

**Subject:** Re: [Reconsideration Request] Reconsideration Request 19-3  
**Date:** Tuesday, August 27, 2019 at 5:17:23 AM Pacific Daylight Time  
**From:** reconsider on behalf of Herb Waye  
**To:** Reconsideration, ombudsman, Dave Marglin  
**CC:** Contact Information Redacted  
**Attachments:** ATT00001.txt

Greetings,

Pursuant to Article 4, Section 4.2(l), I am accepting consideration of Request 19-3.

Best regards Herb

Herb Waye  
ICANN Ombudsman

<https://www.icann.org/ombudsman> [icann.org]  
<https://www.facebook.com/ICANNOmbudsman> [facebook.com]  
Twitter: @IcannOmbudsman

ICANN Expected Standards of Behavior:

<https://www.icann.org/en/system/files/files/expected-standards-15sep16-en.pdf> [icann.org]

Community Anti-Harassment Policy

<https://www.icann.org/resources/pages/community-anti-harassment-policy-2017-03-24-en> [icann.org]

Confidentiality

All matters brought before the Ombudsman shall be treated as confidential. The Ombudsman shall also take all reasonable steps necessary to preserve the privacy of, and to avoid harm to, those parties not involved in the complaint being investigated by the Ombudsman. The Ombudsman shall only make inquiries about, or advise staff or Board members of the existence and identity of, a complainant in order to further the resolution of the complaint. The Ombudsman shall take all reasonable steps necessary to ensure that if staff and Board members are made aware of the existence and identity of a complainant, they agree to maintain the confidential nature of such information, except as necessary to further the resolution of a complaint

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**From:** Reconsideration <reconsideration@icann.org>

**Date:** Friday, August 23, 2019 at 6:43 PM

**To:** Herb Waye <herb.waye@icann.org>, ombudsman <ombudsman@icann.org>, Dave Marglin  
Contact Information Redacted

**Cc:** Contact Information Redacted

**Subject:** Reconsideration Request 19-3

Dear Herb,

ICANN recently received [Reconsideration Request 19-3 \[icann.org\]](#), which was submitted on 30 July 2019 by the Electronic Frontier Foundation (Requestor), seeking reconsideration of ICANN organization's renewal of the Registry Agreement with Public Interest Registry (PIR) for the .org top-level domain (TLD) (the .org Renewed Registry Agreement), insofar as the renewal permits PIR to, "at its election, implement additional protections of the legal rights of third parties,' unilaterally and without further consultation with existing .org registrants or the

ICANN community” and applies the Uniform Rapid Suspension (URS) rules to .org registrants. The Requestor also seeks reconsideration of Board inaction, insofar as the Board did not vote on the .org Renewed Registry Agreement. The Requestor claims that ICANN org’s inclusion of the RPMs in the .org Renewed Registry Agreement “run[s] contrary to ICANN’s bylaws.” (Request, Sec. 3, Pg. 2.)

Request 19-3 seeks reconsideration of Board and staff action. Specifically, the Requestor claims that the .org Renewed Registry Agreement is contrary to:

- (i) ICANN org’s commitment to “seek input from the public, for whose benefit ICANN in all events shall act.”
- (ii) ICANN org’s commitment to “ensure that those entities most affected can assist in the policy development process.”
- (iii) ICANN org’s Core Value of “[s]eeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making to ensure that the bottom-up, multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent.”
- (iv) ICANN org’s Core Value of “[s]triving to achieve a reasonable balance between the interests of different stakeholders, while also avoiding capture.”

The Requestor also claims that the Board’s inaction (i.e., that the Board did not vote on the .org Renewed Registry Agreement) was based on the Board’s consideration of inaccurate material information. (Request at Sec. 8.)

The Board Accountability Mechanisms Committee (BAMC) has determined that Request 19-3 is sufficiently stated pursuant to Article 4, Section 4.2(k) of the ICANN Bylaws. Pursuant the Article 4, Section 4.2(l) of the ICANN Bylaws, a reconsideration request must be sent to the Ombudsman for consideration and evaluation if the request is not summarily dismissed following review by the BAMC to determine if the request is sufficiently stated. Specifically, [Section 4.2 \(l\) \[icann.org\]](#) states:

- (l) For all Reconsideration Requests that are not summarily dismissed, except Reconsideration Requests described in [Section 4.2\(l\)\(iii\)](#) and Community Reconsideration Requests, the Reconsideration Request shall be sent to the Ombudsman, who shall promptly proceed to review and consider the Reconsideration Request.
  - (i) The Ombudsman shall be entitled to seek any outside expert assistance as the Ombudsman deems reasonably necessary to perform this task to the extent it is within the budget allocated to this task.
  - (ii) The Ombudsman shall submit to the Board Accountability Mechanisms Committee his or her substantive evaluation of the Reconsideration Request within 15 days of the Ombudsman’s receipt of the Reconsideration Request. The Board Accountability Mechanisms Committee shall thereafter promptly proceed to review and consideration.
  - (iii) For those Reconsideration Requests involving matters for which the Ombudsman has, in advance of the filing of the Reconsideration Request, taken

a position while performing his or her role as the Ombudsman pursuant to Article 5 of these Bylaws, or involving the Ombudsman's conduct in some way, the Ombudsman shall recuse himself or herself and the Board Accountability Mechanisms Committee shall review the Reconsideration Request without involvement by the Ombudsman.

Please advise whether you are accepting Request 19-3

for evaluation or whether you are recusing yourself pursuant to the grounds for recusal set forth in Section 4.2(l)(iii). If you are accepting Request 19-2 for evaluation, please note that your substantive evaluation must be provided to the BAMC within 15 days of receipt of Request 19-2.

Best regards,  
ICANN  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094