

**DETERMINATION
OF THE BOARD GOVERNANCE COMMITTEE (BGC)
RECONSIDERATION REQUESTS 15-9 AND 15-10**

24 AUGUST 2015

Atgron, Inc, (“Atgron”) seeks reconsideration of ICANN staff’s actions in processing Atgron’s Registry Services Evaluation Policy (“RSEP”) request to modify registry services that Atgron provides pursuant to its registry agreement for .WED (“RA”).

I. Brief Summary.

Reconsideration Requests 15-9 and 15-10, which are jointly considered here,¹ are Atgron’s fourth and fifth reconsideration requests relating to ICANN staff’s actions in processing Atgron’s RSEP request. The first (Request 15-1) was denied because Atgron failed to state a basis for reconsideration; the next two (Requests 15-5 and 15-8) were summarily dismissed because they were based on the same facts, circumstances and claims as Request 15-1. Requests 15-9 and 15-10 are also based on the same facts and circumstances as Atgron’s prior reconsideration requests. As such, Requests 15-9 and 15-10 meet the standard for summary dismissal. However, because Atgron purports to raise new bases for reconsideration, the BGC will address the arguments raised in Requests 15-9 and 15-10 for the sake of completeness.

On 8 October 2013, Atgron submitted an RSEP request that, if approved, would allow Atgron to offer third-level domain name registrations in .WED (“RSEP Request”). In accordance with the RSEP process, ICANN staff completed a preliminary review of the RSEP Request, and informed Atgron that: (i) implementation of the RSEP Request would require a material change to the Atgron’s RA for .WED; and (ii) because the amendment to the RA had the potential to substantially affect third parties, it would require a public comment period.

¹ Because Requests 15-9 and 15-10 involve the same conduct and issues, the Requests will be addressed in the same Determination. (See Reconsideration Request Form, Terms and Conditions; Bylaws, Art. IV, § 2.8.)

Given the concerns raised during the public comment period on the proposed amendment to the RA for .WED (“First Comment Period”), ICANN staff concluded that material revisions to the proposed amendment were necessary. Accordingly, ICANN staff sent Atgron a revised proposed amendment to the .WED RA (“Revised Amendment”) and informed Atgron that because the Revised Amendment was materially different from the initial proposed amendment, an additional public comment period was necessary. Atgron objected to a public comment period for the Revised Amendment, and has since filed five reconsideration requests challenging various ICANN staff actions in processing Atgron’s RSEP Request.

Like Atgron’s previous requests, Requests 15-9 and 15-10 do not state a basis for reconsideration. First, Requests 15-9 and 15-10 were filed five months and seven months, respectively, after the complained-of staff actions, and are therefore time-barred. Further, although Requests 15-9 and 15-10 assert grounds not advanced in Atgron’s three prior reconsideration requests, Atgron again does not demonstrate any misapplication of any policy or procedure by ICANN staff. The BGC therefore denies Requests 15-9 and 15-10.

II. Facts.

A. Background Facts.

Pursuant to the RSEP, a registry operator must make a written request to ICANN if it wants to add to or modify the registry services it provides.² On 8 October 2013, Atgron submitted the RSEP Request that, if approved, would allow Atgron to offer third-level domain name registrations in .WED.³ As part of the RSEP Request, Atgron submitted a list of approximately 11,000 second-level domain names for which it proposed to offer third-level domain registrations (“Second-Level List”).

² See RSEP §§ 1, 2.4, available at <https://www.icann.org/resources/pages/policy-bd-2012-02-25-en>.

³ See <https://www.icann.org/en/system/files/files/atgron-wed-request-08oct13-en.pdf>.

The RSEP and the related RSEP workflow process (“Workflow”) call for ICANN staff to conduct an administrative completeness check and a preliminary review of each RSEP request.⁴ On 14 February 2014, ICANN staff informed Atgron that ICANN had completed its preliminary review of the RSEP Request and that the RSEP was approved as it presented no significant competition, security, or stability issues. ICANN staff also informed Atgron that implementation of the RSEP Request would result in a material change to RA requiring a contract amendment.⁵

On 16 May 2014, ICANN staff provided Atgron with a draft proposed amendment.⁶ ICANN also informed Atgron that because the amendment had the potential to substantially affect third parties, the amendment would be posted for public comment.⁷ On 4 June 2014, ICANN again communicated with Atgron, reiterating that, pursuant to the RSEP, implementation of the RSEP Request would require an amendment to the RA.

The First Comment Period was open from 6 June through 31 July 2014.⁸ Among other things, the comments⁹ raised concerns regarding the circumvention of intellectual property protections embedded in the New gTLD Program, a potential lack of adequate rights protection mechanisms at the third level, and minimal consultation with potentially affected parties.¹⁰ Several comments specifically identified potentially problematic names that appeared on

⁴ See RSEP §§ 2.3-2.4; see also RSEP Workflow, available at <https://www.icann.org/resources/pages/workflow-2012-02-25-en>.

⁵ See *id.*

⁶ Although the letter is erroneously dated 16 March 2014, it was in fact transmitted on 16 May 2014, as is reflected on ICANN’s website. See <https://www.icann.org/resources/pages/rsep-2014-02-19-en>.

⁷ *Id.*

⁸ See <https://www.icann.org/public-comments/wed-amendment-2014-06-04-en>. This time period includes both the initial comments period, and the reply period.

⁹ See Report of Public Comments, available at <https://www.icann.org/en/system/files/files/report-comments-wed-amendment-03oct14-en.pdf>.

¹⁰ *Id.* at Pgs. 2-3.

Atgron's Second-Level List.¹¹ Atgron had the opportunity to, but did not, respond to the concerns raised during the First Comment Period.¹²

On 1 October 2014, ICANN staff sent Atgron a draft revised amendment to the RA, which addressed the concerns raised during the First Comment Period. On 3 October 2014, ICANN staff published a report of the public comments, which noted that “[b]ased on the nature of the comments received, ICANN w[ould] propose changes to the current draft amendment to address the public comments that were received. As the revised amendment is anticipated to be a material change to the previously posted amendment, an additional comment period may be conducted to obtain additional community input and for transparency.”¹³ At that time, ICANN staff notified Atgron that the Revised Amendment would need to be posted for public comment.

On 23 October 2014, Atgron provided feedback on and requested further edits to the Revised Amendment. On 25 November 2014, ICANN staff sent Atgron a new version of the Revised Amendment, reflecting Atgron's feedback. The Revised Amendment requires that Atgron “provide sunrise and claims services for domain name registrations at the third level.”¹⁴ Contrary to what Atgron appears to believe, the Revised Amendment did not remove any domain names from Atgron's Second-Level List.¹⁵ Rather, ICANN staff prepared a list showing which of the domains from Atgron's Second-Level List: (1) corresponded to names that appear in the Trademark Clearinghouse (“Clearinghouse”); or (2) appeared on ICANN's Reserved Names List.

On 2 December 2014, Atgron objected to a public comment period for the Revised Amendment. On 9 January 2015, ICANN staff informed Atgron that a public comment period

¹¹ See Report of Public Comments, Pg. 2, available at <https://www.icann.org/en/system/files/files/report-comments-wed-amendment-03oct14-en.pdf>.

¹² See <https://www.icann.org/public-comments/wed-amendment-2014-06-04-en>; Report of Public Comments.

¹³ Report of Public Comments at Pg. 1.

¹⁴ Reconsideration Request 15-10, Attachment (“Amendment to the Registry Agreement”), ¶ 7(1).

¹⁵ Reconsideration Request 15-10, § 3, Pg. 2.

would be required and asked Atgron to let ICANN know by 23 January 2015 whether it intended to proceed with its RSEP Request.

On 15 January 2015, Atgron filed Reconsideration Request 15-1, seeking reconsideration of ICANN staff's decision to seek public comment on the Revised Amendment, and generally expressing disagreement with ICANN staff's handling of its RSEP Request.¹⁶ On 19 March 2015, the BGC denied Request 15-1, finding that Atgron failed to demonstrate misapplication by ICANN staff of any established policy or procedure in responding to the RSEP Request.¹⁷

On 21 March 2015, Atgron filed Request 15-5, seeking reconsideration of the BGC's denial of Request 15-1.¹⁸ On 6 May 2015, the BGC summarily dismissed Request 15-5, finding that the request was based on the exact same facts, circumstances and arguments as Request 15-1, and similarly did not state a basis for reconsideration.¹⁹

On 20 May 2015, Atgron filed Request 15-8, seeking reconsideration of the BGC's summary dismissal of Request 15-5.²⁰ The BGC summarily dismissed Request 15-8, again finding that the request was based on the same facts, circumstances and arguments as Requests 15-1 and 15-5.²¹

On 4 June 2015, Atgron filed Request 15-9, its fourth reconsideration request, seeking reconsideration of staff's determination that the Revised Amendment should be subject to public

¹⁶ Reconsideration Request 15-1, available at <https://www.icann.org/en/system/files/files/reconsideration-request-15-1-atgron-inc-15jan15-en.pdf>.

¹⁷ 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>.

¹⁸ Reconsideration Request 15-5, available at <https://www.icann.org/en/system/files/files/reconsideration-request-15-5-atgron-redacted-21mar15-en.pdf>.

¹⁹ BGC Determination on Reconsideration Request 15-5, available at <https://www.icann.org/en/system/files/files/determination-15-5-atgron-inc-06may15-en.pdf>.

²⁰ Reconsideration Request 15-8, available at <https://www.icann.org/en/system/files/files/reconsideration-request-15-8-atgron-redacted-20may15-en.pdf>.

²¹ BGC Determination on Reconsideration Request 15-8, available at <https://www.icann.org/en/system/files/files/determination-15-8-atgron-inc-20june15-en.pdf>.

comment.²² In Request 15-9, Atgron raises the purportedly new argument that, in Atgron’s view, an additional public comment period is not appropriate because the RSEP Implementation Notes—a publicly-posted synopsis of the RSEP—do not specifically “list as [an] option” that public comment may be required for certain RSEP requests.”²³

On 17 June 2015, Atgron filed Request 15-10, its fifth reconsideration request relating to ICANN staff’s handling of Atgron’s RSEP Request. In Request 15-10, Atgron for the first time objects to the fact that the Revised Amendment: (1) requires Sunrise and Trademark Claims periods for third-level domain name registrations; and (2) purportedly removes domain names from Atgron’s Second-Level List that correlate to trademarks that appear in the Clearinghouse.²⁴

B. Relief Requested.

In Request 15-9, Atgron asks that ICANN “overturn the staff requirement for a new Public Comment period” for the Revised Amendment.²⁵ In Request 15-10, Atgron asks that ICANN “remove the requirement for another Trademark and Claims period [in the Revised Amendment] and [] reinstate [Atgron’s] initial requested list of extensions.”²⁶

III. Issues.

In view of the claims set forth in the Requests, the issues for reconsideration are whether ICANN staff violated established policy or procedure by: (1) determining that the Revised Amendment required an additional public comment period;²⁷ (2) including in the Revised Amendment a requirement that third-level domain registrations be subject to Trademark Claims

²² Reconsideration Request 15-9, *available at* <https://www.icann.org/en/system/files/files/reconsideration-15-9-atgron-redacted-04jun15-en.pdf>.

²³ *Id.*, § 3, Pgs. 2-4.

²⁴ Reconsideration Request 15-10, *available at* <https://www.icann.org/en/system/files/files/reconsideration-15-10-atgron-17jun15-en.pdf>.

²⁵ Reconsideration Request 15-9, § 9, Pg. 5.

²⁶ Reconsideration Request 15-10, § 9, Pg. 4.

²⁷ Reconsideration Request 15-9, § 9, Pg. 5.

and Sunrise periods;²⁸ and (3) purportedly removing domain names from Atgron’s Second-Level List that correlate to trademarks that appear in the Clearinghouse.²⁹

IV. The Relevant Standards for Evaluating Reconsideration Requests.

ICANN’s Bylaws provide for reconsideration of a Board or staff action or inaction in accordance with specified criteria.³⁰ Dismissal of a request for reconsideration of staff action or inaction is appropriate if the BGC concludes that the requesting party does not have standing because the party failed to satisfy the reconsideration criteria set forth in the Bylaws.

A. The RSEP

The RSEP sets out the procedure by which registry operators may seek to introduce new registry services and/or modify existing registry services by making a written request to ICANN.³¹ ICANN staff then conducts an administrative completeness check to verify that the registry operator has provided ICANN with all of the necessary information to allow a thorough review and analysis of the RSEP request.³² Within 15 days of completing the administrative review, ICANN staff conducts a preliminary substantive review of the request, to determine whether the request raises any significant competition, security, or stability issues.³³

Pursuant to the RSEP and the RSEP Workflow, if ICANN staff determines that the request raises no significant competition, security, or stability issues, the RSEP request is

²⁸ Reconsideration Request 15-10, § 3, Pg. 2.

²⁹ *Id.*

³⁰ Bylaws, Art. IV, § 2. Article IV, § 2.2 of ICANN’s Bylaws states in relevant part that any entity may submit a request for reconsideration or review of an ICANN action or inaction to the extent that it has been adversely affected by:

- (a) one or more staff actions or inactions that contradict established ICANN policy(ies); or
- (b) one or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board’s consideration at the time of action or refusal to act; or
- (c) one or more actions or inactions of the ICANN Board that are taken as a result of the Board’s reliance on false or inaccurate material information.

³¹ See RSEP, available at <https://www.icann.org/resources/pages/policy-bd-2012-02-25-en>.

³² See RSEP Workflow.

³³ RSEP, § 2.4.A; see also RSEP Workflow.

approved.³⁴ If the RSEP request is approved, ICANN staff must then determine whether implementation of the request requires an amendment to the registry agreement.³⁵ If an amendment is required, ICANN staff works with the registry operator to draft the proposed amendment.³⁶ ICANN staff then determines whether the proposed amendment requires public comment.³⁷ The RSEP Workflow specifically notes that public comment may be required where a proposed amendment would set a new precedent or have a substantial effect on ICANN or on third parties.³⁸

In addition to the RSEP and the RSEP Workflow, ICANN has publicly posted Implementation Notes on the RSEP. Those notes are not part of the RSEP and do not supplement it or supplant it—rather, they represent “a synopsis of the process and [are] intended to provide high-level information regarding the policy implementation of the [RSEP].”³⁹ The Implementation Notes relate only to the approval of an RSEP request (*i.e.*, the determination that an RSEP request raises no security, stability, or competition concerns). The Implementation Notes do not discuss the process for implementing approved RSEP requests.

B. Trademark Protections in the New gTLD Program

The New gTLD Applicant Guidebook sets out a number of trademark protections that new gTLD registry operators must implement.⁴⁰ Among these protections are “start-up rights protection measures,” including a Sunrise period and a Trademark Claims service.⁴¹ The Sunrise

³⁴ RSEP, § 2.4.D; *see also* RSEP Workflow.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *See* RSEP Workflow.

³⁸ *See* RSEP Workflow.

³⁹ RSEP Implementation Notes, *available at* <https://www.icann.org/resources/pages/implementation-notes-2012-02-25-en>.

⁴⁰ Guidebook, § 5.4.1. These measures are also set out in Specification 7 of the new gTLD registry agreement.

⁴¹ *Id.*, New gTLD Agreement, Specification 7.

period “allows eligible rightsholders an early opportunity to register names in the TLD.”⁴² It must be offered for a minimum of 30 days during the pre-launch phase of a new gTLD.⁴³ During that period, notice must be provided to all trademark holders in the Clearinghouse in order to allow trademark holders the opportunity to seek a sunrise registration. The Trademark Claims service “provides notice to potential registrants [that domain names potentially infringe on] existing trademark rights, as well as notice to rightsholders of relevant names registered.”⁴⁴ Registry operators must provide Trademark Claims services for at least the first 60 days of general registration on a new gTLD.⁴⁵

V. Analysis and Rationale.

Requests 15-9 and 15-10 are long since time-barred as the complained-of actions occurred five and seven months ago, respectively. However, even if Requests 15-9 and 15-10 were timely, Atgron has not identified a basis for reconsideration. ICANN staff acted in compliance with the RSEP and Workflow in requiring public comment on the Revised Amendment, and Atgron has identified no policy preventing ICANN staff from implementing Sunrise and Trademark Claims periods for third-level extensions. In addition, contrary to what Atgron argues, ICANN staff has removed no names from Atgron’s Second-Level List.

1. Reconsideration Requests 15-9 and 15-10 are Time-Barred.

Reconsideration requests must be filed within 15 days of “the date on which the party submitting the request became aware of, or reasonably should have become aware of, the challenged staff action.”⁴⁶

⁴² *Id.*

⁴³ *Id.*, Trademark Clearinghouse, § 6.2.1

⁴⁴ *Id.*, § 5.4.1.

⁴⁵ *Id.*, Trademark Clearinghouse, § 6.1.1

⁴⁶ Bylaws, Art. IV, § 2.5(b).

In Request 15-9, Atgron seeks reconsideration of ICANN staff’s decision to require public comment on the Revised Amendment. However, Atgron concedes that ICANN informed it on 9 January 2015 that a second public comment period would be required.⁴⁷ Thus, any reconsideration request challenging ICANN staff’s determination that a public comment period was necessary for the Revised Amendment must have been filed by 24 January 2015. Atgron, however, did not file Request 15-9 until almost *four and a half* months after the filing deadline.

In Request 15-10, Atgron seeks reconsideration of ICANN’s determination to require additional trademark protections in the Revised Amendment. However, Atgron acknowledges that the Revised Amendment was “posted in the GDD portal on 11/25/2014.”⁴⁸ Thus, any reconsideration request challenging the contents of the Revised Amendment must have been filed by 10 December 2014.⁴⁹ Atgron, however, did not file Request 15-10 until 17 June 2015, almost *seven months* after the filing deadline.

Atgron provides no explanation for its delay in filing Requests 15-9 and 15-10. To be clear, filing multiple reconsideration requests challenging the same staff action does not extend the filing deadline—Atgron’s new arguments cannot be belatedly appended to its first, timely-filed reconsideration request (*i.e.*, Request 15-1). Requests 15-9 and 15-10 are untimely, and on this basis alone, the BGC finds that these requests should be denied.

2. Requiring Public Comment on the Revised Amendment Does Not Contravene Established Policy or Procedure.

Even if Request 15-9 were timely, which it is not, Atgron has not identified a basis for reconsideration. As previously, Atgron seeks reconsideration of ICANN staff’s decision to

⁴⁷ Reconsideration Request 15-9, § 5, Pg. 4.

⁴⁸ Reconsideration Request 15-10, § 4, Pg. 2

⁴⁹ Atgron claims that it has “been requesting the requirement for another Trademark and Claims period be removed from the [Revised Amendment]” since 12 December 2014. *Id.*, § 5, Pg. 2. However, as discussed, Atgron was aware of the content of the Revised Amendment by 25 November 2014. Even if Atgron had not become aware of the Revised Amendment until 12 December 2014, Request 15-10 would still be time-barred by over six months.

require public comment on the Revised Amendment. Atgron now posits that reconsideration is appropriate because the Implementation Notes for the RSEP do not specifically “list as [an] option[.]” that public comment may be required for certain RSEP requests.⁵⁰ Atgron’s claims are unsupported. The Implementation Notes are “a *synopsis* of the [RSEP] and [are] intended to provide *high-level information* regarding the policy implementation.”⁵¹ They are not intended to—and do not—exhaustively detail the entire RSEP process. Specifically, they do not cover implementation of an RSEP request once it has been approved (*i.e.*, once ICANN staff has determined that it raises no significant competition, security, or stability issues). Atgron’s RSEP Request has already been approved. All that remains is for ICANN staff to work with Atgron, as it has been, to implement the RSEP Request.

The RSEP Workflow, which describes the process for implementing an RSEP request after the request has been approved, explicitly provides for public comment regarding certain RSEP requests.⁵² Specifically, pursuant to the RSEP Workflow, once an RSEP request is approved, it is ICANN staff’s responsibility to determine whether the implementation of the RSEP request requires a material change to the registry agreement.⁵³ If an amendment is required, ICANN staff works with the registry operator to draft a proposed amendment.⁵⁴ ICANN staff then determines whether the proposed amendment requires public comment.⁵⁵ The RSEP Workflow specifically states that public comment may be required where a proposed

⁵⁰ Reconsideration Request 15-9, § 3, Pgs. 2-4.

⁵¹ RSEP Implementation, *available at* <https://www.icann.org/resources/pages/implementation-notes-2012-02-25-en> (emphasis added).

⁵² *See* RSEP Workflow. On 11 March 2015, an updated version of the RSEP Workflow was posted online. The updated version does not constitute a change, but rather clarifies the existing workflow process, which has been established since the RSEP was adopted in 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>. It too explicitly provides for public comment periods regarding certain RSEP requests.

⁵³ RSEP § 2.4.D; *see also* RSEP Workflow.

⁵⁴ *See* RSEP Workflow.

⁵⁵ *See id.*

amendment would set a new precedent or have a substantial effect on ICANN or third parties, or on the DNS.⁵⁶

ICANN staff followed that procedure in this case. After determining that the implementation of the RSEP Request required a material change to the RA, ICANN staff drafted a proposed amendment. ICANN staff determined that the proposed amendment had the potential to affect third parties and would therefore require public comment.⁵⁷ As such, once Atgron had an opportunity to provide feedback on the proposed amendment, it was posted for public comment.⁵⁸ When the public comments raised substantive concerns, including some regarding intellectual property protections, ICANN staff worked with Atgron to revise the proposed amendment. Finally, ICANN staff determined that because the Revised Amendment was materially different than the original proposed amendment, an additional public comment period was necessary to receive public input on the Revised Amendment.⁵⁹

Atgron has not identified any policy or procedure that ICANN staff violated in following the process set forth in the RSEP Workflow. As such, the BGC denies Request 15-9.

3. Adding Additional Trademark Protections in the Revised Amendment Does Not Contravene Established Policy or Procedure.

Atgron unconvincingly claims that ICANN staff violated established policy by: (1) purportedly removing names that appear in the Clearinghouse from Atgron's Second-Level List; and (2) including in the Revised Amendment a requirement that third-level domain name registrations be subject to Sunrise and Trademark Claims periods.⁶⁰

⁵⁶ *See id.*

⁵⁷ *See id.*

⁵⁸ *See* <https://www.icann.org/public-comments/wed-amendment-2014-06-04-en>.

⁵⁹ *See id.*

⁶⁰ Reconsideration Request 15-10, § 3, Pg. 2.

As to the first, ICANN staff did not remove any names from Atgron's Second-Level List. Rather, in preparation for public comment for the Revised Amendment and in the interest of transparency, ICANN staff prepared a list showing which of the domains from Atgron's Second-Level List: (1) corresponded to names that appear in the Clearinghouse; or (2) appeared on ICANN's Reserved Names List. Atgron identifies no established policy or procedure prohibiting ICANN from creating such a list to aid the public in commenting on the Revised Amendment.

As to the second, Atgron cites to no established policy or procedure prohibiting ICANN staff from incorporating additional trademark protections into the Revised Amendment. Pursuant to the RSEP and related Workflow, where implementation of an RSEP Request requires a material change to a registry agreement, ICANN staff works with the registry operator to draft a proposed amendment.⁶¹ Here, ICANN staff followed exactly that process. During the First Comment Period, commenters questioned whether Atgron's proposed offering of third-level domain name registrations in .WED could circumvent intellectual property protections in the New gTLD Program (such as the Sunrise period, the Uniform Domain Name Dispute Resolution Policy, and the Uniform Rapid Suspension System).⁶² Further, several comments specifically identified potentially problematic names that appeared on Atgron's Second-Level List.⁶³

In response to those comments, ICANN staff worked with Atgron to draft a revised proposed amendment. Atgron was given an opportunity to provide feedback on this revision, which resulted in ICANN staff making edits to the Revised Amendment before resending it to Atgron on 25 November 2014. Again, in doing so, ICANN staff acted in accordance with the

⁶¹ RSEP, § 2.4.D; *see also* RSEP Workflow.

⁶² *Id.* at Pgs. 2-3.

⁶³ *See* Report of Public Comments, Pg. 2, *available at* <https://www.icann.org/en/system/files/files/report-comments-wed-amendment-03oct14-en.pdf>.

RSEP, which provides for ICANN staff to work with registry operators to draft proposed amendments to registry agreements.⁶⁴

Moreover, the fact that the Revised Amendment required third-level domain name registrations to be subject to Sunrise and Trademark Claims periods is entirely consistent with similar requirements imposed by the Guidebook on new gTLD registry operators registering second-level domains. Specifically, the Guidebook requires that registry operators include a Sunrise period, “allow[ing] eligible rightsholders an early opportunity to register names in the TLD,” for at least 30 days during the pre-launch phase of a new gTLD.⁶⁵ In addition, the Guidebook requires that registry operators provide a Trademark Claims service, which “provides notice to potential registrants [that domain names potentially infringe on] existing trademark rights, as well as notice to rightsholders of relevant names registered provides notice to potential registrants of existing trademark rights, as well as notice to rightsholders of relevant names registered,” for at least the first 60 days of general registration on a new gTLD.⁶⁶

The Guidebook’s requirements are intended to protect trademark holders, and the rationale behind Sunrise and Trademark Claims periods applies with equal force to both second-level domains and third-level domains. Atgron cites no established policy or procedure preventing ICANN staff from determining that the Guidebook’s trademark protections were appropriate in the context of third-level domain registrations, and incorporating those protections into the Revised Amendment. As such, the BGC denies Request 15-10.

VI. Determination.

⁶⁴ RSEP, § 2.4.D; *see also* RSEP Workflow.

⁶⁵ *Id.*

⁶⁶ Guidebook, § 5.4.1.

Based on the foregoing, the BGC concludes that Atgron has not stated proper grounds for reconsideration, and therefore denies Requests 15-9 and 15-10.

The Bylaws authorize the BGC to make a final determination for all reconsideration requests brought regarding staff action or inaction.⁶⁷ As discussed above, Requests 15-9 and 15-10 seek reconsideration of a staff action or inaction. As such, the BGC concludes that this determination is final and that no further consideration by the Board is warranted.

The BGC notes—as it has before—that ICANN is charged with using its resources in the public benefit; responding to Atgron’s repeated reconsideration requests, when they are based on the same circumstances and do not assert any grounds for reconsideration, is not an appropriate use of those resources.

In terms of the timing of this decision, Section 2.16 of Article IV of the Bylaws provides that the BGC shall make a final determination or recommendation with respect to a reconsideration request within thirty days following receipt of the request, unless impractical.⁶⁸ To satisfy the thirty-day deadline, the BGC would have to have acted by 4 July 2015 and 17 July 2015, respectively. Due to the timing of the filing of the requests, it was impractical for the BGC to consider Requests 15-9 and 15-10 prior to 24 August 2015.

⁶⁷ Bylaws, Art. IV, § 2.15.

⁶⁸ Bylaws, Art. IV, § 2.15.