

## **Reconsideration Request Form**

Version of 1 October 2016

ICANN's Board Governance Committee (BGC) is responsible for receiving requests for review or reconsideration (Reconsideration Request) from any person or entity that believes it has been materially and adversely affected by the following:

- (a) One or more Board or Staff actions or inactions that contradict ICANN's Mission, Commitments, Core Values and/or established ICANN policy(ies);
- (b) 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 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
- (c) 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.

The person or entity submitting such a Reconsideration Request is referred to as the Requestor.

Note: This is a brief summary of the relevant Bylaws provisions. For more information about ICANN's reconsideration process, please visit <https://www.icann.org/resources/pages/governance-committee-2014-03-21-en>.

This form is provided to assist a Requestor in submitting a Reconsideration Request, and identifies all required information needed for a complete Reconsideration Request. This template includes terms and conditions that shall be signed prior to submission of the Reconsideration Request.

Requestors may submit all facts necessary to demonstrate why the action/inaction should be reconsidered. However, argument shall be limited to 25 pages, double-spaced and in 12-point font. Requestors may submit all documentary evidence necessary to demonstrate why the action or inaction should be reconsidered, without limitation.

*For all fields in this template calling for a narrative discussion, the text field will wrap and will not be limited.*

Please submit completed form to [reconsideration@icann.org](mailto:reconsideration@icann.org).

**1. Requestor Information**

**Name:** DotKids Foundation (New gTLD Applicant: 1-1309-46695)

**Address:** Contact Information Redacted

**Email:** Contact Information Redacted

**Phone Number (optional):**

(Note: ICANN will post the Requestor's name on the Reconsideration Request page at <https://www.icann.org/resources/pages/accountability/reconsideration-en>. Requestor's address, email and phone number will be removed from the posting.)

**2. Description of specific action you are seeking to have reconsidered.**

(Provide as much detail as available, such as date of Board meeting, reference to Board resolution, etc. You may provide documents. All documentation provided will be made part of the public record.)

We are seeking for the reconsideration on taking the DotKids Foundation .KIDS community gTLD application off hold. We believe that the application should be kept on hold in light of the ongoing CPE (Community Priority Evaluation) Process Review which has implications on the .KIDS community gTLD application.

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

(Note: If Board action, this is the date on which information about the challenged Board action is first published in a resolution, unless the posting of the resolution is not accompanied by a rationale. In that instance, the date is the date of the initial posting of the rationale.)

December 6, 2017

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

(Provide the date you learned of the action/that action would not be taken. If more than thirty days has passed from when the action was taken or not taken to when you learned of the action or inaction, please provide discussion of the gap of time.)

December 6, 2017

On October 2, 2017, a notice was received from ICANN indicating that the DotKids Foundation .KIDS application was taken off hold in July 2016. DotKids Foundation subsequently responded (Case 00874319) indicating that due to the

ongoing CPE process review, and a separate but related open case at the ICANN Ombudsman office, that the DotKids Foundation .KIDS community gTLD application should be kept on hold until such mechanisms are complete.

On October 29, a further notice was received from ICANN indicating that no action will be taken to keep the DotKids Foundation application on hold until the CPE process review is complete.

On December 5, 2017, DotKids Foundation further inquired and requested (Case 00878539) ICANN to place the DotKids Foundation .KIDS community gTLD on hold pending the open case at the ICANN Ombudsman office, the ongoing CPE process review and impending action that DotKids Foundation intend to take in considering the redress of the community application process.

On December 6, 2017, two days before the deadline to submit information for the proposed ICANN Auction of Last Resort on December 8, 2017, we have not received further response from ICANN and have not seen the DotKids Foundation application placed back on hold.

<p><b>5. Describe how you believe you are materially and adversely affected by the action or inaction:</b></p>
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The DotKids Foundation has been waiting in good faith for the ongoing CPE process review to be complete to further consider appropriate actions to address the mistaken CPE process applied to the DotKids Foundation .KIDS community gTLD application, as well as the larger issue that the .KIDS gTLD represents a namespace labelled and designated for kids and therefore require special governance oversight that is different from other gTLDs, which in the current new gTLD process is afforded only through the community gTLD mechanism.

The hasty push for the .KIDS namespace which is labelled and designated for kids to an ICANN Auction of Last Resort while the above issues have not been appropriately addressed and redressed will materially and adversely affect the DotKids Foundation .KIDS community gTLD application and the global children's rights and welfare community.

As a not-for-profit community gTLD applicant that has successfully obtained financial support from the applicant support program, the DotKids Foundation depend on the integrity of the CPE process for appropriate priority to be provided to the global children's rights and welfare community for the administration of the .KIDS namespace which is labelled and designated for kids.

The DotKids Foundation also depends on the integrity of the overall new gTLD process, including the applicant support program to support its application through all phases of the new gTLD program.

The ongoing CPE process review puts into question the integrity of such processes, and until the reports are complete and accepted by the ICANN

community, it is inappropriate to take the DotKids Foundation .KIDS community gTLD application off hold.

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

The global children's rights and welfare community is affected.

In the physical world, special places such as schools or parks that are labelled and designated for kids, special policy and requirements apply to protect the rights of the kids. We believe strongly that on the Internet, where namespaces are labeled and designated specifically for kids, some additional policy and oversight is required. Currently in the new gTLD process, the only way to ensure that is through the community gTLD process, where the children's rights and welfare community can apply and ensure that the particular gTLD, in this case .KIDS, is operated appropriately with additional policy and oversight.

If the Community Priority Evaluation process fails, .KIDS, a namespace labelled and designated for kids, who the United Nation Convention on the Rights of the Child explicitly protects, could and will effectively be delegated and governed under the same policies and agreements such as .SEX, .SHOP and other new gTLDs.

That means there will be no oversight and policy requirements for .KIDS which is a space labelled and designated for kids. This will have imminent potential harm for children around the world.

**7. Detail of the ICANN Action/Inaction – Required Information**

Please provide a detailed explanation of the facts as you understand they were provided to the Board or the ICANN organization (acting through its staff) prior to the action/inaction and the reasons why ICANN's action or inaction was: (i) contrary to ICANN's Mission, Commitments, Core Values and/or established ICANN policy(ies); (ii) taken or refused to be taken without consideration of material information; or (iii) taken as a result of ICANN's reliance on false or inaccurate relevant information..

If your request is in regards to an ICANN action or inaction that you believe is contrary to established ICANN policy(ies), the policies that are eligible to serve as the basis for a Reconsideration Request are those that are approved by the ICANN Board (after input from the community) that impact the community in some way. When reviewing Board or staff action, the outcomes of prior Reconsideration Requests challenging the same or substantially similar action/inaction as inconsistent with established ICANN policy(ies) shall be of precedential value.

If your request is in regards to an action or inaction taken or refused to be taken without consideration of material information, please provide a detailed explanation of the material information not considered by the ICANN. If that information was not presented to the ICANN, provide the reasons why you did not submit the material information before ICANN acted or failed to act. “Material information” means facts that are material to the decision.

If your request is in regards to an action or inaction that you believe is taken as a result of ICANN’s reliance on false or inaccurate relevant information, provide a detailed explanation as to whether an opportunity existed to correct the material considered by the Board or Organization. If there was an opportunity to do so, provide the reasons that you did not provide submit corrections before the action/failure to act.

Reconsideration Requests are not meant for those who believe that ICANN made the wrong decision when considering the information available. There has to be identification of material information that was in existence of the time of the decision and that was not considered by ICANN in order to state a Reconsideration Request. Similarly, new information – information that was not yet in existence at the time of the decision – is also not a proper ground for reconsideration.

Reconsideration Requests are not available as a means to seek review of country code top-level domain (“ccTLD”) delegations and re-delegations, issues relating to Internet numbering resources, or issues relating to protocol parameters.

Please keep this guidance in mind when submitting requests.

**Provide the Required Detailed Explanation here:**

(You may attach additional sheets as necessary.)

At ICANN57 in Hyderabad (November 2016), the DotKids Foundation met with the ICANN Ombudsman to discuss appropriate next steps for the redress of the .KIDS CPE process. At that time, the Ombudsman informed the DotKids Foundation that the ICANN board has (or will) initiate a review on the CPE process and suggested that the DotKids Foundation wait for the report(s) from the CPE process review to consider further steps on redress.

Subsequently at ICANN58 (Copenhagen), ICANN 59 (Johannesburg) and ICANN60 (Abu Dhabi), the DotKids Foundation had followup meetings with the ICANN Ombudsman to keep abreast of the ongoing CPE process review and how the results from that review may implicate .KIDS and hence how the DotKids Foundation should seek redress on the .KIDS CPE.

On October 3, 2017 (October 2 Pacific Time), the DotKids Foundation received a notice from ICANN indicating that the .KIDS community gTLD application has been taken off hold and that the contention set will be subjected to an ICANN

Auction of Last Resort. The DotKids Foundation subsequently explained and expressed its intent to take further actions to appropriately seek redress on the .KIDS CPE process and the larger process concerning namespaces labelled and designated for kids, pending the ongoing CPE process review.

Subsequently, on December 6, 2017, the DotKids Foundation received a response from ICANN indicating that no action will be taken to keep the DotKids Foundation .KIDS community gTLD application on hold, which prompted the filing of this Reconsideration Request.

We believe that the ICANN GDD team did not understand that even though the CPE process review as explained by the team may be specifically on some community TLD applications, the findings will affect the approach that the DotKids Foundation would take for the redress of the .KIDS CPE process. In light of the ongoing CPE process review therefore, we are seeking reconsideration.

We also note that some other processes implicating other community gTLD applications not explicitly identified in the CPE process review (e.g. the .SPA CEP/IRP by Donuts) have also been put on hold we believe due to the ongoing CPE process review this belief is, as we understand it, shared by the ICANN Ombudsman. Taking the DotKids Foundation .KIDS community gTLD application off hold while the CPE process review is still ongoing is therefore counter to the established processes.

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

(Describe the specific steps you are asking ICANN to take. For example, should the action be reversed, cancelled or modified? If modified, how should it be modified?)

To place the DotKids Foundation .KIDS community gTLD application on hold until the CPE review reports are complete and published.

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

(Include in this discussion how the action or inaction complained of has resulted in material harm and adverse impact. To demonstrate material harm and adverse impact, the Requestor must be able to demonstrate well-known requirements: there must be a loss or injury suffered (financial or non-financial) that is a directly and causally connected to ICANN's action or inaction that is the basis of the Reconsideration Request. The Requestor must be able to set out the loss or injury and the direct nature of that harm in specific and particular details. The relief requested must be capable of reversing the harm alleged by the

Requestor. Injury or harm caused by third parties as a result of acting in line with the ICANN's decision/act is not a sufficient ground for reconsideration. Similarly, injury or harm that is only of a sufficient magnitude because it was exacerbated by the actions of a third party is also not a sufficient ground for reconsideration.)

DotKids Foundation is the applicant of the .KIDS community gTLD. DotKids Foundation has expressed its intent to seek redress through appropriate accountability mechanisms (and/or otherwise) for the mistaken CPE process applied to the application. This can be attested by our continued communications with the ICANN Ombudsman and our continued wait in good faith for the CPE process review to be complete before initiating further actions to seek redress through appropriate accountability mechanisms.

The failure of ICANN to place the DotKids Foundation .KIDS community gTLD application on hold would force the application into a contention set and into the ICANN Auction of Last Resort before the DotKids Foundation is able to appropriately seek redress upon the disclosure of findings from the CPE process review.

As the entity directly affected by the ICANN staff action/inaction, DotKids Foundation have the standing and the right to assert this Request for Reconsideration.

**10. Are you bringing this Reconsideration Request on behalf of multiple persons or entities? (Check one)**

Yes

No

**10a. If yes, is the causal connection between the circumstances of the Reconsideration Request and the harm substantially the same for all of the Requestors? Explain.**

Not Applicable

**Do you have any documents you want to provide to ICANN?**

If you do, please attach those documents to the email forwarding this request. Note that all documents provided, including this Request, will be publicly posted at <https://www.icann.org/resources/pages/accountability/reconsideration-en> .

No.

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

The Board Governance Committee has the ability to consolidate the consideration of Reconsideration Requests if: (i) the requests involve the same general action or inaction; and (ii) the Requestors are similarly affected by such action or inaction.

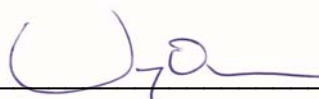
The Board Governance Committee may dismiss a Reconsideration Requests if: (i) the Requestor fails to meet the requirements for bringing a Reconsideration Request; or (ii) it is frivolous.

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, and to call people before it for a hearing.

For all Reconsideration Requests that are not summarily dismissed, except where the Ombudsman is required to recuse himself or herself and Community Reconsideration Requests, the Reconsideration Request shall be sent to the Ombudsman, who shall promptly proceed to review and consider the Reconsideration Request. The BGC shall make a final recommendation to the Board with respect to a Reconsideration Request following its receipt of the Ombudsman's evaluation (or following receipt of the Reconsideration Request involving those matters for which the Ombudsman recuses himself or herself or the receipt of the Community Reconsideration Request, if applicable).

The final recommendation of the BGC shall be documented and promptly (i.e., as soon as practicable) posted on the ICANN Website and shall address each of the arguments raised in the Reconsideration Request. The Requestor may file a 10-page (double-spaced, 12-point font) document, not including exhibits, in rebuttal to the BGC's recommendation within 15 days of receipt of the recommendation, which shall also be promptly (i.e., as soon as practicable) posted to the ICANN Website and provided to the Board for its evaluation; provided, that such rebuttal shall: (i) be limited to rebutting or contradicting the issues raised in the BGC's final recommendation; and (ii) not offer new evidence to support an argument made in the Requestor's original Reconsideration Request that the Requestor could have provided when the Requestor initially submitted the Reconsideration Request.

The ICANN Board shall not be bound to follow the recommendations of the BGC. The ICANN Board's decision on the BGC's recommendation is final and not subject to a Reconsideration Request.

  
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Signature

\_\_\_\_\_ Dec 6, 2017 \_\_\_\_\_

Date

Edmon Chung, as Primary Contact of the  
DotKids Foundation application for “.kids”,  
On behalf of DotKids Foundation