

25 October 2010

Dennis Jennings
Vice-Chair ICANN Board, Chair of ICANN Board Governance Committee
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292-6601

Ref: Reconsideration Request (10-3) – Actions taken by the ICANN Board at the 25-September 2010 Special Meeting of the Board in connection with the High Security Zone TLD Advisory Group

Dear Dennis,

I am writing to you in your capacity as Chair of the ICANN Board Governance Committee, which under Article IV, Section 2.3 of the ICANN Bylaws is tasked with reviewing and considering Reconsideration Requests. I am filing this Reconsideration Request today to preserve my rights under the ICANN Bylaws that require such action within the 30 day window set forth in Article IV, Section 2.5.

In the interest of openness and transparency, I have also filed a request under ICANN's Documentary Information Disclosure Policy to obtain a copy of the ICANN staff briefing paper presented to the Board in connection with this action.

Please also be advised that I currently serve as the Chair of the High Security Zone Advisory Group which is the underlying subject matter of this reconsideration request. While there have been other members of the Advisory Group that have voiced their disappointment with the Board's actions, my actions in connection with this Reconsideration Request are purely in an individual capacity. Moreover, as part of my public disclosure statement made to the Advisory Group prior to my election as Chair, I disclosed working with clients that would like to participate in ICANN's new gTLD initiative.

Respectfully submitted,

Michael D. Palage

CC: Rita Rodin Johnston
Raymond A. Plzak
Ram Mohan
John Jeffrey

Elements of Reconsideration Request 10-3 Required Under the Bylaw

- (a) name, address, and contact information for the requesting party, including postal and e-mail addresses;

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- (b) the specific action or inaction of ICANN for which review or reconsideration is sought;

The "adopted resolutions" posted on the ICANN website in connection the 25 September 2010 Board meeting states:

High Security Zone (HSTLD) concept: The HSTLD concept is a voluntary concept being developed by a cross-stakeholder group including the financial services industry for use in TLDs wishing to provide services on a high-security basis. Thus, the development of the concept does not impact the launch of the gTLD application process. Any publication of this concept will be shared freely with other organizations that might be interested in development of such a concept.

ICANN will not be certifying or enforcing the HSTLD concept; ICANN is supporting the development of a reference standard for industry that others may choose to use as a certification standard of their own. ICANN will not endorse or govern the program, and does not wish to be liable for issues arising from the use or non-use of the standard.

- (c) the date of the action or inaction;

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- (d) the manner by which the requesting party will be affected by the action or inaction;

Simple Statement:

The ICANN Board took action before the HSTLD Advisory Group had even completed its research or issued a final report.

Detailed Statement:

I have served as a Chair of ICANN's High Security Zone TLD Advisory Group since shortly after its inception. In this voluntary leadership position I have easily invested over one hundred hours of my time. Many other members of the HSTLD Advisory Group including ICANN staff and ICANN consultants have made similar investments in time. The stated goal that has guided the work of the Advisory Group for much of the last year is as follows:

*"The goal of the High Security Zone Top Level Domain Advisory Group is to bring together community representatives to evaluate **the viability of a voluntary program**, supporting control standards and incentives that could potentially be adopted to provide an enhanced level of trust and security over the baseline registration-authority controls." (Emphasis added)*

As part of the group's ongoing research into the "viability" of this program, the Advisory Group in coordination with ICANN staff is conducting a Request for Information (RFI) process, see <http://www.icann.org/en/announcements/announcement-22sep10-en.htm> .

During the consensus building efforts within the group over the past year there has been some heated debate among the participants about the voluntary nature of this program and whether it would be hard coded into any final Applicant Guidebook. As Chair I have made sure that all options have remained on the table until we completed our research and made a fact based recommendation as required by the Affirmation of Commitments. The current ongoing RFI solicitation is a key part of our work.

There is one final note that I would like to state for the record. The HSTLD Advisory Group has remained on track with the mutually agreed timeline established with ICANN staff. Therefore the ICANN Board's unilateral action in connection with the HSTLD Resolution before we were even able to complete our work is truly disappointing.

(e) the extent to which, in the opinion of the party submitting the Request for Reconsideration, the action or inaction complained of adversely affects others;

ICANN created the HSTLD Advisory Group to address the concerns it had heard from the community regarding the need to mitigate malicious conduct. Therefore the ICANN Board's action in effectively walking away from the program "ICANN will not endorse or govern the program" prior to any final report from the group adversely affects those for whom this group was originally created.

The ICANN Board's unilateral actions also have a chilling effect on future bottom up consensus efforts because participants have no basis to know when the ICANN Board will take such unilateral actions in the future.

- (f) whether a temporary stay of any action complained of is requested, and if so, the harms that will result if the action is not stayed;

No stay is requested.

- (g) in the case of staff action or inaction, a detailed explanation of the facts as presented to the staff and the reasons why the staff's action or inaction was inconsistent with established ICANN policy(ies);

The HSTLD Advisory Group has had a very constructive relationship with ICANN staff and its consultants in connection with this project. This includes collaborating with ICANN policy, technical and legal staff regarding the drafting and issuance of the current RFI and other important milestone documents. Therefore it is puzzling why the Advisory Group was not consulted in connection with the Staff briefing paper presented to the Board, which effectively resulted in ICANN abandoning this initiative.

While there may appear to be some concern regarding potential liability ICANN may face regarding this program, ICANN legal staff has never meaningfully engaged the Advisory Group with regard to this concern to see how it could be addressed from a viability standpoint.

- (h) in the case of Board action or inaction, a detailed explanation of the material information not considered by the Board and, if the information was not presented to the Board, the reasons the party submitting the request did not submit it to the Board before it acted or failed to act;

The "material" not considered is the final report that has not been prepared because of the outstanding RFI process underway that will allow the Advisory Group to eventually make a fact based recommendation as set forth in the Affirmation of Commitments.

- (i) what specific steps the requesting party asks ICANN to take-i.e., whether and how the action should be reversed, cancelled, or modified, or what specific action should be taken;

The ICANN Board should rescind/revoke the text from the 25 September 2010 Resolution relating to the HSTLD program and allow the bottom up consensus process

to work. Following the timely receipt of our final report, the ICANN Board can make an informed fact based decision per the requirements of the Affirmation of Commitments.

(j) the grounds on which the requested action should be taken; and

For all of the reasons stated above, but most importantly the HSTLD Advisory Group has not yet to complete its work.