

22 February 2018

ICANN
Board Accountability Mechanisms Committee (BAMC)
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536, USA

By email: reconsideration@icann.org

Dear Members of the BAMC,

Re: Consideration of Next Steps in the Community Priority Evaluation Process Review (Reconsideration Request 16-11)

We refer to our letters, sent by email, of 16 January 2018 and 1 February 2018 and to the BAMC meetings of 17 January 2018 and 2 February 2018.

In our letter of 1 February 2018, Requesters complained *inter alia* about the lack of transparency regarding the BAMC's consideration of the FTI CPE review reports. ICANN has never published the preliminary report of the BAMC meeting of 17 January 2018 at which it discussed the FTI CPE review reports.

ICANN has now published the minutes of the BAMC meeting of 17 January 2018. It appears from the meeting minutes that the BAMC did not take into account our letter of 16 January 2018. Shortly after that meeting, ICANN informed us that it had received our email of 16 January 2018 and that it would provide the email to the BAMC for consideration.

On 1 February 2018, we have sent a second letter to the BAMC. ICANN acknowledged receipt of the second letter on 2 February 2018. Also on 2 February 2018, ICANN posted the agenda of the BAMC meeting of 2 February 2018. The agenda mentions as first item: "Recent Correspondence to the ICANN Board re Community Priority Evaluation Process Review Reports". As the agenda does not identify the correspondence, it is yet unclear whether the BAMC considered both our letters at its meeting of 2 February 2018.

By now, ICANN should have informed Requesters about the discussions at the BAMC meeting of 2 February 2018, as it was under the obligation to publish the preliminary report of said meeting at the latest on 14 February 2018, pursuant to Article 3(5)(c) of ICANN's Bylaws. Article 3(5)(c) sets forth a simple and unambiguous rule, which is designed to ensure openness and transparency.

Requesters fail to understand why ICANN decided not to publish the preliminary report of the meeting of 2 February 2018 after Requesters already gave notice to ICANN about its previous failure to publish a preliminary report on the same topic.

As explained in more detail in Reconsideration Request 16-11 and previous correspondence, the lack of transparency surrounding the CPE and the CPE review is appalling. The finding that, for the second consecutive time and while being put on notice, ICANN is ignoring the simple and explicit rule of Article 3(5)(c) can only be explained by the fact that ICANN is being non-transparent about the CPE deliberately.

By failing to provide the necessary transparency, ICANN makes it impossible for affected parties to evaluate whether ICANN has been acting accountably, whether meeting minutes are accurate or whether they are influenced by events that occurred after the meeting.

In any event, ICANN should not proceed as suggested in the meeting minutes of 12 February 2018 pertaining to the BAMC meeting of 17 January 2018. According to said meeting minutes, the BAMC considered that as a result of FTI's findings, there will be no overhaul or change to the CPE process in the current New gTLD round. As explained in our letters of 16 January 2018 and 1 February 2018, FTI's findings are inconclusive. FTI's report is also non-transparent, containing gaps and lacking diligence and care. Nevertheless, the report reveals a lack of independence of the CPE provider, requiring ICANN to intervene and disregard the CPE result on .hotel.

ICANN confirmed that the BAMC would take our letters into account. The content of our letters leaves the BAMC no choice but to reconsider its findings of 17 January 2018. Please inform us immediately whether the BAMC has done so.

Requesters also urge ICANN to provide full transparency on its consideration of the CPE process and to list and give access to all material the BAMC considered during its meetings on the CPE process.

This letter is sent without prejudice and reserving all rights.

Yours sincerely,


Flip Petillion