

nameshop

<http://nameshop.in>

Dear Cherine Challaby,

Please accept this as a communication. This pertains to Agenda item “Adoption of BGC Recommendation on Reconsideration Request No. 13-2” of the new gTLD program Committee meeting scheduled for May 18, 2013. As the new gTLD applicant who has submitted Request No 13-2, I wish to record my request to the New gTLD Program Committee not to adopt the BGC recommendation and a) return it to for Reconsideration and b) simultaneously review this communication at the new gTLD program Committee together with the earlier requests to allow the Change Request and Applicant Support request, both on the following grounds, numbered 1 to 8.

Before enumerating the unusual gaps in ICANN Governance, I wish to acknowledge that, on one level there is a certain degree of positive responsiveness that both arises bottom up from the mutli-stakeholder Community process as also percolates down from the Executive and Board level. However the following prejudicial actions / inactions haven't been adequately addressed to ensure fair treatment and impartial actions on the Nameshop application for .Internet.

1. The Board Governance Committee's dismissal of the Reconsideration Request submitted by Nameshop, with a visible choice of excessive legal parlance (without sound legal basis), is untrue and misleading on several counts:

The letter argues that the applicant did not provide detailed explanation of the facts presented to the Staff / material information not considered by Board in accordance with the provisions of Bylaws, Art. IV, § 2.6(g and h) on this Request concerning Board Inaction on the Nameshop appeal against the Change Request as well as Staff Action / Inaction concerning the SARP panel decision. Detailed explanation was indeed provided in the Reconsideration Request. So this observation by the Board Governance Committee is false and misleading. (Links to the Reconsideration Request and the Reconsideration attachments are included below the signature of this document to show that sufficiently detailed explanation of the facts were indeed presented)

2. The Board Governance Committee argues that the the portion of the Reconsideration Request related to the Change Request is not timely.

Nameshop reconsideration request was on inaction on the letters of appeal to the Chair and CEO. It was 'on time' as a reconsideration request on 'inaction'. Any time gap can be calculated from a point of action, but an 'inaction' that it by nature inconclusive can not possibly be pinpointed to a particular point of time. For the purpose of a certain rule related to a certain time-line on any inaction, what is relevant is an approximate point of time which can reasonably be considered a point when 'inaction' appears obvious. In this case, Nameshop received the Change Request decision on 19th February 2013. On 27, February, within 8 (eight) days, Nameshop appealed to Chair, CEO and COO and immediately thereafter forwarded to the Board Members of the new gTLD program and the Chair of the At Large Advisory committee. The applicant waited for a response for about a month, and as 'inaction' by the Chair, CEO, COO and the Board Members of

the new gTLD program appeared obvious, the reconsideration request was filed on March 29, 2013. The Board Governance Committee has erroneously interpreted the provision as filed 40 days from from the date of the Change Request Decision (action by Staff). The reconsideration request was on 'inaction' on the appeal to Chair, CEO, COO and the Board Members of the new gTLD program, it was very much on time, the request confirmed the norms laid down. If it was convenient for the BCG to claim the reconsideration request as delayed by 10 days, it implies that the BCG was inclined at the outset to find flimsy reasons not to reconsider the request at all.

With the convenient misinterpretation of the provisions of the 30 day time limit, the Board Governance Committee presents an impression of infallible adherence to all time lines of the new gTLD program as if by clock work. This is not the case. Throughout the progress of the new gTLD program implementation, various rules and time lines were laid down, relaxed and compromised as it suited ICANN. The applicant is curious to know if ICANN, for instance, adhered to the \$5000 TAS registration fee deadline, application fee deadline, or even the application deadline in all cases. While the possible relaxations in any of these crucial deadlines are matters of internal records not yet transparent, the applicant is aware that ICANN relaxed application deadline by weeks for every applicant, for instance. This indicates that far more crucial time limits have not been considered sacrosanct, especially when it suited ICANN. In this case of a request to reconsider prejudicial and unexplained decisions related to the Nameshop application, it suits the Board Governance Committee to appear to consider an inadequate time limit sacrosanct and inviolable, and also create the impression of a violation by the applicant by an erroneous interpretation of the rule related to the 30 day limit to wrongly and inappropriately apply that rule on 'inaction' so as to decline the reconsideration request on the fair string change, which when denied makes it convenient to argue that a 'string' does not exist, so the other request for Applicant Support is irrelevant.

If the Board Governance Committee has chosen to take recourse to this rule, invent a violation of this rule where there was none, and cite it as a compelling reason for not considering this request to review the harm done to this applicant, it amounts to a blatant compromise of the high standards expected in ICANN Governance.

3. The Board Governance Committee cites another module of the Bylaws to argue that The Reconsideration The AGB does not set forth any "appeal" process, for the convenience of dismissing Nameshop's notice on February 27, which was within 8 days of the Change Decision, to the new gTLD via Customer Service Center on its intent to appeal and the timely appeal by email to ICANN's President and CEO and two other Board members requesting an "appeal" of the ruling on the Change Request. (27 February 2013 email to Fadi Chehadé.) This was also sent to the Chair of the Board new gTLD program Committee. The Chair of the new gTLD program replied to say that "Your letter will be handled appropriately by ICANN staff." However there was inaction by Staff and inaction by the Board on this matter, so the reconsideration request was filed after waiting for 30 days. As shown earlier, the Reconsideration Request was on inaction, and was reasonably prompt, not at all delayed, but the Board Governance Committee conveniently cites AGB Module 6 (Terms and Conditions) to attempt to suppress, strike away or erase from record, the applicant's communication to the Chair of the Board, Chair of the new gTLD program Committee and the Board Members of the new gTLD program committee which was filed by the applicant within 8 (eight) days from the date of the Change Request decision, in order to wrongly record the Reconsideration Request as a request on the Change Decision dated February 19, and not a Reconsideration Request on inaction on the communication to the Board on February 27. This again is not in tune with the high standards expected of ICANN Board Governance.

4. The Board Governance Committee takes a legally defensive posture out of excessive caution and fails to acknowledge that the Change Request decision and the SARP panel decisions are unexplained and arbitrary:

The evaluation of the Change Request was not explained, the letter from Christine Willet on

February 19, 2013 communicating the prejudicial, discriminatory and unfair Change Request decision did not assign reasons, it was an arbitrary rejection with the vague and false claim for record that the the Request was rejected 'after careful evaluation of the criteria'.

The letter from Chrintine Willet on March 11, 2013 to Nameshop notified that Nameshop's application failed to meet the Public Interest Benefit, Financial Need and Financial Capabilities criteria, in multiple ways. This also amounts to a vague claim that the request was denied because the application did not meet the criteria, but did not assign reasons.

5. The "Analysis of the Request." in the BCG Recommendation is misleading and grossly inadequate. It points to a determined will to find reasons not to review the prejudicial internal decisions / inactions by ICANN, with an ill-fitting emphasis on non-existent "delays", and by an argument that "there are no failures [by ICANN] to meet documented process" to recommend that the Request be denied in full. This indicates that the Board Governance Committee was perhaps inclined at the outset to deny the request and thereafter found a way to list flimsy reasons.

6. The Board Governance Goes back to argue that there is no "appeal mechanism set forth". It also observes : "That some members of the Board received communications from Nameshop regarding the appeal does not create Board action or inaction on an item." The assertion here is that Board could ignore a paramount matter concerning a gap in ICANN governance, even without a response from one of the Staff Assistants of the Board that the Board would not act upon it. More disturbing is the observation by Chair of the Board Governance Committee, Bruce Tonkin as noted at the 11 April 2013 Board meeting, that the reconsideration process does not allow for a full-scale review of a new gTLD application.

All this is contrary to the principles of natural justice. Throughout the course of these issues, it is a situation of Staff unwillingness to correct a wrong decision by a subcommittee or External Consultants, Board refusal to interfere in Staff decision, BCG's unwillingness to acknowledge a gap in Board Governance or Staff processes (and what if the Ombudsman would not want to look at any of the above?). This pattern of the whole organization standing by the actions of the internal decisions, with a weak, but convenient misinterpretation of the various provisions of the ByLaws and the perceived or purported limitation of the Accountability framework, apparently arguable, but contrary to the spirit of the laid down standards of ICANN Governance and its Accountability and Transparency framework.

7. In its rationale for rejecting a review of the SARP panel decision, the Board Governance Committee selectively cites convenient portions from the Reconsideration Request drafted by the Applicant without legal help or any professional help, drafted in defenseless faith in the ICANN process, omitting the emphatic arguments for reconsideration. The facts were strong, the arguments were emphatic but the BCG argues that "Nameshop failed to identify any process that the SARP or the ICANN failed to follow in the consideration of the financial assistance application." In particular, SARP did not assign specific reasons for rejecting the application for applicant support, except for a vague note that the application did not confirm to the list of criteria. BCG did not take note of the absence of reasons, nor did it take note of or comment on the point by point explanation by the applicant as how the application confirmed to the criteria.

8. BCG also makes a contradictory observation that .IDN was not allowed, the request to change the string to .INTERNET hasn't yet gone through, so the application for support was also "moot".

Together, all this points to the possibly that new gTLD program visibly and blatantly discriminates against the Nameshop application with its request for .INTERNET. The applicant wishes to ask the new gTLD Program Committee pointedly if ICANN has unstated reasons and unwritten rules

related to this generic string, which as stated in the Change request, is relevant to the purpose of this new gTLD application, not a reserved or prohibited string, not a geographic string, and not an already applied for or contented string. Within the framework of the new gTLD program and within the stipulated guidelines, there are no provisions to discriminate this application for this string, which is duly applied for by the published Change Request process. While several other change requests have been approved, this request in place is treated unfairly, so a specific response is requested on ICANN's position on this specific string and a specific statement is requested reasons if any, to discriminate (if true) this applicant from being successful with the application for .INTERNET. It requires an assurance that ICANN is not going beyond the norms established nor creating new norms to suit its arbitrary decision on this string, which would be most unfair.

The business prospects of the Nameshop application arises from the business idea which is that of offering an ASCII domain name for every International Domain Name (Domain name in a local language script) registrant to point to their IDN (local language) web space. The idea is to make the Web Spaces in local language scripts identifiable and accessible by users from other language communities and thereby contribute to the Community's efforts to keep the Internet as One Internet. With this business idea, the string .Internet has the prospects of several million registrations which is under threat. (The 'value' of an applied for string, especially as an uncontested string, is well understood by ICANN, based on its knowledge of the business value of existing strings such as .com. It is ICANN's knowledge of the value of applied for strings that gave rise to a process that led to an application process that was safe-guarded from 'gaming the application system' and to rules such as restriction of eligibility to bid for a contested string to only those who have applied for that specific string. If .INTERNET were to be unfairly denied, it would amount to an action that is materially unfair to this applicant who has first thought of and applied for it by the available process; Delays in evaluation of .INTERNET affects the business prospects in augmented proportion to the length of the delay.

More importantly, Nameshop's new gTLD application is interlaced with and somewhat centered on a larger purpose of materially and substantially contributing to the Internet Community's good efforts as narrated in the section on the mission and purpose of the applied for string and as committed in the documented Public Interest Commitments. (It is once again emphasized that the Applicant would make legally binding commitments to ICANN on the Public Interest commitments made, whether or not ICANN has a suitable process in place to bind the Public Interest Commitments). These pursuits are threatened.

The new gTLD program decisions, as decisions of the ICANN Board are required to be fair decisions of the highest standard, especially because ICANN Board is visible center-stage on the multi-stakeholder form of Governance that ICANN exemplifies. Beyond an applicant's scope of this request to return the BCG recommendations, this applicant wishes to make a specific request to ICANN to resist any unseen inclinations to go beyond established norms to obstruct this application for .INTERNET by visible violations of its Accountability and Transparency standards of Board Governance.

Thank you.

Sivasubramanian M

May 16, 2013

Links:

Nameshop Reconsideration Request:

<http://www.icann.org/en/groups/board/governance/reconsideration/request-nameshop-07apr13-en.pdf>

Nameshop Reconsideration Attachements:

<http://www.icann.org/en/groups/board/governance/reconsideration/request-attachment-nameshop-12apr13-en.pdf>