



Your Ref:  
Our Ref:  
7 April 2014

## Reconsideration Request Form

Version of 11 April 2013

### 1. Requester Information

**Name:** Mark Carvell, Department for Culture, Media and Sport. United Kingdom  
Government representative on the GAC

**Address:**

Contact Information Redacted

**Email:**

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**Phone Number (optional):**

Contact Information Redacted

### 2. Request for Reconsideration of (check one only):

**Board action/inaction**

**Staff action/inaction**

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

The UK Government requests that Resolution 2014.03.22.NG01 of the ICANN Board New gTLD Program Committee (NGPC) be suspended and reconsidered on procedural grounds for the following reasons:

- i) the Governmental Advisory Committee (GAC) has not had the opportunity to comment upon the external advice received prior to the decision by the Board as required under Bylaws Art. XI-A, Section 1 subsection 6.

- ii) The GAC was unaware of the NGPC resolution at the time of its passing and it should have been informed in accordance with Bylaw Art. VI Section 9. This amounts to a second failure of due process.
- iii) We are also not assured that the NGPC has taken into account all recent communications in this matter from global wine stakeholders (including from north and Latin America as well as Europe) and from the European Commission and that there is a serious risk therefore that the resolution is flawed.
- iv) We understand that discussions between the applicants and wine rights holders in respect of GIs have not yet been concluded and therefore the NGPC decision and action must be considered premature.

Furthermore, the Buenos Aires GAC Communique referred to requiring a clear understanding of the legally complex and politically sensitive background to this matter in order to consider the appropriate next steps in the process of delegating the two strings. A detailed review by the GAC of the external advice provided to the NGPC would assist the GAC in that objective.

Accordingly the UK Government does not support the NGPC's proposed course of action that the new gTLD applications for .wine and .vin should now continue to proceed through the normal evaluation process and no additional safeguards will be required for the TLDs.

**4. Date of action/inaction:**

With immediate effect.

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

26 March 2014.

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

The NGPC decision and proposed action have not taken into account the position of a significant number of GAC members from Europe, including the United Kingdom, and Latin America which is that the .wine and .vin applications should not proceed through ICANN's evaluation processes until additional safeguards are established with the agreement of the registry operators for the protection of geographical indications (GIs). There is no GAC consensus that the applications should proceed without such safeguards.

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

The European Commission stated in its letter of 3 February 2014 that "*the EU, its Member States, Switzerland and Norway still believe that ... general safeguards are not sufficient*".

Without a comprehensive agreement on GI safeguards being in place, the UK Government believes that there is a serious risk that the interests of consumers worldwide and of individual wine producers and traders will be materially harmed primarily through further widespread abuse of GIs at the second level under these two domains.

**8. Detail of Board or Staff Action – Required Information**

**In the following section, the undersigned aims to provide the necessary details to prove that:**

The United Kingdom Government has supported all the actions taken by the European Commission with regard to resolving the issue of GI safeguards and for GIs, including the following correspondence posted on the ICANN website:

<http://www.icann.org/en/news/correspondence/kroes-to-icann-board-07nov13-en>

<http://www.icann.org/en/news/correspondence/steneberg-to-crocker-et-al-03feb14-en>

<http://www.icann.org/en/news/correspondence/schulz-to-crocker-et-al-19mar14-en>

**9. What are you asking ICANN to do now?**

i.) The United Kingdom Government requests firstly that the NGPC suspend and reconsider its decision and proposed course of action, pending its consideration of points i) – iv) under part 3 of this request.

ii.) the .wine and .vin applicants and interested parties should be allowed additional time to reach agreement on GI safeguards before a decision is taken by ICANN to proceed with evaluation of these applications.

**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.**

As a member of the GAC, the United Kingdom Government has a duty to ensure that the public policy interests are taken fully into account in all ICANN decisions. This public interest mandate includes consumer protection, protecting legal rights, preventing fraud,

combatting criminality and protecting the legitimate interests of business stakeholders including entrepreneurs, investors, and innovators.

The United Kingdom Government is also mindful of its international obligations and commitments in respect of tackling misuse of GIs:

- Article 23 of the Trips Agreement requires Members to provide the legal means for interested parties to prevent use of a GI identifying wines in respect of wines not originating in the place indicated.
- Article 17 of the Treaty on European Union includes provision to "*promote the general interest of the Union and take appropriate initiatives to that end. It shall ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them. It shall oversee the application of Union law under the control of the Court of Justice of the European Union. (...)*".
- Article 92 of Regulation (EU) No 1308/2013 *inter alia* establishes rules regarding GIs in the wine sector, in order to protect the legitimate interests of consumers and producers. Article 103 indicates that a GI shall be protected against:

(a) *any direct or indirect commercial use of that protected name:*

(i) *by comparable products not complying with the product specification of the protected name; or*

(ii) *in so far as such use exploits the reputation of a designation of origin or a geographical indication;*

(b) *any misuse, imitation or evocation, even if the true origin of the product or service is indicated or if the protected name is translated, transcribed or transliterated or accompanied by an expression such as "style", "type", "method", "as produced in", "imitation", "flavour", "like" or similar;*

(c) *any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the wine product concerned, as well as the packing of the product in a container liable to convey a false impression as to its origin;*

(d) *any other practice liable to mislead the consumer as to the true origin of the product."*

- Article 2 of Directive (EU) 2000/13/CE on the approximation of the laws of the EU Member States relating to the labelling, presentation and advertising of foodstuffs requires Member States to ensure that "*The labelling and methods used must not:*

(a) *be such as could mislead the purchaser to a material degree, particularly:*

(i) *as to the characteristics of the foodstuff and, in particular, as to its nature, identity, properties, composition, quantity, durability, origin or provenance, method of manufacture or production (...)"*

Article 19 (2) of Regulation (EU) No 607/2009, which focuses in particular on GIs in the wine sector, requires that "*In the event of unlawful use of a protected designation of origin or geographical indication, the competent authorities of the Member States shall on their own initiative (...) or at the request of a party, take the steps necessary to stop such unlawful use and to prevent any marketing or export of the products at issue.*"

**11. Are you bringing this Reconsideration Request on behalf of multiple persons or entities?**

No

**Do you have any documents you want to provide to ICANN?**

Not at this time.

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>.

**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.

Mark Carvell

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7 April 2014

Signature

Date