

**DETERMINATION OF THE
BOARD ACCOUNTABILITY MECHANISMS COMMITTEE (BAMC)
RE: NEED FOR URGENT CONSIDERATION OF
RECONSIDERATION REQUEST 21-3**

16 December 2021

I. Introduction and Brief Summary

The Requestor, Dot Hip Hop, LLC, seeks urgent reconsideration of alleged ICANN Staff inaction on a request for assignment of the .hiphop generic top-level domain (gTLD) from the current registry holder, UNR Co. (UNR), to the Requestor.¹ The Requestor alleges that UNR requested assignment of the .hiphop gTLD to the Requestor on 11 August 2021 and that ICANN Staff’s “failure to approve the assignment” since then violates the Registry Agreement between UNR and ICANN org and ICANN org’s Mission, Commitments, and Core Values as set forth in the ICANN Bylaws.²

The Requestor asks that Request 21-3 be considered on an urgent basis pursuant to Article 4, Section 4.2(s) of the ICANN Bylaws. The Requestor claims that urgent reconsideration is warranted because “[i]t has been more than four . . . months since the original assignment request” and it is “being economically harmed every day that approval is not given” by ICANN Staff.³ The Requestor asserts that, “instead of working with [the Requestor] to finalize the assignment, it would appear that ICANN is deliberately procrastinating.”⁴ Contrary to the Requestor’s assertion, however, ICANN org has been working diligently evaluating the assignment request and has communicated with the Requestor many times about the assignment

¹ Request 21-3, § 3.

² Request 21-3, § 3.

³ Request 21-3, §§ 5, 12.

⁴ Request 21-3, § 8.

request, including as recently as 14 December 2021, when ICANN org sent a letter to the Requestor explaining the status of the assignment request.⁵

Section 4.2(s) of the ICANN Bylaws provides for urgent reconsideration, where appropriate, of only “Board action or inaction,” not Staff action or inaction.⁶ As discussed in further detail below, the BAMC concludes that Request 21-3 does not meet the requirements for urgent reconsideration because the Requestor is seeking reconsideration of only Staff inaction.⁷ The BAMC notes that the Requestor concedes that Request 21-3 does not qualify for urgent reconsideration but nevertheless is seeking urgent reconsideration. The BAMC finds that Requestor’s decision to pursue urgent reconsideration despite acknowledging that the Bylaws preclude its request is an inappropriate use of the Reconsideration process.

The BAMC’s determination is limited to its assessment of whether Request 21-3 meets the requirements for urgent reconsideration. A substantive review of the merits of the Requestor’s claims is beyond the scope of this determination.

Notwithstanding that Request 21-3 will not be treated as urgent under the ICANN Bylaws, the Requestor may still proceed with Request 23-1 under the timeline for a standard (meaning non-urgent) reconsideration request, and the BAMC will ensure, as always, that the matter will be handled expeditiously, to the extent feasible and practicable.

II. Grounds for Urgent Consideration of Reconsideration Requests

Article 4, Section 4.2(s) of the ICANN Bylaws allows requestors to submit urgent requests for reconsideration provided certain requirements are met:

⁵ See Letter from R. Weinstein, Vice President, GDD Accounts and Services, ICANN, to Dot Hip Hop LLC, 14 Dec. 2021, attached hereto as Exhibit A.

⁶ ICANN Bylaws, Art. 4, § 4.2(s).

⁷ ICANN Bylaws, Art. 4, § 4.2(s).

If the Requestor believes that the Board action or inaction for which a Reconsideration Request is submitted is so urgent that the timing requirements of the process set forth in this Section 4.2 are too long, the Requestor may apply to the Board Accountability Mechanisms Committee for urgent consideration. Any request for urgent consideration must be made within two business days (as calculated by local time at the location of ICANN’s principal office) of the posting of the resolution at issue. A request for urgent consideration must include a discussion of why the matter is urgent for reconsideration and must demonstrate a likelihood of success with the Reconsideration Request.

The BAMC shall respond to the request for urgent consideration within two business days after receipt of the request.⁸ If the BAMC agrees to consider the matter with urgency, then the Request will be processed within the time frame set forth in Section 4.2(t).

III. Request 21-3 Does Not Meet the Bylaws’ Requirements for Urgent Consideration

Under Article 4, Section 4.2(s) of the ICANN Bylaws, urgent consideration is available in certain circumstances with respect to requests for reconsideration of only “Board action or inaction,” not Staff action or inaction.⁹ Further, Section 4.2(s) requires requests for urgent consideration to be made “within two business days . . . of the posting of the resolution at issue,” and only the Board—not Staff—can issue resolutions.¹⁰ Because the Bylaws limit urgent consideration to matters concerning “Board action or inaction,” there is no basis for urgent consideration of Request 21-3, which seeks reconsideration of alleged Staff inaction.

Indeed, the Requestor fully acknowledges that the text of the Bylaws limits the availability of urgent consideration, where appropriate, to matters concerning only “Board action or inaction.”¹¹ The Requestor nevertheless suggests that the omission of an analogous procedure

⁸ ICANN Bylaws, Art. 4, § 4.2(t).

⁹ ICANN Bylaws, Art. 4, § 4.2(s).

¹⁰ ICANN Bylaws, Art. 4, § 4.2(s).

¹¹ Request 21-3, § 12a.

for seeking urgent reconsideration of Staff action or inaction was “unintentional” and must be “a drafting error.”¹² However, the Requestor’s speculation about the intentions of the Bylaws’ drafters contravenes the Bylaws’ plain text, which is the best indication of their intentions.

Nor does the Requestor provide any support for its summary conclusion that there could be “no reason” to allow for urgent reconsideration of Board action or inaction, but not Staff action or inaction.¹³ Notably, the final report of the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) did not propose that urgent reconsideration of Staff action or inaction be available.¹⁴ The revisions to the Bylaws to align with the CCWG-Accountability’s final report did not add challenges to Staff action or inaction to the provision for urgent consideration.¹⁵

In any event, an urgent request for reconsideration, which is subject to speedy resolution under Section 4.2(t) of the Bylaws, is not the appropriate vehicle to advance the novel argument that Section 4.2(s) of the Bylaws should be read more expansively than what—as Requestor acknowledges—its plain language allows.

IV. Conclusion

For the reasons stated above, Request 21-3 does not qualify for urgent consideration, and the Requestor’s decision to pursue urgent reconsideration despite acknowledging that the Bylaws preclude its request is an inappropriate use of the Reconsideration process. Pursuant to Article 4, Section 4.2(t) of the Bylaws, the Requestor is free to file a new reconsideration request within

¹² Request 21-3, § 12a.

¹³ Request 21-3, § 12a.

¹⁴ See CCWG-Accountability Supplemental Final Proposal on Work Stream 1 Recommendations (23 February 2016), <https://www.icann.org/en/system/files/files/ccwg-accountability-supp-proposal-work-stream-1-recs-23feb16-en.pdf>.

¹⁵ See <https://www.icann.org/en/system/files/files/proposed-new-bylaws-redline-20apr16-en.pdf>. The attorneys representing CCWG certified that the Bylaws satisfied the CCWG’s recommendations.

“the regular time frame” set forth in the Bylaws. However, in the interest of time, rather than requiring the Requestor to re-file, ICANN org will proceed with Request 21-3 under the regular time frame of the Reconsideration process. The BAMC will ensure that Request 21-3 will be handled expeditiously, to the extent feasible and practicable.

Exhibit A



Objection to Request to Assign Various Registry Agreements by UNR Corp. to Various Assignees

Via electronic mail

December 14, 2021

RE: Objection and Request for Additional Information re: Assignment of various Registry Agreements by UNR Corp. ("UNR") to various assignees [Dot Hip Hop LLC]

Dear Jeff,

As you are aware, it has now been more than seven months since UNR held its auction for 23 gTLDs delegated for operation to UNR by ICANN (such 23 gTLDs and their corresponding Registry Agreements listed on [Attachment A](#)). Since then, UNR started notifying ICANN of certain assignments of the Registry Agreements for these same 23 gTLDs (the "[TLDs](#)"), including yours, (together, the "[Assignments](#)") as part of the larger transaction whereby UNR purportedly "sold" the operation of their top-level domains.

For your information as a party to this larger transaction, on Friday, 10 December 2021, ICANN sent notice to UNR indicating ICANN's current continued objection to and withholding of ICANN's consent to all pending Assignments, including yours. In the notice, ICANN has reiterated the requirement for UNR to respond to ICANN's questions and issues with full cooperation and with clear and complete answers. If UNR is unable to do so, ICANN will be left with no other choice than to formally terminate the review and let stand ICANN's objection to these Assignments.

ICANN understands the timeline of these Assignments has caused confusion and frustration for the assignees. ICANN shares your frustration. UNR's approach to these Assignments has required significant use of ICANN's resources in an attempt to review, understand and make a determination regarding the requested Assignments.

Dating back to May 2021 and intermittently throughout this process, ICANN has had several discussions with UNR and several of the proposed assignees about the importance of providing ICANN with a clear and fulsome understanding of the Assignments. ICANN has made multiple formal written requests for information aimed at gaining such an understanding. Despite the above, ICANN has yet to receive all of the requested information to enable a comprehensive review and understanding.

From our first request to UNR for additional information issued in May 2021, we sought to understand the impact of the transactions on the Domain Name System ("DNS"), including how Non-Fungible Tokens (NFTs) created on the Ethereum Name Service (ENS) were being used, and were involved in the transactions. ICANN repeatedly asked UNR for documentation or other information relating to NFTs in the hopes that UNR would provide fulsome and complete responses. Only after ICANN's repeated requests for the transaction and auction related documentation did UNR begin to provide such documentation in October 2021 under additional



confidentiality restrictions for ICANN. Such documentation did not fully address ICANN's questions and has, in some cases, raised more questions, which again UNR has not yet fully and completely addressed.

As an example, it has been unclear how such public statements as "the winner of each TLD will receive ownership rights to the Top Level Domain asset...[and.]...the NFT representing their TLD on the ENS" so they could "control the entire TLD namespaces on DNS and ENS" were to be evaluated against the incomplete requests for assignment. As we have communicated to UNR, these statements may not be consistent with important ICANN community-developed policies and agreements that govern registry operations which clearly state that any registry operator would have no property ownership rights or interests in a TLD. Further, the creation of such NFTs and potential operation of a suffix identical to the top-level domains in the DNS in an alternate name space may create risks to security or stability of the TLDs in the DNS.

At this time, ICANN has completed its review of UNR's and the various Assignees' responses to all questions to date. ICANN's determination from this review is that we have not been provided all of the requested information. Significant questions remain, including regarding the role and rights conveyed to the proposed assignees related to the NFTs created on the ENS. For these reasons, ICANN must continue to object to and withhold its consent to all pending Assignments proposed by UNR, including yours.

To move forward, ICANN again has called on UNR to provide a fulsome understanding of the proposed Assignments of UNR's top-level domains. ICANN has informed UNR that ICANN expects UNR to provide updated answers to ICANN's most recent questions. Additionally, in an effort to elicit the requested information from UNR, ICANN plans to issue additional questions to UNR to help the parties involved address ICANN's questions fully and completely. ICANN reserves the right to ask further questions based on UNR's responses.

ICANN understands this may be frustrating information to digest. ICANN, as trusted stewards of the Internet's unique identifiers, is a champion for a single, open, globally-interoperable internet. It is ICANN's responsibility to have a clear understanding of transactions involving the Registry Agreements. ICANN thanks you for your patience and cooperation and appreciates your continued commitment to the multistakeholder model for Internet governance.

Sincerely,

Russell Weinstein

Russ Weinstein
Vice President, GDD Accounts and Services
Internet Corporation for Assigned Names and Numbers (ICANN)



Attachment A
REDACTED - CONFIDENTIAL



REDACTED - CONFIDENTIAL