

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: dot Sport Limited

Address: Contact Information Redacted

Email: Contact Information Redacted

Phone Number (optional): Contact information Redacted

(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.)

Dot Sport Limited (referred to as the “**Requester**”) is seeking reconsideration of ICANN acceptance of the Expert Determination of the new gTLD Community Objection regarding the string .SPORT (Application ID 1-1174-59954) by the International Centre for Expertise in CASE No. EXP/471/ICANN/88. We attach the decision as Annex 1 (referred to as the “**Determination**”).

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 Determination was forwarded on 25th October 2013 by the International Chamber of Commerce (referred to as the “**ICC**”)

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.)

25th October 2013

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

The Requester is one of two applicants for the .SPORT gTLD, and was in a contention set with SportAccord for the .SPORT string (Application ID 1-1174-59954). SportAccord was also the objector in the present case. The Determination will affect the Requester because according to the rules in the Applicant Guidebook, an application which is the subject of a successful community objection must be withdrawn. Therefore the objector

will automatically be delegated the .SPORT gTLD if a withdrawal is required.

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

Other applicants (third parties) in the current gTLD application round who are facing Community Objections are highly concerned that the Applicant Guidebook is being incorrectly applied by panelists appointed by the ICC, and that incorrect decisions already made are being cited as precedent by objectors. See attached letter to ICANN dated 1st November at Annex 2, prepared by various new gTLD applicants at page 5, who together represent, by volume, over 58% of all current open gTLD applications, a clear majority:

*"We also bring to ICANN's attention the fact that objectors on other unrelated cases are citing these decisions in their Supplemental Submissions in order to influence experts to weaken the objection criteria and rule in their favor. **If these are considered to be precedents for other Experts, we can assure you that most community objectors will unfairly prevail over applicants who applied as standard applicants in good faith.**"*

Applicants for future rounds will be put on notice that a community can be created over any generic word, which makes any application a risky proposition. As made clear by ICANN regarding the standard for objections, *"[t]here is a presumption generally in favor of granting new gTLDs to applicants who can satisfy the requirements for obtaining a*

gTLD – and, hence, a corresponding burden upon a party that objects to the gTLD to show why that gTLD should not be granted to the applicant” p. 5 / 16 (New gTLD Draft Applicant Guidebook Version 3 – Public Comments Summary and Analysis, p. 67 available at <https://archive.icann.org/en/topics/new-gtlds/summary-analysis-agv3-15feb10-en.pdf>).

The Community Evaluation Panel would be rendered redundant by the Determination in many cases if it is accepted, since the community test for objections has been rendered an extremely simple hurdle compared to the Community Priority Evaluation. Internet users will be affected by the objector's amorphous registration policies for second level domains in the .SPORT gTLD (see Application ID 1-1012-71460 at Question 18).

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:

ICANN has determined that the Reconsideration process can properly be invoked for challenges of third party's decisions where it can be stated that either the vendor failed to follow its process in reaching the decision, or that ICANN staff failed to follow its process in accepting that decision (Recommendation of the Board Governance Committee (BGC) Reconsideration Request 13-5, August 1, 2013, page 4).

Failure to observe ICANN procedure

The new gTLD program included a dispute resolution procedure pursuant to which disputes between a person or entity who applies for a new gTLD and a person or entity who objects to that gTLD are resolved in accordance with the New gTLD Dispute Resolution Procedure (Article 1(b), New gTLD Dispute Resolution Procedure (referred to as the "**DRP**")).

Dispute resolution proceedings are required to be administered by a Dispute Resolution Service Provider (referred to as "**DRSP**") in accordance with the **DRP** and the applicable

DRSP Rules¹. Any Panel appointed by the DRSP is obliged to apply the standards that have been defined by ICANN². The DRP expressly provides that parties cannot derogate from the DRP without the express approval of ICANN³.

In the present case of .SPORT (Application ID 1-1174-59954), as the Requester evidences below, the sole expert appointed to the Panel (referred to as the "**Expert**") and ergo, the DRSP have derogated substantially from the DRP and the Expert has failed to apply the standards defined by ICANN in reaching his decision in the Determination. We provide full details of the failure to follow the DRP and the standards listed in the Applicant Guidebook at Point 10, after providing grounds for our claim.

Breach of ICANN policy on Transparency

However, we mention here that, whilst struggling to make sense of the wide number of deviations from the DRP, the Requester undertook further research into the subject of conflict of interest. We were concerned to learn that on 22 February 2011, at a major conference of the International Bar Association in Rio de Janeiro, Brazil entitled "Olympic-Size Investments: Business Opportunities and Legal Framework", Dr. Guido Tawil, was co-chair of a panel entitled '***The quest for optimising the dispute resolution process in major sport-hosting events***' in which the following was discussed:

"The panel will debate the trends and best practices of resolving disputes in

¹ Article 1(c) of the DRP

² Article 20(a) of the DRP

³ Article 1(d) of the DRP

challenging environments with time-sensitive deadlines. Panellists will address issues related to arbitration, dispute boards, expert determination, mediation and electronic discovery on infrastructure projects for big international sports events. The experiences of Atlanta, Barcelona and the London Olympic Games will be discussed. The panel will also address the unique aspects of sports disputes and the potential use of a fast-track dispute resolution process in this area"⁴.

The flyer for this event appears at Annex 3 and demonstrates that the conference was aimed at "*Brazilian and international lawyers both private or in-house, government officials, law professors, business executives at investment management firms, company representatives, **sports federation leaders**, bankers, academics, economists and politicians.*"⁵

Prior to Dr. Tawil's appointment, the Requester successfully challenged the appointment of Mr. Jonathan Taylor as sole panelist, on the basis that Mr. Taylor's legal practice was closely related to the activities of the objector and its constituent sports federations. In this context, Dr. Tawil should clearly have disclosed this information about his interest in sporting arbitration and his presence at the conference. We quote from the Applicant Guidebook (§3.5.4) on the Selection of Expert Panels "Experts must be independent of the parties to a dispute resolution proceeding. Each DRSP will follow its adopted

⁴ <http://www.int-bar.org/conferences/conf338/>

⁵ <http://www.int-bar.org/conferences/conf338/>

procedures for requiring such independence, including procedures for challenging and replacing an expert for lack of independence." The ICC's own rules state that: "Before an appointment, a prospective expert shall sign a statement of independence and disclose in writing to the Centre [ICC] any facts or circumstances which might be of such a nature as to call into question the expert's independence in the eyes of the parties⁶".

We note that Dr. Tawil was a member of the of the Conflicts of Interest Subcommittee which monitored developments concerning the IBA Guidelines on Conflicts of Interest in International Arbitration (the 'Guidelines'), adopted by the IBA Council in May 2004. To that extent, Dr. Tawil has no excuse for not disclosing this interest in the circumstances of his succession to Mr. Taylor. We quote section 3 of the Guidelines:

"(a) If facts or circumstances exist that may, in the eyes of the parties, give rise to doubts as to the arbitrator's impartiality or independence, the arbitrator shall disclose such facts or circumstances to the parties, the arbitration institution or other appointing authority (if any, and if so required by the applicable institutional rules) and to the co-arbitrators, if any, prior to accepting his or her appointment or, if thereafter, as soon as he or she learns about them...

(c) Any doubt as to whether an arbitrator should disclose certain facts or circumstances should be resolved in favour of disclosure."

The failure to disclose is further exacerbated by the controversy surrounding the terms

⁶ Article 7(4) of ICC Expertise Rules Section III: Appointment Of Experts

of his recusal from a recent matter involving a US oil company. "Chapter 3: Legal vultures: Law firms driving demand for investment arbitration...In another case of a US oil company against Ecuador, the investor-appointed arbitrator, Guido Tawil, resigned following allegations of an "extremely close connection and relationship" with King & Spalding, the oil company's counsel"⁷. King & Spalding was ranked amongst the 20 busiest investment arbitration law firms actively promoting investment treaty disputes in 2011 by Corporate Europe Observatory⁸.

In summary, when there has been previous controversy involving the Expert over the links between big business and boosting arbitration practice and in the specific context of the recusal of the prior choice of expert precisely on the grounds of conflict of interest with the objector, it was imperative that Dr. Tawil should have disclosed his presence at the conference. It is clear that his mind has been recently focused on the prospect of creating business opportunities by close connections with industry, and very specifically, the organized sporting industry (of which SportAccord is a part). In the circumstances, Dr. Tawil failed in his obligation to disclose a material factor relevant to confirmation of his appointment, and for this reason the resulting Determination must now be considered invalid on the grounds of failure to disclose facts or circumstances that would have, in the eyes of the parties, given rise to doubts as to the arbitrator's impartiality or independence, prior to accepting his or her appointment as Expert. There

⁷ http://corporateeurope.org/trade/2012/11/chapter-3-legal-vultures-law-firms-driving-demand-investment-arbitration#footnote63_smh55ia

⁸ Ibid.

has been an obvious breach of the relevant DRP of the designated ICANN service provider (as set out above) as well as a breach of the ICANN policy on Transparency as set out in ICANN's Bylaws:

- Article 3 Section 1 provides that *"ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness"*.

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?)

We respectfully request that the BCG recommends that:

1. ICANN rejects the decision on .SPORT on the grounds that: (i) material disclosure (of facts or circumstances that would have, in the eyes of the parties, given rise to doubts as to the Expert's impartiality or independence) was not made by the Expert prior to his appointment in accordance with mandatory DRP rules (as detailed by the Requester in section 8, above), which renders the Determination void for failure to follow an ICANN procedure and, further, for violation of ICANN policy on transparency; AND/OR THAT (ii) the Expert was not appropriately qualified to render the Determination which renders the Determination void for failure by the DRSP to follow the mandatory ICANN process of appointment of an appropriately qualified expert (as set out in detail by the Requester in section 10, below); AND/OR THAT (iii) the Expert fails to follow the required ICANN procedure

and standards (in that he deviates arbitrarily and materially from the due process established by the Applicant Guidebook as set out in detail by the Requester in section 10, below).

2. In any case under section 9(1), above, the .SPORT matter should go back to a freshly convened panel which the ICC must demonstrate has been given substantial training in the Applicant Guidebook processes and standards which would be able to apply those standards and protocols in a non-arbitrary way.
3. Additionally, the Requester strongly requests that ICANN requests a formal account from Dr. Guido Tawil of whether he has any links, including current or prospective links, with the objector or any of its member federations.
4. Further, the Requester strongly requests that the ICC be formally requested to demonstrate that the Expert was given reasonable training in the Applicant Guidebook processes and standards which would have qualified and enabled him to be able to apply the ICANN standards and protocols in the required way.

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.

We rely on the following grounds to demonstrate standing and the right to assert this Request for Reconsideration. The following are well known requirements within ICANN Bylaws and the new gTLD application process.

a. Standing and Right

ICANN has determined that the Reconsideration process can properly be invoked for challenges of third party's decisions where it can be stated that either the vendor failed to follow its process in reaching the decision, or that ICANN staff failed to follow its process in accepting that decision (Recommendation of the Board Governance Committee (BGC) Reconsideration Request 13-5, August 1, 2013, page 4). As an applicant under the ICANN process directly affected by a vendor's action, we respectfully consider that we have the standing and the right to assert the Request.

b. Grounds/Justification

- (i) **As a party with standing in good faith, the Requester has the right to expect and insist that the ICANN appointed vendor operates "in an open and transparent matter" to "the maximum extent possible":** Article 3 Section 1 provides that *"ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness"*.
- (ii) **As a party with standing in good faith, the Requester has the right to request that ICANN staff decline to accept the determination of the Expert on the grounds that the requisite ICANN standards, processes and policies have not been followed.** The Requester further relies on the guidance provided by the Recommendation of the Board Governance Committee (BGC) Reconsideration Request 13-10/10 October 2013, which state that where we can demonstrate

there is a breach of policy or process, we can properly invoke the

Reconsideration:

- "ICANN have determined that the Reconsideration process can properly be invoked for challenges of the third-party DRSP's decisions where it can be stated that either the DRSP failed to follow the established policies or processes in reaching the decision or that ICANN staff failed to follow its policies or processes in accepting that decision (at page 5)".
- "The Applicant Guidebook (Applicant Guidebook) sets out the standards used to evaluate and resolve objections". The requesting party must "establish any policy or process that either panel failed to follow (at page 10)."

(iii) In addition, there has been sufficient deviancy from the DRP and application of ICANN standards in the context of the failure to disclose (as set out in section 8, above) as to call into account perceived neutrality of the Expert and of the objection procedure itself; which constitutes a breach of the relevant DRP rule:

In administering objection proceedings, DRSPs **"shall apply the standards that have been defined by ICANN⁹."** Further Under the ICANN Bylaws, all decisions should be made by applying documented policies "neutrally and objectively, with integrity and fairness¹⁰."

(iv) Finally, Article 7(2) of ICC Expertise Rules Section III: Appointment Of Experts states: "Prior to the proposal of an expert, the Centre shall consider in particular

⁹ Art. 20(a) of the DRP

¹⁰ See ICANN Bylaws (11 Apr. 2013) Art. I, §2.8

the prospective expert's qualifications relevant to the circumstances of the case, and the expert's availability, place of residence, and language skills": **From the failure of the Expert to apply the relevant DRP and the applicable standards set out in the DRP, it is clear that the Expert was not familiar with the Applicant Guidebook, clearly had not received any training prior to drafting the Determination, and to that extent did not have the requisite "qualifications relevant to the circumstances of the case"**. The Determination of an Expert who as demonstrated below has clearly reached his decision without an appropriate understanding or observance of the DRP, must clearly be rejected as invalid.

The requisite ICANN standards, processes and policies have not been followed.

(a) Creating a new standard for the *likelihood* material detriment in the Determination

The Expert has failed to follow the DRP requirement and/or failed to apply the relevant standard as required by the Applicant Guidebook in his definition and application of the test of "likelihood". He has completely replaced the standard with a lower standard: of future "possible" harm (at paragraphs 155 and 156 of the Determination). Almost universally, legal dictionaries define or equate the term likelihood with "probability" of something being true and vice versa; "The likelihood of a proposition or hypothesis

being true, from its conformity to reason or experience, or from superior evidence or arguments adduced in its favor¹¹." By contrast, the Expert writes:

"Therefore, the standard that the Appointed Expert should apply to this issue is the "chance" that detriment will occur, which differs from the standard of "actual damage" invariably applied in litigation or arbitration. In other words, the standard of a "likelihood of material detriment" is, in the Appointed Expert's opinion, equivalent to future "possible" damage."¹²

There is little basis in established jurisprudence for interpreting "likelihood" as "possible" harm: a possibility is simply one of several outcomes which may or may not materialize. Likely harm, on the other hand, is clearly the *probability*, based on experience or superior reasoning, that harm will occur. For the Expert to select this definition which favours the objector, is blatantly and expressly failing to follow the required process and replacing the required standard as required of him by the Applicant Guidebook. This is an extremely serious deviation - to draw a parallel, the test for trademark infringement under US trademark law is "likely to cause confusion, or to cause mistake, or to deceive"¹³". Consider the outrage which would result if the test for "likelihood" in US trademark law was watered down in a single decision by a random arbitrator to the possibility of confusion (i.e. that it is theoretically possible that there is a consumer somewhere who might be confused, whether or not it is likely that such confusion might ever happen in reality) - and there was no recourse for the affected

¹¹ <http://thelawdictionary.org/probability/>

¹² Page 23 of the Determination

¹³ See 15 USC § 1114(1)(a) and (b) <http://www.law.cornell.edu/uscode/text/15/1114>

party from that decision. We re-iterate that this arbitrary creation of a new standard is an extremely serious violation of the DRP which ICANN cannot fail to address.

In addition, a detailed reading of the Determination provides no evidence whatsoever that the Expert even considered the “level of certainty that alleged detrimental outcomes would occur.” Unlikely and hypothetical situations are given credence over any level of certainty.

(b) A failure to apply the existing standard for cause of the material detriment to a community

The Expert also ignored the Applicant Guidebook requirements for a showing of material detriment specifically created by the application or at least linked to it. Among the requirements for proof is the objector's burden to provide tangible proof that its community and its reliance on the DNS is likely to be adversely affected by the application for the string in question. While the Expert is clearly aware that the objector needs to prove that “**the application** creates a likelihood of material detriment...¹⁴”, **none** of the factors that were considered included anything about the application itself. The Expert did not identify a single objectionable or lacking aspect in the application that creates a likelihood of material detriment. The likely actual merits or demerits of the application were entirely ignored in the context of detriment which might be caused

¹⁴ Applicant Guidebook §3.5.4

by the success of the application. In other words, the expert failed to apply the required obligatory test which would make *the application* the cause of the material detriment.

(c) Creation of a new standard for material detriment with several limbs

The Expert writes:

"Even though SportAccord did not prove that dot Sport Limited would not have acted (or did not intend to act) in accordance with the interests of the sport community, the Appointed Expert considers that this is only one factor, among others, that may be taken into account in making this determination. Conversely, the Appointed Expert sees a strong dependence of the Sport Community on such domain name.¹⁵"

This is entirely the wrong test to be applied. SportAccord were never required to prove intention to cause material detriment - but they were always required to prove that the application was likely to cause material detriment. What the Expert has done effectively is to create a new test for material detriment, one with several limbs.

(d) Creation of a new test for the subject of material detriment

At paragraph 160, the Expert writes "Regarding the economic damage that SportAccord may suffer". The Expert was never meant to consider the economic damage that SportAccord suffered. Instead, objectors have to prove the "likelihood of material

¹⁵ Page 24 of the Determination

detriment to the rights or legitimate interests of a *significant portion of the community* to which the string may be explicitly or implicitly targeted.¹⁶ In the Determination, the Expert either misread the Applicant Guidebook or incorrectly assumed that the objector was the sports community, effectively creating a new test for the subject of the material detriment.

(e) Failure to apply the Applicant Guidebook standards consistently demonstrating that the Expert was not qualified to conduct the DRP to the required standard

All of the foregoing points to a fundamental lack of understanding of the required DRP on the part of the Expert and/or the complete failure to apply the required ICANN standard (as set out in the Applicant Guidebook and the DRP).

We make one more point under this heading: In the Determination, the Expert expressly stated that, *"the concept of 'community' is not defined by the ICANN Guidebook."*¹⁷

While the DRP might not define community, on the contrary, the Applicant Guidebook (the ICANN Guidebook) does in fact define the concept of community at Applicant Guidebook §4.2.3 under the heading Community Priority Evaluation Criteria:

"'Community' - Usage of the expression 'community' has evolved considerably from its Latin origin – 'communitas' meaning 'fellowship' –while still implying more of cohesion than a mere commonality of interest, [etc]".

¹⁶ Applicant Guidebook §3.5.4

¹⁷ Page 18 of the Determination

Such inaccuracies are forgivable in a layman: but for the dispute resolution process to engender trust in the validity of its outcome, the designated "expert" cannot afford to make such inaccurate statements at the most basic level, let alone completely redefine applicable standards and processes in the process of rendering a Determination without inviting questions as to *why*? Either there was a lack of training¹⁸ and a corresponding lack of essential knowledge of the totality of the rules in the Applicant Guidebook and the procedural matrix in which all the applicants have been operating, i.e. that the Expert was unqualified for the task of making an ICANN decision under the DRP; or as, the further research we conducted on the Expert in order to explain such large deviations evidences, we would raise here the question about the whether the Determination was made by applying documented policies “neutrally and objectively, with integrity and fairness¹⁹” in light of the failure to disclose (set out in Section 8).

Conclusion

A single deviation by a panelist is perhaps possible to overlook and may not amount to a breach of process. However, ICANN cannot look the other way when there are at least five demonstrably separate points on which the Expert has clearly deviated from the DRP Procedure, in the Determination, deviations so blatant and obvious as to be widely criticized in the domain industry. The following comment is typical of the thrust of these

¹⁸ The underlying question on the part of the Requester (and the 11 other new gTLD applicants who wrote to ICANN of 1st November at Annex 2): did the Expert actually read the Application Guidebook? The lack of due care and attention in his review of the evidence and his erroneous application or actual rewriting of the applicable standards presented would suggest otherwise.

¹⁹ See ICANN Bylaws (11 Apr. 2013) Art. I, §2.8

comments from entirely independent observers extrapolating from the .SPORT Determination: "This lack of certainty and consistency isn't good for either applicants or objectors. *Yet ICANN may decide it's easier to just sit back and watch it unfold.*"²⁰.

The decision in .SPORT demonstrates to date the clearest example of how completely it is possible for ICANN mandated standards to be utterly misapplied or for the DRP to be completely disregarded by an expert acting in an arbitrary and capricious way. The Expert himself would be unable to object to the grant of the Request. To quote from a Spanish language article referencing Dr. Tawil, on the liability of the state for judicial error, which is an analogous situation:

*"Conforme lo señala el profesor Guido Tawil, citando a Reyes Monterreal, "el error judicial capaz de acarrear la responsabilidad del Estado se producirá, cuando 'del contexto de la sentencia, de la realidad de los hechos y sus circunstancias y de la apreciación de la prueba y, por la otra, de la confrontación entre la solución dada y la que jurídicamente convenía al caso, resulte manifiesta la materialidad de la equivocación"*²¹ [Translation: As noted by Professor Guido Tawil, citing Reyes Monterreal, "judicial error leading to state responsibility will occur when [on the one hand] 'in the context of the sentence, the reality of the facts and circumstances and the evaluation of

²⁰ <http://ohashi.info/aggregator>; <http://domainnamewire.com/2013/10/29/breathaccord-wins-community-objection-against-breathe-top-level-domain-name/>; <http://domainincite.com/14918-famous-four-vows-to-fight-sport-objection-loss>, etc; See Annex 4 for sample articles.

²¹ RESPONSABILIDAD DEL ESTADO. AUTOR. ALEJANDRO TARABORRELLI, martes, 23 de marzo de 2010 at <http://civiltaraborrelli.blogspot.com/2010/03/responsabilidad-del-estado-autor.html>.

the evidence and, on the other hand, of the confrontation between the solution given and the most legally appropriate in the case, the resulting error is manifestly obvious"]

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>.

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.

A handwritten signature in blue ink, appearing to be 'A. J. ...', written in a cursive style.

Signature

8th November 2013

Date