

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: Anselika Smoljar

Address: I-REGISTRY Ltd., Contact Information Redacted

Email: Contact Information Redacted

Phone Number (optional):

(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

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.)

I-REGISTRY is challenging ICANN's inaction in not stopping or at least amending the decision by the NGPC about the Name Collision Occurrence Management Framework Implementation:

- The NGPC made a decision about the Name Collision Occurrence Management Framework Implementation on August 1, 2014.

(see <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-07-30-en> and <http://newgtlds.icann.org/sites/default/files/agreements/name-collision-assessment-04aug14-en.pdf>)

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 NGPC meeting took place July 30, 2014 with the topic "Name Collision Occurrence Management Framework Implementation" on the agenda (<https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-07-30-en>). The decision by the NGPC has been published on August 1, 2014 (<https://www.icann.org/news/announcement-2-2014-08-01-en>).

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.)

We have been informed by ICANN via E-Mail on August 4, 2014 (see Attachment A) with the document "NAME COLLISION OCCURRENCE ASSESSMENT" published at <http://newgtlds.icann.org/sites/default/files/agreements/name-collision-assessment-04aug14-en.pdf>

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

ICANN did not involve the broader ICANN community in the discussion about the Implementation of the Name Collision Occurrence Management Framework despite pretending to do so (as referenced in the rationale for the decision by the NGPC). As involvement is essential for the acceptance and communication of this topic, Registries such as I-REGISTRY will suffer materially from non-

communication and non-acceptance.

ICANN did not try to harmonize the Name Collision Occurrence Management Framework Implementation across all gTLDs, no matter whether in operations or not yet. As a simple, unified process where and how to register domain names is key for registrants, registrar, and registries, I-REGISTRY expects confused registrants and registrar and thus will suffer economically from a non-harmonization.

ICANN did not yet provide registries and registrars with clear rules and guidance. As it is still missing how to allocate names from the name collision list, I-REGISTRY expects that in doubt registrars will not offer domain name registrations from Name Collision lists.

Albeit a path forward has been described in the Name Collision Occurrence Management Framework Implementation, ICANN reserves the right to withhold names even beyond the proposed release date in general.

As a result, both confused registrants and Internet users will lead to lower registration rates of New gTLD domain names and less usage of New gTLD domain names. Both effects will affect Registries materially.

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

Registrants are affected

We believe that registrants interested in the new TLDs at-large will be materially affected. There is no central website which lists all TLDs and shows the different categories of TLDs according to the Name Collision Occurrence Management Framework Implementation.

Also, there has been only one press release which for sure did not reach the majority of potential registrants of a domain name globally. A Google search for "Name Collision Occurrence Management Framework Implementation" shows 9 hits (Attachment B).

Trademark holders will be affected by the decision since the existing RPM rules do not consider the allocation and activation of APD names.

Overall, we do believe that the overall majority of registrants is not aware of this issue and this will result in registrants' confusion about the availability of domain names in general.

The technical community and Registrants will be affected

The use and communication of the IP for affected names according to the Name Collision Occurrence Management Framework Implementation is widely unknown to registrars, Internet users and even within the Domain Name Industry.

As of today, we haven't seen any information about the resolution by the NGPC about the Name Collision Occurrence Management Framework Implementation

in publications or member information to tech association, special interest media beyond the press release ICANN sent on August 4, 2014.

The ICANN community is affected

Also, we believe that not taking the views of the ICANN community into account before making a decision contradicts the Bylaws of ICANN. As stated in the Bylaws Article I: MISSION AND CORE VALUES, Section 2. CORE VALUES: “4. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.

(<https://www.icann.org/resources/pages/bylaws-2012-02-25-en#III>)

Among others, ALAC stated concerns during their exchange with the GAC which has been noted in the GAC Communiqué after the ICANN meeting in Durban:

“...The ALAC voiced concerns regarding issues on dot-less domains and **domain name collisions**...” (Attachment C).

There is no indication that the GAC has been given the opportunity to provide feedback to any of the proposals by JAS Global Advisors LLC and the advice from the Security and Stability Advisory Committee (SSAC) since the ICANN meeting in Durban as there is no publicly available comment issued by the GAC on this topic.

Registries are affected

We believe that not only I-REGISTRY is affected but all Registries which are not yet delegated. Both, confused registrants and Internet users will lead to lower registration rates of New gTLD domain names and less usage of New gTLD domain names. Both effects will affect Registries materially.

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.)

We provided a detailed letter to the NGPC well in advance to the meeting (Attachment D), receipt has been confirmed by Mr Chalaby, Chair of the NGPC (Attachment E).

In this letter (Attachment D) we noted that:

1. The proposal does provide uncertainty to registrants into which category a gTLD falls and thus lacks guidance which rights protection mechanisms are available.
2. The proposal has not been agreed-upon by the ICANN community at-large, in contrast to the development of the RPM rules where the community was involved.

We requested that:

1. ICANN, together with the community, extend the existing RPM rules for the allocation and activation of APD names.
2. ICANN takes into account the different registration models and phases of existing and future gTLD operators.
3. ICANN together with the community at-large develops a set of common rules, valid for all gTLDs.
4. Those common rules should apply to both, already delegated gTLDs and not-yet delegated gTLDs, to avoid registrant confusion.
5. Provide Registries with a limited timeframe to either stay with their existing policies or develop new one for the allocation and activation of names of their APD list under the to-be-developed RPM rules.

The NGPC failed to consider Input from stakeholders other than the SSAC and ICANN community at-large. The community at-large were allowed to provide input until April 21, 2014 but not after that date:

What Stakeholders or others were consulted?

*ICANN initiated a public comment forum from **26 February to 21 April** 2014, inviting the community to provide feedback on the JAS Study and Name Collision Framework. During the public comment period, twenty-eight comments were received. The public comment report summarizing the comments, and the full comments can be found at:*

<https://www.icann.org/en/system/files/files/report-comments-name-collision-10jun14-en.pdf> [PDF, 230 KB].

*The SSAC also was consulted and offered advice and recommendations to the Board (via SAC066) on the proposed name collision framework included in the JAS Study and Name Collision Framework. Additionally, ICANN **presented** a version of the proposed Final Name Collision Framework during the ICANN Meeting in London.*

The NGPC failed to take material input from the community into account. Also,

the NGPC did not properly assess the implications of the decision.

In their rationale for the decision the NGPC did not mention the letter nor any of the arguments provided by I-Registry and why they have not been considered.

Interestingly, several members of the ICANN community provided their input to the NGPC, too. Apparently the NGPC neither considered them nor provided a rationale why the arguments have not been considered, but did consider only one a few topics as listed in their rationale:

*Whereas, the NGPC acknowledges comments from the community concerning the **need to ensure that all names**, which registries blocked under their Alternate Path to Delegation Report, **be subject to the rights protection mechanisms** established by the New gTLD Program.*

(emphasize added)

AND:

What concerns or issues were raised by the community?

The JAS Study and Name Collision Framework received twenty-eight comments during the public comment period which were submitted by a full range of sources, including New gTLD applicants and those affiliated with applicants, corporations not directly affiliated with applicants,

individual technology experts, and various DNS related industry organizations. Members of the community also submitted correspondence to ICANN regarding the intersection of name collision issues and rights protection mechanisms. Additionally, the SSAC raised some concerns in SAC066 regarding the name collision framework.

Some key themes and concerns expressed by the SSAC and ICANN community included, but are not limited to the following:

- *Concerns related to the current use of the Second Level Domain (SLD) Block Lists and the Alternate Path to Delegation in general.*
- *Concerns that the proposed 120-day "controlled interruption" period is too long and/or not justified – Some commenters suggested that there is no data to support having a 120-day controlled interruption period, and suggested that if there is a period, it should fall in the range of 45 days to 90 days.*
- *Concerns for using a "loopback" approach instead of a "honeypot" approach – The SSAC recommended that using a honeypot approach allows better notification for HTTP cases, and provides support for IPv4 and IPv6. Some of the public comments also suggest that a honeypot approach would provide a better opportunity to inform users of impending problems. Some other commenters, however, note that a honeypot may expose*

personally identifiable or sensitive information outside of the local network or to potential attackers, among other issues.

- *Concerns about whether the controlled interruption should be continuous or intermittent – The SSAC recommended that instead of a single controlled interruption period, ICANN should introduce rolling interruption periods, broken by periods of normal operation, to allow affected end-user systems to continue to function during the test period with less risk of catastrophic business impact.*
- *Concerns about what type of event would trigger an emergency response – The SSAC recommended that ICANN should expand the range of situations that would trigger an emergency response, for example national security, emergency preparedness, critical infrastructure, key economic processes, commerce, and the preservation of law and order. Some of the public comments also raised concern that a "clear a present danger to human life" standard draws an arbitrary line, and others suggest that certain significant dangers to the business and financial sectors of the global economy might also merit the use of emergency measures.*
- *Concerns about the treatment of .CORP, .HOME, and .MAIL – Some of the public comments support the treatment of .CORP, .HOME, and .MAIL recommending in the JAS Study and Name Collision Framework, while others suggest that a final decision on this matter be postponed until a more comprehensive technical*

evaluation can be performed and a solution may be developed to allow for these strings to operate in the DNS.

- *Comments requesting the acceleration and closure of the collisions issue in general - Some members of the community noted a general concern that the name collision matter is being dealt with at such a late stage of the New gTLD process, and questioned why ICANN did not address the matter sooner. Commenters raising concerns about timing also requested that ICANN take action on the matter with deliberate speed so as not to cause further delay.*
- *Comments expressing concern about the interaction between the name collision block lists and intellectual property rights protection mechanisms – Some public comments and correspondence to ICANN suggest that all names, which registries blocked under their alternative path to delegation plans, be subject to the Sunrise and Trademark Claims services outlined in the gTLD Applicant Guidebook, the Registry Agreement, and the Rights Protection Mechanism Requirements (RPMs), or other similar mechanism to protect rights holders. Additionally, some .BRAND TLD applicants note many of the "brand" terms included in the block lists are trademarks for the brand's products and services, and are seemingly generated at the root by the brand itself. These commenters suggest that ICANN consider an alternative process for .BRAND TLD applicants to expedite the release of such*

trademarked terms for their immediate use.

(<https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-07-30-en>)

To the contrary, the answer from the NGPC to stakeholders which provided their input to the NGPC were standardized letters which have been received by many other members of the ICANN community (Attachment F, Attachment G, Attachment H).

Despite our proposals and the proposal brought forward by the community how to address the open issues, the NGPC filed their decision. This decision includes many open issues which are stated in their “Rationale” and respectively in their “Requirements for ICANN”. In detail the following topics according to the NGPC have to be discussed with affected stakeholders or have to be defined by ICANN staff in the future:

Rationale for Resolution 2014.07.30.NG01 – 2014.07.30.NG04

- a) Resolved (2014.07.30.NG01), the NGPC adopts the Name Collision Occurrence Management Framework As part of implementation, **registry operators will be provided with a Name Collision Occurrence**

Assessment (see Registry Agreement, Specification 6, Section 6), which will address, among other things, procedures to remove second level domains from the block list including measures to protect rights holders....

- b) Resolved (2014.07.30.NG02), the NGPC directs the President and CEO, or his designee(s), **to consult with the community during the next 90 days from the publication of these resolutions to address appropriate rights protection mechanisms** for names included in a registry operator's Alternate Path to Delegation Report and recorded in the Trademark Clearinghouse that registry operator withheld from allocation during its Sunrise period or Claims period...

(Emphasize added)

Requirements for ICANN:

- c) Work within the IETF and with other relevant technical communities **to identify a notification mechanism for IPv6 that provides similar functionality to that available in IPv4's "Loopback" reserved prefix.....**
- d) **Produce new outreach and informational materials** as needed to alert potentially affected parties about name collisions, and link to existing information regarding name collisions developed as part of the initial

outreach campaign.

(Emphasize added)

It seems that the decision has been taken in a hurry to address requests by some stakeholders to move forward.

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-REGISTRY seeks immediate reconsideration by the BGC that the decision has to be put on-hold as long as the above mentioned issues have not been solved.

I-REGISTRY requests from the BGC that the decision has to be modified taking input from the ICANN community properly into account.

I-REGISTRY requests from the BGC that the Implementation of the Name Collision Occurrence Management Framework and the release of the concerned names shall be harmonized across all new gTLDs.

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 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.)

We believe that this decision has to be put on-hold to enable a proper discussion and implementation guideline within the community. As long as this is not guaranteed I-REGISTRY, all other gTLD applicants and their stakeholders alike suffer from uncertainty how to setup their registration policies, business models, prices and allocation mechanisms. Therefore I-REGISTRY has the standing to ask for Reconsideration.

We believe that this decision has to be put on-hold so that ICANN can start with the announced initial outreach campaign. As long as this campaign has not been executed, neither Registrants, Internet users, IT administrators nor other affected parties will understand what “Name Collision Occurrence” is, how it affects them and thus refrain from registering domain names under new gTLDs. This will materially affect Registries including I-REGISTRY and therefore I-REGISTRY has the standing to ask for reconsideration.

We believe that I-REGISTRY suffers material harm from the decision by the NGPC: Registrants will be confused which names are available for registration on the one hand and Internet users on the other hand about the error provided via the special IP Address (127.0.53.53). This confusion will for sure lead to less registrations and therefore a financial loss of I-REGISTRY. As there is no information provided by a neutral party no Registrant is able to find information online which category a TLD belongs to and thus does not know which domain names are available at which dates.

The requested steps described in #9 including on-hold, discussion among the ICANN community and harmonization across all gTLDs would eliminate the confusion of registrants, which domains can be registered under which circumstances and dates under certain TLDs.

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>.

See Attachments A-H.

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.



Signature

August 13, 2014

Date

(Anselika Smoljar, Executive Director)