

Reconsideration Request

1. **Requester Information**

Name: Dadotart, Inc.

Address: Contact Information Redacted

Email: Contact Information Redacted

Phone Number (optional): Contact Information Redacted

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.**

Dadotart, Inc. ("Dadotart") is seeking reconsideration of the Economic Intelligence Unit ("EIU") Community Priority Evaluation panel's (the "Panel") determination that Dadotart's Application, no. 1-1097-20833 for .ART (the ".ART Community Application") did not meet the requirements for Community Priority specified in the Applicant Guidebook ("AGB") (the "Panel Determination") and subsequent placement of the Application into active contention by the New gTLD Programming Committee ("NGPC")

4. Date of action/inaction:

The Community Priority Evaluation Report (the "Report") lists the date of the Panel Determination as 10 September 2014. On 12 September 2014, ICANN placed the Application into active contention with the remaining applicants.

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

Dadotart became aware of the actions on the dates identified above, 10 September 2014 and 12 September 2014 respectively. This Reconsideration Request has been filed within fifteen days of the earliest date listed above.

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

The Panel Determination, based on its violation and misapplication of the policies and processes set out in the AGB, CPE Guidelines and ICANN Bylaws, and the subsequent placement of the .ART Community Application into active contention, will materially affect Dadotart because Dadotart will now have to resolve contention of the Application with nine other applicants and the community represented by the Dadotart application will be denied the financial benefits of a priority designation. This will cause significant material harm to Dadotart and its community. As a result of the Panel Determination, which is inconsistent with

both AGB and ICANN policy, Dadotart will incur significant additional expenses to participate in the contention auction and ultimately may and not be able to operate the .ART TLD.

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

Aside from the specific harm to Dadotart cited above, the broader ICANN community has been impacted in the following ways:

First, it is widely acknowledged within the community that there has been a lack of uniformity regarding certain aspects of the new gTLD process requiring subjective analysis, e.g. Objection and CPE. In fact one need look no further than ICANN's still outstanding "Proposed Review Mechanism to Address Perceived Inconsistent Expert Determinations on String Confusion Objections."

Second, ICANN permitted the EIU to enact a substantial change in the CPE process by implementing a two person panel that provided an internal review/appeal mechanism. This was never the original intent of the AGB as all objection panels and CPE panels were intended to be single person panels unless a multi-panel review was requested. Evidence of this substantive change is evidenced by the AGB which original estimated a \$10,000 fee for CPE, which was then more than doubled to \$22,000. No other challenge process had this type of increase in projected fees. However, this doubling of fees is easily explained when accounting for the change in process by incorporating the

second panelist.

Third, despite permitting these substantive changes to the CPE process, it does not appear that ICANN properly informed EIU about GAC advice on community applications. Since the Beijing Communique there has been repeated references for the need to take into account community applicants and/or those applications with community support.

Fourth, the community associated to the arts and that was to be served by the Dadotart community application is at risk of having the .ART namespace thrust into commercial exploitation without regard or respect to the world wide historical, cultural and societal importance of the arts.

8. Detail of Board or Staff Action – Required Information

Dadotart acknowledges that several other Reconsiderations Requests have been filed in connection with CPE results, including those challenging both favorable and adverse findings by the Panels. However, unlike these other Reconsideration Requests, Dadotart is also seeking to challenge the process by which ICANN permitted a substantive change in the CPE process from that as originally set forth in the AGB.

As noted above ICANN permitted EIU to implement an internal review/appeal mechanism into the CPE. This was never the original intent of the AGB as all objection panels and CPE panels were intended to be a single person panel

unless a multi-panel review was requested by a party to the proceeding. The incorporation of this feature resulted in a doubling of fees to applicants seeking CPE. ICANN staff communicated to the community that EIU was developing guidance for its panels and undertaking test/pilot evaluations. However, when the community asked for this documentation and the results of these test/pilot evaluations during an ICANN webinar, ICANN staff (Christine Willet) refused.

The refusal of ICANN to produce any communication between itself and EIU has impeded the ability of the community to see if appropriate GAC advice has been communicated to the EIU and the Panels. This is a gross violation of administrative procedure and a claim of privilege with respect to such matters is completely inappropriate and without basis in law in any corresponding fora.

ICANN also permitted EIU to withhold the identity of the panelists, especially in light of some of the concerns regarding the objectivity of the ICANN selected Independent Objector. Therefore, unlike the drafting of the AGB which done largely in an open and transparent fashion, many of the substantive changes undertaken in connection with the CPE process has been done in a closed and opaque fashion.

Finally, any fair reading the CPE report on the Dadotart application (and the report for Eflux issued contemporaneously) indicates a results-based interpretation of various elements of the AGB and a lack of objective and consistent use of definitional constructs. Most troubling is a "reach" to externalities chosen by the panelists for guidance in a specialized field, the arts, without any consultation with the applicant. Without knowledge of the

qualifications of the panelists there can be no assurance that the panelists held the requisite expertise to make their evaluations. This is another gross violation of established, fair administrative procedures.

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?)

Dadotart is requesting the release of EIU documentation cited above (panelist training material, pilot test results and the identity and qualifications of the panelists). However, given ICANN's repeated refusal to comply with this request from multiple third parties, Dadotart in the alternative is requesting that .ART not be subject to an ICANN auction of last resort until GAC Buenos Aires advice is followed; specifically, that ICANN provide "a briefing on the public policy implications of holding auctions to resolve string contention (including community applications)." Finally, Dadotart is requesting a refund of \$12,000. This is the amount in excess of the original quoted \$10,000 in the AG.

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.

Dadotart has standing and the right to assert this request for Reconsideration because the Panel's Determination, and the ICANN's subsequent placement of Dadotart's .ART application into active contention, was based on the Panel's failure to follow the established policies and procedures for Community Priority

Evaluation in the AGB and ICANN's Bylaws, which emphasize a commitment to open and transparent decision-making

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?

At this time no. However, Dadotart, is preparing a separate Documentary Disclosure Information Policy (DIIP) request which it intends to file shortly after this submission. If this request or other pending DIIP requests filed by other third parties seeking review of CPE panel actions produce any relevant information, Dadotart reserves the right to amend this filing.

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.

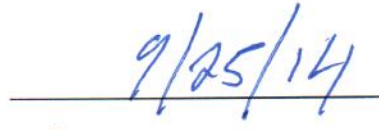
The ICANN Board of Director's decision on the BGC's reconsideration recommendation is final and not subject to a reconsideration request.

A handwritten signature in blue ink, appearing to read "Joshua S. Wattles", written over a horizontal line.

Dadotart, Inc.

By: Joshua S. Wattles

Its: Advisor in Cheif

A handwritten date "9/25/14" in blue ink, written over a horizontal line.

Date