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: DotSecure 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**

__X_ Staff action/inaction

3.   Description of specific action you are seeking to have reconsidered.

3.1 At a date or dates not presently known to DotSecure Inc. ("DSI") DSI believes that ICANN staff provided training and explanatory materials to management and staff of the International Chamber of Commerce International Centre for Expertise, ("ICC") to enable and assist ICC and its appointed Panelists to conduct Expert Determinations in Objections arising out of ICANN's new gTLD program. ICANN appointed ICC as a Dispute Resolution Services Provider ("DRSP") to resolve Objections arising under two Grounds of Objection provided for in ICANN's Applicant Guidebook, ("AGB") namely: (1) Limited Public Interest Objections and (2) Community Objections. ICANN recorded the appointment of ICC as the DRSP in relation to these matters in the AGB at paragraph 3.2.3 (page 3-9). DSI expected that such training would have provided ICC and its panelists with, inter alia, an understanding that the AGB contained the complete and final substantive rules applicable to Objections brought under the grounds named above.

3.2 At a date or dates not presently know to DSI, DSI believes that ICANN staff formed the view that ICC personnel were sufficiently trained to be ready to commence the determination of Objections. ICC has commenced rendering determinations of new gTLD Objections.

3.3 ICC has rendered a determination in an Objection brought by the International Banking Federation (IBF) against DSI's application for the new

gTLD .bank, in which the Panel has determined that the delegation of the .bank gTLD to DSI will cause material detriment to the global banking community simply because DSI is not a member of the alleged global banking community. The submission made during the new gTLD policy development process that sensitive strings (which .bank admittedly is) be operated only by members of the relevant community to which such strings are targeted, was expressly not adopted by ICANN as a policy for the allocation of sensitive strings, despite those submissions to the contrary. Similarly, early advice from the GAC that sensitive strings should be operated only by community applicants was also expressly not adopted by ICANN. Although expressed as a finding of "material detriment" the finding in the DSI .bank case in fact is that only a community-based applicant which is a member of the global financial community should operate .bank. No other feature of the DSI application is raised by the Panel as disqualifying DSI. No particular regulation, law or procedure is cited, nor any individual issue explained as being outside the professional scope or capability of DSI to comply with. The decision is rather an expression of prejudice, that .bank should be run by bankers. This is contrary to ICANN's stated goals in relation to the gTLD program of providing competition and innovation, and contrary to ICANN policies enshrined in the Applicant Guidebook.

3.4 The determination improperly adds a previously rejected ground to the grounds of Objection in cases involving sensitive strings. The decision that ICANN's training and preparation of ICC was sufficient for the ICC and specifically the ICC panelists to commence making determinations was therefore

made in error, and should be reconsidered. ICC must be trained to ensure that panelists do not add new grounds outside of those contained in the AGB, especially grounds that have been rejected by ICANN.

3.5 The Panel also made a finding of "substantial opposition" to the application, based on a considerable number of submissions made through the ICANN public comments process in relation to the DSI .bank application, and as collected and filed as an Annex to IBF's Objection. The submissions meet the AGB requirements, but are based on mistakes of fact, for example, that the DSI name selection policy will require members of the global banking community to file a greater number of defensive registrations than a competing community application, when the name selection policies of both applications are substantially the same. DSI observes that the AGB does not expressly specify that the truth or validity of submissions filed in Opposition are to be considered, merely the amount of opposition filed and the substantiality of the opponents, but DSI says that ICANN should have trained ICC to ensure that only opposition based on accurate statements should be included in the calculus of the substantiality of the opposition. ICC and specifically the ICC panelists must be trained to disregard submissions of opposition that are based on incorrect facts.

3.6 Further, some of the stated reasons for opposition are explicit or disguised statements of the prejudice against non-members of the community.

3.7 By way of a partial alternative to the matters referred to above, DSI believes that ICANN did not provide training or explanations to ICC on adjudicating community objections and simply allowed ICC to commence making

determinations in Objections in the new gTLD program. In either case ICANN staff did not ensure that the panelists appointed by ICC were trained on adjudicating community objections involving sensitive strings as per the policies in the Applicant Guide Book.

3.8 Under either alternative, ICC has demonstrated that it is unable and or unready to properly discharge the functions of a DRSP in relation to at least Community Objections involving sensitive strings.

3.9 A detailed analysis of the ICC Panel's determination is attached as Annex 2. The IBF Objection and the DSI response themselves have been provided at this link –https://www.dropbox.com/sh/ia6mdri0drlasv9/kRoOhtz9u (due to the large size of these documents, we are unable to send these as email attachments. These can be provided separately on request via email, if required).

3.10 ICANN staff members have also failed to provide the ICC with status reports on the changes to the AGB rules made to the Objection process under discussion. At its Beijing meeting the ICANN GAC released advice on a large number of new issues relating to the operation of new gTLDs dated 11 April 2013[1]. One set of this advice was to apply to all new gTLDs, and included new compulsory provisions for registries mitigating against abuse, and requiring registries to conduct audits of registrar compliance with those provisions. Those provisions were accepted by the ICANN board, and made compulsory in registry contracts via enhancement to the PIC Specifications. They make a material

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[1] http://www.icann.org/en/news/correspondence/gac-to-board-18apr13-en.pdf

difference to the allegations of likely poor registry performance made by the Objector in this case, yet were not brought to the ICC's attention.

3.11 Further GAC advice from that date related to "sensitive strings", a group in which the GAC included .bank. On 29 October 2013 the ICANN chairman wrote to the GAC indicating that those portions of advice were also going to be accepted, and included in revised PIC Specifications[2]. Although this was one month before the ICC published the .bank decision, no attempt appears to have been made to explain to the ICC that these additional precautions against abuse were to be included in registry contracts and would have formed a part of DSI's contractual obligations.

3.12 Failing to keep the ICC informed as the subject matter of its dispute was being changed is inaction that DSI seeks to have reconsidered, and its adverse consequences repaired.

3.13 DSI's parent company Radix Registry had suspected earlier that there might be problems with the adequacy of the training of ICC and specifically its appointed panelists in adjudicating Community Objections. Radix had either written, or participated with others in writing to the ICANN Board and staff about the issue on 3 separate occasions: 22 July 2013, 24 September 2013, (in conjunction with one other registry) and 2 November 2013 (in conjunction with 11 other applicant registries, representing over 58% of all new TLD applications). In Annex 3 attached hereto are copies of 3 previous letters written to the ICANN

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[2] https://www.icann.org/en/news/correspondence/crocker-to-dryden-3-29oct13-en.pdf

board and staff about this issue. These letters highlighted with examples that the ICC was inadequately trained and expressed concern that the panelists were 2 degrees removed from the ICANN staff. Failing to act upon this communication and educating is inaction by ICANN staff that DSI seeks to have reconsidered, and its adverse consequences repaired.

3.14 The above referenced letters attached in Annex 3, also requested ICANN to provide for an appeal mechanism to enable applicants to defend their rights under the AGB against exactly this type of an outcome, wherein a decision rendered against them was based on grounds outside the AGB. Failure to provide for such a mechanism is inaction that DSI seeks to have reconsidered.

(Provide as much detail as available, such as date of Board meeting, reference to Board resolution, etc. You may provide documents. All documentation provided will be made part of the public record.)

4.   Date of action/inaction:

4.1 The date that the inaction was reasonably discovered by DSI is 2nd December 2013, the date when DSI finished reviewing the determination dated 26 November 2013 that was received by DSI on 28th November 2013.

4.2 The issue which has triggered this Reconsideration request is the receipt and subsequent review by 2 December 2013 of a decision against its .bank application, in which, despite the previous warnings and requests that ICANN ensure the ICC and specifically ICC panelists, have an adequate understanding of the AGB, the ICC Panel made a determination on grounds not in the AGB, and

failed to rule correctly on issues argued by the parties based on AGB rules.

(Note: If Board action, this is usually the first date that the Board posted its resolution and rationale for the resolution or for inaction, the date the Board considered an item at a meeting.)

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

2 December 2013

(Provide the date you learned of the action/that action would not be taken. If more than fifteen days has passed from when the action was taken or not taken to when you learned of the action or inaction, please provide discussion of the gap of time.)

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

6.1 Although the AGB is not specific about the consequences of an adverse finding in an Objection, the process diagram at the end of module 3 makes it plain that an application that does not "clear all objections" may not pass on to the next stage in the process, and is to withdraw. Other AGB references are to the same effect. It is plain that losing an Objection is the end of an application. The loss of its .bank application and the filing fees paid to the DRSP, caused by a mistake by the panelist, appointed in error or not properly trained by the ICC and by ICANN staff, is a material loss to DSI.

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

7.1 Other opposed applicants for sensitive strings may improperly lose their applications if no action is taken by ICANN as a result of this Reconsideration

request.

7.2 Other applicants, in this and subsequent rounds of new gTLD applications may suffer if the Panel decision of 26 November became a precedent and is applied as authoritative in subsequent Objections.

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.

8.1 See above.

8.2 The policies are those contained in the GNSO Final Report[3] on new gTLDs and the AGB, including changes made to the latter.

8.3 The staff inaction is in (i) assuring the preparedness of the ICC and the ICC panelists to properly apply those policies in the determination of Community Objections concerning sensitive strings and (ii) providing a mechanism to an applicant to appeal an ICC decision on legitimate grounds if the decision rendered against them was based on grounds outside the AGB.

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

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[3] http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm

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:

N/A

(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?)

9.1 In the absence of the ability for an affected party to file an appeal against, or

seek any review of a determination of a new gTLD Objection, DSI requests

ICANN to:

(1) Reject this Expert Determination, and

(2) Reconsider its appointment of ICC to determine either all Community

Objections, or Community Objections involving sensitive strings, and

(3) Cancel that appointment, either in general, or in relation only to Community

Objections involving sensitive strings, with a consequential voiding of decisions

made, including the .bank decision of 26 November 2013 and

(4) Require ICC to fully refund all fees collected in relation to determinations that are voided as a result of this action; and

(5) Provide another fair, open, efficient and expeditious method of providing binding resolution of Community Objections involving sensitive strings, or alternatively, provide a fair, efficient and expeditious procedure available to applicants to review decisions made in Objections; and

(6) Provide a mechanism to an applicant to appeal an ICC decision on legitimate grounds if the decision rendered against them was based on grounds outside the AGB.

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.

10.1 DSI is an applicant in ICANN's new gTLD program, under which it paid ICANN USD185,000 by way of application fee for its .bank application. DSI is entitled to the fair and proper application of the policies and procedures set out in the AGB on which DSI relied when applying for .bank.

10.2 By providing inadequate or no training to the ICC and specifically to the ICC panelists on the AGB and its policies, ICANN has improperly authorised and prepared ICC to commence making determinations in Community Objections involving sensitive strings. An ICC panel has made a determination in breach of the policies and procedures laid out in the AGB, and which is also in breach of ICANN's new gTLD principles of promoting competition and innovation.

10.3 Further, "…ICANN has determined that the Reconsideration process can properly be invoked for challenges of the third party's decisions where it can be stated that either the vendor failed to follow its process in reaching the decision, or that ICANN staff failed to follow its process in accepting that decision." [4]

10.4 Please see point 6.1 of this request which details the material harm to and adverse impact on DSI of this staff inaction.

(Include n 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.)

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

_____ Yes

__X__ 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.

N/A

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[4] http://www.icann.org/en/groups/board/governance/reconsideration/recommendation-booking-01aug13-en.pdf

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.

See Annexes 1, 2 and 3, attached as well as this link –

https://www.dropbox.com/sh/ia6mdri0drlasv9/kRoOhtz9u containing the IBF

Objection and DSI Response.

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.

_____   12 December, 2013

Signature   Date

(Brijesh Joshi)