

Dear Tripti:

We write to express our concern re: the Board's [Summary Dismissal](#) (Dismissal) of the IPC's [Request for Reconsideration](#) (RFR) related to ICANN Board Resolutions 2023.10.26.11 and 2023.10.26.12 (Board Resolutions). The IPC filed this RFR due to concern that the Board Resolutions improperly provided ICANN with the ability to circumvent accountability mechanisms for grant applicants by contractual arrangement. As you know, the Council [urged the Board](#) to resist any advice it may get to take any form of legalistic "win" and to instead engage more substantively on this issue. Unfortunately, it appears that the Board avoided more substantive engagement on this issue by basing the Dismissal on several grounds including a lack of standing, claiming that the IPC did not suffer a harm. The Dismissal based on a lack of standing is concerning to the Council because it appears to unduly limit the applicability of the RFR.

In this instance, the Board takes a position that the thirty-day window to bring an RFR would apply only to grant applicants who have been harmed by Board resolutions allowing for the denial of access to accountability mechanisms. In practice, this nullifies the RFR as an accountability mechanism. The reality is that a grant application window was not open and by the time it was opened, an alleged error would be baked into the applicant guidebook. In fact, we note that the alleged error remains in the current version of the applicant guidebook without regard to the Board's statement that the controversy is now moot. In other words, it seems like it may have been "impossible" to challenge this particular Board resolution via the RFR and thus this action could not be challenged by any group based on policy reasons.

Nullifying this important accountability mechanism isn't in the spirit of the multi-stakeholder model. Further, accountability mechanisms that are impossible to use do not reflect the balance that was struck between the community and the Board during the 2016 IANA transition.

Further, by taking the novel position that recognized portions of the community, such as Constituencies, do not have standing to bring an error made by the Board to the Board's attention via the accountability mechanisms, the Board creates a far worse outcome than the problem complained about originally. This is one of the reasons why we urged the Board not to take a formalistic win. The Board position that Constituencies, and presumably Stakeholder Groups, Houses, Supporting Organizations, and Advisory Committees, lack standing to challenge the Board to reconsider errors, begs the question if not applicants and not the Community groups above, then who does have standing to ask the Board to reconsider?

We urge the Board to make a public statement that, of course, recognized groups such as Constituencies, Stakeholder Groups, Houses, Supporting Organizations, and Advisory Committees have standing to bring challenges to Board decisions. Legalistic "victories" that erode the multistakeholder model are actually defeats. Let's not self-defeat.