

Reconsideration Request Form

Version of 11 April 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: Atgron, Inc.

Address: Contact Information Redacted

Email: Contact Information Redacted

Phone Number (optional): 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.

We would like the Board to direct the Registry Services department to close as final the Public Comment action for the RSEP request titled .WED Registry Agreement Amendment – Introduction of Third Level Domain Sales submitted on 8 October 2013. A Public Comment period for this RSEP was opened eight months later on 4 June 2014 and closed on 31 July 2014. The Registry Services Director, Ms. Krista Papac, insists the RSEP is a request for new functionality unknown in the internet community. This is patently false as you can find detailed discussion of third level extensions used by .name in WIKIPedia, on Verisign's website and in general blog discussions on the web. This same functionality was also requested in an RSEP by .coop in 2011. The first set of public comments also support our request that our list of third-level extensions be kept confidential because the comments reference trademark registration numbers that do not exist or are inactive because it is not possible to trademark the generic terms we are requesting e.g. bebe is the generic term for baby in multiple languages and cannot be owned by a shoe company. We consider these public comments to be nothing more than an attempt to delay our progress and with regard to one requirement for additional stub zones for each new extension, an attempt to levy unnecessary overhead and cost to our proposal. The engineers at ISC, a respected DNS provider, clearly articulated to us there would be less overhead and cost involved with publishing these extensions as third-level extensions rather than stub zones. After significant back and forth, the Registry Services department's current proposed amendment to the .wed Registry Agreement has absolutely no material changes from the existing contract (there is literally one new term REGISTRY-CLASS DOMAIN NAMES introduced in the new amendment language) and yet the Registry Services Director continues to insist this is "new" language requires "transparency" and another Public Comment period which we think will again be used by our competitors and their agents to delay our progress. Either Ms. Papac is too inexperienced to have this position or she is working on behalf of our competitors who are well known by ICANN staff. Given our treatment throughout this process by the Registry Services and ICANN Customer Service departments, I think it is the latter. I have the written timestamped documentation from the GDD portal to show numerous delays for our Registry from no provision of our delegation token to the numerous start-up plans we submitted that went un-reviewed until deadlines had passed and they had to be resubmitted. We were told we were unable to count 30 days properly and to recount and resubmit the start-up plan on at least two occasions. These delays cannot be reasonably explained. In sum, there is a pattern of behavior we are requesting the Board stop forthwith so that we can conduct normal business operations.

4. Date of action/inaction:

The timeline for the review of this Registry Services Evaluation was not adhered to.

Date of Submission – October 8, 2013

1st Notice of Preliminary Review- February 14, 2014 (Document attached)

2nd Notice of Preliminary Review – March 16, 2014 (Document attached)

There is no mention in the ICANN RSEP process that mentions 2 preliminary reviews.

According to the RSEP Policy 2.4-A Preliminary Determination Period
“ICANN shall have 15 calendar days to make a “preliminary determination”.

As shown above, that timeline was not adhered to. In addition, a period of public comment was not opened until June 2014. Per a discussion between ICANN representative Mr. Han Chuan Lee, who handled the RSEP, and Atgron, Inc. President & CEO Adrienne McAdory at ICANN 49 Singapore on 26 March 2014 after the TLD Registry - Ongoing Operations meeting which occurred from 10:30-noon, the amendment to the contract for the RSEP in question was about to be posted and there should be no problem with the fact that Atgron was already selling third level extensions based upon the preliminary review approval letter already provided by ICANN. An ICANN compliance notice in July 2014 subsequently forced the Registry to re-register all third level extensions sold to Registrants as new second level extensions.

Additionally, information that was marked “CONFIDENTIAL” in the RSEP document was posted for the public comments when RSEP Policy 2.4-B states: “Information provided by Registry Operator and marked “CONFIDENTIAL” shall be treated as “CONFIDENTIAL”. The list of third level extension that was provided was marked confidential, yet was published for the public comment.

5. On what date did you become aware of the action or that action would not be taken?

On 9 January 11, 2015, Ms. Papac indicated in case 00153182 in the GDD portal we would have to agree to the second Public Comment period or withdraw our RSEP application by 23 January 2015.

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

The requirement for a second Public Comment period will delay our ability to offer third-level extensions.

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

Registrants will be negatively impacted by the inability to buy third-level extensions, which have a lower price point than our second-level extensions potentially pricing out customers in developing countries who would like to use

the .wed TLD.

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.

ICANN policy on RSEP clearly states in 2.4 that: “ICANN shall have 15 calendar days to make a “preliminary determination” whether a Registry Service requires further consideration by ICANN because it reasonably determines such Registry Service: (i) could raise significant Security or Stability issues or (ii) could raise significant competition issues”. Both preliminary reviews of the .wed RSEP indicated there were no such concerns in those areas.

Currently there are TLD’s selling third level domains without issue and the same protocol should be followed so that Atgron, Inc. can sell third level extensions.

The Amendment that was posted in the GDD Portal on November 25, 2014 is again redundant because the only change in this document and the original Registry Agreement is the addition of the term: REGISTRY-CLASS DOMAIN NAMES: “Refers to a top-level domain (TLD) or any other domain name at any level in the DNS tree for which a registry....”

However, in the correspondence we received, Ms. Papac asserts: “Per section 2.4.D. of the RSEP, ICANN’s Preliminary Determination is that implementation of your RSEP request requires a material change to your Registry Agreement (RA) (i.e., a RA Amendment)”.

We hope the Board will concur that the addition of the term “Registry-Class Domain Names” as posted in the current proposed .wed TLD Registry Agreement amendment for this RSEP is not a material change and does not warrant another Public Comment period.

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:

(You may attach additional sheets as necessary.)

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?)

We are asking ICANN to approve the request to amend the Atgron, Inc./ICANN Registry agreement to allow for the sale of third level domain names in accordance with the already accepted practice and terms of existing agreements.

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.)

We make this request as a party to the signed .wed TLD Registry Agreement between ICANN and Atgron, Inc. which remains in force until Oct 1, 2023.

The harm is twofold:

Financially, we paid staff members to collect common last names in the US, India and China and the three digit month extensions e.g. Jan, Ene etc. in 18 languages. Our competitors now have easy access to that data in advance and we will be very surprised if there are not multiple requests from others to sell third level extensions using exactly the same data we provided. Rather than having to mine the data, it was provided to them in an easily accessible format.

There is also financial harm to Registrants in developing countries because third level extensions will be priced at a lower price point to allow Registrants in poorer countries to use the .wed TLD if they so desire.

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

Yes

No

11a. If yes, Is the causal connection between the circumstances of the Reconsideration Request and the harm the same for all of the complaining parties? Explain.

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>.

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.



Signature

January 11, 2015

Date

Attachments

Re: Proposal #2013007, Third Level Domain Sales (.WED)

From: Han Chuan Lee Contact Information Redacted
To: Contact Information Redacted

Priority: Normal
Date: 14/02/14 10:09 AM

Adrienne McAdory
Atgron, Inc. (.WED)
Contact Information Redacted

Dear Adrienne,

ICANN has conducted a preliminary review of Atgron's request for "Third Level Domain Sales" for .WED, in accordance with the Registry Services Evaluation Policy and process set forth at <http://www.icann.org/registries/rsep/rsep.html>.

Based on the information provided, ICANN's preliminary review did not identify any significant competition, security or stability issues.

As noted in the proposal, implementation requires a modification to the .WED Registry Agreement signed 1 October 2013. We will get back to you as soon as possible with details on the process for consideration of the proposed amendment and with any comments we might have on the text of the proposed amendment.

Please let us know if you have any questions.

Best regards,
Han Chuan, Lee
Registry Services Senior Manager
Internet Corporation for Assigned Names and Numbers (ICANN)
Direct: Contact Information Redacted

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The Internet Corporation for Assigned Names and Numbers

16 March 2014

Re: Third Level Domain Sales RSEP Request

Dear Adrienne McAdory,

ICANN has conducted a preliminary review of Atgron, Inc.'s request to offer third level domain sales in accordance with the Registry Services Evaluation Policy and process provided at:
<https://new.icann.org/resources/pages/policy-bd-2012-02-25-en>.

Based on the information provided, ICANN's preliminary review did not identify any significant competition or security and stability issues. The implementation of your proposal has the potential to substantially affect third parties and would require an amendment to the .WED Registry Agreement between Atgron, Inc. and ICANN (dated 01 October 2013). As a result, ICANN will post the amendment for public comment. ICANN looks forward to working with you on the proposed amendment that will be posted for public comment, and provides the attached amendment language to help facilitate discussions.

If you have any questions, please respond back to this case via the case comment feature. If not, we will move forward with the posting of your amendment shortly.

Regards,
Registry Services Team

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