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 avoid 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 spirt of the multi-stakeholder model. Specifically, this decision affirms a rigid application of timing rules that deprives many of standing—including most ICANN community groups. Affirmatively stating that ICANN's own community groups such as the IPC lack standing is problematic. This position will discourage those in the ICANN community from utilizing the accountability mechanisms (such as RFRs) which will chill the built in accountability measures that were part and parcel of the IANA transition.

This is 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 recognize that ICANN 81 is just a few weeks away and these are critically important issues for the Community, the Board, and ICANN as a whole. Accordingly, we wish to request that we specifically discuss this issue during meeting in Istanbul—perhaps during the joint meeting of Council and the Board.

We look froward to this discussion.