

Reconsideration Request Form

1. Requester Information

Name: Steve DelBianco, Business Constituency vice chair for policy coordination, on behalf of:

The Business Constituency;

The Registries Stakeholder Group; and

The Non-Commercial Stakeholders Group (NCSG)

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2. Request for Reconsideration of (check one only):

X **Staff action/inaction**

3. Description of specific action you are seeking to have reconsidered.

We ask the Board Governance Committee (BGC) to reconsider the ICANN staff’s imposition of its “Accountability Plan”, the final version of which was posted to ICANN’s website on 22-Aug- 2014, which is also the date that the staff Rationale for the plan was initially posted to the public.

Among others, the community groups represented here had called for a *community-developed* Accountability Plan, and yet were not allowed to participate in the drafting of staff’s plan. At the London ICANN #50 meeting in June, staff promised the community that the plan would be community-developed, transparent, open, and bottom-up in its formulation. The plan imposed on 22-Au-2014 had none of those promised attributes.

ICANN staff also failed to take into account the statement of the 4 GNSO Stakeholder Groups at the London #50 meeting noting ICANN’s conflict of interest and calling for an independent accountability mechanism to be developed. Indeed staff has not responded in any way to the statement of the 4 GNSO Stakeholders Groups in the London Public Forum in June. In summary:

1. The BCG should reconsider the staff decision to impose a plan of this significance without allowing a public comment period on the staff-developed plan.
2. The BCG should reconsider the staff decision to impose a plan that failed to address widely shared community concerns as expressed in numerous public comments, discussions at ICANN #50, and stated community reactions to the infographic.

4. Date of action/inaction:

The final version of staff’s Accountability Plan was posted to ICANN’s website on 22-Aug-2014, which is also the date that the staff rationale for the plan was initially posted to the public.

ICANN provided an “Infographic” foretelling certain aspects of its plan to select members of the community on 14-Aug-2014. Community leaders told ICANN staff at that time that their groups were not aligned with staff’s plan, and staff responded and stated it was “fixing” its plan. The community

waited for the so-called “fixed” plan, which was posted as Final on 22-Aug-2014, and which did not address the stated community concerns in any meaningful way. The rationale for this plan was not provided by staff until the plan was final on 22-August, at which point its implementation was already underway.

Staff did not allow a public comment period for any community discussion, shaping, or even support to occur for its Accountability Plan prior to its adoption and implementation. Staff did not address the many concerns that had been expressed about ICANN’s conflict of interest in controlling the process to hold itself “accountable”. Staff did not clarify the roles in its accountability plan to ensure that stakeholders are the decision makers in matters they are subject to.

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

On 22-Aug-2014, when staff finally posted the plan and its rationale to its website, and it did not address community concerns as promised, and its implementation had begun, we became aware that the plan staff intended to implement would not meet the community’s needs and redress measures would be required.

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

We have been materially and negatively affected by the staff’s decision to proceed with their proposed plan finalized in the 22-Aug-2014 ICANN announcement on Enhancing Accountability: *Process and Next Steps*.

The staff-proposed plan did not properly take into account community concerns and did not provide a public comment period whereby the community could provide reaction to the staff plan. By taking this action, we have been materially harmed, as our questions, concerns, and ideas have not been adequately considered in the required multi-stakeholder process.

Further, the community has no say in the appointment of the Public Experts Group (“PEG”) or the seven outside “expert” advisors to be appointed by the PEG. Yet, the seven advisors could steer consensus and outcome that will have a direct impact on the community, since the Coordination Group is directed to make recommendations based upon consensus, taking into account the advice of the advisors. Worse still, the staff-imposed plan would allow the ICANN Board to reject or selectively accept recommendations of the Coordination Group, again bypassing the multi-stakeholder process.

The staff-imposed plan is a top-down approach that calls into question the fairness of enhancing accountability process and the legitimacy of its decisions. It also creates a disturbing precedent that could embolden future actions by staff or the ICANN Board to circumvent and ignore the bottom-up, multi-stakeholder process.

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

In addition to an adverse effect upon us, the staff-imposed plan has an adverse effect upon other constituencies and upon other members of the community. This plan, imposed on the community without transparency and without the opportunity for public comment, creates inconsistency, disregards proper ICANN procedure, injects unfairness into the process, and defeats the purpose of the

entire accountability examination. All members of the ICANN community and users of the Internet have a stake in the outcome of the enhancing accountability process and may be harmed if the process does not take into account their views and is the result of a staff-imposed plan rather than a community-driven plan.

8. Detail of Staff Action – Required Information

The staff development and imposition of its accountability plan as described above failed to uphold ICANN’s stated core values, mission, and promises that the accountability plan would be community-driven and based on the public interest as expressed through a bottom-up process.

Specifically, the staff action is in violation of several core values in ICANN’s bylaws, whereby ICANN promises it will behave in an open, transparent, and bottom-up fashion in the formulation of the organization’s policies and operations.

In Article I, Section 2 of its Bylaws, ICANN promises to engage with the community in the development of policy in a bottom-up and open manner at all levels. And in the Section 3 of its Bylaws, ICANN promises to operate in a transparent and fair manner. Through this staff action, ICANN has failed in its commitment to the Internet community that it will operate in an open, transparent, fair, and bottom-up fashion in the formulation of crucial policy.

ICANN Bylaws – Article I, 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.

ICANN neither sought nor supported participation in the development of this plan, and specifically excluded the community from the drafting and decision-making opportunities behind the staff plan.

7. Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.

The formulation of staff’s plan went on behind closed doors and excluded the opportunity for the community to influence the plan. The community was not provided with the rationale for the staff plan until after the plan had been posted as final and its implementation had begun. At several GNSO Council meetings since June and also during several “community leaders” calls, staff were asked to engage with the community on the development of the plan and those requests were ignored.

8. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.

The decision to impose this plan, to which so many in the community were openly objecting, showed a lack of neutrality, integrity, objectivity, and fairness on the part of staff. Staff failed to follow any documented policy and created its own plan without addressing the concerns about its conflict of interest in the matter.

9. Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.

Staff failed to include the input of those who are most affected by staff's accountability plan: the community members who participate at ICANN in hopes of getting a fair opportunity to influence policy in a democratic, open, transparent process. Staff kept all decision-making on the development of the accountability plan behind closed doors and entirely within their control, beginning after the initial comment period ended in June until the plan was imposed on the community in August.

10. Remaining accountable to the Internet community through mechanisms that enhance ICANN's effectiveness.

Staff failed to integrate the input obtained from the initial public comment period in the formulation of its plan. Then staff did not provide any opportunity for public comment on its plan once it was finally published. ICANN has failed to be accountable to the Internet community through mechanisms such as the public comment period by failing to consider those comments initially and by failing to permit a comment period on the plan it developed internally. Providing an advance "infographic" to a small handful of insiders and asking for their alignment does not meet an acceptable standard for public comment.

ICANN Bylaws – Article III, Section 1 – Transparency

ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.

Staff failed to operate in an open, transparent or fair manner. Decisions and drafting were all done internally by staff with no opportunity for the public to shape the staff plan in any meaningful way. Staff's rationale was not provided until 22 August, after the plan was already considered final by staff and its implementation was underway.

9. What are you asking ICANN to do now?

ICANN should confer with the community as soon as possible to address these concerns and amend its plan in such a way that the community input is taken into account as the plan goes forward. Specifically, ICANN should make modifications and clarifications to its plan to reflect the widely shared concerns of the community that can reasonably be implemented.

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.

The views, concerns, needs, and ideas of the community ICANN was established to serve were not adequately considered in the formulation of the staff plan. Nor were ICANN's Bylaws and promises

to operate in an open, transparent, and bottom-up manner followed in this process. The communities represented here participate in the process with the expectation that the process will be fair, open, transparent, and bottom-up in its operation. Many of our members spent significant time drafting and submitting comments that were not considered by staff and the needs and objectives of our entire stakeholder communities are not reflected in the plan developed by staff.

We legitimately represent the bottom-up process with our members devoting significant energy to ICANN, and that gives us standing to assert this request for reconsideration.

11. Are you bringing this Reconsideration Request on behalf of multiple persons or entities? (Check one)

Yes: Business Constituency, Registries Stakeholder Group, and Non-Commercial Stakeholders Group

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, our members are participants in the GNSO at ICANN and each of our groups signed on to the London #50 Statement (below) of the GNSO regarding the ICANN accountability crisis.

Do you have any documents you want to provide to ICANN?

The ICANN #50 Statement of the GNSO 4 Stakeholder Groups on ICANN Accountability (26 June 2014):

<http://www.internetcommerce.org/gns0-constituencies-issue-unanimous-joint-statement-on-icann-accountability/>

Letter from ICANN communities on ICANN Accountability Plan:

http://www.circleid.com/posts/20140828_icann_community_issues_letter_questioning_icann_accountability/
(28 August 2014)

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.



29-Aug-2014

Signature

Date