

**DETERMINATION
OF THE BOARD GOVERNANCE COMMITTEE (BGC)
RECONSIDERATION REQUEST 15-5**

6 MAY 2015

The Requester, Atgron, Inc, seeks reconsideration of the ICANN Board Governance Committee's (BGC) denial of Requester's Reconsideration Request 15-1.

I. Brief Summary

Request 15-1 sought reconsideration of ICANN staff's actions in processing the Requester's request made pursuant to ICANN's Registry Services Evaluation Policy (RSEP), to modify the registry services provided pursuant to its registry agreement for .WED (Registry Agreement). Reconsideration Request 15-5 is based on the exact same facts and circumstances as Request 15-1, and makes no claims that the BGC failed to consider material information, or considered false or inaccurate material information, in deciding Request 15-1. Accordingly, the BGC finds that Request 15-5 should be summarily dismissed.

II. Background Facts.

The Requester is the registry operator for .WED. Pursuant to the RSEP, before a registry operator can add a new registry service or modify an existing one, it must make a written request to ICANN for evaluation.¹ On 8 October 2013, the Requester submitted an RSEP to allow the Requester to offer third-level domain name registrations in .WED (RSEP Request).²

Pursuant to the RSEP and the related RSEP workflow process (Workflow), upon receipt of the RSEP Request, ICANN staff conducted an administrative completeness check and a

¹ See RSEP §§ 1, 2.4, available at <https://www.icann.org/resources/pages/policy-bd-2012-02-25-en>.

² See <https://www.icann.org/en/system/files/files/atgron-wed-request-08oct13-en.pdf>.

preliminary review for significant security, stability, or competition issues.³ ICANN staff informed the Requester that while the RSEP Request raised no significant security, stability, or competition issues, implementation of the request would require a material change to the Requester's Registry Agreement.⁴ Further, because the amendment to the Registry Agreement had the potential to substantially affect third parties, ICANN staff informed the Requester that it would require a public comment period.⁵

The public comment period on the proposed amendment to the Requester's Registry Agreement was open from 6 June 2014 through 31 July 2014. The public comments⁶ received identified concerns regarding the proposed new registry service, including, among other things, the circumvention of intellectual property protections embedded within the New gTLD Program, a potential lack of adequate rights protection mechanisms at the third level, and minimal consultation with registrars and other constituents that may be affected by the proposed registry service.⁷ Based on the nature of the comments received, ICANN staff concluded that material revisions to the proposed amendment to the Registry Agreement were necessary to address those concerns.⁸ Accordingly, ICANN staff sent the Requester a revised proposed amendment to the Registry Agreement (Revised Amendment).

ICANN staff informed the Requester that because the Revised Amendment was materially different from the initial proposed amendment, an additional public comment period

³ See RSEP §§ 2.3-2.4; see also RSEP Workflow, available at <https://www.icann.org/resources/pages/workflow-2012-02-25-en>. On 11 March 2015, an updated version of the RSEP Workflow was posted; it does not constitute a substantive change, but rather clarifies the existing workflow, which has been established since 2006. The prior version of the RSEP Workflow is available at <https://www.icann.org/sites/default/files/unmanaged/en/registries/rsep/registry-process-flowchart-small-04aug09-en.png>.

⁴ See *id.*

⁵ See <https://www.icann.org/en/system/files/correspondence/registry-services-to-mcadory-16may14-en.pdf>.

⁶ See <https://www.icann.org/en/system/files/files/report-comments-wed-amendment-03oct14-en.pdf>. This time period includes both the initial comments period, and the reply period.

⁷ See *id.*

⁸ *Id.* at Pg. 1.

was necessary on the Revised Amendment if the Requester wished to proceed with its proposed new registry service. The Requester objected to this further public comment period.

Consequently, on 15 January 2015, the Requester filed Request 15-1, challenging ICANN staff's decision to require a public comment period for the Revised Amendment, and more generally expressing disagreement with the manner in which ICANN responded to its RSEP Request.⁹

On 19 March 2015, the BGC denied Request 15-1, finding that the Requester failed to demonstrate any misapplication of any policy or procedure by ICANN staff, which responded to the RSEP Request in accordance with the RSEP and related Workflow.¹⁰

On 21 March 2015, the Requester filed the instant Request, seeking reconsideration of the BGC's denial of Request 15-1. Specifically, the Requester asks that the Board "overturn" the BGC's denial of Request 15-1 and "move forward with the amendment to the .wed Registry Agreement."¹¹

III. Analysis and Rationale.

In order to state a basis for reconsideration of a Board action, a request must demonstrate that the Board (or in this case the BGC) failed to consider material information, or considered false or inaccurate material information, in denying Request 15-1.¹² However, the Requester does not even argue, let alone demonstrate—as it must—that the BGC acted without consideration of material information or in reliance on false or inaccurate material information.

Instead, the Requester asserts—in a Request that consists of a single paragraph of argument—that the BGC should not have denied Request 15-1 because, in the Requester's view,

⁹ Reconsideration Request 15-1, available at <https://www.icann.org/en/system/files/files/reconsideration-request-15-1-atgron-inc-15jan15-en.pdf>.

¹⁰ BGC Determination on Reconsideration Request 15-1, available at <https://www.icann.org/en/system/files/files/determination-15-1-atgron-inc-15jan15-en.pdf>.

¹¹ Request, § 9, Pg. 4.

¹² Bylaws, Art. IV, § 2.2.

the Revised Amendment “has no material change from the original .wed Registry Agreement and therefore the new public comment period ... is not warranted.”¹³ This is precisely the argument the Requester raised in Request 15-1; the Requester offers nothing new here. The Requester’s substantive disagreement with the BGC’s determination on Request 15-1 is not a basis for reconsideration.

The Bylaws provide that the BGC “may summarily dismiss a Reconsideration Request if, among other things: (i) the requestor fails to meet the requirements for bringing a Reconsideration Request; [or] (ii) it is frivolous, querulous or vexatious.”¹⁴ This Request—which raises exactly the same arguments as presented in Request 15-1—meets the standard for summary dismissal.

IV. Determination.

Based on the foregoing, the BGC summarily dismisses Reconsideration Request 15-5.

¹³ Request, § 8, Pg. 3.

¹⁴ *Id.*, Art. IV, § 2.9.