

## 2016 Reconsideration Requests – Status Update – 27 March 2019

No:	Requestor:	Filing Date:	Subject:	BGC/BAMC Action Date <sup>1</sup> :	Board Action Date:	Comments:
16-1	Commercial Connect, LLC	26-Jan-2016	.SHOP	25 February 2016 (Determination); Total days from Request: 30	N/A	
16-2	Commercial Connect, LLC	10-Feb-2016	.SHOP	25 February 2016 (Determination); Total days from Request: 15	N/A	

<sup>1</sup> Reconsideration Requests initiated before 1 October 2016 are subject to the Bylaws in effect before 1 October 2016:

Article IV, Section 2.16 of the Bylaws provide that “[t]he Board Governance Committee shall make a final determination or a recommendation to the Board with respect to a Reconsideration Request within thirty days following its receipt of the request, unless impractical, in which case it shall report to the Board the circumstances that prevented it from making a final recommendation and its best estimate of the time required to produce such a final determination or recommendation.” (Bylaws, Art. IV, § 2.16.) Article IV, Section 2.17 of the Bylaws state that the Board “shall issue its decision on the recommendation of the Board Governance Committee within 60 days of receipt of the Reconsideration Request or as soon thereafter as feasible.” (Bylaws, Art. IV, §2.17.) Requestors are regularly notified at each step of the proceedings, including whether there will be a delay beyond the suggested response deadlines, and whether the matter will be submitted to the Board.

For Reconsideration Requests brought regarding staff action or inaction, and actions by third party panels in the New gTLD Program (including the expert dispute resolution panels) that are being treated as staff actions, the BGC has the option to issue final Determinations or to issue Recommendations to the Board. (*See* Article IV, Section 2.16 of the Bylaws; *see also*, BGC Recommendation on Reconsideration Request 13-5 at <https://www.icann.org/en/system/files/files/recommendation-booking-01aug13-en.pdf>.)

Reconsideration Requests initiated on or after 1 October 2016 are subject to the Bylaws in effect as of 1 October 2016:

Article 4, Section 4.2 of the Bylaws provide that “[t]he Board Accountability Mechanisms Committee shall make a final recommendation to the Board with respect to a Reconsideration Request within 30 days following its receipt of the Ombudsman’s evaluation (or 30 days 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), unless impractical, in which case it shall report to the Board the circumstances that prevented it from making a final recommendation and its best estimate of the time required to produce such a final recommendation. In any event, the Board Accountability Mechanisms Committee shall endeavor to produce its final recommendation to the Board within 90 days of receipt of the Reconsideration Request. The final recommendation of the Board Accountability Mechanisms Committee shall be documented and promptly (i.e., as soon as practicable) posted on the 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) document, not including exhibits, in rebuttal to the Board Accountability Mechanisms Committee’s recommendation within 15 days of receipt of the recommendation, which shall also be promptly (i.e., as soon as practicable) posted to the 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 Board Accountability Mechanisms Committee’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. (*See* Bylaws, Art. 4, § 4.2(q).) Article 4, § 4.2(r) of the Bylaws state that the Board “shall issue its decision on the recommendation of the Board Accountability Mechanisms Committee within 45 days of receipt of the Board Accountability Mechanisms Committee’s recommendation or as soon thereafter as feasible.” Requestors are regularly notified at each step of the proceedings, including whether there will be a delay beyond the suggested response deadline.

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16-3	dotgay LLC (Withdrawn)	17-Feb-2016	.GAY	26 June 2016 (Recommendation); Total days from Request: 131  25 January 2019 (Recommendation); Total days from Request: 1,073		<p>BGC consideration delayed because the Requestor sought and was granted opportunity to make presentation to the BGC, which took place on 15 May 2016. The BGC issued its recommendation to the Board on 26 June 2016 and the Board was to consider it on 15 September 2016. On 13 September 2016, the Requestor submitted a lengthy report for Board consideration. Accordingly, the Board deferred consideration to provide time for review of the report. Thereafter, dotgay submitted additional materials for the Board’s consideration.<sup>2</sup> Subsequently, while Request 16-3 was pending, the Board Board and BGC directed ICANN org to undertake a review of certain aspects of the CPE process (CPE Process Review). The BGC determined that the pending Reconsideration Requests regarding the CPE process, including Request 16-3, would be placed on hold until the CPE Process Review was completed.</p> <p>On 15 March 2018, following the publication of three reports on the CPE Process Review, the Board declared the CPE Process Review completed and directed the BAMC to resume to move forward with consideration of the remaining Reconsideration Requests relating to the CPE process that were placed on hold. The BAMC offered the Requestor the opportunity to submit additional materials in support of Request 16-3 as it relates to the CPE Process Review Reports as well as the opportunity for an oral presentation before the BAMC, which the Requestor rejected.</p> <p>Request 16-3 was withdrawn by the Requestor on 25 February 2019.</p>
16-4	Roman Belichenko	9-Feb-2016	Complaint made to ICANN regarding dispute between Requestor and Registrar was not considered properly.	26 June 2016 (Determination); Total days from Request: 138	N/A	The BGC considered at its 12 April 2016 meeting, and asked staff to obtain additional information from the relevant registrar for its consideration.

<sup>2</sup> See letter from Arif Ali to ICANN Board of Directors, 17 Oct. 2016, available at <https://www.icann.org/en/system/files/correspondence/ali-badgett-to-icann-board-17oct16-en.pdf>; and letter from Arif Ali to ICANN Board of Directors, 15 Nov. 2016, available at <https://www.icann.org/en/system/files/correspondence/ali-to-icann-board-15nov16-en.pdf>.

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16-5	DotMusic Limited	24-Feb-2016	.MUSIC	25 January 2019 (Recommendation) Total days from Request: 1,066	14 March 2019 (Board Action)	<p>The Requestors asked consideration be placed on hold pending a response to the Requestor’s DIDP Request, and also sought and was granted opportunity to make presentation to the BGC, which took place on 17 September 2016. While Request 16-5 was pending, the Board Board and BGC directed ICANN org to undertake a review of certain aspects of the CPE process (CPE Process Review). The BGC determined that the pending Reconsideration Requests regarding the CPE process, including Request 16-5, would be placed on hold until the CPE Process Review was completed.</p> <p>On 15 March 2018, following the publication of three reports on the CPE Process Review, the Board declared the CPE Process Review completed and directed the BAMC to resume to move forward with consideration of the remaining Reconsideration Requests relating to the CPE process that were placed on hold. The BAMC offered the Requestors the opportunity to submit additional materials in support of Request 16-5 as it relates to the CPE Process Review Reports as well as the opportunity for an oral presentation before the BAMC, which the Requestors rejected. On 25 January 2019, the BAMC issued its Recommendation on Request 16-5.</p>
16-6	DotKids Foundation	23-Apr-2016	.KIDS	21 July 2016 (Determination); Total days from Request: 86	N/A	23 April 2016 submission was not complete, but ICANN accepted the original date of 23 April 2016 as filing date; delay due to time for the Requestor to complete submission and intervening ICANN meeting.
16-7	DotMusic Limited	30-May-2016	.MUSIC	26 June 2016 (Determination); Total days from Request: 27	N/A	

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16-8	CPA Australia Ltd (Withdrawn)	15-Jul-2016	.CPA	14 December 2018 (Recommendation); Total days from Request: 882	N/A	Delay due to timing of filing and pre-set BGC meeting schedule. On 15 March 2018, the Board acknowledged and accepted the findings set forth in the CPE Process Review Reports, declared that the CPE Process Review was complete, concluded that, as a result of the findings in the CPE Process Review Reports there would be no overhaul or change to the CPE process for this current round of the New gTLD Program, and directed the BAMC to resume to move forward with consideration of the remaining Reconsideration Requests relating to the CPE process that were placed on hold pending completion of the CPE Process Review. The BAMC offered the Requestor the opportunity to submit additional materials in support of Request 16-8 as it relates to the CPE Process Review Reports as well as the opportunity for an oral presentation before the BAMC. The Requestor did not respond to the BAMC's invitation. Request 16-8 was withdrawn by the Requestor on 8 January 2019.
16-9	Ruby Glen, LLC and Radix FZC	17-Jul-2016	.WEB	21 July 2016 (Determination); Total days from Request: 4	N/A	
16-10	gTLD Registries Stakeholder Group (RySG) (Withdrawn)	9-Aug-2016	(i) ICANN's improper expansion of the scope of the Thick Whois Policy to include requirements for registry operators to include RDAP. (ii) ICANN's ignoring of objections to the RySG's proposed operational profile for RDAP, and ICANN's attempt to impose the adoption of the profile on registry operators despite any contractual basis for doing so.	N/A	N/A	The Requestor asked that Request be placed on hold pending the Requestor's planned discussions with staff.  Request 16-10 was withdrawn by the Requestor on 6 October 2017.

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16-11	Travel Reservations SRL, Spring McCook, LLC, Minds + Machines Group Limited, Famous Four Media Limited, dot Hotel Limited, Radix FZC, dot Hotel Inc., Fegistry, LLC	25-Aug-2016	.HOTEL	16 November 2018 (Recommendation); Total days from Request: 813	27 January 2019 (Board Action)	The Requestor sought and was granted opportunity to make presentation to the BGC, which took place on 16 December 2016. On 15 March 2018, the Board acknowledged and accepted the findings set forth in the CPE Process Review Reports, declared that the CPE Process Review was complete, concluded that, as a result of the findings in the CPE Process Review Reports there would be no overhaul or change to the CPE process for this current round of the New gTLD Program, and directed the BAMC to resume to move forward with consideration of the remaining Reconsideration Requests relating to the CPE process that were placed on hold pending completion of the CPE Process Review. The Requestors made a presentation to the BAMC on 19 July 2018. On 16 November 2018, the BAMC issued a Recommendation on Request 16-11, recommending that the Board deny reconsideration. On 30 November 2018, the Requestors submitted a rebuttal to the BAMC’s Recommendation. On 27 January 2019, the Board adopted the BAMC’s Recommendation on Request 16-11.
16-12	Merck KGaA	25-Aug-2016	.MERCK	14 December 2018 (Recommendation); Total days from Request: 841	27 January 2019 (Board Action)	The Requestor sought and was granted opportunity to make presentation to the BGC on 29 March 2017. On 15 March 2018, the Board acknowledged and accepted the findings set forth in the CPE Process Review Reports, declared that the CPE Process Review was complete, concluded that, as a result of the findings in the CPE Process Review Reports there would be no overhaul or change to the CPE process for this current round of the New gTLD Program, and directed the BAMC to resume to move forward with consideration of the remaining Reconsideration Requests relating to the CPE process that were placed on hold pending completion of the CPE Process Review. The Requestor made a presentation to the BAMC on 4 September 2018. On 14 December 2018, the BAMC issued a Recommendation on Request 16-12, recommending that the Board deny reconsideration. On 27 January 2019, the Board adopted the BAMC’s Recommendation on Request 16-12.
16-13	Merck KGaA	23-Sep-2016	.PHARMACY	2 November 2016 (Determination); Total days from Request: 40	N/A	Delay due to timing of filing and intervening ICANN meeting.

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16-14	Fraser Lee	15-Dec-2016	ICANN's decision not to investigate Requestor's abuse complaint made to registrar regarding an allegation of defamation.	1 February 2017 (Determination); Total days from Request: 48	N/A	Delay due to end of the year holiday schedules.