

## **Board Accountability Mechanisms Committee Activities Report**

1 July 2019 – 31 December 2019

### **Summary:**

#### Completed Activities:

1. Reconsideration Request 19-1 (Colombian government/.AMAZON and related Internationalized Domain Names)
2. Recomposition of Independent Review Process Implementation Oversight Team (IRP-IOT)
3. Reconsideration Request 19-3 (Electronic Frontier Foundation/.ORG)
4. Reconsideration Request 19-4 (Merck KGaA and Merck Registry Holdings, Inc/.MERCK)

#### In-Progress Activities:

1. Update on the Status of Establishment of IRP Standing Panel
2. Update on the IRP-IOT Status

**Section I: Completed Activities**

Item	Description of BAMC Activity	BAMC Completion Date	Accomplishments/Outcome
1. Reconsideration Request 19-1 (Colombian government/.AMAZON and related Internationalized Domain Names)	Request submitted by Colombian government seeking reconsideration of ICANN Board’s action on 15 May 2019 ( <a href="#">Resolutions 2019.05.15.13 – 2019.05.15.15</a> ) to move forward with the processing of Amazon corporation’s application for .AMAZON and related IDNs. The BAMC considered all of the materials received and following in depth discussion, agreed to recommend that the Board deny Request 19-1 because the Board adopted the 15 May 2019 Resolutions based on accurate and complete information and because the Board’s adoption was consistent with ICANN’s Bylaws, policies and procedures. (See <a href="#">BAMC Recommendation on Request 19-1</a> ).	14 August 2019	The BAMC recommended that the Reconsideration Request 19-1 be denied, which the Board adopted on 8 September 2019. (See <a href="#">Resolution 2019.09.08.08</a> )
2. Recomposition of Independent Review Process Implementation Oversight Team (IRP-IOT)	The Committee discussed the expressions of interests to join the IRP-IOT that were submitted and asked ICANN org to conduct outreach as requested by the BAMC. The BAMC discussed the results of the follow up for additional information from some candidates that did not provide sufficient information for the BAMC to determine their substantive qualifications and/or time availability. ICANN org also reported on the responses received from the current IRP-IOT members who have actively participated in the IRP-IOT since January 2018, noting their interests in continuing with the IRP-IOT. The BAMC agreed to recommend that the Board affirm the work of the BAMC on the recomposition of the IRP-IOT.	6 September 2019	The BAMC recommended that the Board affirm the work of the BAMC on the re-composition of the IRP-IOT, which the Board approved in this instance on 3 November 2019. (See <a href="#">Resolutions 2019.11.03.03 – 2019.11.03.05</a> )
3. Reconsideration Request 19-3 (Electronic Frontier Foundation/.ORG)	Request submitted by Electronic Frontier Foundation seeking reconsideration of ICANN org’s renewal of the .ORG Registry Agreement (RA), insofar as the renewal permits the registry operator (Public Interest Registry (PIR)) 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 applies the Uniform Rapid Suspension (URS) rules to .ORG registrants. The Requestor also 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.  During the Requestor’s presentation to the BAMC on 25 November 2019, several	3 December 2019	The Board issued a <a href="#">Proposed Determination</a> on 3 November 2019; on 25 November 2019, the Requestor made an oral presentation to the BAMC; and on 3 December the BAMC recommended that the Board deny Request 19-3, which the Board approved on 12 December 2019 and for which issued the <a href="#">Final Determination on Reconsideration Request 19-3</a> (see <a href="#">Resolution 2019.12.12.02</a> )

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	<p>BAMC members asked the Requestor follow-up questions, seeking further information and clarification regarding its claims, position, and requested remedies.</p> <p>On 3 December 2019, the BAMC found that the reconsideration was not warranted because ICANN org’s execution of the .ORG renewed RA did not contradict ICANN’s Bylaws, policies, or procedures; ICANN staff did not fail to consider material information or rely on false or inaccurate information in executing the RA; and the Board did not fail to consider material information or rely on false or inaccurate information by allowing ICANN org to execute the RA without voting on it prior to execution. With regard to the Requestor’s argument that including the URS in the .ORG renewed RA “[i]ntrudes on a policy determination currently pending in the GNSO’s multistakeholder policy development process” (PDP), the BAMC and ICANN org discussed the parameters and status of the current discussions being held by the Rights Protection Mechanisms in all gTLDs PDP working group, and noted that the PDP working group has not completed its work and no policy has yet been recommended or adopted. It was also noted that if a consensus policy is developed and adopted by the Board, those gTLD registry operators to whom the Board-adopted policy recommendations would apply will be bound by that policy.</p> <p>The BAMC also acknowledged that many members of the .ORG community have voiced substantial concerns regarding the terms of the .ORG renewed RA, and noted that the .ORG community is in the best position to engage PIR in that important discussion and that it is within any registry’s right to propose contract amendments for evaluation by ICANN org. The BAMC also noted that Request 19-3 concerns the 30 June 2019 renewal of the .ORG RA and the information available at that time. The subsequent acquisition of PIR, which was announced four months after the execution of the .ORG renewed RA, did not impact ICANN org’s determination that ICANN’s Mission and Core Values were best served by migrating the .ORG RA to the Base RA. The results of that acquisition is something that ICANN org will be evaluating as part of its normal process in such circumstances.</p> <p>One BAMC member voted against the BAMC’s recommendation that the Board deny Request 19-3. One BAMC member recused herself by not attending the</p>		

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	meeting due to potential conflict of interest. (See <a href="#">BAMC Action on Proposed Final Determination on Request 19-3</a> )		
4. Reconsideration Request 19-4 (Merck KGaA and Merck Registry Holdings, Inc./MERCK)	<p>Request submitted by Merck KGaA and Merck Registry Holdings, Inc. (Requestors) seeking 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 assert 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 assert 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." The Requestors ask that the Second Request be granted, and that the auction date be postponed for nine months to allow them to consider settlement negotiations.</p> <p>On 19 December 2019, BAMC recommended that the Board deny Request 19-4 because ICANN staff did not fail to consider material information or violate ICANN's Commitments, Core Values or established ICANN policy(ies) in its denial of Requestors' Second Request. The BAMC noted, however, that the delay the Requestors sought (in order to have time to reach a private resolution) has nearly been achieved by virtue of the Requestors' first postponement and their filing of Request 19-4. Nevertheless, the BAMC also recommended that the Board ask ICANN org to seek an update from the Requestors on: (i) whether the Requestors have received any of the court rulings that the Requestors stated were expected in 2019 that they indicated would assist them in resolving their dispute; and (ii) what progress, if any, the Requestors have made toward private resolution. If the Requestors jointly declare they have made progress since filing Request 19-4 and that they are very close to private resolution, the BAMC recommended that the Board ask ICANN org to consider providing the Requestors with some form of discretionary relief that could allow them to finalize a resolution (see <a href="#">BAMC Recommendation on Request 19-4</a>).</p>	19 December 2019	Requestors submitted a Joint <a href="#">Rebuttal to the BAMC Recommendation on Request 19-4</a> . Request 19-4 is pending consideration by the Board.

**Section II: In-Progress Activities**

Item	Description of BAMC Activity	Target Completion Date	Status
1. Update on the Status of Establishment of IRP Standing Panel	The BAMC was provided with a briefing on the status of establishment of IRP standing panel. The BAMC agreed with the recommendation to issue the Call for Expressions of Interest accompanied by a blog.	TBD	ICANN org to draft blog addressing the community’s responsibility regarding establishment of the standing panel and the opening of the Call for Expressions of Interest; ICANN org to circulate for BAMC feedback once completed.
2. Update on the IRP-IOT Status	<p>The BAMC received a briefing from ICANN org regarding the status of the IRP-IOT. The IRP-IOT will conduct its first meeting with the new membership on 14 January 2020, and will continue to work on finalizing the IRP supplementary procedures. The IRP-IOT will also begin work on a set of proposed IRP appellate procedures, which is one of the other phases of work slotted for the IRP-IOT.</p> <p>The BAMC also indicated that further discussion is needed regarding the process by which members are added to the IRP-IOT.</p>	TBD	ICANN org to prepare materials for BAMC consideration regarding proposed process by which new members will be added to the IRP-IOT.