

Excerpt of ICANN Board Meeting re Reconsideration Request 17-2 - Scribes Notes
23 September 2017
11:00 UTC

Roll Call:

STEVE CROCKER: All right. The board is now in
. I'd like to go around the room and take roll.

I'm Steve Crocker, board chair.

CHERINE CHALABY: Cherine Chalaby, board.

LITO IBARRA: Lito Ibarra, board member.

RON DA SILVA: Ron Da Silva, member of the board.

RAM MOHAN: Ram Mohan.

ASHA HEMRAJANI: Asha Hemrajani.

CHRIS DISSPAIN: Chris Disspain.

MAARTEN BOTTERMAN: Maarten Botterman.

XAVIER CALVEZ: Xavier Calvez, ICANN org.

MARKUS KUMMER: Markus Kummer, ICANN board.

KHALED KOUBAA: Khaled Koubaa, ICANN board.

KAVEH RANJBAR: Kaveh Ranjbar.

JONNE SOININEN: Jonne Soininen.

DIANE SCHROEDER: Diane Schroeder.

SUSANNA BENNETT: Susanna Bennett, ICANN org.

DAVID CONRAD: David Conrad, ICANN org.

BECKY BURR: Becky Burr.

LEON SANCHEZ: Leon Sanchez, incoming.

DUNCAN BURNS: Duncan Burns, ICANN org.

SALLY COSTERTON: Sally Costerton, ICANN org.

MATTHEW SHEARS: Matthew Shears, incoming.

JAMIE HEDLUND: Jamie Hedlund, ICANN org.

JOHN JEFFREY: John Jeffrey, general counsel and secretary.

THERESA SWINEHART: Theresa Swinehart, ICANN org.

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AKINORI MAEMURA: Akinori Maemura, board member.

ASHWIN RANGAN: Ashwin Rangan, ICANN org.

SARAH DEUTSCH: Sarah Deutsch, incoming.

RINALIA ABDUL RAHIM: Rinalia Abdul Rahim, ICANN board.

LOUSEWIES VAN DER LAAN: Lousewies van der Laan, ICANN org.

WENDY PROFIT: Wendy Profit, ICANN org.

MELISSA KING: Melissa King, ICANN org.

GEORGE SADOWSKY: George Sadowsky.

GORAN MARBY: Goran Marby, ICANN org.

STEVE CROCKER: Thank you.

Mr. Secretary, do we have a quorum?

JOHN JEFFREY: Yes, we do, Mr. Chairman.

STEVE CROCKER: Good.

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Discussion Re: Reconsideration Request 17-2:

With respect to item 2.a., that is a consideration of the Board Accountability Mechanisms Committee's recommendation on root consideration request, 17-2.

Chris, will you take this? And we'll move smoothly into the second one as well when we're done with this one.

CHRIS DISSPAIN: Thank you, Steve.

This is -- the first one is .MUSIC reconsideration request. And I believe Amy is going to take us through it. Just to level-set for everybody -- Amy, I think I'm right -- these are under the new bylaws.

AMY STATHOS: That's correct, Chris.

CHRIS DISSPAIN: And that means that every reconsideration request -- whereas in the past some reconsideration requests would be decided by the BGC, these ones now all come from the -- what will be the BAMC to the board. And that's why we're getting this one.

Amy, would you like to take us through, please.

AMY STATHOS: Sure. Before we do, should we call for conflict identification?

CHRIS DISSPAIN: Yes, we should. Thank you very much for reminding me.

Perhaps we could do conflicts on both -- both of them, that is, .MUSIC and .GAY, to save us some time.

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So, any board member has a conflict?

Becky, your card is up.

BECKY BURR: NeuStar is the provider of back-end registry services for two .MUSIC applications and for a .GAY application.

CHRIS DISSPAIN: Thank you, Becky.

Anybody else?

George? Same reason?

Okay. Thank you, George.

Anyone else?

John, are you comfortable that we've --

JOHN JEFFREY: There's another card up. Sorry.

CHRIS DISSPAIN: I can't see another -- Oh, I'm sorry. Lousewies. No, Lousewies is just -- A rogue card was up.

Anyone else?

All right. That's that done.

Amy, you're on.

AMY STATHOS: Thanks, Chris.

Just again as a reminder, given that these are reconsideration requests that came in under the new bylaws, I want to be clear that in accordance with those bylaws, both of these requests were forwarded to the ombudsman for consideration, in accordance with the bylaws. And the ombudsman has recused himself on both of the reconsideration requests at issue today.

As it relates to 17-2, the requestor submitted an application for .MUSIC, which was placed in contention. The community-based application from the requestor, which is .MUSIC Limited, did participate in CPE, but did not prevail. The issue at hand in the reconsideration request is the DIDP or request under the Documentary Information Disclosure Policy that ICANN maintains requested some documents relating to the CPE or Community Priority Evaluation process review that's ongoing.

In response to the DIDP request submitted by .MUSIC Limited, the ICANN organization responded by identifying a significant number of documents that have already been posted in response to the request. Also identified under the DIDP conditions for nondisclosure, that -- for -- one of the requests for the conditions of nondisclosure applied, and therefore no documents were to be produced.

In accordance with the policy, the ICANN organization also evaluated whether there was -- public reason outweighed the harm of producing the documents. And because under the DIDP, even though items may not be producible because they are subject to conditions of nondisclosure, they are evaluated to

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determine whether they should be disclosed in any case. And in this case, the decision was made that they not be disclosed.

The Board Accountability Mechanisms Committee evaluated the reconsideration request at length and recommended that the board deny the request because the -- the BAMC had indicated that the staff -- or the ICANN organization had followed the DIDP process in evaluating the request for documents from the requestor .MUSIC Limited.

Subsequent to that, under the new bylaws, the requestor was offered the opportunity to submit a rebuttal, which the requestor did here, although it was untimely in that it was a couple of days late. As the board has seen in all the materials it received, the -- there was still analysis of the merits of the rebuttal. And, again, it was -- the determination was that the rebuttal did not provide anything new that wasn't in the request that would be the proper subject of reconsideration. And as the committee has had access to all these materials to review -- or, excuse me, the board -- the recommendation stands that the reconsideration request be denied.

And I'll leave it at that, Chris.

CHRIS DISSPAIN: Thank you, Amy.

So, does anyone -- Steve.

STEVE CROCKER: Amy, you said that this had been referred to the ombudsman, and the ombudsman recused himself. What was the basis for the recusal?

AMY STATHOS: So, under the bylaws, he's allowed to recuse himself if he -- he or she -- has taken a position on the subject matter at issue and/or the subject matter at issue is about the ombudsman. And the ombudsman simply indicated that pursuant to the bylaws and that provision, he has recused himself. And he did not specify anything further than the recusal pursuant to the bylaws provision.

CHRIS DISSPAIN: The challenge, Steve, is that he's bound by a series of confidentiality principles. And in order for him to tell us why he's recused himself, he'd have to breach his confidentiality principles. So, it's a bit of a circular -- And that's the way the bylaw is written.

STEVE CROCKER: Appreciate that.

The reason why I'm asking the question is because we're now very early in the process under the new bylaws.

CHRIS DISSPAIN: Yes.

STEVE CROCKER: And the ombudsman is supposed to be one of the earlier steps in our escalation --

CHRIS DISSPAIN: Correct.

STEVE CROCKER: -- process. And so, I just think it's noteworthy, and wondering if it's a signal of something deeper that didn't work in this case, or in the sense --

CHRIS DISSPAIN: Yeah, it might be. It's also possible that it's a function of the startup of new ones having been dealt with under the old system, and people had gone off to the ombudsman in the past,

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and therefore he has already discussed the issue. And it may be as new ones come along, because the system has changed, people will do things in a different way.

STEVE CROCKER: So as soon as we drain the swamp, it'll all be okay?

CHRIS DISSPAIN: I wouldn't put it that way, Steve.

[Laughter]

No problem.

Does anybody else have a -- a comment or a question on the .MUSIC reconsideration request?

If there are none, then -- it's a separate resolution from the other one? They're two separate resolutions.

Steve, can I hand it back to you to call the resolution, please.

STEVE CROCKER: Yep.

So that ends the discussion about the resolution.

All in favor, say aye.

MULTIPLE VOICES: Aye.

STEVE CROCKER: Any opposed?

And the abstentions?

Becky and George, as noted earlier. Thank you very much.