

## **Board Accountability Mechanisms Committee 2017 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 subsection (u) of that Process, which calls for the Board Accountability Mechanisms Committee (BAMC) to provide information found in this report.

#### **B. Information on Specific Reconsideration Requests**

##### **Number, Nature, and Action**

- Five Reconsideration Requests were received from 26 October 2016 through 25 October 2017: [Requests 16-14](#), [17-1](#), [17-2](#), [17-3](#), and [17-4](#).
- The Board Governance Committee (BGC)/BAMC acted upon eight Reconsideration Requests during the period from 26 October 2016 through 25 October 2017<sup>1</sup>: Requests [13-16](#), [14-10](#), [16-13](#), [16-14](#), [17-1](#), [17-2](#), [17-3](#), and [17-4](#).
- The Board acted upon five Requests during the period from 26 October 2016 through 25 October 2017: Requests [13-16](#), [14-10](#), [17-1](#), [17-2](#), [17-3](#).
- One Request was withdrawn during the period from 26 October 2016 through 25 October 2017: [Request 16-10](#).
- [Request 13-16](#) (filed by dot Sport Limited on 8 November 2013) – The Requestor sought reconsideration of the 23 October 2013 Expert Determination in favor of SportAccord’s community Objection to the Requestor’s application for the .SPORTS gTLD. On [8 January 2014](#), the BGC issued its Determination denying Request 13-16. Following an Independent Review Process (IRP) proceeding, where the IRP Panel in its Final Declaration recommended that the ICANN Board “reconsider its decisions on the Reconsideration Requests in the aggregate, weighing the new evidence in its entirety against the standard applicable to neutrals as set out in the IBA Conflict Guidelines”, the Board [directed](#) the BGC to re-evaluate the relevant Reconsideration Requests. On [1](#)

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<sup>1</sup> For Requests for Reconsideration of staff action or inaction that were filed before 1 October 2016, the Bylaws in effect at the time that the requests were filed states “the Board Governance Committee shall be delegated the authority by the Board of Directors to make a final determination and recommendation on the matter. Board consideration of the recommendation is not required.” (See <https://www.icann.org/resources/pages/bylaws-2016-02-16-en#IV>.)

[June 2017](#), the BGC issued its Further Recommendation on Request 13-16 recommending that Request 13-16 again be denied. [On 14 June 2017](#), the Requestor submitted a supplemental letter in response to the BGC's Further Recommendation. On [24 June 2017](#), the Board adopted BGC's Recommendation on Request 13-16.

- [Request 14-10](#) (filed by dot Sport Limited on 2 April 2014) – The Requestor sought reconsideration of: (i) the Expert Determination, and ICANN's acceptance of that Determination, upholding SportAccord's Community Objection to the Requestor's application for .SPORTs; (ii) the ICC's designation of the Expert Panelist who presided over the underlying objection; and (iii) the BGC's Determination denying Reconsideration Request 13-16. On [21 June 2014](#), the BGC issued its Recommendation on Request 14-10 recommending that Request 14-10 be denied without further consideration. On [18 July 2014](#), the New gTLD Program Committee (NGPC) adopted the BGC's Recommendation on Request 14-10. Following an Independent Review Process (IRP) proceeding, where the IRP Panel in its Final Declaration recommended that the ICANN Board "reconsider its decisions on the Reconsideration Requests in the aggregate, weighing the new evidence in its entirety against the standard applicable to neutrals as set out in the IBA Conflict Guidelines", the Board [directed](#) the BGC to re-evaluate the relevant Reconsideration Requests. On [1 June 2017](#), the BGC issued its Further Recommendation on Request 14-10 recommending that Request 14-10 again be denied. [On 14 June 2017](#), the Requestor submitted a supplemental letter in response to the BGC's Further Recommendation. On [24 June 2017](#), the Board adopted BGC's Further Recommendation on Request 14-10.
- [Request 16-10](#) (filed by the gTLD Registries Stakeholder Group (RySG) on 9 August 2016) – The Requestor essentially sought reconsideration of: (i) what the Requestor suggests is staff's improper expansion of the scope of the Thick Whois Policy to include a requirement for Registry Operators to implement Registration Data Access Protocol (RDAP); and (ii) staff's ignoring objections to the RySG's proposed operational profile for RDAP, and staff's attempt to impose the adoption of the profile on registry operators despite any contractual basis for doing so. Upon filing of the Reconsideration Request, the Requestor noted that there were planned discussions with appropriate staff members and asked that the processing of Request 16-10 be deferred pending the conclusion of those discussions. Subsequently, Request 16-10 was withdrawn by the Requestor on 6 October 2017.
- [Request 16-14](#) (filed by Fraser Lee on 15 December 2016) – The Requestor sought reconsideration of ICANN Contractual Compliance department's investigation of and decision to close Complaint #EWO-100-61631 concerning the domain name [www.ripoffreport.com](#) and the registrar with whom the domain is registered after ICANN's investigation demonstrated that there was no violation of the Registrar Accreditation Agreement. On [1 February 2017](#), the BGC concluded that Request 16-14 was not sufficiently stated and therefore was subject to summary dismissal. As a result, the BGC summarily dismissed Request 16-14.
- [Request 17-1](#) (filed by Russ Smith on 9 March 2017 and subsequently updated on 16 March 2017) – The Requestor sought reconsideration of ICANN Contractual Compliance's decisions to close both his WHOIS Service Level Agreement (SLA)

Complaint concerning the domain name directorschoice.com, and his follow-up complaint expressing his dissatisfaction with the handling of his WHOIS SLA Complaint without making the requested historical WHOIS data for directorschoice.com available. On [7 April 2017](#), pursuant to Article 6, Section 4.2(l)(iii) of the ICANN Bylaws, the Ombudsman recused himself from consideration of Request 17-1. On [1 June 2017](#), the BGC issued its Recommendation on Request 17-1, recommending that Request 17-1 be denied. The Requestor filed a rebuttal to the BGC Recommendation and an addendum to the rebuttal on [2 June 2017](#) and [12 June 2017](#), respectively. On [24 June 2017](#), the Board adopted BGC's Recommendation on Request 17-1.

- [Request 17-2](#) (filed by DotMusic Limited on 18 June 2017) – The Requestor sought reconsideration of ICANN's response to Requestor's DIDP seeking disclosure of documents and information relating to Community Priority Evaluation Process Review. On [10 July 2017](#), pursuant to Article 6, Section 4.2(l)(iii) of the ICANN Bylaws, the Ombudsman recused himself from consideration of Request 17-2. On [23 August 2017](#), the BAMC issued its Recommendation on Request 17-2, recommending that Request 17-2 be denied. On [12 September 2017](#), the Requestor submitted a rebuttal to the BAMC's recommendation. On [23 September 2017](#), the Board adopted BAMC's Recommendation on Request 17-2.
- [Request 17-3](#) (filed by dotgay LLC on 30 June 2017) – The Requestor sought reconsideration of ICANN's response to Requestor's DIDP seeking disclosure of documents and information relating to Community Priority Evaluation Process Review. On [19 July 2017](#), pursuant to Article 6, Section 4.2(l)(iii) of the ICANN Bylaws, the Ombudsman recused himself from consideration of Request 17-3. On [23 August 2017](#), the BAMC issued its Recommendation on Request 17-3, recommending that Request 17-3 be denied. On [8 September 2017](#), the Requestor submitted a rebuttal to the BAMC's recommendation. On [23 September 2017](#), the Board adopted BAMC's Recommendation on Request 17-3.
- [Request 17-4](#) (filed by DotMusic Limited and dotgay LLC on 25 July 2017) – The Requestors seek reconsideration of ICANN's response to the Requestors' joint DIDP request seeking disclosure of documents and information relating to the Community Priority Evaluation Process Review. On [24 August 2017](#), pursuant to Article 6, Section 4.2(l)(iii) of the ICANN Bylaws, the Ombudsman recused himself from consideration of Request 17-4. On [11 October 2017](#), the BAMC issued Recommendation on Request 17-4, recommending that Request 17-4 be denied. The Requestors may submit a rebuttal to the BAMC's Recommendation by 26 October 2017. Request 17-4 is pending Board consideration.

### **Number of Reconsideration Requests Pending**

- As of 25 October 2017, there are nine Reconsideration Requests on hold, and one Reconsideration Request is pending Board action (following action already taken by the BAMC).

- Nine Reconsideration Requests are on hold: Requests 14-30, 14-32, 14-33, 14-42, 16-3, 16-5, 16-8, 16-11, and 16-12.
- One Reconsideration Request is pending Board action, following action already taken by the BAMC: Request 17-4.

### **Number of Reconsideration Requests the BGC Declined to Consider**

- The BGC/BAMC has not declined consideration of any Reconsideration Requests submitted between the Annual General Meeting in 2016 and the Annual General Meeting in 2017.

### **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 ICANN’s Bylaws, ICANN has designated the International Centre for Dispute Resolution as the body to process requests for independent review of Board 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 26 October 2016 through 25 October 2017, no IRPs were initiated, three IRPs have concluded, one IRP was closed, and one IRP is pending.

#### **Concluded**

- dot Sport Limited v. ICANN IRP (.SPORT) – dot Sport Limited (dSL) challenged the Expert Determination on the community objection filed against its application by SportAccord and challenged ICANN’s “adoption” of the Expert Determination. dSL claimed that the Expert Panelist “was not properly trained and [...] had created a reasonable appearance of bias.” The Final Hearing was held on 3 May 2016 and the Final Determination was issued on 31 January 2017. The Final Declaration found dSL to be the prevailing party and declared that the IRP fees and expenses shall be entirely borne by ICANN. On 16 March, the Board considered the Panel’s Final Declaration and took the following decision:

- Resolved (2017.03.16.09), the Board accepts the following aspects of the Final Declaration: (i) dSL is the prevailing party in the *dot Sport Limited v. ICANN* IRP; (ii) ICANN shall reimburse dSL "its share of fees and expenses of the Panel and ICDR in the sum of US\$79,211.64 upon demonstration by [dSL] that these incurred fees and expenses have been paid"; and (iii) each party "shall be responsible for its own fees and expenses."
- Resolved (2017.03.16.10), the Board directs the President and CEO, or his designee(s), to take all steps necessary to implement the IRP Panel's recommendation that the "Board reconsider its decisions on the Reconsideration Requests, in the aggregate, weighing the new evidence in its entirety against the standard applicable to neutrals as set out in the IBA Conflict Guidelines" in accordance with the Bylaws in effect when the Board made its previous determinations on dSL's Reconsideration Requests.
- Amazon EU S.à.r.l. v. ICANN IRP (.AMAZON and related IDNs) – Amazon EU S.à.r.l. (Amazon) filed its IRP Request on 2 March 2016. Amazon claimed that, in accepting the GAC advice, the Board: (a) did not act transparently and in accord with Amazon's expectations; (b) did not apply documented policies neutrally and objectively, and with integrity, fairness and due diligence; (c) discriminated in its treatment of Amazon's applications for .AMAZON and the related IDNs; and (d) acted with a conflict of interest. The Final Hearing took place on 1-2 May 2017.

The IRP Panel issued its Final Declaration on 11 July 2017. The IRP Panel declared that Amazon is the prevailing party and that ICANN shall reimburse Amazon for its IRP fees and costs in the sum of US\$163,045.51. The Panel also recommended that the Board promptly re-evaluate the Amazon applications and independently determine whether there are well-founded, public policy reasons for denying the Amazon applications. On 23 September 2017, the Board considered the Panel's Final Declaration and took the following decision:

- Resolved (2017.09.23.15), the Board accepts that the Panel declared the following: (i) Amazon is the prevailing party in the Amazon EU S.à.r.l. v. ICANN IRP; and (ii) ICANN "shall reimburse Amazon the sum of US\$163,045.51."
- Resolved (2017.09.23.16), the Board directs the President and CEO, or his designee(s), to take all steps necessary to reimburse Amazon in the amount of US\$163,045.51 in furtherance of the Panel's Final Declaration.
- Resolved (2017.09.23.17), further consideration is needed regarding the Panel's non-binding recommendation that the Board "promptly re-evaluate Amazon's applications" and "make an objective and independent judgment regarding whether there are, in fact, well-founded, merits-based public policy reasons for denying Amazon's applications."

- Resolved (2017.09.23.18), the Board asks the Board Accountability Mechanisms Committee (BAMC) to review and consider the Panel's recommendation that the Board "promptly re-evaluate Amazon's applications" and "make an objective and independent judgment regarding whether there are, in fact, well-founded, merits-based public policy reasons for denying Amazon's applications," and to provide options for the Board to consider in addressing the Panel's recommendation.
- Gulf Cooperation Council (GCC) v. ICANN IRP (.PERSIANGULF) – The GCC challenged the Expert Determination, issued on 30 October 2013, denying the GCC's community objection to the .PERSIANGULF application submitted by Asia Green IT System Ltd. The Final Hearing was held on 7 July 2016. The Final Declaration as to the merits was received by ICANN on 24 October 2016. The Final Declaration As To Costs was issued on 15 December 2016. On 16 March 2017, the Board considered the Panel's Final Declaration and took the following decision:
  - Resolved (2017.03.16.08), the Board has determined that further consideration and analysis of the Final Declaration is needed, and directs the ICANN President and CEO, or his designee(s), to conduct or cause to be conducted a further analysis of the Panel's factual premises and conclusions, and of the Board's ability to accept certain aspects of the Final Declaration while potentially rejecting other aspects of the Final Declaration.

## Closed

- Commercial Connect, LLC v. ICANN IRP (.SHOP) – Commercial Connect (CC) challenges ICANN's actions with respect to .SHOP, and seeks review of ICANN's decision to accept the findings contained in the CPE results for CC's application for .SHOP and, resulting therefrom, ICANN's decision not to award community-based status to CC's .SHOP application. An administrative hearing took place on 5 September 2016. ICANN filed an amended IRP Response on 12 October 2016. The IRP provider closed the matter due to CC's failure to pay the required fees for the IRP.

## Pending

- Asia Green IT Systems Ltd. v. ICANN IRP (.HALAL/.ISLAM) – Asia Green IT Systems Ltd. (AGIT) alleges that "the following actions and inaction of the ICANN Board and Staff [have] violated ICANN's Bylaws and Articles: (1) [c]onsulting in secret with the GAC and with Objectors regarding delay or denial of AGIT's applications[;] (2) [r]efusing to specifically identify the Objectors' concerns, how those concerns might be resolved by AGIT, or any process by which the concerns might be resolved[;] (3) [c]reating new policy, without community input, which allows effective, far-from-consensus government veto of just two applications[;] (4) [d]eciding such policy via NGPC resolution, ignoring unanimous advice from the GNSO Council and resolution of the Board that ICANN, *inter alia*, must provide clear criteria for evaluation of all

applications[;] (5) [r]efusing to provide documents reasonably requested by AGIT, which would illuminate and narrow the scope of the IRP, and thus reduce costs and time to decision[; and] (7) [r]efusing to acknowledge[ that IRP decisions are binding and precedential, causing expensive and unnecessary relitigation of settled issues.” The Final Hearing took place on 4 May 2017. The parties are awaiting the Panel’s Final Declaration.

## 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 26 October 2016 through 25 October 2017, 10 DIDP Requests have been submitted and all were responded to.
- Request 20170125-1: Ben Sobel (25 January 2017) – The DIDP Request sought disclosure of: (1) correspondence or documentation related to the initial delegation of .pr, the country-code top level domain (ccTLD) for Puerto Rico; and (2) correspondence or documentation related to redelegations of the following ccTLDs: .ag, .bb, .bz, .bs, .dm, .do, .gd, .gy, .jm, .kn, .lc, .sr, .tt and .vc (which were submitted during the time that these ccTLDs were managed by the University of Puerto Rico). The three page DIDP Response provided the Requestor with extensive 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.
- Request 20170214-1: Michael Palage (14 February 2017) – The DIDP Request sought disclosure of all initiatives, documents and research by ICANN dealing with block chain and distributed ledger technology [DLT] in connection with the DNS and other unique identifiers schemes and frameworks. The DIDP Response explained that ICANN is not in possession, custody, or control of any documents responsive to the Request. The DIDP Response also explained that to the extent that there have been any personal preliminary interest or individual research conducted relating to the Request, that information was not appropriate for public disclosure pursuant to the DIDP Defined Conditions for Nondisclosure.
- Request 20170505-1: Arif Ali on Behalf of DotMusic Limited (5 May 2017) – The DIDP Request sought disclosure of information relating to the Board initiated review of the Community Priority Evaluation process (Review), including: (1) the identity of the evaluator undertaking the review; (2) the selection process of the evaluator; (3) the date of appointment of the evaluator; (4) the terms of instructions provided to the

evaluator; (5) the materials provided to the evaluator by the CPE provider; (6) the materials provided to the evaluator by ICANN; (7) the materials submitted by affected parties provided to the evaluator; (8) any further information, instructions or suggestions provided by ICANN to the evaluator; and (9) the most recent estimates provided by the evaluator for the completion date of the review. The six page DIDP Response provided the Requestor with extensive 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.

- Request 20170506-1: Avri Doria (6 May 2017) – The DIDP Request sought “all available materials related to the Board discussions and decision concerning SSAC 045 and all available materials related to the implementation of Board decisions related to this SSAC advice,” including briefing materials, transcripts, minutes, rationale statements, notes, plans or reports, and “any other available materials related to either Board resolution (2010.12.10.12) [*sic*], the implementation of mechanisms in response to that resolution or any decision made regarding inclusion of a warning in the AGB.” The eight page DIDP Response provided the Requestor with extensive 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.
- Request 20170518-1: Arif Ali on Behalf of dotgay LLC (18 May 2017) – The DIDP Request sought disclosure of information relating to the Board initiated review of the Community Priority Evaluation process (Review), including: (1) the same information/materials requested in DIDP 20170505-1 (above); (2) documents and communications relating to ICANN’s request to “the CPE provider [for] the materials and research relied upon by the CPE panels in making their determinations with respect to certain pending CPE reports”; and (3) documents relating to requests by ICANN staff or Board Members to access the research provided by the EIU or the ongoing evaluation or any comments on the research or evaluation. The seven page DIDP Response provided the Requestor with extensive 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.
- Request 20170608-1: Dot Registry, LLC (8 June 2017) – The DIDP Request sought disclosure of “any and all such information referencing or relating to Dot Registry’s community applications for .INC, .LLC, and/or .LLP used, produced or contained in the CPE Process Review.” 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 20170610-1: dotgay LLC and DotMusic Limited (10 June 2017) – The DIDP Request sought disclosure of certain information relating to the Board initiated review of the Community Priority Evaluation process. Many of the items requested had

previously been requested by the Requestors in prior DIDP requests. The DIDP Response provided extensive 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.

- Request 20170613-1: Centre for Internet and Society (13 June 2017) – The DIDP Request sought disclosure of the “detailed reports with historical data on income and revenue contributions from domain names, for FY15 and FY16, in the manner in which FY13 and FY14 were published, i.e. with a comprehensive list of all legal entities and individuals who have contributed to ICANN’s domain names income/revenue” (Revenue Detail By Source Reports). Additionally, the Request sought the status of the publication of the FY12 Revenue Detail by Source Report. The DIDP Response provided information and numerous links to publicly available material responsive to the Request. The DIDP Response also explained that ICANN is in the process of compiling the Revenue Detail by Source Report for FY12, FY15 and FY16 and intends to publish the FY15 and FY16 and FY12 Revenue Detail by Source Reports by end of July 2017 and September 2017, respectively.
- Request 20170614-1: Travel Reservations SRL, Spring McCook, LLC, Minds + Machines Group Limited, Famous Four Media Limited, dot Hotel Limited, Radix FZC, dot Hotel Inc., and Fegistry, LLC (14 June 2017) – The DIDP Request sought disclosure of certain information relating to the Board initiated review of the Community Priority Evaluation (CPE) process. The DIDP Response provided extensive 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.
- Request 20170727-1: Karl S. Kronenberger (27 July 2017) – The DIDP Request sought disclosure of “all document supporting or relating to [Mr.] Namazi’s statement regarding predicted loss of accredited registrars over the next 12 months, including but not limited to any studies or reports conducted or reviewed by ICANN on this issue.” The DIDP Response provided extensive 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.