

Board Accountability Mechanisms Committee (BAMC)
2021 Annual Report on Accountability Mechanisms

Reconsideration Requests
Independent Review Process (IRP) Requests
Documentary Information Disclosure Policy (DIDP) Requests

RECONSIDERATION REQUESTS

A. Bylaws Provisions Regarding Annual Report on Reconsideration Requests

- ICANN’s Reconsideration Process is set forth in [Article 4, Section 4.2](#) of ICANN’s Bylaws.
- This annual report is presented in fulfillment of [Article 4, Section 4.2\(u\)](#) of the Bylaws.

B. Information on Specific Reconsideration Requests

Number, Nature, and Action

- Overview (From 13 October 2020 through 13 October 2021)
 - Three Reconsideration Requests were received: Requests [20-3](#), [21-1](#), and [21-2](#).
 - The BAMC acted upon three Reconsideration Requests: Requests [20-3](#), [21-1](#), and [21-2](#).
 - Three Reconsideration Requests were summarily dismissed: Requests [20-3](#), [21-1](#), and [21-2](#).
- Request [20-3](#) (filed by Silver A Marketing) – The Requestor sought reconsideration of certain actions taken by a third party registrar (GoDaddy.com) relating to the renewal of the certain domain names. The Requestor did not challenge any action or inaction of the ICANN Board or ICANN staff, but rather asked that ICANN “help and guide [the Requestor] to get [the] domain[s] back from Godaddy.” Without a challenge to ICANN conduct, the BAMC concluded that Request 20-3 did not meet the requirements for bringing a reconsideration request and therefore summarily dismissed Request 20-3.
- Request [21-1](#) (filed by Dot Hotel Limited and Domain Venture Partners PCC Limited) – The Requestors sought reconsideration of the ICANN Board’s and ICANN staff’s approval of a change of control request from the registry operators owned and controlled by Afilias, Inc. (Afilias) related to Afilias’s proposed merger with Donuts Inc. (Donuts) (the Afilias/Donuts Transaction). As per its process, the BAMC evaluated whether Request 21-1 was sufficiently stated pursuant to Article 4, Section 4.2(k) of the ICANN Bylaws and concluded that the Requestors’ allegations fell short of showing the necessary for harm needed to state a Reconsideration Request. Accordingly, the BAMC concluded that Request 20-3 did not meet the requirements for bringing a reconsideration request and therefore summarily dismissed Request 21-1.

- Request [21-2](#) (filed by Pooja Gupta) – The Requestor sought reconsideration of certain actions taken by Net 4 India (a former ICANN-accredited registrar) relating to the renewal of the domain name poojashroof.in. The Requestor did not identify any ICANN action or inaction that is being challenged. Accordingly, the BAMC concluded that Request 21-2 did not meet the requirements for bringing a reconsideration request and therefore summarily dismissed Request 21-2.

Number of Reconsideration Requests Pending (as of 13 October 2021)

- There are no Reconsideration Requests pending.

Number of Reconsideration Requests the BAMC Declined to Consider

- The BAMC has not declined consideration of any Reconsideration Requests submitted between the Annual General Meeting in 2020 and the date of this report.

Other Accountability Mechanisms Available to Denied Requestors

- ICANN makes available the Ombudsman and the Independent Review Process as additional mechanisms to enhance ICANN accountability to persons materially affected by ICANN’s action and inactions. The Ombudsman separately reports on his activities.

Criteria and Processes

- The BAMC has not made any determination that the criteria for which reconsideration may be requested should be revised, or another process should be adopted or modified.

INDEPENDENT REVIEW PROCESS (IRP) REQUESTS

A. General Information Regarding IRPs

In accordance with [Article 4, section 4.3](#) of the Bylaws, ICANN has designated the International Centre for Dispute Resolution as the body to process requests for independent review of Board or staff actions alleged by any affected party to be inconsistent with ICANN’s Articles of Incorporation or Bylaws. Parties typically invoke the voluntary Cooperative Engagement Process (CEP) prior to the filing of an IRP, for the purpose of narrowing the issues that are stated within the request for independent review.

B. Information on Specific IRPs

Number and Nature

- From 13 October 2020 through 13 October 2021, one IRP was initiated, no IRPs have concluded, and four IRPs are pending.

Initiated and Pending:

- [GCCIX, W.L.L. v. ICANN](#) (.GCC) – GCCIX, W.L.L. challenges: (a) ICANN’s acceptance of the GAC advice that the .GCC application “should not proceed”; (b) the termination of the Legal Rights Objection proceedings regarding the .GCC application, once ICANN accepted the GAC advice; (c) ICANN’s acceptance of the GAC advice without considering the Generic Names Supporting Organization’s (GNSO) recommendations regarding protection of Intergovernmental Organization (IGO) acronyms at the top-level; (d) ICANN’s denial of Claimant’s Reconsideration Request 13-17; (e) ICANN’s “refus[al]” to facilitate discussion between Claimant and the objecting entity (similar to the .Amazon matter) and “refus[al]” to allow Claimant’s application to proceed (similar to the .Africa matter); (f) ICANN’s participation in the Cooperative Engagement Process (“CEP”) with Claimant; (g) ICANN’s “den[ial] that analogous IRP decisions are precedential and binding, causing expensive and unnecessary re-litigation of settled issues and despite contrary Bylaw provisions;” and (h) ICANN’s “fail[ure] to provide” an IRP Standing Panel and “IRP Rules.”

ICANN org is currently working on implementing the Board’s 12 September 2021 Resolution (Board Resolution [2021.09.12.08](#)), which authorized the “President and CEO, or his designee(s), to seek a stay of the .GCC IRP and open an informal dialogue with the GAC regarding the rationale for the GAC consensus advice on the .GCC application” .

Pending:

- [Afilias Domains No. 3 Limited \(Afilias\) v. ICANN](#) (.WEB) – Afilias alleged that Nu Dotco LLC (NDC) violated the Guidebook by: (a) “omitting material information from and failing to correct material misleading information in its .WEB application”; (b) “assigning [NDC’s] rights and obligations in its .WEB application to VeriSign”; and (c) “agreeing to submit bids on VeriSign’s behalf at the .WEB Auction.” With regard to ICANN, Afilias alleged that: (a) “ICANN’s failure to disqualify [Nu Dotco] breaches ICANN’s obligation to apply documented ICANN policies neutrally, objectively and fairly”; (b) “ICANN’s decision to finalize a registry agreement while knowing of [NDC’s] arrangement with VeriSign violates ICANN’s mandate to promote competition”; and (c) “ICANN violated its Bylaws in Adopting Rule 7 of the Interim [Supplementary] Procedures,” which allows participation in an IRP by a party with a material interest in the proceedings. NDC and Verisign, Inc. participated as *amici curiae* in the IRP.

The Panel issued a Final Declaration on 20 May 2021 and a corrected Final Declaration on 15 July 2021.

Afilias then requested “interpretation and correction” of the Final Declaration under Article 33 of the ICDR Arbitration Rules, which ICANN and *amici* opposed. The Parties and *amici* are awaiting the Panel’s decision.

- [Fegistry, LLC, Minds + Machines Group, Ltd., Radix Domain Solutions Pte. Ltd., and Domain Ventures Partners PCC Limited v. ICANN](#) (.HOTEL) – Fegistry, LLC et al. (collectively, “Claimants”) submitted an IRP Request on 16 December 2019. In its IRP, Claimants challenge: (a) the Board’s denial of Reconsideration Request 16-11 (relating to the Community Priority Evaluation (CPE) of HTLD’s .HOTEL application, the CPE Process Review, and the Portal Configuration issue); (b) the Board’s denial of Reconsideration Request 18-6 (relating to FTI’s CPE review, and the Board’s adoption of the CPE Process Review Reports); and (c) an alleged change in HTLD’s ownership structure without requiring a new CPE.

In January 2020, Claimants filed a Request for Interim Measures of Protection, requesting, in part, that the .HOTEL contention set remain on hold during the pendency of the IRP. While the Emergency Panelist agreed that the .HOTEL contention set should remain on hold during the pendency of this IRP, it denied the rest of Claimants’ Request for Interim Measures of Protection.

- [Namecheap, Inc v. ICANN](#) (.ORG, .INFO, .BIZ) – Namecheap, Inc. initiated an IRP in February 2020 wherein Namecheap challenges: (i) the lack of price caps in the 2019 Registry Agreements for .ORG, .INFO and .BIZ; and (ii) ICANN organization’s consideration of Public Interest Registry’s (PIR’s) request for indirect change of control (Change of Control Request).

Namecheap also submitted a Request for Interim Measures of Protection, seeking to prevent ICANN from approving the Change of Control Request during the pendency of the IRP, which the Emergency Panelist denied.

The parties are currently in the discovery phase of the IRP (requesting/producing documents and motion practice). Final IRP hearing is currently scheduled to begin on 28 March 2022.

DOCUMENTARY INFORMATION DISCLOSURE POLICY (DIDP) REQUESTS

A. General Information Regarding DIDP

- The DIDP was developed as a part of the Accountability and Transparency Frameworks and Principles to help enhance ICANN’s accountability and transparency.
- The DIDP provides that “information contained in documents concerning ICANN’s operational activities, and within ICANN’s possession, custody, or control” at the time the DIDP request is made, will be made available to the public unless there is a compelling reason for confidentiality, such as the Defined Conditions of Nondisclosure.
- All DIDP requests and responses are posted at:
<https://www.icann.org/resources/pages/governance/transparency-en>.

B. Information on Specific DIDP Requests

Number and Nature

- From 13 October 2020 through 13 October 2021, ICANN org received and responded to three DIDP Requests.
- [Request 20201020-1](#): John Baird submitted a DIDP Request seeking disclosure of “an electronic copy of the ICANN Contractor Consulting Agreement.” The [DIDP Response](#) provided numerous links to publicly available material responsive to the Request. The DIDP Response also explained that certain information was not appropriate for public disclosure pursuant to the DIDP Defined Conditions for Nondisclosure.
- [Request 20210204-1](#): Dot Hotel Limited and Domain Ventures Partners PCC Limited submitted a DIDP Request seeking disclosure of: (1) “complete, published rationale for the Resolution of Dec. 17, 2020 to essentially approve the Afilias acquisition of Donuts, including identification of all materials relied upon by the Board and/or Staff in evaluating the transaction, publication of all communications between Board, Staff and/or outside advisors relating to the transaction, and publication of all communications regarding the transaction between ICANN on the one hand, and Afilias, Donuts and/or Ethos Capital on the other hand”; and (2) “complete, published rationale as to the basis for allowing Donuts to own or control two applications in the same gTLD contention set for the .hotel string.” The [DIDP Response](#) provided numerous links to publicly available material responsive to the Request. The DIDP Response also explained that certain information was not appropriate for public disclosure pursuant to the DIDP Defined Conditions for Nondisclosure.
- [Request 20210628-1](#): GCCIX WLL submitted DIDP Request sought disclosure of any and all information about the Intergovernmental Organization curative work track referenced in the ICANN71 GAC Communique. The [DIDP Response](#) provided numerous links to publicly available material responsive to the Request. The DIDP Response also explained that certain information was not appropriate for public disclosure pursuant to the DIDP Defined Conditions for Nondisclosure.