

## **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](mailto:reconsideration@icann.org).

### **1. Requester Information**

**Name:** Atgron, Inc.

**Address:** Contact Information Redacted

**Email:** Contact Information Redacted

**Phone Number (optional):**

(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.**

The Registry Services organization is requiring a second Trademark and Claims Period for our proposed sale of third level extensions (see attached proposed Amendment to .wed Registry Agreement dated 24 Nov 2014). We believe this is not a reasonable requirement given Trademark Holders had an opportunity to apply for their Trademarks as required by the Trademark Clearinghouse Rights Protection Mechanism and have the post-Trademark and Claims period remedies are available for all Trademark Holders.

The Registry Services group also removed from our requested list any extensions that mirror Trademarks registered in the Trademark Clearinghouse. This is an overreach. None of the extensions we have applied to sell are terms that can be trademarked. The one Public Comment from the first public comment period that referenced marks that were supposedly registered for the term "Bebe" were actually rejected by the USPTO because "bebe" is a generic term for baby in multiple languages and Trademarks have to be specific to a "class" i.e. a clearly identifiable purpose. All of the terms we have applied to sell as third-level extensions fall into the category of generic terms of this nature, common last names or dates in the future.

**4. Date of action/inaction:**

The proposed amendment was posted in the GDD portal on 11/25/2014.

**5. On what date did you become aware of the action or that action would not be taken?**

Since 12/12/2014 we have been requesting the requirement for another Trademark and Claims period be removed from the amendment and the reinstatement of the list we applied for.

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

A requirement for another Trademark and Claims period will further delay our ability to offer third level extensions to the general public and create an undue burden on our Registry and Registrar. All Trademark Holders were offered the opportunity to apply for their .wed extensions during our Trademark and Claims period and have the remedies provided in Specification 7 of the Registry Agreement for any Trademark issues subsequent to the required Trademark and Claims period.

The removed third level extensions will restrict the ability of non-English speakers to use .wed third-level extensions.

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

Registrants will be negatively impacted by the inability to buy third-level extensions, which have a lower price point than our second-level extensions potentially pricing out customers in developing countries who would like to use the .wed TLD.

**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.

Section 3 Claims Period of the Trademark Clearinghouse Rights Protection Mechanism document (Source: <https://www.icann.org/resources/pages/tmch-requirements-2014-01-09-en>) sets forth the requirement that provides all Trademark Holders with notification if their registered trademarks are via "Notifications of Registered Names, NORNS". "NORNS are provided by the Trademark Clearinghouse to eligible Trademark Holders." Atgron satisfied these requirements in March of 2014. All Trademark Holders now have the other remedies as stated in the .wed Registry Agreement Specification 7, the Trademark Post--Delegation Dispute Resolution Procedure (PDDRP) and the Registration Restriction Dispute Resolution Procedure (RRDRP) as well as the Uniform Rapid Suspension system ("URS").

**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:**

(You may attach additional sheets as necessary.)

**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 are asking ICANN to remove the requirement for another Trademark and Claims period and to reinstate our initial requested list of extensions.

**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.**

(Include in this discussion how the action or inaction complained of has resulted in material harm and adverse impact. To demonstrate material harm and adverse impact, the requester must be able to demonstrate well-known requirements: there must be a loss or injury suffered (financial or non-financial) that is a directly and causally connected to the Board or staff action or inaction that is the basis of the Request for Reconsideration. The requestor must be able to set out the loss or injury and the direct nature of that harm in specific and particular details. The relief requested from the BGC must be capable of reversing the harm alleged by the requester. Injury or harm caused by third parties as a result of acting in line with the Board's decision is not a sufficient ground for reconsideration. Similarly, injury or harm that is only of a sufficient magnitude because it was exacerbated by the actions of a third party is also not a sufficient ground for reconsideration.)

We make this request as a party to the signed .wed TLD Registry Agreement between ICANN and Atgron, Inc. which remains in force until Oct 1, 2023.

The harm has been because we are unable to offer this service to our customers in the same manner as our competitors such as .name.

**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**

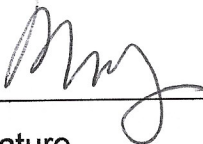
The Board Governance Committee has the ability to consolidate the consideration of Reconsideration Requests if the issues stated within are sufficiently similar.

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.

  
\_\_\_\_\_  
Signature

17 June 2015  
Date

**Attachment**

## Amendment to the Registry Agreement

The Internet Corporation for Assigned Names and Numbers and Atgron, Inc. agree, effective as of \_\_\_\_\_ (“Amendment Effective Date”), that the following modification is made to the 1 October 2013 .WED Registry Agreement:

### I. EXHIBIT A - Approved Services

#### [New Text]

#### 7. Third Level Registrations

Registry Operator may offer domain name registrations at the third level under those REGISTRY-CLASS DOMAIN NAMES (as that term is defined in the DNDE Specification referenced and incorporated in Section 3.1 of Specification 2 of this Agreement) posted at [\[link\]](#) as follows:

- 1) Registry Operator must provide sunrise and claims services for domain name registrations at the third level under all the REGISTRY-CLASS DOMAIN NAMES and such sunrise and claims services must be provided at the same time for all the REGISTRY-CLASS DOMAIN NAMES.
- 2) [Respecting Sunrise/Claims for REGISTRY-CLASS DOMAIN NAMES]:

##### ➤ [OPTION #1]

*“Registry Operator must provide a special sunrise period for all REGISTRY-CLASS DOMAIN NAMES. During the special sunrise period, the domain names must not be withheld by the Registry Operator. At the end of the special sunrise period, the Registry Operator must (1) self-allocate the non-registered names as described in provision 3, and (2) submit a sunrise-qlp LORDN file with all the names that were self-allocated that match a label in the SURL or DNL using the special SMD-id as described in section 5.4.1 of the TMCH functional specifications.”*

##### ➤ [OPTION #2]

*“Include no requirement, because REGISTRY-CLASS DOMAIN NAMES are simply namespaces, similar to TLDs, under which domain name registrations by third parties may exist (e.g. co.uk, b.br, com.mx).”*

- 3) REGISTRY-CLASS DOMAIN NAMES must be allocated to the Registry Operator. The self-allocation transactions of the REGISTRY-CLASS DOMAIN NAMES must be reported in the Per-Registrar Transactions Report using 9999 as the Registrar IANA-id, and will not be considered billable transactions. For the avoidance of doubt, domain name registrations at the third level under those REGISTRY-CLASS DOMAIN NAMES will be considered billable transactions.
- 4) If using separate DNS zone files for the REGISTRY-CLASS DOMAIN NAMES, REGISTRY-CLASS DOMAIN NAMES zones permissible contents are:

- A. Apex SOA record;
- B. Apex NS records and in-bailiwick glue for the DNS servers of the REGISTRY-CLASS DOMAIN NAMES
- C. NS records and in-bailiwick glue for DNS servers of registered names in the REGISTRY-CLASS DOMAIN NAMES
- D. DS records for registered names in the REGISTRY-CLASS DOMAIN NAMES
- E. Records associated with signing the REGISTRY-CLASS DOMAIN NAMES zones (i.e., RRSIG, DNSKEY, NSEC, NSEC3PARAM and NSEC3)

If Registry Operator wishes to place any DNS resource record type into its REGISTRY-CLASS DOMAIN NAMES DNS zones (other than those listed in Sections (a)-(e) above), it must describe in detail its proposal and submit a Registry Services Evaluation Process (RSEP) request. This will be evaluated per RSEP to determine whether the service would create a risk of a meaningful adverse impact on security or stability of the DNS. Registry Operator recognizes and acknowledges that a service based on the use of less-common DNS resource records in the REGISTRY-CLASS DOMAIN NAMES zones, even if approved, might not work as intended for all users due to lack of software support.

- 5) REGISTRY-CLASS DOMAIN NAMES MUST NOT be used as in-bailiwick glue for the DNS servers of the TLD or the REGISTRY-CLASS DOMAIN NAMES.
- 6) If using separate DNS zone files for the REGISTRY-CLASS DOMAIN NAMES, the DNS zone files of the REGISTRY-CLASS DOMAIN NAMES must be made available to ICANN as detailed in Section 2, Specification 4.
- 7) Any registration at the third level under the REGISTRY-CLASS DOMAIN NAMES is subject to section 6.2 of the Trademark Post-Delegation Dispute Resolution Procedure, as posted at <https://newgtlds.icann.org/en/applicants/agb/pddrp-04jun12-en.pdf>.
- 8) REGISTRY-CLASS DOMAIN NAMES are subject to section 6.1 of the Trademark Post-Delegation Dispute Resolution Procedure, as posted at <https://newgtlds.icann.org/en/applicants/agb/pddrp-04jun12-en.pdf>.
- 9) Those REGISTRY-CLASS DOMAIN NAMES posted at the URL listed above may be updated from time to time subject to RSEP and upon mutual written agreement of the parties.
- 10) For the avoidance of doubt, any reference in the Agreement to “registration,” “registrations,” “transactions,” “domain” or “domains,” to include as such terms pertain to any right, duty, liability or obligation of the Registry Operator, registrar or registrant, shall include registrations at the third-level under any REGISTRY-CLASS DOMAIN NAME.
- 11) Except as specifically provided for above, REGISTRY-CLASS DOMAIN NAMES and any registration at the third-level under any REGISTRY-CLASS DOMAIN



NAMES remain subject to all terms and conditions of the Agreement.

The parties have duly executed this Amendment as of the Amendment Effective Date first written above.

**INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS**

By: \_\_\_\_\_  
Akram Atallah  
President, Global Domains Division

**ATGRON, INC.**

By: \_\_\_\_\_  
Adrienne McAdory  
President & CEO