

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: Renato Sabbadini

Address: International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), 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.)

The action ILGA is seeking to have reconsidered is the ICANN acceptance of the Dispute Resolution Service Provider (DRSP) determination of the Community objection filed by ILGA against Afilias Limited (Afilias) for the string .LGBT (EXP/390/ICANN/7).

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 Community objection determination was completed on 13 August 2013 and the assigned DRSP, the International Chamber of Commerce (ICC), notified ILGA of the results on 18 November 2013.

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.)

ILGA became aware that the expert assigned by the ICC, Professor Dr. Bernhard Schlink (Panelist), was not going to uphold ILGA's Community Objection to the non-community .LGBT application by Afilias when the ICC notified ILGA of the determination on 18 November 2013.

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

ILGA is an advocacy and service based organization working on behalf of, and in the interest of, the global gay community. ILGA submitted the Community objection to the non-community string .LGBT by Afiliias, with the support of 40 other international, national and local organizations (noted in the original Community objection) in an effort to mitigate material detriment to the rights and legitimate interests of a significant portion of the gay community. By accepting the Panelist determination, ICANN has inhibited ILGA's attempt to protect the global gay community.

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

ILGA believes that the gay community will be adversely affected by the actions of the Panelist and ICANN, who neglected to protect the rights and legitimate interests of the gay community in his determination. Despite ILGA's objection succeeding in tests one, two and three and the Panelist acknowledging points of material detriment to the legitimate interests (test four) of the gay community that a non-community, yet community targeted gTLD like .LGBT would create, the Panelist has punted his responsibility as Community Objection expert to the Community Priority Evaluation panel, claiming that the material detriment he acknowledges actually does not exist as long as the gay community is assigned their own gTLD under .GAY.

Because the Panelist cannot guarantee the gay community will get their own gTLD in the Community Priority Evaluation, the Panelist's primary responsibility after establishing the existence of material detriment to the legitimate interests of the gay community (test four) was to dismiss the non-community string .LGBT,

plain and simple. By not doing so, the Panelist has not protected the interests of the gay community and opened up the opportunity for material detriment which was to be avoided through the Community objection proceedings.

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.

According to the Applicant Guidebook, the DRSPs are extensions of the ICANN Staff and therefore ILGA has included their actions under the Staff action section.

ILGA has identified three actions of the DRSP Panelist that are inconsistent with ICANN policies and which have clearly influenced the decision in the Panelist's determination of the Community objection filed against the non-community string .LGBT by Afilas.

1. The Panelist has inserted an unsupported notion that a clearly delineated community is only entitled to protect one gTLD with a name or acronym that is significant to the community.

"It may happen that among the registrants of the string .LGBT will be non-gay and even anti-gay registrants who try to use the registration for anti-gay purposes. But not all names that can be formed and used and may emerge to designate the gay community

and not all commercial utilizations of them can be protected completely against abuse.” (.LGBT Determination, Page 7, #20)

“In other words, the gay community’s legitimate interest – to operate its own gTLD, not to have its name usurped and exploited, and not to have a gay-related gTLD abused – cannot legitimize an exclusive claim to all names that can be formed and used and may emerge to designate the gay community nor to the gTLDs with the corresponding names.” (.LGBT Determination, Page 7, #21)

It is ILGA’s understanding that this is not a policy that ICANN subscribes to and it completely cripples a community’s ability to protect an array of names that may be associated or intrinsically linked to their community through the Community objection process, now and in the future. ILGA believes that the Panelist has incorrectly applied this unsubstantiated policy, which is not ICANN policy, in his determination which is counter intuitive to the goals of the Community objection proceedings.

2. The Panelist has introduced future Contention Resolution Proceedings into his findings and used them as a basis in his decision.

“ILGA has shown a likelihood of material detriment to the legitimate interests of the gay community if there is no gTLD designated to serve the gay community and to operate under appropriate principles that grant safety and financial rewards for the gay community.” (.LGBT Determination, Page 8, #23)

“A coexistence of an “official” gTLD of the gay community and another “unofficial” gTLD is no material detriment to the legitimate interests of the gay community.” (.LGBT Determination, Page 8, #23)

- It is ILGA’s understanding that the Community objection proceedings are to be ruled on the merits of Panelist findings from within the Community objection filings, and not future Contention Resolution Proceedings including Community Priority Evaluations or Auctions. ILGA believes that this is not consistent with ICANN policy on how Community objections should be determined and believe it is the responsibility of the Panelist to rule on the findings and not allow speculation or presumption of the outcomes of future ICANN proceedings to be introduced. The Panelist’s presumption that the gay community will have their own gTLD to operate under the dotgay LLC model is premature and does not address the proceeding at hand of determining if a non-community string .LGBT should be dismissed to mitigate future harm to the gay community.
3. The Panelist should have addressed the Community objection to .LGBT independent of other Community objection filings and other applications for gTLDs related to the gay community.

“While the gay community cannot exclude competition, it could file and has filed its own application for a gTLD that is designated to serve the gay community and to operate accordingly: dotgay’s community application for the string .gay.” (.LGBT Determination,

It is ILGA's understanding of ICANN policy that each Community objection would be considered on its own merits and a determination from the Panelist would be rendered irrespective of the outcomes of other proceedings. In this case, because the DRSP utilized the same Panelist for all .GAY and .LGBT objections, a side effect of the determinations has affected the manner in which the merits of each objection are examined. It is ILGA's belief that because the Panelist was privy to all proceedings on gTLDs targeting the gay community there have been actions taken that offer a compromise to the material detriment in question. If there were no .GAY applications and ILGA was extending its ICANN granted right to simply defending the community from a non-community string .LGBT we believe that the Panelist would have handled the determinations in a much different manner.

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.)

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?)

ILGA is asking ICANN to have the Panelist determination of the Community objection for the non-community string .LGBT by Afiliias reconsidered, based on ILGA's findings of actions taken by the Panelist that are inconsistent with ICANN policy. This includes the following actions:

1. ICANN return the determination to the Panelist to make a new determination that is in alignment with the findings and absent of policy applications inconsistent with ICANN policy.
2. In addition ICANN should provide the Panelist with an explanation of the policy violations ILGA has brought to ICANN's attention. This includes the points outlined in Question #9 above and a reminder of the underlying principles of the Community objection proceedings.

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 a 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.)

ILGA has standing and the right to assert this request for reconsideration as the original entity that filed the Community objection against the non-community string .LGBT by Afiliias. It has been unquestioned, proven and confirmed by the Panelist that ILGA is an organization with standing in the gay community.

According to the Applicant Guidebook, the DRSPs are extensions of the ICANN Staff. Because of the policy violations made by the Panelist (noted in Question #8) ILGA is requesting that the BGC instruct ICANN to reconsider the Community objection for the non-community string .LGBT. This would require ICANN to further engage the services of the ICC for reconsideration of the Community objection decision.

ILGA believes that we have stated our grounds and justification for this request have been clearly stated in Questions #6, #7 and #8 above.

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.

Yes. The original Community objection submitted by ILGA was supported by 40

other international, national and local organizations in the gay community who supported and endorsed ILGA's claims, yet who did not have the required funds to file individual Community objections against the non-community string .LGBT by Afilas.

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>.

Not at this time.

Terms and Conditions for Submission of Reconsideration Requests

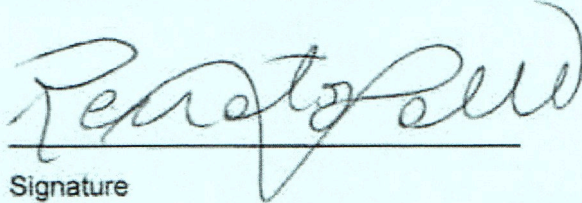
The Board Governance Committee has the ability to consolidate the consideration of Reconsideration Requests if the issues stated within are sufficiently similar.

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

3 December 2013
Date