

## **Reconsideration Request Form**

Version of 1 October 2016

ICANN's Board Governance Committee (BGC) is responsible for receiving requests for review or reconsideration (Reconsideration Request) from any person or entity that believes it has been materially and adversely affected by the following:

- (a) One or more Board or Staff actions or inactions that contradict ICANN's Mission, Commitments, Core Values and/or established ICANN policy(ies);
- (b) One or more actions or inactions of the Board or Staff that have been taken or refused to be taken without consideration of material information, except where the Requestor could have submitted, but did not submit, the information for the Board's or Staff's consideration at the time of action or refusal to act; or
- (c) One or more actions or inactions of the Board or Staff that are taken as a result of the Board's or Staff's reliance on false or inaccurate relevant information.

The person or entity submitting such a Reconsideration Request is referred to as the Requestor.

Note: This is a brief summary of the relevant Bylaws provisions. For more information about ICANN's reconsideration process, please visit <https://www.icann.org/resources/pages/governance-committee-2014-03-21-en>.

This form is provided to assist a Requestor 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.

Requestors 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. Requestors may submit all documentary evidence necessary to demonstrate why the action or inaction should be reconsidered, without limitation.

*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. Requestor Information**

**Name:** Russ Smith

**Address:** Contact Information Redacted

**Email:** Contact Information Redacted

**Phone Number (optional):**

(Note: ICANN will post the Requestor's name on the Reconsideration Request page at <https://www.icann.org/resources/pages/accountability/reconsideration-en>. Requestor's address, email and phone number will be removed from the posting.)

**2. 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.)

My domain was ordered transferred under the UDRP and I have filed court action to review the case (1:15-cv-00081-JBS-AMD SMITH v. DIRECTOR'S CHOICE, LLP). For this case I need historical whois data. Verisign has refused my request claiming the data is "sensitive."

According to <https://www.icann.org/resources/pages/affirmation-of-commitments-2009-09-30-en> at section 9.3.3 it is ICANN's policy to make whois data public.

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

(Note: If Board action, this is 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 date is the date of the initial posting of the rationale.)

I received the following message from ICANN. It appears to be a "stock" answer and it appears ICANN staff did not review the issues contained in my message:

Dear Russ Smith,

Thank you for submitting a Whois SLA complaint concerning the domain name [directorschoice.com](http://directorschoice.com). ICANN has reviewed and closed your complaint because:



- ICANN does not have contractual authority to address any customer-service related matters that fall outside of the Registrar Accreditation Agreement (RAA) or Registry Agreement (RA) and ICANN policies. Complaints about a registrar or registry's performance that cannot be resolved with that entity may be addressed by private-sector agencies involved in addressing customer complaints (e.g., the Better Business Bureau at <http://www.bbb.org/> or the International Consumer Protection and Enforcement Network <http://www.icpen.org/> ). If you believe your complaint concerns an illegal matter, please contact the appropriate law enforcement agency (which will vary depending on jurisdiction) or you may consult an attorney for legal advice.

ICANN considers this matter now closed.

**4. 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 thirty 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.)

3/9/2017

**5. Describe how you believe you are materially and adversely affected by the action or inaction:**

The action will prevent me from seeking a full court review pursuant to the UDRP. ICANN may now be liable under the intentional misconduct provision of the UDRP and may be subject to claims under the Anti-Cybersquatter Protection Act.

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

This is a security issue because unauthorized entities are compiling whois data and selling it. Verisign referred me to these entities but said the data could be unreliable. I understand some of these private services are run by pornographers and others who were involved in massive cybersquatting lawsuits.

**7. Detail of the ICANN Action/Inaction – Required Information**

Please provide a detailed explanation of the facts as you understand they were provided to the Board or the ICANN organization (acting through its staff) prior to the action/inaction and the reasons why ICANN's action or inaction was: (i)



contrary to ICANN's Mission, Commitments, Core Values and/or established ICANN policy(ies); (ii) taken or refused to be taken without consideration of material information; or (iii) taken as a result of ICANN's reliance on false or inaccurate relevant information..

If your request is in regards to an ICANN action or inaction that you believe is contrary to established ICANN policy(ies), the policies that are eligible to serve as the basis for a Reconsideration Request are those that are approved by the ICANN Board (after input from the community) that impact the community in some way. When reviewing Board or staff action, the outcomes of prior Reconsideration Requests challenging the same or substantially similar action/inaction as inconsistent with established ICANN policy(ies) shall be of precedential value.

If your request is in regards to an action or inaction taken or refused to be taken without consideration of material information, please provide a detailed explanation of the material information not considered by the ICANN. If that information was not presented to the ICANN, provide the reasons why you did not submit the material information before ICANN acted or failed to act. "Material information" means facts that are material to the decision.

If your request is in regards to an action or inaction that you believe is taken as a result of ICANN's reliance on false or inaccurate relevant information, provide a detailed explanation as to whether an opportunity existed to correct the material considered by the Board or Organization. If there was an opportunity to do so, provide the reasons that you did not provide submit corrections before the action/failure to act.

Reconsideration Requests are not meant for those who believe that ICANN 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 ICANN in order to state a Reconsideration Request. Similarly, new information – information that was not yet in existence at the time of the decision – is also not a proper ground for reconsideration.

Reconsideration Requests are not available as a means to seek review of country code top-level domain ("ccTLD") delegations and re-delegations, issues relating to Internet numbering resources, or issues relating to protocol parameters.

Please keep this guidance in mind when submitting requests.

**Provide the Required Detailed Explanation here:**

It is my understanding that it is ICANN's policy to allow public access to whois data without regard to whether it is "historical." Further, these requirements are part of the agreements ICANN has with the registrars and registries. As

discussed above, the current situation has security implications for the public.

**8. 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?)

Ensure there is public access to all whois data. If there is some reason that the historical whois data is not be public then that should be explained at the ICANN web site and an explanation should be provided to the US Dept. of Commerce.

**9. Please state specifically the grounds under which you have the standing and the right to assert this Reconsideration Request, 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 Requestor 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 ICANN's action or inaction that is the basis of the Reconsideration Request. 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 must be capable of reversing the harm alleged by the Requestor. Injury or harm caused by third parties as a result of acting in line with the ICANN's decision/act 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 will suffer a monetary loss because I will have the expense of filing subpoenas.

**10. Are you bringing this Reconsideration Request on behalf of multiple persons or entities? (Check one)**

Yes

No

**10a. If yes, is the causal connection between the circumstances of the Reconsideration Request and the harm substantially the same for all of the Requestors? 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 <https://www.icann.org/resources/pages/accountability/reconsideration-en>.

No.

## **Terms and Conditions for Submission of Reconsideration Requests**

The Board Governance Committee has the ability to consolidate the consideration of Reconsideration Requests if: (i) the requests involve the same general action or inaction; and (ii) the Requestors are similarly affected by such action or inaction.

The Board Governance Committee may dismiss a Reconsideration Requests if: (i) the Requestor fails to meet the requirements for bringing a Reconsideration Request; or (ii) it is frivolous.

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.

For all Reconsideration Requests that are not summarily dismissed, except where the Ombudsman is required to recuse himself or herself and Community Reconsideration Requests, the Reconsideration Request shall be sent to the Ombudsman, who shall promptly proceed to review and consider the Reconsideration Request. The BGC shall make a final recommendation to the Board with respect to a Reconsideration Request following its receipt of the Ombudsman's evaluation (or following receipt of the Reconsideration Request involving those matters for which the Ombudsman recuses himself or herself or the receipt of the Community Reconsideration Request, if applicable).

The final recommendation of the BGC shall be documented and promptly (i.e., as soon as practicable) posted on the ICANN Website and shall address each of the arguments raised in the Reconsideration Request. The Requestor may file a 10-page (double-spaced, 12-point font) document, not including exhibits, in rebuttal to the BGC's recommendation within 15 days of receipt of the recommendation, which shall also be promptly (i.e., as soon as practicable) posted to the ICANN Website and provided to the Board for its evaluation; provided, that such rebuttal shall: (i) be limited to rebutting or contradicting the issues raised in the BGC's final recommendation; and (ii) not offer new evidence to support an argument made in the Requestor's original Reconsideration Request that the Requestor could have provided when the Requestor initially submitted the Reconsideration Request.

The ICANN Board shall not be bound to follow the recommendations of the BGC. The ICANN Board's decision on the BGC's recommendation is final and not subject to a Reconsideration Request.

Russ Smith  
Signature

3/9/2017  
Date