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#ICANN51

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# Board Governance Committee 2014 Annual Report on Accountability Mechanisms

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# 1. Reconsideration Requests

# Bylaws Provisions Regarding Annual Report on Reconsideration Requests

- ICANN's Reconsideration Policy is set forth in Article IV, section 2 of ICANN's Bylaws.
- This annual report is presented in fulfillment of subsection 19 of that policy, which calls for the BGC to provide information found in the following slides.

# Information on Specific Reconsideration Requests

# Number and Nature of Reconsideration Requests Received

Fifty Reconsideration Requests have been received from 8 November 2013 thru 1 October 2014:

- Request 13-17: Reconsideration of the NGPC's 4 June 2013 resolution accepting the GAC's consensus advice to reject the requester's application for the .GCC string.
- Request 13-18: Reconsideration of the Expert Determination dismissing the requester's community objection for the .LGBT gTLD.
- Request 13-19: Reconsideration of the NGPC's alleged failure to stay the requester's community objection to the application for the .HOTELS gTLD.
- Request 13-20: Reconsideration of ICANN's alleged failure to properly prepare the ICC to decide community objections and to ensure compliance with the established procedures concerning sensitive strings (such as .BANK), and to provide a mechanism to appeal expert determinations.



# Number and Nature of Reconsideration Requests Received (cont.)

- Request 13-21: Reconsideration of the Expert Determination dismissing the requester's community objection to the application for .LOTTO.
- Request 13-22: Reconsideration of ICANN's alleged failure to properly supervise the ICC, to advise the ICC and appointed expert panelists on GAC advice, and to provide an appropriate appeal process for community objections.
- Request 13-23: Reconsideration of the Expert Determination upholding the Independent Objector's (IO's) limited public interest objection to the requester's application for .HOSPITAL.
- Request 14-1: Reconsideration of the Expert Determination upholding the IO's community objection to the requester's application for .MED.



# Number and Nature of Reconsideration Requests Received (cont.)

- Request 14-2: Reconsideration of the Expert Determination dismissing the requester's community objection to the application for .GOLD.
- Request 14-3: Reconsideration of the Expert Determination upholding the Independent Objector's community objection to the requester's application for .CHARITY.
- Request 14-4: Reconsideration of the Expert Determination dismissing the requester's community objection to the application for .KOSHER.
- Request 14-5: Reconsideration of the Expert Determination upholding string confusion objections to the requester's applications for .WEBS

# Number and Nature of Reconsideration Requests Received (cont.)

- Request 14-6: Reconsideration of the Expert Determination upholding the community objection to the requester's application for .RUGBY.
- Request 14-7: Reconsideration of the NGPC's 5 February 2014 resolution deferring the contracting process for the requester's applications for the .ISLAM and .HALAL strings until certain noted conflicts have been resolved.
- Request 14-8: Reconsideration of ICANN staff's alleged failure: (i) to properly supervise the ICC to ensure that an appropriately qualified expert was appointed and trained; (ii) to properly supervise the ICC to ensure that experts are free of potential conflicts of interest; (iii) to advise the ICC and Expert Panel on GAC advice relating to exclusive access to registries; and (iv) to provide an appropriate appeal process for community objections.
- Request 14-9: Reconsideration of the Expert Determinations dismissing the requester's legal rights objections to .MERCK and .MERCKMSD.

# Number and Nature of Reconsideration Requests Received (cont.)

- Request 14-10: Reconsideration of the Expert Determination upholding SportAccord's Community Objection to the requester's application for .SPORT; the ICC's designation of the Expert Panelist that presided over the underlying objection; and the BGC's Determination denying Reconsideration Request 13-16.
- Request 14-11: Reconsideration of the decision by ICANN staff to change the application status of the requester's .SHOP application to "On Hold" to reflect that the application is involved in multiple ICANN Accountability Mechanisms.
- Request 14-12: Reconsideration of the Community Priority Panel's Evaluation Report finding that the requester did not prevail in the Community Priority Evaluation for .TENNIS.
- Request 14-23: Reconsideration of ICANN's denial of requester's domain name registration for moviestar.photo with 101domain.com and seeking reinstatement of the registration.

# Number and Nature of Reconsideration Requests Received (cont.)

- Requests 14-13 thru 14-22, 14-24 thru 14-26: Reconsideration of one or more of the NGPC Resolutions 2014.03.22.NG01, 2014.04.04.NG01-NG04, which relate to the applications for .WINE and .VIN.
- Request 14-27: Reconsideration of NGPC Resolution 2014.05.14.NG03 accepting the GAC advice and directing that the applications for .AMAZON and related IDNs in Japanese and Chinese should not proceed.
- Request 14-28: Reconsideration of ICANN's approval of material changes to Amazon's applications for .MUSIC, .SONG and .TUNES to remove material exclusive access language from their applications.
- Request 14-29: Reconsideration of the deferral/denial of the requester's Change Request submitted in preparation for the Community Priority Evaluation for the requester's application for .KIDS.

# Number and Nature of Reconsideration Requests Received (cont.)

- Requests 14-30, 14-32, 14-33: Reconsideration of the Community Priority Evaluation Panels' Reports finding that the requester did not prevail in the CPEs for .LLC, .INC, and .LLP.
- Request 14-31: Reconsideration of the Community Priority Evaluation Panel's Report finding that the requester did not prevail in the CPE for .GMBH.
- Request 14-34: Reconsideration of the Community Priority Evaluation Panel's Report finding that HOTEL Top-Level-Domain S.a.r.l.'s application for .HOTEL prevailed in the CPE.
- Request 14-35: Reconsideration of ICANN staff's response to the requester's request for documents pursuant to ICANN's Document Information Disclosure Policy, relating to ICANN's consideration of the applications for .AMAZON and related IDNs.

# Number and Nature of Reconsideration Requests Received (cont.)

- Request 14-36: Reconsideration of ICANN's denial of the requester's change request seeking to modify portions of its community application for the gTLD .SPA.
- Request 14-37: Reconsideration of the NGPC's 30 July 2014 Resolution adopting the Name Collision Occurrence Management Framework.
- Request 14-38: Reconsideration of ICANN staff's 14 August 2014 posting of a proposed process for developing enhancements to ICANN's accountability mechanisms.
- Request 14-39: Reconsideration of ICANN staff's response to the requester's request for documents pursuant to ICANN's Document Information Disclosure Policy, relating to the CPE Panel's Report finding that HOTEL Top-Level-Domain S.a.r.l.'s community application for .HOTEL prevailed in the CPE.

# Number and Nature of Reconsideration Requests Received (cont.)

- Request 14-40: Reconsideration of the CPE Panel's Report finding that the requester did not prevail in the CPE for .ART.
- Request 14-41: Reconsideration of the CPE Panel's Report finding that European Broadcasting Union's application for .RADIO prevailed in the CPE.
- Request 14-42: Reconsideration of the 18 July 2014 Extended Evaluation Report indicating that: (i) the Geographic Names Panel determined that the application for the .TATA gTLD by Tata Sons Limited falls within the criteria for a geographic name in the Applicant Guidebook; and (ii) the application passed Extended Evaluation.



# Number of Requests Acted Upon

For the period of 8 November 2013  
through 1 October 2014:

- The BGC acted upon 46 Reconsideration Requests: Requests 13-13, 13-15 through 13-23, 14-1 thru 14-22, 14-24 thru 14-37, and made final determinations on the majority of those Requests.
- The Board (through the NGPC) acted upon BGC recommendations on the following 19 of the 46 Reconsideration Requests: 13-13, 13-17, 13-19, 14-7, 14-10, 14-13 thru 14-22, 14-24 thru 14-27.
- One Request was withdrawn by the Requester: Request 14-23.

# Number of Requests Acted Upon (cont.)

- **Request 13-13:** On 12 December 2013, the BGC recommended that the NGPC deny Request 13-13. On 22 March 2014, the NGPC adopted the BGC's Recommendation and denied Request 13-13.
- **Request 13-15:** On 12 December 2013, the BGC issued a final determination denying Request 13-15.
- **Requests 13-16, 13-17 and 13-18:** On 8 January 2014, the BGC issued final determinations denying Requests 13-16 and 13-18, and recommended that the NGPC deny Request 13-17. On 30 January 2014, the NGPC adopted the BGC's Recommendation and denied Request 13-17.
- **Requests 13-19, 13-20 and 13-21:** On 21 January 2014, the BGC issued final determinations denying Requests 13-20 and 13-21, and recommended that the NGPC deny Request 13-19. On 30 January 2014, the NGPC adopted the BGC's Recommendation and denied Request 13-19.

# Number of Requests Acted Upon (cont.)

- **Requests 13-22 and 13-23:** On 5 February 2014, the BGC issued final determinations denying Requests 13-22 and 13-23.
- **Request 14-1:** On 21 June 2014, the BGC accepted Request 14-1 and concluded that ICANN not consider the Expert Determination at issue and that the requester's application for .MED be permitted to proceed to the next stage of the process in the New gTLD Program.
- **Request 14-2:** On 5 February 2014, the BGC issued a final determination denying Request 14-2.
- **Request 14-3:** On 27 February 2014, the BGC issued a final determination denying Request 14-3.
- **Request 14-4:** On 12 June 2014, the BGC issued a final determination denying Request 14-4.

# Number of Requests Acted Upon (cont.)

- **Request 14-5:** On 27 February 2014, the BGC issued a final determination denying Request 14-5.
- **Requests 14-6 and 14-7:** On 13 March 2014, the BGC issued a final determination denying Request 14-6 and recommended that the NGPC deny Request 14-7. On 22 March 2014, the NGPC adopted the BGC's Recommendation and denied Request 14-7.
- **Request 14-8:** On 22 March 2014, the BGC issued a final determination denying Request 14-8.
- **Request 14-9:** On 29 April 2014, the BGC issued a final determination denying Request 14-9.
- **Request 14-10:** On 21 June 2014, the BGC recommended that the NGPC deny Request 14-10. On 18 July 2014, the NGPC adopted the BGC's Recommendation and denied Request 14-10.

# Number of Requests Acted Upon (cont.)

- **Request 14-11 and 14-12:** On 29 April 2014, the BGC issued final determinations denying Requests 14-11 and 14-12.
- **Requests 14-13 thru 14-22, 14-24 thru 14-26:** On 14 May 2014, the BGC recommended that the NGPC deny these Requests. On 6 June 2014, the NGPC adopted the BGC's Recommendation and denied these Requests.
- **Request 14-27:** On 22 August 2014, the BGC recommended that the NGPC deny Request 14-27. On 8 September 2014, the NGPC adopted the BGC's Recommendation and denied Request 14-27.
- **Request 14-28:** On 24 July 2014, the BGC issued a final determination denying Request 14-28
- **Request 14-29:** On 22 August 2014, the BGC issued a final determination denying Request 14-29.

# Number of Requests Acted Upon (cont.)

- **Requests 14-30, 14-32, 14-33:** On 24 July 2014, the BGC issued a final determination denying Requests 14-30, 14-32, and 14-33.
- **Request 14-31:** On 24 July 2014, the BGC issued a final determination denying Request 14-31.
- **Request 14-34 and 14-35:** On 22 August 2014, the BGC issued final determinations denying Request Nos. 14-34 and 14-35.
- **Request 14-36:** On 4 September 2014, the BGC issued a final determination denying Request 14-36 and recommended that the NGPC deny Request 14-37. The NGPC has not yet acted on the BGC's Recommendation.

# Number of Requests Pending

- As of 1 October 2014, there are six Reconsideration Requests pending BGC action and three Reconsideration Requests pending Board/NGPC action.
- Fourteen Reconsideration Requests were pending at the conclusion of the 2013 calendar year.



# Number of Reconsideration Requests the BGC Declined to Consider

- The BGC has thus far considered (or will consider) all Reconsideration Requests submitted between the Annual General Meeting in 2013 and the Annual General Meeting in 2014.

# Other Accountability Mechanisms Available to Denied Requesters

- ICANN makes available the Ombudsman and the Independent Review Process as additional mechanisms to enhance ICANN accountability to persons materially affected by its decisions. The Ombudsman separately reports on his activities.

# 2. Independent Review Process (“IRP”) Requests

# General Information Regarding IRP and CEP Requests

- In accordance with Article IV, section 3 of ICANN's Bylaws, ICANN has designated the International Centre for Dispute Resolution as the body to process requests for independent review of Board actions alleged by any affected party to be inconsistent with ICANN's Articles of Incorporation or Bylaws.
- The Cooperative Engagement Process ("CEP") is a procedure that can be initiated prior to the filing of an IRP for the purpose of narrowing the issues that are stated within the request for independent review.

# Number and Nature of IRP and CEP Requests Received

- From 8 November 2013 thru 1 October 2014, five IRP Requests have been submitted.
- From 8 November 2013 thru 1 October 2014, ten CEPs have been initiated.

# Number and Nature of IRP and CEP Requests Received (cont.)

- **IRP: *DotConnectAfrica Trust (DCA) v. ICANN*, ICDR Case No. 50 117 T 1083 13.** DCA filed its IRP Request on 24 October 2013. DCA challenges the NGPC's decision to accept GAC advice that DCA's application for .AFRICA not proceed. DCA asserts that the NGPC should not have accepted the GAC's advice, and argues that ICANN's decision to reject DCA's Reconsideration Request 13-4 was improper. A Panel has been convened. On 5 September 2014, the Panel issued a scheduling order setting a timetable for exchange of documents, required submissions, hearing dates, and final determination on the merits.
- **IRP: *Booking.com B.V. v. ICANN*, ICDR Case No. 50 117 T 00247 14.** Booking.com filed its IRP Request on 18 March 2014, challenging ICANN's "adoption" of String Similarity Panel's determination that Booking.com's applied-for gTLD ".hotels" is visually confusingly similar to another applicant's applied-for string ".hoteis." Booking.com further claims that ICANN breached its Bylaws by failing to publish the String Similarity Panel's rationale and that ICANN's subsequent decision to reject Booking.com's Request for Reconsideration on the same issues was improper. A three party panel has been convened to adjudicate the matter. On 22 August 2014, the Panel issued a procedural order setting forth briefing deadlines.

# Number and Nature of IRP and CEP Requests Received (cont.)

- **IRP: *Better Living Management Co. Ltd. v. ICANN*, ICDR Case No. 50 2014 000189.** On 26 March 2014, BLM initiated an IRP relating to its application for .THAI. On 23 June 2014, ICANN responded to BLM's Request. BLM withdrew its request and on 17 July 2014 matter was closed.
- **IRP: *Vistaprint Limited v. ICANN*, ICDR Case No. 01-14-0000-6505.** Vistaprint filed its IRP Request on 11 June 2014. Vistaprint challenges ICANN's acceptance of the dispute resolution panel's decision on a string confusion objection finding Vistaprint's applications for .WEBS to be confusingly similar with the application for .WEB. Vistaprint also challenges the BGC's decision to deny Vistaprint's Reconsideration Request seeking reconsideration of the expert determination. On 21 July 2014, ICANN responded to Vistaprint's Request for IRP. The parties are in the process of selecting the IRP Panel.



# Number and Nature of IRP and CEP Requests Received (cont.)

- **IRP: *Merck KGaA v. ICANN*, ICDR Case No. 01-14-0000-9604.**  
Merck KGaA filed its IRP Request on 17 July 2014. Merck KGaA challenges the expert determinations denying Merck KGaA's legal rights objections to Merck & Co.'s application for .MERCCK, and challenges the BGC's decision to deny Merck KGaA's Reconsideration Request 14-9 seeking reconsideration of the expert determinations. On 29 August 2014, ICANN filed its Response to Merck KGaA's Request for IRP. The parties are in the process of selecting the IRP Panel.
- **IRP: *Dot Registry, LLC v. ICANN*, ICDR Case No. not assigned yet.**  
Dot Registry challenges the Community Priority Evaluations ("CPEs") of the .INC, .LLC and .LLP gTLDs performed by the Economist Intelligence Unit, and the determination of the BGC denying Dot Registry's Reconsideration Requests 14-30, 14-32, and 14-33 seeking reconsideration of the CPEs and the New gTLD Program Committee's decision to place the contention sets for .INC, .LLC and .LLP into active contention.

# Number and Nature of IRP and CEP Requests Received (cont.)

- **CEP: Commercial Connect, LLC (12-Feb-2014).** CEP Invoked regarding actions taken related to Commercial Connect's application for .SHOP. This matter was resolved on 16 September 2014.
- **CEP: GCCIX, W.L.L. (17-Feb-2014).** CEP invoked regarding actions taken by the NGPC related to GCCIX's application for .GCC. Discussions are still ongoing.
- **CEP: Asia Green IT System Ltd. (21-Feb-2014).** CEP invoked regarding the issues raised in Reconsideration Request 14-7. Discussions are still ongoing.
- **CEP: European Commission (EU member states) (4-Jul-2014).** CEP invoked regarding actions taken related to the applications for .WINE and .VIN. Discussions are still ongoing.

# Number and Nature of IRP and CEP Requests Received (cont.)

- **CEP: Wine Industry Organizations (8-Jul-2014).**  
CEP invoked regarding actions taken related to the applications for .WINE and .VIN. Discussions are still ongoing.
- **CEP: Amazon EU S.a.r.l. (17-Jul-2014).**  
CEP invoked regarding actions taken related to Amazon's applications for .AMAZON and the related IDNs in Chinese and Japanese. Discussions are still ongoing.
- **CEP: Donuts Inc. (18-Jul-2014).**  
CEP invoked regarding actions taken related to Ruby Pike, LLC's application for .HOSPITAL. Discussions are still ongoing.

# Number and Nature of IRP and CEP Requests Received (cont.)

- **CEP: dot Rugby Limited (21-Aug-2014).**  
CEP invoked regarding the ICC Expert Determination regarding .RUGBY and the issues raised in Reconsideration Request 14-6. Discussions are still ongoing.
- **CEP: Famous Four Media Limited (on behalf of dot Sport Limited) (23-Sept-2014).** CEP invoked regarding the ICC Expert Determination regarding .SPORT, the issues raised in Reconsideration Request 14-10, and the actions taken by the NGPC related to Resolution 2014.07.18.NG01. Discussions are still ongoing.
- **CEP: DotKids Foundation (29-Sept-2014).**  
CEP invoked regarding the BGC's Determination on Reconsideration Request 14-29. Discussions are still ongoing.

# 3. Documentary Information Disclosure Policy (“DIDP”) Requests

# General Information Regarding DIDP

- The DIDP was developed as a part of the Accountability and Transparency Frameworks and Principles to help enhance ICANN's accountability and transparency.
- The DIDP provides that “information contained in documents concerning ICANN's operational activities, and within ICANN's possession, custody, or control” at the time the DIDP request is made, will be made available to the public unless there is a compelling reason for confidentiality, such as the Defined Conditions of Nondisclosure.
- All DIDP requests and responses are posted at: <https://www.icann.org/resources/pages/transparency-2012-02-25-en>.

# Number and Nature of DIDP Requests Received in 2014

From 8 November 2013 thru 1 October 2014, nine DIDP Requests have been submitted.

- Request 20140113-1, Kelsey Britton: Seeking disclosure of a report that includes the new domain names that were added during the report period of the Monthly Registry Reports.
- Request 20140320-2, ICOMP: Seeking disclosure of documents relating to the application by Charleston Road Registry, a wholly owned subsidiary of Google, for the .search gTLD and proceedings related thereto.



# Number and Nature of DIDP Requests Received in 2014

- Request 20140515-1, George Kirikos: Seeking disclosure of ICANN's FY13 Form 990.
- Request 20140523-1, Amazon EU S.a.r.l.: Seeking disclosure of documents relating to Amazon's application for .AMAZON and the related IDNs in Japanese and Chinese.
- Request 20140804-1, Donuts, Inc.; Fair Winds Partners, LLC; Famous Four Media Limited; Minds + Machines; Radix FZC: Seeking disclosure of documents relating to the CPE Panel and the CPE Report approving the community application for .HOTEL.

# Number and Nature of DIDP Requests Received in 2014

- Request 20140904-1, Dot Registry: Seeking disclosure of the contract between ICANN and the Economist Intelligence Unit.
- Request 20140917-1, fTLD Registry Services, LLC: Seeking disclosure of communications or agreements between ICANN and Donuts Inc. relating to any extension of time to engage in the CEP or to file an IRP.
- Request 20140925-1, Afilias Limited; BRS Media Inc.; Tin Dale, LLC: Seeking disclosure of documents relating to the Community Priority Evaluation (“CPE”) Panel’s determination that the application for .RADIO prevailed in the CPE.
- Request 20140930-1, Michael Palage: Seeking disclosure of documents regarding fees or contributions billed or received by ICANN in connection with the IDN ccTLD applications.

# Thank You

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