

## **Board Accountability Mechanisms Committee (BAMC) Activities Report**

1 January 2024 – 30 June 2024

### **Summary:**

#### Completed Activity:

1. Procedural Evaluation of Reconsideration Request 23-2

#### On-Going Activities

1. Consideration of Economic Analysis Per Board Resolutions 2023.06.11.07
2. IRP Implementation Oversight Team (IRP-IOT) Update
3. Litigation Update
4. Update on Establishment of IRP Standing Panel
5. Fundamental Bylaws Amendment on Accountability Mechanisms

## Completed Activity

Item	Description of BAMC Activity	BAMC Completion Date	Accomplishments/Outcome
<p>1. Procedural Evaluation on Reconsideration Request 23-2</p>	<p>The Committee received a briefing on Reconsideration Request 23-2 (Request 23-2), submitted by the Intellectual Property Constituency (Requestor), seeking reconsideration of: (i) ICANN Board Resolutions <a href="#">2023.10.26.11</a> and <a href="#">2023.10.26.12</a>, 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."</p> <p>The BAMC Chair briefed the Committee on the meeting between some members of the BAMC and the Requestor that took place during ICANN79 regarding Request 23-2. The BAMC Chair noted that the Requestor is considering whether to pursue or withdraw Request 23-2 in light of the discussions between the Board and the community surrounding the proposed Bylaws revisions and updates to the CCWG-AP's Recommendation 7. However, the Requestor was not able to make this decision by the Bylaws mandated 135 days deadline for the Board to respond to reconsideration requests and asked the BAMC for additional time to consider whether it will withdraw Request 23-2. The Committee noted that while the Board is committed to continuing the dialogue with the community, the Bylaws do not allow for flexibility in the 135-day deadline, which expires on 5 April 2023 for Request 23-2, and therefore, the Committee proceeded with its procedural evaluation of Request 23-2. The BAMC determined that Request 23-2 is not sufficiently stated pursuant to requirements set forth under Article 4, Sections 4.2(a) and (c) of the Bylaws and is therefore summarily dismissed for the following reasons: (i) the Requestor failed to sufficiently identify an alleged an adverse effect of the</p>	<p>4 April 2024</p>	<p>On 4 April 2024, the BAMC summarily dismissed the Request 23-2. (See <a href="#">BAMC Summary Dismissal</a>)</p>

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	<p>challenged conduct on the Requestor; (ii) the request for reconsideration of the Board's 6 December 2018 public comment on the Initial Report of the CCWG-AP is not timely; (iii) the request for reconsideration of Staff's organization of the public comment phase on the Proposed Final Report of the CCWG-AP between December 2019 and February 2020 is not timely; (iv) the request for reconsideration of Board Resolutions 2022.06.12.13 – 2022.06.12.16 is not timely; and (v) the request for reconsideration on the implementation of the Grant Program fails to identify any specific Board or Staff action or inaction. The BAMC further noted that the Board has already effectuated the Requestor's sought-after relief by initiating a Fundamental Bylaws Amendment process to limit access to ICANN's accountability mechanisms in specific circumstances, engaging with the community about the concerns raised in Request 23-2, and adopting Resolution 2024.03.07.03, which made approval of the initial ICANN Grant Program applications "dependent" on the successful completion of both "the Chartering Organizations' updating of the CCWG-AP Recommendation 7" and "full implementation" of the Fundamental Bylaws Amendment process. Although the Requestor has failed to sufficiently state grounds for reconsideration of the challenged action required under Article 4, Section 4.2(a) and (c) of the Bylaws, the BAMC recognized and appreciated the importance of the ICANN Grant Program to ICANN and the broader ICANN community and recommended that the Board continue to participate in a dialogue with the broader community to discuss the concerns raised in Request 23-2. The Committee noted that its decision is strictly limited to the preliminary procedural assessment of whether Request 23-2 has sufficiently stated a reconsideration request and does not reflect a conclusion as to its merits.</p>		

## On-Going Activities

Item	Description of BAMC Activity	Target Completion Date	Status
1. Update on Economic Analysis per Board Resolution 2023.06.11.07	The Committee noted that, pursuant to Board Resolution <a href="#">2023.06.11.07</a> , ICANN retained an independent economist, from a globally recognized economic consulting firm, who provided an economic analysis "regarding the current domain name system (DNS) marketplace with respect to the market power of .INFO and .ORG." After discussing the matter, the Committee agreed that it would be prudent and useful to post the economic report on ICANN's website and to provide Namecheap with an opportunity to submit any comments it might have in response to the economic analysis. The Committee also noted that taking these steps also addresses the Namecheap IRP Panel's recommendation relating to transparency, and could provide useful information for the BAMC and the Board to consider in determining next steps. The Committee agreed to send <a href="#">correspondence</a> to Namecheap regarding the posting of the <a href="#">economic report</a> and Namecheap's opportunity to comment on the analysis.	TBD	ICANN org published the <a href="#">economic analysis</a> on ICANN's website and the BAMC Chair sent <a href="#">correspondence</a> to Namecheap, Inc.
2. 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.
3. 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.
4. Update on Establishment of IRP Standing Panel	The BAMC received a status update on the establishment of the IRP omnibus Standing Panel.	N/A	In its accountability mechanisms oversight function, the BAMC will continue to receive regular updates on the establishment of the IRP omnibus Standing Panel.
5. Fundamental Bylaws Amendment	The BAMC received an update on the next steps on the Fundamental Bylaws amendment process after public	TBD	The BAMC will continue discussing the matter.

Item	Description of BAMC Activity	Target Completion Date	Status
on Accountability Mechanisms	<p>comment. The Committee discussed paths forward given the community dissatisfaction with the Fundamental Bylaws amendment as posted insofar as it is not specifically addressing Recommendation 7 of the Cross-Community Working Group on Auction Proceeds (CCWG-AP), which recommends that accountability mechanisms not be available to challenge decisions related to individual grant applications. The BAMC noted that the Board should consider specifically amending the Bylaws on the Reconsideration and Independent Review processes once the CCWG-AP's Recommendation 7 is updated as has been discussed with the CCWG-AP chartering organizations.</p>		