

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 Requester.

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.

Requesters 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.

1. Requester Information

Requesters are represented by:

Name: Flip Petillion, Jan Janssen, PETILLION bvba

Address: Contact Information Redacted

Email: Contact Information Redacted

Phone Number (optional): Contact Information Redacted

Requesters are:

Requester #1

Name: Travel Reservations SRL ('TRS', formerly Despegar Online SRL)

Address: Contact Information Redacted

Email: Contact Information Redacted

Requester #2

Name: Minds + Machines Group Limited (formerly Top Level Domain Holdings Limited)

Address: Contact Information Redacted

Email: Contact Information Redacted

Requester #3

Name: Radix FZC

Address: Contact Information Redacted

Email: Contact Information Redacted

And its subsidiary applicant:

Name: dot Hotel Inc.

Address: Contact Information Redacted

Contact Information Redacted

Email: Contact Information Redacted

Requester #4

Name: Fegistry LLC

Address: Contact Information Redacted

Email: Contact Information Redacted

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

ICANN Board Resolutions 2018.03.15.08 – 2018.03.15.11, taken on 15 March 2018 (hereinafter, the 'Decision').

3. Date of action/inaction:

15 March 2018

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

Requesters became aware of the Decision on 20 March 2018. ICANN informed Requesters via email on 19 March 2018 at 11:04 pm CET.

5. Describe how you believe you are materially and adversely affected by the action or inaction:

Through its ICANN, the ICANN Board failed to offer Requesters a meaningful review of their complaints regarding HTLD's application for .hotel, the CPE process and the CPE Review Process.

The Decision makes a meaningful review of main arguments expressed by Requesters impossible. Indeed, Requesters urged the ICANN Board to address

Requesters' concerns and to hear Requesters *before* (not after) proceeding further in its consideration of the CPE Process Review. Unless the ICANN Board simply decides to cancel HTLD's application – which it ought to do for the reasons set out in Reconsideration Request 16-11 – the ICANN Board must address the fatal flaws of the CPE and the CPE Process Review, as identified by Requesters in the framework of Reconsideration Request 16-11. These fatal flaws cannot be addressed if the ICANN Board were to uphold its Decision, in which it accepts the findings of the CPE Process Review and finds that no overhaul or change to the CPE process is necessary. Unless the ICANN Board decides to cancel HTLD's application, upholding the Decision would preclude the ICANN Board from granting the remedies requested by Requesters in the framework of Reconsideration Request 16-11 and unjustly deprive Requesters from a meaningful review.

Without a meaningful review of Requesters' complaints, Requesters – who had applied for the gTLD string .hotel themselves – risk being prevented from self-resolving the string contention, as contemplated by the GNSO policy, and, ultimately, from allowing one of the applicants to operate the .hotel gTLD.

Requesters manifestly meet the standing requirements for a Request for Reconsideration (RfR) and ultimately an IRP.

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

ICANN's failure to follow the policies created by the GNSO as well as its own Bylaws, Articles of Incorporation, Commitments and Core values creates

inconsistency, injects unfairness and a lack of transparency in the process, and calls into question the fairness of the gTLD program as a whole.

This situation will inevitably have a chilling effect on new entrants into the gTLD space.

7. Detail of the ICANN Action/Inaction

ICANN's challenged action is (i) contrary to ICANN's Mission, Commitments, Core Values and/or established ICANN policy(ies); and (ii) taken without consideration of material information.

Since 27 July 2017 already, Requesters are asking for more transparency about the community priority evaluation (CPE) process and the CPE Process Review.

On 16 January 2017, Requesters informed ICANN that the concerns about the lack of transparency remained unaddressed despite ICANN's publication of the report of the CPE process reviewer. Requesters reiterated and further substantiated their concerns in their letters of 1 February 2018 and 22 February 2018.

Requesters asked that ICANN and the ICANN Board address Requesters' concerns and hear Requesters *before* (not after) proceeding further in its consideration of the CPE Process Review. Requesters made clear that, in addition to the lack of transparency in the CPE process and the CPE Process Review, they were concerned about the methodology used by the CPE Process

reviewer, and about the due process and policy violations, disparate treatment and inconsistencies that had not been considered.

On 15 March 2018, the ICANN Board accepted the findings set forth in the CPE Process Review Reports and decided that no overhaul or change to the CPE process for this current round of the New gTLD Program is necessary. In doing so, the ICANN Board simply rubberstamped the BAMC's recommendation to accept the CPE Process Reviewer's findings concerning the CPE Process Review. No explanation whatsoever is given as to why the ICANN Board accepted the BAMC's recommendation.

Moreover, both the BAMC's recommendation and the ICANN Board's acceptance of this recommendation were made without considering Requester's well-substantiated arguments against accepting the findings set forth in the CPE Process Review Reports. The BAMC and the ICANN Board failed to address any of the fatal flaws of the CPE process and of the CPE Process Review.

As these flaws have already been explained in the framework of Reconsideration Request 16-11, Requesters will not repeat them here. In sum, Requesters have clearly established that:

- i. ICANN's organisation of the CPE Process Review lacked transparency
- ii. The CPE Process Review itself was not transparent and has been executed without the necessary diligence and care
- iii. The CPE Process Review revealed a lack of independence of the CPE provider

- iv. The CPE Process Reviewer failed to analyse the consistency issues of CPE decisions

Accepting the results of the CPE Process and of the CPE Process Review without addressing these flaws is inconsistent with ICANN's Mission, Commitments and Core Values. ICANN's acceptance of the results of the CPE Process and of the CPE Process Review is not a consistent, neutral, objective and fair application of ICANN's documented policies.

In addition, the lack of transparency surrounding the CPE Process Review made it impossible for anyone, including the ICANN Board, to assess the weight of the conclusions made by the CPE Process Reviewer. Although the scope of the CPE Process Review was too limited, the review revealed that the CPE Provider was not independent. The CPE Process Review Reports uncritically repeated the conclusions found in the CPE Panel's reports and did not discuss or consider the various fairness, nondiscrimination and consistency objections. The CPE Process Review Reports uncritically repeated the conclusions found in the CPE Panel's reports and did not ask whether the criteria the CPE Panel claimed to apply were the criteria laid out in the Applicant Guidebook and GNSO Policy. The approach followed by the CPE Process Reviewer was a "description" of the CPE Panel's reports, but not an "evaluation" to determine whether the CPE Panel's reports were actually following the applicable guidelines in a neutral and nondiscriminatory manner.

8. What are you asking ICANN to do now?

In addition to the Request, made in the framework of Reconsideration Request 16-11, Requesters request that – unless ICANN finally decides to cancel HTLD’s application – ICANN reconsiders the ICANN Board Resolutions 2018.03.15.08 – 2018.03.15.11 and reverses the decisions in which the ICANN Board (i) accepted the findings set forth in the CPE Process Review Reports, (ii) concluded that no overhaul or change to the CPE process for this current round of the New gTLD Program is necessary, (iii) declared that the CPE Process Review has been completed.

In the event that ICANN does not immediately reverse its Decision, Requesters ask that ICANN engage in conversations with Requesters and that a hearing is organised. In such event, Requesters request that, prior to the hearing, ICANN provides full transparency regarding all communications between (i) ICANN, the ICANN Board, ICANN’s counsel and (ii) the CPE Process Reviewer. Requesters ask ICANN to provide full transparency on its consideration of the CPE Process and the CPE Process Review and to list and give access to all material the BAMC and the ICANN Board considered during its meetings on the CPE Process and the CPE Process Reviews.

For reasons of procedural economy, Requesters propose that this request for reconsideration be handled together with Reconsideration Request 16-11 that was put on hold pending completion of the CPE Process Review.

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.

Maintaining the Decision would mean that the ICANN Board fails to offer Requesters a meaningful review of their complaints regarding HTLD's application for .hotel, the CPE process and the CPE Review Process made in the framework of Reconsideration Request 16-11. The lack of a meaningful review directly harms the Requesters, as they are not offered a fair chance to defend their applications for .hotel. Without a meaningful review of Requesters' complaints, Requesters – who had applied for the gTLD string .hotel themselves – risk being prevented from self-resolving the string contention, as contemplated by the GNSO policy, and, ultimately, from allowing one of the applicants to operate the .hotel gTLD.

In addition, Requesters have invested significant time and effort in defending their application for .hotel against the unreasoned and inconsistent advice of the CPE panel, given in contravention of ICANN's Articles of Incorporation and Bylaws. As a result of (i) ICANN's acceptance of this advice in contravention of its Mission, Commitments, Core Values and policies Mission, and (ii) ICANN's failure to address the insufficiencies of this advice and the review of the advice (also in contravention of ICANN's Mission, Core Values and policies), the Requesters' applications for .hotel have all suffered unnecessary delays and are currently experiencing further delays because of the Decision.

Although the requested relief in this Reconsideration Request does not compensate for the lost time, costs and effort, it reverses the harm that would

result from not being given a fair opportunity to defend their application for .hotel. Unless ICANN finally decides to cancel HTLD's application, a reversal of the Decision is necessary to ensure a meaningful review of Requesters' pending Reconsideration Request 16-11.

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.

Requesters' harm is identical, as explained in section 5 above and in Reconsideration Request 16-11.

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>.

At this stage, all relevant documents are believed to be in ICANN's possession.

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.



Signature

14 April 2018

Date