

**DETERMINATION OF THE
BOARD ACCOUNTABILITY MECHANISMS COMMITTEE (BAMC)
RE: NEED FOR URGENT CONSIDERATION OF
RECONSIDERATION REQUEST 19-1**

18 June 2019

I. Introduction and Brief Summary

The Requestor, the Government of Colombia, seeks reconsideration of ICANN Board Resolutions 2019.05.15.13 – 2019.05.15.15 (Request 19-1).¹ The challenged Resolutions directed ICANN org to continue processing Amazon corporation’s applications for the .AMAZON generic top-level domain and related internationalized domain names (IDN) (collectively the .AMAZON applications).² A substantive review of the merits of the Requestor’s claims is beyond the scope of this determination. The BAMC’s determination is limited to only its assessment of whether Request 19-1 meets the requirements for urgent reconsideration under Article 4, Section 4.2(s) of ICANN Organization’s Bylaws. For the following reasons, the BAMC concludes that Request 19-1 does not meet the requirements for urgent reconsideration.

The Requestor suggests that “there have been multiple violations of the ICANN Bylaws in connection with ICANN’s actions to proceed with the processing of Amazon the Company’s applications,”³ and states that it “is asking that ICANN Org stay any further actions” in connection with the .AMAZON applications “until the concerns raised in this Reconsideration Request have been fully and properly addressed.”⁴

¹ Request 19-1, §§ 3, 12.

² <https://www.icann.org/resources/board-material/resolutions-2019-05-15-en>.

³ Request 18-3, § 12a.

⁴ Request 18-3, § 9

The Requestor further asks that Request 19-1 be considered on an urgent basis.⁵ In explaining why the matter is urgent for reconsideration, the Requestor simply states that “[f]ailure to halt contract execution and potential delegation will have a direct impact on the obligations of the Colombia government.”⁶ However, as discussed below, because further processing of the .AMAZON applications will be put on hold pursuant to normal ICANN org processes until Request 19-1 is resolved, urgent resolution of Request 19-1 is not necessary. Further, Request 19-1 was not filed within two business days of the posting of the resolution at issue, and thus does not meet the time requirements for urgent consideration under ICANN’s Bylaws.

Notwithstanding that Request 19-1 will not be treated as urgent under ICANN’s Bylaws, the Requestor may still proceed with Request 19-1 under the timeline for a standard (meaning non-urgent) reconsideration request, and the BAMC will ensure, as always, that the matter will be handled expeditiously, to the extent feasible and practicable.

II. Grounds for Urgent Consideration of Reconsideration Requests

Article 4, Section 4.2(s) of ICANN Organization’s Bylaws allows requestors to submit urgent requests for reconsideration provided certain requirements are met:

If the Requestor believes that the Board action or inaction for which a Reconsideration Request is submitted is so urgent that the timing requirements of the process set forth in this Section 4.2 are too long, the Requestor may apply to the Board Accountability Mechanisms Committee for urgent consideration. Any request for urgent consideration must be made within two business days (as calculated by local time at the location of ICANN’s principal office) of the posting of the resolution at issue. A request for urgent consideration must include a discussion of why the matter is

⁵ Request 18-3, § 12.

⁶ Request 18-3, § 12.

urgent for reconsideration and must demonstrate a likelihood of success with the Reconsideration Request.

Article 4, Section 4.2(t) of ICANN organization's Bylaws sets forth expedited timing for urgent requests for reconsideration:

The Board Accountability Mechanisms Committee shall respond to the request for urgent consideration within two business days after receipt of such request. If the Board Accountability Mechanisms Committee agrees to consider the matter with urgency, it will cause notice to be provided to the Requestor, who will have two business days after notification to complete the Reconsideration Request. The Board Accountability Mechanisms Committee shall issue a recommendation on the urgent Reconsideration Request within seven days of the completion of the filing of the Reconsideration Request, or as soon thereafter as feasible. If the Board Accountability Mechanisms Committee does not agree to consider the matter with urgency, the Requestor may still file a Reconsideration Request within the regular time frame set forth within these Bylaws.

III. Request 19-1 Does Not Meet the Bylaws Requirements for Urgent Consideration

Under ICANN organization's Bylaws, a request for urgent reconsideration must, among other things, "include a discussion of why the matter is urgent for reconsideration."⁷ The Requestor suggests only that Request 19-1 is "urgent" because "[f]ailure to halt contract execution and potential delegation will have a direct impact on the obligations of the Colombia government."⁸ However, because the contracting process for the .AMAZON applications, as well as the delegation of .AMAZON and related IDNs, will be halted pending the resolution of Request 19-1 per ICANN organization's normal processes, urgent consideration of Request 19-1 is not necessary. Meaning that resolving Request 19-1 pursuant to the standard timeline for reconsideration requests under the Bylaws will not result in contract execution or

⁷ ICANN Bylaws, Art. 4, § 4.2(s).

⁸ Request 18-3, § 12a.

delegation of the .AMAZON string before Request 19-1 is resolved. The Request does not contain any other statement identifying reasons “why the matter is urgent for reconsideration.”⁹

Further, the ICANN Bylaws provide that “[a]ny request for urgent consideration must be made within two business days (as calculated by local time at the location of ICANN’s principal office) of the posting of the resolution at issue.”¹⁰ Request 19-1 seeks reconsideration of Board Resolutions first posted on the ICANN website on 17 May 2019.¹¹ According to the Request, the Requestor first became aware of the Resolutions on 18 May 2019.¹² Yet Request 19-1 was not made until 15 June 2019.¹³ The fact that the request for urgent consideration was not made within two business days of the posting of the resolution at issue, or even from the Requestors’ knowledge of the resolutions, is another reason Request 19-1 need not be considered on an urgent basis as it does not qualify for urgent reconsideration under the Bylaws.

IV. Conclusion

For the reasons stated above, Request 19-1 does not qualify for urgent consideration. Pursuant to Article 4, Section 4.2(t) of ICANN organization’s Bylaws, the Requestor is free to file a new reconsideration request under “the regular time frame” set forth in the Bylaws. However, in the interest of time, rather than requiring the Requestor to re-file, ICANN organization will proceed with Request 19-1 under the regular time frame of the Reconsideration Process. The BAMC will ensure that Request 19-1 will be handled expeditiously, to the extent feasible and practicable.

⁹ See ICANN Bylaws, Art. 4, 4.2(s).

¹⁰ See ICANN Bylaws, Art. 4, 4.2(s).

¹¹ Request 19-1, § 5.

¹² Request 19-1, § 5.

¹³ Request 19-1, p. 13.