

## Proposed Reconsideration Bylaws Revisions as of 26 October 2012 to Meet Recommendations of the Accountability Structures Expert Panel

### Article IV, Section 2. RECONSIDERATION

1. ICANN shall have in place a process by which any person or entity materially affected by an action of ICANN may request review or reconsideration of that action by the Board.
2. Any person or entity may submit a request for reconsideration or review of an ICANN action or inaction ("Reconsideration Request") to the extent that he, she, or it have been adversely affected by:
  - a. one or more staff actions or inactions that contradict established ICANN policy(ies); or
  - b. one or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act; or
  - c. one or more actions or inactions of the ICANN Board that are taken as a result of the Board's reliance on false or inaccurate material information.
3. The Board has designated the Board Governance Committee to review and consider any such Reconsideration Requests. The Board Governance Committee shall have the authority to:
  - a. evaluate requests for review or reconsideration;
  - ~~a. determine whether a stay of the contested action pending resolution of the request is appropriate;~~
  - b. summarily dismiss insufficient requests;
  - c. evaluate requests for urgent consideration;
  - ~~b-d.~~ \_\_\_\_\_ conduct whatever factual investigation is deemed appropriate;
  - ~~e-e.~~ \_\_\_\_\_ request additional written submissions from the affected party, or from other parties; ~~and~~
  - f. make a final determination on Reconsideration Requests regarding staff action or inaction, without reference to the Board of Directors; and
  - ~~d-g.~~ \_\_\_\_\_ make a recommendation to the Board of Directors on the merits of the request, as necessary.

4. ICANN shall absorb the normal administrative costs of the reconsideration process. It reserves the right to recover from a party requesting review or reconsideration any costs ~~which~~that are deemed to be extraordinary in nature. When such extraordinary costs can be foreseen, that fact and the reasons why such costs are necessary and appropriate to evaluating the Reconsideration Request shall be communicated to the party seeking reconsideration, who shall then have the option of withdrawing the request or agreeing to bear such costs.
5. All Reconsideration Requests must be submitted to an e-mail address designated by the Board Governance Committee within ~~thirty~~thirty-five days after:
  - a. for requests challenging Board actions, the date on which information about the challenged Board action is first published in a ~~preliminary report or minutes of the Board's meetings~~resolution, unless the posting of the resolution is not accompanied by a rationale. In that instance, the request must be submitted within 15 days from the initial posting of the rationale; or
  - b. for requests challenging staff actions, the date on which the party submitting the request became aware of, or reasonably should have become aware of, the challenged staff action; or
  - c. for requests challenging either Board or staff inaction, the date on which the affected person reasonably concluded, or reasonably should have concluded, that action would not be taken in a timely manner.

- ~~2. All To properly initiate a Reconsideration Requests process, all requestors must include the information required by the Board Governance Committee, which shall include at least the following information:~~
- ~~a. name, address, and contact information for the requesting party, including postal and e-mail addresses;~~
  - ~~b. the specific action or inaction of ICANN for which review or reconsideration is sought;~~
  - ~~c. the date of the action or inaction;~~
  - ~~d. the manner by which the requesting party will be affected by the action or inaction;~~

6. ~~the extent to which, in the opinion of the party submitting the Request for and follow the Reconsideration, the action or inaction complained of adversely affects others; Request form posted on the ICANN website. at <INSERT URL>. Requestors must also acknowledge and agree to the terms and conditions set forth in the form when filing.~~
  - e. ~~whether a temporary stay of any action complained of is requested, and if so, the harms that will result if the action is not stayed;~~
  - f. ~~in the case of staff action or inaction, a detailed explanation of the facts as presented to the staff and the reasons why the staff's action or inaction was inconsistent with established ICANN policy(ies);~~
  - g. ~~in the case of Board action or inaction, a detailed explanation of the material information not considered by the Board and, if the information was not presented to the Board, the reasons the party submitting the request did not submit it to the Board before it acted or failed to act;~~
  - h. ~~what specific steps the requesting party asks ICANN to take i.e., whether and how the action should be reversed, cancelled, or modified, or what specific action should be taken;~~
  - i. ~~the grounds on which the requested action should be taken; and~~
  - j. ~~any documents the requesting party wishes to submit in support of its request.~~
3. ~~All Reconsideration Requests shall be posted on the Website.~~
7. Requestors shall not provide more than 25 pages (double-spaced, 12-point font) of argument in support of a Reconsideration Request. Requestors may submit all documentary evidence necessary to demonstrate why the action or inaction should be reconsidered, without limitation.
- 7.8. \_\_\_\_\_ The Board Governance Committee shall have authority to consider Reconsideration Requests from different parties in the same proceeding so long as: (i) the requests involve the same general action or inaction; and (ii) the parties submitting Reconsideration Requests are similarly affected by such action or inaction. In addition, consolidated filings may be appropriate if the alleged causal connection and the resulting harm is the same for all of the requestors. Every requestor must be able to demonstrate that it has been

materially harmed and adversely impacted by the action or inaction giving rise to the request.

~~4.~~ The Board Governance Committee shall review each Reconsideration ~~Requests promptly~~Request upon its receipt ~~and announce, within thirty days,~~ its intention to either decline to consider or proceed to consider~~determine if it~~ is sufficiently stated. The Board Governance Committee may summarily dismiss a Reconsideration Request ~~after receipt of if: (i) the Request. The announcement shall be posted on the Website.~~

~~5.~~ ~~The Board Governance Committee announcement of a decision not to hear~~requestor fails to meet the requirements for bringing a Reconsideration Request~~must contain an explanation of; (ii) it is frivolous, querulous or vexatious; or (iii) the reasons for its decision.~~

~~8-9.~~ requestor had notice and opportunity to, but did not, participate in the public comment period relating to the contested action, if applicable. The Board Governance Committee may request additional information or clarifications from the party submitting the Request for ReconsiderationCommittee's summary dismissal of a Reconsideration Request shall be posted on the Website.

10. For all Reconsideration Requests that are not summarily dismissed, the Board Governance Committee shall promptly proceed to review and consideration.

~~9-11.~~ The Board Governance Committee may ask the ICANN staff for its views on the matter, which comments shall be made publicly available on the Website.

~~10-12.~~ If theThe Board Governance Committee requires~~may request~~ additional information,it or clarifications from the requestor, and may elect to conduct a meeting with the party seeking Reconsideration~~requestor~~ by telephone, e-mail~~email~~ or, if acceptable to the party requesting reconsideration, in person. A requestor may ask for an opportunity to be heard; the Board Governance Committee's decision on any such request is final. To the extent any information gathered in such a meeting is relevant to any recommendation by the Board Governance Committee, it shall so state in its recommendation.

~~41-13.~~ The Board Governance Committee may also request information relevant to the request from third parties. To the extent any information gathered is relevant to any recommendation by the Board Governance Committee, it shall so state in its recommendation. Any information collected from third parties shall be provided to the requestor.

~~42-14.~~ The Board Governance Committee shall act on a Reconsideration Request on the basis of the public written record, including information submitted by the party seeking reconsideration or review, by the ICANN staff, and by any third party.

~~6. To protect against abuse of the reconsideration process, a request for reconsideration may be dismissed by the Board Governance Committee where it is repetitive, frivolous, non-substantive, or otherwise abusive, or where the affected party had notice and opportunity to, but did not, participate in the public comment period relating to the contested action, if applicable. Likewise, the Board Governance Committee may dismiss a request when the requesting party does not show that it will be affected by ICANN's action.~~

15. For all Reconsideration Requests brought regarding staff action or inaction, 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. As the Board Governance Committee deems necessary, it may make recommendation to the Board for consideration and action. The Board Governance Committee's determination on staff action or inaction shall be posted on the Website. The Board Governance Committee's determination is final and establishes precedential value.

~~43-16.~~ The Board Governance Committee shall make a final determination or a recommendation to the Board with respect to a Reconsideration Request within ninetythirty days following its receipt of the request, unless impractical, in which case it shall report to the Board the circumstances that prevented it from making a final recommendation and its best estimate of the time required to produce such a final determination or recommendation. The final recommendation shall be posted on the Website|ICANN's website.

~~44-17.~~ The Board shall not be bound to follow the recommendations of the Board Governance Committee. The final decision of the Board shall be made public as part of the preliminary report and minutes of the Board meeting at

which action is taken. The Board shall issue its decision on the recommendation of the Board Governance Committee within 60 days of receipt of the Reconsideration Request or as soon thereafter as feasible. Any circumstances that delay the Board from acting within this timeframe must be identified and posted on ICANN's website. The Board's decision on the recommendation is final.

18. If the requestor believes that the Board action or inaction posed for Reconsideration is so urgent that the timing requirements of the Reconsideration process are too long, the requestor may apply to the Board Governance Committee for urgent consideration. Any request for urgent consideration must be made within two business days (calculated at ICANN's headquarters in Los Angeles, California) of the posting of the resolution at issue. A request for urgent consideration must include a discussion of why the matter is urgent for reconsideration and must demonstrate a likelihood of success with the Reconsideration Request.

19. The Board Governance Committee shall respond to the request for urgent consideration within two business days after receipt of such request. If the Board Governance Committee agrees to consider the matter with urgency, it will cause notice to be provided to the requestor, who will have two business days after notification to complete the Reconsideration Request. The Board Governance Committee shall issue a recommendation on the urgent Reconsideration Request within seven days of the completion of the filing of the Request, or as soon thereafter as feasible. If the Board Governance Committee does not agree to consider the matter with urgency, the requestor may still file a Reconsideration Request within the regular time frame set forth within these Bylaws.

~~7.20.~~ \_\_\_\_\_ The Board Governance Committee shall submit a report to the Board on an annual basis containing at least the following information for the preceding calendar year:

- a. the number and general nature of Reconsideration Requests received, including an identification if the requests were acted upon, summarily dismissed, or remain pending;
- ~~b. the number of Reconsideration Requests on which the Board Governance Committee has taken action;~~

~~c. the number of any Reconsideration Requests that remained pending at the end of the calendar year and, the average length of time for which such Reconsideration Requests have been pending;~~

~~d.b. \_\_\_\_\_, and a description of any Reconsideration Requests that were the reasons for any request pending at the end of the calendar year for more than ninety (90) days and the reasons that the Board Governance Committee has not taken action on them;~~

~~e. the number and nature of Reconsideration Requests that the Board Governance Committee declined to consider on the basis that they did not meet the criteria established in this policy;~~

~~f.c. for Reconsideration Requests that were denied, an explanation of any other mechanisms available to ensure that ICANN is accountable to persons materially affected by its decisions; and~~

~~g.d. \_\_\_\_\_ whether or not, in the Board Governance Committee's view, the criteria for which reconsideration may be requested should be revised, or another process should be adopted or modified, to ensure that all persons materially affected by ICANN decisions have meaningful access to a review process that ensures fairness while limiting frivolous claims.~~

~~8. Each annual report shall also aggregate the information on the topics listed in paragraph 19(a)-(e) of this Section for the period beginning 1 January 2003.~~