of the Reconsideration Request and the harm the same for all of the complaining parties? Explain.

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 <http://www.icann.org/en/committees/board-governance/requests-for-reconsideration-en.htm>.

Terms and Conditions for Submission of Reconsideration Requests

The Board Governance Committee has the ability to consolidate the consideration of Reconsideration Requests if the issues stated within are sufficiently similar.

The Board Governance Committee may dismiss Reconsideration Requests that are querulous or vexatious.

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.

The BGC may take a decision on reconsideration of requests relating to staff action/inaction without reference to the full ICANN Board. Whether recommendations will issue to the ICANN Board is within the discretion of the BGC.

The ICANN Board of Director's decision on the BGC's reconsideration recommendation is final and not subject to a reconsideration request.

A handwritten signature in blue ink, appearing to be 'Scott Jones', written in a cursive style.

Signature

_____ 17 February 2014

Date