

Reconsideration Request

1. Requester Information

Name: Afilias Limited

Address: Contact Information Redacted

Email: Contact Information Redacted

Name: BRS Media, Inc.

Address: Contact Information Redacted

Email: Contact Information Redacted

Name: Tin Dale, LLC

Address: Contact Information Redacted

Email: Contact Information Redacted

Hereinafter collectively: the “Requesters”.

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.

Requesters seek the reconsideration of ICANN’s Community Priority Evaluation Panel’s determination whereby Application ID 1-1083-39123 for the .RADIO gTLD (hereinafter: the “Application”) submitted by the European Broadcasting Union (hereinafter: the “EBU”) prevailed in Community Priority Evaluation. This determination was posted on ICANN’s website under URL <https://www.icann.org/sites/default/files/tlds/radio/radio-cpe-1-1083-39123-en.pdf> (hereinafter: the “Determination”).

As a result of this Determination, ICANN has:

- resolved the contention set for the .RADIO gTLD;
- changing the status of the Application to “In Contracting”. Reference is made to the Application’s status page, available at <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1468>;
- changing the status of Requesters’ respective applications for the .RADIO gTLD to “Will Not Proceed”, as referred to their respective status pages available at <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1848>; <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1508>; and <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/624>.

4. Date of action/inaction:

10 September 2014

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

11 September 2014

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

Considering the fact that the Determination states that the EBU’s Application prevailed in the context of Community Priority Evaluation, the Requesters’ respective applications for the .RADIO gTLD will be no longer considered by ICANN, which will likely result in ICANN not awarding the .RADIO gTLD to any of the Requesters.

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

Requesters are of the opinion that, considering the fact that the community described in and targeted by the Application is too narrow and vague, third parties who have an affinity with the radio industry in general, including manufacturers of radio transmitters and receivers, telephony, video, radars, navigation and heating equipment, and many others directly or indirectly affiliated

with radio will be ineligible to register domain names in the .RADIO gTLD.

8. Detail of Board or Staff Action – Required Information

Provide the Required Detailed Explanation here:

In the context of ICANN's New gTLD Program, ICANN has received the following applications for the .RADIO gTLD:

- the EBU's application for a community-based gTLD (Application ID 1-1083-39123);
- Afilias Ltd.'s "standard" application (Application ID 1-868-75631);
- BRS Media, Inc.'s "standard" application (Application ID 1-994-75477);
- Tin Dale's "standard" application (Application ID 1-1593-8224).

On September 10, 2014, ICANN's Community Priority Evaluation panel published its Determination stating that the EBU's Application for the .RADIO gTLD obtained a passing score of 14 out of 16 points, and hence prevailed in Community Priority Evaluation.

Since Requesters are of the opinion that the publication of these Community Priority Evaluation results are considered to be an action by ICANN staff, they are entitled to invoke and utilize ICANN's Reconsideration Request process in relation to this Determination / action by ICANN staff.

The immediate effect of this Determination seems to be that each of the Requesters' applications for the .RADIO gTLD will no longer be considered by ICANN, given the fact that the status of each of their applications has been changed to "Will Not Proceed", as is reflected on their respective Application Status pages published by ICANN. Reference is made to:

- Afilias Ltd.'s application for the .RADIO gTLD:
<https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1848>;
- BRS Media, Inc.'s, application for the .RADIO gTLD:
<https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1508>;
- Tin Dale LLC's application for the .RADIO gTLD:
<https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/624>.

Requesters furthermore refer to their request submitted under ICANN's Documentary Information Disclosure Policy, attached hereto as Annex 1 and incorporated herein by reference.

According to the Determination:

- the Application met the Delineation requirement set out in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook;
- the Application met the Nexus and Uniqueness requirements set out in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook;
- the Application met the Registration Policies requirement set out in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook;
- the Application met the Opposition requirement set out in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook.

For the reasons set out below and any additional arguments to be developed by Requesters as a follow-up to this Reconsideration Request, Requesters are of the opinion that the Community Priority Evaluation Panel incorrectly applied the standards set out in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, and should not have awarded passing scores in the context of the Determination.

Requesters therefore request ICANN in accordance with its Reconsideration Request process to:

- reconsider the Determination, and in particular not award a passing score in view of the Community Priority Evaluation criteria set out in the Applicant Guidebook for the reasons expressed in this Reconsideration Request and any reasons, arguments and information to be supplemented to this Request or forming part of a new Reconsideration Request in the future;
- reconsider the respective decisions by ICANN that each of the Requesters' applications for the .RADIO gTLD "Will Not Proceed" to contracting;
- restore the "Application Status" of the Requesters' applications and the Application submitted by the EBU to "Evaluation Complete", their respective "Contention Resolution Statuses" to "Active", and their "Contention Resolution Result" to "In Contention".

9. What are you asking ICANN to do now?

Based upon the information contained in the Application, Requests are convinced that the Application does not meet the criteria to qualify as a community-based gTLD set out in ICANN's Applicant Guidebook.

In view of obtaining further insights into the arguments of the Community Priority Evaluation panel and the information on which such panel has relied, Requesters

have submitted together with this Reconsideration Request and request to obtain further information under ICANN's Documentary Information Disclosure Policy.

Based upon the information and arguments included in this Reconsideration Request, for which the Requesters reserve the right to submit additional arguments and information following the outcome of their request submitted to ICANN in accordance with the Documentary Information Disclosure Policy, Requesters request ICANN to:

- acknowledge receipt of this Reconsideration Request;
- suspend the process for considering this Reconsideration Request in view of possible supplementary arguments and information to be provided by Requesters following receipt of ICANN's responses to Requesters' Request under ICANN's Documentary Information Disclosure Policy, attached hereto as Annex 1;
- in the meantime, suspend the process for awarding the .RADIO gTLD to the EBU;
- reverse the "Application Status" of the Requesters' applications and the Application submitted by the EBU to "Evaluation Complete", their respective "Contention Resolution Statuses" to "Active", and their "Contention Resolution Result" to "In Contention";
- ultimately, unless each of Requesters withdraw this Reconsideration Request or do not provide ICANN with additional information or arguments within a timeframe of 15 days following receipt of ICANN's responses to Requesters' request under ICANN's Documentary Information Disclosure Policy, reconsider the Determination and determine that the Application does not meet the required thresholds for eligibility under the Community Priority Evaluation criteria set out in the Applicant Guidebook on the basis of the information and arguments provided herein.

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.

Each and every Requester is an applicant for the .RADIO gTLD.

Reference is made to ICANN's status page for each of the following applications:

- Afiliat Ltd.: <https://gtdresult.icann.org/application-result/applicationstatus/applicationdetails/1848>;
- BRS Media, Inc.: <https://gtdresult.icann.org/application-result/applicationstatus/applicationdetails/1508>;
- Tin Dale, LLC: <https://gtdresult.icann.org/application->

[result/applicationstatus/applicationdetails/624](#).

Given the fact that due to the Determination, none of the Requesters' applications for the .RADIO gTLD will proceed to the contracting phase with ICANN, which will likely result in ICANN not awarding the .RADIO gTLD to any of the Requesters, it is clear that the Determination materially affects each of the Requesters' respective applications.

As a consequence, they have standing to file this Reconsideration Request in relation to the Determination by the Community Priority Evaluation, as well as ICANN's subsequent decision to change the status of each of the Requesters' applications from "In Contention" to "Will Not Proceed".

The grounds that support this request are the following:

1. Based on the information available to Requesters, the community definition contained in the Application does not meet the criteria for community-based gTLDs that have been set out in ICANN's Applicant Guidebook;
2. Based on the information available to Requesters, the Application does not meet the requirement of "Delineation" as set out in Section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook for the reasons stated herein, and should therefore not have been awarded a passing score by the Community Priority Evaluation panel in this respect.

Reference is made to the arguments set out in Annex 1. Requesters reserve the right to provide ICANN with additional arguments following receipt of their responses to Requesters' request under ICANN's Documentary Information Disclosure Policy.

3. Based on the information available to Requesters, the Application does not meet the requirements of "Nexus" and "Uniqueness" as set out in Section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook for the reasons stated herein, and should therefore not have been awarded a passing score by the Community Priority Evaluation panel in this respect.

In view of the Requesters, the concept "radio" is much broader than the so-called community definition provided by the EBU, as contained in the determination.

Requesters refer to the fact that the Application does not cover the "radio" concept which is much broader than what has been set out in the Application. By way of example, Requesters refer to the description of all uses of the word "radio" listed by Wikipedia (see: <http://en.wikipedia.org/wiki/Radio>; and [http://en.wikipedia.org/wiki/Radio \(disambiguation\)](http://en.wikipedia.org/wiki/Radio_(disambiguation))).

4. Based on the information available to Requesters, the Application does

not meet the requirements of “Registration Policies” as set out in Section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook for the reasons stated herein, and should therefore not have been awarded a passing score by the Community Priority Evaluation panel in this respect.

According to the Requesters, the registration policies outlined in the Application, and in particular the eligibility and enforcement criteria set out in the Application do not meet the standards set out in the New gTLD Applicant Guidebook.

In particular, considering the fact that the eligibility criteria contained in the Application for registering domain names under the .RADIO gTLD as well as the community definition contained therein are contradictory, vague, and ill defined, this may result in:

- third parties who are affiliated with the “radio” concept, such as those who are active in the telephony, navigation, radar, video, heating, or other industries referred to – by way of example – Wikipedia will be unable to register domain names in the .RADIO gTLD because they do not meet the eligibility requirements set out in the Application, which seems to be mainly directed to the “radio industry”;
- others, such as but not limited to those who merely have the technical skills to set up and maintain a “plug and play” Internet radio software or service on his or her computer but who are not related to the “radio industry” or have no further affiliation with the “radio” concept at all, will be, according to the Application, eligible to register domain names in the .RADIO gTLD. Hence, these parties will have the ability to block or deprive those who are truly and genuinely affiliated to the broad concept of “radio” to register domain names in this gTLD ...

Furthermore, Requesters are of the opinion that, given the fact that this definition and eligibility criteria are vague and contradictory, the effective enforcement of these criteria upon registrants and candidate registrants cannot be guaranteed by the EBU.

5. Based on the information available to Requesters, the Application does not meet the requirements of “Opposition” as set out in Section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook for the reasons stated herein, and should therefore not have been awarded a passing score by the Community Priority Evaluation panel in this respect.

The fact that, in the Determination, the Community Priority Evaluation panel was of the opinion that the Requesters’ respective oppositions against the Application being recognized as a community-based gTLD and/or being considered to meet the thresholds set out in the Applicant

Guidebook for prevailing in the context of Community Priority Evaluation has been considered “of no relevance”, considering the fact that Requesters operate a substantial part of the “radio”-related domain names in, for instance, .INFO, .ORG, .MOBI, .ASIA, .FM, .AM, and many others.¹

Furthermore, bearing in mind the above, Requesters do not agree with the Community Priority Evaluation panel’s Determination in which the Requesters collectively have been considered “a group of negligible size”, and this for the reasons set out above.

Requesters refer to their request under the Documentary Information Disclosure Policy, attached hereto as Annex 1.

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

Yes

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.

Yes. All of the Requesters are applicants for the .RADIO gTLD who are directly affected by the Determination, which – ultimately – would cause irreparable harm to Requesters if such Determination would be final.

However, Requesters acknowledge that, most likely and ultimately, only one of the Requesters or the EBU will become the Registry Operator for the .RADIO gTLD.

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

See Annex 1: Requesters’ Request under ICANN’s Documentary Information Disclosure Policy (DIDP).

Pending Requesters’ request under the Documentary Information Disclosure Policy, Requesters are not providing any additional documents to ICANN, but reserve the right to do so as a follow-up to this Reconsideration Request or in the context of one or more new Reconsideration Requests. Requesters recognize and acknowledge that any such additional Reconsideration Requests may be

¹ Based on the zone file information for each of these TLDs, the “radio”-related domain names registered in these TLDs seem to account for about half of the number of the 50.000 “websites” referred to in the EBU’s Application.

consolidated by the Board Governance Committee.

Terms and Conditions for Submission of Reconsideration Requests

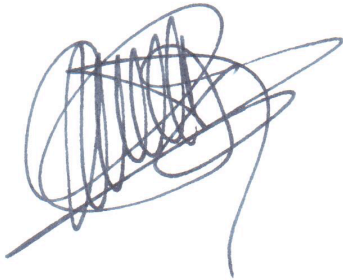
The Board Governance Committee has the ability to consolidate the consideration of Reconsideration Requests if the issues stated within are sufficiently similar.

The Board Governance Committee may dismiss Reconsideration Requests that are querulous or vexatious.

Hearings are not required in the Reconsideration Process, however Requesters 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.



26 September 2014

Bart Lieben

Date

Annex 1: Request under ICANN’s Documentary Information Disclosure Policy (DIDP)