

**PARTIAL SUMMARY DISMISSAL
BY THE BOARD ACCOUNTABILITY MECHANISMS COMMITTEE (BAMC)
RECONSIDERATION REQUEST 20-1
18 MARCH 2020**

The Requestor, Namecheap, Inc., seeks reconsideration of actions and inactions of the ICANN Board and Staff, which the Requestor asserts contradict ICANN’s Mission, Commitments, and established policies¹:

- The Requestor seeks reconsideration of ICANN org’s renewal of the Registry Agreement with Public Interest Registry (PIR) for the .ORG generic top-level domain (the .ORG RA) in 2019, insofar as the 2019 renewal eliminated limits on the fees that PIR may charge registrars for .ORG domain name registrations.² This claim is untimely.
- The Requestor also seeks reconsideration of ICANN Staff’s lack of transparency, insofar as ICANN Staff did not publish: (i) PIR’s request for indirect change of control of PIR (Change of Control Request); (ii) “ICANN’s communications responding to this request”; (iii) ICANN org’s Request for Additional Information regarding the Change of Control Request (Information Request); (iv) PIR’s response to the Information Request; and (v) “any other materials related to the above.”³ This claim does not meet the requirements for bringing a reconsideration request.
- The Requestor preemptively asks the Board to reconsider any future approval of the Change of Control Request.⁴ This request does not meet the requirements for bringing a reconsideration request.
- The Requestor further seeks reconsideration of the ICANN Board’s and Staff’s lack of transparency insofar as the Requestor alleges that ICANN org has not disclosed the criteria that it will use to evaluate the Change of Control Request and is not applying a 2002 Report of the Dot Org Task Force (the 2002 DNSO Policy Guidelines) to the Change of Control Request. This claim meets the requirements for bringing a reconsideration request.

I. Facts.

A. Background Facts.

¹ Request 20-1, § 8, at Pgs. 7-11.

² *Id.*, § 9, at Pgs. 11-12 & n.6.

³ *Id.* § 8, at Pg. 7. Requestor also challenges ICANN org’s alleged failure to disclose “the criteria ICANN intends to use” to evaluate the Change of Control Request. *Id.* That challenge is discussed in the fourth bullet point above.

⁴ Request 20-1 § 9, at Pg. 12.

PIR, a Pennsylvania non-profit corporation, is the registry operator for .ORG.⁵ PIR operates .ORG pursuant to a Registry Agreement with ICANN org (.ORG RA), which has been renewed periodically since PIR became the .ORG registry operator in 2002.⁶ Most recently, the .ORG RA was set to expire on 30 June 2019. Following consultation with the ICANN Board and consideration of public comments on a draft of the 2019 .ORG RA, and with the Board's support, ICANN org announced the execution of the 2019 .ORG RA on 30 June 2019.⁷

Unlike prior .ORG RAs, which limited the fees that PIR may charge registrars for .ORG domain name registrations (price caps), the 2019 .ORG RA does not include price caps.⁸ On 12 July 2019, the Requestor submitted Reconsideration Request 19-2 (Request 19-2), seeking reconsideration of the 2019 .ORG RA insofar as it did not include price caps.⁹ The Board denied Request 19-2 on 21 November 2019.¹⁰

On 13 November 2019, PIR, its parent entity the Internet Society (ISOC), and Ethos Capital publicly announced Ethos Capital's proposed acquisition of PIR.¹¹ Under the 2019 .ORG RA, PIR must obtain ICANN's prior approval before there can be direct or indirect change of control of the registry operator.¹² Accordingly, on 14 November 2019, PIR sought the requisite approval from ICANN via the Change of Control Request.¹³ Typically, requests to

⁵ <https://www.icann.org/public-comments/org-renewal-2019-03-18-en>.

⁶ *Id.*

⁷ Staff Report of Public Comment Proceeding, <https://www.icann.org/en/system/files/files/report-comments-org-renewal-03jun19-en.pdf>; 2019 .ORG RA, <https://www.icann.org/resources/agreement/org-2019-06-30-en>.

⁸ See 2019 .ORG RA, <https://www.icann.org/resources/agreement/org-2019-06-30-en>.

⁹ Request 19-2, <https://www.icann.org/en/system/files/files/reconsideration-19-2-namecheap-request-redacted-12jul19-en.pdf>.

¹⁰ Board Final Determination on Request 19-2, <https://www.icann.org/resources/board-material/resolutions-2019-11-21-en#1.a>.

¹¹ .ORG Update, <https://www.icann.org/news/blog/org-update>; 2019 .ORG RA, <https://www.icann.org/resources/agreement/org-2019-06-30-en>.

¹² *Id.*

¹³ *Id.*

ICANN for approval of a change of control are confidential.¹⁴ In this case, ICANN org asked PIR for permission to publish the Change of Control Request,¹⁵ PIR initially declined.¹⁶

Under the 2019 .ORG RA and ICANN processes for reviewing change of control requests, ICANN org has 30 days to request additional information, including information about the party acquiring control, its ultimate parent entity, and whether the parent meets the ICANN-adopted registry operator criteria (as well as whether they have adequate financial resources and operational and technical capabilities).¹⁷ Accordingly, ICANN org issued the Information Request to PIR.¹⁸

On 9 December 2019, ICANN asked PIR and ISOC to: (1) reconsider publishing the Change of Control Request; and (2) consider publishing the Information Request and PIR's response to the Information Request.¹⁹ On the same day, ICANN org published an update on the .ORG Change of Control Request (.ORG Update), noting that ICANN org sent PIR the Information Request.²⁰

On 20 December 2019, PIR submitted confidential responses to the Information Request.²¹

On 8 January 2020, the Requestor submitted Request 20-1 and a request for documentary information pursuant to ICANN org's Documentary Information Disclosure Policy (DIDP),

¹⁴ *See id.*

¹⁵ *Id.*

¹⁶ *See* 9 December 2019 letter from J. Jeffrey to A. Sullivan and J. Nevett (9 December 2019 Letter) (asking PIR to reconsider ICANN org's request to publish the Change of Control Request), <https://www.icann.org/en/system/files/correspondence/jeffrey-to-sullivan-nevett-09dec19-en.pdf>.

¹⁷ 2019 .ORG RA, Art. 7, § 7.5; Registry Transition Processes, <https://www.icann.org/resources/pages/transition-processes-2013-04-22-en>.

¹⁸ .ORG Update, <https://www.icann.org/news/blog/org-update>.

¹⁹ 9 December 2019 Letter.

²⁰ .ORG Update.

²¹ Update on Change of Control Request of PIR by Ethos Capital, <https://www.icann.org/news/announcement-2020-01-11-en>.

seeking, among other things, “all documents directly and indirectly relating to the change of control of [PIR].”²² At that time, PIR had not agreed to publish the Information Request and PIR’s Response. On 7 February 2020, ICANN org responded to the Requestor’s DIDP request.²³

On 10 January 2020, ICANN org received a revised version of PIR’s responses to the Information Request (Revised Submission).²⁴ With the agreement of PIR, ISOC, and Ethos Capital, ICANN org published the Revised Submission, along with the Change of Control Request and the Information Request.²⁵

ICANN org and PIR agreed to extend ICANN org’s deadline to provide or withhold consent to the Change of Control Request to 17 February 2020.²⁶ Subsequently, ICANN requested a further extension of the deadline to 20 April 2020, in light of the letter ICANN received from the California Attorney General regarding its review of “the impact to the nonprofit community, including to ICANN, of [the] proposed transfer” of PIR to Ethos Capital;²⁷ PIR initially agreed to a further extension to 29 February 2020,²⁸ and then later agreed to a further extension to 20 March 2020.²⁹

B. Relief Requested.

The Requestor asks the BAMC to:

1. “[R]everse [ICANN org’s] decision to eliminate price caps in legacy TLDs”;

²² Request 20-1, Annex 1, at Pg. 4.

²³ ICANN’s Response to DIDP Request 20200108-1, <https://www.icann.org/en/system/files/files/didp-20200108-1-petillion-response-07feb20-en.pdf>.

²⁴ *See id.*

²⁵ <https://www.icann.org/en/system/files/files/pir-isoc-ethos-capital-10jan20-en.pdf>.

²⁶ 17 January 2020 letter from C. Namazi to J. Nevett, <https://www.icann.org/en/system/files/files/icann-to-pir-17jan20-en.pdf>.

²⁷ 20 January 2020 letter from J. Jeffrey to J. Nevett, <https://www.icann.org/en/system/files/correspondence/jeffrey-to-nevett-30jan20-en.pdf>.

²⁸ 14 February 2020 letter from J. Jeffrey to J. Nevett, <https://www.icann.org/en/system/files/correspondence/jeffrey-to-nevett-14feb20-en.pdf>.

²⁹ See <https://www.icann.org/en/system/files/correspondence/jeffrey-to-nevett-21feb20-en.pdf>.

2. “[R]econsider the lack of openness and transparency with respect to the renewal of the .ORG Registry Agreement and the actions surrounding the (proposed) acquisition of PIR and ICANN’s approval process” by providing:
 - a. “full transparency regarding negotiations pertaining to the reassignment, renewal and amendments of the .ORG” RA;
 - b. “full transparency regarding the (proposed) change of control of Public Interest Registry,” and
 - c. “the documents requested in [the] DIDP request by the Requestor”; and
3. Direct ICANN org to withhold its approval—or reconsider its approval—of “the change of control” of PIR, if “ICANN’s actions and/or inactions lead, have led to, or risk leading to the approval of the change of control.”³⁰

II. Issue Presented.

The issue is whether Request 20-1 should proceed through the Reconsideration process or whether summary dismissal is appropriate.

III. The Relevant Standards for Reconsideration Requests.

Articles 4.2(a) and (c) of ICANN’s Bylaws provide in relevant part that any entity “may submit a request for reconsideration or review of an ICANN action or inaction . . . to the extent 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.”³¹

³⁰ Request 20-1, § 9, at Pgs. 11-13.

³¹ ICANN Bylaws, Art. 4 §§ 4.2(a) and (c).

Pursuant to Article 4, Section 4.2(k) of the Bylaws, the BAMC reviews each reconsideration request upon its receipt “to determine if it is sufficiently stated.”³² The BAMC may summarily dismiss a reconsideration request if the BAMC determines the request: (i) does not meet the requirements for filing reconsideration requests under the Bylaws; or (ii) is frivolous.³³ If a reconsideration request is not summarily dismissed, the next step is to send it to the Ombudsman, who shall either recuse himself in accordance with Article 4, Section 4.2(l)(iii) of the Bylaws or shall review and consider the reconsideration request.³⁴ As noted above, this Partial Summary Dismissal only evaluates Request 20-1 to determine if it should proceed through the Reconsideration process.

IV. Analysis and Rationale.

In evaluating whether a reconsideration request is “sufficiently stated,” the BAMC considers the following factors: (1) is the reconsideration request timely; and (2) does the requestor “meet the requirements for bringing a reconsideration request.”³⁵ The BAMC concludes:

- The Requestor’s request for reconsideration of ICANN org’s 2019 renewal of the .ORG RA is not timely; this claim is summarily dismissed.
- The Requestor’s challenge to ICANN Staff’s lack of transparency insofar as ICANN Staff did not publish: (i) the Change of Control Request; (ii) “ICANN’s communications responding to this request”; (iii) the Information Request; (iv) PIR’s response to the Information Request; and (v) “any other materials related to the above”³⁶ does not meet the requirements for bringing a reconsideration request because the Requestor has not sufficiently alleged that it has been adversely affected by this challenged action; this claim is summarily dismissed.

³² *Id.* at § 4.2(k).

³³ *Id.*

³⁴ *Id.* at §§ 4.2(k), (l).

³⁵ ICANN Bylaws, Art. 4, § 4.2(k); *see also id.* § 4.2(e)(ii) (the BAMC has the power to “[s]ummarily dismiss insufficient or frivolous Reconsideration Requests”).

³⁶ Request 20-1 § 8, at Pg. 7. Requestor also challenges ICANN org’s alleged failure to disclose “the criteria ICANN intends to use” to evaluate the Change of Control Request. *Id.* That challenge is discussed in Section IV.C, *infra*.

- The Requestor’s challenge to any *future* ICANN approval of the Change of Control Request does not meet the requirements for bringing a reconsideration request because the Requestor has not identified an action or inaction of the ICANN Board or Staff, and therefore has not sufficiently alleged and cannot allege that it has been adversely affected; this claim is summarily dismissed.
- The Requestor’s challenge to the ICANN Board’s and Staff’s lack of transparency insofar as the Requestor alleges that ICANN org has not disclosed the criteria that it will use to evaluate the Change of Control Request and is not applying the 2002 DNSO Policy Guidelines to the Change of Control Request: (i) was timely filed; (ii) sufficiently identifies the Bylaws provisions and established ICANN policies that ICANN org allegedly violated; and (iii) sufficiently identifies an alleged adverse effect of the challenged conduct.³⁷

Accordingly, the BAMC finds it appropriate to proceed through the Reconsideration process only as to the portion of Request 20-1 challenging the ICANN Board’s and Staff’s alleged lack of transparency insofar as the Requestor alleges that ICANN org has not disclosed the criteria that it will use to evaluate the Change of Control Request and is allegedly not applying the 2002 DNSO Policy Guidelines to the Change of Control Request.³⁸

A. The Requestor’s Challenge to ICANN org’s 2019 Renewal of the .ORG RA Was Not Timely Filed; This Claim is Summarily Dismissed.

The Requestor’s challenge to ICANN org’s 2019 renewal of the .ORG RA—insofar as the 2019 .ORG RA does not include price caps—was not timely filed. Pursuant to ICANN’s Bylaws, a reconsideration request challenging Staff action must be submitted “within 30 days after the date on which the Requestor became aware of, or reasonably should have become aware of, the challenged Staff action.”³⁹ The Requestor challenges ICANN org’s 2019 renewal of the .ORG RA, which was announced on 30 June 2019. The Requestor stated in Request 19-2 that it

³⁷ Request 20-1, § 6, at Pg. 5.

³⁸ ICANN Bylaws, Article 4, Section 4.2(1).

³⁹ *Id.*, Art. 4, § 4.2(g)(i)(B).

became aware of the renewal of the .ORG RA on 1 July 2019.⁴⁰ Request 20-1 was submitted on 8 January 2020, 192 days after the challenged action.⁴¹

The BAMC summarily dismisses this portion of Request 20-1 because it was not timely filed.⁴²

B. The Requestor’s Challenge to ICANN Staff’s Purported Failure to Disclose Documents Does Not Meet the Requirements for Bringing A Reconsideration Request; This Claim is Summarily Dismissed.

The Requestor claims that ICANN Staff should have published the following documents: (i) the Change of Control Request; (ii) “ICANN’s communications responding to this request”; (iii) the Information Request; (iv) PIR’s response to the Information Request; and (v) “any other materials related to the above.”⁴³ The Requestor asserts that it discovered ICANN’s alleged failure to publish documents relating to the Change of Control Request on 11 December 2019 when, according to the Requestor, the .ORG Update made “clear that ICANN would not be completely open and transparent” about the Change of Control Request.⁴⁴

The Requestor has not sufficiently alleged that it has been adversely affected by the challenged inaction, because the Requestor has not identified any harm to it based on lack of

⁴⁰ Request 19-2, § 5, at Pg. 2.

⁴¹ For the same reasons, the Requestor’s passing references to the 2019 renewals of the .BIZ and .INFO RAs (*see* Request 20-1, § 9, at Pg. 12 n.6) do not state timely challenges to ICANN Staff action as those RA renewals were also announced on 30 June 2019. *See* <https://www.icann.org/resources/agreement/biz-2019-06-30-en>; <https://www.icann.org/resources/agreement/info-2019-06-30-en>. The Requestor also makes a passing reference to “the reassignment” of the .BIZ and .INFO RAs. Request 20-1, § 9, at Pg. 13. The Requestor does not assert that the operators of .BIZ and .INFO have notified ICANN org of any proposed changes of control of those registries, because they have not. Thus, to the extent the Requestor is challenging an unidentified assignment of the .BIZ or .INFO registries, the BAMC summarily dismisses those claims as frivolous per ICANN Bylaws, Art. 4, § 4.2(e)(ii).

⁴² The BAMC additionally notes that the Requestor previously challenged ICANN org’s 2019 renewal of the .ORG RA on 12 July 2019 in Reconsideration Request 19-2, which the Board denied on 21 November 2019. <https://www.icann.org/resources/board-material/resolutions-2019-11-21-en#1.a>. The Requestor has given no reason—and there is none—to revisit the Board’s decision.

⁴³ Request 20-1, § 8, at Pg. 7. The Requestor also challenges ICANN org’s alleged failure to disclose “the criteria ICANN intends to use” to evaluate the Change of Control Request. Request 20-1, § 8, at Pg. 7. That challenge is discussed in Section IV.D, *infra*.

⁴⁴ *Id.* § 4, at Pg. 4. As the Requestor submitted Request 20-1 on 8 January 2020, this portion of Request 20-1 was timely filed. ICANN Bylaws, Art. 4, § 4.2(g)(i)(C).

access to particular documents. Instead, the Requestor asserts harm based on purported actual or potential “radical changes” in the 2019 .ORG RA, but this alleged harm relates to other claims asserted in Request 20-1 (and this harm is addressed in Section IV.D below).⁴⁵ In short, the Requestor has not demonstrated that it has been adversely affected by lack of access to particular documents.⁴⁶

Accordingly, the BAMC summarily dismisses this claim because the Requestor has not sufficiently alleged that it has been adversely affected by the challenged inaction.

C. The Requestor’s Challenge to the ICANN Board’s and/or Staff’s Future Approval (If Any) of the Change of Control Request Does Not Meet the Requirements for Bringing A Reconsideration Request; This Claim is Summarily Dismissed.

The Requestor also asks the BAMC to direct ICANN org to withhold its approval of the Change of Control Request or reconsider any such approval, not because ICANN org *has* taken an action (or inaction) that materially or adversely affected the Requestor, but because ICANN *might* take an action that *could* adversely affect the Requestor. To that end, the Requestor asserts that ICANN org *would* violate its Bylaws *if* it approves the Change of Control Request.⁴⁷ This portion of Request 20-1 does not sufficiently identify an ICANN Staff or Board action or inaction, and therefore it does not and cannot establish any existing material or adverse effect on the Requestor.

⁴⁵ Request 20-1, § 4, at Pg. 4.

⁴⁶ The BAMC additionally notes that two days after the Requestor submitted Request 20-1, ICANN org published the Change of Control Request, the Information Request, and the Revised Submission. <https://www.icann.org/en/system/files/files/pir-isoc-ethos-capital-10jan20-en.pdf>. The BAMC also notes that the Requestor submitted a DIDP Request on 8 January 2020 for these and other documents. <https://www.icann.org/en/system/files/files/didp-20200108-1-petillion-request-08jan20-en.pdf>. Any challenges concerning the DIDP Request were not ripe when the Requestor submitted Request 20-1 because ICANN org had not yet responded to the Request (nor had it failed to respond to the DIDP Request within the time allotted). ICANN Bylaws, Art. 4, § 4.2(c); DIDP. ICANN responded to the Requestor’s DIDP request on 7 February 2020. <https://www.icann.org/resources/pages/didp-20200108-1-petillion-request-2020-02-10-en>.

⁴⁷ Request 20-1, § 9, at Pgs. 11-13.

ICANN org has neither approved nor announced that it will approve the Change of Control Request. ICANN org has made no such determination yet. Indeed, the Requestor recognizes that ICANN org has not made its final determination on the Change of Control Request, stating that, *if* “ICANN’s actions . . . lead, have led to, or risk leading to the approval of the change of control,” *then* Requestor seeks reconsideration of those actions (or inactions).⁴⁸ The Requestor is not challenging ICANN Board or Staff action (or inaction); rather, the Requestor is trying to preempt ICANN org’s possible *future* action.⁴⁹

The reconsideration process is not intended to be a mechanism for parties to preserve their right to contest a future action or inaction that may or may not materially affect the parties. To do so would undermine the purpose of the reconsideration process as set forth in Article 4, Section 4.2(a) of the Bylaws, which is to provide “a process by which any person or entity materially affected by *an action or inaction* of the ICANN Board or Staff may request . . . the review or reconsideration of that action or inaction by the Board, . . . to the extent that the Requestor has been *adversely* affected by” Board or Staff action or inaction.⁵⁰

Because ICANN org had not yet taken final action on – i.e., approved or withheld its approval of – the Change of Control Request when the Requestor submitted Request 20-1, there is nothing for the BAMC or Board to *reconsider*. Accordingly, the Requestor has not timely brought Request 20-1 within 30 days *after* an action or inaction. And, the Requestor has not yet been affected—materially, adversely, or otherwise—by a purported challenged action or inaction of the ICANN Board or Staff (because there has been no action or inaction). The Requestor’s

⁴⁸ *Id.*

⁴⁹ Instead, Request 20-1 asserts that ICANN org *would* violate its Bylaws *if* it approved the Change of Control Request. *Id.* § 9, at Pg. 12 (“Based on the information that is publicly available regarding the proposed acquisition of PIR, the Requester considers that there are sufficient grounds which mandate ICANN to withhold its approval.”).

⁵⁰ ICANN Bylaws, Art. 4, § 4.2(a), (c) (emphasis added).

request for review of ICANN org’s future decision on the Change of Control Request does not meet the requirements for bringing a request for reconsideration; therefore, this claim is summarily dismissed.

D. The Requestor’s Challenge to the Board’s and Staff’s Failure to Disclose Evaluation Criteria or Apply Certain Policy Guidelines to the Change of Control Request Meets the Requirements for Bringing a Reconsideration Request.

1. The Challenge is Timely.

The Requestor asserts that it concluded on 11 December 2019, when it reviewed the .ORG Update, that the ICANN Board and Staff would not disclose its criteria for evaluating the Change of Control Request or apply the 2002 DNSO Policy Guidelines to the Change of Control Request.⁵¹ The Requestor submitted Request 20-1 on 8 January 2020, which is timely based on the challenged conduct.⁵²

2. The Challenge Meets the Requirements for Bringing a Reconsideration Request.

The Requestor claims that the ICANN Board’s and Staff’s alleged failure to disclose the criteria they will use to evaluate the Change of Control Request and alleged failure to apply the 2002 DNSO Policy Guidelines to the Change of Control Request contradict:

- ICANN org’s Commitment to “[m]ake decisions by applying documented policies consistently, neutrally, objectively, and fairly, without singling out any particular party for discriminatory treatment.”⁵³
- ICANN org’s Commitment to “operate . . . through open and transparent processes.”⁵⁴
- The 2002 DNSO Policy Guidelines.⁵⁵

⁵¹ Request 20-1, § 5, at Pg. 4.

⁵² ICANN Bylaws, Art. 4, § 4.2(g)(i)(C).

⁵³ *Id.*, Art. 1, § 1.2(a)(v); Request 20-1, § 8, at Pgs. 8-11.

⁵⁴ *Id.*, Art. 1, § 1.2(a); Request 20-1, § 8, at Pgs. 7-8.

⁵⁵ <https://archive.icann.org/en/meetings/accra/org-topic.htm>; Request 20-1, § 8, at Pgs. 7-11.

This portion of Request 20-1 sufficiently identifies established ICANN policies that the Requestor claims ICANN org violated.

The Requestor also sufficiently identifies an alleged adverse effect due to the ICANN Board's and Staff's purported failure to disclose the criteria it is applying and/or purported failure to apply the 2002 DNSO Policy Guidelines. The Requestor seems to be asserting that the claimed lack of transparency concerning the ICANN Board's and/or Staff's evaluation of the Change of Control Request has "immediate repercussions upon the Requestor's business, as it significantly affects the level of trust of customers in the domain name industry."⁵⁶ Whether there is, in fact, an actual harm or adverse effect on the Requestor due to the challenged actions and inactions is not material to this preliminary procedural evaluation.⁵⁷ For purposes of determining whether these claims procedurally meet the requirements for bringing a reconsideration request, it is sufficient that the Requestor alleged such harm.⁵⁸

Accordingly, the Requestor's challenge to the ICANN Board's and Staff's alleged failure to disclose the criteria that it will use to evaluate the Change of Control Request and alleged failure to apply the 2002 DNSO Policy Guidelines to the Change of Control Request shall proceed in accordance with the Reconsideration process.

V. Conclusion.

A substantive review of the merits of the Requestor's claims is beyond the scope of the BAMC's procedural evaluation. The BAMC's conclusion is limited to only the preliminary assessment of whether the Requestor's claims meet the requirements for bringing a

⁵⁶ Request 20-1, § 6, at Pgs. 5-6.

⁵⁷ The BAMC's determination that the Requestor sufficiently identified a material harm for procedural purposes is not a determination that the Requestor was, in fact, materially harmed or, if so, that the challenged action caused such harm. The BAMC takes no position at this point on the merits of the Requestor's claims, including the claim that it has been materially affected by the challenged action.

⁵⁸ ICANN Bylaws, Art. 3 § 3.1.

reconsideration request. For the foregoing reasons, the BAMC concludes that the requests for reconsideration of: (1) ICANN org's 2019 renewal of the .ORG RA; (2) ICANN Staff's failure to disclose (i) the Change of Control Request; (ii) "ICANN's communications responding to this request"; (iii) the Information Request; (iv) PIR's response to the Information Request; and (v) "any other materials related to the above"; and (3) ICANN org's potential future decision on the Change of Control Request do not meet the requirements for bringing a reconsideration request and are hereby summarily dismissed.

The BAMC further concludes that the request for reconsideration of the ICANN Board's and Staff's alleged failure to disclose the criteria they will use to evaluate the Change of Control Request and alleged failure to apply the 2002 DNSO Policy Guidelines to the Change of Control Request meets the requirements for bringing a reconsideration request. Pursuant to Article 4, Section 4.2(l) of the Bylaws, the next step in the Reconsideration process is to send this claim to the Ombudsman for his review and consideration, or recusal.