

# DotMusic Reconsideration Request (“RR”)

## 1. Requester Information

Requester is represented by:

**Name:** Dechert LLP

**Address:** Contact Information Redacted

**Email:** Contact Information Redacted

Requester:

**Name:** DotMusic Limited (“DotMusic”)

**Address:** Contact Information Redacted

**Email:** Constantinos Roussos, Contact Information Redacted

**Counsel:** Arif Hyder Ali, Contact Information Redacted

## 2. Request for Reconsideration of:

**Board action/inaction**

**Staff action/inaction**

## 3. Description of specific action you are seeking to have reconsidered.

On September 17, 2016, the ICANN Board passed a Resolution requesting ICANN to conduct “an *independent review* of the process by which ICANN staff interacted with the community priority evaluation provider, both generally and specifically with respect to the CPE

reports issued by the CPE provider.”<sup>1</sup> Further, on October 18, 2016, ICANN’s Board Governance Committee (“BGC”) requested it be provided “the materials and research relied upon by the CPE panels in making their determinations with respect to the pending CPE reports.”<sup>2</sup> In so doing, the BGC became obligated to disclose these materials under its Bylaws, but has failed to do so.<sup>3</sup>

On January 30, 2017, DotMusic requested “an immediate update about the status of: (1) DotMusic’s Reconsideration Request 16-5 and the BGC’s best estimate of the time it requires to make a final recommendation on DotMusic’s Reconsideration Request; (2) the Independent Review; and (3) Request for Information from the CPE Provider.”<sup>4</sup> DotMusic received no response. On April 28, 2017, DotMusic specifically requested that ICANN disclose the identity of the individual or organization conducting the independent review and investigation and informed ICANN that DotMusic had not received any communication from the independent evaluator. ICANN had not provided any details as to how the evaluator was selected, what its remit was, what information had been provided, whether the evaluator will seek to consult with the affected parties, etc.<sup>5</sup>

Immediately following the Dechert letter submission to ICANN on April 28, 2017, DotMusic received a letter from ICANN BGC Chair Chris Disspain (“BGC Letter”) indicating that the Reconsideration Request 16-5 was “on hold” and *inter alia* that:

The BGC decided to request from the CPE provider the materials and research

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<sup>1</sup> Resolution of the ICANN Board 2016.09.17.01, President and CEO Review of New gTLD Community Priority Evaluation Report Procedures, September 17, 2016, <https://www.icann.org/resources/board-material/resolutions-2016-09-17-en#1.a> (emphasis supplied).

<sup>2</sup> Minutes of the Board Governance Committee, October 18, 2016, <https://www.icann.org/resources/board-material/minutes-bgc-2016-10-18-en>

<sup>3</sup> ICANN Bylaws Art. IV. § 2.13 “The Board Governance Committee may also request information relevant to the Reconsideration 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 by ICANN from third parties shall be provided to the Requestor.***”

<sup>4</sup> Annex A, Letter from Arif Ali to ICANN CEO Göran Marby and the ICANN Board, January 30, 2017, <https://www.icann.org/en/system/files/correspondence/ali-to-marby-bgc-30jan17-en.pdf>

<sup>5</sup> Annex B, Letter from Arif Ali to ICANN CEO Göran Marby and the ICANN Board, April 28, 2017, <https://www.icann.org/en/system/files/correspondence/ali-to-marby-28apr17-en.pdf>

relied upon by the CPE panels in making determinations with respect to certain pending CPEs. This will help inform the BGC's determinations regarding certain recommendations or pending Reconsideration Requests related to CPE. This material is currently being collected as part of the President and CEO's review and will be forwarded to the BGC in due course. The review is currently underway. We recognize that ensuring we fulfill all of our obligations means taking more time, but we believe that this is the right approach. The review will complete as soon as practicable and once it is done, the BGC, and Board where appropriate, will promptly consider the relevant pending Reconsideration Requests. Meanwhile, the BGC's consideration of the following Reconsideration Requests is on hold: 14-30 (.LLC), 14-32 (.INC), 14-33 (.LLP), 16-3 (.GAY), 16-5 (.MUSIC), 16-8 (.CPA), 16-11 (.HOTEL), and 16-12 (.MERCCK).<sup>6</sup>

On May 5, 2017, Arif Ali, on behalf of DotMusic, submitted a DIDP Request 20170505-1 ("DIDP Request")<sup>7</sup> requesting, *inter alia*:

1. The identity of the individual or firm undertaking the Review;
2. The selection process, disclosures, and conflict checks undertaken in relation to the appointment;
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 EIU;
6. The materials provided to the evaluator by ICANN staff/legal, outside counsel or ICANN's Board or any subcommittee of the Board;
7. The materials submitted by affected parties provided to the evaluator;
8. Any further information, instructions or suggestions provided by ICANN and/or its staff or counsel to the evaluator;
9. The most recent estimates provided by the evaluator for the completion of the

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<sup>6</sup> See Annex E, Letter to DotMusic from ICANN BGC Chair Chris Disspain (Received April 28, 2017) <https://www.icann.org/en/system/files/correspondence/disspain-letter-review-new-gtld-cpe-process-26apr17-en.pdf>

<sup>7</sup> See Annex C, DIDP Request at <https://www.icann.org/en/system/files/files/didp-20170505-1-ali-request-05may17-en.pdf>.

investigation; and

10. All materials provided to ICANN by the evaluator concerning the Review.

DotMusic concluded in its DIDP Request that “there are no compelling reasons for confidentiality in disclosing the requested documents; rather, full disclosure will serve the global public interest and ensure the integrity of ICANN’s deliberative and decision-making process concerning the CPE process. On the other hand, ICANN’s failure to provide this information would raise serious questions concerning ICANN’s accountability and compromise the transparency, independence and credibility of such an independent review.”

On May 15, 2017, in a letter to DotMusic, Jeffrey LeVee, on behalf of ICANN, reiterated the statements of BGC Chairman Chris Disspain and stated that certain questions concerning the CPE Review “will be addressed as part of ICANN’s response to the DIDP in due course.”<sup>8</sup>

In response, on May 21, 2017, Arif Ali, on behalf of DotMusic, responded that DotMusic does “not consider ICANN’s delays justified” and that “[r]egrettably, ICANN continues to breach its transparency obligations, ignoring DotMusic’s information requests concerning the review process currently being conducted by an independent evaluator. Particularly, ICANN has ignored the basic safeguards that DotMusic has proposed, *inter alia*, that the identity of the evaluator be disclosed; that DotMusic be provided access to the materials being reviewed by the evaluator; and that DotMusic’s right to be heard during the evaluation process and comment on the evaluation results be given full effect.” Further, the letter stated that “[i]t is clear that the delays and secrecy are thus impairing ICANN’s Board from discharging their oversight responsibilities. Withholding materials concerning DotMusic’s CPE evaluation does not merely result in a denial of DotMusic’s right to be heard; it also hampers the efficiency of the investigation, by disabling us from being

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<sup>8</sup> Annex F, <https://www.icann.org/en/system/files/correspondence/levee-to-ali-2-15may17-en.pdf>

able to identify the flaws in the EIU's results. We urge ICANN to reconsider whether continuing a pattern of secrecy and neglect to the right of applicants to fair treatment serves either ICANN's or the global music community's best interests."<sup>9</sup>

On June 4, 2017, ICANN responded to the DIDP Request,<sup>10</sup> stating that:

As described in the Community Priority Evaluation Process Review Update, dated 2 June 2017, in November 2017 (*sic*), FTI Consulting, Inc.'s (FTI) Global Risk and Investigations Practice (GRIP) and Technology Practice was chosen to assist in the CPE review following consultation with various candidates. FTI was selected because it has the requisite skills and expertise to undertake this investigation. FTI's GRIP and Technology Practice teams provide a multidisciplinary approach to business-critical investigations, combining the skill and experience of former prosecutors, law enforcement officials and regulators with forensic accountants, professional researchers, anti-corruption investigators, computer forensic, electronic evidence and enterprise data analytic specialists. On 13 January 2017, FTI signed an engagement letter to perform the review... [T]he scope of the review consists of: (1) review of the process by which the ICANN organization interacted with the CPE provider related to the CPE reports issued by the CPE provider; (2) review of the consistency in which the CPE criteria were applied; and (3) review of the research process undertaken by the CPE panels to form their decisions and compilation of the reference materials relied upon by the CPE panels to the extent such reference materials exist for the evaluations which are the subject of pending Reconsideration Requests.

Moreover, ICANN denied critical items requested. Specifically:

Items 1- 4 ... With the exception of the correspondence between the ICANN organization and the CPE provider regarding the evaluations, all materials provided to the evaluator are publicly available. Regarding the internal correspondence between the ICANN organization and the CPE provider, these documents are not appropriate for disclosure for the same reasons identified in ICANN's response to the DIDP previous submitted by DotMusic Limited.

Items 5-6 Items 5 and 6 seeks the disclosure of the materials provided to the evaluator by the CPE provider (Item 5) and materials provided to the evaluator by ICANN staff/legal, outside counsel or ICANN's Board or any subcommittee of the Board (Item 6). As detailed in the Community Priority Evaluation Process Review Update, the review is being conducted in two parallel tracks. ***The first track focuses on gathering information and materials from the ICANN Organization, including interviews and document collection. This work was completed in early***

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<sup>9</sup> Annex G, <https://www.icann.org/en/system/files/correspondence/ali-to-Levee-21may17-en.pdf>

<sup>10</sup> Annex D, ICANN DIDP Response, June 4, 2017, <https://www.icann.org/en/system/files/files/didp-20170505-1-ali-response-04jun17-en.pdf>

**March 2017.** This work was completed in early March 2017. As part of the first track, ICANN provided FTI with the following materials:

[...]

With the exception of the correspondence between the ICANN organization and the CPE provider regarding the evaluations, all materials provided to the evaluator are publicly available. Regarding the internal correspondence between the ICANN organization and the CPE provider, these documents are not appropriate for disclosure for the same reasons identified in ICANN’s response to the DIDP previously submitted by DotMusic Limited.

Item 8. Item 8 seeks the disclosure of “[a]ny further information, instructions or suggestions provided by ICANN and/or its staff or counsel to the evaluator.” This item overlaps with Items 4 and 5. The information responsive to the overlapping items has been provided in response to Items 4 and 5 above.

Item 10. Item 10 requests the disclosure of “[a]ll materials provided to ICANN by the evaluator concerning the Review.” As noted, the review is still in process. To date, FTI has provided ICANN with requests for documents and information to ICANN and the CPE provider. These documents are not appropriate for disclosure based on the following applicable DIDP Defined Conditions of Non-Disclosure:

- Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN’s deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including internal documents, memoranda, and other similar communications to or from ICANN Directors.
- ICANN Directors’ Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.
- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.
- Information subject to the attorney– client, attorney work product privilege, or any other applicable privilege, or disclosure of which might prejudice any internal, governmental, or legal investigation.
- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.

Notwithstanding the applicable Defined Conditions of Nondisclosure identified in this Response, ICANN also evaluated the documents subject to these conditions to determine if the public interest in disclosing them outweighs the harm that may be caused by such disclosure. ICANN has determined that there are no circumstances for which the public interest in disclosing the information outweighs the harm that may be caused by the requested disclosure.

On June 10, 2017, Arif Ali, on behalf of DotMusic and dotgay, sent a joint letter to ICANN stating, *inter alia*, that:<sup>11</sup>

ICANN selected FTI Consulting, Inc. (“FTI”) seven months ago in November 2016 to undertake a review of various aspects of the CPE process and that FTI has *already* completed the “first track” of review relating to “gathering information and materials from the ICANN organization, including interview and document collection.” This is troubling for several reasons.

**First**, ICANN should have disclosed this information through its CPE Process Review Update back in November 2016, when it first selected FTI. By keeping FTI’s identity concealed for several months, ICANN has failed its commitment to transparency: there was no open selection of FTI through the Requests for Proposals process, and the terms of FTI’s appointment or the instructions given by ICANN to FTI have not been disclosed to the CPE applicants. There is simply no reason why ICANN has failed to disclose this material and relevant information to the CPE applicants.

**Second**, FTI has already completed the “first track” of the CPE review process in March 2017 without consulting the CPE applicants. This is surprising given ICANN’s prior representations that FTI will be “digging very deeply” and that “there will be a full look at the community priority evaluation.” Specifically, ICANN (i) “instructed the firm that is conducting the investigation to look thoroughly at the involvement of staff with the outside evaluators and outside evaluators’ approach to it, and they’re digging in very deeply and [] trying to understand the complex process of the new gTLD program and the community priority evaluation process,” and that (ii) “when the Board Governance Committee and the board’s discussions on it occurred, the request was that there be a full look at the community priority evaluation, as opposed to just a very limited approach of how staff was involved.”

Accordingly, to ensure the integrity of FTI’s review, we request that ICANN:

1. Confirm that FTI will review all of the documents submitted by DotMusic and DotGay in the course of their reconsideration

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<sup>11</sup> Annex H, Letter from Arif Ali to Jeffrey LeVee and Chris Disspain (10 June 2017).

- requests, including all of the documents listed in Annexes A and B;
2. Identify ICANN employees, officials, executives, board members, agents, etc. who were interviewed by FTI for the purposes of completing its “first track” review;
3. Disclose the details of FTI’s selection process, including the Requests for Proposals process, and the terms under which FTI currently operates for ICANN; and
4. Confirm that ICANN will disclose FTI’s final report and findings to the CPE applicants, including DotMusic and DotGay, immediately after FTI completes its review.

ICANN has not responded to the Joint Letter of June 10, 2017, to date.

According to ICANN’s DIDP “*Defined Conditions of Nondisclosure:*”<sup>12</sup>

ICANN's Documentary Information Disclosure Policy (DIDP) is intended to ensure that information contained in documents concerning ICANN's operational activities, and within ICANN's possession, custody, or control, is made available to the public unless there is a **compelling** reason for confidentiality.

Information...may still be made public if ICANN determines, under the particular circumstances, that the **public interest** in disclosing the information outweighs the harm that may be caused by such disclosure. Further, ICANN reserves the right to deny disclosure of information under conditions not designated above if ICANN determines that the harm in disclosing the information outweighs the **public interest** in disclosing the information.

ICANN’s default policy is to release all information requested unless there is a **compelling** reason not to do so. ICANN did not state compelling reasons for nondisclosure as it pertains to each individual item requested nor provide the definition of **public interest** in terms of the DIDP Request.

ICANN signed an engagement letter with FTI to perform an ***independent*** review of the CPE Process based on the acceptance by ICANN’s Board of the systemic breaches of its Bylaws

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<sup>12</sup> See ICANN DIDP, <https://www.icann.org/resources/pages/didp-2012-02-25-en>

in the CPE Process identified by the *Despegar* and *Dot Registry* IRP Declarations.<sup>13</sup> It is surprising that ICANN maintains that FTI can undertake such a review without providing to ICANN stakeholders and affected parties all the materials that will be used to inform FTI’s findings and conclusions. These materials critically include the items requested by DotMusic in its DIDP request that was denied by ICANN because ICANN “determined that there are no circumstances for which the public interest in disclosing the information outweighs the harm that may be caused by the requested disclosure.” To prevent serious questions arising concerning the independence and credibility of the FTI investigation, it is of critical importance that all the material provided to FTI in the course of its review be provided to DotMusic and the public to ensure full transparency, openness and fairness. This includes the items requested by DotMusic that were denied by ICANN in its DIDP Response. For similar reasons of transparency and independence, ICANN must disclose not only the existence of selection, disclosure and conflict check processes (Item 2), and the existence of the terms of appointment (Item 4) but also the underlying documents that substantiate ICANN’s claims.

ICANN’s assertion with regard to Item 5 that with the “exception of the correspondence between the ICANN organization and the CPE Provider regarding the evaluations, all materials provided to the evaluator are publicly available”<sup>14</sup> is undercut by ICANN’s admission of the existence of interviews conducted by FTI of ICANN staff, whose notes have not been disclosed in response to the DIDP request.<sup>15</sup>

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<sup>13</sup> See Dot Registry Declaration, <https://www.icann.org/en/system/files/files/irp-dot-registry-final-declaration-redacted-29jul16-en.pdf>. See also Despegar Declaration, <https://www.icann.org/en/system/files/files/irp-despegar-online-et-al-final-declaration-12feb16-en.pdf>.

<sup>14</sup> See ICANN DIDP, <https://www.icann.org/resources/pages/didp-2012-02-25-en> at p.4

<sup>15</sup> See ICANN DIDP, <https://www.icann.org/resources/pages/didp-2012-02-25-en> at p.3 (“The first track focuses on gathering information and materials from the ICANN Organization, including interviews and document collection. This work was completed in early March 2017.”).

Further, ICANN’s claim that there is no legitimate public interest in correspondence between ICANN and the CPE Provider is no longer tenable in light of the findings of the Dot Registry IRP Panel of the close nexus between ICANN staff and the CPE Provider in the preparation of CPE Reports.<sup>16</sup>

In fact, *this is a unique circumstance where the “public interest in disclosing the information outweighs the harm that may be caused by the requested disclosure.”* In addition, ICANN has not disclosed any “compelling” reason for confidentiality for the requested items that were denied in its DIDP Response, especially if these items will be used by FTI in its investigation. In fact, rejecting full disclosure of the items requested will undermine both the integrity of the FTI report and the scope of the FTI investigation that the ICANN Board and BGC intends to rely on in determining certain reconsideration requests relating to the CPE process, including DotMusic’s Reconsideration Request 16-5. In conclusion, failure to disclose the items requested does not serve the public interest and compromises the independence, transparency and credibility of the FTI investigation.

**4. Date of action/inaction:**

June 4, 2017

**5. On what date did you become aware of action or that action would not be taken?**

June 5, 2017

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<sup>16</sup> See Dot Registry Declaration, <https://www.icann.org/en/system/files/files/irp-dot-registry-final-declaration-redacted-29jul16-en.pdf> at paras.93-101.

**6. Describe how you believe you are materially affected by the action or inaction:**

ICANN's actions and inactions materially affect the delineated and organized music community defined in DotMusic's application that is supported by organizations with members representing over 95% of global music consumed (the "Music Community") and DotMusic. Not disclosing these documents has negatively impacted the timely, predictable and fair resolution of the .MUSIC string, while raising serious questions about the consistency, transparency and fairness of the CPE process. Without an effective policy to ensure openness, transparency and accountability, the very legitimacy and existence of ICANN is at stake, thus creating an unstable and unsecure operation of the identifiers managed by ICANN. Accountability, transparency and openness are professed to be the key components of ICANN's identity. These three-fold virtues are often cited by ICANN Staff and Board in justifying its continued stewardship of the Domain Name System.

ICANN's action and inaction in denying the DIDP Request do not follow ICANN's Resolutions, its Bylaws or generally how ICANN claims to hold itself to high standards of accountability, transparency and openness. Such action and inaction raise additional questions as to the credibility, reliability and trustworthiness of the New gTLD Program's CPE process and its management by ICANN, especially in the case of the CPE Report and CPE process of DotMusic's application for the .MUSIC gTLD (Application ID: 1-1115-14110), which is subject to the CPE Reconsideration Request 16-5 ("CPE RR")<sup>17</sup> and is highly relevant to this Request.

A closed and opaque ICANN damages the credibility, accountability and trustworthiness of ICANN. By denying access to the requested information and documents, ICANN is impeding the efforts of anyone attempting to truly understand the process that the EIU followed in evaluating

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<sup>17</sup> CPE RR 16-5, <https://icann.org/resources/pages/reconsideration-16-5-dotmusic-request-2016-02-25-en>

community applications, both in general and in particular in relation to the parts relevant to the EIU's violation of established processes as set forth in the DotMusic CPE RR. In turn, this increases the likelihood of resorting to the expensive and time-consuming Independent Review Process ("IRP") and/or legal action to safeguard the interests of the Music Community that has supported the DotMusic community-based application for the .MUSIC string to hold ICANN accountable and ensure that ICANN functions in a transparent manner as mandated in the ICANN Bylaws.

The Reconsideration Request and Independent Review Process accountability mechanisms are the only recourse for applicants (or impacted requesters) in lieu of litigation. As such, ICANN must provide documents and Items in DIDP requests in which there is an appearance of gross negligence, conflicts of interest, multiple violations of established process, or even simply questions from the affected parties as to how a certain process was followed.

**7. Describe how others may be adversely affected by the action or inaction, if you believe that this is a concern.**

See Answer to Question 6 above.

**8. Detail of Staff/Board Action/Inaction – Required Information**

See Answer to Question 6 above.

**9. What are you asking ICANN to do now?**

The Requester requests ICANN to disclose all the Items requested in the Request based on ICANN's Bylaws (including ICANN's guiding principles to ensure transparency, openness and accountability) to serve the global public interest.

Such disclosure will increase transparency and provide DotMusic and the BGC with additional information to assist in evaluating the CPE Report as well as the EIU's decision-making process in issuing the CPE Report. As outlined in Reconsideration Request 16-5 (and incorporated here by reference), ICANN engaged in numerous procedural and policy violations (including material omissions and oversights), which lead to inconsistencies and substantial flaws in its rationale methodology and scoring process.

The Requester requests that the BGC apply the Documentary Information Disclosure Policy to the DIDP Request in the manner it was intended to operate to “*ensure that information contained in documents concerning ICANN's operational activities, and within ICANN's possession, custody, or control, is made available to the public unless there is a compelling reason for confidentiality.*” The Requester requests the BGC:

1. Review the ICANN Staff decision to withhold all the information requested, to ensure that each and every requested Item, documents and information request was considered and evaluated individually, and that the public interest test was applied to each individual item properly. The Requester requests that the Items and documents requested are disclosed;
2. To recognize and instruct Staff that ICANN's default policy is to release all information requested unless there is a compelling reason not to do so and, where such a compelling

reason for nondisclosure exists to inform the Requesters of the reason for nondisclosure pertaining to each individual item requested; and

3. Insofar as Items remain withheld, to inform the Requesters as to the specific formula used to justify the nondisclosure position that the *public interest* does not outweigh the harm. Withholding information under the principle of public interest needs to be avoided in order to ensure the procedural fairness guaranteed by Article 3, Section 1 of ICANN's Bylaws.

As indicated in the CPE Reconsideration Request 16-5, the promise of independence, nondiscrimination, transparency and accountability has been grossly violated in the .MUSIC CPE as the misguided and improper .MUSIC CPE Report shows. As such, the disclosure of the Items and documents requested will ensure that the BGC can perform due diligence and exercise independent judgement to make a well-informed decision pertaining to this DIDP RR (and subsequently the CPE Reconsideration Request 16-5).

**10. Please state specifically grounds under which you have the standing and the right to assert this Request for Reconsideration, and the grounds or justifications that support your request.**

DotMusic is a community applicant for .MUSIC, an application supported by organizations with members representing over 95% of music consumed. The justifications under which the Requester has standing and the right to assert this reconsideration request are:

- i. Predictability: [gTLDs] must be introduced in an orderly, timely and predictable way.<sup>18</sup>
- ii. Breach of Fundamental Fairness: Basic principles of due process to proceeding were violated and lacked accountability by ICANN, including adequate quality control;
- iii. Conflict of interest issues;
- iv. Failure to consider evidence filed; and
- v. Violation of ICANN Articles of Incorporation/Bylaws:
  - a. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.<sup>19</sup>
  - b. Preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet.<sup>20</sup>
  - c. Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.<sup>21</sup>
  - d. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.<sup>22</sup>
  - e. Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.<sup>23</sup>
  - f. Remaining accountable to the Internet community through mechanisms that

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<sup>18</sup> Final Issue Report on New gTLD Subsequent Procedures, <https://gnso.icann.org/en/issues/new-gtlds/subsequent-procedures-final-issue-04dec15-en.pdf>, at pp.23-24

<sup>19</sup> ICANN Bylaws, Art. I, § 2.6

<sup>20</sup> ICANN Bylaws, Art. I, § 2.1

<sup>21</sup> ICANN Bylaws, Art. I, § 2.7

<sup>22</sup> ICANN Bylaws, Art. I, § 2.8

<sup>23</sup> ICANN Bylaws, Art. I, § 2.9

enhance ICANN's effectiveness.<sup>24</sup>

- g. While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments' or public authorities' recommendations.<sup>25</sup>
- h. Non-discriminatory treatment: ICANN shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition.<sup>26</sup>
- i. Transparency: ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.<sup>27</sup>

**11a. Are you bringing this Reconsideration Request on behalf of multiple persons or entities? No**

**11b. If yes, is the causal connection between the circumstances of the Reconsideration Request and the harm the same for all of the complaining parties? Yes.**

**12. Do you have any documents you want to provide to ICANN? Yes.** See exhibits in Annexes.

#### **Terms and Conditions for Submission of Reconsideration Requests:**

*The Board Governance Committee has the ability to consolidate the consideration of Reconsideration Requests if the issues stated within are sufficiently similar. The Board Governance Committee may dismiss Reconsideration Requests that are querulous or vexatious. Hearings are not required in the Reconsideration Process, however Requestors may request a hearing. The BGC retains the absolute discretion to determine whether a hearing is appropriate,*

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<sup>24</sup> ICANN Bylaws, Art. I, § 2.10

<sup>25</sup> ICANN Bylaws, Art. I, § 2.11

<sup>26</sup> ICANN Bylaws, Art. II, § 3

<sup>27</sup> ICANN Bylaws, Art. III, § 1

*and to call people before it for a hearing. The BGC may take a decision on reconsideration of requests relating to staff action/inaction without reference to the full ICANN Board. Whether recommendations will issue to the ICANN Board is within the discretion of the BGC. The ICANN Board of Director's decision on the BGC's reconsideration recommendation is final and not subject to a reconsideration request.*



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Arif Hyder Ali

June 18, 2017

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Date