

Template of Reconsideration Request Reforms v. 3

1. STANDING

Last week: Amend "who" has proper standing to file a Reconsideration Request to widen its scope to include any party impacted by the ICANN decision / inaction.

This week – significantly narrowing the proposed standing:

ICANN's Bylaws could be revised (as in red below):

1. ICANN shall have in place a process by which any person or entity materially affected by an action of ICANN may request review or reconsideration of that action by the Board.
2. Any person or entity may submit a request for reconsideration or review of an ICANN action or inaction ("Reconsideration Request") to the extent that he, she, or it have been adversely affected by:
 - a. one or more staff actions or inactions that contradict established ICANN policy(ies), **its mission, core values**; or
 - b. one or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of ~~material~~ **relevant** information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act; or
 - c. one or more actions or inactions of the ICANN Board that are taken as a result of the Board's reliance on false or inaccurate material information.

2. STANDARD OF REVIEW

~~Amend the standard of reviewing a Reconsideration Request to include a re-examination of the underlying merits of arguments and decisions.~~

Broaden the types of decisions which can be re-examined to include staff action against ICANN's mission or core values (as stated in bylaws / Articles).

Propose amend Paragraph 9 on BGC summary dismissal as follows:

9. The Board Governance Committee shall review each Reconsideration Request upon its receipt to determine if it is sufficiently stated. The Board Governance

ICANN Bylaws Reconsideration Request Process (Article IV, Section 2):

<https://www.icann.org/resources/pages/governance/bylaws-en>

Committee may summarily dismiss a Reconsideration Request if: (i) the requestor fails to meet the requirements for bringing a Reconsideration Request; (ii) it is frivolous, querulous or vexatious; or (iii) ~~the requestor had notice and opportunity to, but did not, participate in the public comment period relating to the contested action, if applicable.~~ The Board Governance Committee's summary dismissal of a Reconsideration Request shall be **documented and promptly** posted on the Website.

3. COMPOSITION

Need less reliance on the legal dept to guide the BGC on its recommendations and more board member engagement in decisions.

Requests should no longer go to ICANN's lawyers (in-house or out-house) for the first substantive evaluation. Instead, the Requests could go to ICANN's Ombudsman for a first look, who could make the initial recommendation to the BGC. Note the bylaws charges the BGC with these duties, but they would utilize the ombudsman instead of ICANN's lawyers to aid it in its evaluation.

All final determinations of requests are made by the entire board (not only requests about board actions).

Amend Paragraph 3:

3. The Board has designated the Board Governance Committee to review and consider any such Reconsideration Requests. The Board Governance Committee shall have the authority to:
 - d. evaluate requests for review or reconsideration;
 - e. summarily dismiss insufficient requests;
 - f. evaluate requests for urgent consideration;
 - g. conduct whatever factual investigation is deemed appropriate;
 - h. request additional written submissions from the affected party, or from other parties;
 - i. ~~make a final determination on Reconsideration Requests regarding staff action or inaction, without reference to the Board of Directors; and~~

- j. make a recommendation to the Board of Directors on the merits of the request, as necessary.

And delete Paragraph 15 since this BGC will make final decisions regarding requests related to staff action/inaction:

~~15. For all Reconsideration Requests brought regarding staff action or inaction, the Board Governance Committee shall be delegated the authority by the Board of Directors to make a final determination and recommendation on the matter. Board consideration of the recommendation is not required. As the Board Governance Committee deems necessary, it may make recommendation to the Board for consideration and action. The Board Governance Committee's determination on staff action or inaction shall be posted on the Website. The Board Governance Committee's determination is final and establishes precedential value.~~

4. SELECTION

N/A

5. DECISION-MAKING

Transparency improvements are needed regarding the information that make up the decision-making process. Recordings / transcripts should be posted of the substantive board discussions on the request.

Provide a rebuttal opportunity to the BGC's final recommendation (can't raise new issues).

Adding hard deadlines to the process including final determination within 120 days from request.

Propose to amend reconsideration rules as follows (in red):

16. The Board Governance Committee shall make a final ~~determination or a~~ recommendation to the Board with respect to a Reconsideration Request within thirty days following its receipt of the request, unless impractical, in which case it shall report to the Board the circumstances that prevented it from making a final recommendation and its best estimate of the time required to produce such a final ~~determination or~~ recommendation. **In any event, the final recommendation to the board shall be made within 90 days of receipt of the Request. The final recommendation shall be promptly posted on ICANN's website and shall address each of the arguments raised in the Request. The**

Requestor may file a rebuttal to the recommendation of the BGC within 15 days of receipt of the recommendation, which shall be promptly posted to ICANN's website and provided to the entire Board for its evaluation.

17. The Board shall not be bound to follow the recommendations of the Board Governance Committee. The final decision of the Board **and its rationale** shall be made public as part of the preliminary report and minutes of the Board meeting at which action is taken. The Board shall issue its decision on the recommendation of the Board Governance Committee within 60 days of receipt of the Reconsideration Request or as soon thereafter as feasible. Any circumstances that delay the Board from acting within this timeframe must be identified and posted on ICANN's website. **In any event, the Board's final decision shall be made within 120 days of receipt of the Request. The final recommendation shall be promptly posted on ICANN's website and shall address each of the arguments raised in the request.** The Board's decision on the recommendation is final.

6. ACCESSIBILITY

Extend the time deadline for filing a Reconsideration Request from 15 to 30 days from when Requester learns of the decision/inaction.

Amend paragraph 5 as follows:

5. All Reconsideration Requests must be submitted to an e-mail address designated by the Board Governance Committee within ~~fifteen~~ 30 days after:
 - a. for requests challenging Board actions, the date on which information about the challenged Board action is first published in a resolution, unless the posting of the resolution is not accompanied by a rationale. In that instance, the request must be submitted within 30 days from the initial posting of the rationale; or
 - b. for requests challenging staff actions, the date on which the party submitting the request became aware of, or reasonably should have become aware of, the challenged staff action; or
 - c. for requests challenging either Board or staff inaction, the date on which the affected person reasonably concluded, or reasonably should have concluded, that action would not be taken in a timely manner.

7. IMPLEMENTATION

n/a

8. DUE PROCESS

Provide all briefing materials supplied to the board to the Requester so that they may know the arguments against them and have an opportunity to respond (subject to legitimate and documented confidentiality requirements).

Final decisions should be issued sooner – hard deadline of 120 days.
