

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

Address: Contact Information Redacted

Email: Contact Information Redacted

Phone Number (optional):

(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

x 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 DotKids Foundation is seeking a reconsideration of the deferral/denial of its Change Request (00127557 – Said Change Request: Exhibit A) submitted in preparation for the Community Priority Evaluation (CPE) for the application.

We believe the Said Change Request should be posted for public comments in full. Currently only a portion of the Said Change Request is posted.

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.)

On May 2, 2014, DotKids Foundation submitted a Change Request (00127557 – Said Change Request) in compliance and according to instructions for Change Requests and in anticipation of the CPE (Exhibit A)

On May 28 2014, ICANN Staff responded (Exhibit B) indicating that certain parts of the Said Change Request is being deferred/denied, and posting a portion of the Said Change Request for public comments (<https://gtldresult.icann.org/application-result/applicationstatus/applicationchangehistory/161>).

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.)

DotKids Foundation became aware of the action (i.e. the deferral/denial of its Said Change Request) on May 28, 2014

This Reconsideration Request is submitted on June 11, 2014 within 15 days of the action taken.

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

The unreasonable deferral/denial of the Said Change Request may have direct and potentially adverse impact on the CPE results of the DotKids Foundation application, which therefore materially affects the DotKids Foundation.

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

The ICANN staff action/inaction (i.e. the deferral/denial of the Said Change Request) adversely affects DotKids Foundation's application and its opportunity for a fair and conscientious consideration through the CPE process.

Furthermore, this is an issue of public interest.

The deferral/denial of the Said Change Request creates a material inconsistency by which ICANN treats changes sought by different applicants as well as changes applied to applications. More details are provided in response to #8 and #10 below. As such, the deferral/denial of the Said Change Request adversely affects all applicants because it has an impact on the overall integrity of the new gTLD program.

The acceptance of the Said Change Request does not adversely affect others.

If ICANN staff believes that the Said Change Request may increase the chances of DotKids Foundation's application of passing CPE, that should not be misconstrued as "adversely impacting" other applications. The CPE is designed such that the CPE panel considers the initiative as a whole, its merits, commitments and support against the CPE criteria, and not the how well the original application was written in English. Further details provided in response to #8 and #10 below.

Furthermore, since all change requests are posted for public comments prior to their actual acceptance, if any others consider themselves to be adversely affected, they could raise such concerns through the public comments process.

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.)

The deferral/denial of the Said Change Request is unfair to the DotKids Foundation and creates a material inconsistency with established ICANN policy(ies):

1. No material changes to nature of the DotKids Foundation application
2. Precedents already set for consideration of commitments by applicants
3. Reasonable expectation based on the AGB
4. Full adherence to the new gTLD program

1. No material changes to nature of the DotKids Foundation application

The Said Change Request made no material changes to the nature of the DotKids Foundation application. As explained in the “Reason(s) for the change

request”, the Said Change Request (included in entirety as Exhibit A) makes clarifications on certain aspects of the application to reflect the

The changes sought in the Change Request do not change the community nature of the DotKids initiative.

As an example to illustrate this point, the definition of the community is well understood by the community members and community experts will understand that the description of the community definition from the original application wording and from the Said Change Request are actually the same, whereas a person without such expertise may consider them to be different. The changes sought in the Change Request reflects the same concept except that it is expressed in a way that is more accessible/understandable/clear to the layman who is not an expert of the community. Because it appears that the CPE panel (despite the expectation set in the AGB) will likely NOT have members who are experts in the kids community nor have experience as such, it is critical that the changes be implemented in preparation for an equitable CPE for the application.

It is therefore understandable that ICANN staff may have felt that there were actual changes in the nature of the application while there was not, because the changes sought may look like “changes” to the untrained eye but it effectively reflects the same community definition. We therefore seek, through this Reconsideration Request that the Said Change Request be posted for public comments in full for public scrutiny including by the community affected.

2. Precedents already set for consideration of commitments by applicants

Even if ICANN staff had felt that there may have been changes, the action by ICANN staff to defer/deny the Said Change Request is inconsistent with already established ICANN policies, procedures and precedents set in the new gTLD process.

Changes to commitments of applicants from the original application have been accepted and encouraged by ICANN (even where such applications are within contention sets).

The implementation of mandatory Public Interest Commitments (“PICs” i.e. Specification 11, including for such in response to overall GAC advice and GAC CAT. 1 advice) as well as the acceptance of applications that materially changed from “closed generics” to “open” (GAC CAT. 2 advice) are examples of material changes to commitments of applicants from their original applications.

More specifically, if the mandatory PICs were not applied (or allowance to materially change from “closed generics” to “open”) some applications may not have met the requirements set out in the accepted GAC advice and may have to be rejected. Only those applications that have, in their original application, already set out such commitments would be able to continue in the process. Especially for cases with contention, i.e. other competing applications, where one

of such applications would have met the GAC advice while others might not have, a material prejudice would have been placed on the one that had anticipated and met the GAC advice, because they may have been the only remaining applicant for the contended string. The implementation of the mandatory PICs meant that they no longer is properly advantaged by the commitments they had originally put in their applications that is above and beyond the other applicants.

In fact, “.kid(s)” may have been such a case with one of the applications having materially changed from a “closed generic” to an “open” model, and cases that may not have met other accepted GAC advice requirements.

The fact that the mandatory PICs were applied across all applications does not remove the prejudice it places on some applications that already made such commitments in their original applications (versus those who did not).

As such it sets a clear precedence in the new gTLD process that it is not about what commitments an applicant was willing to make in its original application but rather what commitments an applicant is really willing to commit to that count.

Therefore even if ICANN staff felt that the Said Change Request included additional commitments by the DotKids Foundation, it should not have deferred/denied it because this is inconsistent with established reasonable expectations and ICANN policies based on precedents already set.

Most importantly, if ICANN staff felt that the Said Change Request enhances the chances that the DotKids Foundation application would pass CPE, then it is even more unfair to the DotKids Foundation that it is deferred/denied.

Whether or not an application passes CPE should be based on the merits of the initiative, community commitments and support the applicant has at the time of the CPE. Whether such commitments and support were added via the public comment process or change request process should not be a factor in affecting the CPE. Ultimately, Community applicants should be judged on their merits against the criteria set out in the AGB, not how well their original applications were written in English.

3. Reasonable expectation based on the AGB

The AGB and accompanying CPE implementation clarifications by ICANN sets a reasonable expectation that information supporting the application can be provided prior to the CPE via either as application comments or through a change request:

According to AGB 4.2.1 Community Priority Evaluation Procedure, “Before the community priority evaluation begins, the applicants who have elected to participate may be asked to provide additional information relevant to the community priority evaluation.”

According to AGB 1.2.3.1, “Additional information may be requested in the event of a community priority evaluation.”

According to the CPE webpage (<http://newgtlds.icann.org/en/applicants/cpe>): “application comments and letters of support or opposition must be submitted within 14 days of the CPE Invitation Date in order to be considered by the CPE Panel.”

According to the CPE FAQ (<http://newgtlds.icann.org/en/applicants/cpe/faqs-31oct13-en.pdf>): Application comments may be submitted at <http://newgtlds.icann.org/en/program-status/comments>. Letters of support or opposition may be submitted via the methods describe in the Letters of Support and Opposition section of the FAQs below... If an applicant submits letters of support via the change request process posted at <http://newgtlds.icann.org/en/applicants/customer-service/change-requests>, the letters of support will be processed as a change request and subject to the 30-day application comment period.

The new gTLD process provides for and respects the priority that should be given to genuine Community gTLD applications, which is an important aspect of the new gTLD program’s fundamental goal of promoting constructive competition in a responsible manner which enhances consumer trust. According to the AGB and subsequent actions already taken by ICANN and the ICANN Board, it is reasonable to understand that the determination of whether or not an application qualifies as a Community gTLD through the CPE should be based on the genuine commitments of an applicant to its community and the support from the community it has and in accordance to the CPE criteria as set out in the AGB, not how well written or not the original application was.

Most importantly, change requests that enhance a community application for CPE should not be prejudiced against because ultimately, it is about the commitments and support that an applicant has.

4. Full adherence to the new gTLD program

The Said Change Request was submitted in accordance with the guidelines set forth and within the time period allowed. The Said Change Request was submitted on May 2, 2014, within 14 days of the effective CPE Invitation Date.

The Said Change Request meets the criteria set forth in the New gTLD Application Change Request Process and Criteria (<http://newgtlds.icann.org/en/applicants/customer-service/change-requests>).

In response particularly to the determination criteria:

Explanation – the Said Change Request (Exhibit A) provided clear explanation that the changes sought reflects the evolution of the initiative, including additional expressed support from the community gathered and clarification of policies that

we believe the CPE panel should take note of in their consideration.

Error – the Said Change Request was not submitted in error.

Other third parties affected – Supporters of the DotKids initiative are keen to see the changes included as described by the Said Change Request. Their interests would be negatively affected if the changes were not accepted.

Precedents – We are not aware of any precedents where comparable change requests were deferred/denied. Precedents of commitment changes by applications have been discussed in 2. above.

Fairness – Given that substantive policy changes to applications (e.g. from a "closed/exclusive" gTLD to an "open" one) were accepted without concerns by the ICANN staff team, the deferral/denial of the Said Change Request by the DotKids foundation would be unfair. Furthermore, since the changes are to be posted for public comments, affected parties, if any, will have ample time to respond in a similarly fair manner.

Timing – there should be no re-evaluation required based on the changes sought. Furthermore, the changes described in the Said Change Request are important and would support the application's case as a community gTLD, therefore we believe the timing is important that the changes not be deferred.

Finally, we must emphasize that if ICANN staff had felt that the Said Change Request may enhance the DotKids initiative's chances in passing the CPE, that should not be construed with being "unfair" to other contending applicants.

As explained by the CPE FAQ set out:

The CPE Panel will review publicly available information including the publicly available portions of the application, application comments on the application, objection determinations, correspondence (letters of support or objection related to the application), and additional research as necessary to complete the evaluation per the AGB criteria in section 4.2.3 and the CPE Panel's guidelines available here: <http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>

In short, the CPE process, based on reasonable understanding from the AGB and accompanying materials, considers not just words in the original application itself but about the initiative as a whole. Changes sought by a community application through the change request itself cannot create any unfairness against any other applicant.

Again, all change requests are posted for public comments before they are fully accepted, so, if any other parties, including contending applicants feel that they are adversely affected, they can utilize the process to express their concerns.

In fact, in the reverse, if ICANN staff felt that the Said Change Request might enhance DotKids Foundation's chances of passing CPE, it would be materially unjust to defer/deny the Said Change Request.

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 DotKids Foundation asks ICANN to publish the Said Change Request in full for public comments in accordance with the Change Request process already established for the New gTLD program, and to accept the Said Change Request in accordance with processes already established for 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 a 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.)

DotKids Foundation believes that the Said Change Request does not change the nature of its application and makes clarification and refinements that enhances the application; therefore, if the Said Change Request is deferred/denied it would materially harm the chances for the application to pass CPE.

As a not-for-profit initiative, it will be very difficult for the DotKids Foundation to compete in a capital/market driven auction (not to mention our strong belief that the interests of kids and the children community should not be put on the auction block in any case), a fair and conscientious consideration in the CPE process is therefore critical. Without which, the DotKids Foundation and the global kids community would be adversely impacted and at imminent material risk.

If ICANN staff feels that the Said Change Request enhances the case for the

DotKids initiative in CPE, that would further evidence that the deferral/denial of the Said Change Request would result in material harm to the initiative, as it would be denied a fair evaluation based on the merits of the initiative. Again, we must emphasize that the CPE is designed to consider the merits, commitments and support of a community gTLD initiative as a whole and not on how well the original application was written in English.

If ICANN staff feels that the Said Change Request do not enhance the case for the DotKids initiative in CPE, there is no reason why the Said Change Request cannot be posted for public comments and accepted.

As the entity directly affected by the ICANN staff action/inaction (i.e. the deferral/denial of the Said Change Request) DotKids Foundation have the standing and the right to assert this Request for Reconsideration.

As a representative of the global children rights and children welfare community, we have strong grounds and justifications to support the request as the changes sought materially affects the global community and if deferred/denied results in material harm in the fact that it could hamper the ability of the community to pass CPE and the ability for the community to assert its rights based on the established new gTLD policies and processes.

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.

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>.

Exhibit A: Said Change Request (Case: 00127557)

Exhibit B: ICANN Staff action/inaction (i.e. notice of deferral/denial of Said Change Request

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.



Signature

June 11, 2014

Date

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