

9 January 2024

**RE: Intellectual Property Constituency's Request for Reconsideration of Board Resolutions  
2023.10.26.11 and 2023.10.26.12**

Tripti Sinha  
Chair, ICANN Board of Directors

Dear Tripti:

We write to express the GNSO Council's continued concern regarding the Board resolutions at ICANN78 resulting in what appears to be an attempt to contract around the fundamental accountability mechanisms found in the ICANN bylaws. Whether or not ICANN can, and should, contract around these fundamental protections, which were the subject of the CCWG on Accountability whose work was foundational to the IANA stewardship transition, is a topic on which every member of the community has a vested interest. As you know, the Board's decision to forgo a planned fundamental bylaws amendment in favor of a contractual term to eliminate the normal accountability mechanisms has been controversial and led the Intellectual Property Constituency ("IPC") to file a formal Request for Reconsideration ("RFR"). The Council believes the concerns outlined in this RFR should be meaningfully addressed.

We want to make clear that the Council supports the years-long plan of distributing auction proceeds that was outlined by the Cross Community Working Group on Auction Proceeds ("CCWG-AP"). A main driver for the Council's support was that the plan for auction proceeds went through the ICANN multi-stakeholder model.

Specifically, the plan for a bylaws change was recommended and approved by the Board years ago. When the Council learned from ICANN Org that the Board intended to ignore the CCWG-AP's Recommendation, that the Board had accepted, the Council engaged in what it believed was a two-way good faith dialogue with an officer of Org. The Board's vote in Hamburg upended what we thought was a productive dialogue and shut the door on our ongoing discussions with Org on this matter. It was an unhappy surprise.

We ask the Board to reconsider its decision to cut off dialogue on this topic. Specifically, we encourage the Board to resist any advice it may get to take any form of legalistic "win" (we note it is a common occurrence for RFRs to be dismissed on technical grounds). Any such "win" would not be a moral victory and it would not enhance trust. Instead, we ask the Board to engage with the IPC and the GNSO Council, in a meaningful dialogue on the important issues raised in the RFR. The Council stands ready to help in any way appropriate.

Yours sincerely,  
*Greg DiBiase*

Greg DiBiase  
Chair, GNSO Council