

Reconsideration Request

November 14, 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: GCCIX, W.L.L.
Address: Contact Information Redacted
Email: Contact Information Redacted

(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.)

NGPC acceptance of GAC Advice to reject .GCC gTLD application. NGPC refusal to consider expert WIPO panelist determination, and NGPC refusal to consider contrary recommendation from GNSO.

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.)

June 4, 2013. Rationale for the action and inaction was requested via letter to ICANN dated June 19, 2013, and again via letter to ICANN dated September 25, 2013 (copies attached in Exh. A). The letters further requested the chance to request Reconsideration once such rationale was provided.

It only became evident on October 31 that such rationale seemingly is not forthcoming from ICANN, and thus Applicant timely seeks reconsideration of the NGPC's apparent decisions to date:

1) to accept GAC Advice to reject the .GCC application, despite lack of any rationale for such Advice;

2) to refuse to request rationale from the GAC;

3) to refuse to provide any rationale for the NGPC decision to accept GAC Advice;

4) to refuse to allow the WIPO Legal Rights Objection to be heard;

5) to refuse to provide any rationale for the refusal to consider the WIPO expert determination;

6) to consider the GNSO PDP work and recommendations regarding IGO acronym protection at the top-level;

7) to refuse to provide any rationale for failing to consider the GNSO PDP work and recommendations; and,

8) to refuse to consider the conflict between the NGPC decision thus far to reject the .GCC application, apparently based on purported IGO name rights, and the GNSO PDP consensus against IGO acronym protection at the top level.

There are no firm dates associated with any of these decisions, except the first.

Instead there apparently has been deliberative process within ICANN, presumably in consideration of Applicant's previous letters, culminating in the October 31 letter from Ms. Christine Willett, discussed below.

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.)

October 31, 2013. In response to Applicant's letter dated September 25, 2013, ICANN's letter of October 31 (copy attached in Exh. A) seems to indicate that no rationale for the action or inaction is forthcoming, despite Applicant's repeated requests. Until that date, due to correspondence between Applicant and Ms. Willett, and ongoing work of the GNSO PDP Working Group referenced below, it was not clear that Ms. Willett or ICANN believed the NGPC resolution to be supported by any documented rationale. Until that date, Applicant reasonably believed that ICANN would provide some semblance of documented rationale for this critical decision.

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

Applicant has invested more than USD 400,000 in its application to operate a gTLD string that is not prohibited by the terms of the Applicant Guidebook. Applicant reasonably estimates a multi-million dollar business opportunity from operating the .GCC gTLD.

Applicant's TLD application has been rejected by the GAC in its Beijing Communique, without any rationale whatsoever. The GAC rejection was accepted by the NGPC, without any rationale whatsoever, except to refer to the Applicant Guidebook provisions with respect to GAC Advice. Applicant has tried via two letters to initiate discussion with ICANN staff, and has specifically requested rationale both times, but it has not been provided.

Applicant fully responded to the Legal Rights Objection filed by the Cooperation Council for Arab States of the Gulf, which claims rights in the GCC acronym. Applicant provided voluminous evidence, including an expensive expert survey, to refute the CCASG's assertion of rights (copy attached as Exh. B). ICANN without rationale has instructed WIPO not to hear the Objection. This response cost applicant at least USD 50,000, including expert panelist fees which have not been refunded. Applicant's two letters specifically requested that ICANN instruct the WIPO panel to proceed with the expert determination, as the Applicant Guidebook specifically suggests that the ICANN Board should consider any such determination, or to provide rationale for the refusal to do so. ICANN has not responded to these requests.

Applicant has tracked the progress of a GNSO PDP Working Group, which has just issued its Final Report on the Protection of IGO and INGO Identifiers (copy attached as Exh. C). The Final Report, Section 3.5, documents the formal "Consensus Against" any recommendation to protect IGO acronym identifiers. The draft GNSO Council resolution, to be discussed at the November 20, 2013, meeting in Buenos Aires, would resolve as follows (Section 3; copy attached as Exhibit D):

At the top-level, acronyms of the RCRC, IOC, IGOs and INGOs under consideration in this PDP shall not be considered as "Strings Ineligible for Delegation".

In other words, purported acronyms of any IGO are considered by the GNSO Working Group, and thus likely by the GNSO Council, to be eligible for delegation as

contemplated in the Applicant Guidebook. It is expected that the ICANN Board consequently will accept that recommendation of the Council.

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

Internet users who seek to use the .GCC domain name are harmed by its continued unavailability. See Exh. A, June 19 letter. The GNSO constituencies, Working Group members, and public commenters, who were virtually unanimous in their recommendation against IGO acronym protection, will be harmed by the NGPC refusal to consider their consensus recommendation. See Exh. C, Sec. 3.5. ICANN itself will suffer further degradation in community interest in PDP participation, if the consensus recommendation is ignored by NGPC. ICANN will further be harmed if the ICANN Board accepts the GNSO Council recommendation as expected, as the NGPC action thus far to reject the .GCC application is directly contrary to that recommendation.

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:

In response to the NGPC action of June 4, 2013, accepting the GAC Advice to reject the .GCC application, Applicant submitted a letter to ICANN on June 19, 2013 – within fifteen days of the action – seeking rationale for the decision since absolutely none had, or has, been provided. See Exh. A. The letter further requested the chance to request Reconsideration once such rationale was provided. The letter further described the ICANN Board’s instruction to the GNSO with respect to protection of IGO names, and the emerging consensus in the GNSO against any top-level protection for IGO acronyms. And the letter further requested that the NGPC allow the WIPO Legal Rights Objection to be heard.

On September 5, 2013, purportedly in response to the June 19 letter, Ms. Christine Willett of ICANN responded. Unfortunately, despite the ten weeks taken to prepare and forward a response, Ms. Willett still did not address in any meaningful way GCCIX’ direct questions about ICANN’s purported rejection of the .GCC new gTLD application. See Exh. A. Instead, the letter merely quoted the NGPC resolution and

the accompanying Briefing Materials, neither of which provide any rationale for the decision. The letter ignored Applicant's request to consider the GNSO PDP, and Applicant's request that the Legal Rights Objection be heard.

Therefore, on September 25, 2013, Applicant wrote again to explain that no rationale had yet been provided, to reiterate its request about the Legal Rights Objection and request rationale for the apparent refusal to grant such request, and to update Ms. Willett with respect to the GNSO PDP consensus. See Exh. A.

No rationale for GAC and NGPC rejection of .GCC application.

Applicant carefully reviewed the documents linked within the September 5 letter, which Ms. Willett claimed to provide rationale for ICANN's purported rejection of the application -- specifically the two documents at these links:

<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-04jun13-en.htm>

<http://www.icann.org/en/groups/board/documents/briefing-materials-3-04jun13-en>

The Briefing Materials provide no rationale from the GAC or ICANN Board, but only include GCCIX' response to the GAC Advice. The NGPC resolution makes no mention of the .GCC application whatsoever, nor any effort to explain its rejection. The NGPC resolution adopts the "NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC Beijing Communiqué" (4 June 2013), attached as Annex 1 to the Resolution. That document, in turn, states only the following with respect to the .GCC application:

Summary of GAC Advice: The GAC Advises the ICANN Board that it has reached consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following application: .gcc (application number 1-1936-2101).

NGPC Response: The NGPC accepts this advice. The AGB provides that if "GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved." (AGB § 3.1) The NGPC directs staff that pursuant to the GAC Advice and Section 3.1, of the Applicant Guidebook, Application number 1-1936-2101 for .gcc will not be approved. In accordance with the AGB the applicant may withdraw ... or seek relief according to ICANN's accountability mechanisms

In turn, the GAC Advice stated within the Beijing Communiqué dated April 11, 2013, simply stated that the GAC had reached consensus to reject the .GCC application, without any explanation whatsoever. The GAC meetings in Beijing were closed to the public and to GCCIX, and the GAC made no public effort to explain its decision as to .GCC.

Clearly, GCCIX has not been provided any rationale whatsoever for the GAC's or the NGPC's purported rejection of the .GCC application. GCCIX knew this in June, when it specifically asked ICANN for such rationale. ICANN still has failed to provide it, some four months and two letters later. Thus, Applicant again reiterates the request for written documentation of the rationale for this critical decision, which if ultimately implemented will cost GCCIX hundreds of thousands of dollars in lost investment, and millions of dollars in lost business opportunity.

No rationale for disregarding Legal Rights Objection process.

ICANN has also failed to provide any rationale for stopping the Legal Rights Objection process initiated with respect to the .GCC application, even though that Objection was fully briefed by the Objector and the Applicant, and fees paid to WIPO to adjudicate the dispute. The Applicant Guidebook, §3.1 re GAC Advice, specifically provides: "The ICANN Board may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in

cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures.”

ICANN has not provided any rationale for failing to allow the independent expert to hear the Legal Rights Objection, even though the issues raised in the GAC Advice appear to be pertinent to that Objection. Of course it is hard to determine whether it is pertinent, as the GAC has not provided any rationale for its decision. But GCCIX has been informed by GAC members that the Objector, Cooperation Council for the Arab States of the Gulf (“CCASG”), was the prime instigator of the GAC advice to reject the .GCC application. Any reasoning of the GAC, if any, remains a closely guarded secret within the GAC and ICANN, as all relevant GAC sessions in Beijing were closed to the public, and no minutes have ever been distributed. But the CCASG’s public Legal Rights Objection indicates that its opposition to the application is based upon CCASG’s purported legal rights to the GCC acronym.

So, it defies common sense that the ICANN Board would fail to allow an independent expert to provide its opinion on the application; particularly when the governmental entity behind the GAC advice has participated in the Objection process, and the applicant has invested heavily in its Response. The ICANN Board cannot reasonably address whether it should disregard the “presumption” to accept GAC advice, if it fails to consider the expert determination on the issue which is specifically contemplated in §3.1 of the Applicant Guidebook. Therefore, GCCIX reiterates its

request that ICANN direct WIPO to continue to decide the Objection, and that the ICANN Board consider the decision of the independent WIPO expert.

At minimum, the NGPC itself should consider the Objection and the Applicant's Response itself, if it is not interested in the independent expert determination by WIPO. See Exh. B.

No rationale for disregarding GNSO input re protection of IGO identifiers.

In her September 5 letter, Ms. Willett stated that:

[T]he NGPC adopted a resolution on 2 July 2013 to require registry operators to implement temporary protections for the IGO names and acronyms on the GAC's IGO List dated 22/03/2013 while the GAC and NGPC work through the implementation issues. This list previously established by the GAC includes the name "Cooperation Council for the Arab States of the Gulf," and its acronym "GCC".

<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-02jul13-en.htm#1.b>

However, that NGPC resolution is irrelevant, as it only addresses acronym protection at the second level of new gTLDs. This is clear from Ms. Willett's letter, referring to a requirement of registry operators, and from the resolution itself which

refers to Specification 5 of the draft Registry Agreement. The NGPC resolution does not address IGO acronym protection at the top level. Furthermore, the GAC List provides no rationale for including GCC as the purported acronym of the CCASG.

The GNSO Working Group on Protection of IGO Names has issued its Final Report to the GNSO Council. See Exh. C. That Working Group has reached broad “Consensus Against” any recommendation that IGO acronyms shall not be protected at the top-level. This is reflected in the draft GNSO Council resolution to be discussed on November 20, 2013, in Buenos Aires. See Exh. D. Given the level of consensus within the Working Group, it is likely that a Supermajority of the GNSO Council will approve this recommendation, which per the ICANN Bylaws (§3.9.i and Annex A, §9.a) “shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such policy is not in the best interests of the ICANN community or ICANN.”

ICANN has given no rationale for disregarding the pending final recommendation of this PDP Working Group and the GNSO Council, or for circumventing the GNSO PDP process and ICANN Bylaws provisions which likely will require the Board to approve that recommendation. At minimum, ICANN should allow the GNSO process to complete, and the Board to act on the GNSO Council recommendations, before rejecting the .GCC application on the purported ground that GCC is an acronym of the CCASG. Such rejection would run directly counter to the GNSO PDP

recommendation on this point, and cannot be in the best interests of the ICANN community or ICANN.

Last word from ICANN; Decisions to be Reconsidered.

On October 31, 2013, Ms. Willett responded to Applicant's Sept. 25 letter by stating only that Applicant has not sought reconsideration in time. See Exh. A. However, Applicant has timely and repeatedly requested some semblance of rationale for the NGPC action, and has further timely and repeatedly requested the ability to request reconsideration once such rationale is provided. It only became evident on October 31 that such rationale seemingly is not forthcoming from ICANN, and thus Applicant timely seeks reconsideration of the NGPC's apparent decisions to date:

- 1) to accept GAC Advice to reject the .GCC application, despite lack of any rationale for such Advice;
- 2) to refuse to request rationale from the GAC;
- 3) to refuse to provide any rationale for the NGPC decision to accept GAC Advice;
- 4) to refuse to allow the WIPO Legal Rights Objection to be heard;

5) to refuse to provide any rationale for the refusal to consider the WIPO expert determination;

6) to consider the GNSO PDP work and recommendations regarding IGO acronym protection at the top-level;

7) to refuse to provide any rationale for failing to consider the GNSO PDP work and recommendations; and,

8) to refuse to consider the conflict between the NGPC decision thus far to reject the .GCC application, apparently based on purported IGO name rights, and the GNSO PDP consensus against IGO acronym protection at the top level.

There are no firm dates associated with any of these decisions, except the first. Instead there apparently has been deliberative process within ICANN, presumably in consideration of Applicant's previous letters, culminating in the October 31 letter.

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?)

The NGPC action to accept GAC Advice should be reversed, pending further investigation by the NGPC. The NGPC should request from the GAC its rationale for its Advice, since the Board cannot legitimately evaluate whether to accept it in the

absence of any rationale for it. The NGPC should instruct WIPO to hear and provide an independent expert determination in the Legal Rights Objection that has been fully briefed, with fees paid, per the Applicant Guidebook. The NGPC should consider the forthcoming GNSO Council resolution with respect to IGO acronym protection at the top level, and consequent Board action in response to the Council resolution. Upon receiving those three inputs, the NGPC should reconsider whether to accept the GAC Advice to reject the .GCC application.

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.)

Applicant has suffered more than USD 400,000 in damages, in the event its .GCC application is ultimately rejected. This includes the USD 185,000 application fee to ICANN, plus legal and consulting fees in support of the application. Reversal of the current rejection, and consideration of the additional inputs requested by Applicant, may lead the NGPC to ultimately refuse to accept the GAC Advice.

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

Yes

X No

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>.

Exhibit A – Copies of letters between Applicant and ICANN since June 19, 2013.

Exhibit B – Applicant’s Response to Legal Rights Objection, plus Annexes – this voluminous documentation is downloadable at the following Dropbox link:

<https://www.dropbox.com/s/tii7195izvlfwka/LRO%20response%20final.zip>

Exhibit C – Final Report on the Protection of IGO and INGO Identifiers

Exhibit D – Draft GNSO Council Resolution re Final Report recommendations

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.

M. Danse

Signature

14/11/2013

Date

