

# Template of Reconsideration Request Reforms

Note: ICANN's decisional Reconsideration Process is described in Article IV, Section 2 of ICANN's Bylaws: <https://www.icann.org/resources/pages/governance/bylaws-en/#IV>

## 1. STANDING

Amend "who" has proper standing to file a Reconsideration Request to widen its scope by including board/staff actions/inactions that contradict ICANN's *mission or core values* (was only *policies* before). It is noted that under the existing bylaws paragraph 2 significantly reduces the rights purportedly granted in paragraph 1 of the Reconsideration Request process.

ICANN's Bylaws could be revised (added text 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 **ICANN Board or** 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~~ **relevant** information.

## 2. STANDARD OF REVIEW

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

Provide more transparency in dismissal process.

Provide board with reasonable right to dismiss frivolous requests, but not on the grounds that one didn't participate in ICANN's public comment or on the claim one is vexatious or querulous, which is too subjective.

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 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

We need less reliance on the legal department (who hold a strong legal obligation to protect the corporation) to guide the BGC on its recommendations. More board member engagement is needed in the overall decision-making process.

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. The Ombudsman may have more of an eye for fairness to the community in looking at these requests. Note the bylaws charge the BGC with these duties, so BGC would utilize the Ombudsman instead of its current practice of ICANN's lawyers to aid the BGC's in its initial evaluation.

All final determinations of reconsideration requests are to be made by the entire board (not only requests about board actions as is the current practice).

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 the board will make all 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 goes into the board's decision-making process and the rationale for why decisions are ultimately taken. Recordings / transcripts should be posted of the substantive board discussions on the option of the requester.

Provide a rebuttal opportunity to the BGC's final recommendation (although requesters can't raise new issues in a rebuttal) before the full board finally decides.

Adding hard deadlines to the process, including final determinations of the board issued 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 BGC's 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 it, which shall also 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**

Transparency improvements throughout the process called for, including more complete documentation and prompt publication of submissions and decisions including their rationale.

ICANN's Document and Information Disclosure Policy (DIDP) should be revised and improved to accommodate the legitimate need for requesters to obtain internal ICANN documents that are relevant to their requests.

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.

Requesters provided more time to learn of action/inaction and to file the request.

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