GUIDELINES & MOTION TEMPLATES

> **Article 4 Accountability and Review - 4.3 Independent Review Process (IRP)**
> **for Covered ICANN Actions**
> **Annex D: EC Mechanism - 4.2 Community Independent Review Process (IRP)**

1. Introduction

Following the adoption by the GNSO Council of the revised GNSO Operating Procedures, as well as the proposed modifications to the ICANN Bylaws adopted by the ICANN Board of Directors on 13 May 2018, staff has outlined in the table below the additional proposed steps to be taken, including guidance and motion templates, to facilitate the ability for the GNSO Council to act in relation to its role and responsibilities outlined in the post-transition Bylaws. These steps fall within the GNSO Council's existing processes and procedures.

2. Background

Per Article 4,2 Section (a) of the ICANN Bylaws, ICANN shall have in place a process by which any person or entity materially affected by an action or inaction of the ICANN Board or Staff may request ("**Requestor**") the review or reconsideration of that action or inaction by the Board.

Per Article 4,2 Section (b) The Empowered Community (EC) may file a Reconsideration Request (as defined in Section 4.2(c)) if approved pursuant to Section 4.3 of Annex D ("**Community Reconsideration Request**") and if the matter relates to the exercise of the powers and rights of the EC of these Bylaws. The EC Administration shall act as the Requestor for such a Community Reconsideration Request and shall act on behalf of the EC for such Community Reconsideration Request as directed by the Decisional Participants, as further described in Section 4.3 of Annex D.

Per Article 4,2 Section (c) A Requestor may submit a request for reconsideration or review of an ICANN action or inaction ("**Reconsideration Request**") to the extent that the Requestor has been adversely affected by:

(i) One or more Board or Staff actions or inactions that contradict ICANN's Mission, Commitments, Core Values and/or established ICANN policy(ies);

(ii) One or more actions or inactions of the Board or Staff that have been taken or refused to be taken without consideration of material information, except where the Requestor could have submitted, but did not submit, the information for the Board's or Staff's consideration at the time of action or refusal to act; or

(iii) One or more actions or inactions of the Board or Staff that are taken as a result of the Board's or staff's reliance on false or inaccurate relevant information.

3. Bylaws and Additional Proposed Steps:

ARTICLE 4: ACCOUNTABILITY AND REVIEW **4.3 INDEPENDENT REVIEW PROCESS (IRP) FOR COVERED ICANN ACTIONS** "(a) In addition to the reconsideration process described in Section 4.2, ICANN shall have a separate process for independent third-party review of Disputes (defined in Section 4.3(b)(iii)) alleged by a Claimant (as defined in Section 4.3(b)(i)) to be within the scope of the Independent Review Process ("**IRP**"). The IRP is intended to hear and resolve Disputes for the following purposes ("**Purposes of the IRP**") ..." "(d) An IRP shall commence with the Claimant's filing of a written statement of a Dispute (a "**Claim**") with the IRP Provider (described in Section 4.3(m) below). For the EC to commence an IRP ("**Community IRP**"), the EC shall first comply with the procedures set forth in Section 4.2 of Annex D."	The GNSO will need to develop further details for the process to decide to be an IRP Claimant. ● How a decision to initiate an IRP is reached - not just the threshold, but what it covers. Presumably it would need to cover at a minimum the basis for the dispute and the harms to the GNSO in reasonable detail. ● Who would represent the GNSO? ● Who would pay for representation? ● How would a claim that is supported by the GNSO be put forward? Such details could be in the form of separate guidelines which eventually may supplement the GNSO Operating Procedures.	Staff to develop a first draft of a template that provides guidance for what should appear in the motion. Specifically, it would state, ""The claim shall state the basis for the dispute and the harms in reasonable detail." Staff (to work with DT, if applicable) also to develop proposed guidelines for initiating an IRP, representation and payment, and decision to make the claim for Council consideration.

ANNEX D: EC MECHANISM **SECTION 4.2 COMMUNITY IRP** "(a) After completion of a mediation under Section 4.7 of the Bylaws, the EC Administration representative of any Decisional Participant who supported the exercise by the EC of its rights in the applicable EC Decision during the applicable decision period may request that the EC initiate a Community IRP (a "Community IRP Petitioning Decisional Participant"), as contemplated by Section 4.3 of the Bylaws, by delivering a notice to the EC Administration and the Decisional Participants requesting the initiation of a Community IRP ("Community IRP Petition"). The Community IRP Petitioning Decisional Participant shall forward such notice to the Secretary for ICANN to promptly post on the Website. The process set forth in this Section 4.2 of this Annex D as it relates to a particular Community IRP Petition is referred to herein as the "Community IRP Initiation Process.""	The steps as outlined in the Bylaws are to be followed, factoring in the customary GNSO practices and procedures. The GNSO to consider how it will develop the advice to its representative on the EC Administration. How the GNSO wishes to join a petition raised by a different Decisional Participant could be part of the same process. (see also other related items).	Staff to develop template for motion. Staff (to work with DT, if applicable) to develop proposed process for developing GNSO advice to its representative on the EC Administration. How the GNSO wishes to join a petition raised by a different Decisional Participant could be part of the same process. (see also other related items).

4. Advising the GNSO's Representative on the Empowered Community Administration

The process of developing and providing advice to the GNSO's Representative on the Empowered Community (EC) Administration – including whether to request or support a Community IRP or to become an IRP Claimant – falls within the GNSO Operating Procedures. These guidelines are meant to supplement those procedures.

The action requested by the GNSO Council of the GNSO representative will be put before the GNSO Council as a motion for consideration. Threshold for approval is a simple majority vote of each house, which per Section 11.3-I of the ICANN Bylaws is the default voting threshold.

In the case of whether the GNSO should become an IRP Claimant, the motion shall include the following resolutions:

- The basis for the dispute and the harms to the GNSO in reasonable detail via the Reconsideration Request Form as an attachment;
- GNSO Council designation of who will represent the GNSO in the Claim; and
- GNSO Council designation of who would pay for representation.

5. Template to Complete the Reconsideration Request Form

See: https://www.icann.org/resources/pages/accountability/reconsideration-en.

Reconsideration Request Form

Version of 1 October 2016

ICANN's Board Governance Committee (BGC) is responsible for receiving requests for review or reconsideration (Reconsideration Request) from any person or entity that believes it has been materially and adversely affected by the following:

(a) One or more Board or Staff actions or inactions that contradict ICANN's Mission, Commitments, Core Values and/or established ICANN policy(ies);

(b) One or more actions or inactions of the Board or Staff that have been taken or refused to be taken without consideration of material information, except where the Requestor could have submitted, but did not submit, the information for the Board's or Staff's consideration at the time of action or refusal to act; or

(c) One or more actions or inactions of the Board or Staff that are taken as a result of the Board's or Staff's reliance on false or inaccurate relevant information.

The person or entity submitting such a Reconsideration Request is referred to as the Requestor.

Note: This is a brief summary of the relevant Bylaws provisions. For more information about ICANN's reconsideration process, please visit https://www.icann.org/resources/pages/governance-committee-2014-03-21-en.

This form is provided to assist a Requestor 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.

Requestors 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-

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point font. Requestors may submit all documentary evidence necessary to demonstrate why the action or inaction should be reconsidered, without limitation.

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. Requestor Information

Name:

Address:

Email:

Phone Number (optional):

(Note: ICANN will post the Requestor's name on the Reconsideration Request page at https://www.icann.org/resources/pages/accountability/reconsideration-en. Requestor's address, email and phone number will be removed from the posting.)

2. 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.)

3. Date of action/inaction:

(Note: If Board action, this is the date on which information about the challenged Board action is first published in a resolution, unless the posting of the resolution is not accompanied by a rationale. In that instance, the date is the date of the initial posting of the rationale.)

 [If Board inaction, the date on which action would have been expected to take place.]

4. 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 thirty days has passed from when the action was taken or not taken to when you learned of the action or inaction, please provide explanation for the gap of time.)

5. Describe how you believe you are materially and adversely affected by the action or inaction:

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

7. Detail of the ICANN Action/Inaction – Required Information

Please provide a detailed explanation of the facts as you understand they were provided to the Board or the ICANN organization (acting through its staff) prior to the action/inaction and the reasons why ICANN's action or inaction was: (i) contrary to ICANN's Mission, Commitments, Core Values and/or established ICANN policy(ies); (ii) taken or refused to be taken without consideration of material information; or (iii) taken as a result of ICANN's reliance on false or inaccurate relevant information.

If your request is in regard to an ICANN action or inaction that you believe is contrary to established ICANN policy(ies), the policies that are eligible to serve as the basis for a Reconsideration Request are those that are approved by the ICANN Board (after input from the community) that impact the community in some way. When reviewing Board or staff action, the outcomes of prior Reconsideration Requests challenging the same or substantially similar action/inaction as inconsistent with established ICANN policy(ies) shall be of precedential value.

If your request regards an action or inaction taken or refused to be taken without consideration of material information, please provide a detailed explanation of the material information not considered by the ICANN. If that information was not presented to the ICANN, provide the reasons why you did not submit the material information before ICANN acted or failed to act. "Material information" means facts that are material to the decision.

If your request regards an action or inaction that you believe was a result of ICANN's reliance on false or inaccurate relevant information, provide a detailed explanation as to whether an opportunity existed to correct the material considered by the Board or Organization. If there was an opportunity to do so, provide the reasons that you did not provide submit corrections before the action/failure to act.

Reconsideration Requests are not meant for those who believe that ICANN made the wrong decision when considering the information available. There must be identification of material information that was in existence of the time of the decision but that was not considered by ICANN in order to make a Reconsideration Request. Similarly, new information – information that was not yet in existence at the time of an action/inaction – is also not a proper ground for reconsideration.

Reconsideration Requests are not available as a means to seek review of country code top-level domain ("ccTLD") delegations and re-delegations, issues relating to Internet numbering resources, or issues relating to protocol parameters.

Please keep this guidance in mind when submitting requests.

Provide the Required Detailed Explanation of the ICANN Action/Inaction here:

(You may attach additional sheets as necessary.)

8. What are you asking ICANN to do now?

(Describe the specific steps you are asking ICANN to take. For example, should the subject action be reversed, cancelled or modified? If modified, how should it be modified?)

9. Please state specifically the grounds under which you have the standing and the right to assert this Reconsideration Request, 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 Requestor 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 ICANN's action or inaction that forms the basis of the Reconsideration Request. 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 must be capable of reversing the harm alleged by the Requestor. Injury or harm caused by third parties as a result of acting in line with the ICANN's decision/act 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.)

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

_____ Yes

_____ No

10a. If yes, please list below the names and contact information of the mulitple persons or entities on behalf of whom you are bringing this Reconsideration Request:

10b. If yes, is the causal connection between the circumstances of the Reconsideration Request and the harm substantially the same for all of the Requestors? Explain.

Do you have any further relevant documents in support of your Reconsideration Request that 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 https://www.icann.org/resources/pages/accountability/reconsideration-en.

Terms and Conditions for Submission of Reconsideration Requests

The Board Governance Committee (BGC) has the ability to consolidate the consideration of Reconsideration Requests if: (i) the requests involve the same general action or inaction; and (ii) the Requestors are similarly affected by such action or inaction.

The Board Governance Committee may dismiss a Reconsideration Requests if: (i) the Requestor fails to meet the requirements for bringing a Reconsideration Request; or (ii) it is frivolous.

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.

For all Reconsideration Requests that are not summarily dismissed, except in cases where the Ombudsman is required to recuse himself or herself or the request at issue is a Community Reconsideration Request, the Reconsideration Request shall be sent by the GNSO Representative to the Empowered Community to the Ombudsman, who shall promptly proceed to review and consider the Reconsideration Request. The BGC shall make a final recommendation to the Board with respect to a Reconsideration Request following its receipt of the Ombudsman's evaluation (or following receipt of the Reconsideration Request involving those matters for which the Ombudsman recuses himself or herself or the receipt of the Community Reconsideration Request, if applicable).

The final recommendation of the BGC shall be documented and promptly (i.e., as soon as practicable) posted on the ICANN Website and shall address each of the arguments raised in the Reconsideration Request. The Requestor may file a 10-page (double-spaced, 12-point font not including exhibits) rebuttal to the BGC's recommendation within 15 days of receipt of the recommendation, which shall also be promptly (i.e., as soon as practicable) posted to the ICANN Website and provided to the Board for its evaluation; provided, that such rebuttal shall: (i) be limited to rebutting or contradicting the issues raised in the BGC's final recommendation; and (ii) not offer new evidence to support an argument made in the Requestor's original Reconsideration Request that the Requestor could have provided when the Requestor initially submitted the Reconsideration Request.

The ICANN Board shall not be bound to follow the recommendations of the BGC.   The ICANN Board's decision on the BGC's recommendation is final and not subject to a Reconsideration Request.

_____   _____

Signature   Date

6. Motion Templates

[Section 4.2] Motion to Approve a Petition to Initiate a Community IRP

Made by:
Seconded by:

Whereas:

1. Per Section 4.2(a) of Annex D, after completion of a mediation under Section 4.7 of the Bylaws, the EC Administration representative of any Decisional Participant who supported the exercise by the EC of its rights in the applicable EC Decision may request that the EC initiate a Community IRP (a "Community IRP Petitioning Decisional Participant"), by delivering a notice to the EC Administration and the Decisional Participants requesting the initiation of a Community IRP ("Community IRP Petition"). The "notice" referred to herein shall be attached to this motion and developed in sufficient detail to meet the requirement for a written statement of a Dispute (a "Claim") as per Bylaw Section 4.3.

2. Per Section 4.2(b) of Annex D, following the delivery of a Community IRP Petition to the EC Administration by a Community IRP Petitioning Decisional Participant, the Community IRP Petitioning Decisional Participant shall contact the EC Administration and the other Decisional Participants to determine whether any other Decisional Participants support the Community IRP Petition.

3. When considering whether to request initiation [join a petition for initiation] of a Community IRP, the GNSO has considered a lesser action and rejected that action.

Resolved:

1. The GNSO Council agrees to request [join a petition to request] that the EC initiate a Community IRP as per the draft notice attached.

2. The GNSO Council requests that the GNSO Representative on the EC Administration forward the Community IRP Petition notice to the EC Administration and the Decisional Participants.

3. The GNSO Council requests that the GNSO Representative on the EC Administration to timely / immediately contact the EC Administration and the other Decisional Participants to determine whether any other Decisional Participants support the Community IRP Petition.

[Section 4.2] Motion to Approve a Petition to Support a Community IRP

Made by:
Seconded by:

Whereas:

1. Per Section 4.2(a) of Annex D, after completion of a mediation under Section 4.7 of the Bylaws, the EC Administration representative of any Decisional Participant who supported the exercise by the EC of its rights in the applicable EC Decision may request that the EC initiate a Community IRP (a "Community IRP Petitioning Decisional Participant"), by delivering a notice to the EC Administration and the Decisional Participants requesting the initiation of a Community IRP ("Community IRP Petition").

2. Per Section 4.2(b) of Annex D, following the delivery of a Community IRP Petition to the EC Administration by a Community IRP Petitioning Decisional Participant, the Community IRP Petitioning Decisional Participant shall contact the EC Administration and the other Decisional Participants to determine whether any other Decisional Participants support the Community IRP Petition.

3. When considering whether to support the request for initiation of a Community IRP by another Decisional Participant, and therefore become a "Community IRP Supporting Decisional Participant," the GNSO has considered a lesser action and rejected that action.

Resolved:

1. The GNSO Council agrees to support the request that the EC initiate a Community IRP.

2. The GNSO Council requests that the GNSO Representative on the EC Administration provide a written notice to the EC Administration, the other Decisional Participants and the Secretary within twenty-four (24) hours of the GNSO providing support to the Community IRP Petition and take other actions as needed sufficient to comply with the ICANN Bylaws, in particular, but not only, Annex D, Section 4.2(b)(i).

Made by:
Seconded by:

Whereas:

1. Per Article 4,2 Section (a) of the ICANN Bylaws, ICANN shall have in place a process by which any person or entity materially affected by an action or inaction of the ICANN Board or Staff may request ("**Requestor**") the review or reconsideration of that action or inaction by the Board. For purposes of these Bylaws, "**Staff**" includes employees and individual long-term paid contractors serving in locations where ICANN does not have the mechanisms to employ such contractors directly.

2. Per Article 4,2 Section (b) The EC may file a Reconsideration Request (as defined in Section 4.2(c)) if approved pursuant to Section 4.3 of Annex D ("**Community Reconsideration Request**") and if the matter relates to the exercise of the powers and rights of the EC of these Bylaws. The EC Administration shall act as the Requestor for such a Community Reconsideration Request and shall act on behalf of the EC for such Community Reconsideration Request as directed by the Decisional Participants, as further described in Section 4.3 of Annex D.

3. Per Article 4,2 Section (c) A Requestor may submit a request for reconsideration or review of an ICANN action or inaction ("**Reconsideration Request**") to the extent that the Requestor has been adversely affected by:

(i) One or more Board or Staff actions or inactions that contradict ICANN's Mission, Commitments, Core Values and/or established ICANN policy(ies);

(ii) One or more actions or inactions of the Board or Staff that have been taken or refused to be taken without consideration of material information, except where the Requestor could have submitted, but did not submit, the information for the Board's or Staff's consideration at the time of action or refusal to act; or

(iii) One or more actions or inactions of the Board or Staff that are taken as a result of the Board's or staff's reliance on false or inaccurate relevant information.

4. When considering whether to become a Reconsideration Request Requestor, the GNSO has considered a lesser action and rejected that action.

Resolved:

1. The GNSO Council has determined that its represented community has been adversely affected by:

[INSERT THE ACTION AS DETAILED IN ARTICLE 4,2 SECTION C, AND STATE THE BASIS FOR THE DISPUTE AND HARMS IN REASONABLE DETAIL]

2. The GNSO Council agrees to submit the completed Reconsideration Request form at: INSERT LINK. [SEE BELOW FOR GUIDANCE TO COMPLETE THE FORM.]

3. The GNSO Council agrees that [INSERT NAME] shall represent the GNSO in the Claim for a Reconsideration Request.

4. The GNSO Council agrees that representation in the Claim for a Reconsideration Request shall be paid for by [INSERT].

5. The GNSO Council requests the GNSO's representative on the Empowered Community Administration to submit the Reconsideration Request form and to notify the Empowered Community Administration.

[Section 4.3(b)(i)] Motion for the GNSO to file an IRP Claim on its own behalf as a Claimant (See Bylaw 4.3(b)(i))]

Made by:
Seconded by:

Whereas:

1. Per Article 4.3 of the ICANN Bylaws, ICANN shall have in place a separate process by which any legal or natural person, group or entity (including, without limitation, a Supporting Organization) may file for independent third-party review of Disputes (as Disputes are defined in Bylaw Section 4.3(b)(iii)).

2. Per Article 4.3 Section (d), an IRP shall commence with the Claimant's filing of a written statement of a Dispute (a "**Claim**") with the IRP Provider (as described in Bylaw Section 4.3(m)).

3. The GNSO Council has determined that the GNSO should pursue the Dispute, described in the written statement of Dispute attached hereto, as an IRP Claim.

4. The GNSO Council has made such determination in conformance with all applicable GNSO policies and procedures applicable to such a course of action and in so doing has considered lesser action(s) and rejected the same.

Resolved:

1. The GNSO Council agrees to file the Dispute, described in the written statement of Dispute attached hereto, as an IRP Claim.

3. The GNSO Council agrees that [INSERT NAME] shall represent the GNSO in this IRP Claim.

4. The GNSO Council agrees that representation in this IRP Claim shall be paid for by [INSERT].