

**Board Accountability Mechanisms Committee (BAMC)**  
**2020 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 23 October 2019 through 23 October 2020)
  - Two Reconsideration Requests were received: Requests [20-1](#), and [20-2](#).
  - The BAMC acted upon four Reconsideration Requests: Requests [19-3](#), [19-4](#), [20-1](#), and [20-2](#).
  - The Board acted upon four Reconsideration Requests: Requests [19-2](#), [19-3](#), [19-4](#), and [20-1](#).
  - One Reconsideration Request was summarily dismissed: Request [20-2](#).
- [Request 19-2](#) (filed by Namecheap, Inc.) – The Requestor sought reconsideration of ICANN’s decision to renew the registry agreements for .ORG and .INFO without the historic price controls included. The Ombudsman submitted to the BAMC his substantive evaluation of Request 19-2 on 7 September 2019. The majority of the BAMC members recused themselves from voting on Request 19-2 due to potential or perceived conflicts, or out an abundance of caution. Accordingly, the BAMC did not have a quorum to consider Request 19-2. Therefore, the Board considered the Request 19-2 and issued a Proposed Determination on 3 November 2019. On 18 November 2019, the Requestor submitted a rebuttal to the Board’s Proposed Determination. On 21 November 2019, the Board adopted the Board’s Final Determination on Request 19-2, denying the request.
- [Request 19-3](#) (filed by Electronic Frontier Foundation) – The Requestor sought reconsideration of ICANN org’s renewal of the .ORG Registry Agreement (RA), insofar as the renewal permits the registry operator to, "at its election, implement additional protections of the legal rights of third parties' unilaterally and without further consultation with existing .ORG registrants or the ICANN community" and decision to include the Uniform Rapid Suspension (URS) in the RA. The Requestor claimed that ICANN org’s inclusion of the rights protection mechanism in the .ORG renewed RA “run[s] contrary to ICANN’s [B]ylaws.” The Requestor also sought reconsideration of an alleged Board inaction on the

basis that the ICANN Board did not vote on the .ORG renewed RA, alleging that this inaction was based on the Board's consideration of inaccurate relevant information and the Board's failure to consider material information. The Ombudsman submitted to the BAMC his substantive evaluation of Request 19-3 on 7 September 2019. The majority of the BAMC members recused themselves from voting on Request 19-3 due to potential or perceived conflicts, or out an abundance of caution. Accordingly, the BAMC did not have a quorum to consider Request 19-3. Therefore, the Board considered Request 19-3 and issued a Proposed Determination on 3 November 2019. On 18 November 2019, the Requestor submitted a rebuttal to the Board's Proposed Determination, followed by the Requestor's presentation to the BAMC on 25 November 2019. On 12 December 2019, the Board adopted the Board's Final Determination on Request 19-3, denying the request.

- [Request 19-4](#) (filed by Merck KGaA and Merck Registry Holdings, Inc.) – The Requestors sought reconsideration of ICANN org's denial of their mutual request for a second postponement of a string contention auction for .MERCK (Second Request). The Requestors asserted that ICANN staff's denial of the Second Request failed to consider material information and contradicted ICANN org's policies of: (i) favoring the voluntary settlement of string contention and treating auctions as a matter of last-resort; and (ii) allowing for discretionary waiver of deadlines in the Applicant Guidebook. The Requestors also asserted that the denial of the Second Request was contrary to ICANN org's Commitment to “[m]ake decisions by applying documented policies neutrally and objectively with integrity and fairness.” On 21 November 2019, the Ombudsman recused himself from consideration of Request 19-4. On 19 December 2019, the BAMC issued a Recommendation on Request 19-4. Following consideration of the Requestors' rebuttal, the Board adopted the BAMC's Recommendation on Request 19-4, denying the request.
- [Request 20-1](#) (filed by Namecheap, Inc.) – The Requestor sought reconsideration of: (i) the removal of the price control provisions from the .ORG registry agreement; and (ii) ICANN's conduct with respect to its evaluation of the proposed Change of Control of Public Interest Registry, the registry operator for .ORG. On 18 March 2020, the BAMC reviewed Request 20-1 “to determine if it is sufficiently stated.” Except for the remaining claim stated above, the BAMC determined that the other three claims in Request 20-1 did not meet the requirements for bringing a reconsideration request and, on that basis, summarily dismissed those claims. Pursuant to Article 4, Section 4.2(1)(ii) of the ICANN Bylaws, the Ombudsman submitted to the BAMC his substantive evaluation of what remained of Request 20-1 on 3 April 2020. On 21 April 2020, the BAMC issued a Recommendation on Request 20-1. Following consideration of the Requestors' rebuttal, on 20 May 2020 the Board adopted the BAMC's Recommendation on Request 20-1, denying the request.
- [Request 20-2](#) (filed by Emily Rose Trust) – The Requestor sought reconsideration of proceeding conducted under Uniform Dispute Resolution Policy (UDRP). The BAMC determined that Request 20-2 is not sufficiently stated because the Requestor's claim is beyond the scope of a reconsideration request given that the Requestor is not challenging an action or inaction taken by the ICANN Board or ICANN staff. On 16 July 2020, the BAMC summarily dismissed Request 20-2 pursuant to Article 4, Section 4.2(k) of the Bylaws.

**Number of Reconsideration Requests Pending** (as of 23 October 2020)

- 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 2019 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 its decisions. The Ombudsman separately reports on his activities.

## **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. Many parties 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 23 October 2019 through 23 October 2020, two IRPs were initiated, no IRPs have concluded, and three IRPs are pending.

#### **Initiated and Pending:**

- [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”) initiated an IRP on 16 December 2019 challenging: (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.

On 30 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. On 7 August 2020, the Emergency Panelist denied in part and granted in part Claimants’ Request for Interim Measures of Protection – the .HOTEL contention set will remain on hold during the pendency of this IRP.

- [Namecheap, Inc v. ICANN](#) (.ORG, .INFO, .BIZ) – Namecheap, Inc. initiated an IRP on 25 February 2020 challenging: (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. On 20 March 2020, the Emergency Panelist denied Namecheap’s Request for Interim Measures.

**Pending:**

- [Afilias Domains No. 3 Limited \(Afilias\) v. ICANN](#) (.WEB) – Afilias submitted its Request for IRP with the ICDR (the IRP provider) on 14 November 2018; the ICDR initiated the IRP effective 26 November 2018. Afilias submitted an Amended IRP Request on 21 March 2019. In its IRP, Afilias alleges that Nu Dotco (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 alleges 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 filed requests to participate as *amici curiae* in the IRP on 11 December 2018, which Afilias opposed. On 12 February 2020, the Panel granted, in part, the *amicus curiae* requests: *amici* participation is limited to attending procedural and merits hearings and submitting written briefing on the dispute or on such discrete questions as the Panel may request; and *amici* will be given access to all briefings and materials related to the IRP except for commercially sensitive or privileged material.

The hearing took place on 3-11 August 2020. The parties submitted closing argument briefs on 12 October 2020.

**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 23 October 2019 through 23 October 2020, ICANN org received seven DIDP requests and responded to six DIDP Requests. There is one DIDP Request pending that was received on 20 October 2020 and that will be responded to before the 30 day response deadline.
- [Request 20191213-1](#): Amy Ward, Mitch Stoltz, and Jacob Malthouse (13 December 2019) – The DIDP Request sought disclosure of information in connection with the sale of the .ORG registry to the private equity firm Ethos Capital. The [DIDP Response](#) provided extensive and numerous links to publicly available material responsive to the Request.
- [Request 20200108-1](#): Flip Petillion on behalf of Namecheap Inc. (8 January 2020) – The DIDP Request sought disclosure of information in connection with the negotiations pertaining to the reassignment, renewal and amendments of the .ORG, .BIZ and/or .INFO Registry Agreements and all documents relating to all economic studies, impact studies and other studies ICANN has commissioned, examined and/or performed with respect to competition and/or pricing of TLDs (in particular original TLDs (.COM, .NET, .ORG) and gTLDs that were delegated pursuant to ICANN Resolution 00.89 of 16 November 2000 (e.g., .BIZ, .INFO) and vertical integration between registries, registrars. The DIDP request also sought disclosure of information relating to the change of control of Public Interest Registry. The [DIDP Response](#) provided extensive 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.
- [Request 20200214-1](#): Flip Petillion on behalf of Namecheap Inc. (14 February 2020) – The DIDP Request sought disclosure of information in connection with the documents submitted to the California Attorney General and all communications with Public Internet Registry and/or third parties in regard to the proposed sale of Public Internet Registry to Ethos Capital. 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 20200219-1](#): Michael Palage (19 February 2020) – The DIDP Request sought disclosure of information in connection with ICANN’s decision to conduct ICANN67 Public Meeting, which was to be held in Cancún, Mexico, via remote participation-only. 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 20200610-1](#): Ephraim Percy Kenyanito on behalf of ARTICLE 19 – The DIDP Request sought disclosure of information on the steps undertaken with regard to the implementation of Workstream 2 Recommendation regarding the Ombudsman. 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 20200610-2](#): Ephraim Percy Kenyanito on behalf of ARTICLE 19 – The DIDP Request sought disclosure of information “about mechanisms or any other changes afoot within ICANN, implemented internally and with various SO/ACs to ensure that ICANN Org supports the Community to carry out the tasks listed under the WS2 Implementation Assessment Report and which most of them required ICANN Org to initiate action.” 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 20201020-1](#): John Baird (20 October 2020) – The DIDP Request seeks the disclosure of ICANN’s Contractor Consulting Agreement. A response will be provided by the 30 day response deadline, on or before 19 November 2020.