

Reconsideration Request Form

Version of 11 April 2013

ICANN's Board Governance Committee is responsible for receiving requests for reconsideration from any person or entity that has been materially affected by any ICANN staff action or inaction if such affected person or entity believes the action contradicts established ICANN policies, or by actions or inactions of the Board that such affected person or entity believes has been taken without consideration of material information. Note: This is a brief summary of the relevant Bylaws provisions. For more information about ICANN's reconsideration process, please visit <http://www.icann.org/en/general/bylaws.htm#IV> and <http://www.icann.org/en/committees/board-governance/>.

This form is provided to assist a requester 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.

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

Name: [DotConnectAfrica Trust](#)

Address, email and phone number redacted.

[Redacted]

acer 6/18/13 10:22 AM

Deleted:

(Note: ICANN will post the Requester's name on the Reconsideration Request page at <http://www.icann.org/en/committees/board-governance/requests-for-reconsideration-en.htm>. Requestors address, email and phone number will be removed from the posting.)

2. Request for Reconsideration of (check one only):

Board action/inaction

___ **Staff action/inaction**

3. 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.)

[The Resolution No. is 2013.06.04.NG01. The Board Meeting was supposedly held on June 4, 2013.](#)

[A public announcement was made on 6th June 2013 to inform the ICANN Global Community that the ICANN Board has approved the Consideration of Non-Safeguard Advice in the GAC's Beijing Communiqué re: 'NPGC Adopts Resolution Accepting Nine Items of GAC Beijing Advice on new gTLDs'. We specifically note the statement: 'the NGPC adopts the "NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC Beijing Communiqué" \(4 June 2013\), attached as Annex 1 to this Resolution, in response to the items of GAC Advice in the Beijing Communiqué as presented in the scorecard.' Please see <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-04jun13-en.htm> for more information.](#)

4. Date of action/inaction:

(Note: If Board action, this is usually the first date that the Board posted its resolution and rationale for the resolution or for inaction, the date the Board considered an item at a meeting.)

[The resolution was publicly posted on June 6, 2013 following the meeting that was supposedly held on June 4, 2014](#)

5. 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 fifteen 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.)

[7th June 2013 from the ICANN Web Site and so far, 15 days has not yet elapsed.](#)

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

[The NGPC accepted the GAC Objection Advice against our application for .Africa new gTLD ID: 1-1165-42560 and have indicated that our application will not be approved. This decision has advised ICANN staff that our application will not be approved, and as such, will put our application out of contention for the .Africa new gTLD name string, and will mean that as an applicant, we are out of the](#)

[ICANN new gTLD Program.](#)

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

[The supporters and business partners of DCA Trust are quite disappointed by the decision.](#)

8. Detail of Board or Staff Action – Required Information

Staff Action: If your request is in regards to a staff action or inaction, please provide a detailed explanation of the facts as you understand they were provided to staff prior to the action/inaction presented to the staff and the reasons why the staff's action or inaction was inconsistent with established ICANN policy(ies). Please identify the policy(ies) with which the action/inaction was inconsistent. The policies that are eligible to serve as the basis for a Request for Reconsideration are those that are approved by the ICANN Board (after input from the community) that impact the community in some way. When reviewing staff action, the outcomes of prior Requests for Reconsideration challenging the same or substantially similar action/inaction as inconsistent with established ICANN policy(ies) shall be of precedential value.

Board action: If your request is in regards to a Board action or inaction, please provide a detailed explanation of the material information not considered by the Board. If that information was not presented to the Board, provide the reasons why you did not submit the material information to the Board before it acted or failed to act. "Material information" means facts that are material to the decision.

If your request is in regards to a Board action or inaction that you believe is based upon inaccurate, false, or misleading materials presented to the Board and those materials formed the basis for the Board action or inaction being challenged, provide a detailed explanation as to whether an opportunity existed to correct the material considered by the Board. If there was an opportunity to do so, provide the reasons that you did not provide submit corrections to the Board before it acted or failed to act.

Reconsideration requests are not meant for those who believe that the Board 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 the Board in order to state a reconsideration request. Similarly, new information – information that was not yet in existence at the time of the Board decision – is also not a proper ground for reconsideration. Please keep this guidance in mind when submitting requests.

Provide the Required Detailed Explanation here:

(You may attach additional sheets as necessary.)

[A fuller explanation is contained in the attached letter dated 14th June 2013 which we are also submitting as a supporting document to this completed reconsideration form.](#)

Our request for reconsideration is made pursuant to the relevant provision(s) in the ICANN Bylaws. The adoption of the Board Resolution (2013.04.06.NG01) by the ICANN NGPC on the Non-Safeguard Advice in the Beijing GAC Advice on new gTLDs, resulted in a decision not to approve our new gTLD application for the .Africa name string (Application ID: 1-1165-42560). The NGPC Response (as per Item No. 1 of Annex 1 of the NGPC Scorecard of 1As) to the GAC advice recommended that the applicant (in this case, DCA Trust) should withdraw its application “or seek relief according to ICANN’s accountability mechanisms (See ICANN Bylaws, Articles IV and V) subject to the appropriate standing and procedural requirements.”

In trying to understand what the ICANN New gTLD Program Committee has done, we consulted the following documents:

- a. The Board Resolution (2013.06.04.NG01) and the rationale for the decision that was taken as conveyed in the Board Resolution.
- b. The current version of the new gTLD Applicants Guidebook, by paying particular attention to all the likely actions as stipulated therein, that may be embarked upon by the ICANN Board in dealing with GAC Advice.
- c. The GAC Advice Framework as published by the ICANN NGPC.
- d. Updates on the GAC Advice published by ICANN regarding the work of the New gTLD Program Committee and how the GAC Advice was being processed and handled.
- e. Utilized the GAC Scorecard Framework established between the ICANN GAC and ICANN Board in Brussels on February 28th 2011 and 1st March 2011.
- f. The expert opinion by Mr. Erik Wilbers of the World Intellectual Property Organization (WIPO) Arbitration and Mediation Center detailing some ‘Observations in Connection with GAC Scorecard on Rights Protection and Corresponding ICANN Board Questions’. This information is readily available in the correspondence section of the ICANN web site.
- g. The ICANN Bylaws (11 April 2013 version) available from the ICANN web site.

We considered the Board Resolution and the options of accountability available to us, and decided to first of all make a request for the decision to be rescinded and reconsidered. By applying the necessary legal principles against the decision, we concluded that the decision was unfair and inequitable and was not based on the proper application of the principles of natural justice and the rule of law. If these principles are upheld, then the ICANN Board Decision seriously violates the relevant provisions of the ICANN Bylaws.

In addition to the principles, we also disagreed with the decision because we believe that the process that led to the NGPC consideration of the GAC Objection Advice against our application was not thorough which therefore led to a decision that was not taken in good faith.

In considering the ICANN new gTLD Applicant Guidebook provisions stipulated in Module 3, Section 3.1, regarding GAC Advice and how GAC Advice would be considered, and the range of likely actions that would be performed by the ICANN Board when considering GAC Advice, we believe that the ICANN Board deviated from its process, and did not perform a certain

important step (procedure) that was necessarily required as per the new gTLD Applicant Guidebook when considering GAC Advice.

We have principally pivoted our argument on the following stipulation in Section 3.1, Module 3, of the Guidebook, viz:

*“Where GAC Advice on New gTLDs is received by the Board concerning an application, ICANN will publish the Advice and endeavor to notify the relevant applicant(s) promptly. The applicant will have a period of 21 calendar days from the publication date in which to submit a response to the ICANN Board. ICANN will consider the GAC Advice on New gTLDs as soon as practicable. **The Board may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures.**”*

Indeed, it is our very strong belief that the ICANN Board should have consulted Independent Experts as per Guidebook stipulations. We have concluded that the Board Decision did not take into account the need to subject the GAC Advice and our Response submitted to the ICANN Board to an independent expert determination as stipulated in the Guidebook.

In our opinion, it is quite evident that the new gTLD Program Committee failed to exercise the necessary amount of discretion as a required procedure when dealing with GAC Advice, thereby deviating from its agreed process. In this case, we believe that the Guidebook provisions are clear enough and should be treated as sacrosanct; therefore, there is really no need for ICANN to deviate from its agreed processes in coming to a decision.

We hereby challenge the insinuation of finality conveyed in the decision which cannot be presently justified against the backdrop that a key procedural pathway outlined in the Guidebook has not been followed by the new gTLD Program Committee in considering the GAC Advice and the Response to GAC Advice submitted by DCA Trust to the ICANN Board.

Therefore, we wish to reiterate our enduring position that the New gTLD Program Committee (acting as the ICANN Board or on behalf of the ICANN Board) should have exercised due discretion and acted in good faith by consulting first with independent experts, who are the recognized/approved subject matter specialists in New gTLD Dispute Resolution Procedures, especially in our case “where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures.” There is no provision within the Guidebook that empowers the ICANN Board or its New gTLD Program Committee to take a final decision on a matter relating to an Objection.

If the GAC Objection Advice against our application corresponds to the standard of an Objection under the new gTLD process, then it should be treated based on established

new gTLD Program criteria. Whilst the A1 scorecard is outside the new gTLD Program Guidebook, and is rather extraneous to the provisions enshrined in Section 3.1 of Module 3 of the new gTLD Program Guidebook, we believe that the entire provisions contained in Section 3.1 of Module 3 regarding consultation with independent experts should have been adhered to before the decision was taken.

Consequently, the recommendation in the NGPC Response that we should “seek relief according to ICANN’s accountability mechanisms (See ICANN Bylaws, Articles IV and V)” as contained in the NGPC Response to GAC Advice should now be utilized by ICANN to reconsider its decision based on ‘Section 2 - RECONSIDERATION’ of Article IV of the Bylaws, by taking into account, all the procedural steps specified in the Guidebook regarding how to deal with GAC Advice.

We therefore insist that the entire decision should be re-evaluated and immediately reconsidered, and an independent expert consulted first before the GAC Objection Advice regarding our application and our Response to GAC Objection Advice are deliberated upon by the ICANN NGPC. In a nutshell, we believe that the outcome of a determination process by an independent expert designated to hear objections in the new gTLD Dispute Resolution Procedure must be a required input into the decision regarding whether to approve or not approve our application.

In reading through the Board Resolution No. 2013.06.04 and the Rationale (<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-04jun13-en.htm>), and the actions that were taken, including who was consulted (“Which stakeholders or others were consulted?”), we note that an independent expert on new gTLD Dispute Resolution was not consulted, and this should therefore be the basis for approving this request for reconsideration so that the decision as it presently stands is not allowed to prevail and constitute a serious miscarriage of justice that would frustrate our new gTLD aspirations.

9. 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?)

The decision should be reversed, and our application reinstated under the new gTLD Program, and the GAC Advice decision reconsidered after all likely actions have been taken into consideration according to the Guidebook provisions such as seeking the advice of Independent Experts as per Section 3.1 of Module 3 of new gTLD Applicant Guidebook. Specifically, we expect the Board to first of all consult with independent experts such as those designated to hear objections in the new gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC Advice are pertinent to one of the subject matter areas of the objection procedures. In a nutshell, we are asking the Board to take necessary corrective action based on the due process provisions enshrined in the Applicant Guidebook regarding GAC Advice for cases like ours – a GAC Objection Advice - which correspond to Objections under the new gTLD Program.

10. Please state specifically the 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.

(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 requester must be able to demonstrate well-known requirements: there must be a loss or injury suffered (financial or non-financial) that is directly and causally connected to the Board or staff action or inaction that is the basis of the Request for Reconsideration. 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 from the BGC must be capable of reversing the harm alleged by the requester. Injury or harm caused by third parties as a result of acting in line with the Board's decision 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.)

[DCA Trust has standing to ask for reconsideration as a directly affected party. It is the named applicant for the new gTLD in question. The justification for requesting the reconsideration is our strong belief that independent experts were not consulted by the ICANN Board in dealing with the GAC Advice relating to our application, and our Response to the GAC Advice. We believe that a prescribed procedure was not followed, and as such the Board deviated from its process indicated in the new gTLD Applicant Guidebook.](#)

[A decision by the NGPC that our application will not be approved is injurious to our application, and frustrates our new gTLD Program aspirations. A lot of time, effort, and resources have been expended in preparing and submitting the application, and responding to issues that have arisen such as clarifying questions and defending threats of community objection, etc. Apart from incidental costs, and fees paid to third parties for service agreements, we have paid the application evaluation fees to ICANN at the time of submitting our application, and also covered costs for setting-up a Registry continued Operations Instrument that is, financial reserves to support critical registry functions over a 3-year operations that is valid for 5 years as per ICANN requirements. A summary decision not to approve our application will make us suffer a lot of damages in addition to the frustration of our aspirations. A reversal of the NGPC decision will mitigate these damages and enable us recover our position as a new gTLD applicant.](#)

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

Yes

No

11a. If yes, Is the causal connection between the circumstances of the Reconsideration Request and the harm the same for all of the complaining parties? 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 <http://www.icann.org/en/committees/board-governance/requests-for-reconsideration-en.htm>.

[See attached letter to ICANN dated 14th June 2013](#)

[Other documents referred to are stored on the ICANN Web Site](#)

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, 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.

Stebele

June 19, 2013

Signature

Date