

**BOARD ACCOUNTABILITY MECHANISMS COMMITTEE (BAMC) SUMMARY
DISMISSAL OF RECONSIDERATION REQUEST 22-4
23 AUGUST 2022**

I. Introduction and Summary

The Requestor, Bryan Ealba, seeks reconsideration of ICANN Contractual Compliance department's (Contractual Compliance) investigation of and decision to close the Requestor's abuse complaint concerning the domain name adultsearch.com and the domain registrar, after ICANN's investigation demonstrated that there had been no violation of the 2013 Registrar Accreditation Agreement (RAA).¹ The Requestor asks that the Board "[c]ompel these registrars to honor their commitment defined in the RAA."²

Article 4, Section 4.2(k) of the ICANN Bylaws provides that upon receipt of a reconsideration request, the BAMC is to review the request "to determine if it is sufficiently stated."³ A request that is not sufficiently stated cannot withstand reconsideration and will be summarily dismissed.⁴ As discussed below, the BAMC concludes that Request 22-4 does not meet the sufficiently stated standard because the Requestor has not established that he has been materially harmed and adversely affected by the challenged action. The BAMC therefore summarily dismisses Request 22-4.⁵

II. Factual Background

The Requestor claims that the domain name adultsearch.com contains illegal content that allegedly facilitates prostitution and exploitation of people.⁶ According to Request 22-4, the

¹ Request 22-4, §§ 1, 8.

² *Id.* § 9.

³ ICANN Bylaws, 2 June 2022, Art. 4, § 4.2(k).

⁴ *Id.*

⁵ A substantive review of the merits of the Requestor's claims is beyond the scope of the BAMC's procedural evaluation. The BAMC's conclusion is limited to the preliminary procedural assessment of whether the Requestor has sufficiently stated a reconsideration request.

⁶ Request 22-4 §§ 6-8 at Pg. 4.

Requestor submitted an abuse complaint to the registrar of the domain name adultsearch.com, but was not satisfied with the registrar's response.⁷

Thereafter, the Requestor submitted an abuse complaint, Complaint #01136612 (the Complaint), to Contractual Compliance, alleging that the domain registrar was in violation of the RAA.⁸ Upon receipt of the Complaint, Contractual Compliance advised the Requestor:

Please note that ICANN does not register domain names or control their content, and has no ability to activate, suspend or otherwise modify domain names. Registrars under the 2013 Registrar Accreditation Agreement (RAA) are required to respond to abuse reports that are sent to its published abuse contact details. However, please note that registrars are not required by the RAA to suspend or delete domain names in response to abuse reports.

ICANN will follow up with the contracted party within ICANN's scope and per process and provide you an update with its findings.⁹

Contractual Compliance then sent a compliance inquiry to the domain registrar and included the Complaint and a list of requirements to demonstrate the registrar's compliance with its duty to "take reasonable and prompt steps to investigate and respond appropriately" to reports of abuse as set forth in Section 3.18 of the RAA.¹⁰ Following review of the information and records available for the case, including those provided by the Requestor and by the registrar in response to the compliance inquiry, Contractual Compliance determined that the registrar "took reasonable and prompt steps to investigate and respond appropriately to the report of abuse" (the Complaint) as required by Section 3.18.1, and that the registrar was not in violation of the terms of the RAA.¹¹

⁷ *Id.* § 8 at Pg. 3-6.

⁸ *Id.* §§ 3, 8 at Pg. 2-3.

⁹ *Id.* § 8 at Pg. 3.

¹⁰ *See* Registration Accreditation Agreement, § 3.18.1, available at <https://www.icann.org/resources/pages/approved-with-specs-2013-09-17-en>. The Requestor also cited Section 3.18.2 in his Complaint to Contractual Compliance and in Request 22-4. That section contains a registrar's duties when it receives reports of illegal activity from law enforcement officials. *See id.* § 3.18.2. Because the Requestor does not claim any law enforcement affiliation, Section 3.18.2 is neither relevant to his Complaint nor Request 22-4.

¹¹ *Id.* § 8 at Pg. 4.

On 7 July 2022, Contractual Compliance notified the Requestor that it had reviewed and closed the Complaint because:

The registrar demonstrated that it took reasonable and prompt steps to investigate and respond appropriately to the report of abuse. Specifically, the registrar responded to you on 26 June 2022, 29 June 2022, 30 June 2022 and 1 July 2022 regarding your abuse report. Please note that ICANN’s authority extends to the enforcement of the requirements outlined in the agreements that it has with its contracted parties, including the Registrar Accreditation Agreement (“RAA”). To that end, Section 3.18 of the RAA requires registrars “to take reasonable and prompt steps to investigate and respond appropriately to any reports of abuse”. Any specific action that a registrar takes on domain names it sponsors following the receipt of an abuse report depends on the registrar’s own domain name use and abuse policies, and is not determined by ICANN. The RAA does not require registrars to suspend or delete domain names in response to abuse reports, and ICANN has no contractual authority to instruct registrars to take specific action(s) or otherwise outside the mentioned agreements.¹²

On 16 July 2022, the Requestor submitted Request 22-4. The Requestor asks that ICANN org now “[c]ompel these registrars to honor their commitment defined in the RAA, and regardless of their personal opinion, or financial enrichment, from this illegal activity. Treat it the same as every other law.”¹³

III. Standard of Review

Article 4, Sections 4.2(a) and (c) of ICANN’s Bylaws provide, in relevant part, that “any *person or entity materially affected* by an action or inaction of the ICANN Board or Staff . . . may submit a request for reconsideration or review of an ICANN action or inaction . . . to the extent the Requestor *has been 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 the Requestor could

¹² *Id.*

¹³ Request 22-4 § 9 at Pg. 6.

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.”¹⁴

The BAMC reviews each reconsideration request upon its receipt to determine if it is sufficiently stated.¹⁵ The BAMC may summarily dismiss a reconsideration request if the BAMC determines the request: (i) does not meet the requirements for filing reconsideration requests under the Bylaws; or (ii) it is frivolous.¹⁶

IV. Analysis

In evaluating whether a reconsideration request is sufficiently stated, the following factors are considered: (1) is the reconsideration request timely; and (2) has the requestor met the requirements for bringing a reconsideration request? The BAMC concludes that Request 22-4 is not sufficiently stated. Although it was timely filed and identifies Bylaws provisions and established ICANN policies that the staff allegedly violated, the Requestor has not sufficiently alleged that he has been materially and adversely affected by the challenged conduct.

A. Request 22-4 Is Timely.

A reconsideration request must be filed “within 30 days after the date on which the Requestor became aware or, or reasonably should have become aware of,” the challenged action or inaction.¹⁷ The Requestor states that the challenged action, namely Contractual Compliance’s response to his Complaint, was taken on 7 July 2022, and that the Requestor became aware of the decision on the same day.¹⁸ The Requestor timely filed Request 22-4 within 30 days, on Saturday, 16 July 2022, making his effective filing date Monday, 18 July 2022.

¹⁴ ICANN Bylaws, 2 June 2022, Art. 4, §§ 4.2(a) and (c) (emphasis added).

¹⁵ *Id.* § 4.2(k).

¹⁶ *Id.*

¹⁷ *Id.* § 4.2(g)(i)(B).

¹⁸ Request 22-4 §§ 3-4 at Pg. 2.

B. The Requestor Does Not Meet the Requirements Set Forth Under Article 4, Section 4.2(c) of the ICANN Bylaws for Bringing a Reconsideration Request.

Under the Bylaws, requestors seeking reconsideration must be “materially harmed” and “adversely affected” by the challenged action or inaction.¹⁹ This Bylaws-mandated criterion requires that a requestor must have suffered an actual injury from the challenged conduct in order to have standing to bring a reconsideration request. A general interest in a Bylaws provision or ICANN policy, or concern about harms to others or the general public, does not establish that the particular alleged violation of that provision has materially harmed *the Requestor*. If it were otherwise, then merely identifying a Bylaws provision or established ICANN policy that the challenged conduct allegedly violated would suffice to establish standing to bring a reconsideration request, and the separate “adversely affected” requirement would be rendered meaningless.

In Request 22-4, the Requestor failed to sufficiently satisfy this standing requirement because he has not alleged that he has been adversely affected by the challenged action. Rather than identifying any individual injury, the Requestor asserts that the challenged conduct “affects every person in American society” by, among other things, “endanger[ing] family stability, which time and again proves the most beneficial children.”²⁰ He also asserts that these trends have affected “2 people [he] know[s], kind of.”²¹ Such generalized allegations of harm are inadequate to support a reconsideration request.²²

¹⁹ ICANN Bylaws, 2 June 2022, Art. 4, § 4.2(a), (c) and (j).

²⁰ Request 22-4 § 6 at Pg. 3.

²¹ *Id.*

²² *See, e.g.*, Summary Dismissal of Reconsideration Request 22-1, 16 May 2022, at Pg. 6-7, available at <https://www.icann.org/en/system/files/files/reconsideration-22-1-palage-request-summary-dismissal-16may22-en.pdf>; Determination of Reconsideration Request 16-14, 1 February 2017, at Pg. 7-8, available at <https://www.icann.org/en/system/files/files/reconsideration-16-14-lee-bgc-determination-01feb17-en.pdf>.

The Requestor also describes an anonymous individual he vaguely asserts has been injured by the general type of illegal conduct with which he is concerned.²³ Absent any connection or nexus to the Requestor, however, general allegations of injuries suffered by others are insufficient to demonstrate that the *Requestor* has been harmed by the challenged action, as required to support a reconsideration request.²⁴ Moreover, the Requestor does not allege that this anonymous individual has been harmed by the challenged action or by the domain name adultsearch.com. As such, the Requestor has not demonstrated how his complaint is related to the injuries allegedly suffered by the anonymous individual. Similarly, the Requestor asserts that he is bringing the request on behalf of multiple persons, but does not identify the others on whose behalf he is acting or provide any suggestion that he has been asked or authorized to serve as a representative for these individuals. To the contrary, the Requestor indicates that the others harmed by the challenged conduct “are not aware” of their injury.²⁵ The Requestor’s vague and generalized allegations of injury as to anonymous individuals appear to be no more than generalized allegations of harm to society as a whole.²⁶ Such generalized allegations do not establish that the Requestor has been injured by the challenged action, and this lack of injury cannot be overcome by framing the claim as based on injuries to unidentified third parties.

In short, the Requestor has not indicated how *the Requestor* was adversely affected by Contractual Compliance’s decision to close his Complaint without finding a violation, much less

²³ Request 22-4 § 10 at Pg. 7-8.

²⁴ *See, e.g.*, Summary Dismissal of Reconsideration Request 22-1, 16 May 2022, at Pg. 6-7, available at <https://www.icann.org/en/system/files/files/reconsideration-22-1-palage-request-summary-dismissal-16may22-en.pdf>; Determination of Reconsideration Request 16-14, 1 February 2017, at Pg. 7-8, available at <https://www.icann.org/en/system/files/files/reconsideration-16-14-lee-bgc-determination-01feb17-en.pdf>.

²⁵ Request 22-4 § 11a at Pg. 8.

²⁶ *Id.*

how he was materially harmed, as is required to support a reconsideration request. The Requestor therefore does not meet the requirements for bringing a reconsideration request.

V. Conclusion

A substantive review of the merits of the Requestor's claims is beyond the scope of this procedural evaluation. The BAMC's conclusion is limited to the preliminary procedural assessment of whether the Requestor has sufficiently stated a reconsideration request. For the foregoing reasons, the BAMC concludes that Request 22-4 does not meet the requirements for bringing a reconsideration request and therefore it is summarily dismissed. To the extent the Requestor believes he has been treated unfairly by ICANN Staff, the Board, or an ICANN constituent body, he may file a complaint with the Ombudsman under Article 5 of the Bylaws.²⁷ In addition, ICANN has a Complaints Office that handles complaints regarding ICANN org that are not otherwise subject to existing accountability mechanisms. This may include complaints about how a request has been handled, a process that appears to be broken, insufficient handling of an issue, or something that may be an indication of a systemic issue, among other things.²⁸

²⁷ ICANN Bylaws, 2 June 2022, Art. 5, § 5.3(a).

²⁸ ICANN Complaints Office, <https://www.icann.org/complaints-office>.