

**DETERMINATION
OF THE BOARD GOVERNANCE COMMITTEE (BGC)
RECONSIDERATION REQUEST 16-14
1 FEBRUARY 2017**

The Requester, Fraser Lee, seeks reconsideration of the 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.

I. Brief Summary.

Complaint #EWO-100-61631, which was submitted to the ICANN Contractual Compliance department on 30 October 2016, claims that www.ripoffreport.com "holds defamatory and hate-based content," and "false information."¹ Following a thorough investigation, the ICANN Contractual Compliance department concluded that there was no violation of the Registrar Accreditation Agreement (RAA), and closed Complaint #EWO-100-61631. The Requester now argues that ICANN staff should have: (1) found that the Registrar, DNC Holdings, Inc., breached the RAA; and (2) "taken down" the referenced website, and that in failing to do so, ICANN breached the ICANN Expected Standards of Behavior and ICANN Bylaws.² The Requester also asserts that ICANN breached the "ICANN Guide for Law Enforcement," which, despite its name, was not issued, endorsed, or approved by ICANN, and thus does not constitute an established ICANN policy.

¹ Complaint #EWO-100-61631, at 4.

² Request § 7, Pg. 4; *see also id.* § 8, Pg. 5.

Article 4, Section 4.2(k) of the ICANN Bylaws provides that upon receipt of a reconsideration request, ICANN’s Board Governance Committee (BGC) is to review the request “to determine if it is sufficiently stated.”³ This Determination is limited to evaluating Reconsideration Request 16-14 (Request 16-14) under this standard and concludes that Request 16-14 is not sufficiently stated. Specifically, while Request 16-14 was timely filed and also identifies established ICANN policies that ICANN purportedly violated, the Requester fails to demonstrate that he has been materially and adversely affected by the challenged conduct. The BGC will therefore summarily dismiss Request 16-14 pursuant to Article 4, Section 4.2(e)(ii) and (k) of the ICANN Bylaws.

It is beyond the scope of this Determination to evaluate whether the Requester’s claims have merit. The BGC notes, however, that the Requester ultimately seeks to have ICANN assume greater responsibility of policing purportedly illegal activity on the Internet, and attempts to place the burden on ICANN to regulate content on the Internet. That is not ICANN’s role. If content is to be regulated, that review and enforcement falls to institutions charged with interpreting and enforcing laws and regulations around the world, such as law enforcement (local and national police agencies as well as intergovernmental organizations like Interpol), regulatory agencies, and judicial systems, and not ICANN.

II. Facts.

A. Background Facts.

The Requester claims that the domain name www.ripoffreport.com “is full of legally proven illegal defamatory, copyright infringing, hateful, suicidal, and human rights depriving

³ ICANN Bylaws, 1 October 2016, Art. 4, § 4.2(k).

content and is in breach of the Universal Charter of Human Rights.”⁴ Accordingly, the Requester claims that he submitted an abuse complaint to DNC Holdings, Inc., which is the registrar of (among others) the domain name www.ripoffreport.com.⁵ The Requester also states that he submitted an abuse complaint to the ICANN Contractual Compliance department, Complaint #EWO-100-61631.

Complaint #EWO-100-61631, which was submitted on 30 October 2016, claims that www.ripoffreport.com “holds defamatory and hate-based content,” and “false information.”⁶ It further claims that when the complainant raised these concerns to the registrar, DNC Holdings, Inc. “got offensive and started to threaten” the complainant.⁷ The complainant thereafter requested “a proper investigation and . . . disciplinary action.”⁸ After reviewing materials submitted by the complainant and DNC Holdings, Inc., the ICANN Contractual Compliance department determined that DNC Holdings, Inc. “demonstrated that it took reasonable and prompt steps to investigate and respond appropriately to the report of abuse” and was not in violation of the terms of the 2013 RAA. Accordingly, the ICANN Contractual Compliance department closed the complaint.⁹

The Requestor provides no evidence that he filed or had any involvement in Complaint #EWO-100-61631. To the contrary, the evidence provided by the Requester and through ICANN’s investigation demonstrates that it was a different individual, and not the Requester, who submitted Complaint #EWO-100-61631 to ICANN. Moreover, a search of the ICANN

⁴ Request, § 6, Pg. 3.

⁵ *Id.* § 7, Pg. 4. DNC Holdings, Inc. is an ICANN-approved registrar pursuant to the 2013 Registrar Accreditation Agreement (RAA).

⁶ Complaint #EWO-100-61631, at 4.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 3.

Contractual Compliance department complaint system confirms that the Requester, i.e., Fraser Lee, has never initiated a complaint with the ICANN Contractual Compliance department regarding the matters at issue in Request 16-14 or any other matters.

The Requester now seeks reconsideration of the ICANN Contractual Compliance department's decision to close Complaint #EWO-100-61631. Specifically, the Requester claims that ICANN breached the ICANN Expected Standards of Behavior and the Guide for Law Enforcement in its investigation of and decision to close the Complaint #EWO-100-61631 without further action, and that ICANN further breached its Bylaws by failing to require DNC Holdings, Inc. to take action against one of its registrants, i.e., the registrant of www.ripoffreport.com.

B. Relief Requested.

The Requester asks ICANN to: (1) find that the registrar, DNC Holdings, Inc., breached the Registrar Accreditation Agreement (RAA); and (2) “take[] down” the referenced website.¹⁰

III. Issue.

The issue is whether Request 16-14 is sufficiently stated or whether summary dismissal is appropriate.

IV. The Relevant Standards For Reconsideration Requests.

Article 4, Section 4.2(a) and (c) of ICANN's Bylaws provide in relevant part that any entity may submit a request “for reconsideration or review of an ICANN action or inaction to the extent that it has been materially and adversely affected by:

- (i) One or more Board or Staff actions or inactions that contradict ICANN's Mission, Commitments, Core Values and/or established ICANN policy(ies);
- (ii) One or more actions or inactions of the Board or Staff that have been taken or refused to be taken without consideration of material information, except where

¹⁰ Request § 7, Pg. 4; *see also id.* § 8, Pg. 5.

the Requestor could have submitted, but did not submit, the information for the Board's or Staff's consideration at the time of action or refusal to act; or

(iii) One or more actions or inactions of the Board or Staff that are taken as a result of the Board's or staff's reliance on false or inaccurate relevant information."¹¹

Pursuant to Article 4, Section 4.2(k), the BGC reviews each reconsideration request upon its receipt to determine if it is sufficiently stated.¹² The BGC may summarily dismiss a reconsideration request if the BGC determines the request: (i) does not meet the requirements for filing reconsideration requests under the Bylaws; or (ii) it is frivolous.¹³ If a reconsideration request is not summarily dismissed, the BGC must make a nonbinding recommendation to the Board, after which the Board will make a final decision on the merits of the request.¹⁴ As noted above, this Determination is limited to evaluating Request 16-14 to determine if it is sufficiently stated.

V. Analysis and Rationale.

In evaluating whether a reconsideration request is sufficiently stated, the following factors are considered: (1) is the reconsideration request timely; and (2) does the requester meet the requirements for bringing a reconsideration request? The BGC concludes that Request 16-14 is not sufficiently stated because the Requester has not demonstrated that he has been materially and adversely affected by the challenged conduct; accordingly, the BGC will summarily dismiss Request 16-14.

¹¹ ICANN Bylaws, 1 October 2016, §§ 4.2(a), (c).

¹² *Id.* § 4.2(k).

¹³ *Id.* §§ 4.2(e)(ii), (k).

¹⁴ *Id.* §§ 4.2(e)(vi), (k). For non-community reconsideration requests that are not summarily dismissed, prior to the BCG's review, the Ombudsman first performs a substantive evaluation of the request, except where the Ombudsman is recused. *Id.* § 4.2(l). The Ombudsman is recused from "matters for which the Ombudsman has, in advance of the filing of the Reconsideration Request, taken a position while performing his or her role as the Ombudsman pursuant to Article 5 of these Bylaws, or involving the Ombudsman's conduct in some way." *Id.* § 4.2(l)(iii).

A. Request 16-14 Is Timely.

Request 16-14 was timely filed. Pursuant to ICANN's Bylaws, a reconsideration request challenging staff action (like Request 16-14 here) must be filed "within 30 days after the date on which the Requester became aware of, or reasonably should have become aware of, the challenged Staff action."¹⁵ The Requester challenges ICANN's Contractual Compliance department's investigation and decision to close Complaint #EWO-100-61631 without action. ICANN's Contractual Compliance department closed Complaint #EWO-100-61631 on 15 November 2016, and the Requester states in Request 16-14 that he became aware of that decision on the same day.¹⁶ Request 16-14 was submitted on 15 December 2016, 30 days after the Requester became aware of the challenged action. As a result, Request 16-14 was timely filed.¹⁷

B. The Requester Does Not Meet The Requirements For Bringing A Reconsideration Request.

The Requester has not shown, as he must, that he has been materially and adversely affected by the challenged conduct; accordingly, summary dismissal is appropriate.

As an initial matter, the BGC notes that Request 16-14 sufficiently identifies established ICANN policies which ICANN staff purportedly violated. Specifically, Request 16-14 challenges ICANN staff action that the Requester argues contravenes "ICANN's Mission, Commitments, Core Values and/or established ICANN policy," as provided in Section 4.2(c)(i) of the Bylaws. The Requester also claims that ICANN breached the ICANN Expected Standards of Behavior in its investigation of and decision to close Complaint #EWO-100-61631 without

¹⁵ ICANN Bylaws, 1 October 2016, § 4.2(g)(i)(B).

¹⁶ Request, § 4, Pg. 3.

¹⁷ Although Request 16-14 was timely filed, the Requester did not provide copies of the attachments referenced in Request 16-14 until after 27 December 2016, and did not authorize ICANN to publish the attachments until 4 January 2017.

further action, and that ICANN further breached its Bylaws by failing to require DNC Holdings, Inc. to shut down www.ripoffreport.com.¹⁸

Despite identifying these ICANN policies, the Requestor's claim must be summarily dismissed because there is no evidence the Requester submitted Complaint #EWO-100-61631 to ICANN's Contractual Compliance department. To the contrary, the evidence provided by Requester and through ICANN's investigation demonstrates that it was another individual (Complainant), and not the Requester, who submitted Complaint #EWO-100-61631 to ICANN. The Requester otherwise has offered zero evidence that would plausibly suggest that he had any involvement in Complaint #EWO-100-61631 submitted to ICANN's Contractual Compliance department. As a result, the Requester has not indicated how he was harmed by the challenged actions. And even assuming (without deciding) that the Complainant could have sufficiently shown the requisite material and adverse harm, the Requester does not claim to have brought Request 16-14 on the Complainant's behalf.

Nor does the Requester suggest—let alone submit evidence showing—that he has been the subject of the claimed “illegal defamatory, copyright infringing, hateful, suicidal, and human rights depriving content” he claims resides on the website www.ripoffreport.com. To be sure, a search for “Fraser Lee” on the website in question presents zero results.¹⁹ Indeed, the Requester concedes that “it is not me [i.e., the Requester]” who has been materially and adversely affected by ICANN's purported actions.²⁰ The Requester instead claims that “it is the world” that has

¹⁸ The Requester also asserts that ICANN breached the “ICANN Guide for Law Enforcement,” but this document was not issued, endorsed, or approved by ICANN, and thus does not constitute an established ICANN policy. As a result, the claimed breach of the Guide for Law Enforcement is not a proper basis for reconsideration.

¹⁹ http://www.ripoffreport.com/reports/specific_search/fraser%20lee. By contrast, a search for the Complainant's name on www.ripoffreport.com presents one result.

²⁰ Request, § 5, Pg. 3.

been materially affected by the conduct described in the Request insofar as unidentified persons purportedly suffer from ongoing “illegal defamation” and “cyber terrorism” as a result of ICANN’s actions.²¹

The Requester then asserts that he intends to “encourag[e]” unidentified “litigants and various stakeholders and industry groups to form a class action of negligence” against ICANN.²² But the Requester does not claim that such individuals or groups have asked him to represent them in connection with Request 16-14 or in any other manner, or even that these unidentified persons and groups have any knowledge of the Requester’s apparent intentions. Such a tenuous and vague suggestion of harm does not satisfy the requirements for bringing a reconsideration request.

In short, the Requester has not indicated how he was affected by the decision of ICANN’s Contractual Compliance department to close Complaint #EWO-100-61631 without action, much less how he was materially or adversely affected, as is required to support a reconsideration request. On that ground alone, the Requester does not meet the requirements for bringing a reconsideration request, and Request 16-14 will be summarily denied.

VI. Determination.

Based on the foregoing, the BGC concludes that the Requester does not meet the requirements for bringing a reconsideration request, and therefore summarily dismisses Request 16-14. If the Requester believes that he has been treated unfairly in the process, he is free to ask the Ombudsman to review this matter.

A substantive review of the merits of the Requester’s claims is beyond the scope of this

²¹ *Id.* § 5, Pg. 3; *see also id.* § 6, Pgs. 3-4.

²² *Id.* § 10a, Pg. 6.

memorandum. The BGC's conclusion is limited to only the preliminary assessment of whether the Requester meets the requirements for bringing a reconsideration request. For the foregoing reasons, the BGC concludes that Request 16-14 is not sufficiently stated and therefore is subject to summary dismissal. As a result, the BGC will summarily dismiss Request 16-14.