

Board Accountability Mechanisms Committee (BAMC)
2022 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 14 October 2021 through 12 September 2022)
 - Six Reconsideration Requests were received: Requests [21-3](#), [22-1](#), [22-2](#), [22-3](#), [22-4](#), and [22-5](#).
 - The BAMC acted upon four Reconsideration Requests: Requests [22-1](#), [22-2](#), [22-3](#), and [22-4](#).
 - One Reconsideration Request was withdrawn: Request [21-3](#).
 - Four Reconsideration Requests were summarily dismissed: Requests [22-1](#), [22-2](#), [22-3](#), and [22-4](#).
 - One Reconsideration Request is pending BAMC consideration: [Request 22-5](#).
- [Request 21-3](#) (filed by Dot Hip Hop, LLC on 14 December 2021) – The Requestor sought reconsideration of alleged ICANN staff inaction on a request for assignment of the .hiphop generic top-level domain (gTLD) from the current registry holder, UNR Co. (UNR), to the Requestor. The Requestor alleged that UNR requested assignment of the .hiphop gTLD to the Requestor on 11 August 2021 and that ICANN staff’s “failure to approve the assignment” since then violates the Registry Agreement between UNR and ICANN org and ICANN org’s Mission, Commitments, and Core Values as set forth in the ICANN Bylaws. The Requestor asked that Request 21-3 be considered on an urgent basis. On 16 December 2021, the BAMC determined that Request 21-3 did not qualify for urgent consideration. Request 21-3 proceeded under the regular time frame of the reconsideration process. On 11 January 2022, the BAMC determined that Request 21-3 satisfied the procedural evaluation because it was sufficiently stated. On 13 January 2022, the Requestor withdrew Request 21-3.

- [Request 22-1](#) (filed by Michael D. Palage on 16 February 2022) – The Requestor challenged the redactions that were made to resolutions taken by the Board on 16 January 2022 approving IT outsourcing contract renewals. (See [Board Resolutions 2022.01.16.01 – 2022.01.16.04.](#)) The confidential information such as the contract terms and amounts were redacted from the resolutions prior to publication for negotiation purposes because the contract renewals are not complete. On 16 May 2022, the BAMC unanimously determined online that the Requestor does not meet the minimum requirements for bringing a reconsideration request because the Requestor has not sufficiently alleged that he has been materially and adversely affected by an ICANN action or inaction as required under Article 4, Section 4.2 of the ICANN Bylaws to maintain a reconsideration request. Accordingly, the BAMC summarily dismissed Request 22-1 pursuant to Article 4, Section 4.2(k) of the ICANN Bylaws.
- [Request 22-2](#) (filed by Namibian Network Information Center (Pty) Ltd. and Blacknight Internet Solutions, Inc. on 12 April 2022) – The Requestors sought reconsideration of alleged ICANN staff action regarding the ICANN74 In-Person Participation Acknowledgment and Waiver. The Requestors asked that Request 22-2 be considered on an urgent basis. On 14 April 2022, the BAMC determined that Request 22-2 does not qualify for urgent consideration. On 1 June 2022, the BAMC unanimously determined that the Requestors do not meet the requirements for bringing a reconsideration request because the Requestors have not identified: (i) an established ICANN policy or Bylaws provision that the Waiver violates; (ii) material information that should have been considered but was not; or (iii) false or inaccurate information that was relied on. Thus, Request 22-2 did not meet any of the three grounds for reconsideration under Article 4, Section 4.2(c). Accordingly, the BAMC summarily dismissed Request 22-2 pursuant to Article 4, Section 4.2(k) of the ICANN Bylaws.
- [Request 22-3](#) (filed by Zydus Lifesciences Ltd. on 11 July 2022) – The Requestor sought reconsideration of the proceeding that was conducted under the Uniform Domain Name Dispute Resolution Policy (UDRP). ICANN advised the Requestor that challenges to UDRP proceedings and decisions do not fall within the scope of the Reconsideration process because neither the ICANN Board nor Staff are involved in UDRP proceedings and thus, the challenge is to an action taken by a third party. ICANN asked the Requestor to withdraw the request. The Requestor responded that it wished to proceed with its request. On 23 July 2022, the BAMC determined that the Requestor does not meet the requirements for bringing a reconsideration request for the foregoing reason.. Accordingly, the BAMC summarily dismissed Request 22-3 pursuant to Article 4, Section 4.2(k) of the ICANN Bylaws.
- [Request 22-4](#) (filed by Bryan Ealba on 18 July 2022) – The Requestor seeks reconsideration of actions taken by the Contractual Compliance team relating to an abuse complaint filed by the Requestor. On 23 August 2022, the BAMC determined that the Requestor failed to allege that he was materially and adversely affected by the challenged action and therefore did not meet the requirements for bringing a reconsideration request. Accordingly, the BAMC summarily dismissed Request 22-4 pursuant to Article 4, Section 4.2(k) of the ICANN Bylaws.

- [Request 22-5](#) (filed by Zydus Lifesciences Ltd. on 8 August 2022) – The Requestor seeks reconsideration of the BAMC’s Summary Dismissal of Request 22-3. Request 22-5 is currently pending BAMC procedural evaluation.

Number of Reconsideration Requests Pending (as of 12 September 2022)

- There is one Reconsideration Request pending: Requests [22-5](#).

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 2021 and the date of this report.

Other Accountability Mechanisms Available to Denied Requestors

- ICANN makes available the Ombudsman and the Independent Review Process (reported on below) 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 14 October 2021 through 12 September 2022, no IRPs were initiated or concluded, and four IRPs are pending.

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 Panel unanimously denied Afilias’ request in its entirety, finding the Request to be “frivolous,” and awarding ICANN the legal fees it incurred in responding to Afilias request (in the amount of US\$236,884.39).

The Board considered the Final Declaration at its 16 January 2022 Board meeting and adopted several resolutions relating to the Final Declaration and further consideration needed regarding the Panel’s non-binding recommendation, which the Board asked the BAMC to evaluate and report back. ([See Board Resolutions 2022.01.16.12 – 2022.01.16.15.](#)) The Board further considered the Final Declaration at its 10 March 2022 Board meeting, and asked the BAMC to review, consider and evaluate the allegations relating to the Domain Acquisition Agreement (DAA) between NDC and Verisign, and the allegations relating to Afilias’ conduct during the auction Blackout Period. In furtherance of the Board’s resolution, the BAMC Chair sent a letter to the interested parties (Altanovo, NDC and Verisign) on 19 May 2022, requesting that they submit comprehensive written summaries of their allegations regarding the DAA and the Auction Blackout Period. Initial submissions were scheduled for 15 July 2022 and reply submissions for 15 August 2022. Altanovo requested a two-week extension with regard to both submissions, and the BAMC granted that request. Initial submissions were submitted to the BAMC on 29 July 2022 and reply submissions were submitted to the BAMC on 29 August 2022.

- [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.

Claimants filed a motion to stay the IRP until the resolution of the [pending lawsuit](#), which the Panel denied. Claimant Minds + Machines Group, Ltd. withdrew from the IRP. ICANN submitted a motion to dismiss certain claims in the IRP as untimely. The parties are awaiting the Panel's decision. The final IRP merits hearing is currently scheduled for 17-18 October 2022.

- [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.

ICANN moved to dismiss the IRP on the grounds that: (1) Namecheap is not a proper "Claimant" under ICANN's Bylaws in that it has not "suffer[ed] an injury or harm that is directly and causally connected to the alleged violation"; and (2) the allegations in the IRP Request regarding the change of control request of the .ORG registry operator (Public Interest Registry) are moot because ICANN has since decided not to consent to the request.

The Panel granted ICANN's motion with respect to claims related to the change of control issue and denied it with respect to the claims related to the price control issue, and indicating that it would be issuing a subsequent order "detailing the Panel's reasoning." Before that further order was issued, Namecheap submitted a request that the Panel reconsider its ruling on ICANN's motion to dismiss. The Panel provided the detailed reasoning for the Panel's rulings on ICANN's motion to dismiss.

The Final IRP hearing took place. The parties submitted post-hearing briefs and closing arguments took place. The parties are awaiting final determination from the IRP Panel.

- [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 sought an order requiring GCCIX to omit from the IRP Request any allegations or annexes discussing the confidential CEP communications between ICANN and GCCIX. The Emergency Panelist ordered GCCIX to file an amended IRP Request excising the confidential CEP communications.

In the meantime, and light of certain prior IRP Panel Declarations, the Board 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 (Board Resolution [2021.09.12.08](#)).

ICANN org then [asked](#) the GAC to engage in the informal dialogue as the Board resolved. The GAC asked ICANN org to provide it some factual background. The GAC alone then discussed the matter and [responded](#) to ICANN org with its rationale for the GAC Advice from 2013 (which the GAC noted was expressed in the GAC Early Warning on .GCC):

The BAMC reviewed the GAC’s response and other relevant materials, discussed potential next steps, and recommended that the Board: (a) ask the BAMC to review, consider, and evaluate the underlying basis for the GAC consensus advice that the .GCC application should not proceed, the Board’s acceptance of that advice, and relevant related materials; and (b) ask the BAMC to provide the Board with recommendations regarding next steps. The Board accepted the BAMC’s recommendation at its [12 June 2022 meeting](#).

In furtherance of the Board directing org to seek a stay pending conclusion of the GAC dialogue, ICANN org requested that Claimant stay the IRP, but Claimant refused. ICANN org then asked the Emergency Panelist to do so, but the Emergency Panelist did not think doing so was in his remit.

Given the 25 January 2022 communication from the GAC regarding the .GCC application, and in light of Applicant Guidebook Section 3.1 (regarding applicant responses to GAC advice), the BAMC decided to provide GCCIX with an opportunity to submit a written response to the GAC communication regarding the .GCC application. Initial deadline for the response was 23 August; GCCIX requested a two-week extension, which the BAMC granted. Deadline to submit the response was 6 September 2022; GCCIX submitted its response on 7 September 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 14 October 2021 through 12 September 2022, ICANN org received and responded to two DIDP Requests.
- [Request 20211210-1](#): ICANNWiki (10 December 2021) – The DIDP Request sought disclosure of documentary information in connection with “the updated contractual compliance policy as amended and announced in March 2007; Any records of public comments received as a result of the announcement of the new policy; Any public-facing announcements, commentaries, or advisories that explained or postulated the legal basis for ICANN’s right to audit; Any published correspondence exchanged with SOs, ACs, and stakeholder groups regarding the policy shift, advice or advocacy regarding such a shift, and any other related material; and Any records of public meetings, teleconferences, board or board committee meetings, or other events of public record that included discussion of this policy shift”. The DIDP Request also sought the transcript from the ICANN28 public meeting in Lisbon. The DIDP Response provided information and numerous links to publicly available material responsive to the Request.
- [Request 20220117-1](#): Altanovo Domains Limited (17 January 2022) – The DIDP Request sought documentary information relating the Afiliac v. ICANN IRP and information about the org’s and Board’s consideration of the IRP Panel Final Declaration. The DIDP Response provided information and 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.