

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.

1. Requester Information

Name: Christopher Barron

Address: Contact Information Redacted

Email: Contact Information Redacted

Phone Number (optional): Contact Information Redacted

Contact Information Redacted

(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

My reconsideration request is related to an external panel contracted by ICANN, that is, the ICC and its adjudication of community objections. It is my understanding that the reconsideration request may also apply to external panels contracted to fulfill ICANN procedural issues.

3. Description of specific action you are seeking to have reconsidered.

(Provide as much detail as available, such as date of Board meeting, reference to Board resolution, etc. You may provide documents. All documentation provided will be made part of the public record.)

To start, here is a timeline of the events:

- March 12th - GOProud Objection Sent to ICC
- March 15th - Spela sends me Contact Information Redacted an e-mail asking if it's one complaint or two
- March 28th - ICC sends me Contact Information Redacted email saying that the objection is over the 5,000 word limit and that I have 5 days (from tomorrow) to respond.
- April 1st - Scott Seitz e-mails Spela at ICC asking what's up with the GOProud Objection (I am not copied)
- April 4th - I e-mail ICC inquiring about the status of the GOProud Objection
- April 9th – I send another e-mail to ICC inquiring about the status of the GOProud Objection
- April 9th - Hannah at ICC acknowledges my inquiries of April "5"th and April 9th and indicates that we've missed the deadline to deal with the issue. She points to the letter of March 28th which the ICC sent to Contact Information Redacted.
- April 10th – I send **Letter to ICC** (Spela) explaining that I never received their original e-mail explaining that we were over the 5,000 word limit
- April 10th - Spela sends the original March 28th e-mail and a outlooks automatic delivery receipt, which actually states that "no delivery notification was sent by the destination server" (i.e. mine)
- April 16th – I send **First Letter** to Fadi
- April 29th – I send **Second Letter** to Fadi along with FedEx
- May 2nd - Christine Schachter acknowledged receipt of the e-mails and said "Your correspondence and inquiries have been forwarded to the New gTLD Program Staff for processing"
- May 6th - I responded with "Thank you for your email below. Please let me know next steps, whether you need anything further from me, and when I can expect to hear results from the processing of my inquiry. In any event, I will follow up with you in a few days to check on the status."

- May 17th - **Letter to Ombudsman**
- May 20th - **Scott Seitz Letter** to Ombudsman and myself
- May 21st - **Ombudsman e-mail to Scott Seitz and myself**
- May 22st – **I respond to Ombudsman**
- May 30th - **Steve Crocker** says they'll get back to Ombudsman quickly
- May 31st - **Ombudsman's e-mail** to ICANN Board
- 6/12/13 - Letter to Chris LaHatte with more details which he asked for
- 6/26/13 **LaHatte** publishes his letter to ICANN & DomainIncite Blogs; argues that there has been unfairness and that my objection should stand.
- 7/13/13 - **Resolved (2013.07.13.NG03)** the New gTLD Program Committee directs the President, Generic Domains Division, or his designee to forward to the ICC the Ombudsman's report about GOProud's objection to a .GAY application and ask the Center for Expertise of the International Chamber of Commerce to revisit its decision in light of the facts and analysis stated in the Ombudsmans' report.
- 9/19/13 **ICC** "...the Standing Committee is currently analyzing the issue and has decided that a further discussion is necessary"
- **10/2/13 ICC (Spela)** "The Centre informs you that on 1 October 2013, the Standing Committee reconsidered this matter and decided not to revise the Centre's decision not to register the present matter. Therefore this matter will not be registered. Accordingly the Centre has now terminated this matter and will close the file. We remind parties that the Filing Fee is non-refundable"

To recap, the ICC claims that my original objection was over 5,000 characters. This is only accurate if one counts every word in the headings, footnotes and standing section - as opposed to the "substantive portion". This was not at all clear from the instructions. I have since fixed this easily by deleting a few words and have resubmitted it. The ICC took my 5,000 euros and cancelled my objection on the basis that I didn't fix this in time. My concerns are:

First, I was unable to address the issues because I did not learn of them in time. To that end, I am prepared to swear under oath that I did not receive the supposed e-mail notification. Further, the only "proof" that the ICC has provided to me is a Microsoft Exchange-based "receipt" that actually states that "no delivery notification was sent by the destination server" (i.e. mine).

Second, and on a related note, the ICC is supposed to notify all parties and ICANN within fourteen (14) days of compliance issues - but they did not do so. Given that I did not receive any notification of the 5,000 word issue (but was notified of a separate compliance issue via a different email address Contact Information Redacted that I had specifically listed as GOProud's official "representative" in the Objection) within the 14-day timeframe, I proceeded under the completely reasonable assumption that my objection was fine. The ICC claims that they (and other DRSPs) had been granted an extension to the admin review deadline, which was supposedly posted to ICANN's new gTLD site at an earlier stage, yet no one has been able to locate the specific page where it is located.

ICC started communicating with me using one of my e-mail addresses
Contact Information Redacted and then for no apparent reason switched to using my
other address Contact Information Redacted and refused to even CC the first email address
(that they had already been using) notwithstanding the fact that the subsequent
correspondence had a much greater and more prejudicial impact (namely, complete
dismissal of the objection with prejudice).

I have carefully followed the rules in good faith, but the ICC refuses to honor my
objection.

4. Date of action/inaction:

(Note: If Board action, this is usually the first date that the Board posted its
resolution and rationale for the resolution or for inaction, the date the Board
considered an item at a meeting.)

The last action taken by the ICC was on October 2nd, when they rejected my
objection for the second time. It remains unclear to me if the reconsideration
timeline is in “calendar days” or “business days,” and in the case of the former, I
must stress to the BGC that I am a newcomer to the ICANN process and was not
aware of the reconsideration process, and its ability to apply to external panels,
until an article published on October 15th on Domain Incite, (“Reconsideration is
not an Appeals Process: ICANN delivers another blow to Amazon’s gTLD
hopes”). Thus, given the fact that this avenue of reconsideration has not been
widely described, in the AGB or elsewhere, I am still within the 15 day time frame
from when this particular article was published.

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

(Provide the date you learned of the action/that action would not be taken. If
more than fifteen days has passed from when the action was taken or not taken
to when you learned of the action or inaction, please provide discussion of the
gap of time.)

Most recently, on October 2nd 2013

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

My objection is not allowed to stand, and consequently, my voice and views related to the delegation of the .gay TLD via “Community Priority,” is not being heard. This decision affects my constituents and I greatly, and we are interested in taking a stand against what we see as an aggressive attempt to lump all gay men and women into one community, along with others who may use or be associated with the term, that is, LGBT individuals. A Community Priority .gay TLD ignores our own voice and the diversity of the groups in question.

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

The entire LGBT populace is being taken advantage of by one company’s attempt to lump them into one group, which they claim they are entitled to speak for. This has the possibility to affect tens of millions of people around the world, and will impact how gay men, LBT individuals, and the world at large use the domain system to interact with one another. The fact that my voice is being silenced on a technicality has repercussions for tens of millions of other people that are not recognized, or unilaterally co-opted, by dotgay LLC’s “community” plans.

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.

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.)

Please also refer to my response to question #3. This is a question of fairness. The ICC is deciding when it can manipulate timelines, both for itself and for objectors, to the benefit of some and the detriment of others. The ICC DID NOT FOLLOW ITS OWN PROCEDURAL RULES, in that it did not contact me within fourteen (14) days to notify me of compliance issues. They claim to have received an extension to this timeframe from ICANN, BUT THIS WAS NOT ACKNOWLEDGED IN ANY PUBLIC WAY AT THE TIME.

When they did contact me, they used a different email address than the one that had already been used by them to establish contact for another unrelated procedural issue. I DID NOT RECEIVE THE OUTREACH RELATED TO THE WORD LIMIT BEING SURPASSED, and I am prepared to swear under oath to this fact, and the only proof they have is a receipt that acknowledges the murkiness of their claim, the email receipt states: "no delivery notification was sent by the destination server" (i.e. mine).

I contacted them on April 5th and April 9th; the ICC responded on the 9th and acknowledged my outreach from that day and the 5th, and at the same time told me I did not rectify the word limit issue in time, the very same issue that I was never informed of.

The ICANN Ombudsman, Mr. Chris LaHatte, agreed that there was an issue of unfairness. The NGPC implicitly acknowledged this issue by forwarding the Ombudsman's response onto the ICC.

The ICC has unfairly rejected me on procedural technicalities while holding itself and other objectors to other standards, wherein it has moved its own deadlines and the deadlines for other objectors.

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?)

I want ICANN to direct the ICC to let my objection stand, or to otherwise facilitate the full consideration of my Community Objection against dotgay LLC.

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.)

I had standing to file a Community Objection with the ICC, and as such, should have standing to request reconsideration. The material harm of this action remains unknown, but it will be felt by my constituents and all other minority gay and LBT groups that are not welcomed into dotgay LLC's "community," this is potentially significant and irreversible. This is an issue of disenfranchisement. If the BGC were to direct the relevant parties to allow my objection to stand, my voice and concerns would be fairly heard and respected and as such, the BGC's actions have the potential to reverse the current harm caused by being unfairly ignored and dismissed.

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>.

Yes. I have attached documents related to the above timeline, including the exchanges between the ICC and myself, and correspondence from the Ombudsman and the NGPC.

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.

____ Christopher Barron _____

Signature

October 19 2013 _____

Date