

Reconsideration Request

1. Requester Information

Name: dotgay LLC

Address: Contact Information Redacted

Email: Contact Information Redacted

Counsel: Bart Lieben Contact Information Redacted

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.

On October 6, 2014, ICANN published its Community Priority Evaluation Panel's New gTLD Program Community Priority Evaluation Report for the .GAY gTLD application submitted by the Requester. Reference is made to <https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-1-1713-23699-en.pdf> (hereinafter: the "CPE Report").

According to this CPE Report, the Community Priority Evaluation concluded that:

"After careful consideration and extensive review of the information provided in your application, including documents of support, the Community Priority Evaluation panel has determined that the application did not meet the requirements specified in the Applicant Guidebook. Your application did not prevail in Community Priority Evaluation."

Although the Disclaimer contained in the Determination states that "[...] these Community Priority Evaluation results do not necessarily determine the final result of the application", ICANN has changed the "Contention Resolution Status" of the Application into "Active", and the "Contention Resolution Result" into "Into Contention", apparently following the publication of the CPE Report". This action by ICANN is hereinafter referred to as the "Determination".¹

¹ See Requester's Application Status Page at <https://gtdresult.icann.org/application-result/applicationstatus/applicationdetails/444>.

4. Date of action/inaction:

October 6, 2014.

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

October 7, 2014.

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

Requester is the applicant for the community-based gTLD .GAY, (Application ID: 1-1713-23699, Prioritization Number: 179; see <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/444>) (hereinafter referred to as the "Application").

Requester has elected to participate to Community Priority Evaluation or "CPE" in accordance with the provisions set out in the Applicant Guidebook.

Considering the fact that CPE Report states that the Requester's application for the .GAY gTLD *"did not prevail in Community Priority Evaluation"*, and the Determination refers to this CPE Report, the Requester is now facing contention from three other applicants for the same string *"through the other methods as described in Module 4 of the Applicant Guidebook"*.

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

Considering the fact that the .GAY gTLD, as contemplated by Requester, intends to be operated to the benefit of and as a safe haven on the internet for a wide variety of members of the LGBTQIA community, our current and future members and endorsers will be adversely affected if the .GAY gTLD would be awarded to an organization that turns it into an unrestricted extension and not necessarily having the best interests in mind for the community as a whole and the community members it wishes to serve.

Given the fact that gay individuals are still considered a vulnerable group in many countries, the intention of reserving a specific zone on the internet for them can only promote the self-awareness of the gay community members and increase trust in like-minded people.

8. Detail of Board or Staff Action – Required Information

Staff Action: If your request is in regards to a staff action or inaction, please provide a detailed explanation of the facts as you understand they were provided to staff prior to the action/inaction presented to the staff and the reasons why the staff's action or inaction was inconsistent with established ICANN policy(ies). Please identify the policy(ies) with which the action/inaction was inconsistent. The policies that are eligible to serve as the basis for a Request for Reconsideration are those that are approved by the ICANN Board (after input from the community) that impact the community in some way. When reviewing staff action, the outcomes of prior Requests for Reconsideration challenging the same or substantially similar action/inaction as inconsistent with established ICANN policy(ies) shall be of precedential value.

Board action: If your request is in regards to a Board action or inaction, please provide a detailed explanation of the material information not considered by the Board. If that information was not presented to the Board, provide the reasons why you did not submit the material information to the Board before it acted or failed to act. "Material information" means facts that are material to the decision.

If your request is in regards to a Board action or inaction that you believe is based upon inaccurate, false, or misleading materials presented to the Board and those materials formed the basis for the Board action or inaction being challenged, provide a detailed explanation as to whether an opportunity existed to correct the material considered by the Board. If there was an opportunity to do so, provide the reasons that you did not provide submit corrections to the Board before it acted or failed to act.

Reconsideration requests are not meant for those who believe that the Board made the wrong decision when considering the information available. There has to be identification of material information that was in existence of the time of the decision and that was not considered by the Board in order to state a reconsideration request. Similarly, new information – information that was not yet in existence at the time of the Board decision – is also not a proper ground for reconsideration. Please keep this guidance in mind when submitting requests.

Provide the Required Detailed Explanation here:

(You may attach additional sheets as necessary.)

Introduction: Definition of the “Gay Community”

The Application describes the “Gay Community” as

“a community centered on individuals whose gender identities [1] and sexual orientation [2] are outside of the norms defined for heterosexual behavior of the larger society. The Gay Community includes individuals who identify themselves as male or female homosexuals, bisexual, transgender, queer, intersex, ally and many other terminology - in a variety of languages - that has been used at various points to refer most simply to those individuals who do not participate in mainstream cultural practices pertaining to gender identity, expression and adult consensual sexual relationships. The Gay Community has also been referred to using the acronym LGBT, and sometimes the more inclusive LGBTQIA [3]. The most common and globally understood term - used both by members of the Gay Community and in the world at large - is however “Gay”.”

The Application furthermore explains that the term “gay” is a term that has solidified around encompassing several sub-communities of individuals whose gender identities and sexual orientation are outside of the norms defined for heterosexual behavior of the larger society. Within these sub-communities even further classifications and distinctions can be made that further classify its members but are equally comfortable identifying as gay, particularly to those outside their own sub-communities.

This interpretation is supported by a large number of press articles in which “LGBT”, “LGBTQIA” and “gay” are used as synonyms, as well as many mission statements of organizations that have expressly supported our application, of which an overview has been provided in **Annex 1**.

According to the Application, “[t]he membership criterion to join the Gay Community is the process of “coming out”. This process is unique for every individual, organization and ally involving a level of risk in simply becoming visible. While this is sufficient for the world at large in order to delineate more clearly, dotgay LLC is also requiring community members to have registered with one of our Authentication Partners (process described in 20E).”

Therefore, Requester is of the opinion that the applied-for string (“.gay”) is indeed the name of the community or well-known short form thereof.

8.1. In relation to Criterion #2-A Nexus

8.1.1. The Applied-For String Identifies the Community and Matches with at least the Well-Known Short-Form of the Community

Notwithstanding the above, the CPE Panel has determined that “[...] the application did not meet the criterion for Nexus as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook. The string

does not identify or match the name of the community as defined in the application, nor is it a well-known short-form or abbreviation of the community.”

Furthermore, according to the CPE Panel:

“The applied-for string neither matches the name of the community as defined by the application nor does it identify the defined community without over-reaching substantially, as required for a full or partial score on Nexus. As cited above:

The membership criterion to join the Gay Community is the process of ‘coming out’. This process is unique for every individual, organization and ally involving a level of risk in simply becoming visible. While this is sufficient for the world at large in order to delineate more clearly, dotgay LLC is also requiring community members to have registered with one of our Authenticating Partners (process described in 20E).”

The CPE Panel seems to incorrectly assume here that, in order to become a registrant of a .GAY domain name, the candidate registrant must be a member of an Authentication Partner.

This is not the case: the application clearly states that Authentication Partners have two key tasks in the context of the .GAY gTLD, being: (1) connecting to potential registrants, and (2) confirming whether potential registrants meet the eligibility requirements that are inherent to the .GAY gTLD.

The Requester’s Application clearly states:

“Through the use of established membership organizations in the Gay Community as Authentication Partners, dotgay LLC not only complies with the most restrictive community registration requirements, but also provides the best solution for connecting with potential registrants. Authentication Partners are the community membership organizations used by dotgay LLC to confirm eligibility. Authentication Partners become advocates for the .gay TLD and provide a trusted entry point for members of the community. Authentication Partners are also the advocates for their registrants within the .gay community-model.” Application, answer to Question 18 (c) ii.

According to the criteria for Community Priority Evaluation set out by the Applicant Guidebook, as well as the Community Priority Evaluation (CPE) Guidelines prepared by the CPE Panel, namely The Economist Intelligence Unit (hereinafter the “CPE Guidelines”), the following question must be scored when evaluating the application:

“Does the string match the name of the community or is it a well-known short-form or abbreviation of the community name? The name may be, but does not need to be, the name of an organization dedicated to the community.”

“Name” of the community means the established name by which the community is commonly known by others. It may be, but does not need to be, the name of an organization dedicated to the community.” “Others” refers to individuals outside of the community itself, as well as the most knowledgeable individuals in the wider geographic and language environment of direct relevance. It also refers to recognition from other organization(s), such as quasi-official, publicly recognized institutions, or other peer groups.

“Identify” means that the applied for string closely describes the community or the community members, without over-reaching substantially beyond the community. “Match” is of a higher standard than “identify” and means ‘corresponds to’ or ‘is equal to’. “Identify” does not simply mean ‘describe’, but means ‘closely describes the community’. “Over-reaching substantially” means that the string indicates a wider geographical or thematic remit than the community has”.

As indicated above, Requester has performed an Internet search, as suggested by the CPE Guidelines, and has found substantial evidence that proves that in common language, the words “gay”, “LGBT” and “LGBTQIA” are used as synonyms.

Requester furthermore refers to §22 of the Decision rendered by Prof. Dr. Bernhard Schlink, the Expert appointed by the International Chamber for Expertise of the International Chamber of Commerce *in re: The International Lesbian Gay Bisexual Trans and Intersex Association vs. Affilias Limited* (sic), and many other objections concerning applications relating to the “.gay” and “.lgbt” gTLDs, who recognized in multiple Decisions that:

“[t]he legitimate interests of the gay community can only legitimize a claim to a gTLD that is exclusively linked to the gay community. A community that represents the legitimate interests of its members can claim a safe and secure position in the society and on the market, and this holds particularly for a community that represents the legitimate interests of a minority. Its claim to a safe and secure position on the society and on the market includes a safe and secure position in the internet. Therefore, while the gay community cannot exclude competition, it could file and has filed its own application for a gTLD that is designed to serve the gay community and to operate accordingly: dotgay’s community application for the string .gay.”²

Requester has not only obtained the official endorsement and support for its application for the .GAY gTLD from the Complainant in the case referred to above, namely the International Lesbian Gay Bisexual Trans and Intersex

² See: ICDR Case No. EXP/390/ICANN/7, *The International Lesbian Gay Bisexual Trans and Intersex Association vs. Affilias Limited*, <https://newgtlds.icann.org/sites/default/files/drsp/25nov13/determination-1-1-868-8822-en.pdf>.

Association (ILGA),³ but is also recognized by the ICDR and ICANN as an established institution associated with a clearly delineated community.⁴

Considering the above, Requester does not understand why, on the one hand, ICANN recognizes the fact that Requester and one of its key supporters “*could file and have filed its own application for a gTLD that is designed to service the gay community and to operate accordingly*” as expressly confirmed by the ICDR, whilst, ICANN and the CPE Panel determining on the other hand that “*the string does not identify or match the name of the community as defined in the application*”.

8.1.2. The Applied-For String Does Not Over-Reach Substantially Beyond the Community Defined by the Application

Furthermore, the Panel has determined that the community described in Requester’s Application “over-reaches substantially” referring to, on the one hand, the 7 million members of the Applicant’s Authentication Partners identified at the time of submission of the Application, and – on the other hand – the estimated 1.2% of the global population who are considered to be LGBTQI.

This is, in the Requester’s opinion, an obvious misreading of the Application, as these two elements are not interrelated in relation to determining the scope of “gay”:

- the role of the Authentication Partners, as explained above, is limited to advocating and facilitating the registration of domain names in the .gay gTLD – it is not so that registrations of domain names in the .gay gTLD will be restricted to members of these Authentication Partners only;
- the 1.2% of the global population is an illustrative estimate that has been put into Requester’s Application in order to demonstrate the size of the community: absent any official numbers, and considering the fact that LGBTs are in some countries not recognized (or even prosecuted), there is no way in determining the actual size at this stage.

Therefore, Requester is of the opinion that the perceived “discrepancy” between the two numbers (i.e., 7 million members of Authentication Partners and 1.2% of the global population that is estimated to be LGBTQI) is irrelevant in this respect.

8.1.3. The Applied-For String Does Not Include Non-Community Members

In the CPE Report, the Panel states that “*while the applied-for string refers to many individuals not included in the application’s definition of membership (i.e., it “substantially over-reaches” based on AGB criteria), the string also fails to*

³ See <https://www.icann.org/en/system/files/correspondence/baxter-to-icann-3-05may14-en.pdf>;

⁴ See ICDR Case No. EXP/390/ICANN/7, §13.

identify certain members that the applicant has included in its definition of the .GAY community.”

According to the Panel, by including transgender and intersex individuals, including “allies” (understood as heterosexual individuals supportive of the missions of the organizations that comprise the defined community) are not identified by the word “gay”.

When looking at the AGB Criteria, and more in particular the Panel’s own CPE Guidelines, nothing could be further from the truth.

Indeed, according to these AGB Criteria and CPE Guidelines, the following principles have been put forward:

- “*identify*” means that the applied for string closely described the community or the community members, without over-reaching substantially beyond the community”
- “*over-reaching substantially*” means that the string indicates a wider geographical or thematic remit than the community has.

When applying the latter standard, it is obvious that the Community Definition is all but over-reaching substantially the concept behind the applied-for gTLD string.

Requester refers to various references in quality press, including the Economist⁵ and the New York Times,⁶ where the word “gay” is being used as a “catch-all term”, synonym or *part pro toto* term for LGBTQIAs.

Moreover, in relation to the three groups that have been considered by the Panel as *not* forming part of the community, it is clear that the groups and organizations of which these individuals form part clearly and unambiguously take a contrary position by officially endorsing the Requester’s Application, and confirming that they consider themselves “gay”.

Requester is therefore of the opinion that the CPE Panel erred by not at least considering these individuals as being part of the thematic remit than the community defined in Requester’s application, not at least because such position is supported by the organizations and groups that have endorsed Requester’s Application.

8.2. In relation to Criterion #2-B Uniqueness

In order to qualify for a score of “1” for the Uniqueness criterion, the AGB Criteria state that the string must have no other significant meaning beyond identifying

⁵ <http://www.economist.com/news/international/21595034-more-places-are-seeing-gay-marchesor-clever-substitutes-pride-and-prejudice>;

<http://www.economist.com/blogs/johnson/2013/01/gender-and-sexual-orientation>;

⁶ <http://www.nytimes.com/2013/01/10/fashion/generation-lgbtqia.html?pagewanted=all& r=0>.

the community described in the application.

According to the CPE Guidelines, the question to be scored when evaluating the application is *“Does the string have any other significant meaning (to the public in general) beyond identifying the community described in the application?”*

As indicated above, general press, organizations and groups supporting the Application, as well as *“knowledgeable individuals in the wider geographic and language environment of direct relevance”* such as the Expert appointed by the ICDR, who has closely investigated this issue, and the endorsement by ICANN of the decision taken by the ICDR provide for an entirely different view: indeed, they are considering the term “gay” to be a synonym or *pars pro toto* term that describes the LGBTQIAs.

Requester is therefore of the opinion that the CPE Panel has misread the information contained in the Application, and asks ICANN to revise its Determination in this respect.

8.3. In relation to Criterion #4-A Support

According to the CPE Report:

“The Community Priority Evaluation panel has determined that the application partially met the criterion for Support specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as there was documented support from at least one group with relevance. The application received a score of 1 out of 2 points under criterion 4-A: Support.”

Requester refers to the list of organizations and groups that have endorsed Requester’s Application for the .GAY gTLD, an overview of which has been included in **Annex 1**.

Many of these organizations are internationally recognized, and account for millions of members and supporters.

Although the criteria and standards utilized by the CPE Panel are unclear, Requester does not understand why only one group – ILGA – has been recognized by the CPE Panel and ICANN as “community institutions or member organizations.

8.4. In relation to Criterion #4-B Opposition

According to the CPE Report, the Community Priority Evaluation panel has determined that the application partially met the criterion for Opposition specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, *“as the application did not receive any relevant opposition”*.⁷

However, notwithstanding the fact that the Panel confirms that the application did not receive any relevant opposition, it only awarded a score of 1 out of 2, which is the score to be given if an application has received opposition from, at most, one relevant group of non-negligible size.

For this reason alone, the Determination needs to be reconsidered and reversed.

Now, in the third paragraph of this section of the CPE Report, and after having acknowledged that the application has not received any relevant opposition, the Panel refers to the fact that opposition has been expressed by *“an organization within the communities explicitly addressed by the application, making it relevant”*. According to the CPE Report, the organization appears to be “a chartered 501(c)3 nonprofit organization with full-time staff members, as well as ongoing events and activities with a substantial following.

All of a sudden, the Panel refers to an organization whereof it assumes that it is relevant and of non-negligible size, without mentioning the name, rendering it impossible to verify in a transparent way whether the argument made by the CPE Panel is accurate and justified.

Requester is therefore of the opinion that this consideration and fact should not be taken into account by ICANN for lack of transparency and – hence – accountability, which are principles that are deeply endorsed by ICANN.

8.5. Conclusion

For the reasons stated above, the Requester is of the opinion that (i) the CPE Panel in drafting the CPE Report and (ii) ICANN in making the Determination, has taken a decision that is based on an incorrect interpretation of the facts presented or available to the CPE Panel in light of the criteria set forth in the AGB.

9. What are you asking ICANN to do now?

Based upon the information contained in the Application, and for the reasons set out below, Requester is convinced that its Application meets the criteria to obtain:

- a score of 4 out of 4 points in relation to Criterion #2: Nexus between

⁷ CPE Report, Page 8, §4-B Opposition, first paragraph.

Proposed String and Community; and

- a score of 4 out of 4 points in relation to Criterion #4: Community Endorsement.

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 2**;
- in the meantime, suspend the process for string contention resolution in relation to the .GAY gTLD;
- ultimately, unless Requester withdraws this Reconsideration Request, reconsider the Determination and determine that the Application meets 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, whether or not Requester provides additional information or arguments to ICANN within a timeframe of 15 days following receipt of ICANN's responses to Requesters' request under ICANN's Documentary Information Disclosure Policy.

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.

(Include in this discussion how the action or inaction complained of has resulted in material harm and adverse impact. To demonstrate material harm and adverse impact, the requester must be able to demonstrate well-known requirements: there must be a loss or injury suffered (financial or non-financial) that is directly and causally connected to the Board or staff action or inaction that is the basis of the Request for Reconsideration. The requestor must be able to set out the loss or injury and the direct nature of that harm in specific and particular details. The relief requested from the BGC must be capable of

reversing the harm alleged by the requester. Injury or harm caused by third parties as a result of acting in line with the Board's decision is not a sufficient ground for reconsideration. Similarly, injury or harm that is only of a sufficient magnitude because it was exacerbated by the actions of a third party is also not a sufficient ground for reconsideration.)

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.

N/A

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

If you do, please attach those documents to the email forwarding this request. Note that all documents provided, including this Request, will be publicly posted at <http://www.icann.org/en/committees/board-governance/requests-for-reconsideration-en.htm>.

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.

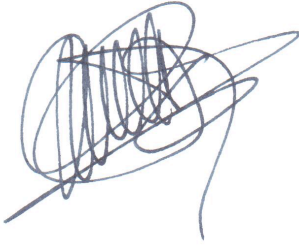
Hearings are not required in the Reconsideration Process, however Requestors may request a hearing. The BGC retains the absolute discretion to determine whether a hearing is appropriate, and to call people before it for a hearing.

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.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to be "Bart Lieben", written over a horizontal line.

October 22nd, 2014

Bart Lieben

Date

Attorney-at-Law

Annex 1

ECOSOC MEMBERS	
ABGLT	BRAZIL
Coalition Gaie et Lesbienne du Quebec (CGLQ)	CANADA
COC Netherlands	NETHERLANDS
Homosexuelle Initiative Wien	AUSTRIA
ILGA-Europe	BELGIUM
International Gay and Lesbian Human Rights Commission	USA
International Lesbian, Gay, Bisexual, Trans and Intersex Assoc.	BELGIUM
LSVD	GERMANY
Swedish Federation for Lesbian, Gay, Bisexual and Transgender Rights	SWEDEN
The Federaci3n Estatal de Lesbianas, Gays, Transexuales y Bisexuales	SPAIN
ORGANIZATIONS	
Aibai	CHINA
Argentine LGBT Federation	ARGENTINA
Arus Pelangi	INDONESIA
Association of LGBT and their friends MOZAIKA	LATVIA
Associazione Radicale Certi Diritti	ITALY
Beijing Gender Health Education Institute	CHINA
BeLonG To	IRELAND
Blue Diamond Society	NEPAL
Broadway Cares/Equity Fights AIDS	USA
Cameroonian Foundation for AIDS	CAMEROON
Cavaria	BELGIUM
CenterLink	USA
Coalition Against Homophobia in Ghana	GHANA
COC-Haaglanden	NETHERLANDS
COLAGE	USA
Community Alliance and Action Network	USA
Comunidad Homosexual Argentina	ARGENTINA
Comunidad Homosexual de Nicaragua	NICARAGUA
Āeský PFLAG / RAPLG	CZECH REPUBLIC
Diamond Foundation	USA
DIVERLEX	VENEZUELA
East End Gay Organization (EEGO)	USA
Egale	CANADA
Equal India Alliance	INDIA
Equality Long Island (EQLI)	USA
FIATPAX	NICARAGUA
Gay Alliance Belarus	BELARUS
Gay & Lesbian Network	SOUTH AFRICA
Gay & Lesbian Victory Fund	USA
Gay Asian Pacific Alliance	USA
Gay Men of African Descent	USA
Gayten-LGBT	SERBIA
Gender Justice Nevada	USA
GLADT	GERMANY
Global Alliance for LGBT Education (GALE)	NETHERLANDS
Good Hope Metropolitan Community Church	SOUTH AFRICA
Grupo E-Jovem de Adolescentes Gays Lesbicas e Aliados (Brazilian LGBT Youth Network)	BRAZIL

Grupo Gay da Bahia	BRAZIL
Healing Our Spirit	CANADA
HOD Chile	CHILE
Human Rights Campaign	USA
i-Freedom Uganda	UGANDA
IDAHO	FRANCE
ILGA-Portugal	PORTUGAL
Iniciativa Inakost'	SLOVAKIA
International Gay & Lesbian Informationcentre and Archives (IHLIA)	NETHERLANDS
International Lesbian, Gay, Bisexual, Transgender and Queer Youth & Student Organization (IGLYO)	BELGIUM
KANHNHA	CAMBODIA
L'Autre Cercle	FRANCE
LEGIT-Toronto	CANADA
Lesbian & Gay Foundation	UNITED KINGDOM
LGBT Centre	MONGOLIA
LGBT Consortium	UNITED KINGDOM
LGBT Forum PROGRESS	MONTENEGRO
LGBT Technology Partners	USA
Lithuanian Gay League	LITHUANIA
Log Cabin Republicans	USA
Long Island Gay and Lesbian Youth (LIGALY)	USA
Long Island GLBT Community Center	USA
Matthew Shepard Foundation	USA
Micro Rainbow International	UNITED KINGDOM
Minority Women in Action	KENYA
MOVILH (Movimiento de integración y Liberación Homosexual)	CHILE
Mr Bear CZ	CZECH REPUBLIC
National Association of GLBT in Isreal	ISREAL
National Gay & Lesbian Task Force	USA
Nəfəs (Breath) LGBT Azerbaijan Alliance	AZERBAIJAN
OMBRES	GUATEMALA
Opus Gay Association	PORTUGAL
PFLAG Canada	CANADA
PFLAG South Africa	SOUTH AFRICA
Pink Cross	SWITZERLAND
PINK Embassy / LGBT Pro Albania	ALBANIA
Pride Foundation	USA
PROUD	CZECH REPUBLIC
Public Organization Informational-Educational Center "For Equal Rights"	UKRAINE
Queer Alliance Nigeria	NIGERIA
Rainbow Community Kampuchea (RoCK)	CAMBODIA
Rainbow Wellington	NEW ZEALAND
Samtökin '78	ICELAND
SASOD (Society Against Sexual Orientation Discrimination)	GUYANA
Services and Advocacy for GLBT Elders - Long Island (SAGE-LI)	USA
SOMOSGAY	PARAGUAY
Subversive Front	MACEDONIA
SunServe	USA
The Fund in the Sun Foundation	USA

The Grace	KYRGYZ
The National Center for Lesbian Rights	USA
The Osito Foundation	USA
The Trevor Project	USA
Trans-Fuzja Foundation	POLAND
Trans-Fuzia Slovakia	SLOVAKIA
Transgender Netwerk Nederland	NETHERLANDS
Turk Gay Club	TURKEY
United Belize Advocacy Movement, UniBAM	BELIZE
Venezuela Diversa Civil Association	VENEZUELA
WEZESHA	TANZANIA
BUSINESS	
Argentina Gay and Lesbian Chamber of Commerce	ARGENTINA
Beijing LGBT Center	CHINA
Boutique Marketing	UK
Brisbane Gay & Lesbian Business Network	AUSTRALIA
Canadian Gay & Lesbian Chamber of Commerce	CANADA
Capital Area Gay & Lesbian Chamber of Commerce	USA
Chambre de commerce gaie du Québec	CANADA
Columbian LGBT Chamber of Commerce	COLUMBIA
Community Marketing, Inc.	USA
Connecticut Alliance for Business Opportunities	USA
DiversMad	SPAIN
Diversity Consulting	SPAIN
DiverSpain	SPAIN
Durban Lesbian & Gay Community & Health Centre	SOUTH AFRICA
egma	SWITZERLAND
Fire Brigades Union	UNITED KINGDOM
Gay Business Assocation	UNITED KINGDOM
GayHills	USA
Gay History Centre Cologne	GERMANY
Gay LGBT Center	ITALY
Greater Fort Lauderdale Gay & Lesbian Chamber of Commerce	USA
Greater Seattle Business Association	USA
Immigration Link	CANADA
Indy Rainbow Chamber	USA
L.A. Gay & Lesbian Center	USA
National Association of Gay & Lesbian Real Estate Professionals	USA
National Gay & Lesbian Chamber of Commerce	USA
National Gay & Lesbian Chamber of Commerce NY	USA
Neil Cerbone Associates	USA
Network	SWITZERLAND
New Era Consulting	SPAIN
North Dakota State University	USA
Ontario Gay & Lesbian Chamber of Commerce	CANADA
Out & Equal Workplace Advocates	USA
OutServe	USA
Parks - Liberi e Uguali	ITALY
Pride Center of the Capital Region	USA

Q-Factor	DENMARK
Queer Business Women	AUSTRIA
Rainbow Link	CANADA
Rainbow Serenity	USA
StartOut	USA
Staten Island LGBT Community Center	USA
Stockholm Gay & Lesbian Network	SWEDEN
Sydney Gay & Lesbian Business Association	AUSTRALIA
The Center	USA
The Center	USA
The DC Center	USA
WyberNet	SWITZERLAND
MEDIA	
Queer Public Radio	USA
CM by Carlos Melia	USA
Compete Sports Media	USA
Connexions Magazine	USA
Curve Magazine	USA
Damron	USA
DNA Magazine	AUSTRALIA
DoubleC	BRAZIL
Echelon Magazine	USA
EDGE Publications	USA
ELEMENT Magazine	SINGAPORE
Fun Maps	USA
The Gay & Lesbian Alliance Against Defamation	USA
GayAshevilleNc	USA
Gay List Daily	USA
Gay Japan News	JAPAN
Gay Star News	UNITED KINGDOM
Gloss Magazine	USA
IAmGay Networks	SOUTH AFRICA
In The Life Media	USA
Instinct Magazine	USA
National Gay Media Association	USA
OUT in Thailand	THAILAND
Out There Magazine	UNITED KINGDOM
out! northeast	UNITED KINGDOM
OUTlooks Magazine	CANADA
Passport Magazine	USA
Pink Banana Media	USA
Q Magazine	AUSTRALIA
QX Publishing	SWEDEN
SentidoG	ARGENTINA
The Rainbow Times	USA
Winq Magazine	NETHERLANDS
TRAVEL & ENTERTAINMENT	
14 Stories	USA
ABRAT GLS	BRAZIL

Alpenglow Productions (Gay Whistler's WinterPRIDE)	CANADA
Atlanta Pride Committee	USA
Arosa Gay Skiweek	SWITZERLAND
Axel Hotels	SPAIN
Blue Ridge Pride	USA
Boston Pride	USA
BUEGay Argentina	ARGENTINA
Brussels Gay Sports	BELGIUM
Cabbagetown Group Softball League	CANADA
Come Out With Pride	USA
Durban Gay & Lesbian Film Festival	SOUTH AFRICA
European Gay Lesbian Sport Federation	NETHERLANDS
Excellent-Journey Bhutan	BHUTAN
Exclusively Pride	UNITED KINGDOM
Federation of Gay Games	FRANCE
GALA Choruses	USA
Gay and Lesbian International Sport Association	CANADA
Gay Days, Inc.	USA
Gay European Tourism Association	FRANCE
Gay Tours Mexico by MMT	MEXICO
Gay Travel Exchange	USA
Heritage of Pride	USA
Imperial Court	USA
IndigNation: Singapore Pride Season	SINGAPORE
International Gay & Lesbian Travel Association	USA
InterPride	USA
KwaZulu-Natal Gay & Lesbian Tourism Association	SOUTH AFRICA
Llamala H	URUGUAY
Mark Nelson Enterprises	USA
mygaytrip.com	FRANCE
mygayxperience.com	GREECE
Netherlands Board of Tourism & Conventions	NETHERLANDS
OUT Adventures	CANADA
Out On The Water Sailing	USA
OutFest	USA
Philly Pride	USA
Pixado-Base	SPAIN
Prague4Gay	CZECH REPUBLIC
Prague Pride	CZECH REPUBLIC
PRANA Tourism	ARGENTINA
QueerANarchive	CROATIA
QueerTrip.com	USA
Queer Sport Split	CROATIA
Rainbow High Vacations	CANADA
Reel Affirmations	USA
Sao Paulo Turismo	BRAZIL
SGRainbow	SINGAPORE
Story Center Productions	USA
Tagum City Gay Association	PHILLIPINES

TLVFest	ISREAL
TOURGUIDEPERU	PERU
Travel Gay Canada	CANADA
Twin Cities Pride	USA
VisitSweden	SWEDEN
World Outgames 2013 - Antwerp	BELGIUM

Annex 2

ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536
USA

22 October 2014

By email: didp@icann.org

Dear Madam,
Dear Sir,

**.GAY Community Priority Evaluation for Application ID 1-1713-23699
Request under ICANN's Documentary Information Disclosure Policy**

This request is submitted under ICANN's Documentary Information Disclosure Policy on behalf of dotgay LLC, one of the applicants for the .GAY gTLD (hereinafter referred to as "Requester") in relation to ICANN's Community Priority Evaluation panel's ("CPE Panel") determination that Requester's application for the .GAY gTLD (Application ID: 1-1713-23699; hereinafter referred to as the "Application") did not prevail in Community Priority Evaluation according to the Community Priority Evaluation report available at <https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-1-1713-23699-en.pdf> (hereinafter: the "Determination").

Context

Reference is made to the Community Evaluation Report that has been released by ICANN and published on the ICANN website as referred to above, and ICANN's decision to change the Contention Resolution Status of the Application to "Active" and the Contention Resolution Result to "In Contention".

According to the Determination: *"[t]he Community Priority Evaluation panel has determined that the application did not meet the requirements specified in the Applicant Guidebook",* hereby confirming that the application for the .GAY gTLD that has been submitted by Requester *"did not prevail in Community Priority Evaluation"*.

Considering the fact that, according to the processes and procedures set out in ICANN's Applicant Guidebook, this Determination would result in ICANN (i) not recognizing the community status of the Applicant and its Application, and (ii) putting the Application into a contention set with multiple other applicants for the .GAY gTLD, which impacts the Applications and the justified claims made by the Applicant in relation to the .GAY gTLD.

According to ICANN, *"ICANN's Documentary Information Disclosure Policy (DIDP) is intended to ensure that information contained in documents concerning ICANN's operational activities,*

and within ICANN's possession, custody, or control, is made available to the public unless there is a compelling reason for confidentiality.”¹

Requester therefore invokes ICANN's accountability mechanisms in order to understand on which information the CPE Panel and ICANN have relied in developing the Determination.

Request

In view of transparency of ICANN's decision-making process, the Requester would like to obtain the following information from ICANN under the Documentary Information Disclosure Policy:

- 1) the agreement(s) between ICANN and the organizations and individuals involved in the Community Priority Evaluation, in particular the representations and warranties given and quality standards to be applied by such organizations and individuals;
- 2) the connection, experience level and qualification in regard to the targeted community of each of the members of the CPE Panel that were involved in reviewing the Requester's application and the preparation of the CPE Report;
- 3) policies, guidelines, directives, instructions or guidance given by ICANN relating to the Community Priority Evaluation process, including references to decisions by the ICANN Board that such guidelines, directives, instructions or guidance are to be considered "policy" under ICANN by-laws;
- 4) statements, documentation, third party input or similar information that is not in the public domain and which has been disclosed to the CPE Panel in connection with the Community Priority Evaluation of its Application;
- 5) internal reports, notes, meeting minutes drawn up by or on behalf of ICANN, the Community Priority Panels, and other individuals or organizations involved in the Community Priority Evaluation in relation to the Application;
- 6) detailed information in relation to (i) the information reviewed, (ii) criteria and standards used, (iii) arguments exchanged, (iv) information disregarded or considered irrelevant, and (v) scores given by the Community Priority Evaluation panel in view of the criteria set out in the Applicant Guidebook, and more in particular:

I. In relation to the criterion "Nexus"

According to the Determination:

"The Community Priority Evaluation panel determined that the application did not meet the criterion for Uniqueness as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook. The string does not identify or match the name of the community as defined in the application, nor is it a well-known short-form or abbreviation of the community. The application received a score of 0 out of 3 points under criterion 2-A: Nexus."

¹ See <https://www.icann.org/resources/pages/didp-2012-02-25-en>.

A simple search on Wikipedia shows that the word “gay” is primarily used for referring to a “homosexual man”, but has been commonly adopted for all members of the LGBT (Lesbian, Gay, Bisexual and Transsexual) community, as well as in the names of organizations such as Parents, Families, and Friends of Lesbians and Gays (PFLAG) and Children of Lesbians and Gays Everywhere (COLAGE), both of which are also endorsing the Requester’s Application for the .GAY gTLD. A similar description has been adopted by the Oxford Dictionary, notwithstanding the CPE Panel’s reference to the narrow definition contained in the same publication.²

- a) which information, apart from the information contained in the application, has been used by the CPE Panel in order to determine that the word “gay” “does not identify or match the name of the community as defined in the application, nor is it a well-known short-form or abbreviation of the community”, notwithstanding the fact that public references to this “catch-all” or “umbrella” term made by reputable organizations prove otherwise;³ other than the Oxford dictionaries.
- b) whether the CPE Panel has considered that the Application clearly states that not only members of Authenticating Partners, the roles and responsibilities whereof are clearly outlined in the Application, but also candidate domain name registrants who have been found eligible by such Authenticating Partners without imposing membership obligations upon them, would be entitled to register domain names in the .GAY gTLD. Indeed, the Application clearly states that “dotgay LLC is also requiring community members to have registered with one of our Authenticating Partners, which clearly implies that they can register domain names through these Authentication Partners, and not that they must register *as a member* with such Partners;
- c) therefore, Requester would like to verify with ICANN and the CPE Panel whether it has understood from the Application that only registered members of such Authenticating Partners would be eligible to register domain names in the .GAY gTLD (who, at the time of submission of the Application, accounted for about 7 million members), notwithstanding the fact that the Application clearly states that all of the estimated 1.2% of the world’s population that is considered to be a “member of the .GAY community” would be able to register domain names in this extension when being considered eligible by one of the .GAY Authenticating Partners, functioning as some kind of certification or registration authority;
- d) which were the criteria and standards adopted and used by the CPE Panel and ICANN in order to determine that a size of 7 million members of Authentication Partners compared to an estimated number of 70 million eligible registrants would be considered “over-reaching”;
- e) whether, in considering that individuals who qualify as transgender, intersex or “allies” are not deemed to be members of the community as defined by the Application, whereas various national, international and supranational organizations such as Parents, Families, and Friends of Lesbians and Gays (PFLAG)

² See for instance <http://en.wikipedia.org/wiki/Gay>.

³ <http://en.wikipedia.org/wiki/Gay>;
<http://www.economist.com/blogs/johnson/2013/01/gender-and-sexual-orientation>;
<http://www.nytimes.com/2013/01/10/fashion/generation-lgbtqia.html?pagewanted=all&module=Search&mabReward=relbias%3Aw%2C%7B%222%22%3A%22RI%3A18%22%7D&r=0>;

and Children of Lesbians and Gays Everywhere (COLAGE), both of which are also endorsing the Requester's Application for the .GAY gTLD,⁴ are clearly being recognized as supporting the same causes and endorsing the same values as expressed by the "inner circle" of members of this community, especially since they are closely linked to the thematic remit the community has;⁵

- f) why, considering the fact that the CPE Panel has clearly struggled with the community definition contained in the Application, the CPE Panel or ICANN has not reached out to the Requester in the form of one or more Clarifying Questions. Indeed, during the Initial Evaluation process, ICANN has reached out to most, if not all applicants in order to provide additional or more detailed information. Given the fact that Requester has paid a sum exceeding USD 210.000 for submitting the application and participating to the Community Priority Evaluation, one would expect that as a minimum some outreach would have been performed by ICANN or the CPE Panel, rather than outright dismissing or unilaterally interpreting information provided in the Application *more than two years after such application has been submitted to ICANN*.

Therefore, Requester would like to know, although the CPE Panel and ICANN had the possibility to submit Clarifying Questions to the Applicant according to the process published at <http://newgtlds.icann.org/en/applicants/clarification-questions>, which have been the reasons, arguments, standards and criteria used by ICANN and the CPE Panel for not doing so in this particular case.

II. In relation to the criterion "Uniqueness":

The CPE Panel determined that *"the application did not meet the criterion for Uniqueness as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the string does not score a 2 or a 3 on Nexus."* For this reason, the CPE Panel has awarded a score of 0 out of 1 point under criterion 2-B: Uniqueness.

Requester would like to obtain further information from ICANN and the CPE Panel in relation to:

- whether the CPE Panel has reviewed, on the basis of the information contained in the application or through independent research, whether the word "gay" has another significant meaning to the public at large other than the concept put forward in the application;
- which have been the criteria and standards that have been adopted and used by the CPE Panel in order to assess the "significance" of the meaning of the term "gay" to the "public at large";
- whether, by referring to the definition contained in the Oxford Dictionary, the CPE Panel has also considered the description provided by the Oxford Dictionary, stating that *"Gay in its modern sense typically refers to men (lesbian being the standard term for homosexual women) but in some contexts it can be used of both men and women."*⁶

⁴ See for instance <http://en.wikipedia.org/wiki/Gay>.

⁵ Requester notes that the wording "thematic remit" is expressly being used in the CPE Guidelines, and more in particular on Page 7.

⁶ <http://www.oxforddictionaries.com/definition/english/gay>.

- which resources have been used in order to substantiate the Determination in this respect, and which information has been discarded by the CPE Panel.

III. In relation to the criterion “Community Endorsement”:

The Community Priority Evaluation panel determined that the Application “*partially met the criterion for Support specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as there was documented support from at least one group with relevance.*” – Determination, Page 7.

Requester would like to obtain further information concerning:

- which letters of endorsement and/or support have been considered by the CPE Panel in making its Determination;
- which criteria and/or standards have been used by the CPE Panel in order to determine which group is “of relevance” in relation to the organizations, companies and individuals that have provided letters of endorsement and/or support in relation to the Application;
- why, although the CPE Panel has recognized that Requester “possesses documented support from many groups with relevance”, only the support of “one group of relevance” has been taken into consideration by the CPE Panel;
- what were the criteria and standards that have been used by the Panel in making such distinction and coming to such determination, and in particular the reasons for not recognizing other internationally established groups and organizations;
- bearing in mind the previous question, why the CPE Panel has come to a different assessment in relation to the standing of ILGA expressed by the Expert Determination provided by the ICDR, which has been acknowledged and endorsed by ICANN in dismissing an official complaint lodged before the ICDR by Metroplex Republicans of Dallas, in which the Requester prevailed, and which have been the criteria and standards that have been used by the CPE Panel to come to a different conclusion apart from process-related considerations;⁷
- which scores or evaluations have been given to the organizations, companies and individuals that have provided letters of endorsement and/or support in relation to the Application against such criteria and/or standards for each of the organizations, companies and groups referred to in the Application, an overview whereof has been contained in **Annex 1** to this Request;
- if no particular additional criteria and/or standards have been utilized by the CPE Panel, apart from the ones published in the Applicant Guidebook and the Guidelines published by the CPE Panel, a detailed overview of the arguments that have been brought forward and have been adopted or acknowledged by the CPE Panel for not considering the letters of support and/or endorsement from other groups, organizations, companies and individuals;
- which independent research has been performed by the CPE Panel and how the results of such research have been taken into account by the CPE Panel in the

⁷ See ICDR Case No. EXP/390/ICANN/7, §13.

scoring they have applied. More in particular, Requester refers to the list of companies, groups and organizations contained in **Annex 1** to this Request, which accounted in total for more than 7 million members at the time of submitting Requester's application for the .GAY gTLD, and which number has increased significantly since then. Considering the wide endorsement obtained from various umbrella organizations, national and supranational groups, the Determination makes it clear that only one letter of endorsement from one group considered "relevant" by the CPE Panel has been taken into account.

IV. In relation to the criterion "Opposition":

According to the Determination, *"the Community Priority Evaluation Panel has determined that the application partially met the criterion for Opposition as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application did not receive any relevant opposition."* – Determination, page 8.

Notwithstanding the fact that the CPE Panel acknowledges that "the application did not receive any relevant opposition", only a partial score of 1 out of 2 points has been awarded. Requester therefore would like to obtain further information on why only a partial score has been given in this case.

Furthermore, notwithstanding the fact that the CPE Panel has acknowledged that "the application did not receive any relevant opposition", the CPE Panel refers to the fact that opposition to the application exists *"from a group of non-negligible size, coming from an organization within the communities explicitly addressed by the application, making it relevant"*.

Apart from noting that the Determination contains a clear and obvious contradiction, Requester requests the following information from ICANN:

- the name, address, and standing of the anonymous organization considered by the CPE Panel;
- an overview of the staff members, including their names, roles and responsibilities of such organization;
- the events and activities organized by such organization; and
- which standards and criteria have been used by the CPE Panel in order to determine that such activities had a "substantial" following;
- the approach taken in relation to the assessment of this "group of relevance", in particular in terms of standards and criteria that formed the basis of this assessment, and whether this assessment, criteria and standards were different from the ones utilized by the CPE Panel in determining that many of the organizations that supported the Requester's application have not be considered "of relevance";
- whether any of the information provided by the Requester to ICANN in relation to potential spurious or unsubstantiated claims made by certain organizations have been taken into account, and more in particular Requester's emails to ICANN and the CPE Panel and – in such event – the reasons for not taking such information

into account (see **Annex 2** for the emails sent by the Requester to ICANN and the CPE Panel).

Standards for Disclosure

Requester is of the opinion that none of the information requested by them meet any of the defined conditions for non-disclosure as set out in ICANN's Documentary Information Disclosure Policy:

- Information provided by or to a government or international organization, or any form of recitation of such information, in the expectation that the information will be kept confidential and/or would or likely would materially prejudice ICANN's relationship with that party.

Considering the nature and contents of Requester's requests, this standard is not met.

- Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including internal documents, memoranda, and other similar communications to or from ICANN Directors, ICANN Directors' Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.

Considering the nature and contents of Requester's requests, this standard is not met. Since these requests are made in view of assessing Requester's respective positions and (legal) actions in relation to ICANN potentially awarding the .GAY gTLD to the Requester, and considering the impact such award may have upon Requester, it believes that it is essential for ICANN to provide supplemental information and motivations for its determination to give the Application a passing score in the context of Community Priority Evaluation.

- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.

Considering the nature and contents of Requester's requests, this standard is not met. Since these requests are made in view of assessing Requester's respective positions and (legal) actions in relation to ICANN potentially awarding the .GAY gTLD to the REQUESTER, and considering the impact such award may have upon Requesters, they believe that it is essential for ICANN to provide supplemental information and motivations for its determination to give the Application a passing score in the context of Community Priority Evaluation.

- Personnel, medical, contractual, remuneration, and similar records relating to an individual's personal information, when the disclosure of such information would or likely would constitute an invasion of personal privacy, as well as proceedings of internal appeal mechanisms and investigations.

Requester believes that this condition does not apply in relation to this request.

- Information provided to ICANN by a party that, if disclosed, would or would be likely to materially prejudice the commercial interests, financial interests, and/or competitive position of such party or was provided to ICANN pursuant to a nondisclosure agreement or nondisclosure provision within an agreement.

Requester believes that this condition does not apply in relation to this request.

- Confidential business information and/or internal policies and procedures.

Requester believes that this condition does not apply in relation to this request.

- Information that, if disclosed, would or would be likely to endanger the life, health, or safety of any individual or materially prejudice the administration of justice.

Requester believes that this condition does not apply in relation to this request.

- Information subject to the attorney– client, attorney work product privilege, or any other applicable privilege, or disclosure of which might prejudice any internal, governmental, or legal investigation.

Requester believes that this condition does not apply in relation to this request.

- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.

Requester believes that this condition does not apply in relation to this request. The Requester's requests relate to the information, final criteria, standards, arguments and considerations used in view of drafting a determination that lacks clarity and is insufficiently motivated.

- Information that relates in any way to the security and stability of the Internet, including the operation of the L Root or any changes, modifications, or additions to the root zone.

Requester believes that this condition does not apply in relation to this request.

- Trade secrets and commercial and financial information not publicly disclosed by ICANN.

Requester believes that this condition does not apply in relation to this request.

- Information requests: (i) which are not reasonable; (ii) which are excessive or overly burdensome; (iii) complying with which is not feasible; or (iv) are made with an abusive or vexatious purpose or by a vexatious or querulous individual.

As stated above, considering the impact of ICANN awarding the .GAY gTLD may have upon Requesters, they believe that it is essential for ICANN to provide supplemental information and motivations for its determination to give the Application a passing score in the context of Community Priority Evaluation.

ICANN's transparency obligations, created by ICANN's Bylaws and Articles of Incorporation require the publication of information related to the process, facts and analysis used by individual members of the Community Priority Evaluation panel in preparation of the Determination.

Bylaw Article III, Section 1 provides as follows:

"ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to use fairness."

Furthermore, Requesters refer to ICANN's core mission and values, set out in their by-laws, and in particular, they intend to review the information provided and to be provided by ICANN following this request on the basis of the following values of ICANN:

7. Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.

8. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.

And

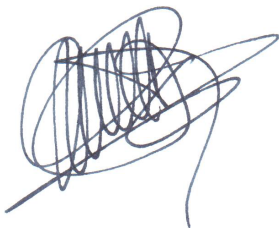
10. Remaining accountable to the Internet community through mechanisms that enhance ICANN's effectiveness.

Furthermore, Article 4 of ICANN's Articles of Incorporation provides:

"The Corporation shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law and, to the extent appropriate and consistent with these Articles and its Bylaws, through open and transparent processes that enable open competition and open entry in Internet-related markets. To this effect, the Corporation shall cooperate as appropriate with relevant international organizations."

Considering the potentially irreparable harm that will be done if ICANN would not take into account the position taken by the Requesters as legitimate competitors for the .GAY gTLD, we respectfully request ICANN to disclose the additional information, criteria, and standards set out above, which have formed the basis of the Determination.

Respectfully submitted,



Bart Lieben
Attorney-at-Law