

Board Accountability Mechanisms Committee Activities Report

1 July 2023 – 31 December 2023¹

Summary:

Completed Activities:

1. Procedural Evaluation of Reconsideration Request 23-1
2. Independent Review Process Standing Panel Selection
3. Initiation of Fundamental Bylaws Amendment Process on Community Modification to Accountability Mechanisms

On-Going Activities

1. IRP Implementation Oversight Team (IRP-IOT) Update
2. Litigation Update
3. Status on Reconsideration Request 23-2
4. Update on Economic Analysis per Board Resolution 2023.06.11.07

¹ This report is intended to capture the activities of the BAMC from 1 July 2023 to 31 December 2023. However, because the report was prepared in February 2024, a few activities that occurred in January 2024 are also captured in the report.

Completed Activities

Item	Description of BAMC Activity	BAMC Completion Date	Accomplishments/Outcome
<p>1. Procedural Evaluation on Reconsideration Request 23-1</p>	<p>The Committee received a briefing and materials about Reconsideration Request 23-1 (Request 23-1) submitted by Michael Palage (Requestor), challenging certain aspects of the renewal of the .NET Registry Agreement (.NET RA Renewal). Article 4, Section 4.2(k) of the ICANN Bylaws provides that upon receipt of a reconsideration request, the BAMC is to review the request "to determine if it is sufficiently stated." A request that is not sufficiently stated cannot withstand reconsideration and will be summarily dismissed. A substantive review of the merits of the Requestor's claims is beyond the scope of procedural evaluation.</p> <p>The BAMC found that Request 23-1 is not sufficiently stated because it does not sufficiently allege that the Requestor has been materially harmed and adversely affected by a challenged ICANN action that allegedly violated a Bylaws provision or established ICANN policy. The BAMC determined that the Requestor has not demonstrated that he has suffered an actual injury with regards to the aspects that he challenges related to the .NET RA Renewal as required under the reconsideration process.</p>	<p>28 August 2023</p>	<p>On 19 September 2023, the BAMC summarily dismissed the Request 23-1 (see BAMC Summary Dismissal).</p>
<p>2. Independent Review Process (IRP) Standing Panel Selection</p>	<p>The Committee considered a slate of Standing Panelists recommended by the IRP Community Representatives Group (CRG). Following discussion, the BAMC recommended that the Board to confirm the CRG nominated slate, modified to exclude one ineligible candidate.</p>	<p>28 August 2023 15 December 2023</p>	<p>The Committee recommended that the Board confirm the CRG nominated slate modified to exclude one ineligible candidate, which the Board approved on 21 January 2024 (see Resolutions 2024.01.21.10 – 2024.01.3.13).</p>
<p>3. Initiation of Fundamental Bylaws</p>	<p>ICANN org presented the Committee with a recommendation on the initiation of the Fundamental Bylaws amendment</p>	<p>15 December 2023</p>	<p>The Committee approved a recommendation that the Board</p>

Item	Description of BAMC Activity	BAMC Completion Date	Accomplishments/Outcome
Amendment Process on Community Modification to Accountability Mechanisms	<p>process as set out at Article 25, Section 25.2 of the Bylaws regarding a proposed amendment to Article 4, Section 4.1 of the ICANN Bylaws. The proposed amendment is in furtherance of the Board’s October 2023 indication that it would seek to commence a Fundamental Bylaws amendment to insert into the Bylaws a description of how the ICANN community can define circumstances under which access to ICANN’s Independent Review and Reconsideration Processes can be limited. The Committee discussed the importance of maintaining the Empowered Community’s voice in future restriction of the IRP or Reconsideration Process. The Committee acknowledged that though Article 4, Section 4.1 of the ICANN Bylaws is not enumerated as a Fundamental Bylaw, it will recommend that it is appropriate to follow the Fundamental Bylaws process because the proposed amendment describes how to alter two sections (Article 4, Sections 4.2 and 4.3) in the future. Following discussion, the Committee approved the BAMC’s recommendation that the Board initiate the Fundamental Bylaws amendment process as set out at Article 25, Section 25.2 of the Bylaws and to direct ICANN org to open a public comment on the proposed amendment to Article 4, Section 4.1 of the ICANN Bylaws.</p>		<p>initiate the Fundamental Bylaws amendment process as set out at Article 25, Section 25.2 of the Bylaws and to direct ICANN org to open a public comment on the proposed amendment to Article 4, Section 4.1 of the ICANN Bylaws, which the Board approved on 21 January 2024 (see Resolution 2024.01.21.09).</p>

On-Going Activities

Item	Description of BAMC Activity	Target Completion Date	Accomplishments/Outcome
1. Implementation Oversight Team (IRP-IOT) Update	The BAMC received a status update on the work of IRP-IOT	N/A	In its accountability mechanisms oversight function, the BAMC will continue to receive regular updates on the progress of the IRP-IOT.

Item	Description of BAMC Activity	Target Completion Date	Accomplishments/Outcome
2. Litigation Update	The BAMC received updates on pending litigation and dispute-related matters in which ICANN is a party or has an interest.	N/A	The BAMC will continue to receive regular updates on pending litigation and dispute-related matters in which ICANN is a party or has an interest.
3. Status on Reconsideration Request 23-2	The Committee received a briefing on Reconsideration Request 23-2 (Request 23-2), filed by the Intellectual Property Constituency (IPC), seeking reconsideration of the: (i) ICANN Board Resolutions 2023.10.26.11 and 2023.10.26.12 , which revisited the Board’s prior action on Recommendation 7 from the Cross-Community Working Group on New gTLD Auction Proceeds (CCWG-AP) Final Report; (ii) the ICANN Board’s public comment of 6 December 2018 on the Initial Report of the CCWG-AP; (iii) the organization of the public comment phase on the Proposed Final Report of the CCWG-AP; (iv) ICANN Board Resolutions 2022.06.12.13 to 2022.06.26.16 ; and (iv) “actions and inactions involving the implementation of the ICANN Grant Giving Program.” The Committee noted that Request 23-2 is currently undergoing procedural evaluation to determine if it is sufficiently stated.	N/A	Request 23-2 is currently undergoing procedural evaluation to determine if it is sufficiently stated.
4. Update on Economic Analysis per Board Resolution 2023.06.11.07	The Committee received an update on the status of the economic analysis “regarding the current domain name system marketplace as it relates to the market power of .INFO and .ORG” pursuant to Board Resolution 2023.06.11.07 .	N/A	In its accountability mechanisms oversight function, the BAMC will continue to receive regular updates on the economic analysis.