

## **Annexes**

- Annex A-1:** CPE Report
- Annex A-2:** Requester's DIDP Request for Information
- Annex A-3:** Requester's Initial Reconsideration Request
- Annex A-4:** ICANN's Response to Requester's DIDP Request for Information
  
- Annex B-1:** GNSO Principles, Recommendations & Implementation Guidelines
- Annex B-2:** ICANN Web Page re: Community Priority Evaluation
- Annex B-3:** CPE Panel Process Document
- Annex B-4:** CPE Guidelines
- Annex B-5:** Updated CPE Frequently Asked Questions (FAQs)
- Annex B-6:** CPE Processing Timeline
- Annex B-7:** ICANN's web page containing Frequently Asked Questions in relation to ICANN's Clarifying Questions process
- Annex B-8:** ICDR Case No. EXP/390/ICANN/7, The International Lesbian Gay Bisexual Trans and Intersex Association vs. Affilias Limited
- Annex B-9:** ICDR Case No. EXP/394/ICANN/11, The International Lesbian Gay Bisexual Trans and Intersex Association vs. United TLD Holdco Ltd.
- Annex B-10:** ICDR Case No. EXP/392/ICANN/9, The International Lesbian Gay Bisexual Trans and Intersex Association vs. Top Level Design, LLC
- Annex B-11:** ICDR Case No. EXP/393/ICANN/10, The International Lesbian Gay Bisexual Trans and Intersex Association vs. Top Level Domain Holdings Limited
  
- Annex C-1:** Oxford English Dictionary search result for "gay"
- Annex C-2 to C-12:**  
Communications between Requester and ICANN regarding "spurious activity"
- Annex C-13:** CPE Report for the .OSAKA gTLD (Application ID 1-901-9391)
- Annex C-14:** CPE Report for the .HOTEL gTLD
- Annex C-15:** Requester's remarks re: the .GAY CPE process
- Annex C-16(a) et seq.:**  
Press articles re: the use of the word "gay" in common language
- Annex C-17:** Overview of Requester's Supporters
- Annex C-18:** Email from the EIU to the Good Hope Metropolitan Community Church
- Annex C-19:** Email from the EIU to I Am Gay
- Annex C-20:** Email from the EIU to the Kwazulu-Natal Gay & Lesbian Tourism Association
- Annex C-21:** Email from the EIU to the LGBT Consortium
- Annex C-22:** Letter from the Federation of Gay Games, supported by many businesses and organizations referred to therein
- Annex C-23:** Letter from the International Lesbian, Gay, Bisexual, Trans and Intersex Association, also available on

<https://www.icann.org/en/system/files/files/request-ilga-to-bgc-17nov14-en.pdf>

**Annex C-24:** Letter from the National Gay & Lesbian Chamber of Commerce, also available on <https://www.icann.org/en/system/files/files/nglcc-to-bgc-17nov14-en.pdf>

## **Annex A-1**



New gTLD Program  
Community Priority Evaluation Report  
Report Date: 6 October 2014

Application ID:	1-1713-23699
Applied-for String:	Gay
Applicant Name:	dotgay llc

Overall Community Priority Evaluation Summary

Community Priority Evaluation Result	Did Not Prevail
<p>Thank you for your participation in the New gTLD Program. 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.</p> <p>Your application may still resolve string contention through the other methods as described in Module 4 of the Applicant Guidebook.</p>	

Panel Summary

Overall Scoring	10 Point(s)	
Criteria	Earned	Achievable
#1: Community Establishment	4	4
#2: Nexus between Proposed String and Community	0	4
#3: Registration Policies	4	4
#4: Community Endorsement	2	4
<b>Total</b>	<b>10</b>	<b>16</b>
<b>Minimum Required Total Score to Pass 14</b>		

Criterion #1: Community Establishment	4/4 Point(s)
1-A Delineation	2/2 Point(s)
<p>The Community Priority Evaluation panel has determined that the community as defined in the application met the criterion for Delineation as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the community defined in the application is clearly delineated, organized and pre-existing. The application received the maximum score of 2 points under criterion 1-A: Delineation.</p> <p><u>Delineation</u> Two conditions must be met to fulfill the requirements for delineation: there must be a clear, straightforward membership definition and there must be awareness and recognition of a community (as defined by the applicant) among its members.</p>	



The community defined in the application (“GAY<sup>1</sup>”) is drawn from:

...individuals whose gender identities and sexual orientation 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<sup>2</sup>. 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 further elaborates the requirements of the above individuals to demonstrate membership in the community:

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 Authentication Partners are the result of a century or more of community members voluntarily grouping themselves into gay civic organizations. Membership in the Gay Community is not restricted by any geographical boundaries and is united by a common interest in human rights.

This community definition shows a clear and straightforward membership and is therefore well defined. Membership is “determined through formal membership with any of dotgay LLC’s [the applicant’s] Authentication Partners (AP) from the community”, a transparent and verifiable membership structure that adequately meets the evaluation criteria of the AGB.

In addition, the community as defined in the application has awareness and recognition among its members. The application states:

As the foundation of the community, membership organizations are the single most visible entry point to the Gay Community around the world. They serve as “hubs” and are recognized as definitive qualifiers for those interested in affirming their membership in the community. The organizations range from serving health, social and economic needs to those more educational and political in nature; with each having due process around affirming status in the community. In keeping with standards currently acknowledged and used within the community, dotgay LLC will utilize membership organizations as APs to confirm eligibility. APs must meet and maintain the following requirements for approval by dotgay LLC:

1. Have an active and reputable presence in the Gay Community
2. Have a mission statement that incorporates a focus specific to the Gay Community
3. Have an established policy that affirms community status for member enrolment
4. Have a secure online member login area that requires a username & password, or other secure control mechanism.

---

<sup>1</sup> In this report the community as defined by the application is referred to as the “GAY community” instead of the “gay community” or the “LGBTQIA community”. The “GAY community” is understood as the set of individuals and associated organizations defined by the applicant as the community it seeks to represent under the new gTLD. “Gay community” or “LGBTQIA community” are used as vernacular terms to refer to LGBTQIA individuals and organizations, whether or not explicitly included in the applicant’s defined community. This use is consistent with the references to these groups in the application.

<sup>2</sup> The Applicant notes with regard to its use of the term LGBTQIA that “LGBTQIA – Lesbian, Gay, Bisexual, Transgender, Queer, Intersex and Ally is the latest term used to indicate the inclusive regard for the extent of the Gay Community.” This report uses the term similarly.

Based on the Panel's research and materials provided in the application, there is sufficient evidence that the members as defined in the application would cohere as required for a clearly delineated community. This is because members must be registered with at least one Authenticating Partner (AP). The AP must have both a "presence in the Gay Community", and also "incorporate a focus specific to the Gay Community." By registering as a verifiable member with an AP with these characteristics, individuals would have both an awareness and recognition of their participation and membership in the defined community.

The Community Priority Evaluation panel has determined that the community as defined in the application satisfies both of the conditions to fulfill the requirements for delineation.

#### Organization

Two conditions must be met to fulfill the requirements for organization: there must be at least one entity mainly dedicated to the community, and there must be documented evidence of community activities.

There are many organizations that are dedicated to the community as defined by the application, although most of these organizations are dedicated to a specific geographic scope and the community as defined is a global one. However, there is at least one entity mainly dedicated to the entire global community as defined: the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA). According to the letter of support from ILGA:

The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) is the only worldwide federation of more than 1,200 lesbian, gay, bisexual, transgender and intersex (LGBTI) national and local organizations, fighting for the rights of LGBTI people. Established in 1978 in Coventry (UK), ILGA has member organizations in all five continents and is divided into six regions; ILGA PanAfrica, ILGA ANZAPI (Aotearoa/New Zealand, Australia and Pacific Islands), ILGA Asia, ILGA Europe, ILGA LAC (Latin America and Caribbean) and ILGA North America.

The community as defined in the application also has documented evidence of community activities. This is confirmed by detailed information on ILGA's website, including documentation of conferences, calls to action, member events, and annual reports.

The Community Priority Evaluation panel has determined that the community as defined in the application satisfies both conditions to fulfill the requirements for organization.

#### Pre-existence

To fulfill the requirements for pre-existence, the community must have been active prior to September 2007 (when the new gTLD policy recommendations were completed).

The community as defined in the application was active prior to September 2007. According to the application:

...in the 20th century a sense of community continued to emerge through the formation of the first incorporated gay rights organization (Chicago Society for Human Rights, 1924). Particularly after 1969, several groups continued to emerge and become more visible, in the US and other countries, evidencing awareness and cohesion among members.

Additionally, the ILGA, an organization representative of the community defined by the applicant, as referred to above, has records of activity beginning before 2007. LGBTQIA individuals have been active outside of organizations as well, but the community as defined is comprised of members of [AP] organizations.

The Community Priority Evaluation panel has determined that the community as defined in the application fulfills the requirements for pre-existence.

The Community Priority Evaluation panel determined that the community as identified in the application met the criterion for Extension specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application demonstrates that the community meets the requirements for size and demonstrates longevity. The application received a maximum score of 2 points under criterion 1-B: Extension.

#### Size

Two conditions must be met to fulfill the requirements for size: the community must be of considerable size, and it must display an awareness and recognition of a community among its members.

The community as defined in the application is of considerable size. While the application does cite global estimates of the self-identified gay/LGBTQIA (lesbian, gay, bisexual, transgender, queer, intersex, and ally) population (1.2% of world population), it does not rely on such figures to determine the size of its community. This is because the applicant requires that any such LGBTQIA individual also be a member of an AP organization in order to qualify for membership of the proposed community. According to the application:

Rather than projecting the size of the community from these larger global statistical estimates, dotgay LLC has established a conservative plan with identified partners and endorsing organizations (listed in 20F) representing over 1,000 organizations and 7 million members.

The size of the delineated community is therefore still considerable, despite the applicant's requirement that the proposed community members must be members of an AP.

In addition, as previously stated, the community as defined in the application has awareness and recognition among its members. This is because members must be registered with at least one Authenticating Partner (AP). The AP must have both a "presence in the Gay Community"<sup>3</sup>, and also "incorporate a focus specific to the Gay Community." By registering as a verifiable member with an AP with these characteristics, individuals would have both an awareness and recognition of their participation and membership in the defined community.

The Community Priority Evaluation panel has determined that the community as defined in the application satisfies both of the conditions to fulfill the requirements for size.

#### Longevity

Two conditions must be met to fulfill the requirements for longevity: the community must demonstrate longevity and must display an awareness and recognition of a community among its members.

The community as defined in the application demonstrates longevity. The pursuits of the .GAY community<sup>4</sup> are of a lasting, non-transient nature. According to the application materials:

...one of the first movements for the human rights of the Gay Community was initiated by Magnus Hirschfeld (Scientific Humanitarian Committee, 1897).

The organization of LGBTQIA individuals has accelerated since then, especially in recent decades and an organized presence now exists in many parts of the world. Evidence shows a clear trend toward greater rates of visibility of LGBTQIA individuals, recognition of LGBTQIA rights and community organization, both in the US and other western nations as well as elsewhere.<sup>5</sup> While socio-political obstacles to community

<sup>3</sup> "Gay community" or "LGBTQIA community" are used as vernacular terms to refer to LGBTQIA individuals and organizations, whether or not explicitly included in the applicant's defined community.

<sup>4</sup> The ".GAY community" is understood as the set of individuals and associated organizations defined by the applicant as the community it seeks to represent under the new gTLD.

<sup>5</sup> Haggerty, George E. "Global Politics." In *Gay Histories and Cultures: An Encyclopedia*. New York: Garland, 2000.

organization remain in some parts of the world,<sup>6</sup> the overall historical trend of LGBTQIA rights and organization demonstrates that the community as defined has considerable longevity.

In addition, as previously stated, the community as defined in the application has awareness and recognition among its members. This is because members must be registered with at least one Authenticating Partner (AP). The AP must have both a “presence in the Gay Community”, and also “incorporate a focus specific to the Gay Community.” By registering as a verifiable member with an AP with these characteristics, individuals would have both an awareness and recognition of their participation and membership in the defined community.

The Community Priority Evaluation panel has determined that the community as defined in the application satisfies both the conditions to fulfill the requirements for longevity.

**Criterion #2: Nexus between Proposed String and Community**

**0/4 Point(s)**

**2-A Nexus**

**0/3 Point(s)**

The Community Priority Evaluation panel 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. The application received a score of 0 out of 3 points under criterion 2-A: Nexus.

To receive the maximum score for Nexus, the applied-for string must match the name of the community or be a well-known short-form or abbreviation of the community. To receive a partial score for Nexus, the applied-for string must identify the community. According to the AGB, “Identify” means that the applied for string closely describes the community or the community members, without over-reaching substantially beyond the community.”

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 application, therefore, acknowledges that “the world at large” understands the Gay community to be an entity substantially different than the community the application defines. That is, the general population understands the “Gay community” to be both those individuals who have “come out” as well as those who are privately aware of their non-heterosexual sexual orientation. Similarly, the applied-for string refers to a large group of individuals – all gay people worldwide – of which the community as defined by the applicant is only a part. That is, the community as defined by the applicant refers only to the sub-set of individuals who have registered with specific organizations, the Authenticating Partners.

As the application itself also indicates, the group of self-identified gay individuals globally is estimated to be 1.2% of the world population (more than 70 million), while the application states that the size of the community it has defined, based on membership with APs, is 7 million. This difference is substantial and is indicative of the degree to which the applied-for string substantially over-reaches beyond the community defined by the application.

<sup>6</sup> <http://www.theguardian.com/world/2013/jul/30/gay-rights-world-best-worst-countries>

Moreover, 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 identify certain members that the applicant has included in its definition of the .GAY community. Included in the application’s community definition are transgender and intersex individuals as well as “allies” (understood as heterosexual individuals supportive of the missions of the organizations that comprise the defined community)<sup>7</sup>. However, “gay” does not identify these individuals. Transgender people may identify as straight or gay, since gender identity and sexual orientation are not necessarily linked.<sup>8</sup> Likewise, intersex individuals are defined by having been born with atypical sexual reproductive anatomy<sup>9</sup>; such individuals are not necessarily “gay”<sup>10</sup>. Finally, allies, given the assumption that they are heterosexual supporters of LGBTQIA issues, are not identified by “gay” at all. Such individuals may be an active part of the .GAY community, even if they are heterosexual, but “gay” nevertheless does not describe these individuals as required for Nexus by the AGB. As such, there are significant subsets of the defined community that are not identified by the string “.GAY”.

The Community Priority Evaluation panel has determined that the applied-for string does not match nor does it identify without substantially over-reaching the name of the community as defined in the application, nor is it a well-known short-form or abbreviation of the community. It therefore does not meet the requirements for Nexus.

**2-B Uniqueness** **0/1 Point(s)**

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 as the string does not score a 2 or a 3 on Nexus. The application received a score of 0 out of 1 point under criterion 2-B: Uniqueness.

To fulfill the requirements for Uniqueness, the “string has no other significant meaning *beyond identifying the community described in the application,*” according to the AGB (emphasis added) and it must also score a 2 or a 3 on Nexus. The string as defined in the application cannot demonstrate uniqueness as the string does not score a 2 or a 3 on Nexus (i.e., it does not identify the community described, as above.). The Community Priority Evaluation panel has determined that the applied-for string is ineligible for a Uniqueness score of 1.

**Criterion #3: Registration Policies** **4/4 Point(s)**

**3-A Eligibility** **1/1 Point(s)**

The Community Priority Evaluation panel has determined that the application met the criterion for Eligibility as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as eligibility is restricted to community members. The application received a maximum score of 1 point under criterion 3-A: Eligibility.

To fulfill the requirements for Eligibility, the registration policies must restrict the eligibility of prospective registrants to community members. The application demonstrates adherence to this requirement by specifying that:

.gay is restricted to members of the Gay Community. Eligibility is determined through formal membership with any of dotgay LLC’s Authentication Partners (AP) from the community.

The Community Priority Evaluation panel has determined that the application satisfied the condition to fulfill the requirements for Eligibility.

<sup>7</sup> This prevailing understanding of “ally” is supported by GLAAD and others: <http://www.glaad.org/resources/ally>

<sup>8</sup> <http://www.glaad.org/reference/transgender>

<sup>9</sup> [http://www.isna.org/faq/what\\_is\\_intersex](http://www.isna.org/faq/what_is_intersex)

<sup>10</sup> “Gay” is defined by the Oxford dictionaries as “A homosexual, especially a man.” The applicant defines the community as “individuals whose gender identities and sexual orientation are outside of the norms defined for heterosexual behavior of the larger society.”

<b>3-B Name Selection</b>	<b><i>1/1 Point(s)</i></b>
<p>The Community Priority Evaluation panel has determined that the application met the criterion for Name Selection as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as name selection rules are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-B: Name Selection.</p> <p>To fulfill the requirements for Name Selection, the registration policies must be consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by outlining the types of names that may be registered within the .Gay top-level domain, including rules barring “[s]ensitive words or phrases that incite or promote discrimination or violent behavior, including anti-gay hate speech.” The rules are consistent with the purpose of the gTLD. The Community Priority Evaluation panel has determined that the application satisfied the condition to fulfill the requirements for Name Selection.</p>	
<b>3-C Content and Use</b>	<b><i>1/1 Point(s)</i></b>
<p>The Community Priority Evaluation panel has determined that the application met the criterion for Content and Use as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the rules for content and use are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-C: Content and Use.</p> <p>To fulfill the requirements for Content and Use, the registration policies must include rules for content and use for registrants that are consistent with the articulated community-based purpose of the applied-for gTLD. This includes “efforts to prevent incitement to or promotion of real or perceived discrimination based upon race, color, gender, sexual orientation or gender expression.”</p> <p>The Community Priority Evaluation panel has determined that the application satisfied the condition to fulfill the requirements for Content and Use.</p>	
<b>3-D Enforcement</b>	<b><i>1/1 Point(s)</i></b>
<p>The Community Priority Evaluation panel has determined that the application met the criterion for Enforcement as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application provided specific enforcement measures and appropriate appeal mechanisms. The application received a maximum score of 1 point under criterion 3-D: Enforcement.</p> <p>Two conditions must be met to fulfill the requirements for Enforcement: the registration policies must include specific enforcement measures constituting a coherent set, and there must be appropriate appeals mechanisms. The application outlines policies that include specific enforcement measures constituting a coherent set. The application also outlines a comprehensive list of investigation procedures, and circumstances in which the registry is entitled to suspend domain names. The application also outlines an appeals process, managed by the Registry, to which any party unsuccessful in registration, or against whom disciplinary action is taken, will have the right to access. The Community Priority Evaluation panel has determined that the application satisfies both the conditions to fulfill the requirements for Enforcement.</p>	

<b>Criterion #4: Community Endorsement</b>	<b><i>2/4 Point(s)</i></b>
<b>4-A Support</b>	<b><i>1/2 Point(s)</i></b>
<p>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.</p> <p>To receive the maximum score for Support, the applicant is, or has documented support from, the recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community. In this context, “recognized” refers to the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community. To receive a partial score for Support, the applicant must have documented support from at least one group with relevance. “Relevance” refers to the communities explicitly and implicitly addressed by the application’s defined community.</p>	

The Community Priority Evaluation panel has determined that the applicant was not the recognized community institution(s)/member organization(s), nor did it have documented authority to represent the community, or documented support from the recognized community institution(s)/member organization(s). (While the ILGA is sufficient to meet the AGB's requirement for an "entity mainly dedicated to the community" under Delineation (1-A), it does not meet the standard of a "recognized" organization. The AGB specifies that "recognized" means that an organization must be "clearly recognized by the community members as representative of the community." The ILGA, as shown in its mission and activities, is clearly dedicated to the community and it serves the community and its members in many ways, but "recognition" demands not only this unilateral dedication of an organization to the community, but a reciprocal recognition on the part of community members of the organization's authority to represent it. There is no single such organization recognized by the defined community as representative of the community. However, the applicant possesses documented support from many groups with relevance; their verified documentation of support contained a description of the process and rationale used in arriving at the expression of support, showing their understanding of the implications of supporting the application. Despite the wide array of organizational support, however, the applicant does not have the support from the recognized community institution, as noted above, and the Panel has not found evidence that such an organization exists. The Community Priority Evaluation Panel has determined that the applicant partially satisfies the requirements for Support.

4-B Opposition

*1/2 Point(s)*

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. The application received a score of 1 out of 2 points under criterion 4-B: Opposition.

To receive the maximum score for Opposition, the application must not have received any opposition of relevance. To receive a partial score for Opposition, the application must have received opposition from, at most, one relevant group of non-negligible size.

The Community Priority Evaluation panel has determined that there is opposition to the application from a group of non-negligible size, coming from an organization within the communities explicitly addressed by the application, making it relevant. The organization is a chartered 501(c)3 nonprofit organization with full-time staff members, as well as ongoing events and activities with a substantial following. The grounds of the objection do not fall under any of those excluded by the AGB (such as spurious or unsubstantiated claims), but rather relate to the establishment of the community and registration policies. Therefore, the Panel has determined that the applicant partially satisfied the requirements for Opposition.

**Disclaimer:** Please note that these Community Priority Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. These results do not constitute a waiver or amendment of any provision of the Applicant Guidebook or the Registry Agreement. For updated application status and complete details on the program, please refer to the Applicant Guidebook and the ICANN New gTLDs microsite at <[newgtlds.icann.org](http://newgtlds.icann.org)>.

## **Annex A-2**



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

22 October 2014

By email: [didp@icann.org](mailto: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.”<sup>1</sup>*

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.”*

---

<sup>1</sup> 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.<sup>2</sup>

- 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;<sup>3</sup> 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)

---

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

<sup>3</sup> <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%22%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,<sup>4</sup> 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;<sup>5</sup>

- 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."*<sup>6</sup>

---

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

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

<sup>6</sup> <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;<sup>7</sup>
- 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

---

<sup>7</sup> 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

## **Annex A-3**

## 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".<sup>1</sup>

---

<sup>1</sup> 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.”<sup>2</sup>*

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

---

<sup>2</sup> 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),<sup>3</sup> but is also recognized by the ICDR and ICANN as an established institution associated with a clearly delineated community.<sup>4</sup>

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*

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

<sup>4</sup> 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 Economist<sup>5</sup> and the New York Times,<sup>6</sup> 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

---

<sup>5</sup> <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>;

<sup>6</sup> <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”*.<sup>7</sup>

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

---

<sup>7</sup> 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 A-4**



## Response to Documentary Information Disclosure Policy Request

To: Bart Lieben, Bart Lieben BV ovve BVBA

Date: 31 October 2014

Re: Request No. 20141022-2

---

Thank you for your Request for Information dated 22 October 2014 (the “Request”), which was submitted through the Internet Corporation for Assigned Names and Numbers’ (“ICANN’s”) Documentary Information Disclosure Policy (“DIDP”). For reference, a copy of your Request is attached to the email forwarding this Response.

### **Items Requested:**

Your Request seeks the following:

- (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 Bylaws;
- (4) statements, documents, 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 [for .GAY that did not prevail in the CPE];
- (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: [relating to the panel’s determination of each individual criterion].

## Response

Community Priority Evaluations (“CPEs”) are performed by an independent community panel that is coordinated by the Economist Intelligent Unit (“EIU”), an independent, third-party company that contracts with ICANN to perform that coordination role. The CPE standards set forth in Section 4.2 of the Applicant Guidebook (“Guidebook”) are available at <http://newgtlds.icann.org/en/applicants/agb>. The CPE Panel Process Document (at <http://newgtlds.icann.org/en/applicants/cpe>) and the CPE Guidelines (at <http://newgtlds.icann.org/en/applicants/cpe>) provide more information on the CPE process. The Guidebook, CPE Panel Process Document, and the CPE Guidelines set forth the guidelines, procedures, standards and criteria applied to CPEs, and make clear that the EIU and its designated panelists are the only persons or entities involved in the provision of CPEs.

For item 1, there is a single contract at issue, the contract between ICANN and the EIU for the coordination of the independent community panels to perform CPEs in the New gTLD Program. ICANN does not contract with individuals or individual panelists to perform CPEs. The contract between ICANN and the EIU is not appropriate for public disclosure through the DIDP. The contract includes a confidentiality clause barring ICANN from disclosing the agreement as requested. The following Defined Conditions for Nondisclosure apply to the requested contract:

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

Item 2 seeks “the connection [to the targeted community], experience level and qualification[s]” of “the members of the CPE Panel” that reviewed the Requester’s application. ICANN (either Board or staff) is not involved with the selection of the CPE panel’s two individual evaluators that perform the scoring in each CPE process (the “CPE Panel”), nor is ICANN provided with information about who the evaluators on any individual panel may be. The coordination of the CPE Panel, as explained in the CPE Panel Process Document, is entirely within the work of the EIU’s team. ICANN therefore does not have any documentation regarding the “connection, experience level and qualification[s]” of the CPE Panel members as requested in Item 2.

For item 3, which seeks “policies, guidelines, directives, instructions or guidance given by ICANN relating to” the CPE process, to the extent that this is seeking information external to the types of directives that would be incorporated into a contract, much of that information is already incorporated into the publicly available documents identified above. Similarly, for items 3, 4, 5 and 6, ICANN has previously indicated in response to Request No. 20140804-1 that ICANN has communications with persons at EIU that are not involved in the scoring of a CPE (but otherwise assist in the facilitation of a particular CPE), and also previously indicated that those communications are not appropriate for public disclosure.

Items 4, 5 and 6 seek extensive, detailed information regarding the materials reviewed and the analysis conducted by the CPE Panel in making its determination that the .GAY application did not prevail in the CPE. For instance, the Requester seeks “information that is not in the public domain,” “internal reports,” “detailed information in relation to [...] information disregarded or considered irrelevant,” and specific information regarding the CPE Panel’s determination as to each criterion.<sup>1</sup>

To help assure independence of the process and evaluation of CPEs, ICANN (either Board or staff) is not involved with the CPE Panel’s evaluation of criteria, scoring decisions, or underlying analyses. The coordination of the CPE Panel, as explained above and in the CPE Panel Process Document, is entirely within the work of the EIU’s team. ICANN does not have, nor does it collect or maintain, the work papers of the individual CPE Panels (including the .GAY CPE Panel). The end result of the CPE Panel’s analysis is the CPE Report, which explains the CPE Panel’s determinations and scoring, and is available at <https://www.icann.org/sites/default/files/tlds/eco/eco-cpe-1-912-59314-en.pdf>.

In accordance with the Panel Process Document, the CPE Panel reviews documents and communications that are publicly available through a number of resources, such as: (a) dotgay’s application for .GAY available at <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/444>; (b) the New gTLD Correspondence webpage<sup>2</sup> available at <http://newgtlds.icann.org/en/program-status/correspondence>; (c)

---

<sup>1</sup> ICANN is not aware of any “other individuals or organizations” outside of the EIU and the CPE Panel that were “involved in the Community Priority Evaluation” of dotgay LLC’s .GAY application.

<sup>2</sup> Some examples of communications from the Correspondence webpage relating to dotgay LLC’s application for .GAY include: Letter from Marc-Antoine Saumier, Quebec Gay Chamber of Commerce - <https://www.icann.org/en/system/files/correspondence/baxter-to-icann-27may14-en.pdf>; Letter from Gregory T. Angelo, Log Cabin Republicans - <https://www.icann.org/en/system/files/correspondence/baxter-to-icann-07may14-en.pdf>; Numerous letters of support from various organizations (submitted by dotgay) - <https://www.icann.org/en/system/files/correspondence/baxter-to-icann-10oct13-en.pdf>; Letter from Andrew Merriam, Top Level Design, LLC (on behalf of other .gay and .lgbt applicants, Top Level Design, LLC, Top Level Domain Holdings, LTD, United TLD

the Applicant Comment Forum<sup>3</sup> available at <https://gtldcomment.icann.org/comments-feedback/applicationcomment/viewcomments>; and (d) the Objection Determinations<sup>4</sup> webpage available at <http://newgtlds.icann.org/en/program-status/odr/determination>.

As such, to the extent that ICANN has documentation responsive to Items 3, 4, 5 and 6, such documents are either already public or subject to certain of the Defined Conditions for Nondisclosure set forth in the DIDP:

- 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.
- 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

---

Holdco Ltd., Afilias, LTD) -

<https://www.icann.org/en/system/files/correspondence/merriam-to-chalaby-willet-06nov13-en.pdf>; and Email from Rob Schlein, Metroplex Republicans of Dallas - <https://www.icann.org/en/system/files/correspondence/schlein-to-chehade-icann-board-06nov13-en.pdf>.

<sup>3</sup> Some examples of comments from the Applicant Comment Forum relating to dotgay LLC's application for .GAY include: Comment from Dean Nelson, GayWhistler's WinterPRIDE – <https://gtldcomment.icann.org/comments-feedback/applicationcomment/commentdetails/12473>; Comment from Christopher Wood, LGBT Technology Partnership - <https://gtldcomment.icann.org/comments-feedback/applicationcomment/commentdetails/12448>; Comment from R. Bruce McDonald, Canadian Gay & Lesbian Chamber of Commerce - <https://gtldcomment.icann.org/comments-feedback/applicationcomment/commentdetails/12453>; Comment from Grant - <https://gtldcomment.icann.org/comments-feedback/applicationcomment/commentdetails/12441>; Comment from William T. Patton - <https://gtldcomment.icann.org/comments-feedback/applicationcomment/commentdetails/12439>; and Comment from Nash Jones - <https://gtldcomment.icann.org/comments-feedback/applicationcomment/commentdetails/12410>.

<sup>4</sup> The Objection Determination Page includes a determination on an objection to the dotgay llc application for .GAY, at <http://newgtlds.icann.org/sites/default/files/drsp/25sep13/determination-1-1-1713-23699-en.pdf>.

between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.

- 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.
- Confidential business information and/or internal policies and procedures.
- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.

Although your analysis in the Request concluded that no Conditions for Nondisclosure should apply, ICANN must independently undertake the analysis of each Condition as it applies to the documentation at issue, and make the final determination as to whether any Nondisclosure Conditions apply. Here, for example, ICANN cannot violate contractual conditions that require ICANN to maintain items as confidential solely because the Request proffers that no such conditions apply. Similarly, ICANN does not release draft documentation – particularly if draft documentation was shared for the purpose of facilitating deliberations or decision making – because drafts are not reliable sources of information regarding what actually occurred or standards that were actually applied.

For each of the items identified above as subject to Defined Conditions of Nondisclosure, ICANN has determined that there are no particular circumstances for which the public interest in disclosing the information outweighs the harm that may be caused to ICANN, its contractual relationships and its contractors’ deliberative processes by the requested disclosure.

### **About DIDP**

ICANN’s DIDP is limited to requests for information already in existence within ICANN that is not publicly available. In addition, the DIDP sets forth Defined Conditions of Nondisclosure. To review a copy of the DIDP, please see <https://www.icann.org/resources/pages/didp-2012-02-25-en>. ICANN makes every effort to be as responsive as possible to the entirety of your Request.

We hope this information is helpful. If you have any further inquiries, please forward them to [didp@icann.org](mailto:didp@icann.org).

## **Annex B-1**

## **SUMMARY -- PRINCIPLES, RECOMMENDATIONS & IMPLEMENTATION GUIDELINES**

1. This section sets out, in table form, the set of Principles, proposed Policy Recommendations and Guidelines that the Committee has derived through its work. The addition of new gTLDs will be done in accordance with ICANN's primary mission which is to ensure the security and stability of the DNS and, in particular, the Internet's root server system[\[24\]](#).
2. The Principles are a combination of GNSO Committee priorities, ICANN staff implementation principles developed in tandem with the Committee and the March 2007 GAC Public Policy Principles on New Top-Level Domains. The Principles are supported by all GNSO Constituencies.[\[25\]](#)
3. ICANN's Mission and Core Values were key reference points for the development of the Committee's Principles, Recommendations and Implementation Guidelines. These are referenced in the right-hand column of the tables below.
4. The Principles have support from all GNSO Constituencies.

	PRINCIPLES	MISSION & CORE VALUES
A	New generic top-level domains (gTLDs) must be introduced in an orderly, timely and predictable way.	M1 & CV1 & 2, 4-10
B	Some new generic top-level domains should be internationalised domain names (IDNs) subject to the approval of IDNs being available in the root.	M1-3 & CV 1, 4 & 6
C	The reasons for introducing new top-level domains include that there is demand from potential applicants for new top-level domains in both ASCII and IDN formats. In addition the introduction of new top-level domain application process has the potential to promote competition in the provision of registry services, to add to consumer choice, market differentiation and geographical and service-provider diversity.	M3 & CV 4-10
D	A set of technical criteria must be used for assessing a new gTLD registry applicant to minimise the risk of harming the operational stability, security and global interoperability of the Internet.	M1-3 & CV 1
E	A set of capability criteria for a new gTLD registry applicant must be used to provide an assurance that an applicant has the capability to meets its obligations under the terms of ICANN's registry agreement.	M1-3 & CV 1
F	A set of operational criteria must be set out in contractual conditions in the registry agreement to ensure compliance with ICANN policies.	M1-3 & CV 1
G	The string evaluation process must not infringe the applicant's freedom of expression rights that are protected under internationally recognized principles of law.	



	RECOMMENDATIONS <a href="#">[26]</a>	MISSION & CORE VALUES
1	<p>ICANN must implement a process that allows the introduction of new top-level domains.</p> <p>The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination.</p> <p>All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.</p>	M1-3 & CV1-11
2	<p>Strings must not be confusingly similar to an existing top-level domain or a Reserved Name.</p>	M1-3 & C1-6-11
3	<p>Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law.</p> <p>Examples of these legal rights that are internationally recognized include, but are not limited to, rights defined in the Paris Convention for the Protection of Industry Property (in particular trademark rights), the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) (in particular freedom of expression rights).</p>	CV3
4	<p>Strings must not cause any technical instability.</p>	M1-3 & CV 1
5	<p>Strings must not be a Reserved Word<a href="#">[27]</a>.</p>	M1-3 & CV 1 & 3

6*	<p>Strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law.</p> <p>Examples of such principles of law include, but are not limited to, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Convention on the Elimination of All Forms of Racial Discrimination, intellectual property treaties administered by the World Intellectual Property Organisation (WIPO) and the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS).</p>	M3 & CV 4
7	Applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out.	M1-3 & CV1
8	Applicants must be able to demonstrate their financial and organisational operational capability.	M1-3 & CV1
9	There must be a clear and pre-published application process using objective and measurable criteria.	M3 & CV6-9
10	There must be a base contract provided to applicants at the beginning of the application process.	CV7-9
11	[Replaced with Recommendation 20 and Implementation Guideline P and inserted into Term of Reference 3 Allocation Methods section]	
12	Dispute resolution and challenge processes must be established prior to the start of the process.	CV7-9
13	Applications must initially be assessed in rounds until the scale of demand is clear.	CV7-9

14	The initial registry agreement term must be of a commercially reasonable length.	CV5-9
15	There must be renewal expectancy.	CV5-9
16	Registries must apply existing Consensus Policies and adopt new Consensus Policies as they are approved.	CV5-9
17	A clear compliance and sanctions process must be set out in the base contract which could lead to contract termination.	M1 & CV1
18	If an applicant offers an IDN service, then ICANN's IDN guidelines[28] must be followed.	M1 & CV1
19	Registries must use only ICANN accredited registrars in registering domain names and may not discriminate among such accredited registrars.	M1 & CV1
20*	An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted.	

\* The NCUC submitted Minority Statements on Recommendations 6 and 20. The remainder of the Recommendations have support from all GNSO Constituencies.

	IMPLEMENTATION GUIDELINES	MISSION & CORE VALUES
IG A	The application process will provide a pre-defined roadmap for applicants that encourages the submission of applications for new top-level domains.	CV 2, 5, 6, 8 & 9
IG B	Application fees will be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process.	CV 5, 6, 8 & 9

	Application fees may differ for applicants.	
IG C	ICANN will provide frequent communications with applicants and the public including comment forums.	CV 9 & 10
IG D	A first come first served processing schedule within the application round will be implemented and will continue for an ongoing process, if necessary.  Applications will be time and date stamped on receipt.	CV 8-10
IG E	The application submission date will be at least four months after the issue of the Request for Proposal and ICANN will promote the opening of the application round.	CV 9 & 10
IG F*	If there is contention for strings, applicants may <sup>[29]</sup> :  i) resolve contention between them within a pre-established timeframe  ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention and;  iii) the ICANN Board may be used to make a final decision, using advice from staff and expert panels.	CV 7-10
IG H*	Where an applicant lays any claim that the TLD is intended to support a particular community such as a sponsored TLD, or any other TLD intended for a specified community, that claim will be taken on trust with the following exceptions:  (i) the claim relates to a string that is also subject to another application and the claim to support a community is being used to gain priority for the application; and  (ii) a formal objection process is initiated.  Under these exceptions, Staff Evaluators will devise criteria and	CV 7 - 10

	<p>procedures to investigate the claim.</p> <p>Under exception (ii), an expert panel will apply the process, guidelines, and definitions set forth in IG P.</p>	
IG H	External dispute providers will give decisions on objections.	CV 10
IG I	An applicant granted a TLD string must use it within a fixed timeframe which will be specified in the application process.	CV 10
IG J	The base contract should balance market certainty and flexibility for ICANN to accommodate a rapidly changing market place.	CV 4-10
IG K	ICANN should take a consistent approach to the establishment of registry fees.	CV 5
IG L	The use of personal data must be limited to the purpose for which it is collected.	CV 8
IG M	ICANN may establish a capacity building and support mechanism aiming at facilitating effective communication on important and technical Internet governance functions in a way that no longer requires all participants in the conversation to be able to read and write English <sup>[30]</sup> .	CV 3 - 7
IG N	ICANN may put in place a fee reduction scheme for gTLD applicants from economies classified by the UN as least developed.	CV 3 - 7
IG O	ICANN may put in place systems that could provide information about the gTLD process in major languages other than English, for example, in the six working languages of the United Nations.	CV 8 -10
IG P*	<p>The following process, definitions and guidelines refer to Recommendation 20.</p> <p><b>Process</b></p> <p>Opposition must be objection based.</p> <p>Determination will be made by a dispute resolution panel constituted for the purpose.</p> <p>The objector must provide verifiable evidence that it is an established institution of the community (perhaps like the RSTEP pool of panelists</p>	

from which a small panel would be constituted for each objection).

### **Guidelines**

The task of the panel is the determination of substantial opposition.

- a) **substantial** – in determining substantial the panel will assess the following: signification portion, community, explicitly targeting, implicitly targeting, established institution, formal existence, detriment
- b) **significant portion** – in determining significant portion the panel will assess the balance between the level of objection submitted by one or more established institutions and the level of support provided in the application from one or more established institutions. The panel will assess significance proportionate to the explicit or implicit targeting.
- c) **community** – community should be interpreted broadly and will include, for example, an economic sector, a cultural community, or a linguistic community. It may be a closely related community which believes it is impacted.
- d) **explicitly targeting** – explicitly targeting means there is a description of the intended use of the TLD in the application.
- e) **implicitly targeting** – implicitly targeting means that the objector makes an assumption of targeting or that the objector believes there may be confusion by users over its intended use.
- f) **established institution** – an institution that has been in formal existence for at least 5 years. In exceptional cases, standing may be granted to an institution that has been in existence for

	<p>fewer than 5 years.</p> <p>Exceptional circumstances include but are not limited to a re-organization, merger or an inherently younger community.</p> <p>The following ICANN organizations are defined as established institutions: GAC, ALAC, GNSO, ccNSO, ASO.</p> <p>g) <b>formal existence</b> – formal existence may be demonstrated by appropriate public registration, public historical evidence, validation by a government, intergovernmental organization, international treaty organization or similar.</p> <p>h) <b>detriment</b> – the objector must provide sufficient evidence to allow the panel to determine that there would be a likelihood of detriment to the rights or legitimate interests of the community or to users more widely.</p>	
IG Q	ICANN staff will provide an automatic reply to all those who submit public comments that will explain the objection procedure.	
IG R	Once formal objections or disputes are accepted for review there will be a cooling off period to allow parties to resolve the dispute or objection before review by the panel is initiated.	

\* The NCUC submitted Minority Statements on Implementation Guidelines F, H & P. The remainder of the Implementation Guidelines have support from all GNSO Constituencies.

1. This set of implementation guidelines is the result of detailed discussion, particularly with respect to the two *ICANN Staff Discussion Points*[\[31\]](#) documents that were prepared to facilitate consultation with the GNSO Committee about the implementation impacts of the proposed policy Recommendations. The Implementation Guidelines will be used to inform the final Implementation Plan which is approved by the ICANN Board

2. The *Discussion Points* documents contain draft flowcharts which have been developed by the Implementation Team and which will be updated, based on the final vote of the GNSO Council and the direction of the ICANN Board. The *Discussion Points* documents have been used in the ongoing internal implementation discussions that have focused on ensuring that draft recommendations proposed by the Committee are implementable in an efficient and transparent manner<sup>[32]</sup>. The flowchart setting out the proposed Contention Evaluation Process is a more detailed component within the Application Evaluation Process and will be amended to take into account the inputs from Recommendation 20 and its related Implementation Guidelines.

3. This policy development process has been designed to produce a systemised and ongoing mechanism for applicants to propose new top-level domains. The Request for Proposals (RFP) for the first round will include scheduling information for the subsequent rounds to occur within one year. After the first round of new applications, the application system will be evaluated by ICANN's TLDs Project Office to assess the effectiveness of the application system. Success metrics will be developed and any necessary adjustments made to the process for subsequent rounds.

4. The following sections set out in detail the explanation for the Committee's recommendations for each Term of Reference.



## **Annex B-2**

[Français](#) [日本語](#)

## COMMUNITY PRIORITY EVALUATION (CPE)

### CPE Page Menu

- [News & Views](#)
- [Understanding CPE](#)
- [CPE Eligibility](#)
- [CPE Status](#)
- [News & Views \(Archive\)](#)
- [CPE Resources \(Archive\)](#)

### News & Views

#### 7 October 2014 – CPE Results Released

ICANN has published the Community Priority Evaluation (CPE) Results for 3 applications, and updated application and contention set statuses accordingly.

- [View CPE results \(/en/applicants/cpe#invitations\)](#)
- [View Contention Set Status \(https://gtdresult.icann.org/application-result/applicationstatus/stringcontentionstatus\)](https://gtdresult.icann.org/application-result/applicationstatus/stringcontentionstatus)

## Understanding CPE

### Overview

Community Priority Evaluation (CPE) is a method to resolve string contention, described in section 4.2 of the [Applicant Guidebook \(AGB\)](#) ([/en/applicants/agb](#)). It will only occur if a community application is both in contention and elects to pursue CPE.

CPE is an independent analysis and any scores received in previous evaluation steps are not carried forward. CPE will be performed by a community priority panel appointed by ICANN – the Community Priority Panel will review and score the one or more community applications in a contention set, having elected CPE, against the four following criteria:

- Community Establishment
- Nexus between Proposed String and Community
- Registration Policies
- Community Endorsement

An application must score at least 14 points to prevail in a community priority evaluation. See section 4.2 of the Applicant Guidebook for full detail. For details regarding the panel's evaluation process, see the [CPE Panel Process Document \(/en/applicants/cpe/panel-process-07aug14-en.pdf\)](#) [PDF, 314 KB] under Resources.

### CPE Eligibility

Fulfillment of the CPE Eligibility criteria explained below permits an applicant to begin the CPE process and ensures that applications as well as contention sets are in stable, viable states, i.e. are not at risk of an open matter affecting whether they will proceed.

### **Eligibility Requirements for Standard CPE Invitation**

Once an application is eligible for CPE, it will be invited to CPE and have up to 21 days to accept the invitation and pay the CPE fees. The invitations will be posted to this page in the CPE Status section. The evaluation will begin no sooner than 14 days after the invitation to allow for final submission of application comments and correspondence to ICANN regarding the application.

To be eligible to begin Standard CPE Processing, an application must:

- be a self-designated Community Application per section 1.2.3 of the AGB
- have an application status of "Active"
- be in an unresolved contention set (contention set status is either "Active" or "On-Hold" and at least one other application in the set has a status of either "Active or On-Hold")
- not have a pending change request
- not be in an active comment window for a recently approved changed request

Additionally, as per section 4.2 of the AGB, all remaining members of the contention set must have completed all previous stages of the process. All remaining applications in the contention set must:

- have completed evaluation
- have no pending objections
- have addressed all applicable GAC Advice
- not be classified in the "High Risk" category of the Name Collision Occurrence Management Framework

### **Eligibility Requirements for Accelerated Invitation to CPE**

Once a community application has met the requirements listed below, ICANN will notify them of the option to request an Accelerated Invitation to CPE. An applicant is able to request an Accelerated Invitation to CPE when outstanding eligibility criteria do not have the potential to impact the community applicant's membership in a contention set and/or when the contention set as a whole may not have met all eligibility requirements for the standard CPE Invitation process.

After an Applicant has requested the Accelerated Invitation, the standard CPE Invitation process will commence, including posting on this web page.

To be eligible for an Accelerated Invitation to CPE, an application must:

- be a self-designated Community Application per section 1.2.3 of the AGB
- have a status of "Active" or "On-Hold"
- be in an unresolved contention set (contention set status is either "Active" or "On-Hold" and at least one other application in the set has a status of either "Active or On-Hold")
- not have a pending change request
- not be in an active application comment window for an approved changed request
- have addressed all applicable GAC Advice

Additionally, as per section 4.2 of the AGB, all remaining members of the contention set must have completed all previous stages of the process. All remaining applications in the contention set must:

- have completed evaluation
- have no pending objections
- not be classified in the "High Risk" category of the Name Collision Occurrence Management Framework

## CPE Resources

- [CPE Panel Process Document \(/en/applicants/cpe/panel-process-07aug14-en.pdf\)](/en/applicants/cpe/panel-process-07aug14-en.pdf) [PDF, 314 KB] {06 August 2014}

The Economist Intelligence Unit's Process documentation for Community Priority Evaluation is posted for informational purposes to provide transparency of the panel's evaluation process.

- [CPE Guidelines \(/en/applicants/cpe/guidelines-27sep13-en.pdf\)](/en/applicants/cpe/guidelines-27sep13-en.pdf) [PDF 1.85 MB] {27 September 2013}

ICANN has published the CPE Guidelines produced by the Economist Intelligence Unit after considering ICANN community feedback on the first draft. The Guidelines are an accompanying document to the AGB, and are meant to provide additional clarity around the scoring principles outlined in the AGB. The Guidelines are intended to increase transparency, fairness and consistency in the evaluation process.

- [Updated CPE Frequently Asked Questions \(FAQs\) \(/en/applicants/cpe/faqs-10sep14-en.pdf\)](/en/applicants/cpe/faqs-10sep14-en.pdf) [PDF, 377 KB] (10 SEPT 2014)

This document contains answers to common questions about CPE from applicants and other interested community members. The update from 19 September 2014 includes revisions to existing answers based on changes put forth in the "[Update on Application Status and Contention Sets](/en/applicants/advisories/application-contention-set-14mar14-en)" Advisory (</en/applicants/advisories/application-contention-set-14mar14-en>).

- [CPE Processing Timeline \(/en/applicants/cpe/timeline-10sep14-en.pdf\)](/en/applicants/cpe/timeline-10sep14-en.pdf) [PDF, 54 KB] {10 SEPT 2014}

The timeline has been updated to reflect changes made in the FAQ revision from 13 Aug 2014.

## CPE Status

ICANN began inviting [eligible](#) applicants to elect the CPE process on 9 October 2013. The invitation date and evaluation results are represented in the table below. **Important:** application comments and letters of support or opposition must be submitted within 14 days of the CPE Invitation Date in order to be considered by the CPE Panel. [Access the Application Comments page](#) (<https://gtldcomment.icann.org/applicationcomment/viewcomments>).

Application ID	String	Contention Set Number	Applicant	CPE Invitation Date	Elected	Status
1-1000-62742	IMMO	99	STARTING DOT LIMITED	09 October 2013	Yes	<a href="http://www.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-en.pdf">Evaluation Complete (http://www.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-en.pdf)</a> (17 March 2014)
1-1025-18840	TAXI	225	Taxi Pay GmbH	09 October 2013	Yes	<a href="http://www.icann.org/sites/default/files/tlds/taxi/taxi-cpe-1-1025-18840-en.pdf">Evaluation Complete (http://www.icann.org/sites/default/files/tlds/taxi/taxi-cpe-1-1025-18840-en.pdf)</a> (17 March 2014)
1-901-9391	OSAKA	130	Interlink Co.,	06 November	Yes	<a href="http://www.icann.org/sites/default/files/tlds/osaka/osaka-cpe-1-901-9391-en.pdf">Evaluation Complete (http://www.icann.org/sites/default/files/tlds/osaka/osaka-cpe-1-901-9391-en.pdf)</a>

			Ltd.	2013		(30 July 2014)
1-1723-69677	TENNIS	136	TENNIS AUSTRALIA LTD	06 November 2013	Yes	<p><a href="http://www.icann.org/sites/default/files/tlds/tennis/tennis-cpe-1-1723-69677-en.pdf">Evaluation Complete (http://www.icann.org/sites/default/files/tlds/tennis/tennis-cpe-1-1723-69677-en.pdf)</a></p> <p>(17 March 2014)</p>
1-1888-47714	MLS	144	The Canadian Real Estate Association	11 December 2013	Yes	<p><a href="http://www.icann.org/sites/default/files/tlds/mls/mls-cpe-1-1888-47714-en.pdf">Evaluation Complete (http://www.icann.org/sites/default/files/tlds/mls/mls-cpe-1-1888-47714-en.pdf)</a></p> <p>(17 March 2014)</p>
1-1273-63351	GMBH	30	TLDDOT GmbH	19 February 2014	Yes	<p><a href="http://www.icann.org/sites/default/files/tlds/gmbh/gmbh-cpe-1-1273-63351-en.pdf">Evaluation Complete (http://www.icann.org/sites/default/files/tlds/gmbh/gmbh-cpe-1-1273-63351-en.pdf)</a></p> <p>(12 June 2014)</p>
1-880-17627	LLC	81	Dot Registry LLC	19 February 2014	Yes	<p><a href="http://www.icann.org/sites/default/files/tlds/llc/llc-cpe-1-880-17627-en.pdf">Evaluation Complete (http://www.icann.org/sites/default/files/tlds/llc/llc-cpe-1-880-17627-en.pdf)</a></p> <p>(12 June 2014)</p>
1-880-35979	INC	102	Dot Registry LLC	19 February 2014	Yes	<p><a href="http://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf">Evaluation Complete (http://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf)</a></p> <p>(12 June 2014)</p>
1-880-35508	LLP	45	Dot Registry LLC	19 February 2014	Yes	<p><a href="http://www.icann.org/sites/default/files/tlds/llp/llp-cpe-1-880-35508-en.pdf">Evaluation Complete (http://www.icann.org/sites/default/files/tlds/llp/llp-cpe-1-880-35508-en.pdf)</a></p> <p>(12 June 2014)</p>
						<p><a href="#">Evaluation Complete</a></p>

1-1083-39123	RADIO	33	European Broadcasting Union (EBU)	19 February 2014	Yes	<a href="http://www.icann.org/sites/default/files/tlds/radio/radio-cpe-1-1083-39123-en.pdf">http://www.icann.org/sites/default/files/tlds/radio/radio-cpe-1-1083-39123-en.pdf</a>  (10 September 2014)
1-1032-95136	HOTEL	51	HOTEL Top-Level-Domain S.a.r.l	19 February 2014	Yes	<a href="http://www.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf">Evaluation Complete http://www.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf</a>  (12 June 2014)
1-1675-51302	ART	72	EFLUX.ART, LLC	19 February 2014	Yes	<a href="http://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1675-51302-en.pdf">Evaluation Complete http://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1675-51302-en.pdf</a>  (10 September 2014)
1-1097-20833	ART	72	Dadotart, Inc.	20 February 2014	Yes	<a href="http://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1097-20833-en.pdf">Evaluation Complete http://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1097-20833-en.pdf</a>  (10 September 2014)
1-912-59314	ECO	22	Big Room Inc.	12 March 2014	Yes	<a href="http://www.icann.org/sites/default/files/tlds/eco/eco-cpe-1-912-59314-en.pdf">Evaluation Complete http://www.icann.org/sites/default/files/tlds/eco/eco-cpe-1-912-59314-en.pdf</a>  (7 October 2014)
1-1309-46695	KIDS	1,330	DotKids Foundation Limited	16 April 2014	–	Pending Eligibility
1-1713-23699	GAY	179	dotgay llc	23 April 2014	Yes	<a href="http://www.icann.org/sites/default/files/tlds/gay/gay-cpe-1-1713-23699-en.pdf">Evaluation Complete http://www.icann.org/sites/default/files/tlds/gay/gay-cpe-1-1713-23699-en.pdf</a>  (7 October 2014)
1-959-51046	MUSIC	106	.music LLC	18 June 2014	Yes	<a href="http://www.icann.org/sites/default/files/tlds/music/music-cpe-1-959-51046-en.pdf">Evaluation Complete http://www.icann.org/sites/default/files/tlds/music/music-cpe-1-959-51046-en.pdf</a>

						(7 October 2014)
1-890-52063	SHOP	1593	GMO Registry, Inc.	8 October 2014	Yes	Evaluation in Progress

## CPE Archive

### News & Views Archive

Below find archival materials documenting milestones in the formation and implementation of Community Priority Evaluation, listed in reverse chronological order.

#### 10 September 2014 – CPE Results Released

ICANN has published the Community Priority Evaluation (CPE) Results for 3 applications, and updated application and contention set statuses accordingly.

- [View CPE results \(/en/applicants/cpe#invitations\)](/en/applicants/cpe#invitations)
- [View Contention Set Status \(https://gtldresult.icann.org/application-result/applicationstatus/stringcontentionstatus\)](https://gtldresult.icann.org/application-result/applicationstatus/stringcontentionstatus)

#### 10 September 2014 – CPE Eligibility Criteria, FAQs and Timeline Updated

ICANN has made minor revisions to the CPE eligibility criteria for both a standard invitation and an accelerated invitation to align with recent changes put forth in the ["Update on Application Status and Contention Sets" Advisory \(/en/applicants/advisories/application-contention-set-14mar14-en\)](/en/applicants/advisories/application-contention-set-14mar14-en). These revisions reflect the current definitions of "active" and "on-hold" for both applications and contention sets. For more details, please see the updated [eligibility criteria \(/en/applicants/cpe#eligibility\)](/en/applicants/cpe#eligibility) below. The corresponding questions and answers on the [FAQ page \(/en/applicants/cpe/faqs-10sep14-en.pdf\)](/en/applicants/cpe/faqs-10sep14-en.pdf) [PDF, 377 KB] have also been updated, and the timeline has also been updated to reflect changes made in the last FAQ revision.

#### 13 August 2014 – CPE Frequently Asked Questions (FAQs) Updated

ICANN has updated the CPE FAQs. The update includes revisions to existing answers based on lessons learned over the past nine months of CPE operations as well as the addition of answers to questions regarding Accelerated Invitation to CPE.

- [View CPE FAQs \(/en/applicants/cpe/faqs-13aug14-en.pdf\)](/en/applicants/cpe/faqs-13aug14-en.pdf) [PDF, 119 KB]

#### 7 August 2014 – Community Priority Evaluation (CPE) Panel Process Document Released

ICANN has published the Economist Intelligence Unit's (EIU) process documents for Community Priority Evaluation (CPE). This document provides detail of the process the EIU employs to perform the CPE.

- [View CPE Panel Process Document \(/en/applicants/cpe/panel-process-07aug14-en.pdf\)](/en/applicants/cpe/panel-process-07aug14-en.pdf) [PDF, 314 KB]

#### 30 July 2014 – Additional Community Priority Evaluation (CPE) Result Released

ICANN has published the Community Priority Evaluation (CPE) Results for 1 application, and updated application and contention set statuses accordingly.

- [View CPE results \(/en/applicants/cpe#invitations\)](/en/applicants/cpe#invitations)
- [View Contention Set Status \(https://gtldresult.icann.org/application-result/applicationstatus/stringcontentionstatus\)](https://gtldresult.icann.org/application-result/applicationstatus/stringcontentionstatus)



## 12 June 2014 – Additional Community Priority Evaluation (CPE) Results Released

ICANN has published the Community Priority Evaluation (CPE) Results for 5 applications, and updated application and contention set statuses accordingly.

- [View CPE results \(/en/applicants/cpe#invitations\)](/en/applicants/cpe#invitations)
- [View Contention Set Status \(https://gtldresult.icann.org/application-result/applicationstatus/stringcontentionstatus\)](https://gtldresult.icann.org/application-result/applicationstatus/stringcontentionstatus)

## 28 May 2014 – Accelerated Invitation to Elect CPE

In effort to maintain program momentum, ICANN has enhanced the CPE invitation process to allow for community applicants to begin the CPE process earlier. The new process provides the community applicant the ability to Opt-In to a CPE invite sooner than the standard Eligibility Criteria. If they qualify, the community applicant can request an invitation to elect CPE. This would allow them to initiate the CPE process sooner than current requirements allow. Select the following link for more information about the process

- [View Eligibility Criteria for Accelerated Invitation to Elect CPE](#)

## 18 March 2014 – First Community Priority Evaluation (CPE) Results Released

ICANN has published the first four results of the Community Priority Evaluation (CPE) process.

- [View CPE results](#)

## 25 October 2013 – Additional Community Priority Evaluation Resources Available

Community Priority Evaluation FAQs and a CPE processing timeline are now available.

- [View Resources](#)

## 09 October 2013 – CPE Invitations Sent to Eligible Applicants

Find out which applicants have been invited and where their applications are in the process. This information will be updated regularly as invitations are sent and evaluations are performed and completed.

- [Read the Announcement \(/en/announcements-and-media/announcement-27sep13-en\)](/en/announcements-and-media/announcement-27sep13-en)
- [View CPE Invitations](#)

## 27 September 2013 – Final Community Priority Evaluation Guidelines Published

The Economist Intelligence Unit finalized its CPE Guidelines after considering ICANN community feedback. The Guidelines have been made public to ensure quality, consistency and transparency in the evaluation process.

- [Read the Announcement \(/en/announcements-and-media/announcement-27sep13-en\)](/en/announcements-and-media/announcement-27sep13-en)
- [Download the CPE Guidelines \(/en/applicants/cpe/guidelines-27sep13-en.pdf\)](/en/applicants/cpe/guidelines-27sep13-en.pdf) [PDF, 1.85 MB]

## 10 September 2013 – CPE Teleconference Content Available

ICANN holds a teleconference to discuss the details of Community Priority Evaluation with applicants.

- [Teleconference Recording \(http://audio.icann.org/new-gtlds/cpe-10sep13-en.mp3\)](http://audio.icann.org/new-gtlds/cpe-10sep13-en.mp3) [MP3, 15.2 MB]
- [Additional Questions & Answers \(http://newgtlds.icann.org/en/applicants/cpe/podcast-qa-10sep13-en.pdf\)](http://newgtlds.icann.org/en/applicants/cpe/podcast-qa-10sep13-en.pdf) [PDF, 546 KB]

## 09 September 2013 – Feedback on Draft CPE Guidelines

Applicants respond to ICANN's call for input on the Community Priority Evaluation Guidelines created by panel firm EIU.

- [Draft CPE Guidelines \(/en/applicants/cpe/guidelines-16aug13-en.pdf\)](/en/applicants/cpe/guidelines-16aug13-en.pdf)
- [Community Feedback \(/en/applicants/cpe#guidelines\)](/en/applicants/cpe#guidelines)

## 16 August 2013 – CPE Draft Guidelines & Community Review

EIU, the CPE panel firm, develops a set of guidelines based on the criteria in the Applicant Guidebook to be used in the evaluation



process. Applicants and community members are invited to provide feedback.

- [Announcement: Community Priority Evaluation Guidelines Posted for Community Review and Input \(/en/announcements-and-media/announcement-4-16aug13-en\)](/en/announcements-and-media/announcement-4-16aug13-en)
- [Community Priority Evaluation \(CPE\) Guidelines \(/en/applicants/cpe/guidelines-16aug13-en.pdf\)](/en/applicants/cpe/guidelines-16aug13-en.pdf) [PDF, 803 KB]

### 16 August 2013 – CPE Resources

ICANN publishes a set of resources to guide eligible applicants through the Community Priority Evaluation process.

- [Community Priority Evaluation Resources \(/en/applicants/cpe#resources\)](/en/applicants/cpe#resources)

### 14 June 2013 – Community Priority Evaluation Early Election

ICANN offers a means for applicants to indicate their intent to elect for Community Priority Evaluation prior to the launch of CPE operations.

- [Community Priority Evaluation: Now Open for Early Election \(/en/announcements-and-media/announcement-4-14jun13-en\)](/en/announcements-and-media/announcement-4-14jun13-en)

### CPE Resources Archive

- [Draft CPE Guidelines \(/en/applicants/cpe/guidelines-16aug13-en.pdf\)](/en/applicants/cpe/guidelines-16aug13-en.pdf) [PDF, 803 KB] (Published 16 August 2013)  
Economist Intelligence Unit (EIU), the firm selected to manage Community Priority Evaluation, published a set of draft Guidelines that panelists will use to score Community applicants. Before finalizing, applicants and the community were invited to review and provide feedback.
- Community Feedback on Draft CPE Guidelines is available for review below:
  - [At-Large Advisory Committee \(ALAC\) \(http://atlarge.icann.org/en/correspondence/statement-cpe-guidelines-09sep13-en.pdf\)](http://atlarge.icann.org/en/correspondence/statement-cpe-guidelines-09sep13-en.pdf) [PDF, 252 KB]
  - [Big Room Inc. \(/en/applicants/cpe/guidelines-comment-big-room-02sep13-en.pdf\)](/en/applicants/cpe/guidelines-comment-big-room-02sep13-en.pdf) [PDF, 267 KB]
  - [Community TLD Applicant Group \(CTAG\) \(/en/applicants/cpe/guidelines-comment-ctag-29aug13-en.pdf\)](/en/applicants/cpe/guidelines-comment-ctag-29aug13-en.pdf) [PDF, 315 KB]
  - [Donuts Inc. \(/en/applicants/cpe/guidelines-comment-extend-donuts-20sep13-en.pdf\)](/en/applicants/cpe/guidelines-comment-extend-donuts-20sep13-en.pdf) [PDF, 41 KB]
  - [Donuts Inc. \(/en/applicants/cpe/guidelines-comment-donuts-20sep13-en.pdf\)](/en/applicants/cpe/guidelines-comment-donuts-20sep13-en.pdf) [PDF, 394 KB]
  - [DotMusic Limited \(/en/applicants/cpe/guidelines-comment-dotmusic-07sep13-en.pdf\)](/en/applicants/cpe/guidelines-comment-dotmusic-07sep13-en.pdf) [PDF, 581 KB]
  - [Dot Registry, LLC \(/en/applicants/cpe/guidelines-comment-dot-registry-04sep13-en.pdf\)](/en/applicants/cpe/guidelines-comment-dot-registry-04sep13-en.pdf) [PDF, 390 KB]
  - [.music llc \(/en/applicants/cpe/guidelines-comment-music-06sep13-en.pdf\)](/en/applicants/cpe/guidelines-comment-music-06sep13-en.pdf) [PDF, 155 KB]
  - [Radix, Top Level Domain Holdings / Minds & Machines, Famous Four Media, Fegistry, LLC \(/en/applicants/cpe/guidelines-comment-radix-minds-machines-20sep13-en.pdf\)](/en/applicants/cpe/guidelines-comment-radix-minds-machines-20sep13-en.pdf) [PDF, 108 KB]
  - [Radix, Top Level Domain Holdings / Minds & Machines, Famous Four Media, Fegistry, LLC \(/en/applicants/cpe/guidelines-comment-redline-radix-minds-machines-20sep13-en.pdf\)](/en/applicants/cpe/guidelines-comment-redline-radix-minds-machines-20sep13-en.pdf) [PDF, 316 KB]
  - [Ray Fassett \(/en/applicants/cpe/guidelines-comment-nexus-20sep13-en.pdf\)](/en/applicants/cpe/guidelines-comment-nexus-20sep13-en.pdf) [PDF, 760 KB]
  - [TLDDOT GmbH \(.GmbH Top-Level-Domain\) \(/en/applicants/cpe/guidelines-comment-tlddot-gmbh-30aug13-en.pdf\)](/en/applicants/cpe/guidelines-comment-tlddot-gmbh-30aug13-en.pdf) [PDF, 48 KB]

© 2014 Internet Corporation For Assigned Names and Numbers

[Site Map](#)

## **Annex B-3**

## **COMMUNITY PRIORITY EVALUATION PANEL AND ITS PROCESSES**

### **Overview**

At the time of submitting the new gTLD application, applicants had the opportunity to designate themselves as a community-based application, as prescribed in the section 1.2.3 of the Applicant Guidebook (AGB).

Community Priority Evaluation (CPE) is defined in section 4.2 of the AGB, and allows a community based-application to undergo an evaluation against the criteria as defined in section 4.2.3 of the AGB, to determine if the application warrants the minimum score of 14 points (out of a maximum of 16 points) to earn priority and thus win the contention set.

Only community-based applicants are eligible to participate in a community priority evaluation. A determination by a community priority panel, appointed by ICANN, must be made before a community name is awarded to an applicant. This determination will be based on the string and the completeness and validity of supporting documentation.

There are two possible outcomes to a Community Priority Evaluation:

- Determination that the application met the CPE requirements specified in the Applicant Guidebook (Section 4.2.2) to receive priority over other applications for the same or confusingly similar string = Prevailed.
- Determination that the application did not meet the CPE requirements specified in the Applicant Guidebook (Section 4.2.2) to receive priority over other applications for the same or confusingly similar string = Did not prevail.

Section 4.2.2 of the AGB prescribes that the Community Priority Evaluations will be conducted by an independent panel. ICANN selected the Economist Intelligence Unit (EIU) as the panel firm for Community Priority Evaluations.

### **The Economist Intelligence Unit**

The Economist Intelligence Unit (EIU) was selected as a Panel Firm for the gTLD evaluation process. The EIU is the business information arm of The Economist Group, publisher of The Economist. Through a global network of more than 500 analysts and contributors, the EIU continuously assesses political, economic, and business conditions in more than 200 countries. As the world's leading provider of country intelligence, the EIU helps executives, governments, and institutions by providing timely, reliable, and impartial analysis.

The evaluation process respects the principles of fairness, transparency, avoidance of potential conflicts of interest, and non-discrimination. Consistency of approach in scoring applications is of particular importance. In this regard, the Economist Intelligence Unit has more than six decades of experience building evaluative frameworks and benchmarking models for its clients, including governments, corporations, academic institutions and NGOs. Applying scoring systems to complex questions is a core competence.

### **EIU evaluators and core team**

The Community Priority Evaluation panel comprises a core team, in addition to several independent<sup>1</sup> evaluators. The core team comprises a Project Manager, who oversees the Community Priority Evaluation project, a Project Coordinator, who is in charge of the day-to-day management of the project and provides guidance to the independent evaluators, and other senior staff members, including The Economist Intelligence Unit's Executive Editor and Global Director of Public Policy. Together, this team assesses the evaluation results. Each application is assessed by seven individuals: two independent evaluators, and the core team, which comprises five people.

The following principles characterize the EIU evaluation process for gTLD applications:

- All EIU evaluators, including the core team, have ensured that no conflicts of interest exist.
- All EIU evaluators undergo regular training to ensure full understanding of all CPE requirements as listed in the Applicant Guidebook, as well as to ensure consistent judgment. This process included a pilot training process, which has been followed by regular training sessions to ensure that all evaluators have the same understanding of the evaluation process and procedures.
- EIU evaluators are highly qualified, they speak several languages and have expertise in applying criteria and standardized methodologies across a broad variety of issues in a consistent and systematic manner.
- Language skills and knowledge of specific regions are also considered in the selection of evaluators and the assignment of specific applications.

### **CPE Evaluation Process**

The EIU evaluates applications for gTLDs once they become eligible for review under CPE.

The evaluation process as described in section 4.2.3 of the Applicant Guidebook and discussed in the CPE Guidelines document is described below:

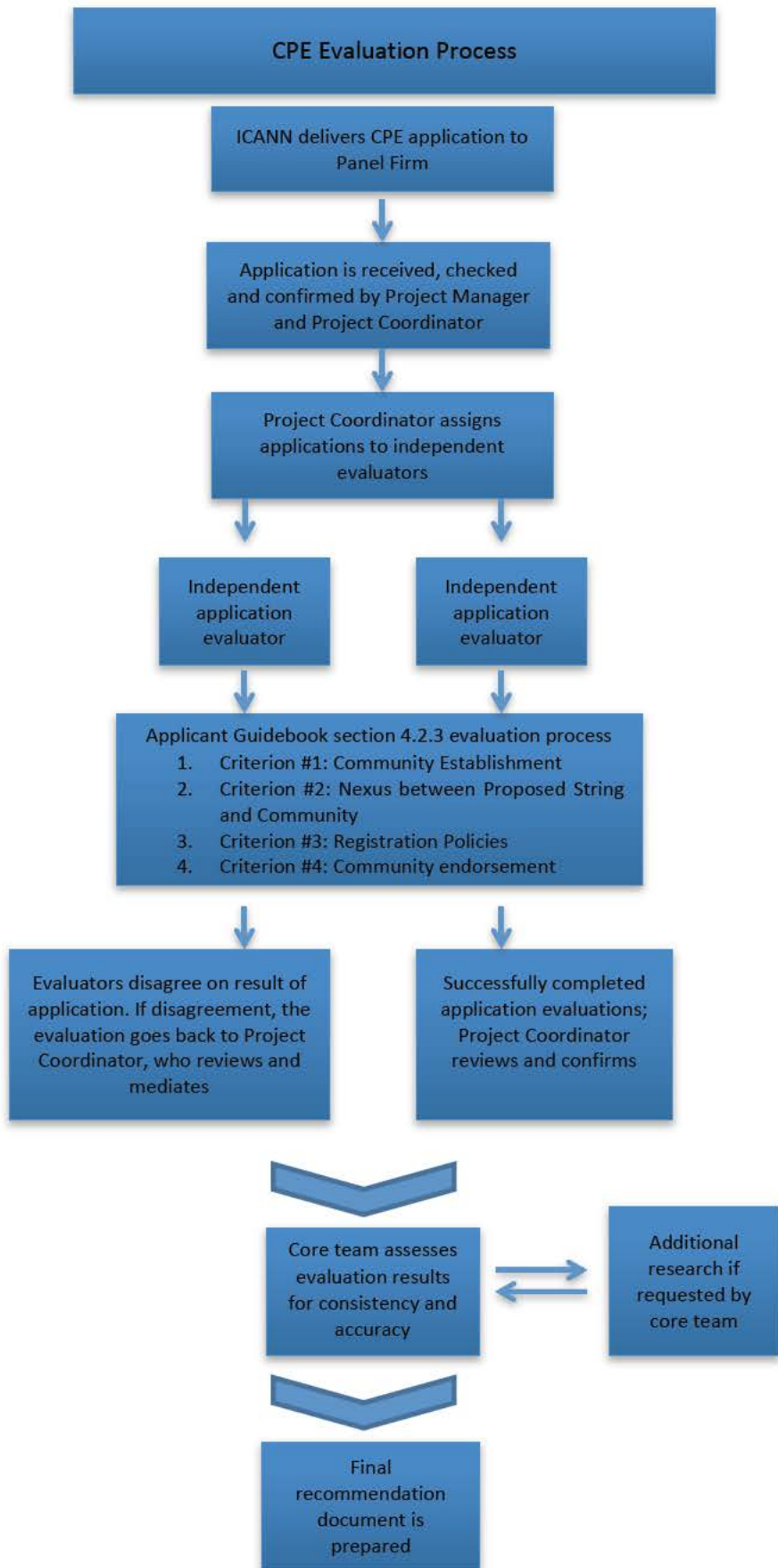
- The Panel Firm's Project Manager is notified by ICANN that an application for a gTLD is ready for CPE, and the application ID and public comments are delivered to the EIU. The EIU is responsible for gathering the application materials and other documentation, including letter(s) of support and relevant correspondence, from the public ICANN website. The EIU Project Manager reviews the application and associated materials, in conjunction with the EIU Project Coordinator. The Project Coordinator assigns the application to each of two evaluators, who work independently to assess and score the application.
- Each evaluator reviews the application and accompanying documentation, such as letter(s) of support and opposition. Based on this information and additional independent research, the evaluators assign scores to the four CPE criteria as defined in the Applicant Guidebook.
- As part of this process, one of the two evaluators assigned to assess the same string is asked to verify the letters of support and opposition. (Please see "Verification of letter(s) of support and opposition" section for further details.)
- When evaluating an application the CPE Panel also considers the public application comments. The public comments are provided to EIU by ICANN following the close of the 14-day window associated with the CPE invitation. For every comment of support/opposition received, the designated evaluator assesses the relevance of the organization of the poster along with the content of the comment. A separate verification of the comment author is not performed as the Application Comments

---

<sup>1</sup> The term "independent" means that the evaluators do not have any conflict of interest with CPE applicants. It also means that the evaluators sit outside the core EIU team; they provide individual evaluation results based on their assessment of the AGB criteria, application materials, and secondary research without any influence from core team members.

system requires that users register themselves with an active email account before they are allowed to post any comments. However, the evaluator will check the affiliated website to ascertain if the person sending the comment(s) is at that entity/organization named, unless the comment has been sent in an individual capacity.

- Once the two evaluators have completed this process, the evaluation results are reviewed by the Project Coordinator, who checks them for completeness and consistency with the procedures of the Applicant Guidebook.
- If the two evaluators disagree on one or more of the scores, the Project Coordinator mediates and works to achieve consensus, where possible.
- The Project Director and Project Coordinator, along with other members of the core team, meet to discuss the evaluators' results and to verify compliance with the Applicant Guidebook. Justifications for the scores are further refined and articulated in this phase.
- If the core team so decides, additional research may be carried out to answer questions that arise during the review, especially as they pertain to the qualitative aspects of the Applicant Guidebook scoring procedures.
- If the core team so decides, the EIU may provide a clarifying question (CQ) to be issued via ICANN to the applicant to clarify statements in the application materials and/or to inform the applicant that letter(s) of support could not be verified.
- When the core team achieves consensus on the scores for each application, an explanation, or justification, for each score is prepared. A final document with all scores and justifications for a given application, including a determination of whether the application earned the requisite 14 points for prevailing, is presented to ICANN.
- The Economist Intelligence Unit works with ICANN when questions arise or when additional process information may be required to evaluate an application.
- The Panel Firm exercises consistent judgment in making its evaluations in order to reach conclusions that are compelling and defensible, and documents the way in which it has done so in each case.



### Verification of letter(s) of support and opposition

As part of this CPE evaluation process, one of the two evaluators assigned to assess the same string verifies the letters of support and opposition. This process is outlined below:

- On a regular basis, the EIU reviews ICANN's public correspondence page (<http://newgtlds.icann.org/en/program-status/correspondence>) for recently received correspondence to assess whether it is relevant to an ongoing evaluation. If it is relevant, the public correspondence is provided to the evaluators assigned to the evaluation for review.
- For every letter of support/opposition received, the designated evaluator assesses both the relevance of the organization and the validity of the documentation. Only one of the two evaluators is responsible for the letter verification process.
- With few exceptions, verification emails are sent to every entity that has sent a letter(s) of support or opposition to validate their identity and authority.
- The exceptions noted above regarding sending verification letter(s) include but may not be limited to:
  - If there are no contact details included in the letter(s). However, the evaluator will attempt to obtain this information through independent research.
  - If the person sending the letters(s) does not represent an organization. However, if the content of the letter(s) suggests that the individual sending a letter has sent this letter(s) on behalf of an organization/entity the evaluator will attempt to validate this affiliation.
- The verification email for letter(s) of support/opposition requests the following information from the author of the letter:
  - Confirmation of the authenticity of the organization(s) letter.
  - Confirmation that the sender of the letter has the authority to indicate the organization(s) support/opposition for the application.
  - In instances where the letter(s) of support do not clearly and explicitly endorse the applicant, the verification email asks for confirmation as to whether or not the organization(s) explicitly supports the community based application.
- To provide every opportunity for a response, the evaluator regularly contacts the organization for a response by email and phone for a period of at least a month.
- A verbal acknowledgement is not sufficient. The contacted individual must send an email to the EIU acknowledging that the letter is authentic.

**Annex B-4**



# **Community Priority Evaluation (CPE) Guidelines**

**Prepared by The Economist Intelligence Unit**

## **Interconnection between Community Priority Evaluation (CPE) Guidelines and the Applicant Guidebook (AGB)**

The CPE Guidelines are an accompanying document to the AGB, and are meant to provide additional clarity around the process and scoring principles outlined in the AGB. This document does not modify the AGB framework, nor does it change the intent or standards laid out in the AGB. The Economist Intelligence Unit (EIU) is committed to evaluating each applicant under the criteria outlined in the AGB. The CPE Guidelines are intended to increase transparency, fairness and predictability around the assessment process.

## Criterion #1: Community Establishment

This section relates to the community as explicitly identified and defined according to statements in the application. (The implicit reach of the applied string is not considered here, but taken into account when scoring Criterion #2, “Nexus between Proposed String and Community.”)

Measured by

1FA Delineation

1FB Extension

A maximum of 4 points is possible on the Community Establishment criterion, and each sub-criterion has a maximum of 2 possible points.

### 1-A Delineation

AGB Criteria	Evaluation Guidelines
<b>Scoring</b>	
<p>2= Clearly delineated, organized, and pre-existing community.</p> <p>1= Clearly delineated and pre-existing community, but not fulfilling the requirements for a score of 2.</p> <p>0= Insufficient delineation and pre-existence for a score of 1.</p>	<p>The following questions must be scored when evaluating the application:</p> <p><i>Is the community clearly delineated?</i></p> <p><i>Is there at least one entity mainly dedicated to the community?</i></p> <p><i>Does the entity (referred to above) have documented evidence of community activities?</i></p> <p><i>Has the community been active since at least September 2007?</i></p>
<b>Definitions</b>	
<p>“Community” Usage of the expression “community” has evolved considerably from its Latin origin – “communitas” meaning “fellowship” – while still implying more of cohesion than a mere commonality of interest. Notably, as “community” is used throughout the application, there should be: (a) an awareness and recognition of a community among its members; (b) some</p>	<p>The “community,” as it relates to Criterion #1, refers to the stated community in the application.</p> <p>Consider the following:</p> <ul style="list-style-type: none"> <li>• <i>Was the entity established to administer the community?</i></li> <li>• <i>Does the entity’s mission statement clearly identify the community?</i></li> </ul>

<p>understanding of the community’s existence prior to September 2007 (when the new gTLD policy recommendations were completed); and (c) extended tenure or longevity—nontransience—into the future.</p>	<p>Additional research may need to be performed to establish that there is documented evidence of community activities. Research may include reviewing the entity’s web site, including mission statements, charters, reviewing websites of community members (pertaining to groups), if applicable, etc.</p>
<p>"Delineation" relates to the membership of a community, where a clear and straightforward membership definition scores high, while an unclear, dispersed or unbound definition scores low.</p>	<p>"Delineation" also refers to the extent to which a community has the requisite awareness and recognition from its members.</p> <p>The following nonexhaustive list denotes elements of straightforward member definitions: fees, skill and/or accreditation requirements, privileges or benefits entitled to members, certifications aligned with community goals, etc.</p>
<p>"Preexisting" means that a community has been active as such since before the new gTLD policy recommendations were completed in September 2007.</p>	
<p>"Organized" implies that there is at least one entity mainly dedicated to the community, with documented evidence of community activities.</p>	<p>"Mainly" could imply that the entity administering the community may have additional roles/functions beyond administering the community, but one of the key or primary purposes/functions of the entity is to administer a community or a community organization.</p> <p>Consider the following:</p> <ul style="list-style-type: none"> <li>• <i>Was the entity established to administer the community?</i></li> <li>• <i>Does the entity’s mission statement clearly identify the community?</i></li> </ul>
<p><b>Criterion 1-A guidelines</b></p>	
<p>With respect to "Delineation" and "Extension," it should be noted that a community can consist of legal entities (for example, an association of suppliers of a particular service), of individuals (for example, a language community) or of a logical alliance of communities (for example, an international federation of national communities of a similar nature). All are viable as such, provided the requisite awareness and recognition of the</p>	<p>With respect to the Community, consider the following:</p> <ul style="list-style-type: none"> <li>• <i>Are community members aware of the existence of the community as defined by the applicant?</i></li> <li>• <i>Do community members recognize the community as defined by the applicant?</i></li> </ul>

<p>community is at hand among the members. Otherwise the application would be seen as not relating to a real community and score 0 on both “Delineation” and “Extension.”</p> <p>With respect to “Delineation,” if an application satisfactorily demonstrates all three relevant parameters (delineation, preExisting and organized), then it scores a 2.</p>	<ul style="list-style-type: none"> <li>• <i>Is there clear evidence of such awareness and recognition?</i></li> </ul>
---	---

**1-B Extension**

<b>AGB Criteria</b>	<b>Evaluation Guidelines</b>
<b>Scoring</b>	
<p>Extension:</p> <p>2=Community of considerable size and longevity</p> <p>1=Community of either considerable size or longevity, but not fulfilling the requirements for a score of 2.</p> <p>0=Community of neither considerable size nor longevity</p>	<p>The following questions must be scored when evaluating the application:</p> <p><i>Is the community of considerable size?</i></p> <p><i>Does the community demonstrate longevity?</i></p>
<b>Definitions</b>	
<p>“Extension” relates to the dimensions of the community, regarding its number of members, geographical reach, and foreseeable activity lifetime, as further explained in the following.</p>	
<p>"Size" relates both to the number of members and the geographical reach of the community, and will be scored depending on the context rather than on absolute numbers Fa geographic location community may count millions of members in a limited location, a language community may have a million members with some spread over the globe, a community of service providers may have "only" some hundred members although well spread over the globe, just to mention some examples Fall these can be regarded as of "considerable size."</p>	<p>Consider the following:</p> <ul style="list-style-type: none"> <li>• <i>Is the designated community large in terms of membership and/or geographic dispersion?</i></li> </ul>

<p>"Longevity" means that the pursuits of a community are of a lasting, nontransient nature.</p>	<p>Consider the following:</p> <ul style="list-style-type: none"> <li>• <i>Is the community a relatively short-lived congregation (e.g. a group that forms to represent a one-off event)?</i></li> <li>• <i>Is the community forward-looking (i.e. will it continue to exist in the future)?</i></li> </ul>
<p><b>Criterion 1-B Guidelines</b></p>	
<p>With respect to "Delineation" and "Extension," it should be noted that a community can consist of legal entities (for example, an association of suppliers of a particular service), of individuals (for example, a language community) or of a logical alliance of communities (for example, an international federation of national communities of a similar nature). All are viable as such, provided the requisite awareness and recognition of the community is at hand among the members. Otherwise the application would be seen as not relating to a real community and score 0 on both "Delineation" and "Extension."</p> <p>With respect to "Extension," if an application satisfactorily demonstrates both community size and longevity, it scores a 2.</p>	

## Criterion #2: Nexus between Proposed String and Community

This section evaluates the relevance of the string to the specific community that it claims to represent.

Measured by

2FA Nexus

2FB Uniqueness

A maximum of 4 points is possible on the Nexus criterion, and with the Nexus subCriterion having a maximum of 3 possible points, and the Uniqueness subCriterion having a maximum of 1 possible point.

### 2-A Nexus

AGB Criteria	Evaluation Guidelines
<b>Scoring</b>	
<p>Nexus:</p> <p>3= The string matches the name of the community or is a well-known short-form or abbreviation of the community</p> <p>2= String identifies the community, but does not qualify for a score of 3</p> <p>0= String nexus does not fulfill the requirements for a score of 2</p>	<p>The following question must be scored when evaluating the application:</p> <p style="text-align: center;"><i>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.</i></p>
<b>Definitions</b>	
<p>“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.</p>	<p>“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.</p>
<p>“Identify” means that the applied for string closely describes the community or the community members, without overreaching substantially beyond the community.</p>	<p>“Match” is of a higher standard than “identify” and means ‘corresponds to’ or ‘is equal to’.</p> <p>“Identify” does not simply mean ‘describe’, but means ‘closely describes the community’.</p> <p>“Overreaching substantially” means that the string indicates a wider geographical or thematic remit than the community has.</p>

	<p>Consider the following:</p> <ul style="list-style-type: none"> <li>• <i>Does the string identify a wider or related community of which the applicant is a part, but is not specific to the applicant’s community?</i></li> <li>• <i>Does the string capture a wider geographical/thematic remit than the community has? The “community” refers to the community as defined by the applicant.</i></li> <li>• <i>An Internet search should be utilized to help understand whether the string identifies the community and is known by others.</i></li> <li>• <i>Consider whether the application mission statement, community responses, and websites align.</i></li> </ul>
<p><b>Criterion 2-A Guidelines</b></p>	
<p>With respect to “Nexus,” for a score of 3, the essential aspect is that the applied string is commonly known by others as the identification / name of the community.</p> <p>With respect to “Nexus,” for a score of 2, the applied string should closely describe the community or the community members, without overreaching substantially beyond the community. As an example, a string could qualify for a score of 2 if it is a noun that the typical community member would naturally be called in the context. If the string appears excessively broad (such as, for example, a globally well-known but local tennis club applying for “.TENNIS”) then it would not qualify for a 2.</p>	

**2-B Uniqueness**

<p><b>AGB Criteria</b></p>	<p><b>Evaluation Guidelines</b></p>
<p><b>Scoring</b></p>	
<p>Uniqueness: 1=String has no other significant meaning beyond</p>	<p>The following question must be scored when evaluating the application:</p>



<p>identifying the community described in the application. 0=String does not fulfill the requirement for a score of 1.</p>	<p><i>Does the string have any other significant meaning (to the public in general) beyond identifying the community described in the application?</i></p>
<p><b>Definitions</b></p>	
<p>“Identify” means that the applied for string closely describes the community or the community members, without overreaching substantially beyond the community.</p>	<p>“Overreaching substantially” means that the string indicates a wider geographical or thematic remit than the community has.</p>
<p>“Significant meaning” relates to the public in general, with consideration of the community language context added</p>	<p>Consider the following:</p> <ul style="list-style-type: none"> <li>• <i>Will the public in general immediately think of the applying community when thinking of the applied-for string?</i></li> <li>• <i>If the string is unfamiliar to the public in general, it may be an indicator of uniqueness.</i></li> <li>• <i>Is the geography or activity implied by the string?</i></li> <li>• <i>Is the size and delineation of the community inconsistent with the string?</i></li> <li>• <i>An internet search should be utilized to find out whether there are repeated and frequent references to legal entities or communities other than the community referenced in the application.</i></li> </ul>
<p><b>Criterion 2-B Guidelines</b></p>	
<p>"Uniqueness" will be scored both with regard to the community context and from a general point of view. For example, a string for a particular geographic location community may seem unique from a general perspective, but would not score a 1 for uniqueness if it carries another significant meaning in the common language used in the relevant community location. The phrasing "...beyond identifying the community" in the score of 1 for "uniqueness" implies a requirement that the string does identify the community, i.e. scores</p>	

2 or 3 for "Nexus," in order to be eligible for a score of 1 for "Uniqueness."

It should be noted that "Uniqueness" is only about the meaning of the string F since the evaluation takes place to resolve contention there will obviously be other applications, community-based and/or standard, with identical or confusingly similar strings in the contention set to resolve, so the string will clearly not be "unique" in the sense of "alone."

## Criterion #3: Registration Policies

This section evaluates the applicant’s registration policies as indicated in the application. Registration policies are the conditions that the future registry will set for prospective registrants, i.e. those desiring to register second-level domain names under the registry.

Measured by

3FA Eligibility

3FB Name Selection

3FC Content and Use

3FD Enforcement

A maximum of 4 points is possible on the Registration Policies criterion and each sub-criterion has a maximum of 1 possible point.

### 3-A Eligibility

AGB Criteria	Evaluation Guidelines
<b>Scoring</b>	
Eligibility: 1= Eligibility restricted to community members 0= Largely unrestricted approach to eligibility	The following question must be scored when evaluating the application:  <i>Is eligibility for being allowed as a registrant restricted?</i>
<b>Definitions</b>	
“Eligibility” means the qualifications that organizations or individuals must have in order to be allowed as registrants by the registry.	
<b>Criterion 3-A Guidelines</b>	
With respect to “eligibility” the limitation to community “members” can invoke a formal membership but can also be satisfied in other ways, depending on the structure and orientation of the community at hand. For example, for a geographic location community TLD, a limitation to members of the community can be achieved by requiring that the registrant’s physical address be within the boundaries of the location.	

### 3-B Name Selection

AGB Criteria	Evaluation Guidelines
<b>Scoring</b>	
<p>Name selection:            1= Policies include name selection rules consistent with the articulated community-based purpose of the applied-for TLD            0= Policies do not fulfill the requirements for a score of 1</p>	<p>The following questions must be scored when evaluating the application:</p> <p style="text-align: center;"><i>Do the applicant’s policies include name selection rules?</i></p> <p style="text-align: center;"><i>Are name selection rules consistent with the articulated community-based purpose of the applied-for gTLD?</i></p>
<b>Definitions</b>	
<p>“Name selection” means the conditions that must be fulfilled for any second-level domain name to be deemed acceptable by the registry.</p>	<p>Consider the following:</p> <ul style="list-style-type: none"> <li>• <i>Are the name selection rules consistent with the entity’s mission statement?</i></li> </ul>
<b>Criterion 3-B Guidelines</b>	
<p>With respect to “Name selection,” scoring of applications against these subcriteria will be done from a holistic perspective, with due regard for the particularities of the community explicitly addressed. For example, an application proposing a TLD for a language community may feature strict rules imposing this language for name selection as well as for content and use, scoring 1 on both B and C above. It could nevertheless include forbearance in the enforcement measures for tutorial sites assisting those wishing to learn the language and still score 1 on D. More restrictions do not automatically result in a higher score. The restrictions and corresponding enforcement mechanisms proposed by the applicant should show an alignment with the community-based purpose of the TLD and demonstrate continuing accountability to the community named in the application.</p>	

### 3-C Content and Use

AGB Criteria	Evaluation Guidelines
--------------	-----------------------

<b>Scoring</b>	
<p>Content and use:  1= Policies include rules for content and use consistent with the articulated community-based purpose of the applied-for TLD  0= Policies do not fulfill the requirements for a score of 1</p>	<p>The following questions must be scored when evaluating the application:</p> <p><i>Do the applicant’s policies include content and use rules?</i></p> <p><i>If yes, are content and use rules consistent with the articulated community-based purpose of the applied-for gTLD?</i></p>
<b>Definitions</b>	
<p>“Content and use” means the restrictions stipulated by the registry as to the content provided in and the use of any second-level domain name in the registry.</p>	<p>Consider the following:</p> <ul style="list-style-type: none"> <li><i>Are the content and use rules consistent with the applicant’s mission statement?</i></li> </ul>
<b>Criterion 3-C Guidelines</b>	
<p>With respect to “Content and Use,” scoring of applications against these subcriteria will be done from a holistic perspective, with due regard for the particularities of the community explicitly addressed. For example, an application proposing a TLD for a language community may feature strict rules imposing this language for name selection as well as for content and use, scoring 1 on both B and C above. It could nevertheless include forbearance in the enforcement measures for tutorial sites assisting those wishing to learn the language and still score 1 on D. More restrictions do not automatically result in a higher score. The restrictions and corresponding enforcement mechanisms proposed by the applicant should show an alignment with the community-based purpose of the TLD and demonstrate continuing accountability to the community named in the application.</p>	

### 3-D Enforcement

<b>AGB Criteria</b>	<b>Evaluation Guidelines</b>
<b>Scoring</b>	
<p>Enforcement  1= Policies include specific enforcement measures</p>	<p>The following question must be scored when evaluating the application:</p>

<p>(e.g. investigation practices, penalties, takedown procedures) constituting a coherent set with appropriate appeal mechanisms 0= Policies do not fulfill the requirements for a score of 1</p>	<p><i>Do the policies include specific enforcement measures constituting a coherent set with appropriate appeal mechanisms?</i></p>
---	---

**Definitions**

<p>“Enforcement” means the tools and provisions set out by the registry to prevent and remedy any breaches of the conditions by registrants.</p>	<p>“Coherent set” refers to enforcement measures that ensure continued accountability to the named community, and can include investigation practices, penalties, and takedown procedures with appropriate appeal mechanisms. This includes screening procedures for registrants, and provisions to prevent and remedy any breaches of its terms by registrants.</p> <p>Consider the following: Do the enforcement measures include:</p> <ul style="list-style-type: none"> <li>• <i>Investigation practices</i></li> <li>• <i>Penalties</i></li> <li>• <i>Takedown procedures (e.g., removing the string)</i></li> <li>• <i>Whether such measures are aligned with the community-based purpose of the TLD</i></li> <li>• <i>Whether such measures demonstrate continuing accountability to the community named in the application</i></li> </ul>
--	---

**Criterion 3-D Guidelines**

<p>With respect to “Enforcement,” scoring of applications against these subcriteria will be done from a holistic perspective, with due regard for the particularities of the community explicitly addressed. For example, an application proposing a TLD for a language community may feature strict rules imposing this language for name selection as well as for content and use, scoring 1 on both B and C above. It could nevertheless include forbearance in the enforcement measures for tutorial sites assisting those wishing to learn the language and still score 1 on D. More restrictions do not automatically result in a higher score. The restrictions and corresponding enforcement</p>	
--	--

mechanisms proposed by the applicant should show an alignment with the community-based purpose of the TLD and demonstrate continuing accountability to the community named in the application.	
--	--

## Criterion #4: Community Endorsement

This section evaluates community support and/or opposition to the application. Support and opposition will be scored in relation to the communities explicitly addressed in the application, with due regard for communities implicitly addressed by the string.

Measured by

4FA Support

4FB Opposition

A maximum of 4 points is possible on the Community Endorsement criterion and each subCriterion (Support and Opposition) has a maximum of 2 possible points.

### 4-A Support

AGB Criteria	Evaluation Guidelines
<b>Scoring</b>	
<p>Support:</p> <p>2= Applicant is, or has documented support from, the recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community</p> <p>1= Documented support from at least one group with relevance, but insufficient support for a score of 2</p> <p>0= Insufficient proof of support for a score of 1</p>	<p>The following questions must be scored when evaluating the application:</p> <p><i>Is the applicant the recognized community institution or member organization?</i></p> <p>To assess this question please consider the following:</p> <p><i>a. Consider whether the community institution or member organization is the clearly recognized representative of the community.</i></p> <p>If the applicant meets this provision, proceed to Letter(s) of support and their verification. If it does not, or if there is more than one recognized community institution or member organization (and the applicant is one of them), consider the following:</p> <p><i>Does the applicant have documented</i></p>



	<p><i>support from the recognized community institution(s)/member organization(s) to represent the community?</i></p> <p>If the applicant meets this provision, proceed to Letter(s) of support and their verification. If not, consider the following:</p> <p><i>Does the applicant have documented authority to represent the community?</i></p> <p>If the applicant meets this provision, proceed to Letter(s) of support and their verification. If not, consider the following:</p> <p><i>Does the applicant have support from at least one group with relevance?</i></p> <p>If the applicant meets this provision, proceed to Letter(s) of support and their verification.</p> <p>➤ Instructions on letter(s) of support requirements are located below, in <b>Letter(s) of support and their verification</b></p>
<b>Definitions</b>	
<p>“Recognized” means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of that community.</p>	
<p>“Relevance” and “relevant” refer to the communities explicitly and implicitly addressed. This means that opposition from communities not identified in the application but with an association to the applied for string would be considered relevant.</p>	<p>The institution(s)/organization(s) could be deemed relevant when not identified in the application but has an association to the applied for string.</p>
<b>Criterion 4-A Guidelines</b>	
<p>With respect to “Support,” it follows that documented support from, for example, the only national association relevant to a particular community on a national level would score a 2 if the string is clearly oriented to that national level, but only a 1 if the string implicitly addresses similar communities in other nations.</p>	<p><b>Letter(s) of support and their verification:</b> Letter(s) of support must be evaluated to determine both the relevance of the organization and the validity of the documentation and must meet the criteria spelled out below. The letter(s) of support is an input used to determine the relevance of the organization and the validity of</p>

<p>Also with respect to “Support,” the plurals in brackets for a score of 2, relate to cases of multiple institutions/organizations. In such cases there must be documented support from institutions/organizations representing a majority of the overall community addressed in order to score 2.</p> <p>The applicant will score a 1 for “Support” if it does not have support from the majority of the recognized community institutions/member organizations, or does not provide full documentation that it has authority to represent the community with its application. A 0 will be scored on “Support” if the applicant fails to provide documentation showing support from recognized community institutions/community member organizations, or does not provide documentation showing that it has the authority to represent the community. It should be noted, however, that documented support from groups or communities that may be seen as implicitly addressed but have completely different orientations compared to the applicant community will not be required for a score of 2 regarding support.</p> <p>To be taken into account as relevant support, such documentation must contain a description of the process and rationale used in arriving at the expression of support. Consideration of support is not based merely on the number of comments or expressions of support received.</p>	<p>the documentation.</p> <p>Consider the following:</p> <p>Are there multiple institutions/organizations supporting the application, with documented support from institutions/organizations representing a majority of the overall community addressed?</p> <p>Does the applicant have support from the majority of the recognized community institution/member organizations?</p> <p>Has the applicant provided full documentation that it has authority to represent the community with its application?</p> <p>A majority of the overall community may be determined by, but not restricted to, considerations such as headcount, the geographic reach of the organizations, or other features such as the degree of power of the organizations.</p> <p><u>Determining relevance and recognition</u></p> <p><i>Is the organization relevant and/or recognized as per the definitions above?</i></p> <p><u>Letter requirements &amp; validity</u></p> <p><i>Does the letter clearly express the organization’s support for the community-based application?</i></p> <p><i>Does the letter demonstrate the organization’s understanding of the string being requested?</i></p> <p><i>Is the documentation submitted by the applicant valid (i.e. the organization exists and the letter is authentic)?</i></p> <p>To be taken into account as relevant support, such documentation must contain a description of the process and rationale used in arriving at the expression of support. Consideration of support is not based merely on the number of comments or</p>
--	--

	expressions of support received.
--	----------------------------------

#### 4-B Opposition

AGB Criteria	Evaluation Guidelines
<b>Scoring</b>	
<p>Opposition:</p> <p>2= No opposition of relevance</p> <p>1= Relevant opposition from one group of nonF negligible size</p> <p>0= Relevant opposition from two or more groups of nonF negligible size</p>	<p>The following question must be scored when evaluating the application:</p> <p style="text-align: center;"><i>Does the application have any opposition that is deemed relevant?</i></p>
<b>Definitions</b>	
<p>“Relevance” and “relevant” refer to the communities explicitly and implicitly addressed. This means that opposition from communities not identified in the application but with an association to the applied for string would be considered relevant.</p>	<p>Consider the following:</p> <p>For “nonF negligible” size, “relevant” and “relevance” consider:</p> <ul style="list-style-type: none"> <li>• <i>If the application has opposition from communities that are deemed to be relevant.</i></li> <li>• <i>If a web search may help determine relevance and size of the objecting organization(s).</i></li> <li>• <i>If there is opposition by some other reputable organization(s), such as a quasi-official, publicly recognized organization(s) or a peer organization(s)?</i></li> <li>• <i>If there is opposition from a part of the community explicitly or implicitly addressed?</i></li> </ul>
<b>Criterion 4-B Guidelines</b>	
<p>When scoring “Opposition,” previous objections to the application as well as public comments during the same application round will be taken into account and assessed in this context. There will be no presumption that such objections or comments would prevent a score of 2 or lead to any particular score for “Opposition.” To be taken into account as relevant opposition, such objections or</p>	<p><b>Letter(s) of opposition and their verification:</b> Letter(s) of opposition should be evaluated to determine both the relevance of the organization and the validity of the documentation and should meet the criteria spelled out below.</p> <p><u>Determining relevance and recognition</u> <i>Is the organization relevant and/or</i></p>

<p>comments must be of a reasoned nature. Sources of opposition that are clearly spurious, unsubstantiated, made for a purpose incompatible with competition objectives, or filed for the purpose of obstruction will not be considered relevant.</p>	<p><i>recognized as per the definitions above?</i></p> <p><u>Letter requirements &amp; validity</u></p> <p><i>Does the letter clearly express the organization's opposition to the applicant's application?</i></p> <p><i>Does the letter demonstrate the organization's understanding of the string being requested?</i></p> <p><i>Is the documentation submitted by the organization valid (i.e. the organization exists and the letter is authentic)?</i></p> <p>To be considered relevant opposition, such documentation should contain a description of the process and rationale used in arriving at the expression of opposition. Consideration of opposition is not based merely on the number of comments or expressions of opposition received.</p>
---	---

## Verification of letter(s) of support and opposition

Additional information on the verification of letter(s) of support and opposition:

- Changes in governments may result in new leadership at government agencies. As such, the signatory need only have held the position as of the date the letter was signed or sealed.
- A contact name should be provided in the letter(s) of support or opposition.
- The contact must send an email acknowledging that the letter is authentic, as a verbal acknowledgement is not sufficient.
- In cases where the letter was signed or sealed by an individual who is not currently holding that office or a position of authority, the letter is valid only if the individual was the appropriate authority at the time that the letter was signed or sealed.

## About the Community Priority Evaluation Panel and its Processes

The Economist Intelligence Unit (EIU) is the business information arm of The Economist Group, publisher of The Economist. Through a global network of more than 900 analysts and contributors, the EIU continuously assesses political, economic, and business conditions in more than 200 countries. As the world's leading provider of country intelligence, the EIU helps executives, governments, and institutions by providing timely, reliable, and impartial analysis.

The EIU was selected as a Panel Firm for the gTLD evaluation process based on a number of criteria, including:

- The panel will be an internationally recognized firm or organization with significant demonstrated expertise in the evaluation and assessment of proposals in which the relationship of the proposal to a defined public or private community plays an important role.
- The provider must be able to convene a linguistically and culturally diverse panel capable, in the aggregate, of evaluating Applications from a wide variety of different communities.
- The panel must be able to exercise consistent and somewhat subjective judgment in making its evaluations in order to reach conclusions that are compelling and defensible, and
- The panel must be able to document the way in which it has done so in each case.

The evaluation process will respect the principles of fairness, transparency, avoiding potential conflicts of interest, and non-discrimination. Consistency of approach in scoring Applications will be of particular importance.

The following principles characterize the EIU evaluation process for gTLD applications:

- All EIU evaluators must ensure that no conflicts of interest exist.
- All EIU evaluators must undergo training and be fully cognizant of all CPE requirements as listed in the Applicant Guidebook. This process will include a pilot testing process.
- EIU evaluators are selected based on their knowledge of specific countries, regions and/or industries, as they pertain to Applications.
- Language skills will also be considered in the selection of evaluators and the assignment of specific Applications.
- All applications will be evaluated and scored, in the first instance by two evaluators, working independently.
- All Applications will subsequently be reviewed by members of the core project team to verify accuracy and compliance with the AGB, and to ensure consistency of approach across all applications.

- The EIU will work closely with ICANN when questions arise and when additional information may be required to evaluate an application.
- The EIU will fully cooperate with ICANN's quality control process.





# Community Priority Evaluation (CPE) Frequently Asked Questions

---

Version 1.3

*Note: This version of the FAQ was updated on 10 September 2014. No new questions have been added, but existing answers have been updated to reflect changes put forth in the “Update on Application Status and Contention Sets” Advisory.*

## Early Election

### **Q: Is early election required to participate in CPE?**

A: No. Early election of CPE is optional and at the discretion of the applicant. Early election is, however, not a guarantee of eligibility to proceed with CPE. Early election status will be reflected on an Applicant’s status on the New gTLD Application Status Page (<https://gtldresult.icann.org/application-result/applicationstatus/viewstatus>). Applicants will be invited to CPE once they are eligible, regardless of whether early election was made.

## Timeline and Processing

### **Q: What are the eligibility requirements to begin Standard CPE?**

A: To be eligible to begin Standard CPE Processing, an application must:

- be a self-designated Community Application per section 1.2.3 of the AGB
- have an application status of “Active”
- be in an unresolved contention set (contention set status is either “Active” or “On-Hold” and at least one other application in the set has a status of either “Active or On-Hold”
- not have a pending change request
- not be in an active comment window for a recently approved changed request

Additionally, as per section 4.2 of the AGB, all remaining members of the contention set must have completed all previous stages of the process. All remaining applications in the contention set must:

- have completed evaluation
- have no pending objections
- have addressed all applicable GAC Advice
- not be classified in the “High Risk” category of the Name Collision Occurrence Management Framework

The Name Collision Occurrence Management Framework is available here:  
<https://www.icann.org/en/system/files/files/name-collision-framework-30jul14-en.pdf>

**Q: When will CPE start?**

A: Invitations to begin CPE started in early October 2013 to eligible applicants. On an ongoing basis, applicants will be invited to begin CPE as each becomes eligible based on the eligibility requirements listed in the prior question. The evaluation will begin approximately 2-3 weeks after an invitation is sent. However, in order to allow sufficient time for the submission of Application Comments and Letters of Support/Opposition, CPE will begin no earlier than 14 days after an invitation is sent. The date that the invitation is sent will be posted on the CPE page of the New gTLD Microsite (<http://newgtlds.icann.org/en/applicants/cpe>).

**Q: What is the fee for CPE?**

A: The deposit fee for CPE is USD 22,000. An applicant that prevails in CPE will be refunded their full deposit amount.

**Q: What is the process to elect CPE?**

A: One week before an application becomes eligible for CPE, a pre-invitation notice is sent to those applications that are likely to become eligible. The purpose of the pre-invitation is to verify payer information before the actual invitation is sent.

Once an application becomes eligible for CPE, ICANN will send an official invitation to the applicant via a case in the Customer Portal. If the Applicant wishes to pursue CPE, the Applicant must respond to the case within 21 days with the following: declaration that they are electing to pursue CPE, the CPE deposit payment form with the required details, and the CPE deposit payment itself (USD 22,000).

**Q: How will I know when an application has been invited to elect CPE?**

A: The CPE landing page on the New gTLD Microsite (<http://newgtlds.icann.org/en/applicants/cpe>) will be updated regularly to inform the community of each invitation date, election date and evaluation result for CPE. Additionally, the members of the contention set will be notified via Customer Portal when a member of their contention set is invited to CPE.

**Q: What is the due date for submitting an application comment or letters of support or opposition to ensure the CPE Panel takes them into consideration?**

A: Application comments and letters of support or opposition must be received within 14 days of the CPE invitation date posted on the CPE landing page on the New gTLD

Microsite (<http://newgtlds.icann.org/en/applicants/cpe>). Application comments may be submitted at <http://newgtlds.icann.org/en/program-status/comments>. Letters of support or opposition may be submitted via the methods described in the Letters of Support and Opposition section of the FAQs below. It is not guaranteed, however, that Application Comments and letters of support/opposition submitted after the 14 day period will be considered in the CPE Panel's evaluation of the the application.

**Q: What is the Accelerated Invitation to CPE?**

A: Accelerated Invitation to CPE is a process where the applicant can elect to start CPE earlier than the typical conditions would normally allow. An applicant is able to request an Accelerated Invitation to CPE when outstanding eligibility criteria do not have the potential to impact the community applicant's membership in a contention set and/or when the contention set as a whole may not have met all eligibility requirements for the standard CPE Invitation process.

**Q: What are the eligibility requirements to receive an Accelerated Invitation to CPE?**

A: To be eligible for an Accelerated Invitation to CPE, an application must:

- be a self-designated Community Application per section 1.2.3 of the AGB
- have a status of "Active" or "On-Hold"
- be in an unresolved contention set (contention set status is either "Active" or "On-Hold" and at least one other application in the set has a status of either "Active or On-Hold")
- not have a pending change request
- not be in an active application comment window for an approved changed request
- have addressed all applicable GAC Advice

Additionally, as per section 4.2 of the AGB, all remaining members of the contention set must have completed all previous stages of the process. All remaining applications in the contention set must:

- have completed evaluation
- have no pending objections
- not be classified in the "High Risk" category of the Name Collision Occurrence Management Framework

**Q: When will I receive an Accelerated Invitation to CPE?**

A: Once a community application has met the requirements listed above, ICANN will notify the applicant of the option to request an Accelerated Invitation to Elect CPE. After an Applicant has requested the Accelerated Invitation, the standard CPE Invitation process will

commence as described above, including notification to other members of the contention set and posting to the CPE status page (<http://newgtlds.icann.org/en/applicants/cpe>).

**Q: Is there a deadline to request an Accelerated Invitation to CPE? How long do I have in order to decide to participate in CPE once I receive the Accelerated Invitation?**

A: There is no deadline for requesting the Accelerated Invitation to CPE. A request can be made at any time while outstanding eligibility criteria are being resolved for other members of the contention set. Once the Accelerated Invitation has been requested, however, a response (i.e. decision to participate in CPE) must be received within 21 days.

## Evaluation Panel

**Q: What will be reviewed by the CPE Panel?**

A: As part of its evaluation and in accordance with the AGB criteria in section 4.2.3 and the CPE Panel's guidelines (<http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>), the CPE Panel will review publicly available information such as the publicly available portions of the application, application comments on the application, objection determinations, and correspondence (letters of support or objection related to the application). The CPE Panel will also conduct any additional research as it sees fit.

**Q: How will the CPE guidelines be used in performing evaluations?**

A: The CPE guidelines are an accompanying document to the AGB and are intended to provide additional clarity around process and scoring principles as defined in the AGB. The CPE guidelines do not change the AGB framework or change the intent or standards established in the AGB.

**Q: Where can I find out more about the CPE process?**

A: More information about the process followed by the CPE panel can be found in the CPE Panel Process document (<http://newgtlds.icann.org/en/applicants/cpe/Community Priority Evaluation Panel Process.06AUG2014.pdf>).

**Q: Will the CPE Panel ask clarifying questions?**

A: Prior to the start of CPE evaluation, the CPE Panel may, but is not obligated to, request additional information from applicants if the CPE Panel feels that additional information is required to evaluate the application. If during the evaluation additional information is needed, the expectation is that clarifying questions will be issued by the CPE Panel to applicants in order to provide the opportunity to:

- Address any application comments that may impact the scoring of their application.
- Address any objection determinations not in their favor.
- Address any letters of opposition.
- Contact supporting organizations and ask them to respond to the CPE Panel's request for validation of letters of support or objection.

Applicants will be contacted via the Customer Service Portal if additional information is required, and will be provided 28 days to respond to clarifying questions.

**Q: Once CPE has started, approximately how long will the CPE Panel take to perform the evaluation?**

A: The evaluation is expected to take approximately three to four months<sup>1</sup>, depending on the number of letters of support or opposition requiring validation and the need for clarifying questions.

**Q: In what order will applicants be invited and evaluated in CPE?**

A: The order is firstly determined by the eligibility requirements as defined above. The priority number may be used as a secondary method to determine evaluation ordering in the unlikely event that volume exceeds the CPE Panel's capacity.

### Letters of Support and Opposition

**Q: How should additional letters of support/opposition be sent to ICANN?**

A: Organizations that would like to submit letters of support or opposition for an application may send these letters to ICANN either electronically at [newgtld@icann.org](mailto:newgtld@icann.org) or by physical mail to ICANN's Los Angeles office. If these letters are addressed to ICANN, they will be treated as correspondence and posted on the New gTLD Correspondence page (<http://newgtlds.icann.org/en/program-status/correspondence>).

If the letters are addressed to the applicant, the applicant may send the letters to ICANN electronically at [newgtld@icann.org](mailto:newgtld@icann.org) to be posted as correspondence, with the following requirements:

- Include a cover letter to ICANN requesting that the letters be posted as correspondence. This cover letter should contain, at a minimum: application ID, string, and the applicant name for the application that they are supporting or opposing.
- Attach letters of support or opposition to the correspondence request. If such a request is received, ICANN will post the cover letter and the

---

<sup>1</sup> This number was changed in the 13 August 2014 version of the FAQs to reflect lessons learned.  
10 September 2014

attachments as a single item of correspondence.

If an applicant submits letters of support via the change request process posted at <http://newgtlds.icann.org/en/applicants/customer-service/change-requests>, the letters of support will be processed as a change request and subject to the 30-day application comment period.

**Q: Will the CPE Panel contact the person referenced in the letters of support and opposition?**

A: The CPE Panel will attempt to validate all letters of support and opposition to ensure that the individuals who have signed the documents are in fact the sender, have the authority to speak on behalf of their institution, and that the panel clearly understands the intentions of the letter. This is similar to the Geographic Names Panel process of validating letters of support or non-objection. More information about the letter validation process can be found in the CPE Panel Process document (<http://newgtlds.icann.org/en/applicants/cpe/Community Priority Evaluation Panel Process.06AUG2014.pdf>).

As some of the contact information from the letters included in the application may no longer be accurate, it is suggested, but not required, that CPE applicants provide current contact information for the individuals who authored the letters of support for their application. This updated contact information can be submitted via the Customer Service Portal. The use of such information is at the discretion of the CPE Panel.

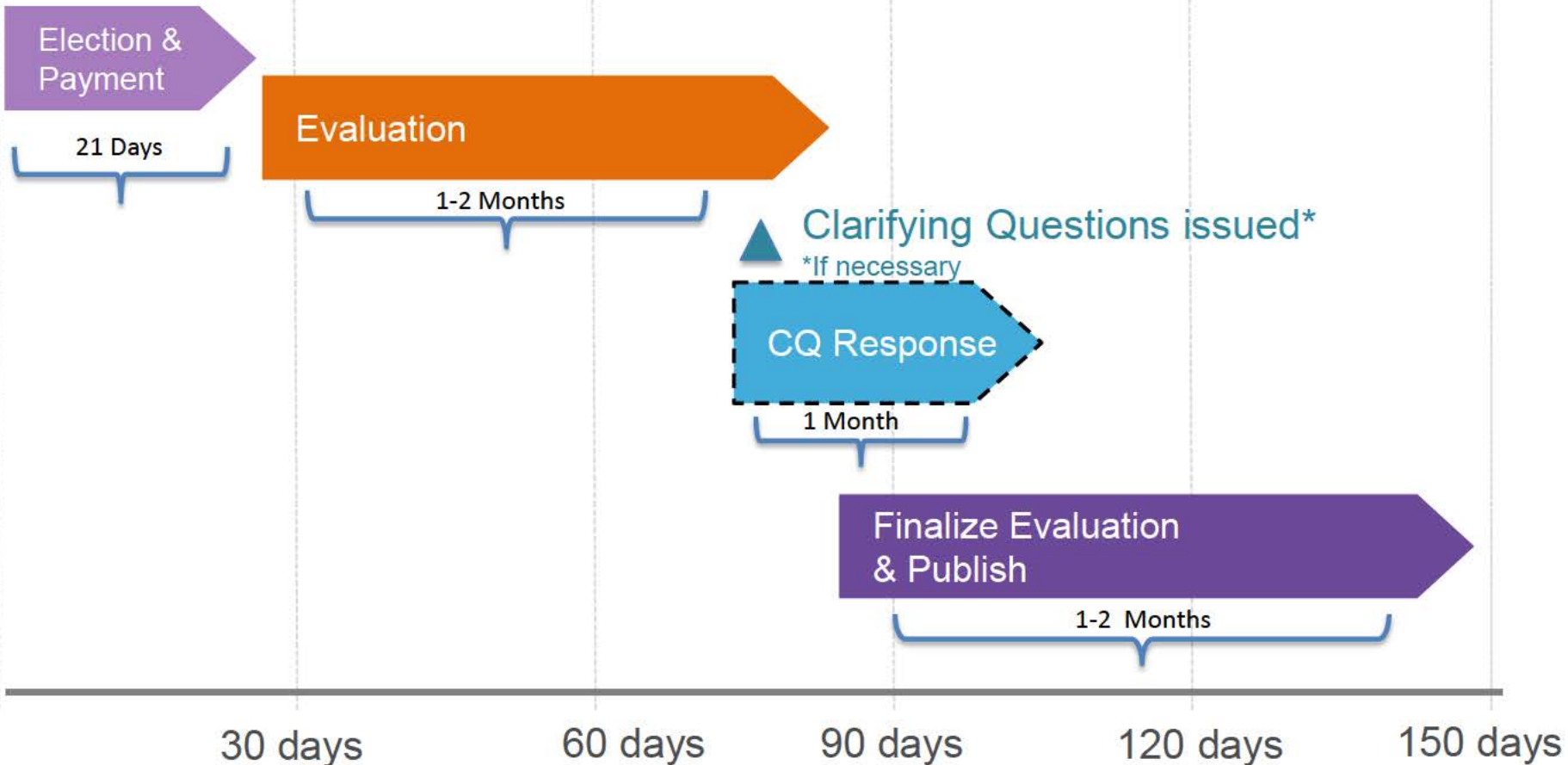
Should the CPE Panel be unable to contact or get a response from a material amount of relevant supporters such that it is impacting the scoring of the evaluation, they will issue a clarifying question to the applicant, requesting both updated contact information for those they have been unable to complete the verification with, and they will also request the applicant's assistance in getting a response from the supporter to the panel. These clarification questions will come from ICANN to the applicant via the customer portal, as indicated in previous questions on this FAQ page.

## **Annex B-6**

# Community Priority Evaluation > Timeline

▲ Invitations sent to eligible applicants

▲ Day 14: Deadline for application comment







## CLARIFYING QUESTIONS

Updated on 01 March 2013.

[FAQs: Clarifying Questions \(/en/applicants/clarification-questions/faqs\)](/en/applicants/clarification-questions/faqs)

Per the Applicant Guidebook: "As part of the evaluation process, evaluators may request clarification or additional information during the Initial Evaluation period. For each application, clarifying questions will be consolidated and sent to the applicant from each of the panels. The applicant will thus have an opportunity to clarify or supplement the application in those areas where a request is made by the evaluators."

Clarifying questions may be sent from the following panels:

- Background screening
- Geographic name
- String similarity
- DNS stability
- Registry services
- Technical/Operational
- Financial
- Community priority evaluation (if applicable)

### Timing for Clarifying Questions

All geographic names clarifying questions will be released on 26 November 2012. They will be issued through the Customer Service Center (CSC) Portal, and applicants will have until the end of the Initial Evaluation period (August 2013) to respond.

The TLD Application System (TAS) will reopen on 26 November 2012 to allow applicants to view their submitted application materials.

It is anticipated that the remaining clarifying questions will be issued in January 2013 through TAS. Applicants will have four weeks to respond to these clarifying questions.

### Incorporating Feedback from the Clarifying Questions Pilot

In response to the feedback collected from the clarifying questions pilot, the language in the clarifying questions will be more specific about why the information provided is insufficient and what additional information is required.

Additionally, the character limit has been increased to 7000, and applicants will be able to submit attachments if they require additional space. However, it is recommended that applicants respond within the allotted space whenever possible.

Although interaction with the evaluation panels will not be permitted, applicant advisories will be available for questions 25, 30, 48, and 50 in November 2012. Advisories are intended to help applicants prepare in advance for clarifying questions.

[Site Map](#)



**THE INTERNATIONAL CENTRE FOR EXPERTISE OF THE  
INTERNATIONAL CHAMBER OF COMMERCE**

CASE No. EXP/390/ICANN/7

**THE INTERNATIONAL LESBIAN GAY BISEXUAL TRANS AND INTERSEX  
ASSOCIATION**

**(BELGIUM)**

vs/

**AFFILIAS LIMITED**

**(IRELAND)**

This document is an original of the Expert Determination rendered in conformity with the New gTLD Dispute Resolution Procedure as provided in Module 3 of the gTLD Applicant Guidebook from ICANN and the ICC Rules for Expertise.

**EXP/390/ICANN/7**

THE INTERNATIONAL LESBIAN GAY BISEXUAL TRANS AND INTERSEX  
ASSOCIATION (BELGIUM)

vs.

AFILIAS LIMITED (IRELAND)

Expert Determination

## **Objector**

The International Lesbian Gay Bisexual Trans and Intersex Association  
Mr. Renato Sabbadini  
Contact Information Redacted

## **Objector's Representative**

International Gay & Lesbian Travel Association  
Mr. Clark Massad  
Contact Information Redacted

## **Applicant**

Afilias Limited  
Mr. John Kane  
Contact Information Redacted

## **Applicant's Representative**

Hogan Lovells (Paris) LLP  
Mr. David Taylor  
Contact Information Redacted

## **Expert Panel**

Professor Dr. Bernhard Schlink  
Humboldt-Universität zu Berlin, Juristische Fakultät  
Contact Information  
Redacted

## **Table of Contents**

Procedure	4
Summary of Parties' Positions	4
Findings	6
Decision	8



## **Procedure**

1. On 12 March 2013, The International Lesbian Gay Bisexual Trans and Intersex Association ("ILGA"), represented by the International Gay & Lesbian Travel Association ("IGLTA"), filed a Community Objection against the application by Afilias Limited ("Afilias") for the string .LGBT. On 14 May 2013, Afilias filed its response. On 7 June 2013, I, Professor Dr. Bernhard Schlink, was appointed by the Chairman of the Standing Committee of the International Centre for Expertise ("Centre") of the International Chamber of Commerce ("ICC") as Expert in this matter.
2. On 3 July 2013, the Centre confirmed the full constitution of the Expert Panel, transferred the file to me and invited me to proceed with this matter. On 2 August 2013, I informed the parties that I had received the file and did not intend to invite additional submissions and did not consider holding a hearing. The parties did not submit any further submissions or statements nor did they request to be granted leave to submit additional submissions.
3. I proceeded with this matter in accordance with the Rules for Expertise of the ICC ("Rules"), supplemented by the ICC Practice Note on the Administration of Cases ("ICC Practice Note") under the Attachment to Module 3 of the gTLD Applicant Guidebook, New gTLD Dispute Resolution Procedure ("Procedure") of the gTLD Applicant Guidebook ("Guidebook") and Appendix III to the Rules.
4. The language of all submissions was English. All communications by the parties, the Expert Panel and the Centre were submitted electronically (Article 6(a) of the Procedure).
5. The draft Expert Determination was rendered to the Centre on 13 August 2013, *i.e.* within 45 days after receipt of the file transmitted by the Centre on 3 July 2013.

## **Summary of Parties' Positions**

### **Objector's Position**

6. ILGA presents itself as an established institution that has an ongoing relationship with the clearly delineated gay community, which ILGA writes capitalized as Gay Community. To demonstrate that it is an established institution that has an ongoing relationship with the gay community, ILGA asserts that it is the only worldwide federation of more than 1000 lesbian, gay, bisexual, transgender and intersex national and local organizations in over 100 nations and on all five continents; that it has existed since 1978; that it gathers every two years in a world conference; that its annual reports cover its own activities and also state-sponsored homophobia; and that it enjoys consultative status with the Economic and Social Council of the United Nations. To demonstrate that the gay community is a clearly delineated community, ILGA describes how a sense of community emerged among gay individuals in the early 20th century; how the Stonewall events in New York in 1969 triggered gay individuals around the world to experience themselves as part of a community; how since then more and more gay organizations sprout and provide the gay community with a network of cooperation, support, and services; and how the annual gay pride march demonstrates the unity, vitality, and strength of the gay community, which includes gay, lesbian, bisexual, transgender, and other

individuals whose gender identities and sexual orientations fall outside of the societal norms for heterosexual behavior.

7. ILGA claims substantial opposition from a significant part of the gay community to which the string .LGBT, using the acronym that stands for lesbian, gay, bisexual, and transgender, may be targeted. ILGA describes how the gay community came to understand that it needs a voice inside the new generic top-level domain ("gTLD") program, how it took the lead on the community application by dotgay llc ("dotgay") for the string .gay, how this application has the support from ILGA and more than 150 gay community organizations, and that these same organizations also object to the application by Afilias for the string .LGBT. The gay community did not, through ILGA or through an organisation closely related like dotgay, initiate a community application for the string .LGBT. Still, in ILGA's eyes, the string .LGBT and the string .gay for which dotgay has applied are identical, in so far as they target one and the same community, using names by which this community is known.

8. ILGA argues that Afilias's operation of the string .LGBT would damage the gay community. According to ILGA, Afilias presumes that the string .LGBT would bring together the people living the gay lifestyle into a community – as if being gay were merely a lifestyle and not the expression of the essential nature of a gay person, and as if the gay community did not already exist. According to ILGA, the operation of the string .LGBT would usurp and exploit the name of the abused minority community of lesbian, gay, bisexual, and transgender people and use it to generate profits that would not benefit the community. The operation of the string .LGBT would make this gTLD available to all registrants for any purpose and any use with no restriction, thereby allowing for abuses of the domain name that might cause the gay community harm, for example from registrants masquerading as members of the community who in fact were anti-gay activists intending to use the registration for anti-gay purposes.

9. ILGA sees the main damage in the loss of opportunities for the gay community with the operation of the string .LGBT by Afilias. The operation of the string .LGBT under a non-gay community leadership and responsibility, and solely for profit, would not give the gay community the safety that it could enjoy from a gTLD under gay community leadership and responsibility. Registrants of the string .LGBT could not rely on other registrants of the string .LGBT being reliably gay, and people who approach registrants of the string .LGBT could not rely upon finding trustworthy gay businesses and enterprises, gay community programs and services. In addition, the operation of the string .LGBT under a non-gay community leadership and responsibility and solely for profit would not generate the funds that the gay community needs to support its programs and services – something that the operation of the string .gay by dotgay would do, because dotgay has committed to give a substantial share of its profits back to the gay community.

10. In its objection, ILGA requests that Afilias "be forced to withdraw its application". Pursuant to Article 21 (d) of the Procedure, the Panel in its Expert Determination decides whether an objection is successful or dismissed; it cannot force an applicant to withdraw its application. Thus, ILGA's request that Afilias be forced to withdraw does not fall into the scope of the present proceedings.

### **Applicant's Position**

11. Afilias responds that the operation of the string .LGBT is not meant to create a community, but rather, to provide an online environment whereby lesbian, gay, bisexual, and transgender

("LGBT") individuals, organisations, and companies can interact under a new secure domain name space. It further responds that operating the string .LGBT cannot exploit the name of the gay community, because the objector itself refers to this community again and again as gay and not as LGBT. It also points to the huge marketing trend of more and more businesses targeting the "gay dollar", the financial and monetary potential of the LGBT community; these businesses, even without themselves belonging to the LGBT community, should be able to use the string .LGBT to present themselves as having this special targeting focus. As to the damages that ILGA foresees, Afilias points to its robust policy and swift actions to remove abusive domain name registrations from its other domains and to the speculative nature of the damages envisioned by ILGA. As to the lost opportunities that ILGA claims, Afilias claims the freedom not to protect and to serve the gay community but rather to pursue a business.

12. Afilias suspects that ILGA's real issue with Afilias's application for the string .LGBT is that it is likely to provide competition with dotgay's application for the string .gay which is supported by ILGA and which tries to become the only gTLD on the Internet to serve the gay community.

## **Findings**

13. ILGA's standing has not been doubted by Afilias and is not to be doubted. To have standing the objector has to be an established institution associated with a clearly delineated community (Module 3.2.2.4 of the Guidebook), *i.e.* with a group that is publicly recognized as a community at a local and/or global level and has formal boundaries that enable a determination of what persons or entities form the community (Module 3.5.4 of the Guidebook, first test). The gay community is a clearly delineated community. It is publicly recognized as such in the language of the media, scholarship, and common usage, formed by millions of individuals whose gender identities and sexual orientations are outside of the societal norms for heterosexual behavior and who, whether they are more or whether they are less organized, share the awareness of their special status. During the last century, the gay community has grown out of individuals with that special awareness into a community in its own right and is now a worldwide presence.

14. ILGA is a globally recognized institution, existing since 1978, organized around the cause of the gay community, fighting for the freedom to live and express one's gender identity and sexual orientation outside of the societal norms for heterosexual behavior without any discrimination. ILGA existed much prior to the new gTLD proceedings and its purpose is far broader than merely taking the role of objector in the present proceedings.

15. ILGA has also proven substantial opposition against Afilias's application for the string .LGBT (Module 3.5.4 of the Guidebook, second test). It has named more than 150 gay community organizations that support the community application by dotgay for the string .gay and also object to the application by Afilias for the string .LGBT.

16. ILGA has used less care to prove a strong association between the string .LGBT and the gay community it represents (Module 3.5.4 of the Guidebook, third test). As Afilias points out in its response, ILGA itself refers again and again to the gay community and not to the lesbian, gay, bisexual, and transgender community. It was not required to prove the strong association with more care; it is common knowledge that the term gay community refers to this wider community, wider even than a lesbian, gay, bisexual, and transgender community, and that LGBT is one of the different abbreviations used to characterize it.

17. For an objection to be successful, the objector has to prove that the application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted; Module 3.5.4 of the Guidebook, fourth test, mentions as detrimental in particular damage to the reputation of the community, a failure of the applicant to act in accordance with the interests of the community, interference with the core activities of the community, impairment of the community's dependency on the Domain Name System ("DNS") for its core activities, and economic damage to the community.

18. ILGA has not proven that Afilias's application creates a likelihood of material detriment to the rights of a significant portion of the gay community, nor has ILGA attempted to prove this. Instead, ILGA has attempted to prove a likelihood of material detriment to the legitimate interests of the gay community. It has argued that the gay community needs its own gTLD, that is designed to serve the gay community and to operate accordingly. It should be a safe gTLD where registrants and users can rely on the fact that other registrants who present themselves as gay and as providers of programs, services, funds, and support for gay people are actually gay and trustworthy. It should not be operated only for profit, not even foremost for profit, but with the purpose of giving a fair share of the revenue back to the gay community for its needs and activities. ILGA also fears an usurpation and exploitation of the name of the gay community, should Afilias operate the string .LGBT. But, while not negating that the gay community is also known by the name LGBT, ILGA emphasises that "the Gay Community is of course known by the name gay". It insists on the name gay as the one true name of the gay community, however else the community may be called and known otherwise, as there are indeed many abbreviations that can be formed and used to designate the gay community, and new abbreviations keep emerging.

19. The interest in operating its own gTLD and the interest in not having its name usurped and exploited are legitimate interests of the gay community. But the names gay and LGBT are different. It is not to be seen how Afilias's operation of the string .LGBT could be a detriment to the gay community's interest in operating its own gTLD under the name gay. Nor is it to be seen how Afilias's use of the name LGBT could be an usurpation and exploitation of the name gay that ILGA as the representative of the gay community regards to be truly the name of the gay community.

20. It may happen that among the registrants of the string .LGBT will be non-gay and even anti-gay registrants who try to use the registration for anti-gay purposes. But not all names that can be formed and used and may emerge to designate the gay community and not all commercial utilizations of them can be protected completely against abuse. Occasional abuse is not to be regarded as damage to the reputation of the gay community. Neither does the possibility of occasional abuse mean that Afilias would not operate the string .LGBT in accordance with the interests of the gay community. It does not interfere with the gay community's core activities, nor does it cause economic damage to the gay community.

21. In other words, the gay community's legitimate interest - to operate its own gTLD, not to have its name usurped and exploited, and not to have a gay-related gTLD abused - cannot legitimize an exclusive claim to all names that can be formed and used and may emerge to designate the gay community nor to the gTLDs with the corresponding names. In a free society and on a free market, a community that represents the legitimate interests of its members cannot exclude competition to represent it, to serve it, to target its members as

customers and to do business with them. There is no legal or moral or social principle that would support this kind of exclusivity.

22. The 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 in 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.

23. ILGA has shown a likelihood of material detriment to the legitimate interests of the gay community if there is no gTLD designed to serve the gay community and to operate under appropriate principles that grant safety and financial rewards for the gay community. ILGA has not proven that other gTLDs with names that can also be targeted to the gay community are likely to cause material detriment to the legitimate interests of the gay community or a significant portion thereof. They can only cause a certain amount of competition, and Afilias has convincingly argued that there is a legitimate interest in targeting the gay community without belonging to it or without belonging to the portion of it that supports the string .gay. A coexistence of an "official" gTLD of the gay community and another "unofficial" gTLD is no material detriment to the legitimate interests of the gay community.

### **Decision**

For all the above reasons and according to Article 21 (d) of the Procedure, I hereby render the following Expert Determination:

1. ILGA's objection fails and is dismissed.
2. The Applicant Afilias prevails.
3. Afilias's advance payment of costs shall be refunded by the Centre to Afilias.

16 November 2013



Prof. Dr. Bernhard Schlink, Expert





**THE INTERNATIONAL CENTRE FOR EXPERTISE OF THE  
INTERNATIONAL CHAMBER OF COMMERCE**

CASE No. EXP/394/ICANN/11

THE INTERNATIONAL LESBIAN GAY BISEXUAL TRANS AND INTERSEX  
ASSOCIATION

(BELGIUM)

vs/

UNITED TLD HOLDCO LTD.

(CAYMAN ISLANDS)

This document is an original of the Expert Determination rendered in conformity with the New gTLD Dispute Resolution Procedure as provided in Module 3 of the gTLD Applicant Guidebook from ICANN and the ICC Rules for Expertise.



**EXP/394/ICANN/11**

THE INTERNATIONAL LESBIAN GAY BISEXUAL TRANS AND INTERSEX  
ASSOCIATION (BELGIUM)

vs.

UNITED TLD HOLDCO LTD. (CAYMAN ISLANDS)

Expert Determination

### **Objector**

The International Lesbian Gay Bisexual Trans and Intersex Association  
Mr. Renato Sabbadini  
Contact Information Redacted

### **Objector's Representative**

International Gay & Lesbian Travel Association  
Mr. Clark Massad  
Contact Information Redacted

### **Applicant**

United TLD Holdco Ltd.  
Mr. Jeffrey Eckhaus  
Contact Information Redacted

### **Applicant's Representative**

Greenberg Traurig, LLP  
Mr. Ian C. Ballon, Ms. Wendy M. Mantell, Mr. Justin A. Barton  
Contact Information Redacted

### **Expert Panel**

Professor Dr. Bernhard Schlink  
Humboldt-Universität zu Berlin, Juristische Fakultät  
Contact Information  
Redacted

## **Table of Contents**

Procedure	4
Summary of Parties' Positions	4
Findings	6
Decision	10

## **Procedure**

1. On 12 March 2013, The International Lesbian Gay Bisexual Trans and Intersex Association ("ILGA"), represented by the International Gay & Lesbian Travel Association ("IGLTA"), filed a Community Objection against the application by United TLD Holdco Ltd. ("United TLD") for the string .gay. On 22 May 2013, United TLD filed its response. On 7 June 2013, I, Professor Dr. Bernhard Schlink, was appointed by the Chairman of the Standing Committee of the International Centre for Expertise ("Centre") of the International Chamber of Commerce ("ICC") as Expert in this matter.
2. On 15 July 2013, the Centre confirmed the full constitution of the Expert Panel, transferred the file to me and invited me to proceed with this matter. On 2 August 2013, I informed the parties that I had received the file and did not intend to invite additional submissions and did not consider holding a hearing. The parties did not submit any further submissions or statements nor did they request to be granted leave to submit additional submissions.
3. I proceeded with this matter in accordance with the Rules for Expertise of the ICC ("Rules"), supplemented by the ICC Practice Note on the Administration of Cases ("ICC Practice Note") under the Attachment to Module 3 of the gTLD Applicant Guidebook, New gTLD Dispute Resolution Procedure ("Procedure") of the gTLD Applicant Guidebook ("Guidebook") and Appendix III to the Rules.
4. The language of all submissions was English. All communications by the parties, the Expert Panel and the Centre were submitted electronically (Article 6(a) of the Procedure).
5. The draft Expert Determination was rendered to the Centre on 13 August 2013, *i.e.* within 45 days after receipt of the file transmitted by the Centre on 15 July 2013.

## **Summary of Parties' Positions**

### **Objector's Position**

6. ILGA presents itself as an established institution that has an ongoing relationship with the clearly delineated gay community, which ILGA writes capitalized as Gay Community. To demonstrate that it is an established institution that has an ongoing relationship with the gay community, ILGA documents that it is the only worldwide federation of more than 1000 lesbian, gay, bisexual, transgender and intersex national and local organizations in over 100 nations and on all five continents; that it has existed since 1978; that every two years it holds a world conference; that its many activities and particularly its fight against state-sponsored homophobia are covered in annual reports; and that it enjoys consultative status with the Economic and Social Council of the United Nations. To demonstrate that the gay community is a clearly delineated community, ILGA describes how a sense of community emerged among gay individuals in the early 20th century; how the Stonewall events in New York in 1969 triggered gay individuals around the world to experience themselves as part of a community; how since then more and more gay organizations sprout and provide the gay community with a network of cooperation, support, and services; and how the annual gay pride march demonstrates the unity, vitality, and strength of the gay community, which

includes all individuals whose gender identities and sexual orientations fall outside of the societal norms for heterosexual behavior.

7. ILGA claims substantial opposition from a significant part of the gay community to which the string .gay may be targeted. It describes how the gay community came to understand that it needs a voice inside the new generic top-level domain ("gTLD") program, how it took the lead on the community application by dotgay llc ("dotgay") for the string .gay, how this application has the support from ILGA and more than 150 gay community organizations, and that these same organizations also object to the application by United TLD for the string .gay.

8. ILGA argues that United TLD's operation of the string .gay would damage the gay community. According to ILGA, United TLD does not recognize the gay community, denies its identity and renders it to a commodity among other commodities to be bought and sold. To operate a string .gay while denying the identity of the gay community would be a harmful act in and of itself. Furthermore, the operation of the string .gay would usurp and exploit the name of the gay community, which these days includes lesbian, gay, bisexual, trans, queer, intersex people and allies. Taking a group's name and using it to create a profitable business should be regarded as exploitation, unless it is done for and endorsed by the community itself. United TLD would use the string .gay to generate profits that would not benefit the community. Its operation of the string .gay would make this gTLD available to all registrants for any purpose and any use with no restriction, thereby allowing for abuses of the domain name that might cause the gay community harm, for example from registrants masquerading as members of the community who in fact were anti-gay activists intending to use the registration for anti-gay purposes.

9. ILGA sees a major damage in the loss of opportunities for the gay community with the operation of the string .gay by United TLD. The operation of the string .gay under a non-gay community leadership and responsibility, and solely for profit, would not give the gay community the safety that it could enjoy from a gTLD under gay community leadership and responsibility. Registrants of the string .gay could not rely on other registrants being reliably gay, and people who approach registrants of the string .gay could not rely upon finding trustworthy gay businesses and enterprises, gay community programs and services. In addition, the operation of the string .gay under a non-gay community leadership and responsibility and solely for profit would not allow the gay community to assemble the funds and resources that it needs to support its programs and services.

10. In its objection, ILGA requests that United TLD "be forced to withdraw its application". Pursuant to Article 21 (d) of the Procedure, the Panel in its Expert Determination decides whether an objection is successful or dismissed; it cannot force an applicant to withdraw its application. Thus, ILGA's request that United TLD be forced to withdraw its application does not fall into the scope of the present proceedings.

### **Applicant's Position**

11. United TLD challenges ILGA's standing. It claims that there is no such thing as a gay community and that what is called the gay community cannot be regarded as a clearly delineated community, because it is too diverse, too much in flux, and lacks a single ideology. In any case, according to United TLD, the so-called gay community is too diverse to be represented by ILGA or any other organization or set of organizations.

12. United TLD further argues that there is no substantial opposition from a significant part of the so-called gay community against its application. It points to the fact that there is no evidence that the members of the so-called gay community who are not organized in or around ILGA object United TLD's application.

13. United TLD finally denies the material detriment to the legitimate interest of the gay community that ILGA sees likely to arise from United TLD's operation of the string .gay. By operating an open gTLD without restrictions, boundaries, and limitations, United TLD would not only embrace the people who identify with the term gay, but would allow all people who wish to interact under the gTLD name gay to do so. United TLD claims that its operation of .gay would not allow for more discrimination or more expression of abusive, hateful, and harmful views than already exist. As to the funds and resources that ILGA wants to raise through dotgay's operation of the string .gay to support programs and services of the gay community, United TLD argues that ILGA is not entitled to them. Finally United TLD criticizes ILGA's objection as anti-competitive, because if the string .gay were operated by dotgay rather than United TLD, fewer people could register under it.

## **Findings**

14. Based on the submissions of the parties, ILGA has standing. To have standing the objector has to be an established institution associated with a clearly delineated community (Module 3.2.2.4 of the Guidebook), *i.e.* with a group that is publicly recognized as a community at a local and/or global level and has formal boundaries that enable a determination of what persons or entities form the community (Module 3.5.4 of the Guidebook, first test). The gay community is a clearly delineated community. It is publicly recognized as such in the language of the media, scholarship, and common usage, formed by millions of individuals whose gender identities and sexual orientations are outside of the societal norms for heterosexual behavior and who, whether they are more or whether they are less organized, share the awareness of their special status. During the last century, the gay community has grown out of individuals with that special awareness into a community in its own right and is now a worldwide presence. That this community is diverse, in flux, and in lack of a single ideology does not deprive it of being a community; communities are living entities.

15. ILGA is a globally recognized institution, existing since 1978, organized around the cause of the gay community, fighting for the freedom to live and express one's gender identity and sexual orientation outside of the societal norms for heterosexual behavior without any discrimination. ILGA does not claim to represent the gay community in each and every context and respect and is not required to do so; all that Module 3.2.2.4 of the Guidebook asks for is that it has an ongoing relationship with the gay community. This, ILGA has certainly demonstrated. ILGA existed much prior to the new gTLD proceedings and its purpose is far broader than merely taking the role of objector in the present proceedings.

16. ILGA has also proven substantial opposition against United TLD's application for the string .gay (Module 3.5.4 of the Guidebook, second test). It has named more than 150 gay community organizations that support the community application by dotgay for the string .gay and also object to the application by United TLD for the string .gay. That there are gay people and gay organizations that do not object is irrelevant; Module 3.5.4 of the Guidebook does not ask for comprehensive opposition of the community but only for substantial opposition within the community. The strong association between the the string .gay and the gay community that ILGA represents (Module 3.5.4 of the Guidebok, third test) is obvious.

17. For an objection to be successful, the objector has to prove that the application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted; Module 3.5.4 of the Guidebook, fourth test, mentions as detrimental in particular damage to the reputation of the community, a failure of the applicant to act in accordance with the interests of the community, interference with the core activities of the community, impairment of the community's dependency on the Domain Name System ("DNS") for its core activities, and economic damage to the community.

18. ILGA has not proven that United TLD's application creates a likelihood of material detriment to a significant portion of the gay community, nor has ILGA attempted to prove this. Instead, ILGA has attempted to prove a likelihood of material detriment to the legitimate interests of the gay community. To prove this, it would have been sufficient to prove the likelihood of damage to the reputation of the community, of a failure of the applicant to act in accordance with the interests of the community, of interference with the core activities of the community, of impairment of the community's dependency on the Domain Name System ("DNS") for its core activities, or of economic damage to the community (Module 3.5.4 of the Guidebook, fourth test). ILGA has argued that the gay community needs a gTLD, that is designed to serve the gay community and to operate accordingly. It should be a safe domain where registrants and users can rely on the fact that other registrants who present themselves as gay and as providers of programs, services, funds, and support for gay people are actually gay and trustworthy. The gTLD should be safeguarded against anti-gay registrants who want to use it as a tool for discrimination against the gay community. Furthermore the gTLD should not be operated only for profit, not even foremost for profit, but with the purpose of giving a fair share of the revenue back to the gay community for its needs and activities. To avoid these likely usurpations and exploitations the gTLD should be administered by gay community itself.

19. With these submissions ILGA has not proven an interference with the gay community's core activities or an economic damage to the gay community that would result from United TLD's operation of the string .gay. Nor has ILGA proven that United TLD would not act in accordance with the interests of the community; all that is clear from ILGA's and also United TLD's assertions is that United TLD would not feel a particular responsibility towards the community but rather treat it and its members like any other user.

20. What ILGA has shown is that over the last century and particularly over the last decades the gay community has turned the name gay from a derogatory term into a respected name. Even though the name gay is not a legally protected name of the gay community, ILGA's concern, that the usurpation and exploitation of this name for naked profit making might make the gay community look like a community of customers and consumers rather than a community of people with a special identity and special concerns, may be understandable. But this feared adverse affect on the gay community's appearance would be far from a damage to thereputation of the gay community. In our capitalist world, each and every name is being used for profit making, and everybody is being targeted as a customer and consumer. The reputation of individuals and communities grows out of their qualities, engagements, and activities that transcend the level of profit making and being a customer and consumer.

21. ILGA has certainly demonstrated that the gay community depends on the DNS for its core activities. Within the DNS it depends on its own gTLD. United TLD's operation of the string .gay would not impair the gay community's core activities or economic situation or

even reputation. But since the string .gay, operated by United TLD, and the string .gay, operated by dotgay, can not exist simultaneously, United TLD's operation of the string .gay would keep the gay community from promoting its core activities, improving its economic situation, and also enhancing its reputation by operating its own string .gay. It would also keep the gay community from operating its own string .gay with special mindfulness for the gay community's needs and interests. The interference that can be found in this is an interference less with what the gay community has than with what the gay community wants – its own gTLD. If United TLD would operate the string .gay, the gay community would be deprived of the chance to operate its own string .gay and to make manifold use of it.

22. The detriment that the gay community is threatened by is the loss of the chance to operate its own string .gay. Supported by ILGA and more than 150 gay organizations, dotgay filed a community application for the string .gay. If United TLD, rather than the gay community represented by ILGA as the objector and dotgay as the applicant, were granted the string .gay, the gay community would lose the chance to operate its own string .gay. This loss of the chance to operate its own string .gay might be regarded as a detriment to the legitimate interests of the gay community. But Module 3.5.4 of the Guidebook clarifies that this detriment alone is not sufficient for ILGA's objection to be successful.

23. Module 3.5.4 of the Guidebook states that "an allegation of detriment that consists only of the applicant being delegated the string instead of the objector will not be sufficient for a finding of material detriment". This cannot be taken literally as referring to a situation in which the objector's one and only argument is that it, in its role as applicant, should get the string rather than the other applicant; no objector would argue in such a reductionist way. It can only refer to a situation in which the objector argues that the community involved would be better served if its application were successful and it got the string rather than the other applicant. The logic behind the quoted Module 3.5.4 of the Guidebook is that the Guidebook stipulates a different procedure for the contention between two applicants, one a community-based applicant, the other a standard applicant, and the decision on whether the community-based applicant will serve the community involved well enough to win against the standard applicant. That procedure is the Community Priority Evaluation Procedure of Module 4.2.2 of the Guidebook.

24. The objector that the above quote of Module 3.5.4 of the Guidebook deals with is an applicant himself. But, again, this must not be taken literally as meaning that the objector and the applicant have to be one and the same institution. The institutions must not be identical as long as the interests and the community involved are.

25. This is confirmed by Module 3.2.2.4 of the Guidebook, which gives standing for a Community Objection only to an institution that has "not been established solely in conjunction with the gTLD application process". Because the possibility of applying for a new gTLD is new, and the operation of a new gTLD is a technically and logistically advanced and sophisticated business, for an established institution that represents an established community, the obvious choice is not to take on the task of operating this business itself but rather to delegate it to a new, technically and logistically properly equipped institution. In this situation, Module 3.5.4 of the Guidebook, if taken literally as requiring objector and applicant to be one and the same institution, would become irrelevant: the new institution, as applicant, could not object under Module 3.2.2.4 of the Guidebook and the old institution that could object, not being the applicant, could not argue that the community involved would be better served if its application were successful and it got the string rather than the other applicant. But Module 3.2.2.4 of the Guidebook is meant to become relevant and to steer the contention



between two applicants, one a community-based applicant, the other a standard applicant, and the decision on whether the community-based applicant will serve the community involved well enough to win to the Community Priority Evaluation Procedure of Module 4.2.2 of the Guidebook.

26. So for Module 3.5.4 of the Guidebook, the objector, the established institution, and the applicant, the new institution, are to be treated as one entity under the following conditions: The objector and the applicant are intrinsically linked because they serve the same community, share the same interests, cooperate closely, and practice a division of labor under which the objection comes from the established institution that has established ties to the community and knows and represents its interests plausibly and competently, while the application comes from the new institution charged with applying for a new gTLD and running it on behalf of the community.

27. In this case, if the arguments that the objector brings forward under the Community Objection Procedure of Module 3.5.4 of the Guidebook are the same that matter in the Community Priority Evaluation Procedure of Module 4.2.2 of the Guidebook, then they have to be dealt with under the latter procedure, and therefore cannot be regarded as material detriment under the Community Objection Procedure of Module 3.5.4 of the Guidebook.

28. ILGA and dotgay are not one and the same institution, but they are intrinsically linked. As described in ILGA's objection, the gay community, of which ILGA is the established representative, took leadership of the community application by dotgay, and dotgay advised, supported, and organized ILGA's community objection. ILGA, the established institution, and dotgay, the new institution, practice a division of labor under which they serve the gay community and pursue the same interests optimally.

29. ILGA argues that the gay community would be better served if dotgay's application were successful and dotgay got the string rather than United TLD. It emphasizes the history, vitality, and strength of the gay community and how it is clearly defined and richly organized; the nexus between the string .gay and the gay community; the registration policies under which dotgay would operate the string .gay in the interest of the gay community; and the gay community's support for the operation of the string .gay by dotgay. These are the arguments that matter in the Community Priority Evaluation Procedure of Module 4.2.2 of the Guidebook.

30. The interplay between the Community Objection Procedure of Module 3.2.2.4 of the Guidebook and the Community Priority Evaluation Procedure of Module 4.2.2 of the Guidebook is intricate. The contention between two applicants, one a community-based applicant, the other a standard applicant, and the decision on whether the community-based applicant will serve the community involved well enough to win against the standard applicant, belong into the Community Priority Evaluation Procedure of Module 4.2.2 of the Guidebook. If the community involved could exclude the other applicant by using the Community Objection Procedure of Module 3.2.2.4 of the Guidebook, presenting an established institution as an objector, and presenting arguments that were not sufficient to win in the Community Priority Evaluation Procedure of Module 4.2.2 of the Guidebook, this procedure would be voided and kept from serving the purpose for which it is created.

31. One might consider dealing with the intricate interplay between the two procedures by requiring that the likelihood of material detriment to the legitimate interests of the community under Module 3.5.4 of the Guidebook were proven in a manner that would also fulfill the

criteria of the Community Priority Evaluation Procedure of Module 4.2.2 of the Guidebook and, if that proof succeeded, allow the objection to prevail. The arguments that ILGA presents offer enough material to suggest that such criteria might well be fulfilled. But the Guidebook stipulates the Community Priority Evaluation as a different procedure before a different panel. This has to be respected.

32. So while the lost chance of operating its own string .gay, caused by United TLD being delegated the string .gay, might be regarded as a detriment to the legitimate interests of the gay community, under Module 3.5.4 of the Guidebook this detriment is not sufficient for a finding of material detriment and for ILGA's objection to be successful.

### **Decision**

For all the above reasons and according to Article 21 (d) of the Procedure, I hereby render the following Expert Determination:

1. ILGA's objection fails and is dismissed.
2. The Applicant United TLD prevails.
3. United TLD's advance payment of costs shall be refunded by the Centre to United TLD.

16 November 2013



Prof. Dr. Bernhard Schlink, Expert



**THE INTERNATIONAL CENTRE FOR EXPERTISE OF THE  
INTERNATIONAL CHAMBER OF COMMERCE**

CASE No. EXP/392/ICANN/9

THE INTERNATIONAL LESBIAN GAY BISEXUAL TRANS AND INTERSEX  
ASSOCIATION

(BELGIUM)

vs/

TOP LEVEL DESIGN, LLC

(USA)

This document is an original of the Expert Determination rendered in conformity with the New gTLD Dispute Resolution Procedure as provided in Module 3 of the gTLD Applicant Guidebook from ICANN and the ICC Rules for Expertise.

**EXP/392/ICANN/9**

THE INTERNATIONAL LESBIAN GAY BISEXUAL TRANS AND INTERSEX  
ASSOCIATION (BELGIUM)

vs.

TOP LEVEL DESIGN, LLC (USA)

Expert Determination

### **Objector**

The International Lesbian Gay Bisexual Trans and Intersex Association  
Mr. Renato Sabbadini  
Contact Information Redacted

### **Objector's Representative**

International Gay & Lesbian Travel Association  
Mr. Clark Massad  
Contact Information Redacted

### **Applicant**

Top Level Design, LLC  
Mr. Raymond King  
Contact Information Redacted

### **Applicant's Representative**

N/A

### **Expert Panel**

Professor Dr. Bernhard Schlink  
Humboldt-Universität zu Berlin, Juristische Fakultät  
Contact Information  
Redacted

## **Table of Contents**

Procedure	4
Summary of Parties' Positions	4
Findings	6
Decision	10

## **Procedure**

1. On 12 March 2013, The International Lesbian Gay Bisexual Trans and Intersex Association ("ILGA"), represented by the International Gay & Lesbian Travel Association ("IGLTA"), filed a Community Objection against the application by Top Level Design, LLC ("TLD") for the string .GAY, written in capital letters. On 22 May 2013, TLD filed its response. On 7 June 2013, I, Professor Dr. Bernhard Schlink, was appointed by the Chairman of the Standing Committee of the International Centre for Expertise ("Centre") of the International Chamber of Commerce ("ICC") as Expert in this matter.
2. On 4 July 2013, the Centre confirmed the full constitution of the Expert Panel, transferred the file to me and invited me to proceed with this matter. On 2 August 2013, I informed the parties that I had received the file and did not intend to invite additional submissions and did not consider holding a hearing. The parties did not submit any further submissions or statements nor did they request to be granted leave to submit additional submissions.
3. I proceeded with this matter in accordance with the Rules for Expertise of the ICC ("Rules"), supplemented by the ICC Practice Note on the Administration of Cases ("ICC Practice Note") under the Attachment to Module 3 of the gTLD Applicant Guidebook, New gTLD Dispute Resolution Procedure ("Procedure") of the gTLD Applicant Guidebook ("Guidebook") and Appendix III to the Rules.
4. The language of all submissions was English. All communications by the parties, the Expert Panel and the Centre were submitted electronically (Article 6(a) of the Procedure).
5. The draft Expert Determination was rendered to the Centre on 13 August 2013, *i.e.* within 45 days after receipt of the file transmitted by the Centre on 4 July 2013.

## **Summary of Parties' Positions**

### **Objector's Position**

6. ILGA presents itself as an established institution that has an ongoing relationship with the clearly delineated gay community, which ILGA writes capitalized as Gay Community. To demonstrate that it is an established institution that has an ongoing relationship with the gay community, ILGA documents that it is the only worldwide federation of more than 1000 lesbian, gay, bisexual, transgender and intersex national and local organizations in over 100 nations and on all five continents; that it has existed since 1978; that every two years it holds a world conference; that its many activities and particularly its fight against state-sponsored homophobia are covered in annual reports; and that it enjoys consultative status with the Economic and Social Council of the United Nations. To demonstrate that the gay community is a clearly delineated community, ILGA describes how a sense of community emerged among gay individuals in the early 20th century; how the Stonewall events in New York in 1969 triggered gay individuals around the world to experience themselves as part of a community; how since then more and more gay organizations sprout and provide the gay community with a network of cooperation, support, and services; and how the annual gay pride march demonstrates the unity, vitality, and strength of the gay community, which



includes all individuals whose gender identities and sexual orientations fall outside of the societal norms for heterosexual behavior.

7. ILGA claims substantial opposition from a significant part of the gay community to which the string .GAY may be targeted. It describes how the gay community came to understand that it needs a voice inside the new generic top-level domain ("gTLD") program, how it took the lead on the community application by dotgay llc ("dotgay") for the string .gay, how this application has the support from ILGA and more than 150 gay community organizations, and that these same organizations also object to the application by TLD for the string .GAY.

8. ILGA argues that TLD's operation of the string .GAY would damage the gay community. According to ILGA, TLD denies the existence of a gay community and does not understand that being gay is the expression of the essential nature of a gay person and not a choice of a gay lifestyle or a homosexual culture. To operate a string .GAY while denying the existence of the gay community would be a harmful act in and of itself. Furthermore, the operation of the string .GAY would usurp and exploit the name of the gay community, which these days includes lesbian, gay, bisexual, trans, queer, intersex people and allies. Taking a group's name and using it to create a profitable business should be regarded as exploitation, unless it is done for and endorsed by the community itself. TLD would use the string .GAY to generate profits that would not benefit the community. Its operation of the string .GAY would make this gTLD available to all registrants for any purpose and any use with no restriction, thereby allowing for abuses of the domain name that might cause the gay community harm, for example from registrants masquerading as members of the community who in fact were anti-gay activists intending to use the registration for anti-gay purposes.

9. ILGA sees a major damage in the loss of opportunities for the gay community with the operation of the string .GAY by TLD. The operation of the string .GAY under a non-gay community leadership and responsibility, and solely for profit, would not give the gay community the safety that it could enjoy from a gTLD under gay community leadership and responsibility. Registrants of the string .GAY could not rely on other registrants being reliably gay, and people who approach registrants of the string .GAY could not rely upon finding trustworthy gay businesses and enterprises, gay community programs and services. In addition, the operation of the string .GAY under a non-gay community leadership and responsibility and solely for profit would not allow the gay community to assemble the funds and resources that it needs to support its programs and services.

10. In its objection, ILGA requests that TLD "be forced to withdraw its application". Pursuant to Article 21 (d) of the Procedure, the Panel in its Expert Determination decides whether an objection is successful or dismissed; it cannot force an applicant to withdraw its application. ILGA's request that TLD be forced to withdraw its application does not fall into the scope of the present proceedings.

### **Applicant's Position**

11. TLD challenges ILGA's standing. It sees many different gay lifestyles and cultures, too many to talk of one gay community. Not wanting to categorically deny the existence of a gay community, TLD finds it at least impractical to define the gay community for the purposes of the new gTLD application and dispute resolution procedure. TLD also regards ILGA as a strawman for dotgay, the competing applicant for .GAY who itself does not have standing as an objector; TLD therefore regards ILGA's objection as abusive.

12. TLD further argues that there is no substantial opposition from a significant part of the gay community against its application, and that TLD does not even target the string .GAY to the gay community but welcomes anybody to register domain names under this gTLD without prior restrictions.

13. TLD finally argues that the material detriment to the legitimate interest of the gay community that ILGA sees likely to arise from TLD's operation of the string .GAY is irrelevant. TLD finds likelihood of material detriment not sufficient, but thinks that certainty is required. TLD does not deny that it will not operate the string .GAY in the particular interest of the gay community. But it sees no need to do so; it will operate the string .GAY in a completely open and unrestricted manner and thereby serve the interests of all who may register equally and, doing that, even reduce prejudice against the gay community.

## **Findings**

14. Based on the submissions of the parties, ILGA has standing. To have standing the objector has to be an established institution associated with a clearly delineated community (Module 3.2.2.4 of the Guidebook), *i.e.* with a group that is publicly recognized as a community at a local and/or global level and has formal boundaries that enable a determination of what persons or entities form the community (Module 3.5.4 of the Guidebook). The gay community is a clearly delineated community. It is publicly recognized as such in the language of the media, scholarship, and common usage, formed by millions of individuals whose gender identities and sexual orientations are outside of the societal norms for heterosexual behavior and who, whether they are more or whether they are less organized, share the awareness of their special status. During the last century, the gay community has grown out of individuals with that special awareness into a community in its own right and is now a worldwide presence.

15. ILGA is a globally recognized institution, existing since 1978, organized around the cause of the gay community, fighting for the freedom to live and express one's gender identity and sexual orientation outside of the societal norms for heterosexual behavior without any discrimination. ILGA existed much prior to the new gTLD proceedings and its purpose is far broader than merely taking the role of objector in the present proceedings.

16. ILGA has also proven substantial opposition against TLD's application for the string .GAY (Module 3.5.4 of the Guidebook, second test). It has named more than 150 gay community organizations that support the community application by dotgay for the string .gay and also object to the application by TLD for the string .GAY. The strong association between the the string .GAY and the gay community that ILGA represents (Module 3.5.4 of the Guidebook, third test) is obvious.

17. For an objection to be successful, the objector has to prove that the application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted; Module 3.5.4 of the Guidebook, fourth test, mentions as detrimental in particular damage to the reputation of the community, a failure of the applicant to act in accordance with the interests of the community, interference with the core activities of the community, impairment of the community's dependency on the Domain Name System ("DNS") for its core activities, and economic damage to the community.

18. ILGA has not proven that TLD's application creates a likelihood of material detriment to the rights of a significant portion of the gay community, nor has ILGA attempted to prove this. Instead, ILGA has attempted to prove a likelihood of material detriment to the legitimate interests of the gay community. To prove this, it would have been sufficient to prove the likelihood of damage to the reputation of the community, of a failure of the applicant to act in accordance with the interests of the community, of interference with the core activities of the community, of impairment of the community's dependency on the Domain Name System ("DNS") for its core activities, or of economic damage to the community (Module 3.5.4 of the Guidebook, fourth test). ILGA has argued that the gay community needs a gTLD that is designed to serve the gay community and to operate accordingly. It should be a safe gTLD where registrants and users can rely on the fact that other registrants who present themselves as gay and as providers of programs, services, funds, and support for gay people are actually gay and trustworthy. The gTLD should be safeguarded against anti-gay registrants who want to use it as a tool for discrimination against the gay community. Furthermore the gTLD should not be operated only for profit, not even foremost for profit, but with the purpose of giving a fair share of the revenue back to the gay community for its needs and activities. To avoid these likely usurpations and exploitations the gTLD should be administered by the gay community itself.

19. With these submissions ILGA has not proven an interference with the gay community's core activities or an economic damage to the gay community that would result from TLD's operation of the string .GAY. Nor has ILGA proven that TLD would not act in accordance with the interests of the community; all that is clear from ILGA's and also TLD's assertions is that TLD would not feel a particular responsibility towards the community but rather treat its members and interests like any other users and interests.

20. ILGA has shown that over the last century and particularly over the last decades the gay community has turned the name gay from a derogatory term into a respected name. Even though the name gay is not a legally protected name of the gay community, ILGA's concern, that the usurpation and exploitation of this name for naked profit making might make the gay community look like a community of customers and consumers rather than a community of people with a special identity and special concerns, may be understandable. But this feared adverse effect on the gay community's appearance would be far from a damage to the reputation of the gay community. In our capitalist world, each and every name is being used for profit making, and everybody is being targeted as a customer and consumer. The reputation of individuals and communities grows out of their qualities, engagements, and activities that transcend the level of profit making and being a customer and consumer.

21. ILGA has certainly demonstrated that the gay community depends on the DNS for its core activities. Within the DNS it depends on its own gTLD. TLD's operation of the string .GAY would not impair the gay community's core activities or economic situation or even reputation. But since the strings .GAY and .gay, written differently, but treated identically within the DNS, can not exist simultaneously, TLD's operation of the string .GAY would keep the gay community from promoting its core activities, improving its economic situation, and also enhancing its reputation by operating its own string .gay. It would also keep the gay community from operating its own string .gay with special mindfulness for the gay community's needs and interests. The interference that can be found in this is an interference less with what the gay community has than with what the gay community wants – its own gTLD. If TLD would operate the string .GAY, the gay community would be deprived of the chance to operate its own string .gay and to make manifold use of it.

22. The detriment that the gay community is threatened by, is the loss of the chance to operate its own string .gay. Supported by ILGA and more than 150 gay organizations, dotgay filed a community application for the string .gay. If TLD, rather than the gay community represented by ILGA as the objector and dotgay as the applicant, were granted the string .gay, the gay community would lose the chance to operate its own string .gay. This loss might be regarded as a detriment to the legitimate interests of the gay community. But Module 3.5.4 of the Guidebook clarifies that this detriment alone is not sufficient for ILGA's objection to be successful.

23. Module 3.5.4 of the Guidebook states that "an allegation of detriment that consists only of the applicant being delegated the string instead of the objector will not be sufficient for a finding of material detriment". This cannot be taken literally as referring to a situation in which the objector's one and only argument is that it, in its role as an applicant for the string, should get the string rather than the other applicant; no objector would argue in such a reductionist way. It can only refer to a situation in which the objector argues that the community involved would be better served if its application were successful and it got the string rather than the other applicant. The logic behind the quoted Module 3.5.4 of the Guidebook is that the Guidebook stipulates a different procedure for the contention between two applicants, one a community-based applicant, the other a standard applicant, and the decision on whether the community-based applicant will serve the community involved well enough to win against the standard applicant. That procedure is the Community Priority Evaluation Procedure of Module 4.2.2 of the Guidebook.

24. The objector that the above quote of Module 3.5.4 of the Guidebook deals with is an applicant himself. But, again, this must not be taken literally as meaning that the objector and the applicant have to be one and the same institution. The institutions must not be identical as long as the interests and the community involved are.

25. This is confirmed by Module 3.2.2.4 of the Guidebook, which gives standing for a Community Objection only to an institution that has "not been established solely in conjunction with the gTLD application process". Because the possibility of applying for a new gTLD is new, and the operation of a new gTLD is a technically and logistically advanced and sophisticated business, for an established institution that represents an established community, the obvious choice is not to take on the task of operating this business itself but rather to delegate it to a new, technically and logistically properly equipped institution. In this situation, Module 3.5.4 of the Guidebook, if taken literally as requiring objector and applicant to be one and the same institution, would become irrelevant: the new institution, as applicant, could not object under Module 3.2.2.4 of the Guidebook and the old institution that could object, not being the applicant, could not argue that the community involved would be better served if its application were successful and it got the string rather than the other applicant. But Module 3.2.2.4 of the Guidebook is meant to become relevant and to steer the contention between two applicants, one a community-based applicant, the other a standard applicant, and the decision on whether the community-based applicant will serve the community involved well enough to win to the Community Priority Evaluation Procedure of Module 4.2.2 of the Guidebook.

26. So for Module 3.5.4 of the Guidebook, the objector, the established institution, and the applicant, the new institution, are to be treated as one entity under the following conditions: The objector and the applicant are intrinsically linked because they serve the same community, share the same interests, cooperate closely, and practice a division of labor under which the

objection comes from the established institution that has established ties to the community and knows and represents its interests plausibly and competently, while the application comes from the new institution charged with applying for a new gTLD and running it on behalf of the community.

27. In this case, if the arguments that the objector brings forward under the Community Objection Procedure of Module 3.5.4 of the Guidebook are the same that matter in the Community Priority Evaluation Procedure of Module 4.2.2 of the Guidebook, then they have to be dealt with under the latter procedure, and therefore cannot be regarded as material detriment under the Community Objection Procedure of Module 3.5.4 of the Guidebook.

28. ILGA and dotgay are not one and the same institution, but they are intrinsically linked. As described in ILGA's objection, the gay community, of which ILGA is the established representative, took leadership of the community application by dotgay, and dotgay advised, supported, and organized ILGA's community objection. ILGA, the established institution, and dotgay, the new institution, practice a division of labor under which they serve the gay community and pursue the same interests optimally.

29. ILGA argues that the gay community would be better served if dotgay's application were successful and dotgay got the string rather than TLD. It emphasizes the history, vitality, and strength of the gay community and how it is clearly defined and richly organized; the nexus between the string .gay and the gay community; the registration policies under which dotgay would operate the string .gay in the interest of the gay community; and the gay community's support for the operation of the string .gay by dotgay. These are the arguments that matter in the Community Priority Evaluation Procedure of Module 4.2.2 of the Guidebook.

30. The interplay between the Community Objection Procedure of Module 3.2.2.4 of the Guidebook and the Community Priority Evaluation Procedure of Module 4.2.2 of the Guidebook is intricate. The contention between two applicants, one a community-based applicant, the other a standard applicant, and the decision on whether the community-based applicant will serve the community involved well enough to win against the standard applicant, belong into the Community Priority Evaluation Procedure of Module 4.2.2 of the Guidebook. If the community involved could exclude the other applicant by using the Community Objection Procedure of Module 3.2.2.4 of the Guidebook, presenting an established institution as an objector, and presenting arguments that were not sufficient to win in the Community Priority Evaluation Procedure of Module 4.2.2 of the Guidebook, this procedure would be voided and kept from serving the purpose for which it is created.

31. One might consider dealing with the intricate interplay between the two procedures by requiring that the likelihood of material detriment to the legitimate interests of the community under Module 3.5.4 of the Guidebook were proven in a manner that would also fulfill the criteria of the Community Priority Evaluation Procedure of Module 4.2.2 of the Guidebook and, if that proof succeeded, allow the objection to prevail. The arguments that ILGA presents offer enough material to suggest that such criteria might well be fulfilled. But the Guidebook stipulates the Community Priority Evaluation as a different procedure before a different panel. This has to be respected.

32. So while the lost chance of operating its own string .gay, caused by TLD being delegated the string .GAY, might be regarded as a detriment to the legitimate interests of the gay community, under Module 3.5.4 of the Guidebook this detriment is not sufficient for a finding of material detriment and for ILGA's objection to be successful.

## **Decision**

For all the above reasons and according to Article 21(d) of the Procedure, I hereby render the following Expert Determination:

1. ILGA's objection fails and is dismissed.
2. The Applicant TLD prevails.
3. TLD's advance payment of costs shall be refunded by the Centre to TLD.

16 November 2013

A handwritten signature in blue ink, appearing to read 'Schlink', written in a cursive style.

Prof. Dr. Bernhard Schlink, Expert

## **Annex B-11**

**THE INTERNATIONAL CENTRE FOR EXPERTISE OF THE  
INTERNATIONAL CHAMBER OF COMMERCE**

CASE No. EXP/393/ICANN/10

**THE INTERNATIONAL LESBIAN GAY BISEXUAL TRANS AND INTERSEX  
ASSOCIATION**

**(BELGIUM)**

vs/

**TOP LEVEL DOMAIN HOLDINGS LIMITED**

**(BRITISH VIRGIN ISLANDS)**

This document is an original of the Expert Determination rendered in conformity with the New gTLD Dispute Resolution Procedure as provided in Module 3 of the gTLD Applicant Guidebook from ICANN and the ICC Rules for Expertise.



**EXP/393/ICANN/10**

THE INTERNATIONAL LESBIAN GAY BISEXUAL TRANS AND INTERSEX  
ASSOCIATION (BELGIUM)

vs.

TOP LEVEL DOMAIN HOLDINGS LIMITED (BRITISH VIRGIN ISLANDS)

Expert Determination

## **Objector**

The International Lesbian Gay Bisexual Trans and Intersex Association  
Mr. Renato Sabbadini  
Contact Information Redacted

## **Objector's Representative**

International Gay & Lesbian Travel Association  
Mr. Clark Massad  
Contact Information Redacted

## **Applicant**

Top Level Domain Holdings Limited  
Mr. Antony Van Couvering  
Contact Information Redacted

## **Applicant's Representative**

Minds + Machines  
Mr. Reg Levy  
Contact Information Redacted

## **Expert Panel**

Professor Dr. Bernhard Schlink  
Humboldt-Universität zu Berlin, Juristische Fakultät  
Contact Information  
Redacted

## **Table of Contents**

Procedure	4
Summary of Parties' Positions	4
Findings	6
Decision	10

## **Procedure**

1. On 12 March 2013, The International Lesbian Gay Bisexual Trans and Intersex Association ("ILGA"), represented by the International Gay & Lesbian Travel Association ("IGLTA"), filed a Community Objection against the application by Top Level Domain Holding Limited ("TLDH"), represented by Minds + Machines for the string .gay. On 22 May 2013, TLDH filed its response. On 7 June 2013, I, Professor Dr. Bernhard Schlink, was appointed by the Chairman of the Standing Committee of the International Centre for Expertise ("Centre") of the International Chamber of Commerce ("ICC") as Expert in this matter.
2. On 4 July 2013, the Centre confirmed the full constitution of the Expert Panel, transferred the file to me and invited me to proceed with this matter. On 2 August 2013, I informed the parties that I had received the file and did not intend to invite additional submissions and did not consider holding a hearing. The parties did not submit any further submissions or statements nor did they request to be granted leave to submit additional submissions.
3. I proceeded with this matter in accordance with the Rules for Expertise of the ICC ("Rules"), supplemented by the ICC Practice Note on the Administration of Cases ("ICC Practice Note") under the Attachment to Module 3 of the gTLD Applicant Guidebook, New gTLD Dispute Resolution Procedure ("Procedure") of the gTLD Applicant Guidebook ("Guidebook") and Appendix III to the Rules.
4. The language of all submissions was English. All communications by the parties, the Expert Panel and the Centre were submitted electronically.
5. The Expert Determination was rendered to the Centre on 13 August 2013, *i.e.* within 45 days after receipt of the file transmitted by the Centre on 4 July 2013.

## **Summary of Parties' Positions**

### **Objector's Position**

6. ILGA presents itself as an established institution that has an ongoing relationship with the clearly delineated gay community, which ILGA writes capitalized as Gay Community. To demonstrate that it is an established institution that has an ongoing relationship with the gay community, ILGA documents that it is the only worldwide federation of more than 1000 lesbian, gay, bisexual, transgender and intersex national and local organizations in over 100 nations and on all five continents; that it has existed since 1978; that every two years it holds a world conference; that its many activities and particularly its fight against state-sponsored homophobia are covered in annual reports; and that it enjoys consultative status with the Economic and Social Council of the United Nations. To demonstrate that the gay community is a clearly delineated community, ILGA describes how a sense of community emerged among gay individuals in the early 20th century; how the Stonewall events in New York in 1969 triggered gay individuals around the world to experience themselves as part of a community; how since then more and more gay organizations sprout and provide the gay community with a network of cooperation, support, and services; and how the annual gay pride march demonstrates the unity, vitality, and strength of the gay community, which

includes all individuals whose gender identities and sexual orientations fall outside of the societal norms for heterosexual behavior.

7. ILGA claims substantial opposition from a significant part of the gay community to which the string .gay may be targeted. It describes how the gay community came to understand that it needs a voice inside the new generic top-level domain ("gTLD") program, how it took the lead on the community application by dotgay llc ("dotgay") for the string .gay, how this application has the support from ILGA and more than 150 gay community organizations, and that these same organizations also object to the application by TLDH for the string .gay.

8. ILGA argues that TLDH's operation of the string .gay would damage the gay community. According to ILGA, TLDH does not reach out to the gay community and does nothing to protect the gay community. Furthermore, TLDH's operation of the string .gay would usurp and exploit the name of the gay community, which these days includes lesbian, gay, bisexual, trans, queer, intersex people and allies. Taking a group's name and using it to create a profitable business should be regarded as exploitation, unless it is done for and endorsed by the community itself. TLDH would use the string .gay to generate profits that would not benefit the community. Its operation of the string .gay would make this gTLD available to all registrants for any purpose and any use with no restriction, thereby allowing for abuses of the domain name that might cause the gay community harm, for example from registrants masquerading as members of the community who in fact were anti-gay activists intending to use the registration for anti-gay purposes.

9. ILGA sees a major damage in the loss of opportunities for the gay community with the operation of the string .gay by TLDH. The operation of the string .gay under a non-gay community leadership and responsibility, and solely for profit, would not give the gay community the safety that it could enjoy from a gTLD under gay community leadership and responsibility. Registrants of TLDH's string .gay could not rely on other registrants being reliably gay, and people who approach registrants of TLDH's string .gay could not rely upon finding trustworthy gay businesses and enterprises, gay community programs and services. In addition, the operation of the string .gay under a non-gay community leadership and responsibility and solely for profit would not allow the gay community to assemble the funds and resources that it needs to support its programs and services.

10. In its objection, ILGA requests that TLDH "be forced to withdraw its application". Pursuant to Article 21 (d) of the Procedure, the Panel in its Expert Determination decides whether an objection is successful or dismissed; it cannot force an applicant to withdraw its application. Thus, ILGA's request that TLDH be forced to withdraw its application does not fall into the scope of the present proceedings.

### **Applicant's Position**

11. TLDH challenges ILGA's standing. According to TLDH, the "so-called gay community" is not a clearly delineated community, because it is not a defined, hierarchically structured bloc with a leader or a group speaking for all its members. According to TLDH, ILGA is also not an established institution, because it has lost its consultative status with the Economic and Social Council of the United Nations in 1994.

12. TLDH further denies the material detriment to the legitimate interest of the gay community that ILGA sees likely to arise from TLDH's operation of the string .GAY – while applying explicitly for the string .gay, TLDH in its application also writes the gTLD for

which it applies in capital letters as .GAY. TLDH points out that it will provide a procedure that allows registrants to report content that they find inappropriate, harmful, or damaging to any person and especially to lesbian, gay, bisexual, transgender, and intersex people. By not placing restrictions on registration, TLDH claims to not harm the so called gay community but rather to protect lesbian, gay, bisexual, transgender, and intersex people against discriminatory registration policies. Because TLDH denies the existence of a gay community, it can see no need for the gay community to assemble funds and resources to support its programs and services and no harm in this need being unfulfilled.

## Findings

13. Based on the submissions of the parties, ILGA has standing. To have standing the objector has to be an established institution associated with a clearly delineated community (Module 3.2.2.4 of the Guidebook), *i.e.* with a group that is publicly recognized as a community at a local and/or global level and has formal boundaries that enable a determination of what persons or entities form the community (Module 3.5.4 of the Guidebook, first test). The gay community is a clearly delineated community. It is publicly recognized as such in the language of the media, scholarship, and common usage, formed by millions of individuals whose gender identities and sexual orientations are outside of the societal norms for heterosexual behavior and who, whether they are more or whether they are less organized, share the awareness of their special status. During the last century, the gay community has grown out of individuals with that special awareness into a community in its own right and is now a worldwide presence. TLDH's notion of a community being a bloc with a hierarchical top down structure and one leader or speaker may suit a paramilitary organisation or a certain type of political party, but is far from characteristic for a community.

14. ILGA is a globally recognized institution, existing since 1978, organized around the cause of the gay community, fighting for the freedom to live and express one's gender identity and sexual orientation outside of the societal norms for heterosexual behavior without any discrimination. That ILGA has once lost its consultative status with the Economic and Social Council of the United Nations is irrelevant; it has regained this status. ILGA existed much prior to the new gTLD proceedings and its purpose is far broader than merely taking the role of objector in the present proceedings.

15. ILGA has also proven substantial opposition against TLDH's application for the string .gay (Module 3.5.4 of the Guidebook, second test). It has named more than 150 gay community organizations that support the community application by dotgay for the string .gay and also object to the application by TLDH for the string .gay. The strong association between the the string .gay and the gay community that ILGA represents (Module 3.5.4 of the Guidebook, third test) is obvious.

16. For an objection to be successful, the objector has to prove that the application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted; Module 3.5.4 of the Guidebook, fourth test, mentions as detrimental in particular damage to the reputation of the community, a failure of the applicant to act in accordance with the interests of the community, interference with the core activities of the community, impairment of the community's dependency on the Domain Name System ("DNS") for its core activities, and economic damage to the community.

17. ILGA has not proven that TLDH's application creates a likelihood of material detriment to the rights of a significant portion of the gay community, nor has it attempted to prove this. Instead, ILGA has attempted to prove a likelihood of material detriment to the legitimate interests of the gay community. To prove this, it would have been sufficient to prove the likelihood of damage to the reputation of the community, of a failure of the applicant to act in accordance with the interests of the community, of interference with the core activities of the community, of impairment of the community's dependency on the Domain Name System ("DNS") for its core activities, or of economic damage to the community (Module 3.5.4 of the Guidebook, fourth test). ILGA has argued that the gay community needs a gTLD, that is designed to serve the gay community and to operate accordingly. It should be a safe domain where registrants and users can rely on the fact that other registrants who present themselves as gay and as providers of programs, services, funds, and support for gay people are actually gay and trustworthy. The gTLD should be safeguarded against anti-gay registrants who want to use it as a tool for discrimination against the gay community. Furthermore the gTLD should not be operated only for profit, not even foremost for profit, but with the purpose of giving a fair share of the revenue back to the gay community for its needs and activities. To avoid these likely usurpations and exploitations the gTLD should be administered by the gay community itself.

18. With these assertions ILGA has not proven an interference with the gay community's core activities or an economic damage to the gay community that would result from TLDH's operation of the string .gay. Nor has ILGA proven that TLDH would not act in accordance with the interests of the community; all that is clear from ILGA's and also TLDH's assertions is that TLDH would not feel a particular responsibility towards the community but rather treat it and its members like any other user.

19. ILGA has shown that over the last century and particularly over the last decades the gay community has turned the name gay from a derogatory term into a respected name. Even though the name gay is not a legally protected name of the gay community, ILGA's concern, that the usurpation and exploitation of this name for naked profit making might make the gay community look like a community of customers and consumers rather than a community of people with a special identity and special concerns, may be understandable. But this feared adverse effect on the gay community's appearance would be far from a damage to the reputation of the gay community. In our capitalist world, each and every name is being used for profit making, and everybody is being targeted as a customer and consumer. The reputation of individuals and communities grows out of their qualities, engagements, and activities that transcend the level of profit making and being a customer and consumer.

20. ILGA has certainly demonstrated that the gay community depends on the DNS for its core activities. Within the DNS it depends on its own gTLD. TLDH's operation of the string .gay would not impair the gay community's core activities or economic situation or even reputation. But since the strings .gay and .gay, treated identically within the DNS, even if they are written differently, can not exist simultaneously, TLDH's operation of the string .gay would keep the gay community from promoting its core activities, improving its economic situation, and also enhancing its reputation by operating its own string .gay. It would also keep the gay community from operating its own string .gay with special mindfulness for the gay community's needs and interests. The interference that can be found in this is an interference less with what the gay community has than with what the gay community wants – its own gTLD. If TLDH would operate the string .gay, the gay community would be deprived of the chance to operate its own string .gay and to make manifold use of it.

21. The detriment that the gay community is threatened by is the loss of the chance to operate its own string .gay. Supported by ILGA and more than 150 gay organizations, dotgay filed a community application for the string .gay. If TLDH, rather than the gay community represented by ILGA as the objector and dotgay as the applicant, were granted the string .gay, the gay community would lose the chance to operate its own string .gay. This loss of the chance to operate its own string .gay might be regarded as a detriment to the legitimate interests of the gay community. But Module 3.5.4 of the Guidebook clarifies that this detriment alone is not sufficient for ILGA's objection to be successful.

22. Module 3.5.4 of the Guidebook states that "an allegation of detriment that consists only of the applicant being delegated the string instead of the objector will not be sufficient for a finding of material detriment". This cannot be taken literally as referring to a situation in which the objector's one and only argument is that it, in its role as applicant, should get the string rather than the other applicant; no objector would argue in such a reductionist way. It can only refer to a situation in which the objector argues that the community involved would be better served if its application were successful and it got the string rather than the other applicant. The logic behind the quoted Module 3.5.4 of the Guidebook is that the Guidebook stipulates a different procedure for the contention between two applicants, one a community-based applicant, the other a standard applicant, and the decision on whether the community-based applicant will serve the community involved well enough to win against the standard applicant. That procedure is the Community Priority Evaluation Procedure of Module 4.2.2 of the Guidebook.

23. The objector that the above quote of Module 3.5.4 of the Guidebook deals with is an applicant himself. But, again, this must not be taken literally as meaning that the objector and the applicant have to be one and the same institution. The institutions must not be identical as long as the interests and the community involved are.

24. This is confirmed by Module 3.2.2.4 of the Guidebook, which gives standing for a Community Objection only to an institution that has "not been established solely in conjunction with the gTLD application process". Because the possibility of applying for a new gTLD is new, and the operation of a new gTLD is a technically and logistically advanced and sophisticated business, for an established institution that represents an established community, the obvious choice is not to take on the task of operating this business itself but rather to delegate it to a new, technically and logistically properly equipped institution. In this situation, Module 3.5.4 of the Guidebook, if taken literally as requiring objector and applicant to be one and the same institution, would become irrelevant: the new institution, as applicant, could not object under Module 3.2.2.4 of the Guidebook and the old institution that could object, not being the applicant, could not argue that the community involved would be better served if its application were successful and it got the string rather than the other applicant. But Module 3.2.2.4 of the Guidebook is meant to become relevant and to steer the contention between two applicants, one a community-based applicant, the other a standard applicant, and the decision on whether the community-based applicant will serve the community involved well enough to win to the Community Priority Evaluation Procedure of Module 4.2.2 of the Guidebook.

25. So for Module 3.5.4 of the Guidebook, the objector, the established institution, and the applicant, the new institution, are to be treated as one entity under the following conditions: The objector and the applicant are intrinsically linked because they serve the same community, share the same interests, cooperate closely, and practice a division of labor under which the objection comes from the established institution that has established ties to the community



and knows and represents its interests plausibly and competently, while the application comes from the new institution charged with applying for a new gTLD and running it on behalf of the community.

26. In this case, if the arguments that the objector brings forward under the Community Objection Procedure of Module 3.5.4 of the Guidebook are the same that matter in the Community Priority Evaluation Procedure of Module 4.2.2 of the Guidebook, then they have to be dealt with under the latter procedure, and therefore cannot be regarded as material detriment under the Community Objection Procedure of Module 3.5.4 of the Guidebook.

27. ILGA and dotgay are not one and the same institution, but they are intrinsically linked. As described in ILGA's objection, the gay community, of which ILGA is the established representative, took leadership of the community application by dotgay, and dotgay advised, supported, and organized ILGA's community objection. ILGA, the established institution, and dotgay, the new institution, practice a division of labor under which they serve the gay community and pursue the same interests optimally.

28. ILGA argues that the gay community would be better served if dotgay's application were successful and dotgay got the string rather than TLDH. It emphasizes the history, vitality, and strength of the gay community and how it is clearly defined and richly organized; the nexus between the string .gay and the gay community; the registration policies under which dotgay would operate the string .gay in the interest of the gay community; and the gay community's support for the operation of the string .gay by dotgay. These are the arguments that matter in the Community Priority Evaluation Procedure of Module 4.2.2 of the Guidebook.

29. The interplay between the Community Objection Procedure of Module 3.2.2.4 of the Guidebook and the Community Priority Evaluation Procedure of Module 4.2.2 of the Guidebook is intricate. The contention between two applicants, one a community-based applicant, the other a standard applicant, and the decision on whether the community-based applicant will serve the community involved well enough to win against the standard applicant, belong into the Community Priority Evaluation Procedure of Module 4.2.2 of the Guidebook. If the community involved could exclude the other applicant by using the Community Objection Procedure of Module 3.2.2.4 of the Guidebook, presenting an established institution as an objector, and presenting arguments that were not sufficient to win in the Community Priority Evaluation Procedure of Module 4.2.2 of the Guidebook, this procedure would be voided and kept from serving the purpose for which it is created.

30. One might consider dealing with the intricate interplay between the two procedures by requiring that the likelihood of material detriment to the legitimate interests of the community under Module 3.5.4 of the Guidebook were proven in a manner that would also fulfill the criteria of the Community Priority Evaluation Procedure of Module 4.2.2 of the Guidebook and, if that proof succeeded, allow the objection to prevail. The arguments that ILGA presents offer enough material to suggest that such criteria might well be fulfilled. But the Guidebook stipulates the Community Priority Evaluation as a different procedure before a different panel. This has to be respected.

31. So while the lost chance of operating its own string .gay, caused by TLDH being delegated the string .gay, might be regarded as a detriment to the legitimate interests of the gay community, under Module 3.5.4 of the Guidebook this detriment is not sufficient for a finding of material detriment and for ILGA's objection to be successful.

## **Decision**

For all the above reasons and according to Article 21(d) of the Procedure, I hereby render the following Expert Determination:

1. ILGA's objection fails and is dismissed.
2. The Applicant TLDH prevails.
3. TLDH's advance payment of costs shall be refunded by the Centre to TLDH.

16 November 2013



Prof. Dr. Bernhard Schlink, Expert

## **Annex C-1**

# Oxford English Dictionary | The definitive record of the English language

## gay, *adj.*, *adv.*, and *n.*

**Pronunciation:** Brit. /geɪ/ , U.S. /geɪ/

**Forms:** ME *gaze*, ME-15 *gai*, ME-16 *gaie*, ME-16 *gaye*, ME- *gay*, 19- *gey* (*nonstandard* ...)

**Etymology:** < Anglo-Norman *gai*, *gaye* and Old French, Middle French *gai*...

### A. *adj.*

#### 1.

#### a. Bright or lively-looking, esp. in colour; brilliant, showy.

The precise sense intended in quot. ?c1225 is unclear.

?c1225 (▶?a1200) *Ancrene Riwe* (Cleo. C.vi) (1972) 127 (*margin*) Hwi þe Gay world is to fleon.

a1375 *William of Palerne* (1867) 1936 (*MED*), No man..schuld now deuse men richlier a-raid..to richesse þat þei hadde; þe grete after here degre in þe gaiest wise & menere men as þei miȝt.

c1380 *Sir Ferumbras* (1879) 1694 (*MED*), Oppon þe tour..þar stondeþ a iuwel gay, An egle of gold þat schynað briȝt so doþ þe sonne on may.

?a1400 (▶a1338) R. MANNING *Chron.* (Petyt 511) ll. 169 (*MED*), Þei sauh fer in þe se A grete busse & gay; fulle hie of saile was he.

c1400 (▶?c1380) *Pearl* 260 In þis gardyn gracios gaye.

c1405 (▶c1387-95) CHAUCER *Canterbury Tales Prol.* (Hengwrt) (2003) l. 111 Vpon his arm he bar a gay bracer.

c1420 *Sir Amadace* (Camden) lvi, He come in als gay gere, Ryȝte as he an angelle were.

a1425 (▶?a1300) *Kyng Alisaunder* (Linc. Inn) 3185 (*MED*), Muche bost was þare, Gret pruyde and gay gere.

1463 in S. Tymms *Wills & Inventories Bury St. Edmunds* (1850) 41 My best gay cuppe of erthe.

?1507 W. DUNBAR *Tua Mariit Wemen* (Rouen) in *Poems* (1998) 50 He grathit me in a gay silk and gudly arrayis.

1539 *Will of Robert Ashyn* (P.R.O.: PROB. 11/27) f. 235, My gaye potte of glasse.

1573 G. HARVEY *Let.-bk.* (1884) 6 His oun gai gallant gaskins do and wil descri it sufficiently.

1638 F. JUNIUS *Painting of Ancients* 285 Too much cheerefulnesse of gay and flourishing colours.

1650 J. BULWER *Anthropometamorphosis* 260 The Brama's, who delight in such Gay-bables.

1717 LADY M. W. MONTAGU *Let.* 1 Apr. (1965) I. 311 The perpetual Spring..makes every thing look gay and flourishing.

1797 A. RADCLIFFE *Italian* I. i. 7 In every gay carriage that passed, he hoped to see the object of his constant thought.

1834 E. BULWER-LYTTON *Last Days of Pompeii* I. i. ii. 9 They were now in that quarter which was filled with the gayest shops.

1842 E. MIALl in *Nonconformist* 2 1 The civil magistrate, dressed in his gayest, approached the altar.

1860 G. W. S. PIESSE *Lab. Chem. Wonders* (1869) 131 The *Collinsia verna*, a gay, dark purple flower.

- 1870 E. PEACOCK *Ralf Skirlaugh* III. 233 Their costumes were gay with ribbons.
- 1922 P. G. WODEHOUSE *Adventures of Sally* 25 Their female friends and relatives clustered in groups under gay parasols.
- 1974 *Sunday Gleaner* (Kingston, Jamaica) 25 Aug. (Mag. section) 3/3 (caption) Denim goes gay—A boldly embroidered blue denim skirt.
- 1990 'J. KINCAID' *Lucy* 5, I got up and put on a dress, a gay dress made out of madras cloth.

## b. Finely or showily dressed. Now rare.

- †a1387 J. TREVISA tr. R. Higden *Polychron.* (St. John's Cambr.) (1872) IV. 241 Cleopatra made here gay.
- c1430 (†c1380) CHAUCER *Parl. Fowls* 234 Some ther weere Fayre of hemself, and some of hem were gay.
- c1450 (†?a1400) *Parl. Thre Ages* (BL Add. 31042) 615 (MED), Amadase and Edoyne..in golde and in grene were gaye in thaire tyme.
- 1509 A. BARCLAY *Brant's Shyp of Folys* (Pynson) f. xl, Wymen..sell theyr soules and bodyes to go gay.
- 1572 *Taill of Rauf Coilzear* (1882) 484 He is the gayest in geir, that euer on ground glaid.
- 1611 *Bible* (King James) Baruch vi. 9 And taking golde, as it were for a virgine that loues to go gay, they make crownes for the heads of their gods.
- a1616 SHAKESPEARE *Othello* (1622) II. i. 153 She that..Neuer lackt gold, and yet went neuer gay.
- 1766 C. ANSTEY *New Bath Guide* XI. vi. 78 Who is that Bombazine Lady so gay, So profuse of her Beauties, in sable Array?
- 1801 J. STRUTT *Glig-gamena Angel-ðeod* I. i. 7 The king was desirous of knowing the name of this gay gentleman.
- 1812 J. WILSON *Isle of Palms* III. 600 Vaunt not, gay bird! thy gorgeous plume.
- 1859 TENNYSON *Enid* in *Idylls of King* 15 The armourer..seeing one so gay in purple silks.
- 1924 *Cape Argus* 3 Jan. 8 The quiet streets of Cape Town were enlivened by the marching of troupes of coloured youths, gay in coon costumes.
- 1932 *Men's Dress Reform Party* No. 23. 3/1 Mr. Ernest Thesiger pleaded for colour and self-expression... 'Let us go gay,' he pleaded.

## 2. Noble; beautiful; excellent, fine.

†a. Chiefly *poet*. As a conventional epithet of praise for a woman. Cf.

FREE *adj.* 3. *Obs.*

- c1325 in G. L. Brook *Harley Lyrics* (1968) 49 (MED), Heo is..graciouse, stout, ant gay, gentil, iolyf so þe iay.
- a1375 *William of Palerne* (1867) 816 Whan þe gaye gerles were in-to þe gardin come, Faire floures þei founde of fele maner hewes.
- c1400 (†?c1390) *Sir Gawain & Green Knight* (1940) l. 1003 (MED), Gawan & þe gay burde, to-geder þay seten.
- 1562 E. LEWICKE tr. Boccaccio *Titus & Gisippus* sig. B<sup>v</sup>, It is (I wyll it not denay) Sophronia the lady gay, Whom Gisippus had chose to wife.

- 1599 SHAKESPEARE et al. *Passionate Pilgrime* (new ed.) sig. C4, The learned man hath got the Lady gay.
- a1600 T. DELONEY *Pleasant Hist. John Winchcomb* (1619) sig. E2<sup>v</sup>, That day made many a fatherlesse child, and many a widow poore: And many a Scottish gay Lady, sate weeping in her bowre.
- 1658 T. BANCROFT *Heroical Lover* ii. 16 Some Rusticks..Bluntly inform'd him that a Lady gay, Who in that region bare a Queen-like sway..Did adde much sweetness to their flowery Plains.
- 1736 S. WESLEY *Poems Several Occasions* 215 Our Landlord has, they say, Long woo'd, and lately wed a Lady gay.
- 1802 in Scott *Minstrelsy Sc. Border* II. 124 Prince Robert has wedded a gay ladye, He has wedded her with a ring.

## b. More generally. *regional* in later use.

† **to have a gay mind**: 'to have a good mind', to be very much inclined (*obs. rare*).

- a1375 *William of Palerne* (1867) 1595 (*MED*), Swiþe sent he sondes to somoun..alle þe grete of grece and oþer gaie pepul.
- c1450 *Alphabet of Tales* (1904) I. 168 (*MED*), Þis lorde had also a gay falcon & a swyfte.
- 1488 (1478) HARY *Actis & Deidis Schir William Wallace* (Adv.) (1968–9) ix. l. 178 A gud gay wynd out off the rycht art com.
- ?1529 R. HYRDE tr. J. L. VIVES *Instr. Christen Woman* ii. i. sig. T.iiiij, But loke in the same boke, howe goodly & gaye is the preyse of a good woman.
- 1533 J. BELLENDEN tr. Livy *Hist. Rome* (1822) ii. vii. 127 Becaus vertew wes honorit in this wise, it gaif occasioun to wemen to do gay vassalege.
- 1550 H. LATIMER *Moste Faithfull Serm. before Kynges Maiestye* sig. Fiii, The concord of brethren, & agreing of brethren is a gay thinge.
- 1551 T. WILSON *Rule of Reason* sig. Dviiij<sup>v</sup>, People whiche haue mucche dispraised all temporal lawes..thinkynge it mete that al common weales should onlye haue the gospell, and none other lawe at all. This maye seme to some a gaie saienge, where as in dede it is bothe folishe, and wicked.
- 1557 POLE in J. Strype *Eccl. Mem.* III. App. lxviii. 238 Yf you..had suche a gay mynde to restore the ruynes of the Chyrches.
- 1573 T. TUSSEER *Fiue Hundreth Points Good Husbandry* (new ed.) f. 34, The labor is little, the profit is gaye.
- 1577 W. HARRISON *Descr. Eng.* (1877) Ded. i. p. cix, And thus with hope of good although no gaie successe.
- 1593 *Tell-Trothes New-yeares Gift* (1876) 38 It is a gay thing to come to dignity.
- 1611 J. SPEED *Hist. Great Brit.* ix. xviii. 704/2 Here is a gay goodly cast [of dice], foule cast away for hast.
- 1863 G. W. WHITMAN in *Civil War Lett.* 89, I have a bran new tent and when I get it fixed up to suit me, it will be just gay.
- 1877 E. PEACOCK *Gloss. Words Manley & Corringham, Lincs.* (at cited word), This raäin'll mak' tonups look gaay. Them's a gaay lot o' hogs o' yours.
- 1894 'M. TWAIN' in *Cent. Mag.* Feb. 553 My business and your law practice ought to make a pretty gay team, Dave.

- 1904 J. C. LINCOLN *Cap'n Eri* viii. 132 Ain't this gay? Look at them eggs; b'iled jest to a T.  
 1932 'L. G. GIBBON' *Sunset Song* 20 Ellison had begun to think himself a gey man in Kinraddie.

**c. ironically. Sc. in later use.**

- 1581 J. BELL tr. W. Haddon & J. Foxe *Against Jerome Osorius* 11 b, O gay payre of Byshops, which are so intangled in two examples onely, that [etc.].  
 1582 G. MARTIN *Discov. Corruptions Holy Script.* vii. 120 If these later Rabbines be the Hebreues that Beza meaneth, and which these gay English translatoours follow.  
 1871 W. ALEXANDER *Johnny Gibb* iii, Aye, aye! Ye're a gey boy comin' to yer bed at three o'clock i' the mornin'.  
 1929 E. LINKLATER *White-Maa's Saga* 122 His grandfather was a gey man for the women.  
 1990 S. ROBERTSON *Fish-Hooses* (1992) 48 Salty, the gey lad that he wis, told Peggy that he wis gan tae mairry her before Michaelmas.

**3.**

**a.** Of persons, their attributes, actions, etc.: light-hearted, carefree; manifesting, characterized by, or disposed to joy and mirth; exuberantly cheerful, merry; sportive. Also in extended use.

- c1400 (▷?c1380) *Cleanness* (1920) 830 (MED), Penne seten þay at þe soper..þe gestes gay and ful glad, of glam debonere.  
 a1425 (▷c1385) CHAUCER *Troilus & Criseyde* (1987) II. l. 922 A lay Of love..made hire herte fressh and gay.  
 a1450 *York Plays* 265 Boy, be not agaste if we seme gaye.  
 c1530 A. BARCLAY *Egloges* III. sig. Nij, Makyng the tapster, comyth gay & feat.  
 1706 G. STANHOPE *Paraphr. Epist. & Gospels* III. 367 That gay insulting Man was particularly careful to distinguish himself from his poor dejected Companion.  
 1744 J. THOMSON *Autumn in Seasons* (new ed.) 162 Quick, As is the Wit it gives, the gay Champaign.  
 1785 W. COWPER *Task* I. 493 Whom call we gay? The lark is gay.  
 1812 J. WILSON *Isle of Palms* I. 58 Smiles wander o'er thy placid face As if thy dreams were gay.  
 1814 WORDSWORTH *Excursion* III. 118 The choir Of gay companions.  
 1843 E. BULWER-LYTTON *Last of Barons* I. I. i. 6 Edward..[was] the handsomest, the gayest, and the bravest prince in Christendom.  
 1849 T. B. MACAULAY *Hist. Eng.* I. iv. 431 He made an effort to converse with them in his usual gay style.  
 1882 *Cent. Mag.* Feb. 590/1 The Canadians began to play and sing those gay, gay airs of old France.  
 1913 *Sat. Evening Post* 22 Feb. 14/2 All of a sudden I felt chipper and gay. I no longer gave a hoot for any one.  
 1938 R. K. NARAYAN *Dark Room* iv. 32 He expressed his gay mood by tying a preposterous turban round his head.  
 1972 *Biogr. Mem. Fellows Royal Soc.* 18 550 The conversation on such occasions was always gay, but

students often found themselves picking up useful information about the wider scientific world.

2003 *Village Voice* (N.Y.) 22 Oct. 52/4 'There's no prizes for being happy and gay in a noir movie—that's failure,' [Jane] Campion says with a shake of the head.

**b. Of a horse: lively, prancing. *rare*.**

1590 SPENSER *Faerie Queene* II. I. sig. N6, The gentlest knight, that euer on greene gras Gay steed with spurs did pricke, the good Sir Mortdant was.

1642 J. ROW *Red-shankes Serm.* sig. A3<sup>v</sup>, The poore Post man must first venture over upon his little Nag, to see whether it be deepe or no, and then the Laird comes mounted on his gay steed and he passes over.

1822 *Times* 6 Feb. 4/4 (*advt.*) A bright bay horse..now too gay for single harness, which is the true reason of his being to be sold.

1827 B. DISRAELI *Vivian Grey* IV. VI. ii. 65 As spruce a cavalier as ever pricked gay steed on the pliant grass.

1891 W. CORY *Ionica* (rev. ed.) 160 So speed, gay steed, that I may see Dear Euphrasie, dear Eulalie.

1929 D. H. LAWRENCE *Pansies* 36 Horse, gay horses, swirling round and plaiting in a long line, their heads laid over each other's necks.

**c. *the gay science*: the art of poetry; (also in extended use) poetical or literary criticism. Now *rare*.**

1693 T. RYMER *Short View Trag.* sig. F<sup>v</sup>, This King, Richard Ceur de lion, and his Brother Jeffrey had formerly liv'd much..in and about Provençe, so came to take delight in their Language, their Poetry (then call'd the *Gay Science*) and their Poets.

1715 S. LEWIS tr. P.-D. Huet *Hist. Romances* 110 'Tis certain that the Arabians were extremely addicted..to the Gay Science, I mean, Poesy, Fable, and Fiction.

1813 W. TAYLOR in *Monthly Rev.* 70 455 So little of an heroic or tragic cast had their effusions, that they termed poetry the *gay science*.

1855 H. H. MILMAN *Hist. Lat. Christianity* IV. IX. xiii. 313 Not forbidding himself those amorous indulgences which were the reward of chivalrous valour, and of the 'gay science'.

1866 E. S. DALLAS (*title*) The *gay science*.

1920 O. ELTON *Survey Eng. Lit.* III. x. 253 The 'gay science' is the science of criticism, the term being transferred from its original, Provencal sense of the craft of poetry.

1997 *19th Cent. Lit.* 52 336 The poet's..punning use of 'gay', which juxtaposes its suggestions of poetry as the *gay science* with its more usual meaning of joyful or perhaps even wanton.

**d. With implied sense of depreciation: offhand, airy. Now *rare*.**

1703 S. F. EGERTON *Poems Several Occasions* 55 In distant Shades contending Months I past, Thought I could see the Youth at my return, With gay Indifference and Unconcern.

1781 JOHNSON *Pope* in *Pref. Wks. Eng. Poets* VII. 49 Fenton..made him a gay offer of five pounds.



- 1811 J. AUSTEN *Sense & Sensibility* III. v. 101 Elinor was left to improve her acquaintance with Robert, who, by the gay unconcern, the happy self-complacency of his manner..was confirming her most unfavourable opinion of his head and heart.
- 1866 B. TAYLOR *Story of Kennett* xi. 114 Little by little, a serious liking for her friend was sending its roots down through the gay indifference of his surface mood.
- 1940 T. WOLFE & E. ASWELL *You can't go Home Again* i. i. 9 The gay insouciance of her unmannered settings.

**e. (with) gay abandon:** (in) a carefree or expansive manner; (with) lack of consideration for the consequences of an action.

- 1842 *New World* 18 June 393/3 The combination of refined enjoyment, and gay *abandon*, which throws such a charm over the audience.
- 1910 P. MACKAYE *Garland to Sylvia* II. i. 72 At the end, Sylvia with her arm about Hikrion dances out, right, with graceful, gay abandon, followed by the others.
- 1925 H. W. BRECHT in B. C. Williams *O. Henry Prize Stories of 1925* (1926) 143 Very vivid in his mind still was the gay abandon of those afternoons.
- 1943 S. A. BROWN et al. *Negro Caravan* iii. 281 The gay abandon of cabarets, the weary blues of a wandering piano plunker.
- 1977 *Arab Times* 14 Dec. 10/3 Jumpers threw themselves at the bar with gay abandon without the slightest modicum of lift at take-off.
- 1998 *Artist* Mar. 45/2 It can do neither your painting style nor yourself any harm to swing a paintbrush with gay abandon—just watch out for the wallpaper!
- 2003 *Daily Tel.* 20 Feb. 22/2 She was dancing about with gay abandon, and smoking a spliff.

**f. Of a dog's tail:** carried high or erect. Also of the manner in which a tail is carried. Cf. *GAILY adv.* 1c.

- 1894 R. B. LEE *Hist. & Descr. Mod. Dogs: Non-sporting Div.* ix. 239 The tail..should be incapable of being raised above the level of the backbone, which is called a 'gay' carriage.
- 1927 W. H. DOWLING in C. C. Sanderson *Pedigree Dogs* 334 *Tail.*—Should be carried proudly, curved or plumed in a tight curl over and close to the back (never gay as in a 'Peke').
- 1935 *Times* 20 May 20/6 It is supposed..that the tails of some fox terriers are operated upon to remedy the grave defect of too gay a carriage.
- 1952 C. L. B. HUBBARD *Pembrokeshire Corgi Handbk.* 111 *Gay tail*, one which from root to tip is carried over the horizontal.
- 2002 J. CUNLIFFE *Encycl. Dog Breeds* 38/3 A gay tail is carried higher than the horizontal line of the back and is considered a fault in many, indicating that it is being carried much higher than it should be, usually while the dog is on the move.

#### 4.

†**a.** Wanton, lewd, lascivious. *Obs.*

- c1405 (▷c1390) CHAUCER *Miller's Tale* (Hengwrt) l. 3769 Som gay gerl..Hath broght yow thus vp on the viritoot.
- a1425 *Medulla Gram.* (Stonyhurst) f. 26, *Lacius*, gay.
- a1450 *Castle Perseverance* (1969) l. 1160 Panne mayst þou..serdyn gay gerlys.

**b.** Originally of persons and later also more widely: dedicated to social pleasures; dissolute, promiscuous; frivolous, hedonistic. Also (esp. in **to go gay**): uninhibited; wild, crazy; flamboyant. Cf. *Gay Nineties n.* at **Special uses 2a.** Now *rare*.

See also *gay dog n.* at **Special uses 2a.** *gay Lothario*: see **LOTHARIO n.**

- 1597 J. PAYNE *Royall Exchange* 27 Sum gay professors (kepinge secret minions) do love there wyues..to avoyde shame.
- 1624 P. MASSINGER *Bond-man* v. iii. sig. L3, Then I dare rise vp And tell this gay man to his teeth, I neuer Durst doubt her constancie.
- 1637 J. SHIRLEY *Lady of Pleasure* v. K 1 b, *Lord*. You'le not be angry, Madam. *Cel*. Nor rude, though gay men have a priviledge.
- 1700 T. BROWN *Amusem. Serious & Comical* x. 130 Every Duncce of a Quack, is call'd a Physician..Every Gay thing, a Chevalier.
- 1703 N. ROWE *Fair Penitent* v. i, Is this that Haughty, Gallant, Gay Lothario?
- 1754 *Adventurer* No. 124. ¶7 The old gentleman, whose character I cannot better express than in the fashionable phrase which has been contrived to palliate false principles and dissolute manners, had been a gay man, and was well acquainted with the town.
- 1791 E. BURKE *Let. to Member National Assembly in Wks.* (1823) VI. 36 The brilliant part of men of wit and pleasure, or gay, young, military sparks.
- 1798 J. FERRIAR *Illustr. Sterne* ii. 40 The dissolute conduct of the gay circles in France is not of modern date.
- 1847 H. ROGERS *Ess.* I. v. 214 For some years he lived a cheerful, and even gay, though never a dissipated life, in Paris.
- 1849 T. B. MACAULAY *Hist. Eng.* II. vi. 103 The place was merely a gay suburb of the capital.
- 1851 H. MAYHEW *London Labour* I. 382/2 The principal of the firm was what is termed 'gay'. He was particularly fond of attending public entertainments. He sported a little as well, and delighted in horse-racing.
- 1879 *National Police Gaz.* 4 Jan. 6/1 Besides being very handsome, there are reasons to fear that Mr. Charles Victor Fremy was sometimes very, very gay.
- 1891 E. PEACOCK *Narcissa Brendon* I. 302 This elder Narcissa had led a gay and wild life while beauty lasted.
- 1897 J. HUTCHINSON *Archives Surg.* VIII. 224 My patient was a married man, who admitted having been very gay in early life.
- 1912 C. MACKENZIE *Carnival* xi. 128 They stayed another night [at the public house]... Jenny..had a flaming quarrel with her mother, who accused her of 'going gay'.
- 1932 *Appleton (Wisconsin) Post-Crescent* 17 Aug. 9/4 Often the beginning of a married man's sidesteppings are coincident with his starting down the financial toboggan... Think of the number of men you know who began to lose out as soon as they began to go gay.

1939 H. WALPOLE *Sea Tower* iv. 54 She understood that there had been 'ladies'. Her father had in fact a..reputation as 'gay'.

**c.** Freq. *euphem.* Esp. of a woman: living by prostitution. Of a place: serving as a brothel. Now *rare*.

?1795 R. KING *New Cheats of London Exposed* 17 Those bullies who live upon whores of fashion, affect the dress and airs of men of rank and fortune, and by strutting occasionally by the side of a gay lady, add a consequence to her and themselves, and induce the ignorant cully to think that miss confers her favours on gentlemen alone.

1799 M. ROBINSON *False Friend* II. xlix. 293 'That's not my business,' replied the bailiff. 'She keeps a gay house at the west end of town. I dare say Miss can inform you for what purpose.'

1806 J. DAVIS *Post-Captain* xxviii. 194 As our heroes passed along the Strand, they were accosted by a hundred gay ladies, who asked them if they were good-natured... 'Devil take me!..there is not a girl in the Strand that I would touch with my gloves on.'

1825 C. M. WESTMACOTT *Eng. Spy* II. 22 Two sisters—both gay.

1857 J. E. RITCHIE *Night Side of London* 40 The gay women, as they are termed, are worse off than American slaves.

1868 *Sunday Times* 19 July 5/1 As soon as ever a woman has ostensibly lost her reputation, we, with a grim inappositeness, call her 'gay'.

1879 *National Police Gaz.* 4 Jan. 3/1 She prospered in the gay resort she opened, and..it was the rendezvous for military men, merchants and politicians.

1885 *Hull & Linc. Times* 26 Dec. 8/4 She was leading a gay life.

1889 J. SAUL *Statement: Cleveland Street Case* (P.R.O. DPP 1/95/4) 38, I am still a professional 'Maryanne'. I have lost my character and cannot get on otherwise. I occasionally do odd jobs for different gay people.

1890 *Star* 16 Jan. (ed. 5) 2/7, I worked hard at cleaning the houses of the gay people; the gay ladies on the beat.

1927 S. LEWIS *Elmer Gantry* xxvii. 358 It was thirty days before any of the gay ladies were really back at work.

1967 G. GREENE *Root of all Evil* in *Coll. Stories* (1972) 143 He now reported..that members of the secret society dressed themselves as women and in that guise frequented the gay houses of the town.

**d.** orig. *U.S. slang.* (*a*) Of a person: homosexual; (*b*) (of a place, milieu, way of life, etc.) of or relating to homosexuals.

Although more frequently used of male homosexuals, this sense can either include or exclude lesbians: see, for example, quotes. 1962 and 1993.

A number of quotations have been suggested as early attestations of this sense (see a sample below). It is likely that, although there may be innuendo in some cases, these have been interpreted anachronistically in the light either of the context (for example the disguise as a homosexual of the protagonist of quot. 1941<sup>1</sup>), or of knowledge about an author's sexuality.

[1922 G. STEIN *Miss Furr & Miss Skeene* in *Geogr. & Plays* 17 Helen Furr and Georgina Keene lived together then... They were together then and traveled to another place and stayed there and were

- gay there..not very gay there, just gay there. They were both gay there.
- 1929 N. COWARD (*We all wore*) *Green Carnation* in B. Day *N. Coward: Compl. Lyrics* (1998) 114/3 Art is our inspiration, And as we are the reason for the 'Nineties' being gay, We all wear a green carnation.
- 1933 *Baltimore Afro-American* 21 Oct. 17 The products engendered by union of these decadents of changing sexes is generally an unenviable type of degeneracy... Sissies, fairies, pansies gay, The woods are full of them today.
- 1938 D. NICHOLS & H. WILDE *Bringing up Baby* (film script, final revision) 35 David..comes on..in negligee... *Aunt*: Why are you wearing these clothes?.. *David*: Because I just went gay, all of a sudden.
- 1939 N. COWARD *I went to Marvellous Party* in B. Day *N. Coward: Compl. Lyrics* (1998) 195/2 Everyone's here and frightfully gay, Nobody cares what people say, Though the Riviera Seems really much queerer Than Rome at its height.
- 1941 'A. BOUCHER' *Case of Solid Key* xiii. 235, I had deliberately changed my manners, my mannerisms. I had 'gone gay', as we say in Hollywood.]
- 1941 G. LEGMAN *Lang. Homosexuality* in G. W. Henry *Sex Variants* II. 1167 *Gay*, an adjective used almost exclusively by homosexuals to denote homosexuality, sexual attractiveness, promiscuity..or lack of restraint, in a person, place, or party. Often given the French spelling, *gai* or *gaie* by (or in burlesque of) cultured homosexuals of both sexes.
- 1941 T. PAINTER *Homosexual (typescript)* in G. Chauncey *Gay N.Y.* (1994) 18 Supposing one met a stranger on a train from Boston to New York and wanted to find out whether he was 'wise' or even homosexual. One might ask: 'Are there any gay spots in Boston?' And by a slight accent put on the word 'gay' the stranger, if wise, would understand that homosexual resorts were meant.
- 1947 *Vice Versa* in J. Katz *Gay/Lesbian Almanac* (1983) 624 Homosexuality is becoming less and less a 'taboo' subject, and..I venture to predict that there will be a time in the future when gay folk will be accepted as part of regular society.
- 1948 K. WILLIAMS *Diary* 22 Aug. (1993) 32 Met a charming young RAF fellow there obviously gay who played Debussy's *Bergamasque* with more understanding than I've heard for many a day.
- 1948 G. VIDAL *City & Pillar* ix. 246 [In New York] the words 'fairy' and 'pansy' were considered to be in bad taste. It was fashionable to say a person was 'gay'.
- 1955 P. WILDEBLOOD *Against Law* I. 23 Most of the officers at the station had been 'gay'..an American euphemism for homosexual.
- 1960 F. RAPHAEL *Limits of Love* I. v. 70 'Great thing about gay people.'.. 'Gay?' Tessa said. 'Bent, queer, you know. Homosexual.'
- 1962 'A. BANNON' *Beebo Brinker* 146, I know you don't want it from a man. I know you're gay, for chrissakes. That's one thing I can spot a mile off. I like gay girls, Beebo, in case you ain't noticed.
- 1976 *Rocky Mountain Rev. Lang. & Lit.* 30 237 He wasn't going gay, was he, out there with Oberon's troupe? The actor he shared a house with was homosexual.
- 1979 *United States 1980/81* (Penguin Travel Guides) 428 It is a natural center of gay life,..and gays have been incorporated into the city's mainstream.
- 1988 R. SHILTS *Band played On* III. vii. 67 Already, a Manhattan gay newspaper..had published a story about the rumours of a new killer pneumonia striking gay men.
- 1993 *Spin* Apr. 48/2 Queercore youth have punctured the stilted air of the 'gay establishment' by exposing the clichés and stereotypes present within the gay and lesbian community.

2003 *Village Voice* (N.Y.) 6 Aug. 32/1 Episcopalians took a big step toward electing their first openly gay bishop.

†5. Of words or speech: brilliant, attractive, charming. Formerly also of reasoning, etc.: specious, plausible. *Obs.*

c1425 LYDGATE *Troyyes Bk.* (Augustus A.iv) Prol. 276 (*MED*), In his dities, þat wer so fresche and gay With sugred wordes vnder hony soote, His galle is hidde lowe by the rote.

?a1475 *Ludus Coventriae* 355 (*MED*), Ys ther ony renogat among vs..or any that peruertyth the pepil wyth gay eloquens alon.

1529 T. MORE *Dialogue Heresydes* III, in *Wks.* 243/2 Those reasons semed..gay and glorious at the first sight.

1548 *Hall's Vnion: Henry VI* f. cxiiij, Thei with money, and gay promises, first corrupted a Miller.

1562 T. COOPER *Answer Def. Truth* f. 57<sup>v</sup>, in *Apol. Priuate Masse*, You will seeme with your gay gloses to glorifie the bloud of Christe.

1637 MILTON *Comus* 27 Enjoy your deere Wit, and gay Rhetorick.

1638 W. CHILLINGWORTH *Relig. Protestants* I. vi. §5. 327, I would fain know what gay probabilities you could devise to disswade him from this Resolution.

1711 POPE *Ess. Crit.* 24 Let not each gay Turn thy Rapture move.

1781 JOHNSON *Pope* in *Pref. Wks. Eng. Poets* VII. 41 All the gay varieties of diction were ready at his hand.

6. *U.S.* Amongst the Religious Society of Friends (Quakers) or other (esp. nonconformist) religious groups: denoting a person who has ceased adhering to the plain and simple life or beliefs of the community; worldly. Esp. in *gay Quaker, to go gay*. Now chiefly *hist.*

This sense perh. arises from the idea that showy clothes are a mark of worldliness; compare use of *to go gay* in 16th–17th cent. quotes. at sense A. 1b.

1798 *Aurora* (Philadelphia) 6 Nov. 3/2 Her dress was pretty nearly that marked as 'gay quakers'; she wore a white gown, white gloves, white..bonnet, green petticoat, and drab cloak.

1876 *Ballou's Monthly Mag.* July 90/1 Abner and Susan..were of the strictest sort of Friends, even in the Quaker City where all were strict, and 'gay Quakers' were as yet unknown.

1888 J. GOSSLER *Turnpike-road* 71 The attendance [at the Quaker meeting-house] was much larger fifty years ago... During the interval they have become 'gay', or 'gone West', or 'over to the majority'.

1935 *Amer. Speech* 10 169/1 *To go gay*, meaning to become worldly in the sense of attending dances, card parties, or participating in other forbidden pleasures.

1969 *Washington Post* 9 Nov. G3/1 If an Amish young man enters the outside world—what they call 'going gay'—his father is relieved of the obligation of providing a farm for that son.

1999 S. BRUCE *Choice & Relig.* vi. 151 Early Quakers would not have read a novel or attended the theatre but the Gay Quakers (usually the offspring of wealthy merchants)..became more and more like the Church of England neighbours with whom they mixed as social equals.



**7. Brit. regional.** In good health; well, convalescent.

- 1855 F. K. ROBINSON *Gloss. Yorks. Words* 69, I am quite gay I thank you.
- 1877 E. PEACOCK *Gloss. Words Manley & Corringham, Lincs.* (at cited word), I heard thoo was badly, but thoo looks gay.
- 1887 W. D. PARISH & W. F. SHAW *Dict. Kentish Dial.* (at cited word), I don't feel very gay this morning.
- 1893 G. E. DARTNELL & E. H. GODDARD *Gloss. Words Wilts.* (at cited word), I do veel main gay agean 'smarnin', but I wur gashly bad aal laas' wick wi' th' rheumatiz.
- 1967 H. ORTON & M. F. WAKELIN *Surv. Eng. Dial.* IV. II. 740 Q[uestion]. If you are in good health, you must be feeling very... [Berkshire] Gay.

**8. U.S. slang.** Forward, impertinent, too free in conduct, over-familiar; reckless; usually in **to get gay**.

- 1889 *Decatur (Illinois) Morning Rev.* 26 Nov. 2/1 If those congressmen get gay, Harrison can take the large basket of loaves and fishes away from them.
- 1893 S. CRANE in *Truth* 18 Mar. 5/2 When a feller asts a civil question yehs needn't git gay.
- 1896 W. C. GORE in *Inlander* Jan. 147 *Get gay*, to joke boisterously; to show off; to act 'smart'.
- 1900 G. ADE *Fables in Slang* 109 The Copper, perceiving that he had come very near getting Gay with our First Families, Apologized for Cutting In.
- 1901 S. MERWIN & H. K. WEBSTER *Calumet 'K'* xii. 226 He got gay one day. I warned him once, and then I threw him off the distributing floor.
- 1911 J. F. WILSON *Land Claimers* vi. 80 And I wouldn't get gay round her.
- 1915 P. G. WODEHOUSE *Something Fresh* iv, The flush on the little man's face deepened. 'Are you trying to get gay with me?' he demanded dangerously.
- 1917 U. SINCLAIR *King Coal* 11 Because you're too gay, kid. Didn't you know you had no business trying to sneak in here?
- 1940 L. ZINBERG *Walk hard—talk Loud* xvii. 350 You shouldn't be so gay with your mitts.
- 1970 J. BOUTON *Ball Four* 157 They give you a false sense of security. The result is that you get gay, throw it down the middle and get clobbered.
- 2002 H. TURTLEDOVE *Through Darkness* 22 Oraste pulled his stick off his belt and blazed the Kaunian, with deliberate malice, in the belly... 'Anybody else want to get gay with us? We'll give you what he got.'

**9. slang (chiefly U.S.).** Foolish, stupid, socially inappropriate or disapproved of; 'lame'. *derogatory* (freq. considered *offensive*).

- 1978 G. KIMBERLY *Skateboard* 41 'It looks terrific on you.' 'It looks gay.'
- 1987 *Creem Close-up Presents* No. 1. 6 Your so-stupid-they're-funny captions are gay. Get into some [real] humor.
- 1999 T. PARKER & M. STONE *Cartman's Mom is Dirty Slut* in *South Park Scripts: Bk. 1* 150 (*stage direct.*) As the camera zooms in on their faces, that gay 'Near/Far' song from 'Titanic' plays.

- 2001 *Washington Post* 8 May c9 Today, they [sc. teenagers] often use gay as an adjective meaning 'stupid'... A gay movie is a stupid movie or one that makes no sense or one with a lame plot or all of those things.
- 2002 *Independent* 3 Oct. 21/3 At last—the first official confirmation that the term 'gay' has now ousted 'pants' as the popular youth slang for 'naff'.

†**B. adv.**

**1.** In a gay mood, joyously; = GAILY *adv.* 1. *Obs. rare.*

- ?a1400 (▷a1338) R. MANNING *Chron.* (Petyt 511) II. 332 (*MED*), At þe Whitsonen day, þe kyng his fest suld hold at Westmynstre fulle gay.
- 1754 J. SHEBBEARE *Matrimony* (1766) II. 140 This paid her Debts, and put some considerable Sum of Money in her Pocket, with which she lived as gay as before.

**2.** Brightly, showily; = GAILY *adv.* 2. *Obs.*

- c1400 (▷?c1380) *Cleanness* (1920) l. 1568 (*MED*), He schal be gered ful gaye in gounes of porpre.
- 1415 T. HOCCKLEVE *To Sir J. Oldcastle* l. 414 Yimages..causen men honure The seint after whom maad is that figure, And nat worsshipe it how gay it be wrought.
- ▷a1513 W. DUNBAR *Poems* (1998) 238 Send in þour steid þour ladeis, grathit vp gay.
- 1577 B. GOOGE tr. C. Heresbach *Foure Bks. Husbandry* i. f. 7, Nor seelyng garnisht gaye with Imagrye, Nor ritche attyre we see.
- 1633 Bp. J. HALL *Occas. Medit.* (ed. 3) §xcviii, Not acknowledging any friend but..the Nurse that dresses us gay.
- 1744 S. FIELDING *Adventures David Simple* II. 161 He was dressed very gay.

**C. n.**

†**1.** A noble or beautiful lady. Also (rarely) of a man: a 'gallant'. Cf. sense **A. 2.** *Obs. (arch. in later use).*

- c1400 (▷?c1390) *Sir Gawain & Green Knight* (1940) l. 970 (*MED*), Gawayn glyzt on þat gay þat graciously lokod.
- c1475 (1400) *Awntyrs Arthure* (Taylor) (1842) 20 (*MED*), Then gloppunt that gaye, Hit was no ferly, in faye.
- c1540 (▷?a1400) *Destr. Troy* 2679 Parys was purpost with pouer to wende Into Grese for a gay, all on grete wise.
- 1572 *Taill of Rauf Coilyear* 786, I will the ganandest gait to that gay glyde.
- 1899 E. C. DOWSON *Poems* (1905) 145 We see once more fair dame and gallant gay, The glamour and the grace of yesterday.

**2.**

**a.** Anything that looks bright or showy; an ornament; *esp.* one that is

used to amuse a child. Cf. NOSEGAY *n.* Now *rare* (*Brit. regional* in later use).

- c1475 (†c1399) *Mum & Sothsegger* (Cambr. Ll.4.14) (1936) II. 94 But how the gayes han y-gon, God wotte the sothe, Amonge myȝtfull men alle these many ȝeris.
- 1519 W. HORMAN *Vulgaria* xiii. f. 147, This baby hath many gayes hangyng at his necke.
- c1525 *Bk. Mayd Emlyn* sig. B.ii<sup>v</sup>, This mannes name was hARRY He coude full clene cary He loued prety gayes.
- 1601 A. DENT *Plaine Mans Path-way to Heauen* 45 As if a theefe should be proud of his halter: a beggar of his cloutes: a childe of his gay.
- 1655 tr. C. Sorel *Comical Hist. Francion* ii. 36 He..took pleasure in such Gayes, on purpose to be the more noted by wearing Cloathes out of the Common *Mode*.
- 1880 M. A. COURTNEY *W. Cornwall Words* in M. A. Courtney & T. Q. Couch *Gloss. Words Cornwall*, *Gays*, children's toys: often, broken earthenware.

†**b. fig.** A childish amusement; a trifle, a whim. *Obs.*

- 1577 N. BRETON *Floorish upon Fancie* sig. Giiij<sup>v</sup>, Though (perhaps) most commonly ech youth, Is geuen in deede, to follow euery gaye.
- 1605 J. SYLVESTER tr. G. de S. Du Bartas *Deuine Weekes & Wks.* I. iii. 109 O how I grieue (deere Earth) that giuen to gayes, Most of best wits contemne thee now-a-dayes.
- 1667 L. STUCKLEY *Gospel-glasse* (1670) xxiii. 232 Forraigners breed their Children..to work those gaies with their hands.
- 1694 F. BRAGGE *Pract. Disc. Parables* iii. 83 It highly concerns us..no longer childishly to doat upon empty gayes and trifles.

**3.** Esp. in children's language: a picture in a book; (also occas.) a picture book. Now *rare* (*Brit. regional* in later use).

- 1630 tr. G. Botero *Relations Famous Kingdomes World* (rev. ed.) 598 (China) Their Printing is but stamping, like our great Letters or Gaies cut in wood; for they cut many words in one peece, and then stampe it off in paper.
- 1646 W. JENKYN *Reformation's Remora* 30 'Tis the gay in the lesson, that makes the childe delight to learn.
- a1657 R. LOVEDAY *Lett.* (1663) 149 Finding him still eager to put a gay before his book, I design'd him this which is now a cutting.
- 1698 L. MILBOURNE *Notes Dryden's Virgil* 4 Who, in the Inscription to his fine Gay in the Front of the Book, calls it very honestly *Dryden's Virgil*.
- 1839 C. CLARK *John Noakes* (E.D.S. No. 76) 157 At a stall, soon Mary bote A hume-book full ov gays.
- 1869 E. FITZGERALD *Let.* 2 Feb. (1980) III. 125 We have been..looking at 'Gays' (that is, Picture-books) which are a great Literature with these great children.
- 1880 S. BARING-GOULD *Mehalah* II. viii. 148 'The master of Red Hall is turning over a new leaf to-day.'



‘Maybe..but I doubt it will be a blank one.. . It won't be a gay for him.’

- 1906 *Daily Chron.* 25 Apr. 6/7 Suffolk has a curious word which shows appreciation of the pictured page. They call the pictures ‘the gays’. ‘Why do you want those books?’ asked a Sunday school teacher the other day at Bungay. ‘Please, miss, we want to look at the gays,’ was the reply.
- 1953 S. GRAPES *Boy John Lett.* (1974) 62 We orl enjoy them luvly pictures yow hev in yar pearper. We allus hev time to look at them; Granfar still corl 'em gays.

#### 4. With *the*.

**a.** With *pl.* concord. Light-hearted or carefree people as a class. Now *rare*.

- 1690 T. BETTERTON *Prophetess* v. 67 Let the Graces, and Pleasures repair, With the Youthful, the Gay, the Witty, and Fair.
- 1712 POPE *To Young Lady* in *Misc. Poems* 138 And the Gay mourn'd who never mourn'd before.
- 1750 JOHNSON *Rambler* No. 2. ¶1 This practice is a commodious subject of raillery to the gay.
- 1769 W. BUCHAN *Domest. Med.* I. 80 That greatest of human blessings [sleep]..visits the happy, the chearful, and the gay.
- 1779 *Mirror* No. 64, The gay, whose minds, unbent from serious and important occupations, had leisure to sport themselves in the regions of wit and humour.
- 1807 G. CRABBE *Parish Reg.* I, in *Poems* 45 'Twould warn the Giddy and awake the Gay.
- a1817 J. AUSTEN *Persuasion* (1818) IV. viii. 155 She had feelings for the tender, spirits for the gay, attention for the scientific, and patience for the wearisome; and had never liked a concert better.
- 1821 W. M. CRAIG *Lect. Drawing* viii. 440 To the youthful and gay, I would recommend these studies most particularly.
- 1868 *Times* 19 Sept. 10/5 (*advt.*) The ‘Percy Anecdotes’ are..universal favourites with the old and the young, the grave and the gay, the rich and the poor.
- 1923 *Times* 20 Aug. 11/6 Drink affects men in various ways, making the grave gay and the gay solemn.
- 1944 *Times* 17 Feb. 5/4 The grave would rather die than let the faintest watery ghost of a smile appear upon their features during the gay's turn.

**b.** With *sing.* concord. Light-hearted matters; freq. contrasted with *the grave*. Now *rare*.

- 1790 *Times* 24 Mar. 2/3 The Third Grand Selection..is announced again for this evening at Covent Garden Theatre. The gay and the grave are most happily combined in it.
- 1847 *Tait's Edinb. Mag.* 14 69 Some pendulate perpetually between the grave and the gay.
- 1890 H. JAMES *Tragic Muse* I. ix. 191 They walked round..discussing: mingling the grave with the gay and paradox with contemplation.
- 1971 *Times* 9 Sept. 11/4 At last night's Prom, however, I felt that the grave predominated unduly over the gay, and that *The Fairy Queen* emerged more sombre than I had thought it before.

#### 5. *slang*.

**a. Chiefly in *pl.* orig. *U.S.* A homosexual person. Cf. sense A. 4d.**

Although more frequently used of male homosexuals, like sense A. 4d this sense can either include or exclude lesbians.

- 1953 S. ROBINSON in *True Crime* May 49 The city decided to crack down on the 'gays' and..padlocked a number of known homosexual hangouts.
- 1972 *Pride of Lions* (Columbia Univ.) Apr. 7/3 What about a program acceptable to gays, students and workers?
- 1975 *Whig-Standard* (Kingston, Ont.) 13 Aug. 43/5 The female gays in Ottawa are split into four main groups.
- 1985 *Sunday Tel.* 30 June 18/7 What about gays, one asks, and will there be facilities for them to relate significantly to each other?
- 1998 *Gay Times* Aug. 53/2 Mr Justice Lightman said he felt that, if the MoD's policy towards gays in the armed forces did not change, then the policy faced 'an uncertain future'.
- 2003 *Time Out N.Y.* 4 Dec. 22/2 Many liberal synagogues explicitly welcome gays and lesbians.

**b. With *the*. With *pl.* concord. Homosexual people as a class.**

- 1966 A. FIRTH *Tall, Balding, Thirty-five* xv. 194 Would he ever dare, even if he wanted to, join the shrill freemasonry of the London gay?
- 1968 *Globe & Mail Mag.* (Toronto) 13 Jan. 6/1 A coffee shop frequented by the gay.
- 1995 M. BUCHOLTZ in K. Hall & M. Bucholtz *Gender Articulated* III. xiv. 359 Passing..between the worlds of the insane and the sane, the deaf and the hearing, the blind and the seeing, the gay and the straight.

**SPECIAL USES****S1. Chiefly parasynthetic.****gay-coloured** *adj.*

- 1626 tr. T. Boccalini *New-found Politicke* I. i. 7 Fann's, made, not of the feathers of Ostriges, of Peacocks, or of any other gay-coloured bird, but of herbs and flowers.
- 1777 H. MACKENZIE *Julia de Roubigné* I. xxiv. 191 He pulled off his hat, which he had adorned with some gay coloured ribands in honour of the occasion.
- 1866 W. D. HOWELLS *Venetian Life* xx. 342 Brilliant tapestries and other gay-coloured cloths.
- 1926 *People's Home Jrnl.* Feb. 35/2 Odd pieces of gay colored chiffon or crêpe de Chine may be cut in strips and used as bands around the fullness of the sleeve.
- 1983 *Times* 15 June 16/3 The blue-green leaves of *Hosta sieboldiana* make an attractive foil to..the gay coloured orange and yellow *Mimulus malibu*.

**gay-flowered** *adj.*

- 1854 J. D. HOOKER *Himalayan Jrnls.* I. 16 Gay-flowered..*Barlerias*, and such hothouse favourites.
- 1886 F. H. BURNETT *Little Ld. Fauntleroy* (1887) vi. 114 Everything was bright and cheerful with gay-flowered chintz.
- 1958 *Times* 1 Feb. 8/6 Sweet scented jasmin and honeysuckle and gay flowered hibiscus shrubs.

### gay-hearted *adj.*

- 1753 E. YOUNG *Brothers* III. 30 He..Kind, and gay-hearted, came to visit me.
- 1853 J. G. WHITTIER *Panorama* (1856) 33 Gay-hearted Health.
- 1947 W. DE LA MARE *Coll. Stories for Children* 44 Fairies, sly, small, gay-hearted.
- 2000 *Oregonian (Portland, Oregon)* (Nexis) 1 Sept. 21 All of Dassin's characters live, breathe, bleed and seethe like you and me, from doom-faced Servais and gay-hearted Manuel to a frivolous hoochie-coochie dancer.

### gay-humoured *adj.*

- 1668 DRYDEN *Secret-love* I. iii. 11 You were gay humour'd, and you now are pensive.
- 1709 R. STEELE *Tatler* 16–18 June 2/1 One of 'em was a mercurial gay humour'd Man; the other a Man of a serious, but a great and gallant Spirit.
- a1834 T. PRINGLE *Poet. Wks.* (1839) 29 The gay-humoured Captain Fox, With whom I roamed 'mid Koonap's woods and rocks.
- 1883 F. M. PEARD *Contradictions* x, It was a fresh, gay-humoured day.

### gay-looking *adj.*

- 1756 M. CALDERWOOD *Jrnl.* (1884) iv. 109 Harlem is a very pretty gay-looking town.
- 1897 *Daily News* 21 Apr. 3/3 A gay looking gig now put out from Palermo.
- 1968 *Times* 23 Nov. 26/1 For people planning parties this might be the moment to consider which of those gay-looking bottles contains the wine which will suit them best.
- 2006 *Sunday Tel.* (Nexis) 22 Jan. VII. 51 The comic-book trilogy starring Wesley Snipes as half-man, half-bloodsucker, all humourless vampire-scurge in gay-looking black leather.

### gay-seeming *adj.*

- 1596 SPENSER *Hymne Heauenlie Beautie* in *Fowre Hymnes* 45 This vile world, and these gay seeming things.
- 1638 F. JUNIUS *Painting of Ancients* 328 It dazeleth our senses with the resplendent beames of gay-seeming things, not suffering them to see what is in the worke.
- 1887 H. D. RAWNSLEY *Sonnets round Coast* vii, The changing pageant of the bannered skies Forbade him trust gay-seeming enterprise.

- 2001 *Canberra (Australia) Times* (Nexis) 19 Nov. (TV Guide) 10 Tonight he brings home and plays his harp, a notoriously gay-seeming instrument in homophobic Ohio.

## gay-themed *adj.*

- 1979 *Los Angeles Times* 21 Oct. (Calendar section) 30/4 He didn't want to talk about the gay-themed film 'Cruising'.
- 2004 P. BISKIND *Down & Dirty Pictures* ix. 293 Any gay-themed project would have a tough time.

## S2.

a. Chiefly in senses A. 3a or A. 4b.

**gay blade** *n.* a dashing or lively man; a rake (*RAKE n.*<sup>7</sup>); (in later use also punningly) a homosexual man, *esp.* a dashing or rakish one; cf.

BLADE *n.* 11b.

- 1750 J. LOCKMAN tr. P. de Marivaux *Pharsamond* II. vii. 124 'Tis very pretty in you, (says a gay blade,) to measure other people's corn by your bushel.
- 1803 G. COLMAN *Love laughs at Locksmiths* i. i. 9 And now, my gay blade of an officer, if you choose to enter the bit with me, we'll have a trial of skill.
- 1928 *Amer. Speech* 3 259 'Jim Dandy', 'spark', 'gay boy', and 'gay blade', etc., are now replaced by 'lounge lizzard', 'giggolo', 'cake eater', [etc.].
- 1960 W. CANTON *African* xii. 175 One could sense at once how he got his reputation as a gay blade on the one hand, and a statesman of genius on the other.
- 1968 'A. D'ARCANGELO' *Homosexual Handbk.* 48 It seems to me incredible that so few of the gay blades one meets form permanent or relatively permanent attachments.
- 2001 J. MURDOC & D. PRICE *Courting Justice* xi. 304 The justice who had railed about using the..word 'home' in connection with a swinging gay blade like Hardwick apparently could, nevertheless, empathize with gay couples.

**gay cat** *n.* *U.S. slang* (now rare) a young or inexperienced tramp, *esp.* one who acts as a scout; a hobo who accepts occasional work.

Some examples imply a relationship with an older tramp involving sexual favours, but this cannot be taken as evidence for sense A. 4d: see also etymological note.

- 1893 *Cent. Mag.* Nov. 106 The gay-cats are men who *will* work for 'very good money', and are usually in the West in the autumn to take advantage of the high wages.
- 1897 'J. FLYNT' in *Forum* Feb. 741 Nothing arouses his [sc. the hobo's] scorn more than the dilettante, or 'gay-cat', as he calls him.
- 1901 J. LONDON *Let.* 6 Dec. (1966) 126 Wyckoff is a gay cat. That was his rating when he wandered over the States.
- 1905 *Amer. Mag.* 209/1 From this center a number of so-called 'gay cats', or 'spies' will visit a small village.
- 1914 *Sat. Evening Post* 4 Apr. 10/3, I ain't no gay-cat that 'ud kick you after makin' friends.

- 1926 J. BLACK *You can't Win* vi. 74 He must have been an awful gay cat to get into the end of a carload of planed lumber. It's suicide.
- 1935 N. ERSINE *Underworld & Prison Slang* 39 *Geycat*,...a homosexual boy.
- 1950 R. CHANDLER *Let.* 18 May (1966) 78 A gay-cat is a young punk who runs with an older tramp and there is always a connotation of homosexuality. Again, he could be a 'look-out' (outside man) or a 'finder' (finger or finger man), but that is a derived or occasional meaning and not exact.
- 1980 E. WHITE in L. Michaels & C. B. Ricks *State of Lang.* 238 In American slang at the turn of the century, a 'gay cat' was a younger, less experienced man who attached himself to an older, more seasoned vagrant or hobo; implicit in the relationship between gay cat and hobo was a sexual liaison.

**gay deceiver** *n.* now rare (a) a deceitful rake (RAKE *n.*<sup>7</sup>); (b) (in pl.)  
*slang* = FALSIES *n.*; (also occas.) false eyelashes.

- 1710 C. JOHNSON *Force of Friendship* II. 10 You have already fought this gay Deciever [*sic*], Your Arm Victorious, blush'd with his best Blood.
- 1803 G. COLMAN *Love laughs at Locksmiths* II. i. 25 Says he, 'I am a handsome man, but I'm a gay deceiver.'
- 1809 B. H. MALKIN tr. A. R. Le Sage *Adventures Gil Blas* III. VII. i. 10, I..posted myself on the high road, where the gay deceiver was sure to be intercepted.
- 1898 J. D. BRAYSHAW *Slum Silhouettes* 44 Ah! he's a gay decaver, is Billy, like all the min. Sure I wouldn't trust my ould gran'mother wid him.
- 1942 D. POWELL *Time to be Born* (1943) x. 232 Her pink sweater..clung properly to the seductive curves of her Gay Deceivers.
- 1962 *Guardian* 12 Mar. 4/7 False bosoms..were known as 'gay deceivers'.
- 1969 M. PUGH *Last Place Left* xvii. 121 'Your gay deceivers aren't straight,' I said. 'My eyelashes, you mean?'
- 1971 W. REYBURN *Bust-up* (1972) 67 In those days when what were known as 'gay deceivers' were made of rubber, women in general did not realise that the quality of falsies on the market in any given year was directly related to the weather in Malaya.

**gay dog** *n.* a man given to revelling or self-indulgence.

- 1847 DICKENS *Dombey & Son* (1848) xxvi. 266 Well! we *are* gay dogs, there's no denying.
- 1900 G. SWIFT *Somerley* 54 Oh! that first kiss! how proud of it we are, what gay dogs we feel!
- 1910 S. KAYE-SMITH *Spell Land* xix. 221 He felt rather a gay dog.
- 1952 H. E. BATES *Love for Lydia* (1956) II. ii. 88 Then Alex kissed Lydia..in his gay-dog, slightly ironic, debonair fashion.
- 1992 *Guardian* 25 July (Weekend Suppl.) 9/4, I utterly deny the description of me in the press as a gay dog [or] Lothario.

**Gay Gordons** *n.* (with *the*) (a) the Gordon Highlanders (see quot. 1925); (b) an old-time dance performed in couples (originally to a tune

called 'The Gordon Highlanders') and popular at ceilidhs and social dances.

- 1823 C. K. SHARPE *Ballad Bk.* 37 His name is Glenlogie, when he is from home, He is of the gay Gordons, his name it is John.
- 1925 E. FRASER & J. GIBBONS *Soldier & Sailor Words* 185 *Gay Gordons, The*, The Gordon Highlanders. In particular the 2nd Battalion, the 92nd Highlanders.
- 1947 J. R. GILLESPIE *Old Tyme Dancing* 32 (*heading*) The Gay Gordons.
- 1955 J. I. M. STEWART *Guardians* III. iv. 238 The music of the Samba and the Gay Gordons.
- 1966 *Crescendo* Dec. 27/1 A musical chore to be dealt with grudgingly like the Veleta or the Gay Gordons.
- 1990 in J. Faley *Up oor Close* v. 90 And ye were all squashed in and dancing like the Gay Gordons, or the quick-step, fox-trot, waltzes. Just in a wee room, all right together.

**Gay Nineties** *n.* (also with lower-case initials) orig. and chiefly *U.S.* the 1890s, often perceived as a period of optimism, prosperity, and extravagance; freq. with *the*; cf. *naughty nineties n.* at NAUGHTY *adj.*  
Special uses 2.

- 1925 R. V. CULTER in *Life* 9 Apr. 7 (*title of cartoon*) The Gay Nineties.
- 1930 O. M. SAYLER *Revolt in Arts* I. 8 The skyscraper, that upstart coxcomb of the gay nineties, pushed onward and upward.
- 1961 E. C. MARSTON *Origin & Devel. Northeastern Univ.* i. 6 The Gay Nineties have perhaps been given a glamor they do not deserve yet the appeal of electric lights, gaming rooms, and saloons must have been strong to country boys of the time.
- 2000 *Oxf. Amer.* Mar.–Apr. 115/3 It had a real Gay Nineties, red plush, stripey kind of decor.

**b.** (In sense A. 4d.)

**gay bar** *n.* a public house or bar frequented predominantly by homosexuals.

- 1947 K. WILLIAMS *Diary* 16 Jan. (1993) 9 Went round to the gay bar which wasn't in the least gay and saw K. and Co.
- 1976 M. MACHLIN *Pipeline* xxxviii. 412 There were no gay bars or hangouts, and very few gays dared walk the streets in the more extravagant, deviant-type-wardrobes.
- 2005 *Independent* 18 Jan. (Review section) 5/4 In gay bars the guys have a couple of drinks, but they're more interested in dancing and posing.

**gay boy** *n.* sometimes *depreciative* (a) a hedonistic young man; (b) a homosexual man.

- 1921 *Hot Dog* Nov. 23 A festive gayboy of our acquaintance,..having been newly introduced to a demure



young thing from the Kentucky hills, invited her to supper.

- 1945 T. WILLIAMS *Let.* 15 Mar. in *Lett. to D. Windham* (1976) 167 [She] goes hog-wild in the presence of gay boys, flitting from one to another... She..fixed me up with a charming Captain in the air-force.
- 1951 E. LAMBERT *Sleeping-house Party* vii. 74 In a way it was an odd threesome. It occurred to me that Esther rather hung round our two gay boys.
- 1995 *Face* Sept. 60/1, I always got called gay. 'Oy, pouf! Gayboy!'
- 2000 J. HARVEY *Gimme Gimme Gimme* 65 *Favourite Perfume*. A special fragrance called Poppers, that all those gayboys use in the clubs. They put it up their noses. I dab it behind me ears.

**Gay Day** *n.* (also with lower-case initials) orig. *U.S.* any of various all-day public events intended to promote and raise awareness of gay and lesbian issues.

- 1971 *Sunday Post-Crescent (Appleton, Wisconsin)* 29 Aug. 1/5 Gay Day brought Trafalgar its oddest hour.
- 1980 *Family Relations* 29 176/1 One father and his 10-year-old daughter march annually in San Francisco's Gay-Day Parade with the gay father contingent.
- 2005 *Chicago Tribune* (Midwest ed.) 13 Nov. v. 14/4 Evangelicals waged a boycott of Walt Disney Co. for its benefits to same-sex partners, as well as gay days at its theme parks.

**gay gene** *n. colloq.* a sequence or sequences of DNA supposedly predisposing a person towards a homosexual orientation.

- 1986 *Los Angeles Times* 13 July (Mag. section) 21/1 An extreme sociobiologist would argue that there is a gay gene.
- 1993 *New Scientist* 24 July 3/2 While the 'discovery' of the gay gene may generally have been welcomed by gay rights groups, it could..also help to produce tests to see whether a fetus was carrying that gene, or a search for ways to alter its function.
- 2000 H. HAMMOND *Lesbian Art in Amer.* i. 99 Despite reports of a gay gene, most of us believe that to be queer is not simply a biological condition but a combination of biology, socially conditioned factors, and conscious choice, as is heterosexuality.

**gay ghetto** *n. colloq.* an urban area with a significant homosexual population and a high concentration of businesses catering primarily to this community (sometimes characterized negatively as isolationist or segregated); cf. *gay village n.*

- 1970 *N.Y. Times* 31 Aug. 28 Police harassment of homosexuals had been intensified within the last three weeks in the 'gay ghettos' of Manhattan.
- 1994 P. HINDLE *Gay Communities* in S. Whittle *Margins of City* i. 13 One possible end product of the creation of gay space is a segregated 'gay ghetto', similar to ethnic and racial ghettos, but in this case defined by a combination of sexuality, lifestyle and culture.

2004 *Gay Times* Feb. 117/1 The last thing I want from a holiday is to swap the fast-lane, 24/7 concrete-jungle of queer London for the gay ghetto of another large city.

**gay icon** *n.* a public figure said to be particularly admired by homosexuals, esp. for showing spirit, fortitude, flamboyance, or a disregard of convention.

1984 M. BRONKSI *Culture Clash* II. 104 Judy Garland was the quintessential pre-Stonewall gay icon. She made a legend out of her pain and oppression, and although she always managed to come back, she never fought back.

1991 *Pink Paper* 30 Mar. 11/1 Gay icons may come and go, but few can command such an adulatory following and even fewer repay the devotion with such dedication as diva Eartha Kitt.

2005 *Financial Times* (Nexis) 17 Dec. 12 David Beckham is so comfortable as a gay icon that he has posed as a pin-up for the gay magazine *Attitude*.

**gay lib** *n.* [see LIB *n.*<sup>4</sup>] orig. *U.S.* = *gay liberation n.*

1970 *Los Angeles Free Press* 6 Feb. 17 (*heading*) Gay Lib Front meets.

1970 *Los Angeles Free Press* 20 Feb. 18/3 The Pope hopes that all Gay organizations—Old line, Gay lib, motorcycle, and social—will join in the demonstration.

1974 A. GINSBERG *Interview* in *Spontaneous Mind* (2001) 309 The gay lib movement will have to come to terms sooner or later with the limitations of sex.

1986 *Guardian Weekly* 26 Jan. 12/4 The bars—since gay lib, their fronts are of transparent glass—do not have invitingly dim-lit backrooms.

1999 *Callaloo* 22 135 The things I..quickly started reading everything I could about, in porno magazines and gay lib books..certainly had nothing to do with..black people or poverty.

**gay liberation** *n.* (also with capital initials) orig. *U.S.* the liberation of homosexuals from social stigma and discrimination.

1969 *Berkley Barb* (*San Francisco*) 10 Oct. 12/2 A magazine devoted to gay liberation is shortly to be published.

1985 *Listener* 7 Feb. 28/3 To depict life from the standpoint of a male prostitute..is to make a statement, if not to thump the tub for gay liberation.

2002 R. GOLDSTEIN *Attack Queers* ii. 34 The cadres of gay liberation never imagined that straight society would be so quick to embrace them.

**Gay Liberation Front** *n.* orig. *U.S.* a movement promoting gay liberation.

1969 *Village Voice* (N.Y.) 18 Sept. 2/1 (*advt.*) The Gay Liberation Front sends love to all gay men and women in the homosexual community.



- 1974 A. GINSBERG *Interview in Spontaneous Mind* (2001) 335 Look out straights, here comes the Gay Liberation Front, springing up like warts all over the bland face of Amerika.
- 1993 *New Republic* 20 Dec. 26/1 The Gay Liberation Front clung to the highly un-Bolshevik anti-elitism of the earlier New Left.

**gay liberationist** *n.* (also with capital initials) orig. *U.S.* an activist in the Gay Liberation Front; an advocate of gay liberation.

- 1970 *Times Recorder (Zanesville, Ohio)* 13 Nov. 12/2, I plan to join the Gay Liberationists as a sympathizer.
- 2003 *Daily Tel.* (Nexis) 11 July 26 Evangelicals are not the only ones who object to the forcing of a gay liberationist agenda on the Church.

**gay marriage** *n.* a relationship or bond between partners of the same sex which is likened to that between a married man and woman; (in later use chiefly) a formal marriage bond contracted between two people of the same sex, often conferring legal rights; (also) the action of entering into such a relationship; the condition of marriage between partners of the same sex.

- 1971 W. D. OBERHOLTZER *Is Gay Good?* Introd. 41 Also, current research has not comprehensively tapped the world of the gay marriage, nor has it determined whether the male homosexual goes through stages, e.g., promiscuous while young but nonpromiscuous when older or when married.
- 1977 *Washington Post* (Nexis) 23 May c1 Gays seized the phrase as a legalization of gay marriages—and Dixon's voters, many of them representing church groups, were outraged.
- 1990 *Daily Tel.* 19 Apr. 12/8 Gay marriages for 648 Danes... Under the law, homosexual couples enjoy almost all the rights of a heterosexual marriage, except adoption.
- 2001 *Times* 27 Feb. i. 1/5 One plan under consideration is to give away the first 100 'gay marriage' licences free to publicise the scheme which brings London into line with San Francisco, Amsterdam and Paris.

**gay panic** *n.* anxiety or panic as a reaction to (one's own or more usually another's) homosexuality, *esp.* that supposedly provoked in a heterosexual man by another man's homosexual advances, and sometimes claimed as the cause of violent conduct (freq. in *N. Amer.* legal contexts, *esp. attrib.* in **gay panic defence**); cf. *homosexual panic n.* at **HOMOSEXUAL** *adj.* and *n.* Additions.

- 1986 *Times* 14 June 3/1 (*heading*) Gay panic led man to kill.
- 1989 *Harvard Law Rev.* **102** 1543 Some courts, however, have refused to acquit defendants on the basis of the gay panic defense.
- 1994 *Washington Post* 23 Dec. A3 A Washington attorney with Gay and Lesbian Americans, says he has

heard the 'gay panic defense' before and brands it 'nonsense'.

- 1999 *Independent on Sunday* 7 Nov. 5/2 In an ongoing murder trial, lawyers attempted to use 'gay panic' as a defence, stating that the defendant was provoked to violence by homosexual advances.
- 2001 *N.Y. Times* 24 June 1. 15/5 They say he has a history of supporting anti-gay legislation, including a 'gay panic' measure that would have permitted someone accused of attacking a gay person to argue that the victim provoked the attack with 'lewd and lascivious' behavior.

**gay plague** *n.* *offensive* (orig. *U.S.*) Aids (so called because it was first identified amongst homosexual men).

- 1982 *New York* 31 May 52 (*heading*) The gay plague.
- 1985 *Sun* 7 Dec. 3/1 Christian, 32, has turned down an out-of-court offer of £7000 because, he says, Hudson knowingly exposed him to the 'Gay Plague'.
- 1988 M. BISHOP *Unicorn Mountain* xi. 100, I think he must believe I'm highly infectious—the Gay Plague's answer to Typhoid Mary.
- 2005 *Independent* 1 Feb. 31/3 In 1987..there was still a widely held belief that the 'gay plague' was a punishment for indiscriminate immorality.

**gay power** *n.* (also with capital initials) orig. *U.S.* the exertion of social, cultural, or economic power by homosexuals; the advocacy of this (freq. used as a slogan by gay civil rights activists).

- 1969 *N.Y. Times* 30 June 22/1 Graffiti on the boarded-up windows of the inn included: 'Support gay power' and 'Legalize gay bars'.
- 2004 *Guardian* (Nexis) 4 Nov. 13 Gay power will shake the foundations of one of Spain's most reactionary institutions today when an officer from the civil guard police force formally asks to share married quarters with his male partner.

**gay pride** *n.* a sense of self-esteem engendered by a person's (public) acknowledgement of his or her homosexuality; solidarity among homosexual men and women, esp. as expressed publicly; (freq. *attrib.* and with capital initials) any of various public events intended to promote this feeling.

- 1970 *Washington Post* 29 June A20/2 It [*sc.* the march] was the climax of what its organizers called 'Gay Pride Week'.
- 1972 *Pride of Lions* (Columbia Univ.) Apr. 2/2 What is important is that you come out, have gay pride and leave the dance with a sense of Gay power.
- 1987 J. RULE *Memory Board* vi. 96 She toyed with the idea of joining one of the early gay pride marches.
- 1993 R. SHILTS *Conduct Unbecoming* i. ix. 95 Hence, gay pride became a movement watchword. 'Coming out', or acknowledging one's homosexuality—either privately to oneself or publicly—became like a born-again experience to the new gay activists.

2000 M. ALBO *Hornito* 27 Last weekend was Gay Pride, and I spent it on Ecstasy, howling, walking around in the gold boot-cut jeans I got at the Salvation Army for three dollars.

**gay rape** *n.* = *male rape n.* at MALE *adj.* and *n.*<sup>1</sup> Compounds 2.

1974 *Daily Rev. (Hayward, Calif.)* 26 Sept. 10/2 (*heading*) Marcus Welby episode on gay rape cancelled.

2004 *Evening Standard (Nexis)* 17 Nov. 7 The investigation looked at..claims of a cover-up over an alleged gay rape.

**gay rights** *n.* orig. U.S. the civil rights of homosexual people, esp. in terms of equality of freedom, privilege, and opportunity with heterosexuals.

1972 *Pride of Lions (Columbia Univ.)* Apr. 2/3 A point by point Gay rights platform for the United States in 1972 was drawn up.

2004 *Times Lit. Suppl.* 4 June 3/2 He was outspoken in his advocacy of gay rights, of peace and religious tolerance.

**gay scene** *n.* the cultural and social environment associated with homosexuals; *spec.* gay and lesbian bars, clubs, etc., considered collectively as a social scene; cf. SCENE *n.* 7f.

1969 *Los Angeles Times* 30 Mar. (Calendar section) 32/1 The plays contribute to a saner public attitude to the so-called gay scene by divesting it of its furtive glamor.

1971 J. VON ROHR in W. D. Oberholtzer *Is Gay Good?* i. 41 Nonetheless, 'straight' sex is a noticeable part of the male gay scene.

1988 *Observer* 2 Oct. v. 3/4 Born from the New York black and Puerto Rican gay scene, Voguing nights are friendly and strangely innocent affairs.

2005 *Gay Times* Dec. 61/1 He was also bored by the Muscle Marys' and disco bunnies' monopoly of the gay scene.

**gay sex** *n.* sexual activity between people of the same sex.

1967 *Barnard (N.Y.) Bull.* 29 Nov. 4/1 Jason tells about taking a box of poppers to an orgy at a Turkish bath,..talks about gay sex.

2004 *Gay Times* Feb. 91/2 Official advice now suggests ordinary-strength condoms are just as safe as the thicker varieties traditionally recommended for gay sex.

**gay village** *n.* an urban area with a significant homosexual population and a high concentration of businesses catering primarily to this community.

- 1982 *United Press Internat. Newswire* (Nexis) 1 Sept., Ogunquit, Maine (is) certainly a booming gay village.
- 1998 *HotLine* Autumn–Winter 73/5 Located in the popular Gay Village., this busy pub attracts a cosmopolitan crowd and is open until 2am at weekends.
- 2005 *Cape Etc. (Cape Town)* Feb.–Mar. 86/2 Join us..in Cape Town's gay village. Lush is an exclusive night out for the girls..with some of the hottest lesbians around.

---

## COMPOUNDS

**C1.** Compounds of the adverb (chiefly with present and past participles), as **gay-beseen** (see BESEE *v.* II.), **gay-careering**, **gay-chirping**, **gay-dressed**, **gay-motleyed**, **gay-painted**, **gay-shifting**, **gay-smiling**, **gay-spent**, **gay-spotted**, **gay-throned**, etc., adjs.

- 1549 T. CHALONER tr. ERASMUS *Praise of Folie* sig. Oij<sup>v</sup>, What saie you to Courtiers? these minion gaibeseen gentlemen.
- 1590 SPENSER *Faerie Queene* II. iii. sig. P3<sup>v</sup>, She her gay painted plumes disorderid..Peepes forth, and soone renews her natiue pride.
- 1596 SPENSER *Second Pt. Faerie Queene* VI. v. sig. Dd4<sup>v</sup>, Deckt with greene boughes, and flowers gay beseene.
- 1642 H. MORE *Ψυχωδια Platonica* sig. G3<sup>v</sup>, There be six Orders 'fore you do descend To this gay painted bow.
- 1690 W. MOUNTFORT *Successfull Strangers* II. ii. 15 The Gay Chirping Flutterers of the Air To their own mossy Architects repair.
- 1728 J. THOMSON *Spring* 12 The downward Sun Looks out illustrious from amid the Flush Of broken Clouds, gay-shifting to his Beam.
- 1728 J. THOMSON *Winter* (ed. 5) 36 Those busy, bustling Days..Those gay-spent, festive Nights.
- 1742 W. COLLINS *Persian Ecl.* iii. 16 Gay-motley'd Pinks and sweet Junquils she chose.
- 1744 J. THOMSON *Spring* in *Seasons* (new ed.) 25 Nor broad Carnations; nor gay-spotted Pinks.
- 1747 G. LYTTELTON *To Memory of Lady* ii. 2 Ye Lawns gay-smiling with eternal Green, Oft have You my Lucy seen!
- 1777 T. WARTON *Poems* 36 The butterfly, gay-painted soon, Explores awhile the tepid noon.
- 1777 T. WARTON *Poems* 76 But since, gay-thron'd in fiery chariot sheen, Summer has smote each daisy-dappled dale.
- 1784 *Distressed Lady* 9 In this manner she sat for about half an hour, when a very gay dressed lady came into the room, and said what is the matter with you madam?
- 1821 *Xarifa* in Lady Dacre *Dramas & Occas. Poems* v. ii. 209 The knights appellants, gay-careering, urge Their foaming coursers o'er the vacant space.
- 1824 T. FENBY *Outl. Four Temperaments* I, in *Wild Roses* 78 Thy gay-careering soul.
- a1832 P. M. FRENEAU *Poems* (1929) 269 Gay spotted pinks their charming bloom withdrew, And Polyanthus quench'd its thousand dyes.

- 1844 LD. HOUGHTON *Palm Leaves* 132 The sparrow Gay-chirping by the door.
- 1848 A. H. CLOUGH *Bothie* iv. 80 Seizing his gay-smiling Janet.
- 1850 H. MELVILLE *White-jacket* xii.59 For sights, a gay-painted punch-bowl, or Dutch tankard—never mind about filling it—might be recommended.
- 1900 R. C. DUTT tr. *Ramayana* vii. vi. vi. 100 And five thousand gay-dressed damsels shall upon my Sita wait.

## C2. Objective compounds of the noun (in sense C. 5a).

**gay-baiting** *n.* orig. *U.S.* the incitement or exploitation of anti-homosexual sentiment, esp. for political gain; the harassment, abuse, or intentional provocation of homosexuals.

- 1973 *Los Angeles Times* 28 Apr. II. 14/5 Representatives of the city's gay or homosexual community..accuse Arnegergh of 'gay-baiting' in his campaign... Arnegergh's ads 'are inflammatory..and could set off a mass pogrom against us'.
- 1984 *Signs* 9 705 There is a lot of gay-baiting in my office, as well as anti-gay remarks and jokes. One gay man was already fired.
- 1997 *Sunday Times* 26 Oct. (News Review section) 6/2 They have lost the battle to outlaw abortion; and there is only so much gay-baiting even their grassroots will tolerate.

**gay-bash** *v.* orig. *U.S. intr.* to engage in gay-bashing; (also *trans.*) to subject (a homosexual) to an attack of this type.

- 1987 *Oregonian* (Portland, Oregon) (Northwest ed.) 26 Oct. B5/3 It is not our effort to 'gay bash' or affect the homosexual community in any way.
- 1992 *Nation* (N.Y.) 15 June 825/2 Let Dannemeyer gay-bash and yell about the fetus.
- 2002 *N.Y. Times* (National ed.) 6 Jan. II. 33/4 The show's teenage character..was gay-bashed.

**gay-basher** *n.* orig. *U.S.* a person who engages in gay-bashing.

- 1979 *Body Politic* May 15/2 (*heading*) Gay basher gets life.
- 1979 *Boston Sunday Globe* 9 Dec. 43/2 Gay bashers..usually feel they can operate with impunity 'because the social climate out there says that homosexuality is a form of degeneracy'.
- 1981 *Chicago Tribune* 10 Oct. I. 11/5 They didn't die at the hands of gay bashers; their killers were gay, too.
- 1997 I. RANKIN *Black & Blue* (1998) xxv. 358 They were fine and private places right up until the moment you met your first junkie, mugger, rapist or gay-basher.

**gay-bashing** *n.* orig. *U.S.* the action or practice of specifically targeting homosexuals for physical or verbal attack; = QUEER-BASHING *n.*

- 1978 *Body Politic* Sept. 21/1 Gay-bashing in New York's Central Park has been a fact of the cruising life

for years.

- 1981 *Los Angeles Times* 6 Mar. 1. 17/1 It has come to be known in Portland as 'gay bashing'—vicious attacks directed..at homosexual men.
- 1993 R. HUGHES *Culture of Complaint* i. 44 The same putrid stew of gay-bashing, thinly veiled racial prejudice, black Irish paranoia and authoritarian populism continued to bubble beneath the commonfellow surface.
- 2003 E. HUNT & N. KELLER *Rarotonga & Cook Islands* (ed. 5) 40/1 There's no need for gays or lesbians to hide their sexuality, and there's no need to fear 'gay bashing'.

---

Oxford University Press  
Copyright © 2014 Oxford University Press . All rights reserved.



From: Christine Willett Contact Information Redacted  
Sent: Friday, November 14, 2014 10:46 PM  
To: Jamie  
Cc: Scott Seitz; Trang Nguyen; Amy Stathos  
Subject: Re: [FWD: Spurious Activity]

Dear Jamie,

Please find attached ICANN's response to the issues you raised in your email.

Feel free to contact me if you wish to discuss.

Regards,

Christine A. Willett  
Vice President, Operations - Global Domains Division  
Internet Corporation for Assigned Names and Numbers (ICANN)

Contact Information Redacted

From: Christine Willett Contact Information Redacted  
Date: Friday, October 24, 2014 at 6:12 PM  
To: Jamie Baxter Contact Information Redacted  
Subject: Re: [FWD: Spurious Activity]

Jamie,

I have conferred with our legal team and I can confirm that ICANN will review the materials you've provided and provide you with a fulsome response by 14 November 2014.

Thank you for your patience,  
Christine Willett

From: Jamie Baxter Contact Information Redacted  
Date: Wednesday, October 15, 2014 at 8:53 AM  
To: Christine Willett <christine.willett@icann.org>  
Subject: [FWD: Spurious Activity]

Just sent this but it bounced back.

Trying again.

----- Original Message -----

Subject: Spurious Activity

From: "Jamie Baxter" Contact Information Redacted

Date: Wed, October 15, 2014 11:51 am

To: Contact Information Redacted



Cc: "Scott Seitz" Contact Information Redacted

Good morning Christine,

Thanks again for taking the time to speak with our team and community supporters on Monday. As a follow up I wanted to provide you with the specific parts of our July 28 email exchange regarding spurious activity from competitive applicants, and once again include the supporting documents. Please note, some parts related to Item #2 regarding .LGBT have been deleted from the copy/paste below, but remain otherwise unedited.

One additional spurious activity item that was not originally included in the July 28 email is the exchange received from Rob Schlein of the Metroplex Republicans where he clearly acknowledges he only filed his objection as a favor to Chris Barron (Item\_5), who we all know was fraudulently attempting to interfere with our application. This behavior not only cost dotgay a \$5,000 filing fee to respond, but combined with evidence provided here pointing to a competitor paying for Rob's objection, it feeds into the larger pool of spurious activity that our community application has faced and which ICANN has not addressed or made public statements on.

We look forward to ICANN's response regarding the spurious activity shared here, and to the accountability mechanisms that will be put in place now and for future rounds of new gTLDs.

Please do confirm receipt and let me know if I can assist in clarifying anything.

Cheers  
Jamie

Jamie Baxter  
VP of Marketing  
dotgay LLC  
Contact Information Redacted

[www.dotgay.com](http://www.dotgay.com)

Please join us on Facebook at [www.facebook.dotgay.com](http://www.facebook.dotgay.com)  
and follow us at [www.twitter.com/dotgay](http://www.twitter.com/dotgay)

Hello Christine,

I just wanted to send a quick thank you note and summary of our conversation from Friday. The important aspects of this conversation where to highlight areas of concern in the current process for community applications and specifically

how community applications and specifically the gay community have been disadvantaged.

#### Item A: Spurious Activities

As you recall we pointed out several areas where Standard .GAY competitors have been allowed to engage in spurious activity against the gay community and the .GAY community application, for which there exists no ICANN accountability mechanism for any community applicant to use in response. Specific examples for .GAY are,

1) Standard applicants have attacked global nonprofits supporting dotgay, with no repercussion, allowing them to cast a shadow on our supporters reputation and intimidate our endorsers and potential endorsers. Ultimately going unchecked and thus encouraging them to escalate activity when no ICANN response occurs.

#### Attachments:

- Item\_1\_A - Objection response from TLDH saying ILGA involved in pedophilia
- Item\_1\_B - Andrew Merriam telling our endorser we are censoring & other lies
- Item\_1\_C - Andrew Merriam telling gay press lies about our application
- Item\_1\_D - Andrew Merriam telling gay press lies about our application

2) The community pointed out suspicion behind the GOProud community objection suggesting spurious activities by a single person versus an organization, yet no process existed nor were attempts made by ICANN staff to confirm and eliminate the objection and reconsideration request presented by Christopher Barron in order to avoid further delay of the dotgay application.

Item\_2 - Email sent by dotgay to ICC (with ICANN copies) requesting ICC investigate GoProud objection (Aug 5, 13)

3) We have presented proof that a competing Standard applicant for dotgay has indeed paid for a community objection against dotgay, a clear indication of spurious activity, however it was rejected by ICANN with no offer as to what the correct accountability mechanism is to have it investigated or indication as to how ICANN would allow for this information to be presented in defense of a community.

- Item\_3\_A - Wire document for the Metroplex objection payment
- Item\_3\_B - Detail that links the payee to Top Level Design (.GAY competitor)

4) Throughout the comment process ICANN was advised by both CTAG and individual community applicants that spurious activity was occurring in the comments section and as a community applicant we were unable to address Standard applicants activities. dotgay has documented several examples of this and again there is not a process to allow sensitive information to be reviewed and considered.

(No supporting document, however a quick look on Facebook & LinkedIn shows that a large majority of the public comments submitted on the ICANN website are from the Portland Oregon area, home of Andrew Merriam and Top Level Design. Without any clear way to indicate that the comments come from members of our community, it is a tactic that that standard applicants clearly have as a mechanism to create the illusion of opposition.)

It is understandable that ICANN staff never anticipated spurious activities or panelist determinations of this nature, however it does not exempt ICANN from taking steps to ensure fair play overall and that community detriment is avoided by fulfilling the principles and goals of the community objection proceedings.

To date, and despite the ongoing efforts of ILGA ICANN staff have failed to even address these community concerns or respond in a way that shows they are acting in a manner consistent with the principles and goals of the new gTLD program and the community objection proceedings.

This is not only harmful and negligent to the gay community, but a clear indicator that the ICANN accountability mechanisms were not designed for unique situations like the one at hand.

We hope that this is ultimately a helpful dialog, and look forward to hearing from you and your team.

Best regards,  
Scott Seitz

## **Annex C-3**



The Internet Corporation for Assigned Names and Numbers

14 November 2014

Jamie Baxter  
VP of Marketing  
dotgay LLC

Dear Mr. Baxter:

Thank you for your correspondence of 15 October 2014, in which you identify what you believe to be spurious activities towards dotgay LLC's community application for .GAY. We appreciate the time you have taken to collect and provide these materials to us. The meeting with you, Scott and the dotgay LLC team at ICANN 51 was very informative and allowed us to better understand your perspective.

We have reviewed the concerns raised in your correspondence as well as those raised by Mr. Seitz in his correspondence dated 28 July 2014 and provide the following response.

Mr. Seitz's correspondence brought forth four points. Two of these were:

*Standard applicants have attacked global nonprofits supporting dotgay, with no repercussion, allowing them to cast a shadow on our supporters reputation and intimidate our endorsers and potential endorsers. Ultimately going unchecked and thus encouraging them to escalate activity when no ICANN response occurs.*

and

*Throughout the comment process ICANN was advised by both CTAG and individual community applicants that spurious activity was occurring in the comments section and as a community applicant we were unable to address Standard applicants activities.*



Openness and transparency are at the heart of ICANN's multi-stakeholder model. Hence, public comment mechanisms play a vital role in ICANN's policy development, implementation, and operational processes. The New gTLD Program encourages a healthy exchange and debate of information from all parties, and many of the Program processes incorporate consideration of public comments.

The Application Comment Forum is an open and transparent mechanism for the public to raise relevant information and issues about new gTLD applications. Anyone in the community, including applicants, may provide comments about an application and any party may choose to respond to comments it believes are spurious or inaccurate in nature in the same forum.

In considering the public comments, Section 1.1.2.3 of the Applicant Guidebook states the following:

*Evaluators will perform due diligence on the application comments (i.e., determine their relevance to the evaluation, verify the accuracy of claims, analyze meaningfulness of references cited) and take the information provided in these comments into consideration. In cases where consideration of the comments has impacted the scoring of the application, the evaluators will seek clarification from the applicant. Statements concerning consideration of application comments that have impacted the evaluation decision will be reflected in the evaluators' summary reports, which will be published at the end of the Extended Evaluation.*

The Applicant Guidebook (Section 4.2.3) provides further guidance concerning Community Priority Evaluation:

*When scoring "Opposition," previous objections to the application as well as public comments during the same application round will be taken into account and assessed in this context. There will be no presumption that such objections or comments would prevent a score of 2 or lead to any particular score for "Opposition." To be taken into account as relevant opposition, such objections or comments must be of a reasoned nature. Sources of opposition that are clearly spurious, unsubstantiated, made for a purpose incompatible with*



*competition objectives, or filed for the purpose of obstruction will not be considered relevant.*

In summary, although you may disagree with comments made in opposition to dotgay LLC's application, the Program has mechanisms for you to refute such comments and for evaluation panels to consider the relevance, weight and impact of such comments.

The next point in Mr. Seitz's email was:

*The community pointed out suspicion behind the GOProud community objection suggesting spurious activities by a single person versus an organization, yet no process existed nor were attempts made by ICANN staff to confirm and eliminate the objection and reconsideration request presented by Christopher Barron in order to avoid further delay of the dotgay application.*

As you know, GOProud's community objection was never fully accepted by the Dispute Resolution Service Provider – the International Center of Expertise of the International Chamber of Commerce (ICC). During the administrative review of the objection, the ICC determined that the objection was not compliant with the ICC Rules for Expertise, the ICC Practice Note on the Administration of Cases under the Procedure and/or the New gTLD Dispute Resolution Procedure of ICANN.<sup>1</sup> Accordingly, the ICC rejected GOProud's objection without prejudice.

Following the ICC's determination, Mr. Barron, who at that time was purportedly associated with GOProud, utilized the Reconsideration Request process, one of the accountability mechanisms<sup>2</sup> specified in ICANN's Bylaws, and asked ICANN to review the ICC's decision to reject GoProud's objection. ICANN's accountability mechanisms are fundamental safeguards to help ensure that the bottom-up, multi-stakeholder model remains effective. Reconsideration, in particular, is a mechanism by which any person or entity materially and adversely affected by an action or inaction of ICANN may request reconsideration of that action by the Board.

---

<sup>1</sup> New gTLD Dispute Resolution Procedure with the ICC International Centre for Expertise: <http://www.iccwbo.org/Products-and-Services/Arbitration-and-ADR/Expertise/ICANN-New-gTLD-Dispute-Resolution/Procedure/>

<sup>2</sup> ICANN's Accountability Mechanisms: <https://www.icann.org/resources/pages/mechanisms-2014-03-20-en>



Accordingly, ICANN staff cannot simply “eliminate” a Reconsideration Request; to do so would be contrary to ICANN’s Bylaws. Upon receipt of a letter from GOProud, ICANN staff sent it to the ICANN Board members reviewing the Reconsideration Request, noting GOProud’s comments about its relationship with Mr. Barron, as well as GOProud’s statement that it had, and wanted, no involvement in the purported “community objection” that Mr. Barron attempted to file against dotgay LLC’s application for .GAY. Taking this information into consideration, the New gTLD Program Committee ultimately denied Reconsideration Request 13-13.<sup>3</sup>

The final point in Mr. Seitz’s email was:

*We have presented proof that a competing Standard applicant for dotgay has indeed paid for a community objection against dotgay, a clear indication of spurious activity, however it was rejected by ICANN with no offer as to what the correct accountability mechanism is to have it investigated or indication as to how ICANN would allow for this information to be presented in defense of a community.*

And you added:

*One additional spurious activity item that was not originally included in the July 28 email is the exchange received from Rob Schlein of the Metroplex Republicans where he clearly acknowledges he only filed his objection as a favor to Chris Barron (Item\_5), who we all know was fraudulently attempting to interfere with our application.*

Although we do recognize your view on this matter, the Applicant Guidebook does not provide any restrictions on who may provide funding for an objection. Section 3.2.2 of the Applicant Guidebook defines that, as part of the dispute proceedings, all objections are reviewed by the Dispute Resolution Service Provider to determine the standing and merits of the objection. The Expert Panel reviewed Metroplex Republican of Dallas’ objection against dotgay LLC’s application for .GAY, and

---

<sup>3</sup> <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-03-22-en#1.d>





determined that the objector lacked standing, and “even if it had standing [the objection] would have to be dismissed in terms of merits.”<sup>4</sup>

Any party, with standing in accordance with the Applicant Guidebook, is eligible to file objections. That said, in the specific instance you mentioned, the objection was dismissed as it was determined that the party did not have standing. The source of funding for this objection was therefore moot.

In conclusion, upon careful review of all the materials provided, and the specific concerns raised, we have not identified anything that indicates the evaluation processes of the New gTLD Program were compromised by the activities cited, and have determined that all of these processes have been followed in all respects.

We recognize that you may still have further concerns. We encourage you to review ICANN’s Bylaws, which outlines the various accountability mechanisms that may be utilized, <https://www.icann.org/resources/pages/bylaws-2012-02-25-en#IV>.

Again, thank you for bringing these issues to our attention. We appreciate the time you have invested in the dotgay LLC’s community application for .GAY and your participation in the New gTLD Program. If you wish to discuss further, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, reading "Christine A. Willett".

Christine A. Willett  
Vice President, Operations  
Global Domains Division  
Internet Corporation of Assigned Names and Numbers (ICANN)

---

<sup>4</sup> ICC Determination Metroplex Republicans of Dallas vs. dotgay LLC:  
<http://newgtlds.icann.org/sites/default/files/drsp/25sep13/determination-1-1-1713-23699-en.pdf>

## **Annex C-4**



International Chamber of Commerce

*The world business organization*

International Centre for Expertise ☒ Centre international d'expertise

## NEW GENERIC TOP-LEVEL DOMAIN NAMES (“gTLD”) DISPUTE RESOLUTION PROCEDURE

### RESPONSE FORM TO BE COMPLETED BY THE APPLICANT

- Applicant responding to several Objections or Objections based on separate grounds must file separate Responses
- Response Form must be filed in English and submitted by email to [expertise@iccwbo.org](mailto:expertise@iccwbo.org)
- The substantive part is limited to 5000 words or 20 pages, whichever is less

**Disclaimer:** This form is the template to be used by Applicants who wish to file a Response. Applicants must review carefully the Procedural Documents listed below. This form may not be published or used for any purpose other than the proceedings pursuant to the New GTLD Dispute Resolution Procedure from ICANN administered by the ICC International Centre for Expertise (“Centre”).

#### References to use for the Procedural Documents

Name	Abbreviation
Rules for Expertise of the ICC	“Rules”
Appendix III to the ICC Expertise Rules, Schedule of expertise costs for proceedings under the new gTLD dispute resolution procedure	“Appendix III”
ICC Practice Note on the Administration of Cases	“ICC Practice Note”
Attachment to Module 3 - New gTLD Dispute Resolution Procedure	“Procedure”
Module 3 of the gTLD Applicant Guidebook	“Guidebook”

ICC International Centre for ADR ☒ Centre international d'ADR de la CCI

Contact Information Redacted

Website [www.iccexpertise.org](http://www.iccexpertise.org)

© International Chamber of Commerce (ICC) D 2012. All rights reserved. No part of this document may be reproduced or copied in any form or by any means, or translated, without the prior permission in writing of ICC.

## Identification of the Parties and their Representatives

### Applicant

Name	Top Level Domain Holdings Limited
Contact person	Antony Van Couvering
Address	Contact Information Redacted
City, Country	Contact Information Redacted
Telephone	Contact Information Redacted
Email	Contact Information Redacted

### Objector

Name	The International Lesbian Gay Bisexual Trans and Intersex Association
Contact person	Renato Sabbadini
Address	Contact Information Redacted
City, Country	Contact Information Redacted
Telephone	Contact Information Redacted
Email	Contact Information Redacted

*Copy the information provided by the Objector.*

### Applicant's Representative(s)

Name	Minds + Machines
Contact person	Reg Levy
Address	Contact Information Redacted
City, Country	Contact Information Redacted
Telephone	Contact Information Redacted
Email	Contact Information Redacted

*Add separate tables for any additional representative (for example external counsel or in-house counsel).*

**Applicant's Contact Address**

Name	Minds + Machines
Contact person	Reg Levy
Address	Contact Information Redacted
City, Country	Contact Information Redacted
Telephone	Contact Information Redacted
Email	Contact Information Redacted

*This address shall be used for all communication and notifications in the present proceedings. Accordingly, notification to this address shall be deemed as notification to the Applicant. The Contact Address can be the Applicant's address, the Applicant's Representative's address or any other address used for correspondence in these proceedings.*

**Other Related Entities**

Name	
Address	
City, Country	
Telephone	
Email	

*Add separate tables for any additional other related entity.*

## Disputed gTLD

gTLD Applicant has applied to and Objector objects to [.example]

Name	.gay
------	------

### Objection

**The Objector filed its Objection on the following Ground (Article 3.2.1 of the Guidebook and Article 2 of the Procedure)**

**Limited Public Interest Objection:** the applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law.

or

**Community Objection:** there is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.

*Copy the information provided by the Objector.*

### **Point-by-Point Response to the claims made by the Objector (Article 3.3.3 of the Guidebook and Article 11 of the Procedure)**

---

*(Provide an answer for each point raised by the Objector.)*

Top Level Domain Holdings Limited (“TLDH”) submits this response to the Community Objection by the International Lesbian Gay Bisexual Trans & Intersex Association (“ILGA”) against TLDH’s application for .gay.

#### **I. Grounds and Standing**

##### **A. Grounds**

Under Module 3 of ICANN’s Applicant Guidebook (AGB, available at <http://newgtlds.icann.org/en/applicants/agb>; we note that, while the current version posted is the 4 June 2012 version, the version in effect at the time of submission of TLDH’s application for .music was the 11 January 2012 version, a copy of which is available at <http://newgtlds.icann.org/en/about/historical-documentation/matrix-agb-v9>), for ILGA to have grounds to object, it must show that “[t]here is substantial opposition to the application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.”<sup>1</sup>

Since the community itself is not objecting, but rather ILGA, (ostensibly on the community’s behalf), the questions of “substantial opposition” to TLDH’s application by a “significant

---

<sup>1</sup> AGB §3.2.1 Grounds for Objection. There is no substantial difference in this section, or any of the other sections referenced, between the 11 January 2012 and the 4 June 2012 versions of the AGB.

portion” of the community must turn on the question of whether the ILGA has in any way measured the purported opposition, or, if it has not, the panel must consider whether the ILGA actually represents the community (see “Standing,” below). The objector has offered no evidence of any polling or other measuring of opposition even among its own members, let alone a wider sampling of people who are lesbian, gay, bisexual, transgendered, intersex, genderqueer, or any other person who might fall outside the gender binary.

## **B. Standing**

Under Module 3 of the AGB, ILGA must show that it is an established institution associated with a clearly delineated community.<sup>2</sup>

### **1. Established Institution**

To decide whether an objector is an established institution, ICANN requires that the Dispute Resolution Service Provider (DRSP) consider the level of global recognition of the institution, length of time the institution has been in existence, and the public historical evidence of its existence.<sup>3</sup>

ILGA asserts that it “is the only worldwide federation that unites more than 1,000 lesbian, gay, bisexual, transgender, and intersex (LGBTI) national and local organizations in over 100 nations around the world, fighting for the rights of LGBTI people.” These claims are difficult to substantiate, however, since until recently, ILGA did not publish its membership list. This was one of the factors that lead the United Nations (UN) to refuse to reconsider its suspension of ILGA as a consultant non-governmental organization (NGO) due to its association with the North American Man/Boy Love Association (NAMBLA).<sup>4</sup>

In order to determine whether ILGA is “an established institution” within the meaning of the AGB, we have to look at the level of global recognition, length of existence, and historical evidence of its existence. ILGA was founded as the International Gay Association (IGA) in 1978 and rebranded in 1986 as the International Lesbian and Gay Association.<sup>5</sup> Looking at the level of global recognition of ILGA, it once held consultative status as an NGO to the Economic and Social Council (ECOSOC) of the UN, but lost that status in 1994 due to the previously-discussed connections to NAMBLA and other similar organizations promoting illegal activity around the world.<sup>6</sup> The UN does, however, allow 27 other LGBT organizations consultative status in the ECOSOC.<sup>7</sup> Since then, ILGA has struggled to regain that status but has yet to convince the UN that it has severed its ties to pedophilia. ILGA’s loss of UN consultative status and its support of pedophilia directly relates to the historical evidence of its existence as a recognized representative of the LBGT community, which has been problematic and *not* recognized by the UN since 1994.

It cannot therefore be said that ILGA is an “established institution,” particularly in comparison to other LGBT organizations recognized by international treaty organizations such as the United Nations, within the meaning defined by ICANN in the AGB.

---

<sup>2</sup> AGB §3.2.2.4 Community Objection.

<sup>3</sup> *Id.*

<sup>4</sup> <http://www.un.org/News/Press/docs/2002/ECOSOC6004.doc.htm>.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> <http://esango.un.org/civilsociety/displayConsultativeStatusSearch.do?method=search>.

## 2. Relationship with a Clearly Delineated Community

To determine whether an objector has an on going relationship with a clearly delineated community, the DRSP must consider the mechanisms for participation in activities, membership, and leadership; institutional purpose related to the benefit of the associated community; performance of regular activities that benefit the associated community; and level of formal boundaries around the community.<sup>8</sup>

### a. Not a clearly delineated community

Persons who identify themselves as lesbian, gay, bisexual, transsexual, intersex, queer, and in other non-gender binary manners coalesce and work together as a cohesive community on some issues, for example the battle against Proposition 8 in California in 2008, which saw many LGBTI groups working together in support of marriage equality.<sup>9</sup> It is equally certain that they (and the many and varied organizations that represent them) disagree on many issues, for example the battle against legislation in France in 2013, which saw many LGBTI working together against support of marriage equality.<sup>10</sup> The so-called gay community may be best understood as a series of shifting alliances that coalesce around issues, often with significant dissent, rather than as a defined bloc with an agreed-upon hierarchy where one leader or one group speaks for all its members. We note, for example, the objection filed by Metroplex Republicans of Dallas against the application by dotgay llc, which is supported by the ILGA.<sup>11</sup>

This heterogeneity is boldly evidenced by the substantial disagreement among the many people outside the gender binary and groups over the very name “gay,” which is seen by some as a catch-all word for the entire rainbow of persons outside the gender binary, by others as referring to homosexual men only, by others as referring to homosexual men and women only, and by others still as unacceptably dated, exclusionary, and useless at best.<sup>12</sup>

### C. Conclusion

Although ILGA may be a worldwide federation, it is not a “community” within the definitional requirements of ICANN, as it is neither an established institution nor does it have an ongoing relationship with a clearly delineated community. ILGA has no standing to bring this objection.

Further, since the word “gay” itself is not universally defined by people who are LGBTI, it is not possible for there to be a “gay community” because it is in no way “clearly delineated.”

## II. Harm to the Community

ILGA alleges that TLDH’s application for .gay will harm LGBTI persons. It includes in this the statement that “in much of the world the members of the Gay Community [sic] are persecuted”<sup>13</sup> however, having a top-level domain (TLD) devoted to the gay community will

---

<sup>8</sup> AGB §3.2.2.4 Community Objection.

<sup>9</sup> <http://weblog.signonsandiego.com/news/metro/20080710-9999-1m10boycott.html>.

<sup>10</sup> <http://www.dailymail.co.uk/news/article-2312518/Thousands-streets-Paris-protest-legalisation-gay-marriage-set-pass-week.html>.

<sup>11</sup> ICANN’s list of objections: <http://newgtlds.icann.org/en/program-status/odr/filings>.

<sup>12</sup> See: <http://www.glaad.org/reference/offensive> and <http://www.pflagatl.org/lgbt-glossary/> for differing opinions—just in the United States—about what the term “gay” means and whether or not it is offensive or recommended.

<sup>13</sup> ILGA Objection to TLDH’s .gay application pp 9-10.



allow such members to more freely communicate. Further, simply stating that LGBTI persons are subject to harm around the world does not prove that a .gay TLD run by any of the non-dotgay llc applicants will be detrimental to LGBTI persons or indeed that the dotgay llc TLD will *not* be detrimental to LGBTI persons.

#### **A. Exploitation of the Gay Community**

ILGA argues that TLDH's application for .gay is an exploitation of the gay community because .gay is a part of TLDH's broader business model. ILGA claims that this application is "an attempt to usurp" the identity of the gay community.

On the contrary, TLDH's application, as described in its response to application question 18 Mission/Purpose,<sup>14</sup> is intended to benefit the gay community worldwide. It is intended to "allow people of all sexes, cultures and creeds to freely express and voice their opinions and discourse. Moreover, the .GAY domain will serve as an identifiable platform where one can reach out to seek advice, comfort and counseling from others who share common struggles, values and interests."<sup>15</sup>

ICANN has created the application process to expand the TLD namespace and TLDH believes that this is an excellent goal. In fact, TLDH has applied for numerous TLDs, of which .gay is only one. It is true that TLDH's business model intends the .gay TLD to be profitable, but this, in fact, encourages us to run .gay in a manner that benefits the people most likely to want to purchase a .gay domain—people and businesses who are or who support LGBTI people around the world. As discussed in TLDH's Public Interest Commitments (attached) as well as in our response to application question 28: Abuse Prevention and Mitigation, TLDH intends to have an Abuse Point of Contact, whose sole purpose is to ensure that .gay remains a safe space on the internet.<sup>16</sup> TLDH's .gay TLD will have a dispute resolution procedure in addition to the ICANN-mandated processes which will include alternative dispute resolution methods as well as a community flagging process to allow members of the .gay community to report content hosted on domains within the .gay namespace that they believe are inappropriate, harmful, or damaging to any person but especially LGBTI people.<sup>17</sup>

#### **B. No Registration Restrictions**

ILGA argues that the fact that TLDH does not place restrictions on registrations within TLDH's .gay namespace is a "large harm". ILGA states that, "second level names in .gay should [...] only be allocated to Gay Community members."<sup>18</sup>

It is true that TLDH will not seek to police people and businesses who are interested in a domain name in order to determine whether or not they merit a domain in TLDH's .gay namespace, but this is because TLDH does not believe that anyone has the right to determine another's "gayness". How will ILGA determine, other than by using arbitrary self-established criteria, as to who gets to have a .gay domain and who does not?

There is no consensus within the gay community about what the word "gay" refers to. It was originally used to refer solely to men who were homosexual, to the exclusion of women. For example, the National Gay and Lesbian Task Force, a US-based organization whose mission

---

<sup>14</sup> Attached as Annex 1.

<sup>15</sup> *Id.*

<sup>16</sup> TLDH Application, answers to Question 28 and 29, attached as Annex 2; TLDH's Public Interest Commitments ("PICs"), attached as Annex 3.

<sup>17</sup> *Id.*

<sup>18</sup> ILGA Objection to TLDH's .gay application p 10.

is to build the grassroots power of the lesbian, gay, bisexual and transgender (LGBT) community,<sup>19</sup> was known simply as the National Gay Task Force until 1985.<sup>20</sup> In fact, even the International Lesbian Gay Bisexual Trans & Intersex Association was known only as the International Gay Association until 1986 and did not adopt its current name until 2008.<sup>21</sup> Even ILGA today continues to use an abbreviation that ignores more than half of the people it purports to represent.<sup>22</sup> Should lesbians be allowed to use a .gay domain? Will they be allowed to in ILGA's .gay TLD? TLDH's commitment to free speech and non-discrimination will allow anyone who wants to identify with the broader LGBTI population around the world—including lesbians, bisexuals, the transgender, queers, allies, and the entire spectrum—will have a place in the TLDH .gay namespace.

ILGA states that harm will come to the gay community if a .gay TLD is not restricted. However, more harm will come to members of the broader gay community who self-identify as belonging to the gay community but who will be denied a place by ILGA and dotgay llc's discriminatory registration policies.

In addition, policing of "gayness" sufficient to merit a domain in dotgay llc's namespace is offensive to say the least. What kinds of test will be required? How will a finding of insufficient (or sufficient) "gayness" be rebutted by an honest applicant against a slander?

Requiring a certain level of "gayness" as dotgay llc and ILGA seem to desire is also incredibly harmful to LGBTI people and supportive businesses around the world. As ILGA itself notes, "in much of the world the members of the Gay Community [sic] are persecuted,"<sup>23</sup> yet they appear to be desirous of publishing a list of LGBTI persons via their Whois (as required by ICANN).<sup>24</sup> Any country in the list published by ILGA itself<sup>25</sup> need simply download the latest Whois list to find a list of people to incarcerate, prosecute, persecute, or kill. Perhaps countries—even countries that are not unfriendly to LGBTI people—will check visa or citizenship requests against dotgay llc's Whois before making a decision. It is dotgay llc's closed policies that will cause more harm—in tangible form—to LGBTI people and businesses than TLDH's open policies.

### **C. Misappropriated Resources**

ILGA argues that the gay community should have a say in who gets important generic domains in a .gay TLD and objects to the fact that TLDH will use a market-based model to determine who gets premium domain names. While failing to articulate why the gay community would be harmed by a market-based solution, ILGA once again runs into the problem of attempting to determine whether one registrant or another is "gay enough" for the purposes of dotgay llc's .gay TLD.

---

<sup>19</sup> [http://www.thetaskforce.org/about\\_us/mission\\_statements](http://www.thetaskforce.org/about_us/mission_statements).

<sup>20</sup> [http://www.thetaskforce.org/about\\_us/history](http://www.thetaskforce.org/about_us/history).

<sup>21</sup> Report of Proceedings: 3rd Regional Conference of the International Lesbian and Gay Association—Asia (ILGA—ASIA) pp 10, 27 available at [http://isiswomen.org/index.php?option=com\\_content&view=article&id=936:-3rd-international-lesbian-gay-association-ilga-conference-proceedings&catid=139:ilga-2008&Itemid=233](http://isiswomen.org/index.php?option=com_content&view=article&id=936:-3rd-international-lesbian-gay-association-ilga-conference-proceedings&catid=139:ilga-2008&Itemid=233).

<sup>22</sup> "ILGA" stands for "International Lesbian and Gay Association", ignoring ILGA's bisexual intersex and trans members.

<sup>23</sup> ILGA Objection to TLDH's .gay application pp 9-10.

<sup>24</sup> AGB §2.2.3.2 Customary Services.

<sup>25</sup> State-Sponsored Homophobia Report and Gay and Lesbian Rights Map <http://ilga.org/ilga/en/article/1161>.

#### **D. Stolen Funding Opportunity**

ILGA's argument that TLDH has, in any way, stolen anything from LGBTI people is risible, even more so because at the time of ILGA's objection, the dotgay llc application had not even passed initial evaluation. As of now, dotgay llc's application remains contested by no less than three other applications. ILGA is arguing that TLDH has stolen something that, as yet, does not even exist. As importantly, such argument is based on the conclusory statement that dotgay, llc and the ILGA are the representatives of a definitive "gay community" from which TLDH or anyone else could "steal;" as set forth above the ILGA can in no way be seen as the definitive representative of an alleged "gay community."

#### **E. Community Safety**

As discussed above in II. A., TLDH's .gay policies are intended to promote free speech and user policing. ILGA argues that a .gay extension to a domain name indicates involvement with LGBTI people—something TLDH agrees with. However TLDH refuses to be in the business of determining how involved in the gay community someone has to be to be considered "gay enough" or "gay friendly enough" to merit a .gay TLD. ILGA goes on to list a number of horrors—that TLDH's .gay TLD will be used by registrants to promote each registrant's desired goal rather than staying in lockstep with dotgay llc's vision of what an appropriate "gay" use of the domain is. TLDH prefers to promote free speech and rely upon user policing to ensure a thriving online space within the .gay namespace, which strategy is significantly more respectful of the diversity and rights of the gay community than ILGA's and dotgay, llc's self-appointed, arbitrary determinations of use.

As discussed above in II. B., dotgay llc's policy of requiring people to be "gay enough" before allowing them a domain in dotgay llc's .gay namespace is extremely dangerous and harmful to anyone who acquires—or who is barred from acquiring—such a domain. The harm discussed above is not an ill-defined theft of something not yet in existence, but a real, definable harm to person, property, and freedom if dotgay llc's Whois is used to hunt down people and businesses.

#### **F. Conclusion**

ILGA has alleged but has not shown any exploitation by TLDH of any so-called "gay community" (and indeed has not even shown that such a community exists) or any theft of existing resources from such claimed community. Further, rather than showing that TLDH's application for .gay could cause some nebulous and ill-defined harm to LGBTI persons, it is in fact the case that dotgay llc's application for .gay would cause real physical harm to LGBTI persons around the world.

TLDH accordingly respectfully requests that the Panel deny ILGA's request for withdrawal of TLDH's application for the .gay TLD.

**Communication (Article 6(a) of the Procedure and Article 1 of the ICC Practice Note)**

A copy of this Response is/was transmitted to the Objector on: 22 May 2013 by email to the following address: icann@iglta.org.

A copy of this Response is/was transmitted to ICANN on: 22 May 2013 by email to the following address: drfiling@icann.org.

**Filing Fee (Article 1 Appendix III to the Rules and Article 11(f) of the Procedure)**

As required, Euros 5 000 were paid to ICC on 22 May 2013.

Evidence of the payment is attached for information.

**Description of the Annexes filed with the Response (Article 11(e) of the Procedure)**

*List and Provide description of any annex filed.*

Annex 1: Excerpt from TLDH's application for .gay: Answer to Question 18

Annex 2: Excerpt from TLDH's application for .gay: Answers to Questions 28 and 29

Annex 3: TLDH's Public Interest Commitments ("PICs")

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

A handwritten signature in black ink, appearing to read "D. Perry", is written over a horizontal line. The signature is cursive and includes a large, stylized initial "D" and a closing flourish.

Annex 1:  
Excerpt from TLDH's application for .gay:  
Answer to Question 18

# Mission/Purpose

## 18(a). Describe the mission/purpose of your proposed gTLD.

### OVERVIEW

The goal of the .GAY top-level domain is to have an interactive, identifiable, and easily accessible outlet for people in the gay community or interested in gay-related issues. We wish to provide a top-level domain that provides an identifiable means of communicating with people who identify as gay, lesbian, bisexual, transgender, genderqueer, and their allies (GLBTQA) as well as with organizations and businesses that market to, support, associate with, or identify with the GLBTQA population.

With the passage of statutes and laws which help to protect the rights of homosexual, bisexual, transsexual, and transgendered people in communities throughout the united states and the world, people are more likely to openly and comfortably express themselves rather than keeping their sexuality private.

### MISSION & PURPOSE

We believe that there are fundamental rights that should apply to all people including freedom of speech and association, liberty, and equal treatment. This company stands firmly by the notion that these inalienable rights should not be affected or altered depending on one's sexual orientation, identity or preference.

The .GAY domain will allow people of all sexes, cultures and creeds to freely express and voice their opinions and discourse. Moreover, the .GAY domain will serve as an identifiable platform where our can reach out to seek advice, comfort and counseling from others who share common struggles, values and interests.

## 18(b). How do you expect that your proposed gTLD will benefit registrants, Internet users, and others?

That the public benefit from the .GAY domain is clear: having a platform for those who associate themselves with the gay, lesbian, bisexual, transgender, genderqueer population--or their allies (GLBTQA)--in business, culture, or education. The .GAY domain will serve as a catalyst to a fairer, more tolerant and well-balanced society.

### PUBLIC BENEFIT

We believe that the Internet-using world will benefit from the existence of a .GAY gTLD by:

- making domain names ending in .GAY available to all those who may want to use such .GAY domain names for their own business, personal, political or other legal purposes in the United States and world-wide.
- the promotion of the GLBTQA population by having information of any and all types and for any and all legal purposes available and disseminated from websites and email addresses ending in .GAY for the registrants' and users'

own purposes world-wide.

- the promotion of the GLBTQA population by allowing businesses, not-for-profits and individuals to associate their products, services, information and selves with the GLBTQA population for their own purposes.

- allowing people and organizations to promote their association with the GLBTQA population on the Internet.

- providing an identifiable means for people, organizations and businesses to communicate with those who associate with the GLBTQA population.

#### EXPANDING THE TLD NAMESPACE

Over the past decade, the market for domain name registrations has grown at a tremendous pace. From 2000 to 2010 domain name registrations increased from 40 million to 200 million domain names registered globally. 2011 experienced a growth of approximately 9%, which was significantly higher than the previous year's 6% growth, ending third quarter 2011 with approximately 220 million domain names registered globally. Approximately 60% of these are gTLDs, while the remaining 40% are comprised of ccTLDs. More specifically, gTLD growth was approximately 8% in 2011, while ccTLD growth exceeded 11%.

Existing TLDs, such as .COM and .NET, do not provide adequate solutions for many registrants. Domain names that relate to the registrants' business, interests, or associations are often already registered, priced exorbitantly high, or available options are unsuitable. Additionally, other options, such as ccTLDs, do not provide adequate alternatives as a registrant may not have any geographic relation or meet the criteria associated with other gTLDs such as .MUSEUM or .AERO. Therefore, the only available opportunity to pursue a relevant and useful domain name registration may be through a brand new registration of a gTLD.

Taking into account the new opportunities available with new gTLDs, growth is expected to continue in all sections of the domain name industry. It will benefit registrants and users by allowing registrants to reach more targeted audiences and increase their web presence. Additionally, it will allow registrants to more closely identify with a particular market segment.

At present, there is no specific .GAY domain name, or useful top-level alternative domain name, that exists for the people, organizations or businesses that associate themselves with the GLBTQA population or people, organizations or businesses that want to communicate with them. Those desirous of a domain name that indicates some level of association with the GLBTQA population could seek a second level domain name such as "GAY.COM," "GAY.US" or "GAY.NET," but such domains (or similar names) are not readily available under the limited number of existing gTLDs, and--more importantly--only provide a secondary (at best) or weak (at worst) relationship between the domain name and the GLBTQA population, which we believe is the primary goal of the registrant of such names.

From a competitive perspective, registrants that want a domain name that effectively and efficiently shows an association with the GLBTQA population or registrants that want a domain name that allows them to identifiably communicate with people who associate or identify with it face a domain name marketplace that provides them with few, if any, options for their purposes. The .GAY top-level domain will resolve this problem by providing registrants with an efficient, effective, prominent, instantly understood way of showing their association with the GLBTQA population, and provide those registrants

who desire it a domain that that can effectively communicate information to such Internet users in an identifiable way. At the same time, .GAY provides competition with the existing TLDs and new gTLDs that will be approved by ICANN, benefiting the Internet community at large by increasing consumer choice.

We believe that the .GAY top-level domain will add significantly to competition and differentiation in the top-level domain space, both for registrants and Internet consumers. With respect to competition, registrants are presently extremely limited in their choice of domain names that allow them to efficiently and effectively associate themselves with the GLBTQA population. The availability of useful, effective, straight-forward domain names on existing top-level domains, such as .COM, .NET and .ORG, are few and far between, or may be for sale at prices that are out of reach for most. .GAY will allow registrants to obtain useful, effective, straight-forward domain names rather than be forced to purchase, for example, their fifth, sixth or even later choice .COM or .NET name--which may well barely relate to the registrant's purpose--or use of a domain name that may be confusingly similar with numerous other .COM or .NET domain names. In addition, some existing generic top-level domain names, though newer, such as .XXX, may be inappropriate for most registrants for content associational reasons, while country-code top-level domains, though numerous, are not useful or appropriate for many registrants for geographical associational reasons. Thus, .GAY will increase competition for registrants who want a domain name that clearly, effectively and efficiently associates them with the GLBTQA population for their domain name purposes as well as for those registrants who want to reach Internet users who identify with it.

.GAY will also increase pricing competition in the top-level domain name space by assuring that .GAY domain names are priced at levels that are appropriate to the vast majority of potential registrants to whom .GAY is targeted.

Internet consumers benefit from this increase in competition, as less confusing and clearly associated .GAY domain names will make it easier for them to know that the owner of the second-level domain name is a member of or seeks to associate with the GLBTQA population.

Likewise, .GAY will help significantly increase differentiation in the top-level domain space. Existing leading generic top-level domain names, such as .COM, .NET and .ORG no longer require and no longer represent any real differentiation in association, purpose or content. Newer top-level domains, such as .XXX, .AERO and .MUSEUM, do represent differentiation, but are either inappropriate or unavailable to most prospective registrants at whom .GAY is targeted. .GAY will further increase differentiation by allowing registrants to be associated, and consumers to know that the registrant seeks to associate with the GLBTQA population.

In terms of user experience, .GAY will provide users with a top-level domain name that allows them to easily recognize that the registrant seeks to have its second-level domain name and content associated with the GLBTQA population. We believe this will be of substantial benefit to the Internet user community in generally--and the gay, lesbian, transgender, genderqueer population and their allies specifically--as it will allow them to more easily and more readily understand the purpose or motives of the registrant's website or email, allowing for better, more efficient and more effective use of their time online.



On balance, and for the reasons set forth above, a .GAY domain will be in the public's interest; it will serve as a catalyst to promoting tolerance, equality and the gay, lesbian, transgender, genderqueer population and their allies; and it will benefit societies around the world.

### **18(c). What operating rules will you adopt to eliminate or minimize social costs?**

This applicant, like most organizations, takes its good reputation seriously. We are fully cognizant, for example, that artistic, political, economic and social issues, all of which can be associated with the GLBTQA population, often provoke heated debate and are at times controversial. However, we recognize and support the free speech rights of both registrants and Internet users as fundamental rights and believe that such free speech rights are important to the success of the .GAY business plan. We believe that any plan to stifle free speech would be more harmful to .GAY's reputation and business success than any attempt by us to govern speech. That being said, to protect .GAY's reputation and the associational benefits it offers registrants and Internet consumers, we will actively promote and enforce our Acceptable Use and Abuse Prevention policies and procedures, which we believe will effectively combat improper or unlawful unprotected speech and online conduct. We believe that these mechanisms will be effective in assuring the reputation of the .GAY top-level domain, its registrants, Internet Users, as well as the public.

The .GAY top-level domain will be marketed to registrants who want to associate themselves, their products, services, thoughts, ideas or anything else in a positive way with the GLBTQA population, as well as to those who want to communicate with them in an easily identifiable way. Therefore we believe that the great majority of registrants who apply for a .GAY domain name will do so because of its association with or because they want to reach those who do, and not for other reasons. In these ways, the .GAY top-level domain will bring a special association with the GLBTQA population to the top-level domain name space.

We are dedicated to protection of third-party rights and prevention of abusive uses of the .GAY domain name. We intend to achieve this goal by crafting our Naming Policy, Acceptable Use Policy, and other policies to be readily understandable and easily accessible, and by making sure that our mechanisms for enforcing rights and preventing abuse (such as our Complaint Resolution Service) operate effectively, efficiently, and fairly. In addition, we will ensure that they work symbiotically with other ICANN-mandated rights protection mechanisms such as the UDRP.

We have crafted a draft framework for registration of .GAY domains that fully supports the goals and benefits set forth above. Our draft registration framework is based on advice from ICANN, WIPO, applicable laws, and a variety of other expert sources. Specifically, the .GAY draft framework includes these interrelated sets of agreements setting forth our policies and regulations, all of which registrants must agree to be bound by:

- The Registrant Agreement, which registrars contracted with .GAY must present to registrants. This is a collateral agreement to the Registrar Registry Agreement (detailed below), and will bind registrants to .GAY's Acceptable Use Policy (as detailed below), .GAY's Privacy & Whois Policy (detailed below), ICANN-mandated rights protection mechanisms (including the

Universal Dispute Resolution Policy ("UDRP"), and the Complaint Resolution Service;

- The Acceptable Use Policy ("AUP"), which details the proper use of domain names that end in .GAY, which is incorporated by reference in the Registrant Agreement that registrants must agree to;

- The Privacy and Whois Policy, which describes how a registrant's personal data is to be used, which is also incorporated by reference in the Registrant Agreement;

- The Registrar-Registry Agreement, which is the contract between .GAY and its ICANN-accredited registrars, which sets forth, inter alia, the duties and obligations of the registrar with respect to .GAY registrants and the .GAY registry; and

- The Naming Policy, which sets out .GAY's policies governing prohibited, blocked or reserved domain names.

These agreements and policies are designed to ensure transparent and non-discriminatory policies for the registration of .GAY names; fair and competitive pricing; protection of personal data and privacy; adherence by registrars and registrants to the AUP; protection of trademarks, the names of natural and legal persons and other property rights; prevention of the registration of illegal terms; and the prevention violations of the law. Moreover, our policies promote competition among registrars, combat abuse of the DNS, address cybercrime, protect intellectual property rights, and align the .GAY top-level domain with applicable regulatory and legislative environments and Internet registry best practices.

These policies will effectively support the key mission, purposes and goals of the .GAY top-level domain, which is to allow registrants who want to associate themselves with, while at the same time protecting third-party rights and preventing abuse.

We specifically examined more restrictive registration policies, such as limiting registration to members of organizations with a specific tie to the GLBTQA population. We rejected such limitations because they would interfere with .GAY's primary mission, purpose and goals--which is to encourage as many registrants as possible to associate themselves with the GLBTQA population for any legal purpose. Factors that we took into account when considering a more restrictive registration policy included:

- Our recognition that registrants of a .GAY domain name will self-select because they have an interest in the GLBTQA population, naturally reducing the number of potential registrants; and, because restrictive policies such as, for example, requiring membership in a specific organization or organizations, would exclude many legitimate registrants from obtaining a .GAY domain name. For example, and by way of illustration, if membership in an organization were required for registration, businesses and charitable organizations that would find a .GAY top-level domain name an effective marketing tool would be excluded from registering a .GAY domain name as they might not be eligible to be members in an organization that accepted only natural persons for membership.

With respect to protecting registrant privacy and confidential information, we will comply with all applicable ICANN rules, including Whois policies, and all applicable laws, rules and regulations of appropriate jurisdictions.

Registrant privacy and use of confidential information are set forth in our Privacy & Whois Policy. Information concerning updates and changes to the Privacy & Whois Policy will be promptly and prominently displayed on the .GAY web site.

.GAY's back-end registry services provider will also be required to employ industry-standard procedures to prevent the unauthorized or illegal access of registrant privacy or confidential information.

With respect to users, .GAY's Registration Agreement will require that all registrants comply with any and all applicable laws, rules or regulations concerning user privacy and confidential information for applicable jurisdictions; failure to do so may result in suspension or loss of their .GAY name and may, in addition, result in legal actions by appropriate authorities.

We plan to minimize social costs primarily through clearly written, widely disseminated, and easy-to-understand policies. Our Acceptable Use Policy clearly delineates unacceptable behavior and prohibited content by registrants using domain names in the .GAY zone.

Our rules concerning applications for the same domain name establish clearly delineated rules, and will be published well in advance. They provide adequate safeguards for the rights of all participants as well as expeditious and cost-effective challenge procedures in the event of disputes.

During the Sunrise period and Landrush periods, multiple applications for the same name will be resolved by auction. UDRP or URS will be used if there are disputes as to rights to a name.

After Sunrise and Landrush, domain names will be allotted on a first-come, first-serve basis. All domains are subject to UDRP and URS challenges.

At all times, .GAY's Complaint Resolution Service will be available to registrants and the public in the case of alleged prohibited use or content.

.GAY does not envision special discounts for different classes of registrants, but may consider such offers in the future. We may offer introductory discounts for first-time registrants in .GAY. Bulk registration discounts are not being considered at this time.

.GAY plans to make contractual commitments to registrants regarding the magnitude of price increases. .GAY will contract with its registrars that any percentage increase in renewal and first registration fees will be applied uniformly across all registrations, and that notice of any price increases will be provided on the registrar's website and by the registrar to registrants via email six months or more in advance.

Annex 2:  
Excerpt from TLDH's application for .gay:  
Answers to Questions 28 and 29

## 28. Abuse Prevention and Mitigation

### 28.1 --ABUSE POINT OF CONTACT--

Strong abuse prevention is an important benefit to the Internet community. .GAY and its registry services provider, Minds + Machines, agree that a registry must not only aim for the highest standards of technical and operational competence but must also act as a steward on behalf of the Internet community in promoting the public interest. One of those public interest functions for a responsible domain name registry includes working towards the eradication of abusive domain name registrations, including, but not limited to, those resulting from:

- \* illegal or fraudulent actions
- \* spam
- \* phishing
- \* pharming
- \* distribution of malware
- \* fast flux hosting
- \* botnets
- \* distribution of child pornography
- \* online sale or distribution of illegal pharmaceuticals

Minds + Machines provides the staff and technology to handle abuse prevention and mitigation. Roles and responsibilities refer to Minds + Machines staff. The Compliance Administrator (CA) serves as the primary Abuse Point of Contact (as required by ICANN). CA will be responsible for overall policy development and enforcement.

CA will administer the complaint resolution process, and communicate with registrars (with the assistance of the Registrar Liaison), with law enforcement, the World Intellectual Property Organization and industry organizations such as the Anti-Phishing Working Group and the Registration Abuse Policies Working Group. Minds + Machines' Chief Technical Officer (CTO) will also serve as the secondary Abuse Point of Contact. The CA, CTO or other personnel will be reachable on a 24/7 basis to deal with any alleged abuses that require immediate attention, whether from law enforcement or otherwise.

On the technical side, the Chief Technology Officer (CTO) is responsible for implementing abuse prevention and mitigation software on the Espresso registry platform and the abuse information and reporting features of the website.

All of the Registry staff will be trained to (i) respond to communication concerning abuse via the published (the required abuse point-of-contact) and restricted (only available to law enforcement and the customers) contact details; (ii) perform sufficient verification to distinguish genuine claims from the malicious and from false positives; (iii) enter the details into the abuse tracking and monitoring system; (iv) identify and contact the registrar of record, inform them of the complaint, initiate a prompt investigation of the complaint and note any information received back from the registrar; and (v) report progress to the complainant at appropriate times.

Primary and secondary Abuse Points of Contact, as well as designated employees, will be supplied with pagers and smart phones, and create an "on call" roster to assure 24x7 availability of abuse prevention and mitigation resources.

The website will prominently display and provide easy access to policies, resources available for handling complaints regarding abuse, and how to

contact the designated Abuse Point of Contact. The Abuse Point of Contact staff will provide timely responses to complaints.

An abuse and complaint tracking and monitoring system will be set up as part of the registry software and maintained by Minds + Machines on our behalf. No further resourcing or provisioning will be required to maintain this effective 24x7 system.

#### 28.2 --ABUSE PREVENTATION AND MITIGATION PROGRAM--

The abuse prevention and mitigation program (the "Program") is based on best practice policy recommendations developed by the Council of Country Code Administrators (CoCCA), on lessons learned from previous new gTLD launches, on the operating experience of TLDs such as .COM, and on participation in policy working groups and debate at ICANN. All policies are consistent with and conform to ICANN consensus policies where applicable. Twenty-five ccTLDs use the CoCCA policy framework to ensure protection of the registry, and to minimize abusive registrations and other activities that affect the legal rights of others. We have updated the best parts of these policies to the new gTLD environment to protect the specific needs of the registry and the registrants, and the rights and needs of third parties. Wherever applicable, we follow the recommendations of NIST SP 800-83 Guide to Malware Incident Prevention and Handling.

The Program is comprised of policies, procedures and resource allocation that aim to prevent and mitigate abusive practices at all levels of registry operations and domain name use.

The Program aims to: (i) prevent the registration of names that violate policies; (ii) provide efficient procedures for the reporting and removal of names that violate policies if they are registered; (iii) provide efficient procedures for the reporting and removal of domains which engage in abusive or unlawful practices; and (iv) secure and protect domain name ownership and Whois information.

The Program is designed to provide for the transparent and non-discriminatory registration of domain names; to protect Whois data and privacy; to ensure adherence by registrars and registrants to the Acceptable Use Policy (AUP); to protect trademarks and prevent registration of blocked and reserved names; to prevent the registration of illegal terms and inappropriate names; to prevent violations of the law; to combat abuse of the DNS; to address cybercrime; to protect intellectual property, and to align use of the registry with the applicable regulatory and legislative environments. We note that while as a registry operator we cannot remove prohibited or unlawful content from the Internet, we can and will seek to ensure that the network is not part of the abuse or publication chain.

The Program is balanced between the need to prevent abusive registrations and uses, the need to properly implement ICANN policies and follow applicable laws, and the need to respect the legal rights of registrants and others. The goal is to encourage legitimate use while discouraging abusive or illegal use. We recognize the importance for the overall health and reputation of the registry that we handle abusive registrations and use quickly, fairly and impartially.

The Program will be administered to (i) ensure that registrars adhere to registration policies; (ii) enforce the policies with registrars and registrants; and (iii) prevent any violations as effectively and efficiently as possible. The means for enforcing policies and procedures will be the

comprehensive contract, which sets out penalties for non-compliance; and the registry software, through which some regulations and procedures will be enforced (for instance, blocking reserved names and displaying Trademark Clearinghouse notices and warnings).

The Program employs a model that includes registry-level suspensions for AUP and other policy violations; and also provides that the use of a domain is subject at all times to the AUP's provisions concerning cybercrime, prohibited content, intellectual property abuses and other issues of importance to the Internet, security, intellectual property, legal and law enforcement communities.

Below we describe various agreements and policies, each of which will be a part of the Program:

(1) REGISTRANT AGREEMENT - The Registrant Agreement, which must be presented to the registrant for agreement by the registrar as a condition of registration, binds the registrant to ICANN-mandated rights protection mechanisms, including the Uniform Dispute Resolution Policy ("UDRP"), AUP, Privacy Policy, Whois Policy, and the Complaint Resolution Service. At the time of registration, registrars will be contractually required, pursuant to the Registry-Registrar Agreement, to bind registrants to these agreements.

(2) REGISTRY-REGISTRAR AGREEMENT (RRA) - The primary mechanism for ensuring that registrars adhere to registration guidelines, meet the obligations set forth in the policies and pass them on to registrants will be through the RRA we will sign with registrars. The terms of the RRA adhere to ICANN policies and contain additional abuse safeguards. The RRA includes provisions that must also be included in the contract between registrars and registrants. Registrars may include additional provisions, but those provisions may not conflict with the language provided by us, and registrars must include the terms and conditions in their entirety, and legally bind registrants to them. It is by this mechanism that registration and use policies, regulations and procedures will be passed on to registrants. The RRA contains provisions to combat abusive registrations or use as required by ICANN policies, applicable laws, and the registry's Acceptable Use Policy.

(3) ACCEPTABLE USE POLICY (AUP) - The AUP is incorporated by reference into the Registrant Agreement. It defines the acceptable use of second-level domains, and is designed to ensure that the registry is used for appropriate and legal purposes. It specifically bans, among other practices, the use of a domain name for abusive or illegal activities, including (i) illegal, fraudulent, misleading, or deceptive actions or behavior; (ii) spamming (the use of electronic messaging systems to send unsolicited bulk messages, including email spam, instant messaging spam, mobile messaging spam, the spamming of Web sites and Internet forums, and use of email in a Distributed Denial of Service (DDoS) attack); (iii) phishing (the use of counterfeit Web pages that are designed to trick recipients into divulging sensitive data such as usernames, passwords, or financial data); (iv) pharming (the redirecting of unknowing users to fraudulent sites or services, typically through DNS hijacking or poisoning); (v) willful distribution of malware (the dissemination of software designed to infiltrate or damage a computer system without the owner's consent--e.g. computer viruses, worms, keyloggers and Trojan horses); (vi) fast-flux hosting (use of fast-flux techniques to disguise the location of Web sites or other Internet services, or to avoid detection and mitigation efforts, or to host illegal activities); (vii) botnet command and control (services run on a domain name that are used to control a collection of compromised computers or "zombies," or to direct DDoS attacks); (viii) distribution of obscene material, including but not limited

to child pornography, bestiality, excessive violence; (ix) illegal or unauthorized access to computer networks or data (illegally accessing computers, accounts, or networks belonging to another party, or attempting to penetrate security measures of another party's system, often referred to as "hacking," or any activity that may be used as a precursor to an attempted system penetration, such as port scanning, stealth scanning, probing, surveillance or other information gathering activity); (x) deceptive or confusing uses of the domain or any content provided thereon with respect to any third party's rights; (xi) disrupting the registry network or the provision of any content capable of disruption of computer or systems or data networks; (xii) providing circumvention technologies, technical information or other data that violates export control laws; (xiii) spoofing (forging email network headers or other identifying information); and (xiv) distribution of any other illegal or offensive material including hate speech, harassment, defamation, abusive or threatening content, or any other illegal material that violates the legal rights of others including but not limited to rights of privacy or intellectual property protections.

(4) PRIVACY AND WHOIS POLICY - The Privacy & Whois Policy is incorporated into the terms and conditions presented to potential registrants. It is designed to prevent abuse by: (i) requiring that registrants provide us with accurate information to be included in their "thick" Whois listing; (ii) by requiring that registrars proactively require registrants to verify and/or modify their Whois information to ensure its accuracy on an ongoing basis as per ICANN policy; and (iii) making the failure to provide or maintain complete and accurate Whois information a material breach of the Registrant Agreement, which will allow us to cancel any registration for which the Whois information is not accurate or complete.

(5) EXPIRED DOMAIN DELETION POLICY - As per ICANN policy, the Expired Domain Deletion Policy sets out how a domain name is registered and renewed, and includes policies and procedures for redemption and grace periods.

(6) NAMING POLICY - The Naming Policy sets out policies governing prohibited, blocked, and reserved names and eligibility criteria for registrants. It also provides registrants with information regarding trademark and third party rights in names, and offers guidance on choosing a domain name that comports with the policies, regulatory and legal policies, and the rights of third parties. This Policy will provide registrants with the list of blocked and reserved names; explain the rights of trademark holders and the role of the Trademark Clearing House in the registration process; and explain the policies concerning "typosquatting" - misspellings, "typos" or other names that give false or misleading impressions.

A plain language version of the policies will be made available to registrars and potential registrants. Registrants will be required to give their informed consent to be bound by the policies during the registration process, but we recognize that registrants may not fully understand what they are agreeing to when they register a domain name, because the contractual language can be difficult, particularly for a non-native reader of English. As an example, registrars will present the terms and conditions to the registrants and secure their agreement prior to registration. The terms and conditions are many pages long and contain words and concepts that may not be familiar to an average Internet user. Since registrants cannot adhere to policies if they cannot understand them, we will also require registrars to provide a prominent link to a "plain-language" overview of the policies posted on the website. This link will set forth the major terms and conditions in non-legal terms in order to make them understandable to the



average registrant. While contracts will be the official and legally binding agreements, we believe the plain-language overview will be very useful for conveying to registrants the major points of their obligations with regard to their domain name itself and their use of that domain name.

The policies and the plain language overview will be prominently available on the website together with explanations and links to the Uniform Rapid Suspension (URS) Service, the UDRP, and the Complaint Resolution Service, with instructions and facilities for reporting alleged abuses to us directly.

### 28.3 --ANTI-ABUSE MEASURES PRIOR TO REGISTRATION--

The Program will include policies and procedures designed to prevent abusive registrations and use from the start by providing users with guidelines for choosing names, informing them of the proper and improper use of those names, and the consequences of abuse. The anti-abuse measures prior to registration include:

(1) Implementation of the Trademark Claims Service (TCS): In the case where a potential registration is an exact match to an applicable trademark in the Trademark Clearing House, the TCS automated notification service will inform registrants that the name they may be about to register may be a violation of the trademark rights of a third party, and that their registration may be subject to challenge and possible cancellation. We will not, however, reserve or block domain name registration of terms, or confusingly similar terms, which might infringe intellectual property or other rights. The Naming Policy will however advise registrants that prior to registering the name, it is the registrants' responsibility to determine whether or not any particular term might infringe the intellectual property or other legal rights of an entity or individual. The Policy will also encourage registrants to perform a trademark search with respect to the term comprising the domain name prior to registration, and inform the registrant that it is solely liable in the event that the name constitutes an infringement or other violation of a third party's rights, which may include criminal liability for willful, fraudulent conduct.

(2) Prohibition of a duplicate application for registration of a domain name with another registrar: The policies prohibit a registrant from submitting an application for a domain name if the registrant has previously submitted an application for registration of a domain name for the same term with another registrar where the registrant is relying on the same eligibility criteria for both domain name applications, and the name has previously been rejected by a registrar or by the registry.

(3) Preventing numerous attempts to register reserved or blocked names: The policies provide that registrants who repeatedly try to register reserved or blocked names, or names that infringe the rights of others, will be banned from registering domain names. Further, any domain names registered to them will be cancelled or transferred, as provided for in the Registrant Agreement and AUP. We specifically inform such users that we reserve the right to refer them to appropriate legal authorities.

(4) Blocking/flagging certain names: We will be able to enforce many of the registration policies at the point of registration through the Espresso platform. For example, the Espresso platform can block certain prohibited names from registration. In addition, domain names that are doubtful--for instance names that contain within them blocked or reserved names--or portions thereof--may be flagged for further review before they are delegated. We believe that a robust implementation of registration policies

through the registry software is the best first line of defense against certain types of violations. The Espresso platform is easily programmed to disallow any registrations set forth on the list of blocked or reserved names.

#### 28.4 --POST-REGISTRATION ANTI-ABUSE MEASURES--

Even with policy implementation, oversight, and automated anti-abuse features, abuse registration and use may occur. In addition, innocuous domain names may be used for abusive purposes, such as phishing or spamming. Therefore, post-registration policies and procedures are designed to effectively and efficiently prevent and mitigate abuses with respect to registered domain names themselves and also their use.

(1) **Suspension/Cancellation:** The policy framework allows us to suspend or cancel registrations that violate certain terms of the Registrant Agreement and related policies. We reserve the right to cancel or suspend any name that in our sole judgment is in violation of the terms of service. With cancellation, to the extent permitted by applicable law, we may publish notice of the cancellation, along with a rationale for the decision.

We believe that this step is important for several reasons: (i) It will help us keep the trust of Internet users, who will see that our actions are not arbitrary; (ii) it will act as a deterrent, as violators' names will be published; and (iii) it will provide valuable additional information to users about which names are considered violations, by providing examples of names that have been canceled because they are offending terms.

In the case of clear-cut violations of the policies, we will take immediate action without refund of the registration fee.

(2) **Putting domain names in a "pending" status:** In certain cases where we determine that a registration may be in breach of the policies, we may put a registration in "pending" status, in which the registration itself is not affected, but in which the domain name will not resolve. Names in a "pending" state can be restored to operational status. In this case, we will inform the registrant of the initial determination and provide the registrant with a speedy mechanism, such as the Complaint Resolution Service, to assist us in resolving the issue, or to appeal the decision.

(3) **Infringement of trademarks:** With respect to registrations that infringe trademarks, ICANN has policies and procedures in place that provide a wide net of protections. These policies provide for very quick cancellation of obvious infringements via the Uniform Rapid Suspension (URS), and for less obvious violations, the UDRP. These policies are the result of many years' experience and extensive negotiations with the trademark community. Additionally, these mechanisms are reasonably well understood by both trademark holders and registrants. We believe that abiding by ICANN's established policies for dealing with alleged trademark infringing registrations provides the best level of protections for both trademark owners and applicants. We will make the URS and UDRP mandatory procedures for handling such disputes through contracts with the registrars.

A more detailed discussion of the rights protection mechanisms may be found in Question 29: Rights Protection Mechanisms.

(4) **Complaint Resolution Service (CRS):** While ICANN has a number of procedures in place to prevent abusive registrations, especially with regard to violations of intellectual property rights, we will in addition implement

a CRS. The CRS is a formal process that provides a low-cost, efficient, neutral, and clear-cut mechanism for complaints from the public concerning alleged illegal content, abusive or disruptive use of a domain name (e.g. phishing or spam) or other inappropriate conduct to be fairly adjudicated. The policies provide that the CRS is available to anyone, including rights holders. The CRS is a multi-step process designed to ensure fairness and is analogous to an ombudsperson process. It provides an easy method for lodging complaints while protecting registrants from arbitrary, harassing, or repetitive meritless claims. The CRS is described in detail in Question 29.

(5) Trademark Claims Service (TCS): In addition to warning potential registrants prior to registration that their choice of domain name may infringe the rights of others, the TCS will inform trademark holders that a potential infringement of their mark has been registered. This will provide the trademark holder with the opportunity to challenge the registration, via the URS, UDRP, or court action. The TCS will provide means to inform trademark holders who have successfully deposited their trademarks in the Trademark Clearing House that a domain name has been registered that exactly matches their trademark.

#### 28.5 --PROMOTION OF WHOIS ACCURACY--

As set forth in the Registrant Agreement, Whois Privacy Policy and related agreements we will take significant steps to collect and maintain complete and accurate Whois information.

To ensure Whois accuracy, the Registration Agreement requires that a registrant provide us with (i) true, current, complete, accurate, and reliable registration information; and requires (ii) that the registrant will maintain, update, and keep their registrant information true, current, complete, accurate, and reliable by notifying their registrar of a change to any such information in a timely manner. The Registration Agreement makes clear that providing true, current, complete, and accurate contact information is an absolute condition of registration of a domain name. Registrants are required to acknowledge that a breach of these provisions will constitute a material breach of the Registration Agreement, and that if any registration information provided during registration or subsequent modification to that information is false, inaccurate, incomplete, or misleading, or conceals or omits pertinent information, we may in our sole discretion terminate, suspend or place on hold the domain name of any Registrant without notification and without refund to the Registrant.

Whois accuracy verification at the point of registration as well as over the life of a registration will be carried out by the ICANN-accredited registrars pursuant to the terms of ICANN policy as embodied in the RRA.

Registrants are required to provide the following information to an accredited registrar, who will then provide it to us: (i) Legally recognized first and last name of the contact person for the registrant (this contact person may be the registrant itself), and if the Registrant is an organization, association, corporation, Limited Liability Company, Proprietary Limited Company, or other legally recognized entity, we require that the contact person must be a person authorized under the applicable law in the applicable territory to legally bind the entity; (ii) valid postal address of the Registrant; (iii) working e-mail address of the Registrant, and (iv) working telephone number for the Registrant, including country code, area code, and proper extension, if applicable. Attempted registrations lacking any of these fields will be automatically rejected by the system.

The Registration Agreement provides that the registrant is responsible for keeping the registrant information up to date and responding in a timely fashion to communications from registrars regarding their registered domain names.

Validation of Whois information prior to registration has not met with success among top-level domains. Historically, in many country-code top-level domains, pre-validation has been abandoned due to depressed user adoption and criticism from end users and industry businesses, such as web hosting companies, ISPs, and domain name registrars. With few exceptions, major registries validate Whois information after the domain name is delegated, if at all. This reduces cost, which keeps prices down and allows for the near-instant registration of domain names by ordinary registrants.

We will not use pre-delegation validation of registrant data. The strong policies against abusive registrations, combined with the easy-to-use CRS and active enforcement response, will better balance the needs of consumers and law enforcement or other users of Whois information than pre-verification, and in addition will result in higher customer satisfaction.

We will discourage illegitimate or abusive registrations by pricing our domain names above the price of .COM or .BIZ, which we believe will discourage various forms of noxious behaviors, as cybercriminals typically register large numbers of domains for their schemes and will therefore face a larger cost of doing business if they attempt to use the registry for their schemes. We therefore propose to price domain names at a wholesale cost higher than existing gTLDs as a way to discourage malicious use of second-level domain names. With fewer illegitimate registrations, we expect that Whois accuracy will be higher.

#### 28.6 --ADEQUATE CONTROLS TO ENSURE PROPER ACCESS TO DOMAIN FUNCTIONS--

The RRA provides that a registrar must ensure that access to registrant accounts are adequately protected, at a minimum, by secure log-in process that requires username and password authentication, and comport with other security related ICANN registrar accreditation requirements. Registrars must ensure that its connection to the Shared Registry System (SRS) is secure and that all data exchanged between registrar's system and the SRS is protected against unintended disclosure. Registrars are required to use multi-factor authentication and encryption methods for each EPP session with the SRS using both a server certificate identified by the Registry and the registrar password, which is disclosed only on a need to know basis.

To protect unauthorized transfers of domain names, the registry generates a Unique Domain Authentication ID, or UDAI (also known as an "authorization code" or "auth code"), and provides the UDAI only to the registrant, in a secure manner. A UDAI is a randomly generated unique identifier used to authenticate requests to transfer domain names from one registrar to another. A UDAI is generated when a domain name is registered. Registrars will be obliged to promptly support domain transfers from qualified registrants upon request and may not withhold them to prevent a domain name from being transferred, nor may they require burdensome manual steps (such as requiring a signature) as a condition of transferring a domain name to a new registrar.

Registrars will further be required to identify a duly authorized officer (or similar senior manager) to handle cases where a company or organization wants to make changes but where the original registration was performed by an individual working for the company in his or her own name. For example, a company might hire a web developer to design a web site, and ask the

developer to register a domain name, which they may do, but in his or her own name. The purpose of this policy is to prevent mistakes in the case of a transfer of ownership. The instructions on the change of registrant form must ensure (i) that the current authorized registrant is authorizing the changes; (ii) that the prospective registrant is identified and that all relevant contact information has been provided; (iii) that the prospective registrant acknowledges the changes and agrees to be bound by all of agreements and policies; (iv) that the process utilized by the registrar for the change of registrant process is clearly identified to registrants; and (v) that all documentation and correspondence relating to the transfer is retained. Registrars may request a statutory declaration where they have concerns about the authority to effect the change in registrant details if the registrars have concerns about the authority to effect a change in registration or any detail thereof and include an indemnity clause for any costs, losses, or liabilities incurred in the reasonable performance of their duties in processing the registrant's request, or in dealing with claims arising from the allocation or use of the name.

The Minds + Machines CA will be responsible for ensuring that the ICANN-accredited registrars are implementing security protocols to provide adequate controls regarding access to registrants' registration information. The RRA will provide that we may audit the registrant account access policies and procedures of the ICANN-accredited registrars to ensure their compliance with the policies. These audits will be carried out by the CA on a random basis or in response to a report or a complaint that a registrar is not complying with the account access policies. Failure to correct deficiencies identified in any audit may be considered a material breach of the RRA.

#### 28.7 --ORPHAN GLUE RECORDS--

The registry policies and Shared Registration System (SRS) rules do not allow for orphan glue records in the zone. All glue records are automatically removed from the zone when the parent domain is deleted by the Espresso SRS. This automated registry software process prevents what are known as "fast-flux" phishing attacks.

#### 28.8 --RESOURCE ALLOCATION--

The Abuse Prevention and Mitigation functions will be carried out by members of the Minds + Machines Technical and Legal staff. The CTO oversees the technical team in their development and implementation of, abuse prevention mechanisms such as black lists, removal of orphan glue records, automated warning emails, and creation and ongoing management of domain status fields such as "suspended" when a domain registration is under review for policy violation. The VP of Policy, the Director of Legal Affairs and the Compliance Administrator perform the duties of Abuse Point of Contact, complaint review, collaboration with law enforcement, and other legal duties necessary to conform to ICANN consensus policies, registry Acceptable Use Policies, and local laws.

Our registry functions are outsourced to Minds + Machines. Their staff resource allocation follows. All costs associated with the technical functioning of the registry are covered by Minds + Machines as per our contract with them. Please see the attachment to "Q 24 Staff" for complete descriptions of each staff position.

Title

-----

CTO

VP Policy

Director Legal Affairs  
Compliance Administrator  
Registrar Cust Svc - Tech 1  
Registrar Cust Svc - Tech 2  
Espresso Application Developer  
Espresso Application Developer 2  
Espresso Application Developer 3  
Database Developer  
Database Developer 2  
Information Security Officer  
Database Administrator  
Database Administrator 2

## 29. Rights Protection Mechanisms

### --PROTECTION OF LEGAL RIGHTS: A CORE OBJECTIVE--

Ensuring the protection of the legal rights of others is a core objective. We believe that protecting third-party rights enhances the reputation of the registry and encourages registrants. We are therefore committed to the protection of legal rights and have developed a series of mechanisms, including but not limited to, those minimum requirements for rights protection mechanisms as detailed in Specification 7. These mechanisms are intended to prevent infringing or abusive registrations and to identify and address the abusive use of registered names on an ongoing basis and in a timely manner. As part of this commitment, we have developed and will maintain and implement a series of related policies and practices specifically designed to prevent infringing and abusive registrations and uses of domains that affect the legal rights of others. We will take reasonable steps to investigate and respond to any reports from law enforcement and governmental and quasi-governmental agencies of illegal conduct in connection with the use of the TLD.

### --OVERVIEW--

As well as implementing all ICANN rights protection mechanisms (RPMs), we will introduce other additional RPMs that go beyond the current ICANN protections.

In order to do so, we have developed a detailed policy framework based on best practices from the ccTLD .NZ, from the Council of Country Code Administrators (CoCCA), and from existing gTLDs. This tapestry of policies provides rules and procedures regarding registrant eligibility; sets out which type of names can be registered and which cannot; defines abusive registration and usage and provides for penalties for non-compliance; describes and implements ICANN-mandated RPMs; and binds registrars and registrants to the major policies.

The major policies are the Naming Policy, which defines which names can be registered, and by whom; the Acceptable Use Policy, which describes permitted and non-permitted uses of registered names; the Whois and Privacy Policy, which helps registrants understand what we can and cannot do with their personal data; and the Complaint Resolution Services (CRS).

Registrants are bound to these four policies as a condition of registration through their contracts with their registrars, who are in turn compelled by us to get registrant consent to the policies as a condition of registration.

The Naming Policy first of all defines blocked and reserved names, which include geographical names at the second level, thereby adhering to ICANN rules and protecting the rights of governments. Secondly, it prohibits the registration of infringing names and specifically binds registrants to ICANN RPMs. It contains provisions beyond ICANN RPMs, such as prohibiting multiple attempts at blocked names, either through the same or by using different registrars. The Naming Policy further provides that we may sanction registrants who do not abide by its provisions by revoking names (with or without refund) and in appropriate cases informing law enforcement.

The Acceptable Use Policy (AUP) addresses abusive use of second-level domain names, prohibiting spam, phishing pharming, malware, illegal content and other abusive uses of second-level domain, including abusive registrations, particularly registrations that infringe the rights of third parties. Many best practices concerning infringing registrations that were developed in

among ccTLD world have in the gTLD world been superseded by Consensus Policies developed at ICANN. Where ICANN has procedures and policies, we follow them. Therefore, the AUP requires that registrants abide by the terms of the Uniform Domain Name Dispute Resolution Policy (UDRP), the Uniform Rapid Suspension service (URS), and the Trademark Claims Services (TCS). Another ICANN-mandated rights protection mechanisms (RPM), the Sunrise Period, will be implemented as described later in this response.

Above and beyond the ICANN-mandated RPMs, the AUP contains provisions that exceed ICANN policy minimums to provide a higher standard of protection for the legal rights of others. The AUP allows us to suspend or cancel names, or multiple names by the same registrant, if an egregious use or pattern of abusive or infringing use is engaged in by a registrant. In addition, the Complaint Resolution Service (CRS) provides means for Internet users to alert us to abusive or infringing registrations.

Additional prevention or mitigation of abusive or infringing registrations include rapid takedown procedures; cancelation or suspension of multiple domain names registered to the same flagrant abuser; higher prices to discourage mass registrants of abusive names; and protection of second-level geographic names.

We first describe the implementation of ICANN-mandated mechanisms, then follow that with a description of the additional policies we plan to implement to prevent registration abuse and rights infringement.

--SUNRISE--

The Sunrise Period is mandated by ICANN, as per Section 6.2 of the Trade Mark Clearinghouse module of the registry agreement. It is a process by which owners of legal rights have the opportunity to register domain names before the process opens to the public or others. Specifically, rights holders may use the Sunrise Service to assert a priority right to register a second-level domain which matches their eligible word mark, as defined in paragraph 7.2 of the Trade Mark Clearinghouse module of the registry agreement. An identical match (as defined in paragraph 6.1.5 of the Trade Mark Clearinghouse module of the registry agreement) is required between the eligible word registered in the Trademark Clearing House ("TCH") and the domain applied for as a condition of participation in the Sunrise Period. All Sunrise applications will be validated by a third-party verification agent through the ICANN-mandated TCH to check the eligibility of the legal right claimed.

We will offer the Sunrise period for a minimum of 30 days during the pre-launch phase, and according to the terms of the Sunrise Policy. Applications received within that period are treated as filed at the same time. Where there is a contest between valid claimants, allocation will be determined by auction.

The Sunrise policy will provide for a Sunrise Dispute Resolution policy, which will allow a challenge under the four grounds required in paragraph 6.2.4 of the Trade Mark Clearinghouse module of the registry agreement. Other grounds may be added as experience reveals their advantages.

Policy oversight of the Sunrise Service will be provided by the Minds + Machines Vice-President of Policy, Peter Dengate Thrush. Peter is an intellectual property barrister experienced in intellectual property cases, especially involving domain names. He was involved in ICANN's Working Group A which developed the UDRP, and with the New Zealand Working Group which developed the Dispute Resolution Process for .NZ. Operational oversight of



the Sunrise Period will be provided by Minds + Machines' CEO, Antony Van Couvering. Antony is a veteran of several Sunrise periods as the head of a registrar (NameEngine) specializing in providing services to large brands and other holders of trademarks. We will provide all necessary infrastructure and sufficient resources to support the Sunrise Period.

--TRADEMARK CLAIMS SERVICE--

We will provide a TCS during an initial launch period for eligible marks as defined in para 7.1 of the Trade Mark Clearinghouse module of the registry agreement. This launch period will last at least the first 60 days of general registration, and will be operated according to the terms of Trademark Claims Policy.

The TCS allows a trademark owner to register a claim asserting trademark rights by putting potential registrants on notice of its possible legal claim of the domain name being considered for registration. We will provide notice in the approved format to all prospective registrants of domains that match trademarks in the TCH that their registration may infringe a trademark right. The mandatory form requires a prospective registrant to specifically warrant that: (i) the prospective registrant has received notification that the mark(s) is included in the TCH; (ii) the prospective registrant has received and understood the notice; and (iii) to the best of the prospective registrant's knowledge, the registration and use of the requested domain name will not infringe on the rights that are the subject of the notice.

Additionally, the Trademark Claims Notice will provide the prospective registrant with access to the Trademark Clearinghouse Database information referenced in the Trademark Claims Notice to enhance understanding of the trademark rights being claimed by the trademark holder. These links (or other sources) will be provided in real time without cost to the prospective registrant. The Trademark Claims Notice will be provided in the language used for the rest of the interaction with the registrar or registry, and will be provided in the most appropriate UN-sponsored language as specified by the prospective registrant or registrar/registry.

Oversight of TCS will also rest with the Vice President of Policy (VPP). We will provide the necessary infrastructure and sufficient resources to support the VPP in this role, including adequate computers, connectivity, telephones including cell phones and administrative support.

Responsibility for implementing the customer-facing (registrar) aspects of the Trademark Sunrise Service and TCS will rest with the Registrar Liaison as part of their on-going responsibilities. Responsibility for the technical implementation of the Trademark Sunrise and TCS will rest with the Registry under the contract to provide registry services. Minds + Machines' CTO, network engineer, and systems engineer will maintain the functionality of the automated Trademark Clearinghouse system. No additional resourcing is required to support these functions, as they are part of the base level requirements for the Registrar Liaison and the CTO. We will pay fees to the TCH for Sunrise and TCS services. At the present time no fees details are available, but we assume that the higher fees we propose to charge Sunrise applicants during the 60-day TCS period will be sufficient to cover the fees likely to be charged by the TCH.

--PHISHING AND PHARMING--

Phishing and pharming are a kind of rights infringement in which the malefactor pretends to be a trusted source by using another's trademark, brand look-and-feel, or other protected property in order to lure Internet

users to perform some action that benefits the perpetrator. These practices are prohibited by the AUP and will result in cancellation of any second-level domain name involved, and possibly in cancellation of additional names registered to the abuser.

--POST DELEGATION DISPUTE RESOLUTION POLICY--

In the Registry Agreement with ICANN, we will agree to participate in all post-delegation procedures and to be bound by the resulting determinations. Because we are fully committed to combatting abusive use and abusive registration of second-level registrations, we do not expect to have occasion to be involved in any proceedings stemming from ICANN's Post Delegation Dispute Resolution Policy (PDDRP), which deals with registries who knowingly engage in trademark infringement or abet those who do. We will comply with all Consensus Policies adopted by ICANN, including the PDDRP.

--ADDITIONAL ANTI-ABUSE POLICES--

We will be implementing RPMs and anti-abuse measures that go beyond the UDRP, URS, Sunrise, TCS and other ICANN-mandated mechanisms and procedures. These additional measures are detailed below.

--COMPLAINT RESOLUTION SERVICE--

The Complaint Resolution Service (CRS) is an alternative to litigation for resolution of complaints between the registrant of a domain name and a complainant who alleges a registrant or a domain name is in violation of the AUP. The CRS provides a transparent, efficient, and cost effective way for the public, law enforcement agencies, regulatory bodies, and intellectual property owners to address concerns regarding abuse on the system.

The CRS provides a reliable and simple way for the public to inform us if they think there is a problem. Submissions of suspected infringement or abuse are monitored by Registrar Customer Service personnel and escalated according to severity. Upon escalation, we may take immediate action to protect registry system or the public interest or refer the matter to law enforcement if we suspect criminal activity. In the case of a non-critical complaint, the CRS also provides an amicable complaint resolution and adjudication service conducted by an Ombudsperson hired by Minds + Machines. The CRS is a service intended to supplement parties' existing legal rights to resolve a dispute in a court of law. Any proceeding brought under the CRS will be suspended upon any pleading to a court, decision-making body, or tribunal, and only re-started if directed to do so by one of those bodies.

The Ombudsperson is a neutral third-party specialist with respect to conflict resolution who will provide informal arms-length mediation and adjudication of any complaints of alleged registrant abuses and violations of the AUP. The Ombudsperson shall have the power to direct that a domain name should be cancelled, suspended, transferred, modified or otherwise amended.

If the Ombudsperson takes a decision that a domain name registration should be cancelled, suspended, transferred, modified, or otherwise amended, the Ombudsperson will implement that decision by requesting the Registry to make the necessary changes to the Register. The CRS provides for a right of appeal by registrants if they believe the AUP has been enforced in error. We will comply with the decisions of the Ombudsperson and the Appeal Panel under the direction of the VPP.

--PROVISIONS OF THE ACCEPTABLE USE POLICY--

The AUP defines a set of unacceptable behaviors by domain name registrants in relation to the use of their domain names. It is incorporated by reference

into the Registrant Agreement. It defines the acceptable use of second-level domains, and is designed to ensure that the registry is used for appropriate and legal purposes.

The AUP specifically bans, among other practices, the use of a domain name for abusive or illegal activities, including:

- (i) illegal, fraudulent, misleading, or deceptive actions or behavior;
- (ii) spamming (the use of electronic messaging systems to send unsolicited bulk messages, including email spam, instant messaging spam, mobile messaging spam, the spamming of Web sites and Internet forums, and use of email in a Distributed Denial of Service (DDoS) attack);
- (iii) phishing (the use of counterfeit Web pages that are designed to trick recipients into divulging sensitive data such as usernames, passwords, or financial data);
- (iv) pharming (the redirecting of unknowing users to fraudulent sites or services, typically through DNS hijacking or poisoning);
- (v) willful distribution of malware (the dissemination of software designed to infiltrate or damage a computer system without the owner's consent--e.g. computer viruses, worms, keyloggers and Trojan horses);
- (vi) fast-flux hosting (use of fast-flux techniques to disguise the location of Web sites or other Internet services, or to avoid detection and mitigation efforts, or to host illegal activities);
- (vii) botnet command and control (services run on a domain name that are used to control a collection of compromised computers or "zombies," or to direct DDoS attacks);
- (viii) distribution of obscene material, including but not limited to child pornography, bestiality, excessive violence;
- (ix) illegal or unauthorized access to computer networks or data (illegally accessing computers, accounts, or networks belonging to another party, or attempting to penetrate security measures of another party's system, often referred to as "hacking," or any activity that may be used as a precursor to an attempted system penetration, such as port scanning, stealth scanning, probing, surveillance or other information gathering activity);
- (x) deceptive or confusing uses of the domain or any content provided thereon with respect to any third party's rights;
- (xi) disrupting the registry network or the provision of any content capable of disruption of computer or systems or data networks;
- (xii) providing circumvention technologies, technical information or other data that violates export control laws;
- (xiii) spoofing (forging email network headers or other identifying information); and
- (xiv) distribution of any other illegal or offensive material including hate speech, harassment, defamation, abusive or threatening content, or any other illegal material that violates the legal rights of others including but not limited to rights of privacy or intellectual property protections.

--MALWARE--

The AUP prohibits the use of the second-level domains to spread or install malware. Malware is software that is installed without the knowledge of the end user, or without the full understanding by the user of the software's effects, which are often deleterious or dangerous. It should be noted that malware cannot be spread by the registration of a domain name. Where applicable, we will adhere to and implement the recommendations of NIST SP 800-83, "Guide to Malware Incident Prevention and Handling." We have documented policies, processes, and procedures to mitigate operating system and application vulnerabilities that malware might exploit, as explained in further detail in our answers to Question 30: Security and Question 32:

Architecture. We will implement a malware awareness program that includes guidance to users on malware incident prevention, detection and how to report suspect infections.

As recommended in NIST Special Publication 800-61, "Computer Security Incident Handling Guide," we have instituted a robust incident response process to address malware, which has four main phases: preparation, detection and analysis, containment/eradication/recovery, and post-incident activity. In order to be prepared, we will implement malware-specific incident handling policies and procedures. As part of our detection objective, we will review malware incident data from primary sources and monitor malware advisories and alerts to identify likely impending malware incidents. We understand that we can play a critical role in the containment and eradication process of malware, and we will develop strategies and implement procedures, reflecting the appropriate level of risk, to contain and mitigate malware threats. The policies will clearly define who has the authority to make major containment decisions and under what circumstances various actions are appropriate. We reserve the right in contracts, and will not hesitate to use that right, to shut down or block services, such as email, that are used as vectors by malware producers. We also reserve the right and are prepared to place additional temporary restrictions on network connectivity to contain a malware incident, such as suspending Internet access or physically disconnecting systems from network, even while we recognize the impact such restrictions might have on organizational functions. Our strategy for the recovery phase from malware incidents is to restore the functionality and data of infected systems and to lift temporary containment measures. Our strategy for handling malware incidents in the final phase includes conducting a robust assessment of lessons learned after major malware incidents to prevent similar incidents from occurring in the future.

Additionally, we will work with the Anti-Phishing Working Group and other industry leaders, including ICANN working groups on phishing and pharming, to ensure that our practices allow parties to act quickly when a registrant is in violation of the policies. Finally, we reserve the right to immediately terminate any activity deemed, in our sole judgment, to be abusive, in violation of the AUP or related policies, or against the public interest.

#### --RAPID TAKE-DOWN PROCEDURES--

The AUP and related policies provide for a rapid take-down of abusive domains that are in violation of the policies, including mass domain shutdowns to act against DDoS, phishing abuse, and Botnet exploitation of domain names. Experience has shown that aggressive policy enforcement, combined with user-accessible complaint procedures to shut down obviously abusive names discourages malefactors, who have the option of registering in more loosely administered TLDs, such as .COM or .INFO.

#### --PROTECTION OF GEOGRAPHIC NAMES--

We will enact measures for the protection of country and territory names. The geographical names contained in the lists described in Specification 5 of the registry agreement will be added to the registry software system "prohibited word" function. Any attempt to register a domain containing those geographical names will be automatically denied, as they were similarly blocked in the .INFO TLD. See our answer to Question 22: Protection of Geographic Names for a more complete description of polices to protect geographic names.

#### --COMMUNITY FLAGGING--

We will use the common practice of community flagging of abusive uses of domains in order to rapidly detect a possible abuse so that a rapid response may be provided, including a rapid take-down of an abusive domain. Community members can easily flag a domain name as potentially abusive by filing notice through the Complaint Resolution Service. The CRS provides a "community flagging" mechanism that allows Internet users to report suspected violations and has proven to be an effective and speedy policy to prevent unwanted behavior. Internet web sites such as Craigslist, OK Cupid and many others use community flagging as their primary means of combating illegal and abusive behavior, and we will implement it in the registry.

#### --SUSPENDING MULTIPLE DOMAINS FOR FLAGRANT ABUSE--

The Registry reserves the right to suspend all domain names registered to or associated with any user for flagrant or repetitive abuse of any domain name as a means of preventing and curtailing abuse of the systems.

#### --TRANSFER FEES TO MITIGATE ABUSE--

To create a deterrent to abuse in the registry, we will charge registrants with a processing fee for transferring domains to another registrar or registrant. The transfer processing fee assessed will not be high, but will act as a deterrent by those who register multiple domain names for their schemes.

#### --QUALIFICATION OF REGISTRANTS--

We will have no general eligibility requirements for registration as pre-qualification of registrations is not applicable to our business model. Validation of Whois information prior to registration has been met with widespread user non-adoption among top-level domains historically. In country-code top-level domains such as .FR (France), .ES (Spain), .PT (Portugal), and .SE (Sweden), pre-validation has been abandoned due to depressed user adoption and criticism from end users and industry businesses, such as web hosting companies, ISPs, and domain name registrars. With few exceptions, major registries validate Whois information after the domain name is delegated, if at all. This reduces cost, which keeps prices down and allows for the near-instant registration of domain names by ordinary registrants.

We will not use pre-delegation validation of registrant data. Our strong policies against abusive registrations, combined with the easy-to-use CRS and active enforcement response, will better balance the needs of consumers and law enforcement or other users of Whois information than pre-verification, and in addition will result in higher customer satisfaction.

We will discourage illegitimate or abusive registrations by pricing our domain names above the price of .COM or .BIZ, which we believe will discourage various forms of noxious behaviors, as cybercriminals typically register large numbers of domains for their schemes and will therefore face a larger cost of doing business if they attempt to use the registry for their schemes. We therefore will price domain names at a wholesale cost higher than existing gTLDs as a way to discourage malicious use of second-level domain names. With fewer illegitimate registrations, we expect that Whois accuracy will be higher.

#### --IMPLEMENTATION OF POLICY--

The Vice-President of Policy will oversee the management and maintenance of all policies and coordinate their implementation with Minds + Machines' CTO and other technical staff and any third-party service provider partners. The VP of Policy will also be responsible for assuring that the policies are

complied with by both registrars and registrants. We are committed to providing sufficient resources to ensure full functioning and effective implementation of these policies, as described below.

We will implement all decisions rendered under the URS and UDRP and courts of law in an ongoing and timely manner. We have designated the Vice-President of Policy as the URS Point of Contact (URSPOC) for proceedings brought under the URS against registrations in the Registry. The URSPOC will monitor the receipt of emails from URS providers informing that a URS complaint has passed Administrative Review, and will, on receipt of such an email, immediately arrange to lock the relevant domain name. Resolution services shall not be affected. The URSPOC will also monitor emails from URS providers for determinations in URS cases, and will act on them according to their terms. In those cases where the complainant has succeeded in the URS complaint, the domain name status will be moved from "locked" to "suspended", and will not longer resolve. Where a complainant has been unsuccessful, the domain name will be unlocked, with full control being restored to the registrant. If an appeal is filed, the URSPOC will monitor emails for any change of status resulting from such appeals. The software will designate the status of names during URS proceedings and provide for monitoring to ensure deadlines are met. In order to be able to monitor emails or phone calls and respond quickly, the VPP will be aided by one or more of the Registrar Customer Service representatives.

In the event that the rate of complaints is too high for existing personnel to handle, we will work to automate what can be automated, and hire additional staff as necessary. If a high percentage of complaints are nuisance complaints, or harassing complaints, we may institute a small fee for the Complaint Resolution service in order to prevent capricious use of the service.

Responsibility for maintaining and implementing technical protection mechanisms via the Registry software and hardware rests with the CTO. The CTO will be aided by developers, architect, and technicians in the NOC.

#### --RIGHTS PROTECTION MECHANISMS--

The Vice-President of Policy will oversee the management and maintenance of all the policies and coordinate their implementation with Minds + Machines' CTO and other technical staff and any third-party service provider partners. The VP of Policy, in co-ordination with the Compliance Administrator, will also be responsible for assuring that the policies are complied with by both registrars and registrants. We are committed to providing sufficient resources to ensure full functioning and effective implementation of these policies, as described below.

In the event that the rate of complaints is too high for existing personnel to handle, we will work to automate what can be automated, and hire additional staff as necessary. If a high percentage of complaints are nuisance complaints, or harassing complaints, we may institute a small fee for the Complaint Resolution service in order to prevent capricious use of the service.

Responsibility for maintaining and implementing technical protection mechanisms via the Registry software and hardware rests with Minds + Machines' CTO, who has worked extensively with enforcing Rights Protections in registries through software applications. The CTO will direct the technical team as necessary. The technical team will implement the trademark clearinghouse and sunrise services at the application level, including

connecting to the TMCH, and managing the API for sunrise auction tools.

Our registry functions are outsourced to Minds + Machines. Their staff resource allocation follows. All costs associated with the technical functioning of the registry are covered by Minds + Machines as per our contract with them. Please see the attachment to "Q 24 Staff" for complete descriptions of each staff position.

Title

-----

CTO

VP Policy

Compliance Administrator

Registrar CS Tech 1

Registrar CS Tech 2

Espresso Application Dev

Espresso Application Dev 2

Espresso Application Dev 3

Database Developer

Database Developer 2

Annex 3:  
TLDH's Public Interest Commitments ("PICs")



*gTLD String: gay*

*Applicant Entity Name: Top Level Domain Holdings Limited*

*Application ID#: 1-1039-47682*

## **SPECIFICATION 11 PUBLIC INTEREST COMMITMENTS**

1. Registry Operator will use only ICANN accredited registrars that are party to the Registrar Accreditation Agreement approved by the ICANN Board of Directors on [date to be determined at time of contracting], 2013 (or any subsequent form of Registrar Accreditation Agreement approved by the ICANN Board of Directors) in registering domain names. A list of such registrars shall be maintained by ICANN on ICANN's website.

2.  Registry Operator will operate the registry for the TLD in compliance with all commitments, statements of intent and business plans stated in the following sections of Registry Operator's application to ICANN for the TLD, which commitments, statements of intent and business plans are hereby incorporated by reference into this Agreement. Registry Operator's obligations pursuant to this paragraph shall be enforceable by ICANN and through the Public Interest Commitment Dispute Resolution Process established by ICANN ((posted at [url to be inserted when final procedure is adopted])), as it may be amended by ICANN from time to time, the "PICDRP"). Registry Operator shall comply with the PICDRP. Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Registry Agreement) following a determination by any PICDRP panel and to be bound by any such determination.

[Registry Operator to insert specific application sections here, if applicable]

3.  Registry Operator agrees to perform following specific public interest commitments, which commitments shall be enforceable by ICANN and through the PICDRP. Registry Operator shall comply with the PICDRP. Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Registry Agreement) following a determination by any PICDRP panel and to be bound by any such determination.

### **Preamble**

We agree with the Government Advisory Committee (GAC) that some representations made in new gTLD applications should be binding. We believe that this step will increase consumer confidence in the new gTLD program, and it will enable the various compliance functions built into the new gTLD program to more easily correct behavior that is inconsistent with the stated purpose of the application. We therefore support the main thrust of the Public Interest Commitment (PIC) initiative.

While we agree with the aims of the PIC requirement, we note that it is of recent vintage and that our application was not written in a manner upon which we could make contractual PIC commitments. We also note that many elements of the PIC program remain undefined, and we are unsure how the different policy initiatives surrounding the program, including a formal Policy Development Process (PDP), may affect the final form of the program and the compliance regime.

Therefore, we offer here a set of commitments that are a distillation of what we believe are the important and relevant portions of our application, worded as commitments to which we can be held. We believe that they are responsive to what we understand to be the concerns behind the PIC program and they bind us in a real and substantive way to behave responsibly and in the interest of the global Internet. Our commitments are meant to provide protection to consumers and other affected parties, and are worded in

a way that provides sufficient flexibility in their implementation to be effective in a wide variety of possible final versions of the PIC program.

We are committed to responsible self-governance and look forward to finalizing the PIC program into a safeguard that encourages consumer choice and competition and assures the security and stability of the Internet.

## **Commitments**

With reference to the Government Advisory Committee Toronto Communiqué (October 17, 2012); the United States Government (USG) Input to Early Warning Processes for New Generic Top-Level Domain Names (gTLDs) Via the Governmental Advisory Committee; and the letter from Lawrence Strickling of the U.S. Department of Commerce to Dr. Stephen Crocker, Chair of the Board of Directors of ICANN, dated February 26, 2013, we offer the following commitments:

We will implement and operate a robust abuse mitigation process to minimize abusive registrations that have a negative impact on Internet users and rights holders. We commit to establish and promulgate an Acceptable Use Policy (AUP) for registrants, which will feature enforceable processes designed to ensure that registered domain names will be used only for legitimate activities. Our AUP will include but is not limited to the following commitments we agree to be bound by within the confines of applicable laws:

- To publish and make readily available to the public policies and procedures that cover domain name acceptable use, naming standards, and which define malicious or abusive behavior. Abusive behavior includes, but is not limited to, using domain names for spam, phishing, pharming, and illegal activity, as well as cybersquatting or other behavior that infringes the rights of others;
- To make these policies and procedures binding upon registrants by requiring registrars to get registrant agreement to our AUP as a condition of registration during the sign-up process;
- To provide an easily accessible flagging process that allows members of the public, law enforcement, and other government entities to quickly and easily call attention to possible cases of non-compliance with these policies or to report abuse;
- To provide a single point of contact, available to law enforcement and other authorized government entities, responsible for addressing reports of abuse, non-compliance and other matters requiring expedited attention;
- To constructively work with law enforcement to address reported cases of abuse;
- To timely review, resolve, and respond to reported cases of abuse, including implementation of procedures that allow us, within the confines of applicable laws and in cases where domain registrations are determined to have been used abusively, to:
  - Suspend or delete abusive domain names;
  - Block registrants of abusive domain names from further registrations; and/or
  - Suspend or delete all names associated with a registrant.

- To prevent registration of exact matches of geographic names at the second level as defined by the Applicant Guidebook of January 12, 2012, except by authorized representatives of the governmental authority of the territory in question;
- To prevent registration of exact matches of IGO names at the second level, according to the list to be provided by the GAC as per the GAC Toronto Communiqué of 17 October 2012, except by authorized representatives of the IGO in question;
- To institute a 60-day Trademark Sunrise using the Trademark Clearinghouse process;
- To develop a dispute-resolution procedure that supplements ICANN-mandated processes, including access to alternative resolution processes; and
- To implement security policies and procedures commensurate with the security profile of the TLD.



10-14-13 Canadian Gay Chamber Merriam letter: ILGA member

Sent from my BlackBerry 10 smartphone on the Rogers network.

> From: Canadian Gay Chamber

> Sent: Monday, October 14, 2013 11:43 AM

> To: Contact Information Redacted

> Reply To: Contact Information Redacted

> Subject: Canadian Gay Chamber Contact Form

>

> Name: Andrew Merriam

> E-Mail: Contact Information Redacted

> Phone:

> Website E-Mail Message

> Mr. McDonald & The CGLCC I'm writing to you concerning a letter sent

> by

yourself in March 2011 indicating The NGLCC's support of the .gay top level domain [TLD]. The issue at hand is the assignment of the ".gay" top-level domain, which will function much like other current TLDs, such as .com, .net and .org . Your original letter can be found here:

<http://dotgay.com/endorsements/lgbt-business> There have been a number of developments related to the delegation of the .gay TLD since your letter was submitted. You were originally contacted by a particular applicant for .gay, a company called dotgay LLC, there are another 3 organizations that have applied; I represent one of those. I note that you do not specifically mention dotgay LLC or supporting them in your letter, but I would like to raise a few developments related to .gay. For example, dotgay LLC's application has now been published, and is the only application that proposes to limit both content and access, in a way that will censor and restrict the diverse LGBT community. Perhaps most important, however, is the fact that dotgay LLC, along with its partner ILGA, have officially objected to a completely separate application for ".lgbt." This means that they are intent on removing an important choice that the LGBT community should have.

We view this as a confirmation of the closed and self-serving model for .gay that would result from their management of the TLD. I would love to talk to you more about .gay, including our own application - and I hope that you would consider clarifying your letter of support that is being used by dotgay LLC's to further its restrictive plans for .gay and tied to their antagonistic approach to the community evidenced in their objection to .lgbt. Sincerely, Andrew Merriam

>

## **Annex C-6**

**From:** Joe MyGod Contact Information Redacted  
**Sent:** Friday, October 04, 2013 11:48 AM  
**To:** Scott Seitz  
**Subject:** Fwd: .gay TLD applicant objects to .lgbt

Here's the earlier email from the same guy. It's a lot longer...

----- Forwarded message -----  
**From:** **Andrew P Merriam** Contact Information Redacted  
**Date:** Tue, Sep 17, 2013 at 2:02 PM  
**Subject:** .gay TLD applicant objects to .lgbt  
**To:** Contact Information Redacted

Mr. Jarvis,

I have been referred to you as a leader and activist in the gay community, and I'm hoping that by educating you on what is happening you may find greater cause to raise awareness around this issue. I'm writing to you about a very serious and time sensitive matter; the TLD, ".gay", could be awarded to an organization that claims the term "gay" is the best, and most culturally sensitive and inclusive way to refer to the whole of the LGBT community, even more so than the acronym itself.

To step back, a TLD is the suffix at the end of a web address, so ".com", ".org", ".net" are all existing TLDs. The organization that controls the naming and numbering system for the Internet, ICANN, recently opened up a new TLD application process, 7 years in the making, and received over 1,900 applications. This will likely result in about 700 new generic extensions that you will begin to see and use over the course of the coming year; ".gay" is guaranteed to be one of them.

To be clear, we are one of 4 applicants for .gay; and all 4 applicants, including the applicant referenced above, dotgay LLC, are for profit entities. However, dotgay LLC has claimed that it represents the whole of the LGBTQ+ community, and that the community has settled upon "gay" as the most representative and appropriate identifier. They have applied as a community, an official ICANN designation that involves special procedures, and should ICANN find that they do in fact represent the gay/LGBTQ+ community, they will be delegated the TLD without consideration of other applicants, which do not propose to restrict access to the TLD and control content or impose their umbrella terms as dotgay LLC does.

dotgay LLC has the support of ILGA and the HRC, and they have gone so far, with the backing of ILGA, to object to an unrelated application for ".lgbt". This means that they have spent upwards of \$50,000 on an official ICANN objection process to prevent the delegation of ".lgbt". While the text of the objection is private, we can only surmise from their similar objection to our own .gay application, and their public statements, that they believe "gay" is "good enough" and the preferred umbrella term both in and outside of community. We are completely against this marginalizing consolidation of the LGBTQ+ community under ".gay", and we welcome competition from .lgbt as it allows for

consumer choice; as potential stewards of .gay, we would be open to any future LGBTQ+ oriented TLDs.

We are deeply troubled by dotgay LLC's tactics aimed at becoming the gatekeeper for .gay and stifling the diversity of the LGTBQ+ community. Once .gay is delegated it will not change hands, as contract renewals are presumptive, and they would be in a position to block a possible ".lesbian", ".trans" or any other LGBTQ+ community term from delegating in future TLD expansion rounds, just as they have attempted to block .lgbt.

The only trans\* specific organization that has issued support to dotgay LLC is an organization from Poland, Trans-Fuzja Poland. In their application, dotgay LLC claims that they have been working with the "largest and most visible" LGBTQ+ organizations "in all segments of the community" since 2009.

We feel that this issue hasn't been adequately discussed in community and are wondering if you have been reached out to or were aware of the forthcoming .gay? We want to have an open conversation about the differing visions of .gay, and how the LGBTQ+ community can be represented at the Internet's top-level. I would love to talk to you as soon as you are able about the ICANN process, what our application for .gay means, and the further problems with dotgay LLC's business model, which include systematic disenfranchisement and significant restrictions on content and access. They are clearly trying to game the ICANN process by fabricating LGTBQ+ cohesion around the term "gay", and we are afraid that widespread misunderstanding of these issues could see them prevailing.

Please feel free to call me at any time or please let me know of a time we can schedule a phone call. Their community status will be decided by ICANN in mid-October, so there is no time to lose. However, there is an open public comment forum where organizations and individuals in the LGBTQ+ community that do not feel that gay should be the only LGBTQ+ related TLD can still make their voices heard.

Thanks so much for taking time to review this matter; I look forward to talking with you. Also, I have included some external links below to make any further research easier.

Best Regards,

Andrew Merriam

- [ICANN's homepage](#)
- [Our application for .gay](#) (note link to pdf download)
- [dotgay LLC's application for .gay](#)
- [dotgay LLC homepage](#)
- [Proof of ILGA objection to .lgbt](#) (included among pdf, "List of Pending Cases," pg 14)
- [ICANN Public Comment Forum Landing Page](#)



--

**Andrew Merriam**

Business Development Coordinator

Top Level Design, LLC

Contact Information

Redacted

--

Joe Jervis

Joe.My.God.

[www.JoeMyGod.com](http://www.JoeMyGod.com)

## **Annex C-7**

**From:** Angela Giampolo Contact Information Redacted  
**Sent:** Thursday, November 21, 2013 3:30 PM  
**To:** Scott Seitz  
**Subject:** From your friend Merriam

Hello again,

I wanted to provide you with an update, the ILGA recently lost its formal objections against dotgay LLC's three competitors for .gay, ourselves included, and also its formal objection against the .lgbt TLD. This means that the .lgbt TLD will be allowed to reach the Internet, and that it be widely available and not restricted.

The fundamental difference between ourselves and dotgay LLC is that we do not believe that any person should have to "authenticate" their gender and/or sexual identity to purchase a product. Furthermore, dotgay LLC's plan to censor "objectionable" content will not serve the dynamic opinions and debate that happen across the LGBTQ+ spectrum.

Below, I've included some links to some further information on the process and our position. I would certainly welcome the opportunity to talk to you regarding the benefit of our model, which promises an accessible and uncensored .gay TLD.

Sincerely Yours,

Andrew Merriam

- [Our position as explained on the Bilerico Project](#)
- [Our evaluation of a ".gay" TLD as an "ICANN community"](#)

Angela D. Giampolo, Esquire  
BUSINESS | REAL ESTATE | CIVIL RIGHTS | LGBT LAW  
Contact Information  
Redacted



## **Annex C-8**

## Scott Seitz

---

**From:** Scott Seitz  
**Sent:** Friday, February 28, 2014 7:50 AM  
**To:** Jamie Baxter  
**Subject:** FW: EXP/426/ICANN/43, GOProud, Inc. vs. dotgay LLC

---

**From:** Scott Seitz  
**Sent:** Monday, August 05, 2013 6:03 PM  
**To:** 'Christopher R. Barron' <Contact Information Redacted >  
**Cc:** < > < > < Contact Information Redacted >  
**Subject:** RE: EXP/426/ICANN/43, GOProud, Inc. vs. dotgay LLC

Dear Hannah,

We appreciate the invitation to comment on this procedural matter between the ICC and GOProud (filed by Mr. Barron). Although the matter remains unresolved, dotgay LCC is in no way responsible for Mr. Barron being dismissed from the objection proceedings, nor have we found it appropriate to comment on an issue that we are not a direct party to. Because the result of ICC's ruling will directly affect dotgay LLC, and because we have been asked to comment, we would at this time like to add some additional facts into the record and then address some additional procedural concerns.

### Additional facts:

1. Upon learning of the objection filed by Mr. Barron (on behalf of GOProud), dotgay LLC made an immediate outreach to Mr. Barron in an attempt to resolve concerns addressed in their filing. An email sent directly to Mr. Barron was accompanied by a certified return-receipt letter with the US Postal Service (proof available upon request), and followed up with an additional email within a week's time. None of these attempts to contact Mr. Barron before his objection was dismissed received any response.
2. When dotgay LLC was informed by the ICANN ombudsman that Mr. Barron was seeking his assistance to have the ICC dismissal reconsidered, dotgay LLC once again offered an opportunity to discuss and resolve Mr. Barron's concerns despite it being dismissed by the ICC. dotgay LLC then received our first and only communication from Mr. Barron surrounding our offer, who made it very clear to us and the ICANN ombudsman in an email communication that he would not engage in a dialogue until his objection was reinstated. We understood this to mean that Mr. Barron was more focused on having his objection positioned inside the ICANN's formal objection framework than he was having it resolved.
3. Mr. Barron has made mention in his email communication of July 29, 2013 that the International Gay & Lesbian Travel Association (IGLTA) received an extension from the ICC to pay for objection deposits for expert fees. It should be clarified that it was the International Lesbian Gay Bisexual Trans and Intersex Association (ILGA) that received the extensions since they are the objecting party.
4. It is true that ILGA requested and received a deposit payment extension from the ICC, based on the higher than expected prices that they were subjected to. Our understanding however is that they made their request well before the deposit deadline and also received an approval from the ICC before the original deadline, a completely different scenario than Mr. Barron's.

### Additional procedural concerns:

1. Since the two objections that were originally filed against dotgay LLC by GOProud and their affiliate organization Metroplex Republicans of Dallas were in fact almost identical, down to the exact wording at times, dotgay LLC would like to better understand how the ICC would address the objection consolidation issue given that the ICC has already moved one of the objections into the evaluation phase. dotgay LLC strongly believes that we should not be burdened in

any way by any decisions that could be made on GOProud's appeal, because the opportunity to consolidate objections was missed.

2. Mr. Barron has made mention of the payment extensions received by ILGA in his communications as well as responses from applicants who wanted the ICC to deny ILGA's extension requests, however it is our understanding that this information is private between the objectors and applicants. We question how Mr. Barron obtained that information since ILGA has confirmed to us they have never spoken to Mr. Barron and the ICC has not made that information public.
3. Given that Mr. Barron appears to have confidential information about other ICC proceedings that he has not been a party to, dotgay LLC believes that it would be in the best interest of these proceedings for Mr. Barron to divulge how he learned of any information surrounding objection proceedings between ILGA and the other applicants for .gay and .lgbt. It is already known by the ICC and ICANN, based on declarations made by ILGA, that dotgay LLC has maintained a close and transparent relationship with ILGA throughout the new gTLD program. Given that dotgay LLC is a Community applicant, which inherently requires community interaction and support, ILGA's relationship with dotgay LLC should not be open for criticism or used to dilute attention from the procedural matter at hand.
4. Given that Mr. Barron is no longer in his prior leadership role of Senior Strategist at the GOProud organization, dotgay LLC would appreciate if the ICC could confirm with the new leadership of GOProud that the objection filed by Mr. Barron (on behalf of GOProud) in March 2013 continue to be representative of the organizations current position\*. We seek clarity simply to ensure that any statements made by Mr. Barron in his original objection filing remain concerns of GOProud, the organization being utilized to fulfill community status in the community objection proceeding. The new leaders of GOProud, effective just last month (July 2013), include the individuals listed below. A written confirmation from the new leadership at GOProud would satisfy dotgay LLC's concerns.

\* <http://www.buzzfeed.com/chrisgeidner/goproud-leaders-stepping-aside-for-someone-else-to-come-in-a>

- i. Matthew Bechstein – Director of Development and Administration
- ii. Shane E. Farmer – Director of Operations and Outreach
- iii. Ross L. Hemminger – Director of Media and Membership

dotgay LLC would once again like to thank the ICC for this opportunity to comment on the procedural matter between the ICC and GOProud (filed by Mr. Barron). Please do not hesitate to let us know if there is any further information you may need at this time.

Best regards,  
Scott Seitz  
dotgay LLC

---

**From:** Christopher R. Barron (Contact Information Redacted) ]  
**Sent:** Monday, July 29, 2013 11:28 AM  
**To:** Contact Information Redacted ;  
**Cc:** Contact Information Redacted  
Scott Seitz; Contact Information Redacted ;  
**Subject:** Re: EXP/426/ICANN/43, GOProud, Inc. vs. dotgay LLC

Hannah Tümpel  
Manager  
ICC International Centre for Expertise  
Contact Information Redacted ;

Dear Ms. Tümpel,

We are in receipt of the ICC's letter of 19 July 2013 (the "ICC Letter") and please accept our thanks for agreeing to proceed to revisit the disputed decision concerning our objection ("Objection"). As a means of supplementing the 19 July correspondence, and in order to further clarify certain points contained in same, we offer the following:

(1) Notwithstanding the text contained in the Model Response form, communication via the e-mail address Contact Information Redacted would be consistent with the ICC Rules of Expertise, in particular Article 10, Paragraph 2, which states in pertinent part:

"All notifications or communications from the Centre and the expert shall be made to the last address of the party or its representative for whom the same are intended, as notified either by the party in question or by the other party."

See [http://www.iccwbo.org/Products-and-Services/Arbitration-and-ADR/Expertise/ICC-Rules-for-Expertise/#article\\_10](http://www.iccwbo.org/Products-and-Services/Arbitration-and-ADR/Expertise/ICC-Rules-for-Expertise/#article_10)(emphasis added). As [cbarron@capsouthdc.com](mailto:cbarron@capsouthdc.com) was not only the address listed for Objector's Representative but was also the "last address" used in communications both sent to and received from the ICC concerning this matter, it would be entirely appropriate to send (or at minimum, copy) that address on such a highly time-sensitive and potentially impactful communication (e.g. a notice of impending dismissal of the entire case with only a 5-day correction period and no ability to re-file).

(2) Further, it is important to note that the ICC not only ignored the appropriateness (and prior history) of communicating with Objector through the address of its designated Representative, but also failed to even respond when I sent in a specific inquiry as to the status of the Objection on 5 April, 2013. See ICC Letter at page 4. It was not until several days later, when I sent in a second inquiry (on 9 April) that the ICC finally clarified that the Objection had been dismissed for being ~100 words over the 5,000 limit. *Id.* In good faith, and with an eye toward minimizing any adverse procedural impact, Objector (through me) quickly corrected the minor deficiency and resubmitted the corrected objection (*Id.*) prior to the issuance of the official dispute announcement.

(3) Also, as mentioned in a prior correspondence with the ICC, the "delivery confirmation" (if one can even call it that) supplied in the ICC's 10 April follow-up correspondence casts extreme doubt on whether or not the email purportedly sent to [info@goproud.org](mailto:info@goproud.org) actually went through. The record text specifically stated that "no delivery notification was sent by the destination server." I repeat: GOProud never received the email from the ICC.

(4) The ICC should also consider that the International Gay & Lesbian Travel Association ("ILGTA") an affiliate and strong proponent of dotgay's gTLD application (see, e.g., <https://gtdresult.icann.org/application-result/applicationstatus/applicationdetails/downloadattachment/138827?t:ac=444>) has itself been flexible with respect to impactful deadlines (most notably an extension of time to pay expert fees), while ignoring the concerns raised by several Respondents pertaining to same. Bear in mind that GOProud paid its filing fee

on-time (documentation available upon request) and would, assuming the Objection is permitted to move forward, be prepared to pay any remaining fees as quickly as needed.

All GOProud requests is an opportunity to pay the aforementioned expert fees and proceed ahead with an objection that will be beneficial to a number of disenfranchised persons and entities, notwithstanding one minor procedural technicality (that has now been corrected). This seems to us to be a very reasonable request, and there is every indication that ICANN (whether via the Ombudsman or the NGPC) is in complete agreement. We have every confidence that the ICC will arrive at a similar conclusion and allow the Objection to continue.

In accordance with the Procedure, a copy of this letter has been sent to the Applicant  
via Contact Information Redacted

Sincerely,

/crb/

Christopher R. Barron  
GOProud, Inc.



## **Annex C-10**

INTERNATIONAL WIRE TRANSFER AUTHORIZATION FORM



*This form must be completed in its entirety and must be approved by an authorized individual.*

**Wire request method:**  In person  Phone **Date/Time:** 3/13/13 **Branch:** Griffin Main

**Section I**

<b>Amount</b> \$7,000.00 US dollars	<b>Receiver/FI ABA:</b>
Wire fee: \$50 <input type="checkbox"/> Fee waived reason _____	<b>Receiver FI name:</b>
<b>Purpose of Wire:</b> <input type="checkbox"/> Personal <input checked="" type="checkbox"/> Business If business, then nature of wire: filing fee	

**Section II**      **Originator Information**      **Beneficiary Information**

<b>Account Number to Debit:</b> Contact Information Redacted	<b>Beneficiary Account Number:</b> Contact Information Redacted
<b>Originator Name:</b> Mark A Roberson	<b>Beneficiary Name:</b> International Chamber of Commerce
<b>Physical Address Line 1:</b> Contact Information Redacted	<b>Beneficiary Address Line 1:</b> Contact Information Redacted
<b>Physical Address Line 2:</b> Contact Information Redacted	<b>Beneficiary Address Line 2:</b> Contact Information Redacted
<b>Phone Number:</b> Contact Information Redacted	<b>Beneficiary Information:</b>

<b>Intermediary Section</b>	<b>International Bank Section</b>
<b>Intermediary Bank name:</b>	<b>International Beneficiary FI Name:</b> UBS SA
<b>Intermediary Bank ABA:</b>	<b>International Beneficiary FI Address:</b> Contact Information Redacted
<b>Intermediary Bank Address:</b>	<b>International Beneficiary Swift Code or Sort Code:</b> Contact Information Redacted

**Additional Information/Special Instructions:**  
filing fee for community objection by Metroplex against application for .gaytld  
*intentionally left blank*

**Section III- Customer Identification & Authorization**  
Requestor is the person actually making the wire request (e.g., an Authorized signer making a wire request on behalf of a commercial customer)

<b>Requestor (Person requesting wire):</b> Sandra Lohnes	<b>Authorization:</b> Account Holder/Signature card <input checked="" type="checkbox"/> Corporate Resolution <input type="checkbox"/> Internal Use (Loan funding, CD) <input type="checkbox"/> FTAA with security code <input type="checkbox"/>
<b>Primary ID Type:</b> Driver's License <input checked="" type="checkbox"/> Military ID <input type="checkbox"/> State-issued ID <input type="checkbox"/> US Passport <input type="checkbox"/>	<b>Primary ID #:</b> 055438198
<b>Issue State/Country:</b> GA	<b>Expiration Date:</b> 12/08/2018

<b>Secondary ID (Required if over \$2,500):</b> VISA 7336	<b>Employee Verifying Requestor's Signature, Identity Verification and/or Terms of FTAA:</b> Chris Mullikin
--	--

**Section IV – Customer Authorization**  
*By signing below, I agree to the terms accompanying this form. Wires will not be processed without customer's signature. Repetitive wires without customer's signature will not be processed unless a prearranged and authorized written agreement is on file at United Bank.*

**Customer Signature:** *Sandra Lohnes* **Date/Time:** 3/13/13

*Email Conf # to Chris Mullikin*

## **Annex C-11**

**Trail of the payments linking Top Level Design (STANDARD applicant for .gay) to the Metroplex Republicans of Dallas objection against dotgay LLC's COMMUNITY .gay application.**

**Summary:**

\* /%&% ( %>"%& @%4A 23 >%? B &' ; /2 C #/(2>"#\$ @#>- . "%%& 2B1%"%; /2 B# %  
+2D D - &?/4 2. #+/2&%3%& / ' 2/3%4 556F !+ +2('?&3/2 /, # #8?# &# >(28?# ' &/, ?;  
'2+ -D #&/0@%A&3& .-; &#; ; >%/ &# (%/H2> 5#8#"1#; 3&0I# / # ( J (- '%%& >%/ &# ( C? (%& %  
@2.#( ; 2&>(28?# ' /, # B &' ; B ( /, # C #/(2>"#\$ 2.E#+/2&F K- &' ; L #(# #\$/#&' #' 8?%&=  
>%/4/2 , ? # /, # ; 2- (+#0, 2L #8#( /, # D 2&#4 +%& # "2M#" /2 I# / # ( J (- '%%& C ?%& %  
@2.#( ; 2&8?% /, # N#O- # ; /2(P 2&/, # L ?# / (%& ; B ( L , 2 ? ; /, # 6KQ 2B/, # ? +2D >%& R 2D #  
7- ( ; # 8+F H, # B &' >(28? # ( "B#; &! /%&%& ? - &"M#"4/2 .# D #D. # ( %/ 2BC #/(2>"#\$  
@#-." ?%& ; 2B1%"% F

**Detailed examination:**

H, # C #/(2>"#\$ 2. #+/2&, %; . ##&>%? B ( . 4 &/#( &%/?2&6". %&M ?#F

!+ +2('?&3/2 /, # / (%& ; B ( B (D /, # D 2&#4 L % ' (%& & B (2D %. %&M?+2- &/ 2BT  
C% (M! @. # ( ; 2&  
Contact Information Redacted

H, # Y (#O- # ; /2(Y ZY>#( ; 2& (#O- # ; /2&3 /, # L ?#Y[ &/, ? ; B (D ? ; T  
\*%& (%52, &#;  
Contact Information Redacted

\*## /, # >%D #&/ B (D /2 8#( B /, ? ; B (D %/?&%/%%+ # ' F

@%A&3? /, # B -&' # ( %&' 6VQ 2B/, # B%4 %>"%&/ YH2> 5#8#"1#; 3&0556Y  
!+ +2('?&3/2 /, # >-. " ? %8%2%" # %>"%&/2&'2+ -D #& //, # Y; #+2&'%(4 +2&/+ /Y ?;  
C( FI #/#( A#?, J (- %'

[./ /> ; T 3/"\( # ; - /F+&&E\(3 %>"%&/2&'\(# ; - "/" %>"%&/2& /% - ; %>"%&/2&' # /% ; T 2L &'2% %>"%&/2& : XU<](#)

62&B(D &3I# / # ( J (- %'? @%4A 23 ; . - ; &# ; ; >%/ &# (F

!+ +2('?&3/2 '%&' .F +2D J( - '%%&' 52, &# ; %& # +2&&#/#' T  
62D >%&4YS7 HV55SW7 H \*Q5c HSQ7 \*OS7 6Y

62&/%+;T

I#/ # ( J (- %"

C? (%&' %@. #(; 2&

\*%& (%52, &#;

./ />T L L L F%&'.F +2D .-; &#; ;'?(#+/2(4 &#/"B#&/2"/ 2&;&+  
%//%&%3%9d\XXdX=F, /D "

!"( #;; 2B/, #. -; &#;; Z?/#O- %'; /, # 2&# ?&/, # >%4D #&/ B(D [

Contact Information Redacted

C? (%&' %@. #(; 2& ? J (- %'; >%/8#( %& 2L &%, 2- ; # /23#/, # ( ZU\< W(#4; /2&# >%M F  
H, #4 %'2 %# +2&&#+/#' 8?%&/, # ( +2D >%&T

R2D # 7- (; #0S&+F

I( &+?%TC ; FC ?%&%@. #(; 2&ZVQ[

C; F\*%& (%52, &#; ZKQ[

./ />T L L L F..F 2(3\_%' %&/%.-; &#; ;`(#8#L ;\_ 2D #` ,# %/, `#(8?#;\_ 2D #`&- (; #'?&3(B&`3%9d<: <dX<

R2D # 7- (; #0S&+e L #. ; ?# ; %4; T

I#/ # ( J (- %0V\$#+- /&# f ?# I( #; ? #&/

./ />T L L L F, 2D #&- (; #&# / D %&%#D #&/

!&' C %M! @2.#(; 2&>( #82-; "4 2L &# /, # ,2-; # /, %/ ? &#\$/ 2 U\< W(#4; /2&# I %M7V

R# 2L &# ' U\< W(#4; /2&# I %M7V

./ />T L L L F; ?4 '%/ %&+2D B"/2&' +2- &/4 7 7V`W(#4; /2&# 'I% (M9F, /D "

H, # ; %D# ' 2+- D #&/ %'2 ; , 2L ; /, %/ J (- %' %& @. #(; 2& 2L & U\< W(#4; /2&# F

7- D. # ( U\ ? 2>>2; ?# g U\< %& UU<%# &#B, . 2- (; F

## **Annex C-12**



Search...  
Go [Adv. Search](#)

Unlimited Usage: 6496MB

- Inbox
- Bulk Mail
- Drafts
- Templates
- Send Later
- Sent Items
- Trash [\[purge\]](#) (3)

- aaa players
- conferences
- Deleted Messages
- dotgay - artwork
- dotgay - clarifying Q
- dotnav - comments

Copyright © 2003-2014. All rights reserved.

[Move to Folder](#) Move

[More Acti](#)

**dotgay - cpe > Message Detail**  Entire thread **Print**

**Subject** RE: Texas GOP  
**From** Chris LaHatte Contact Information Redacted  
**Date** Thu, Aug 07, 2  
**To** Jamie Baxte Contact Information Redacted  
**Cc** Scott Seitz <

**Subject:** Re: Texas GOP

See below from Rob.

GTA

+++++

----- Forwarded message -----  
**From:** Rob Schlein  
**Date:** Wed, Jun 18, 2014 at 5:18 PM  
**Subject:** Re: dotGay  
**To:** Contact Information Redacted

We filed in opposition as a courtesy of Christopher Barron. I don't think it matters at this point...a determination has been ma

## **Annex C-13**





**New gTLD Program**  
**Community Priority Evaluation Report**  
Report Date: 29 July 2014

Application ID:	1-901-9391
Applied-for String:	Osaka
Applicant Name:	Interlink Co., Ltd.

**Overall Community Priority Evaluation Summary**

<b>Community Priority Evaluation Result</b>	<b>Prevailed</b>
<p>Thank you for your participation in the New gTLD Program. After careful consideration and extensive review of the information provided in your application, including documents of support, the Community Priority Evaluation panel determined that the application met the requirements specified in the Applicant Guidebook. Your application prevailed in Community Priority Evaluation.</p>	

**Panel Summary**

<b>Overall Scoring</b>	<b>15 Point(s)</b>	
Criteria	Earned	Achievable
#1: Community Establishment	4	4
#2: Nexus between Proposed String and Community	4	4
#3: Registration Policies	3	4
#4: Community Endorsement	4	4
<b>Total</b>	<b>15</b>	<b>16</b>
<b>Minimum Required Total Score to Pass <u>14</u></b>		

<b>Criterion #1: Community Establishment</b>	<b>4/4 Point(s)</b>
<b>1-A Delineation</b>	<b>2/2 Point(s)</b>
<p>The Community Priority Evaluation panel determined that the community as identified in the application met the criterion for Delineation as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the community is clearly delineated, organized and pre-existing. The application received the maximum score of 2 points under criterion 1-A: Delineation.</p> <p><u>Delineation</u> Two conditions must be met to fulfill the requirements for delineation: there must be a clear straightforward membership definition, and there must be awareness and recognition of a community (as defined by the applicant) among its members.</p> <p>The community defined in the application (“Osaka”) is:</p>	

Members of the community are defined as those who are within the Osaka geographical area as well as those who self identify as having a tie to Osaka, or the culture of Osaka. Major participants of the community include, but are not limited to the following:

- Legal entities
- Citizens
- Governments and public sectors
- Entities, including natural persons who have a legitimate purpose in addressing the community.

This community definition shows a clear and straightforward membership. The community is clearly defined because membership is dependent on having a clear connection to a defined geographic area.

In addition, the community as defined in the application has awareness and recognition among its members. This is because of the clear association with the Osaka geographical area, as according to the applicant, “the Osaka Community is largely defined by its prefectural borders.”

The Community Priority Evaluation panel determined that the community as defined in the application satisfies both the conditions to fulfill the requirements for delineation.

#### Organization

Two conditions must be met to fulfill the requirements for organization: there must be at least one entity mainly dedicated to the community, and there must be documented evidence of community activities.

The community as defined in the application has at least one entity mainly dedicated to the community, which is the Osaka Prefectural government. According to the letter of support from the Osaka Prefectural Government:

As the Governor of Osaka Prefecture, I confirm that I have the authority of the government to be writing to you on this matter. As the local municipality, the government has the authority to decide conditions to use .osaka as a trustworthy domain.

The community as defined in the application has documented evidence of community activities. This is confirmed by detailed information on the website of the Osaka Prefectural government. These activities include carrying out promotional activities to attract overseas corporations and tourists to the Osaka region.

The Community Priority Evaluation panel determined that the community as defined in the application satisfies both the conditions to fulfill the requirements for organization.

#### Pre-existence

To fulfill the requirements for pre-existence, the community must have been active prior to September 2007 (when the new gTLD policy recommendations were completed).

The community as defined in the application was active prior to September 2007. According to the application:

The Osaka community has been in existence for thousands of years, and is known as Japan’s oldest capital. Osaka has been an economic and cultural center of the Japan for over a long span of time, though formally, the geographic area that defines the community, Osaka Prefecture, was formally established in 1868.

The Community Priority Evaluation panel determined that the community as defined in the application fulfills the requirements for pre-existence.

1-B Extension	<b>2/2 Point(s)</b>
<p>The Community Priority Evaluation panel determined that the community as identified in the application met the criterion for Extension specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application demonstrates considerable size and longevity for the community. The application received a maximum score of 2 points under criterion 1-B: Extension.</p>	
<p><u>Size</u></p>	
<p>Two conditions must be met to fulfill the requirements for size: the community must be of considerable size and must display an awareness and recognition of a community among its members.</p>	
<p>The community as defined in the application is of considerable size. The community for .Osaka as defined in the application is large in terms of the number of members. According to the applicant, “the Osaka Prefecture is currently the 3rd most populous area in Japan with a community of over 8.8 million people.”</p>	
<p>In addition, the community as defined in the application has awareness and recognition among its members. This is because of the clear association with the Osaka geographical area. According to the applicant, “the Osaka Community is largely defined by its prefectural borders.”</p>	
<p>The Community Priority Evaluation panel determined that the community as defined in the application satisfies both the conditions to fulfill the requirements for size.</p>	
<p><u>Longevity</u></p>	
<p>Two conditions must be met to fulfill the requirements for longevity: the community must demonstrate longevity and must display an awareness and recognition of a community among its members.</p>	
<p>The community as defined in the application demonstrates longevity. The pursuits of the .Osaka community are of a lasting, non-transient nature. According to the application materials:</p>	
<p style="padding-left: 40px;">The Osaka community has been in existence for thousands of years, and is known as Japan’s oldest capital. Osaka has been an economic and cultural center of the Japan for over a long span of time, though formally, the geographic area that defines the community, Osaka Prefecture, was formally established in 1868. Osaka’s culture is grounded in its long history of being a center for traditional performing arts known as the “kamigata culture”. The community enjoys festivals and other customs that have been passed on from generation to generation.</p>	
<p>In addition, the community as defined in the application has awareness and recognition among its members This is because of the clear association with the Osaka geographical area. According to the applicant, “the Osaka Community is largely defined by its prefectural borders.”</p>	
<p>The Community Priority Evaluation panel determined that the community as defined in the application satisfies both the conditions to fulfill the requirements for longevity.</p>	

<b>Criterion #2: Nexus between Proposed String and Community</b>	<b>4/4 Point(s)</b>
2-A Nexus	<b>3/3 Point(s)</b>
<p>The Community Priority Evaluation panel determined that the application met the criterion for Nexus as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook. The string matches the name of the community. The application received a maximum score of 3 points under criterion 2-A: Nexus.</p>	
<p>To receive the maximum score for Nexus, the applied-for string must match the name of the community or be a well-known short-form or abbreviation of the community. To receive a partial score for Nexus, the applied-for string must identify the community. “Identify” means that the applied-for string closely describes</p>	

<p>the community or the community members without over-reaching substantially beyond the community.</p> <p>The applied-for string (.Osaka) matches the name of the community. The string matches the name of the geographical and political area around which the community is based. According to the application documentation:</p> <p style="padding-left: 40px;">The string, “.osaka”, directly represents the Osaka community, and has been fully approved by the Osaka Prefectural Government as the proper representation of the Osaka community on the Internet.</p> <p>The Community Priority Evaluation panel determined that the applied-for string matches the name of the community as defined in the application. It therefore meets the requirements for nexus.</p>
<p><b>2-B Uniqueness</b> <span style="float: right;"><b>1/1 Point(s)</b></span></p> <p>The Community Priority Evaluation panel determined that the application met the criterion for Uniqueness as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the string has no other significant meaning beyond identifying the community described in the application. The application received a maximum score of 1 point under criterion 2-B: Uniqueness.</p> <p>To fulfill the requirements for Uniqueness, the string must have no other significant meaning beyond identifying the community described in the application. The string as defined in the application demonstrates uniqueness, as the string does not have any other meaning beyond identifying the city and prefecture on which the community is based. The Community Priority Evaluation panel determined that the applied-for string satisfies the condition to fulfill the requirements for uniqueness.</p>

<p><b>Criterion #3: Registration Policies</b> <span style="float: right;"><b>3/4 Point(s)</b></span></p>
<p><b>3-A Eligibility</b> <span style="float: right;"><b>1/1 Point(s)</b></span></p> <p>The Community Priority Evaluation panel determined that the application met the criterion for Eligibility as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as eligibility is restricted to community members. The application received a maximum score of 1 point under criterion 3-A: Eligibility.</p> <p>To fulfill the requirements for Eligibility, the registration policies must restrict the eligibility of prospective registrants to community members. The application demonstrates adherence to this requirement by specifying that registrants must satisfy at least one of the following requirements:</p> <p style="padding-left: 40px;">Osaka municipalities and local governments; public and private institutions in Osaka; organizations, companies and other businesses in Osaka; residents of Osaka; other community members who have a bona fide purpose for registering and using the domain. Registrants who purchase “.osaka” names will be required to certify that meet one of the categories above. (Comprehensive details are provided in Section 20e of the applicant documentation).</p> <p>The Community Priority Evaluation panel determined that the application satisfied the condition to fulfill the requirements for Eligibility.</p>
<p><b>3-B Name Selection</b> <span style="float: right;"><b>1/1 Point(s)</b></span></p> <p>The Community Priority Evaluation panel determined that the application met the criterion for Name Selection as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as name selection rules are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-B: Name Selection.</p> <p>To fulfill the requirements for Name Selection, the registration policies for name selection for registrants</p>

<p>must be consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by outlining the types of names that may be registered within the .Osaka top-level domain, while the name selection rules are consistent with the purpose of the gTLD. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfied the condition to fulfill the requirements for Name Selection.</p>	
3-C Content and Use	<b>1/1 Point(s)</b>
<p>The Community Priority Evaluation panel determined that the application met the criterion for Content and Use as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the rules for content and use are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-C: Content and Use.</p> <p>To fulfill the requirements for Content and Use, the registration policies must include rules for content and use for registrants that are consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by outlining prohibitions on certain types of content. Additionally, the applicant “will implement an Acceptable Use Policy (AUP) as well as include an Abuse Point of Contact on its website as a means to provide a method for users to submit complaints of abuse...” (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfied the condition to fulfill the requirements for Content and Use.</p>	
3-D Enforcement	<b>0/1 Point(s)</b>
<p>The Community Priority Evaluation panel determined that the application did not meet the criterion for Enforcement as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the application provided specific enforcement measures but did not include appropriate appeal mechanisms. The application received a score of 0 out of 1 point under criterion 3-D: Enforcement.</p> <p>Two conditions must be met to fulfill the requirements for Enforcement: the registration policies must include specific enforcement measures constituting a coherent set, and there must be appropriate appeals mechanisms. The applicant outlined policies that include specific enforcement measures constituting a coherent set as the registry will monitor domain registrations for content and has the right to cancel or suspend domain names that are in breach of its policies. (Comprehensive details are provided in Section 20e of the applicant documentation). However, the application did not outline an appeals process. The Community Priority Evaluation panel determined that the application satisfies only one of the two conditions to fulfill the requirements for Enforcement.</p>	

<b>Criterion #4: Community Endorsement</b>	<b>4/4 Point(s)</b>
4-A Support	<b>2/2 Point(s)</b>
<p>The Community Priority Evaluation panel determined that the application fully met the criterion for Support specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook based on documented support from the recognized community institution to represent the community. The application received a maximum score of 2 points under criterion 4-A: Support.</p> <p>To receive the maximum score for Support, the applicant is, or has documented support from, the recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community. “Recognized” means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community. To receive a partial score for Support, the applicant must have documented support from at least one group with relevance. “Relevance” refers to the communities explicitly and implicitly addressed.</p> <p>The Community Priority Evaluation panel determined that the applicant has documented support from the</p>	

recognized community institution that represents the community. The Osaka Prefectural government has provided its written endorsement to the applicant for the provision of registry services under the .Osaka gTLD. The government also provided support for the applicant in the Initial Evaluation (Geographic Names Evaluation) phase. The Community Priority Evaluation Panel determined that the applicant fully satisfies the requirements for Support.

4-B Opposition

*2/2 Point(s)*

The Community Priority Evaluation panel determined that the application 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. The application received the maximum score of 2 points under criterion 4-B: Opposition.

To receive the maximum score for Opposition, the application must not have received any opposition of relevance. To receive a partial score for Opposition, the application must have received opposition from, at most, one group of non-negligible size.

The application did not receive any letters of opposition. The Community Priority Evaluation Panel determined that the applicant satisfied the requirements for Opposition.

**Disclaimer:** Please note that these Community Priority Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. These results do not constitute a waiver or amendment of any provision of the Applicant Guidebook or the Registry Agreement. For updated application status and complete details on the program, please refer to the Applicant Guidebook and the ICANN New gTLDs microsite at <[newgtlds.icann.org](http://newgtlds.icann.org)>.

## **Annex C-14**



**New gTLD Program**  
**Community Priority Evaluation Report**  
Report Date: 11 June 2014

Application ID:	1-1032-95136
Applied-for String:	HOTEL
Applicant Name:	HOTEL Top-Level-Domain s.a.r.l

**Overall Community Priority Evaluation Summary**

<b>Community Priority Evaluation Result</b>	<b>Prevailed</b>
<p>Thank you for your participation in the New gTLD Program. After careful consideration and extensive review of the information provided in your application, including documents of support, the Community Priority Evaluation panel determined that the application met the requirements specified in the Applicant Guidebook. Your application prevailed in Community Priority Evaluation.</p>	

**Panel Summary**

<b>Overall Scoring</b>	<b>15 Point(s)</b>	
<u>Criteria</u>	<u>Earned</u>	<u>Achievable</u>
#1: Community Establishment	4	4
#2: Nexus between Proposed String and Community	3	4
#3: Registration Policies	4	4
#4: Community Endorsement	4	4
Total	15	16
<b>Minimum Required Total Score to Pass 14</b>		

<b>Criterion #1: Community Establishment</b>	<b>4/4 Point(s)</b>
<b>1-A Delineation</b>	<b>2/2 Point(s)</b>
<p>The Community Priority Evaluation panel determined that the community as identified in the application met the criterion for Delineation as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the community is clearly delineated, organized and pre-existing. The application received the maximum score of 2 points under criterion 1-A: Delineation.</p> <p><u>Delineation</u> Two conditions must be met to fulfill the requirements for delineation: there must be a clear, straightforward membership definition, and there must be awareness and recognition of a community (as defined by the applicant) among its members.</p> <p>The community defined in the application (“HOTEL”) is:</p>	



The .hotel namespace will exclusively serve the global Hotel Community. The string “Hotel” is an internationally agreed word that has a clear definition of its meaning: According to DIN EN ISO 18513:2003, “A hotel is an establishment with services and additional facilities where accommodation and in most cases meals are available.” Therefore only entities which fulfil this definition are members of the Hotel Community and eligible to register a domain name under .hotel. .hotel domains will be available for registration to all companies which are member of the Hotel Community on a local, national and international level. The registration of .hotel domain names shall be dedicated to all entities and organizations representing such entities which fulfil the ISO definition quoted above:

1. Individual Hotels
2. Hotel Chains
3. Hotel Marketing organizations representing members from 1. and/or 2.
4. International, national and local Associations representing Hotels and Hotel Associations representing members from 1. and/or 2.
5. Other Organizations representing Hotels, Hotel Owners and other solely Hotel related organizations representing on members from 1. and/or 2.

These categories are a logical alliance of members, with the associations and the marketing organizations maintaining membership lists, directories and registers that can be used, among other public lists, directories and registers, to verify eligibility against the .hotel Eligibility requirements.

This community definition shows a clear and straightforward membership. The community is clearly defined because membership requires entities/associations to fulfill the ISO criterion for what constitutes a hotel. Furthermore, association with the hotel sector can be verified through membership lists, directories and registers.

In addition, the community as defined in the application has awareness and recognition among its members. This is because the community is defined in terms of its association with the hotel industry and the provision of specific hotel services.

The Community Priority Evaluation panel determined that the community as defined in the application satisfies both the conditions to fulfill the requirements for Delineation.

#### Organization

Two conditions need to be met to fulfill the requirements for organization: there must be at least one entity mainly dedicated to the community, and there must be documented evidence of community activities.

The community as defined in the application has at least one entity mainly dedicated to the community. There are, in fact, several entities that are mainly dedicated to the community, such as the International Hotel and Restaurant Association (IH&RA), Hospitality Europe (HOTREC), the American Hotel & Lodging Association (AH&LA) and China Hotel Association (CHA), among others. According to the application,

Among those associations the International Hotel and Restaurant Association (IH&RA) is the oldest one, which was founded in 1869/1946, is the only global business organization representing the hotel industry worldwide and it is the only global business organization representing the hospitality industry (hotels and restaurants) worldwide. Officially recognized by United Nations as the voice of the private sector globally, IH&RA monitors and lobbies all international agencies on behalf of this industry. Its members represent more than 300,000 hotels and thereby the majority of hotels worldwide.

The community as defined in the application has documented evidence of community activities. This is confirmed by detailed information on IH&RA’s website, as well as information on other hotel association websites.

The Community Priority Evaluation panel determined that the community as defined in the application

satisfies both the conditions to fulfill the requirements for Organization.

Pre-existence

To fulfill the requirements for pre-existence, the community must have been active prior to September 2007 (when the new gTLD policy recommendations were completed).

The community as defined in the application was active prior to September 2007. Hotels have existed in their current form since the 19<sup>th</sup> century, and the oldest hotel association is IH&RA, which, according to the entity's website, was first established in 1869 as the All Hotelmen Alliance. The organization has been operating under its present name since 1997.

The Community Priority Evaluation panel determined that the community as defined in the application fulfills the requirements for Pre-existence.

1-B Extension

*2/2 Point(s)*

The Community Priority Evaluation panel determined that the community as identified in the application met the criterion for Extension specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application demonstrates considerable size and longevity for the community. The application received a maximum score of 2 points under criterion 1-B: Extension.

Size

Two conditions must be met to fulfill the requirements for size: the community must be of considerable size and must display an awareness and recognition of a community among its members.

The community as defined in the application is of a considerable size. The community for .HOTEL as defined in the application is large in terms of the number of members. According to the applicant, "the global Hotel Community consists of more than 500,000 hotels and their associations".

In addition, the community as defined in the application has awareness and recognition among its members because the community is defined in terms of association with the provision of hotel services.

The Community Priority Evaluation panel determined that the community as defined in the application satisfies both the conditions to fulfill the requirements for Size.

Longevity

Two conditions must be met to fulfill the requirements for longevity: the community must demonstrate longevity and must display an awareness and recognition of a community among its members.

The community as defined in the application demonstrates longevity. The pursuits of the .HOTEL community are of a lasting, non-transient nature.

In addition, the community as defined in the application has awareness and recognition among its members because the community is defined in terms of association with the provision of hotel services.

The Community Priority Evaluation panel determined that the community as defined in the application satisfies both the conditions to fulfill the requirements for Longevity.

**Criterion #2: Nexus between Proposed String and Community**

*3/4 Point(s)*

2-A Nexus

*2/3 Point(s)*

The Community Priority Evaluation panel determined that the application met the criterion for Nexus as

specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook. The string identifies the name of the community, without over-reaching substantially beyond the community. The application received a score of 2 out of 3 points under criterion 2-A: Nexus.

To receive the maximum score for Nexus, the applied-for string must match the name of the community or be a well-known short-form or abbreviation of the community name. To receive a partial score for Nexus, the applied-for string must identify the community. “Identify” means that the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community.

The applied-for string (.HOTEL) identifies the name of the community. According to the applicant,

The proposed top-level domain name, “HOTEL”, is a widely accepted and recognized string that globally identifies the Hotel Community and especially its members, the hotels.

The string nexus closely describes the community, without overreaching substantially beyond the community. The string identifies the name of the core community members (i.e. hotels and associations representing hotels). However, the community also includes some entities that are related to hotels, such as hotel marketing associations that represent hotels and hotel chains and which may not be automatically associated with the gTLD. However, these entities are considered to comprise only a small part of the community. Therefore, the string identifies the community, but does not over-reach substantially beyond the community, as the general public will generally associate the string with the community as defined by the applicant.

The Community Priority Evaluation panel determined that the applied-for string identifies the name of the community as defined in the application. It therefore partially meets the requirements for Nexus.

2-B Uniqueness

*1 / 1 Point(s)*

The Community Priority Evaluation panel determined that the application met the criterion for Uniqueness as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the string has no other significant meaning beyond identifying the community described in the application. The application received a maximum score of 1 point under criterion 2-B: Uniqueness.

To fulfill the requirements for Uniqueness, the string .HOTEL must have no other significant meaning beyond identifying the community described in the application. The Community Priority Evaluation panel determined that the applied-for string satisfies the condition to fulfill the requirements for Uniqueness.

**Criterion #3: Registration Policies**

**4/4 Point(s)**

3-A Eligibility

*1 / 1 Point(s)*

The Community Priority Evaluation panel determined that the application met the criterion for Eligibility, as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as eligibility is restricted to community members. The application received a maximum score of 1 point under criterion 3-A: Eligibility.

To fulfill the requirements for Eligibility, the registration policies must restrict the eligibility of prospective registrants to community members. The application demonstrates adherence to this requirement by restricting eligibility to the narrow category of hotels and their organizations as defined by ISO 18513, and verifying this association through membership lists, directories and registries. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Eligibility.

3-B Name Selection	<i>1/1 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application met the criterion for Name Selection as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as name selection rules are consistent with the articulated community-based purpose of the applied-for gTLD. The application received a maximum score of 1 point under criterion 3-B: Name Selection.</p> <p>To fulfill the requirements for Name Selection, the registration policies for name selection for registrants must be consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by specifying that eligible applicants will be entitled to register any domain name that is not reserved or registered at the time of their registration submission. Furthermore, the registry has set aside a list of domain names that will be reserved for the major hotel industry brands and sub-brands. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Name Selection.</p>	
3-C Content and Use	<i>1/1 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application met the criterion for Content and Use as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the rules for content and use are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-C: Content and Use.</p> <p>To fulfill the requirements for Content and Use, the registration policies must include rules for content and use for registrants that are consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by specifying that each domain name must display hotel community-related content relevant to the domain name, etc. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Content and Use.</p>	
3-D Enforcement	<i>1/1 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application met the criterion for Enforcement as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application provided specific enforcement measures as well as appropriate appeal mechanisms. The application received a maximum score of 1 point under criterion 3-D: Enforcement.</p> <p>Two conditions must be met to fulfill the requirements for Enforcement: the registration policies must include specific enforcement measures constituting a coherent set, and there must be appropriate appeals mechanisms. The applicant outlined policies that include specific enforcement measures constituting a coherent set. The applicant's registry will establish a process for questions and challenges that could arise from registrations and will conduct random checks on registered domains. There is also an appeals mechanism, whereby a registrant has the right to request a review of a decision to revoke its right to hold a domain name. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies both conditions to fulfill the requirements for Enforcement.</p>	

<b>Criterion #4: Community Endorsement</b>	<b>4/4 Point(s)</b>
4-A Support	<i>2/2 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application fully met the criterion for Support</p>	

specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the applicant had documented support from the recognized community institution(s)/member organization(s). The application received a maximum score of 2 points under criterion 4-A: Support.

To receive the maximum score for Support, the applicant is, or has documented support from, the recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community. “Recognized” means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community. To receive a partial score for Support, the applicant must have documented support from at least one group with relevance. “Relevance” refers to the communities explicitly and implicitly addressed.

The Community Priority Evaluation panel determined that the applicant was not the recognized community institution(s)/member organization(s). However, the applicant possesses documented support from the recognized community institution(s)/member organization(s), and this documentation contained a description of the process and rationale used in arriving at the expression of support. These groups constitute the recognized institutions to represent the community, and represent a majority of the overall community as defined by the applicant. The Community Priority Evaluation Panel determined that the applicant fully satisfies the requirements for Support.

4-B Opposition

*2/2 Point(s)*

The Community Priority Evaluation panel determined that the application 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. The application received the maximum score of 2 points under criterion 4-B: Opposition.

To receive the maximum score for Opposition, the application must not have received any opposition of relevance. To receive a partial score for Opposition, the application must have received relevant opposition from, at most, one group of non-negligible size. According to the Applicant Guidebook, “To be taken into account as relevant opposition, such objections or comments must be of a reasoned nature. Sources of opposition that are clearly spurious, unsubstantiated, made for a purpose incompatible with competition objectives, or filed for the purpose of obstruction will not be considered relevant”. “Relevance” and “relevant” refers to the communities explicitly and implicitly addressed.

The application received letters of opposition, which were determined not to be relevant, as they were either from groups of negligible size, or were from entities/communities that do not have an association with the applied for string. The Community Priority Evaluation Panel determined that these letters therefore were not relevant because they are not from the recognized community institutions/member organizations, nor were they from communities/entities that have an association with the hotel community. In addition, some letters were filed for the purpose of obstruction, and were therefore not considered relevant. The Community Priority Evaluation Panel determined that the applicant satisfies the requirements for Opposition.

**Disclaimer:** Please note that these Community Priority Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. These results do not constitute a waiver or amendment of any provision of the Applicant Guidebook or the Registry Agreement. For updated application status and complete details on the program, please refer to the Applicant Guidebook and the ICANN New gTLDs microsite at <[newgtlds.icann.org](http://newgtlds.icann.org)>.

## **Annex C-15**

## **Annex C-14 : Specific Remarks Concerning the .GAY Community Priority Evaluation Process, the Initial Request for Information and the Initial Reconsideration Request**

### **1. In relation to ICANN's Response to Requesters' Request for Information**

As stated in the Reconsideration Request, ICANN has basically denied each and every request for information made by Requesters in their Request for Information.

ICANN states in its Response to the Request for Information that the Economic Intelligence Unit (EIU) is an independent panel firm that has been engaged by ICANN in order to perform CPEs.

Requester does not challenge the independency of the Economist Intelligence Unit (EIU), or at least does not have knowledge about any facts or circumstances to the contrary.

However, it is not because of the fact that the EIU is independent from ICANN or Requesters that it would not be required to be subject to the same obligations of transparency and accountability as ICANN itself. Indeed, if a decision or determination by such third party materially affects and/or has a material effect in a process that is managed by ICANN – as it has been described in the Applicant Guidebook, the CPE Guidelines, etc. – then such party should be subject to the same transparency and accountability mechanisms as ICANN.

Requester has entered into an agreement with ICANN when submitting its application for the .GAY gTLD to ICANN. It goes without saying that ICANN and any ICANN Affiliated Party is and must be able to be held accountable under ICANN's transparency and accountability mechanisms

Moreover, if it would be so that ICANN has entered into arrangements with third parties that would deprive ICANN of its obligations and responsibilities laid down in its By-Laws, and more in particular its obligations of Transparency, Accountability and Review, then entering such an arrangement by itself must be considered an action that would be contrary to ICANN's By-Laws.

### ***Conclusion***

Considering the fact that ICANN has denied each and every request made by Requesters in the context of the Request for Information, the Response provided contradicts established ICANN policies, as provided for in Article IV, Section 2, (2), (a) of ICANN's By-Laws.

## 2. 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 C-16**.

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.

Dotgay LLC created the community definition in conjunction with a community policy board of 12 community leaders, accepting the guidance of the gay community itself. Many applicants instead circumvented that work and simply stated (translated into “.gay”):

*“The proposed top-level domain name, “GAY”, is a widely accepted and recognized string that globally identifies the Gay Community and especially its members, the Gays.”*



Reference is made to the 200+ organizations supporting LGBTQIs, who have clearly endorsed the fact that they consider themselves as a member of the “gay” community as defined by the Requester in its Application.

### 3. In relation to Criterion #2-A Nexus

#### 3.1. 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).”*

#### 3.2. 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 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.

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.

#### 4. 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 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. In this respect, Requester points out to the fact that this concept has not been disputed by any of its 200+ supporters, some of which are widely recognized international organizations that represent and serve the interests LGBTQIs all over the world.

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.

## 5. 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 C-17**.

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”.

## 6. 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”*.<sup>1</sup>

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

---

<sup>1</sup> CPE Report, Page 8, §4-B Opposition, first paragraph.

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.

## **Annex C-16**

1 of 6 DOCUMENTS

Sydney Morning Herald (Australia)

February 12, 2000 Saturday  
Late Edition

## More than just Mardi Gras

**BYLINE:** Dominic O'Grady**SECTION:** TRAVEL; Pg. 7**LENGTH:** 542 words

I HAVE 210 lesbians coming in March, and they definitely did not want to come during the [Sydney **Gay** & Lesbian] Mardi Gras," says Lynne Hocking, the director of the **gay** and lesbian travel agency Destination DownUnder, and an adviser to Mardi Gras' own travel business, Mardi Gras Travel.

While it's clear the Sydney **Gay** & Lesbian Mardi Gras draws substantial number of queer tourists - estimated at 5,000 and expected to grow a further 10 per cent this year - Hocking's booking for March next year illustrates the fact that **gay** and lesbian tourism stretches beyond the obvious.

"We're expecting 2000 to be big," she says. "2001 will probably show no growth, and come 2002 people will have to make a serious decision about whether they come here for Mardi Gras or for the **Gay** Games."

Internationally and locally, **gay** and lesbian travellers can choose from a huge range of options: skiing in Canada, game watching in Africa, partying in Amsterdam, wine tasting in the Hunter, relaxing on a beach in Fiji, or cruising South Australia's Great Ocean Road. These are just a few of the choices regularly advertised in the **gay** and lesbian media.

And a quick glance at the 1999 **Gay** and Lesbian Accommodation Guide to Australia reveals 46 pages of listings for queer tourists, covering capital city hotels, coastal resorts and a network of B&Bs that dot the countryside.

Search the Internet, and the choice is mind-boggling.

Fancy a week in Key West's "premier **gay** complex"? Try New Orleans House, which bills itself as the "largest **gay** complex in South Florida". What about London accommodation? Check out the Clone Zone apartments in Brompton St. Maybe you're looking for a "clothing optional" resort in Acapulco? Try Las Palmas ([www.acapulco-laspalmas.com](http://www.acapulco-laspalmas.com)).

"It's a growing market," says Rosemary Hopkins, the Australian regional director of the International **Gay** and Lesbian Travel Association (**ILGTA**).

"Eighteen months ago we set up the first international branch of **ILGTA** in Sydney, and we've grown from 25 members to 120 members in that time."

Both Hopkins and Hocking note the high level of Internet use among **gay** and lesbian travellers. Mardi Gras Travel ([www.mardi-gras.com.au](http://www.mardi-gras.com.au)), for example, does not produce printed brochures. Instead, it relies on Internet traffic and the fact that 69 per cent of its 13,000 members say they are regular Internet users.

The possibilities have not escaped other travel providers, such as travel.com.au which includes **gay**- and lesbian-specific information on its site, as well as a weekly **gay** and lesbian travel newsletter for members.

So why does **gay** and lesbian travel exist?

"I think we fall into three categories," says **ILGTA's** Hopkins. "There are those of us that would hate to go to a **gay**-only or lesbian-only resort. They could probably think of nothing worse.

"There's another group that prefer to be with their own, and love the idea of a **gay**- or lesbian-only holiday.

"The majority of us, I think, fall somewhere in the middle. We choose where we want to go because of the location, what it offers, and because it's **gay**-friendly.

"I don't know how else to put it. It's like if you were a tennis fanatic and you were considering going somewhere for a holiday, but there's no tennis courts nearby. You're not going to go there."

**LOAD-DATE:** July 24, 2007

**LANGUAGE:** ENGLISH

**GRAPHIC:** Illus: Photograph courtesy of AUSTRALIAN TOURIST COMMISSION

**PUBLICATION-TYPE:** Newspaper

Copyright 2000 John Fairfax Publications Pty Ltd  
All Rights Reserved

2 of 6 DOCUMENTS

The Globe and Mail (Canada)

June 21, 2014 Saturday  
Ontario Edition

## **HUMAN RIGHTS; The voices of World Pride**

**BYLINE:** Sean Tepper

**SECTION:** GLOBE T.O.; Pg. M4

**LENGTH:** 1659 words

**HIGHLIGHT:** In China, most LGBT people 'choose to stay in the closet.' In Uganda, an anti-**gay** law 'makes your entire being illegal.' Close to two million people from around the world are expected to take part in North America's first WorldPride, a 10-day celebration with dozens of events across the city. At the festival's core is the fight for equality. Activists coming here for the

WorldPride Human Rights Conference, taking place at the University of Toronto this week, talk to Sean Tepper about what it's like to be a member of the LGBT community in their countries.

King Oey

Indonesia

*Mr. Oey is one of the founders of Arus Pelangi (Rainbow Flow), the first organization to advocate for LGBT rights in Indonesia.*

Being **gay** often means that you can be quite alone in life until you can meet up with other **gays**. That makes it so meaningful to have this type of conference [the WorldPride Human Rights Conference]. It's not just to socialize, but to be part of a global movement. We're all working at the same time together for a better life in each country.

It's particularly difficult in Indonesia because it is a Muslim country, and there is a very strong bias against homosexuality. A lot of people have to carry this burden of guilt of being abnormal. And for us, one of the main [goals] is to bring understanding to LGBT people that they are not messed up, that they are not wrong, that they're just healthy, normal people who just happen to have a different sexual orientation. We are also working toward better, more LGBT friendly policies from the government.

Indonesia doesn't have laws that criminalize us directly ... but we do have this societal bias, this stigma, against LGBT people, which is mainly a thing of the religious people. It's particularly difficult because you have to face condemnation from your parents and your family in the first place, the people that you would expect to really understand you and give you support. Unlike other minorities, we don't get that support from our family, which is the number one adversity that you have to face. That makes it so difficult.

[In Canada], we can have at least a taste of what real freedom is in a country that really respects LGBT people, so we can also learn from all the different types of expressions that you can have without fearing the repercussions. But it's also partly academic. [In Toronto], I hope to get new learning on how to do things better.

Dandan Zhang

China

*The executive director of Chinese Lala Alliance, a lesbian leadership group in China. Ms. Zhang is also on the International Lesbian and **Gay** Association board, a worldwide network of LGBT groups.*

My organization got registered in Hong Kong and I am now working in Hong Kong, but I come from mainland China. In China, things are different between **LGBTI** [Lesbian, **Gay**, Bisexual, Transsexual and Inclusive] people in big cities and those in small cities. In big cities, it's easier for **LGBTI** people to be accepted by friends and colleagues, so more and more **LGBTI** young people leave their hometown and live in big cities to [live] their lifestyle.

But it's still hard for most **LGBTI** people to come out to their families no matter where they are, since we have a close connection with our parents and have to deal with huge marriage pressure. That's why more and more fake marriages between lesbians and **gays** appear.

In Hong Kong, the whole society has been deeply influenced by conservative Christian [values] and all public **LGBTI** issues were attacked by religious groups. Although several famous **LGBTI** people came out in the past two years and spoke for **LGBTI** communities, the anti-**LGBTI** groups grew very quickly. This May, the religious groups held a parade, hoping to fight for the traditional value of marriage.

Most **LGBTI** people choose to stay in the closet since they are not sure if they can be accepted.

Our government never supports **LGBTI** issues in public or in any regulations or laws. **LGBTI** communities are not mentioned in most existing laws or regulations. There are only two regulations that mention **LGBTI** issues: One is that **LGBTI** issues are forbidden [to



appear] in mainstream media, and the other says that **gays** are not allowed to donate blood.

Canada always gives people, especially those in Chinese-speaking society, an impression about its open attitudes towards **LGBTI** issues. So I think Canada is suitable to host a WorldPride.

Azusa Yamashita

Japan

*Co-secretary of the International Lesbian & **Gay** Association (ILGA). Ms. Yamashita is also co-director of **Gay** Japan News, Japan's online **LGBTI** news source and advocacy group.*

[In Japan] different **LGBTI** people have different experiences. Some **LGBTI** people are happy about who they are and have what they want - a partner, family, house, job, money, education (except legal protection and recognition.)

Other **LGBTI** people have difficulty accepting themselves and don't have what they want.

Being **LGBTI** in Japan is to fight against stigmatization, invisibility, discrimination, violence, and isolation. In Japan, there is a law that allows some transgender people to change their genders on a legal identity card. Equal Employment Opportunity Law bans sexual harassment at work, including harassment against **LGBTI** workers. Other than these laws, Japanese **LGBTI** people aren't legally protected from violence and discrimination or guaranteed basic rights. We have no anti-discrimination law inclusive of sexual orientation and gender identity. Gender-change law requires sterilization. Anti-domestic violence law is exclusive of same-sex partner violence.

In Japanese culture, "harmony" is respected. "Harmony" means not to stand out or not to "bother others." If you are different from the majority, it's likely that people would think you're "not normal" or "bothering other people" and can be isolated in a group (group can be your family, classmates, colleagues or neighbours). In schools, we're taught to respect this harmony instead of being taught about diversities of sexualities. In the media, while queer figures are popular in many TV programs, you see them mocked or laughed at. So, generally speaking, it is still hard in Japan for **LGBTI** people to get positive messages that it's okay or safe to be **LGBTI**.

In 2004-05, I lived in Edmonton as an exchange student for a year. I could have picked China, Germany, or Britain but I chose Canada because I knew Canada was moving toward legalization of same-sex marriage at that time. I wanted to feel the atmosphere around the discussion. I was fascinated by how tolerant, open and equal Canada has become towards people of differences.

Johanna Sigurdardottir

Iceland

*Elected in 2009, the former prime minister of Iceland was the world's first openly **gay** female head of government.*

In the late 1970s, Icelandic society was radically different from the way it is today. Only a handful of Icelanders had come out of the closet and many of them had subsequently moved abroad, as it was very difficult to be "different" in our small society. Thus, most people did not know anyone who was openly homosexual and, therefore, honestly thought that there were hardly any queer people in our country. There were no laws to protect the human rights of LGBT people - indeed, nobody had even heard the term transgender in those days.

Through relentless work and great self-sacrifice [LGBT leaders] along with some progressively thinking heterosexuals, managed to inform people about LGBT issues and change the attitude of a whole society. And gradually more and more homosexual, bisexual and transgender Icelanders started to come out.

Today it would be hard to find an Icelander who doesn't have an LGBT person in their family, in their circle of friends or as a colleague at work. And as prejudice thrives on the unknown, it tends to evaporate when you get to know someone from a group you had preconceptions and perhaps some misgivings about.

That is how Icelandic society had evolved when I became prime minister in 2009, and the fact that I have a same-sex partner was absolutely no issue here.

I think it is the duty of progressive countries such as Canada and Iceland, along with other Western societies, to try to inform people around the globe about LGBT issues. It is difficult to stand by and do nothing while queer people in many countries are punished or even executed, simply for having been born with feelings that ignorant, brutal leaders deem "wrong." Information is the key to opening people's eyes and changing attitudes, as we have seen so clearly in Iceland.

Richard Lusimbo

Uganda

*Ugandan activist and the research manager for Sexual Minorities in Uganda, an LGBT rights organization based in Uganda. In February, Uganda's president signed a controversial anti-gay bill that imposes harsh penalties for homosexuality, including life in prison.*

Having a law that criminalizes the work you are doing makes it difficult. Living in a very autocratic society that is filled with a lot of biased information, and a media that is not objective, makes everything very difficult. Once your life is at stake, when you get to work you don't know whether your offices will be open the following day, or if you're going to be raided the next minute or not, because of all these threats from the government. [And] then losing your privacy to the media [you] wake up one morning and find your face on the front page [of a tabloid] with very misleading headlines like 'How I became homo' and headlines like 'Exposed **gays**.'

There's a lot of insecurity at times when you leave your community, because every time you appear in the media, you lose your entire life. You can't go shopping for groceries or even use public transport because you're trying to protect yourself and your face from being abused or beaten up.

[The law] makes your entire being illegal ... so life really becomes difficult. The government provides no security for us. The government is not supportive of the community because the government is full of people who are biased, who believe that LGBT people are recruiting young children. They're claiming ... that they're protecting African values and children who are being recruited into homosexuality.

We've seen [recently] that Canada, and Toronto in particular, is a society that has been very accommodating of their LGBT community. [In Toronto] we can celebrate who we are, but we can also have a proper dialogue without fear of being scared that the government or the police are going to raid everything.

*As told to Sean Tepper*

*These interviews have been condensed and edited*

**LOAD-DATE:** June 21, 2014

**LANGUAGE:** ENGLISH

**PUBLICATION-TYPE:** Newspaper

Copyright 2014 The Globe and Mail, a division of CTVglobemedia Publishing Inc.  
All Rights Reserved

3 of 6 DOCUMENTS

# Cyprus Mail

Internet Edition

Cyprus Mail

June 1, 2014 Sunday

## 'All different, all equal'

**LENGTH:** 1084 words

By Evie Andreou

THOUSANDS of people participated in the island's first **gay** pride parade in Nicosia yesterday in a show of public support marred only by a couple of minor incidents.

Smoke bomb goes off

As the **LGBTI** community, joined by other groups and families gathered at Nicosia's Eleftheria Square around 5pm someone threw a smoke bomb into the crowd.

Also an anti-**gay** gathering led by clerics held a counter protest near Ochi Square, and in a third incident a man jumped out of nowhere into the parade at Solomou Square attacking a group of men on their way to Eleftheria Square carrying the distinctive rainbow flag.

Man attacks participants

They managed to stop him however and he was subsequently arrested. None of the incidents managed to derail the festivities.

A little after 5pm the head of ACCEPT-**LGBTI**, which organised the parade, Costas Gavrielides, addressed the crowd, which was growing by the minute from hundreds to thousands. He thanked everyone who supported the movement and the Festival and for showing their support for **LGBTI** rights.

Gavrielides also thanked the Turkish Cypriot **LGBTI** association KUIR Cyprus and assured them of ACCEPT's support in order to fight the prejudice against ten per cent of the island's population.

He argued that human rights and EU Conventions could not be cherry-picked but should apply to all and that the **LGBTI** community in Cyprus is claiming just that - their human rights. "The right to diversity is not negotiable," he said.

He also said that Cyprus falls behind when it comes to **LGBTI** legal rights and he asked the political parties to take action and keep their pre-election promises on the relevant legislation regarding the status of **LGBTI** persons in Cyprus. He said Cypriot society was finally coming of age and that 53 per cent of Cypriots now accept the notion of homosexual couples.

Gavrielides said that he hoped political parties would be their side when the time came for them to hand over their signatures on the relevant laws, which prompted some laughter and applause from the crowd.

Present also were representatives from International Lesbian, **Gay**, Bisexual, Trans and Intersex Association **ILGA** Europe, the Turkish Cypriot organisation KUIR Cyprus, representatives of the political parties AKEL, DISY, DIKO, EDEK, the Green Party, United Democrats and Drasy-Eylem, among them former president Giorgos Vassiliou.

"**ILGA** Euope is extremely happy to be here today, it is a historic day for the LGBT movement in Cyprus, it is actually the success of

the community here to have this made happened and we hope that this is just the beginning of much more progress in terms of recognition and acceptance," said Executive director of **ILGA** Europe Evelyn Paradis.

Mingling in the crowd and holding the pride flag was Cyprus' first **gay** activist Alecos Modinos who battled for years to have homosexuality decriminalised. "I am thrilled and I am certain that things will change, they already have. I hope our politicians will dare as they should and that the state will make the right moves for equality and social tolerance," he said.

Also present were many people who travelled to Cyprus just for the parade.

"Things are changing slowly through education and struggle. We all are different and everyone is equal regardless of race, gender and sexual preference," said Nicolas Petrou, a US resident who travelled to Cyprus especially.

"I feel very proud and I came from Greece just for the parade. I am very happy that Cyprus' **LGBTI** community has managed to orchestrate this event," said another participant who gave his name as Nireas.

Cypriots also gathered to show their support and to prove their tolerance and acceptance.

"The presence of all these people here signifies that things have changed a lot. I hope our society becomes more tolerant and more liberal," said Christodoulos Kallinos.

"Everyone should support equality. This is the first Cyprus Pride Parade and we need to show our support. It is very positive that there are here many straight people supporting the cause" said Christina Serof.

Participants expressed satisfaction with the turnout.

"I feel very liberated. It's amazing to see the colours, the love, so many people to support this cause; and it's not just about LGBT only, it also has to do with diversity, about any other people who are different. It is a positive fact that there has been so much discussion of the Pride Parade in Cyprus and abroad because the more you talk about it, the more chance we have for a change" said Fatima Islam

"I feel very proud for all my compatriots who managed to be here today, I know it took a lot of courage for some to be here and I hope that next year more people will have the courage to show up. I hope it will be understood what kind of march this is and for what reason is happening," said Xenia Georgiou

Anna Vissi

The crowd went delirious when the popular Cypriot singer Anna Vissi addressed them.

Vissi said that she came to the event with a lot of love and to consciously support the island's first Pride Parade.

She said she has learned to respect people for their value, kindness, honesty, dignity and not how they chose to love and be loved and that everyone has in common their equal rights in love, in everyday life.

"Don't hate what you don't understand," she said quoting John Lennon.

After Vissi's speech, Gavrielides declared the commencement of the Parade which would lead to up the Parliament. After the march, a party followed at the Nicosia Municipal Garden from where Madonna, the Beach Boys and other popular music could be heard blaring over the city centre. There were DJ sets by Cotsios o Pikatillis of the Afro-Banana Republic crew followed by a spectacular, full-blown show by international artist A Man To Pet.

The parade was highlight of the first Cyprus Pride Festival's two-week celebrations organised by ACCEPT-LGBT Cyprus which aimed at the promotion of equal rights for everyone, and the increase in visibility of LGBT people as full members of society.

To celebrate, the US Embassy also flew the rainbow flag yesterday and several staff members from the embassy participated in the

parade.

The festival held under the auspices of Nicosia Mayor Constantinos Yiorkadjis.

During the festival there were film screenings, discussions, book readings, a theatre play, a human library and art events.

The parade took place 16 years after homosexuality was finally decriminalised in Cyprus.

Send to KindleCopyright © Cyprus Mail 2014 Provided by SyndiGate Media Inc. (Syndigate.info).

**LOAD-DATE:** June 12, 2014

**LANGUAGE:** ENGLISH

**PUBLICATION-TYPE:** Newspaper

**JOURNAL-CODE:** 70

Copyright 2014 Cyprus Mail - Cyprus Mail Co. Ltd.  
 Provided by Syndigate.info, an Albawaba.com company  
 All Rights Reserved

4 of 6 DOCUMENTS



May 15, 2014 Thursday 3:15 PM GMT

## **Rainbow nation: Where is the best place for **LGBTI** rights in Europe? UK in number one while the Republic of Ireland lags far behind - survey**

**BYLINE:** By Antonia Molloy

**SECTION:** WORLD

**LENGTH:** 445 words

The UK has been ranked number one in Europe for **LGBTI** rights - while Ireland lags far behind much of the rest of the continent.

**Click here to see the the full Rainbow Europe map**

The Rainbow Europe survey, carried out by the International Lesbian, **Gay**, Bisexual, Trans and Intersex Association (**ILGA**), named the UK the best out of 49 countries in terms of legislation and policies that have a "direct impact on the enjoyment of human rights by

**LGBTI** people".

With a tally of 82%, the UK scored highly across six categories: equality and non-discrimination; family; bias motivated speech/violence; legal gender recognition; freedom of assembly, association and expression; and asylum.

But the Republic of Ireland, lags far behind - scoring just 34% in the survey. It finished in 22nd place - just behind the Czech Republic

The UK result marks a five per cent increase since last year's survey, helped in particular by marriage equality legislation, which saw the first same-sex couples tie the knot in March.

Belgium was in second place, with a score of 78%, followed by Spain with 73%. The Netherlands, Norway and Portugal came in joint fourth place with 70%, while Sweden, France and Iceland completed the top five with equal scores of 65%.

Unsurprisingly, Russia was revealed to be the worst place for **LGBTI** people to live, scoring just six per cent. It was closely followed by Monaco, Armenia and Azerbaijan with joint scores of 10%.

Launched to mark the International Day against Homophobia and Transphobia on May 17, the survey showed that the European average for **LGBTI** rights stands at 36% - with the average for EU countries only slightly higher at 46%.

But vast improvements were seen in Malta, which had a score 22 points higher than in last year's survey, and Montenegro, which was up by 20 points.

However, the report's authors stressed that discrimination against **LGBTI** people continues to occur all across Europe. It also highlighted concerns regarding new anti-**gay** legislation, including Russia's law banning **gay** "propaganda".

Gabi Calleja, co-chair of **ILGA**-Europe's executive board, said: "**ILGA**-Europe's 2014 edition of its Rainbow Europe package shows that while the human rights of **LGBTI** people have undoubtedly gained great visibility across Europe, progress in terms of real legal, political and social changes vary considerably from one country to another, in large part depending on levels of societal acceptance, of political leadership and political will, as well as the strength of civil society in a given country."

For a full breakdown of the survey, [click here](#).

Source: Independent

**LOAD-DATE:** May 16, 2014

**LANGUAGE:** ENGLISH

**PUBLICATION-TYPE:** Newspaper; Web Publication

**JOURNAL-CODE:** WEBBELT

Copyright 2014 Independent News & Media (Northern Ireland)  
All Rights Reserved

5 of 6 DOCUMENTS



July 22, 2013

## More progressive abroad than at home

**LENGTH:** 699 words

**HIGHLIGHT:** The EU's guidelines on the rights of sexual minorities abroad should be followed by more action at home, writes Silvan Agius

On 24 June, the European Union's Council of Ministers adopted a ground-breaking foreign-policy document entitled "Guidelines to promote and protect the enjoyment of all human rights by lesbian, **gay**, bisexual, transgender and inter-sex (**LGBTI**) persons". These guidelines, drawn up by the European External Action Service (EEAS) are a comprehensive, legally binding document that instructs European Union institutions and member states on how to help progress the rights for **LGBTI** people when dealing with third countries and in international forums. These guidelines replace the non-binding 'toolkit' adopted in 2010, they include references to the human rights of inter-sex people, and enhance the scope. They call for actions to combat discriminatory laws and policies; combat **LGBTI**-phobic violence; and promote equality and non-discrimination. In short, the EU now has a state-of-the-art framework for the promotion of greater recognition of **LGBTI** human rights internationally. This is an extraordinarily fast-paced development and deserves to be praised.

Unfortunately, the same cannot be said about the EU's internal policy. The need to combat discrimination based on sexual orientation was included in the Treaty of Amsterdam in 1997, and in three different cases since 1996 the European Court of Justice has clarified that EU gender-equality legislation also applies to transgender people. Despite this, the EU continues to be slow in developing its legal package on **LGBTI** people's human rights, and does not yet have a coherent internal policy framework on **LGBTI** issues. More worryingly, the European Commission has dismissed as unnecessary a call backed by nearly half the member states for the development of an **LGBTI** equality roadmap. Current "actions" are said to be "making LGBT rights a reality", the Commission says.

The contradiction between external and internal policy has never been more conspicuous. The adoption of the external-policy guidelines has highlighted the need for an equally robust internal policy framework. Unless the EU acts accordingly, it will not be taken seriously by the third countries that the guidelines address.

On 17 May, the EU's Fundamental Rights Agency published the results of a survey that found that discrimination against LGBT people remains rampant in all member states. About 25% of the 93,000 respondents said they had been attacked or threatened with violence in the past five years. Many continue to live in fear of hate and discrimination; 67% of the respondents across all EU member states were scared of holding hands in public with their same-sex partner.

Viviane Reding, the European commissioner for fundamental rights, who commissioned the report in 2010, welcomed the report, but she promised no new targeted action by the Commission. A 'roadmap' is already in place, and she has acted consistently against homophobia and transphobia, she told the European Parliament's civil-liberties committee on 19 June. She claimed that her 'roadmap' has "three pillars": legislative proposals and initiatives; enforcement of EU law; and assistance to NGOs.

But if the Commission really had such a 'roadmap' in place, why has it been so shy about publishing it? The EU has clear strategies on gender, disability and Roma integration, and they are all public.

And how are the EU internal policy "actions" addressing abuses? The Fundamental Rights Agency survey is clear on problems of bullying in schools, of legal recognition for transgender people and access to healthcare. Moreover, some EU member states - notably



Lithuania, Hungary and Romania - have witnessed a surge of homophobia and transphobia in the discourse of politicians. In Greece, police have targeted and rounded up transgender people.

This is not to point the finger at the European Commission. Rather, we are acknowledging the fast progress made by the EEAS and the excellent guidelines that it has adopted and the need for the EU's internal policy to match that commitment. The guidelines have shown that where there is the will, there is a way.

Silvan Agius is the policy director of **ILGA**- Europe, a group representing lesbian, **gay**, bisexual, trans and intersex people in Europe.

**LOAD-DATE:** July 22, 2013

**LANGUAGE:** ENGLISH

**PUBLICATION-TYPE:** Newspaper

Copyright 2013 European Voice  
All Rights Reserved

6 of 6 DOCUMENTS

## **THE IRISH NEWS**

The Irish News

October 22, 2012 Monday

### **Gay marriage should be civil right says tanaiste**

**BYLINE:** David Young

**SECTION:** Pg. 14

**LENGTH:** 372 words

Ireland's journey toward creating a society fully tolerant of the **gay** community is still not complete, the tanaiste said yesterday.

Eamon Gilmore said attitudes were almost unrecognisable to those that prevailed a generation ago but that more progress was needed.

Addressing the European region's annual International Lesbian, **Gay**, Bisexual, Trans and Intersex Association (**Ilga**) conference in Dublin, Mr Gilmore reaffirmed his support for the acknowledgment of **gay** marriage by the state.

"That **Ilga** Europe should choose our capital city, Dublin, for this conference is a source of pride for us," he said.

"This city and this Republic have been on their own remarkable journey in relation to the rights of Lesbian, **Gay**, Bisexual, Trans and Intersex (**LGBTI**) persons.

"There is a generation of young Irish people for whom the Ireland of 20 or 30 years ago would be almost unrecognisable.



"Thousands of young **LGBTI** persons who in the past would have felt the need to live elsewhere have opted to stay in Ireland.

"And by doing so they have enriched the country and made it a more tolerant place.

"Many in public life have emerged as role models for young **LGBTI** people and in recent years civil partnership ceremonies have been occasions of great celebration around the country.

"That journey is still incomplete. As I have stated elsewhere, the right of same-sex couples to marry is not a **gay** rights issue. It is a civil rights issue and one that I support.

"The question of same-sex marriage is one that will be considered by our forthcoming constitutional convention. This is an innovation in Irish democracy where citizens and public representatives will come together to consider what changes might be made to our constitution so that it better reflects not just the society we are now but the society we aspire to."

The conference was attended by delegates from 42 European countries.

Dublin conference chairman Tiernan Brady said: "The tanaiste's presence at the conference is a remarkable symbol of the progress that has taken place in Ireland.

"The tanaiste's presence sent a powerful message of hope to those delegates coming from countries where **LGBTI** people are under daily threat and where opportunities for progress are very limited."

**LOAD-DATE:** October 22, 2012

**LANGUAGE:** ENGLISH

**PUBLICATION-TYPE:** Newspaper

Copyright 2012 The Irish News Limited  
All Rights Reserved



June 17, 2012 Sunday

Acceptance is key: Families of gay youth

**SECTION:** CHENNAI

**LENGTH:** 352 words

CHENNAI: Sameer Ghunakikar told his father he was gay about 12 years ago. But he felt his coming out journey had come to an end on Saturday when his father Vinayak stood in front of an audience and spoke about accepting Sameer's sexual orientation for the first time.

"When I called him from the US and told him, his reaction was positive. He said I should never have an inferiority complex because of who I am," said Sameer. "Today, so many years later, I find it touching that he is speaking to the public about need for families to support their children."

Vinayak and Sameer were speaking at a panel discussion on 'Family acceptance of LGBTQIA Youth' on Saturday. It was organized by Goethe-Institut /Max Mueller Bhavan, Chennai LGBT Groups, Orinam and Chennai Dost as part of the ongoing **LGBT (Lesbian Gay Bisexual Transgender) Pride month celebrations.**

"I am proud of my son and confident he will lead a happy life," said Vinayak. "I want to tell other parents that our children didn't choose their sexual orientation and we need to accept them."

Chennai has been celebrating Pride month since 2009 and it has brought about a change in attitudes, said Magdalene Jeyarathnam, director, Center for Counselling. "In the last three years, more parents of LGBT people have been approaching counsellors," she said. "Parents take time to understand the issues and community members need to understand that." It is important for parents to be connected with others like them so they don't feel isolated, she added.

Human rights lawyer Sudha Ramalingam spoke about the need to scrap Section 377 of the IPC, which criminalises **homosexuality.** "We need to accept them so that we don't lose valuable lives since many **LGBT youth commit suicide.**"

As the evening wore on, people from the audience also shared their experiences. "My mother is a trans- person and she spoke about it only after I came out to her as a lesbian," said Sumathi, 40, a Bangalore-based musician. "She has accepted me and is my best friend. Family acceptance is essential because you get unconditional support from them."

For Reprint Rights: timescontent.com

Times-News (Burlington, North Carolina)

Distributed by McClatchy-Tribune Business News

April 26, 2013 Friday

Elon trustees decide Chick-fil-A can stay

**BYLINE:** Steve Huffman, Times-News, Burlington, N.C.

**SECTION:** STATE AND REGIONAL NEWS

**LENGTH:** 803 words

April 26--ELON -- Members of the Elon University board of trustees have decided that Chick-fil-A can remain on campus.

The decision was announced Thursday in a lengthy email sent to students, faculty and staff. The restaurant chain has been at the center of controversy since last summer when Dan Cathy, the company's chief operating officer, made public statements supporting the traditional family and speaking against same-sex marriage.

Protests -- both in opposition to and in support of the chain -- followed at numerous locations. At Elon, members of the student government association voted to kick Chick-fil-A off campus. The president of the student association vetoed the vote. SGA members tried to overturn the veto, but didn't have the votes.

At Elon, opponents of the company criticized its president, Truett Cathy, for his opposition to gay marriage and contributions through Winshape, its charitable wing, to organizations that some describe as anti-gay.

According to Thursday's email, three factors went into making the decision to permit the restaurant to remain at Elon. They include:

-- Elon's food service contract is with Aramark (not Chick-fil-A) and staff members serving Chick-fil-A food at Elon are Aramark employees protected by a non-discrimination policy similar to Elon's.

"There has been no evidence of discrimination or complaints about service at Chick-fil-A on our campus," the board email reads.

-- Board members said they're reluctant to put the university in a position of monitoring or making value judgments about the lawful philanthropic giving of vendors or related organizations.

"Removing Chick-fil-A solely on the basis of the owners' stated views or their lawful philanthropic choices would stand in opposition to Elon's mission statement, which encourages freedom of thought and liberty of conscience," the email reads.

-- Circumstances regarding Chick-fil-A have changed since last summer.

"Chick-fil-A, its owners and the Winshape Foundation have modified previous positions and stepped away from taking political stands on gay rights issues," the email continues.

According to the board, considerable work went into making the decision outlined in Thursday's email. The university appointed a 15-member Vendor Policy Study Committee that included students, faculty, staff, trustees and alumni.

"Given our commitment to student engagement and our respect for human differences, we saw great value in taking time to study the issues, dig deeper into the facts, understand differing points of view and weigh the evidence and opinions expressed by hundreds of stakeholders," the email reads.

It stated the board's conviction to uphold Elon's non-discrimination policy and pointed out the university offers same-sex partner benefits to employees.

"We applaud efforts to confront discrimination whenever it is present on the Elon campus," it reads.

The university has recently hired a full-time staff position to support the interest and needs of the LGBTQIA (Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual, Ally) community, the email states. Dan Anderson, a spokesman for the university, said that while the position has been filled, the employee doesn't start work until summer. Attempts were unsuccessful Thursday to reach members of Elon's LGBTQIA community.

According to the email, Chick-fil-A's location on campus will be moved by early fall to the first floor of McEwen Dining Hall. That's as a result of previously announced plans to remodel Moseley Center, which will no longer include food service facilities.

"The board believes Elon has benefitted from carefully considering these complicated and sometimes deeply personal issues," the email concludes. "Our community has resisted calls to make a quick and unilateral decision, studying the issues thoroughly, listening carefully to all opinions and insisting that every member of the community be treated with respect."

Elon University President Leo Lambert and SGA Executive President Welsford Bishopric issued a statement in response to the board's email.

"Today's communication from the Board of Trustees calls upon our community to further commit ourselves to building a campus climate of respectful and meaningful civic dialogue," it begins.



The **GLBT Center** feels cozy, they say, on a campus that is not. In the past year, several students have heard slurs hurled from passing cars-or been followed; two female roommates in a relationship found garbage and used condoms outside their door.

Students in the university's **GLBT community** are fed up with what they describe as their marginalization. They are seeking, among other resources, respectable headquarters, where they can invite professors, hold events, and develop a sense of belonging on the campus. Since a weeklong protest this past fall, they are gaining ground.

The needs of gay, lesbian, bisexual, and transgender students, already well-served at some colleges, are attracting attention on campuses around the country. Several gay teenagers' suicides in the fall, including that of a student at Rutgers University, raised awareness of bullying, as have other incidents of bias: a **gay-pride flag** shredded last year at Elmhurst College, in Illinois, and one burned at Albion College, in Michigan. Concerns about safety and comfort, recently reflected in the first national survey of the GLBT campus population, are leading more administrators to consider how their students feel and what kinds of programs and services may help.

"There's a trend to see this as something that's needed and valued on a campus," says Allison F. Subasic, director of the **LGBT Student Resource Center** (whose abbreviation includes "allies"), on Pennsylvania State University's main campus.

Last year the University of Cincinnati and the University of North Carolina at Wilmington hired advisers and opened centers to serve lesbian, gay, bisexual, and transgender students. Membership in the national Consortium of Higher Education LGBT Resource Professionals included 75 colleges in 2000; it represents 175 today.

But a center is just one item on the LGBT-Friendly Campus Climate Index-"a national standard of LGBT- and ally-inclusive policies, programs, and practices"-maintained by the Campus Pride advocacy group. Among 54 questions used to generate a 0-to-5-star score, the tool asks: Does your college offer to match students with LGBT-friendly roommates? Does it have an LGBT alumni group?

Campus Pride introduced the index in 2007, with 30 public ratings; since then, 260 colleges have released their scores, and 100 more have requested the free evaluation. Some administrators use the index as a checklist, as others do with guidelines for LGBT programs and services published in 2003 and updated last year by the Council for the Advancement of Standards in Higher Education.

As the population of openly gay students grows, supporting them has become a critical responsibility, says Amit Taneja, associate director of the LGBT Resource Center at Syracuse University. At a college without adequate resources, he says, the tasks of educating the campus on gay issues and advocating for a supportive climate often fall to students. Daunted, they may get depressed, drop out, or, as alumni, feel detached.

"It's a disservice to the students," Mr. Taneja says, "but it's also a disservice to the institution."

## Protest and Progress

Andrew Winters came to Kingston in 1995, certain that the University of Rhode Island would be gay-friendly. Moving from Champaign, Ill., for a job in residence life, his image of New England was Provincetown, Mass., a gay haven. But within five years, The Princeton Review had twice named the University of Rhode Island among its top-10 most homophobic campuses, an unscientific but stigmatizing distinction. In 1999, on the outside wall of a new Rainbow Diversity House, somebody painted an expletive: "\_\_\_\_ URI, No Fags." An assault on a student prompted university officials to appoint Mr. Winters as GLBT adviser and to open a center in 2000 (the diversity house didn't last).

Mr. Winters counseled students and worked toward getting Rhode Island into The Advocate College Guide for LGBT Students, a directory of 100 welcoming institutions published in 2006. But the programs and services the university listed were "paper thin," he says. "We got off the 10 worst and into the 100 best," Mr. Winters says, without much of a change in climate.

Last April, during the inauguration of President David M. Dooley, students demonstrated against the participation of a pastor with antigay views. Over the summer, some students were again threatened from passing cars. In August, Mr. Dooley invited members of the GLBT community, from the campus and beyond, to his house for a meeting, but a month later, students remained skeptical that top officials were committed to their concerns.

Beginning at midnight on September 23, 10 students occupied part of a glass-walled study room on the first floor of the library, sleeping in shifts on the floor. Their demands included a new center as well as diversity training for faculty members and resident advisers, they explained to curious classmates.

"There was a girl who said she had never thought about the issue literally once before," says Marisa O'Gara, a junior majoring in English and French. "She sat with us for a couple of hours and kind of informed other people as to why we were there."

From supportive students the protesters received a heartfelt letter and a poem; faculty and staff members delivered pizzas. A petition collected more than 1,400 signatures, a donation jar about \$200. Still, some students muttered slurs outside the library, says Ms. O'Gara, things like, "Those fags want to be treated equally. What a joke." A graduate-student employee of the GLBT Center found a goodbye card under the door of his office, next to the center: "Shut up faggots. We know where you live."

Meanwhile, a student scrawled antigay messages and drawings on dorm-room doors; campus police officers tracked him down and arrested him for vandalism and disorderly conduct. A campuswide e-mail described the incident and named the student. "It sent a



clear message to our community," says Thomas R. Dougan, vice president for student affairs: "The university is not going to tolerate this."

For nine days the protesters negotiated with the university's provost, Donald H. DeHayes, who ultimately agreed to their demands, just before family weekend. He says he was impressed with the students' maturity and mettle. "They're bright, courageous leaders that have done a lot for the university."

Their possible future home, a large, ramshackle house that the university plans to renovate, is removed from the center of campus but in a visible location, diagonally across from the admissions office. "For too long we've been satisfied with shoehorning the operation," Mr. Dooley says.

After the protest, the president attended a meeting of Parents, Families and Friends of Lesbians and Gays and hired, six months earlier than planned, an interim associate vice president for community, equity, and diversity. In January the university conducted its first round of diversity training for faculty, as well as three hours of sensitivity training for its 135 RA's. A new alumni group, **LGBTIQ2**, whose abbreviation includes "intersex, queer, and questioning," will hold a series of events. And this month the Bias Response Team, active since August, plans to begin making public all reported incidents.

For their part, the students who protested hope to widen their circle. "We need to create allies," Alexandra E. Epervary, a freshman, says with a smile and a sigh. "Right now it's a bunch of angry gay kids."

Their plan is to reach out with the Welcome Project, educating students and employees who want to be seen as allies of the GLBT community, explains Mr. Winters.

"We're trying to find a way to breathe new life into a program that's languished a bit," he says. Behind him, on the door to the center, a chalk dragon breathes rainbow fire.

### 'I Fit In'

On many campuses, a center's door first opens after a crisis. On occasion, opponents, even state legislators, push hard against it. And often the space inside is a meager remnant of campus planning. Harvard University's Queer Resource Center is confined to 380 square feet in the basement of a freshman dormitory.

North Carolina State University opened its GLBT Center in 2008, in a tiny storage room in the theater department. "It was basically like we were in the closet," says Matthew Woodward, a junior there.

The establishment of a center at North Carolina State met much resistance, including the Facebook group Students Against NCSU LGBT Center. Some members argued that gay students could get support at the counseling center and through student groups. "There are so many other more worthwhile places we could drop our tuition and fees," one student

posted. "If they want the center they should fund it themselves on an OFF campus site," wrote another.

In the face of hostility, the community rallied. "Having a center really brought people together," says Mr. Woodward, who grew up in a small city near Charlotte and separated from his family before enrolling. Official recognition from the university carries validation: "You say, 'Oh, there's a place for me. I fit in,'" he says.

From the theater department the group moved to a suite in the student center. Students eat lunch there, study, and network, Mr. Woodward says. Together with Justine R. Hollingshead, the center's director, they have organized RA training, safe-space programs to educate and identify allies, and a popular Lady Gaga party for the whole campus last semester.

Evidence suggests that the overall climate is improving. A university survey to be released this year reflects double-digit percentage-point increases over one in 2004, which showed that 51.3 percent of straight students and 27.4 percent of gay, lesbian, and bisexual students found the campus supportive for people of different sexual orientations, Ms. Hollingshead says.

Architects of a new student center at the university recently met with the GLBT community about plans for the space. Students explained, for example, the importance of a private entrance to the director's office, so visitors wouldn't have to out themselves to fellow students by walking through a common area. And last month the university produced a video for the It Gets Better Project, aimed at young people struggling with their sexual orientation.

"Doing the video and having it be from N.C. State University and not just a few GLBT-identified individuals was a big deal," Ms. Hollingshead says. On screen the chancellor, William R. (Randy) Woodson, delivers a promise: "It will and can get better at N.C. State."

Having a base of operations also helps a campus respond promptly to a crisis. Near Emory University this past fall, a gay student was dragged out of a fraternity party. Now the university's Office of LGBT Life is collaborating with the Office of Sorority & Fraternity Life on a series of programs, including Greek-ally lunches and bystander training.

At the University of Michigan at Ann Arbor last fall, the Spectrum Center held a community meeting and a glow-light vigil in support of the student-body president after he was harassed by a now former public official for being gay. A professionally staffed office can quickly offer expertise and resources, says Gabriel C. Javier, assistant director of the center, the oldest in the nation to serve gay students.

"Centers have the opportunity," he says, "to help make really destructive moments into teachable moments."

## Gauges of Climate and HBCU's

Still, a tragedy on an otherwise supportive campus can alter perceptions of its climate. Tyler Clementi, a freshman at Rutgers, jumped to his death in October after his roommate used an Internet chat program to broadcast live video of Mr. Clementi and a male companion, investigators say.

Observers assumed that Rutgers lacked resources and support for gay students, says Jenny Kurtz, acting director of the Center for Social Justice Education and LGBT Communities there. Alumni called and suggested safe-zone programs, for example, which the center already ran. Ms. Kurtz saw a chance to expand services—such as new gender-neutral-housing and roommate-matching options—and to promote them more widely.

Gauging safety and comfort levels, however, is an imprecise science. The first national report by the Q Research Institute for Higher Education, released in September, found that nearly a quarter of gay, lesbian, bisexual, and queer students and employees had experienced harassment at their colleges, and more than half had observed or perceived it. But that report didn't drill down to the campus level. And the increasingly popular Campus Climate Index, with its five-star scale, measures services, not sensitivities.

"How students feel regardless of resources is the really important thing," says Thomas E. Wesley, a master's candidate in student-affairs administration at Michigan State University who works with the LGBT Resource Center there. Last fall the center announced results of an institutional survey: 57 percent of LGBTQ-identified students and employees felt comfortable on the campus. Susan R. Rankin, a senior research associate in the Center for the Study of Higher Education at Penn State, administered the survey, as she has on about 100 campuses in the past decade.

Marquette University, Syracuse, and the University of Illinois at Springfield have also brought in consultants to assess their environments. But polls and focus groups often examine a self-identified population. LGBT-climate research tends to rely on snowball sampling, in which subjects recruit their friends. That technique, especially as it favors people who are out of the closet, can generate a skewed sample.

Another challenge is how to interpret a rate like 57 percent. Is that decent, or should it be better?

A new national survey this spring will try to set standards for comparison. The Cooperative Institutional Research Program, which administers the Freshman Survey, is beginning a Diverse Learning Environments Survey, based on 90 institutional-diversity-and-climate instruments. It will poll all students, asking, for example, how often they have interacted with somebody of a different sexual orientation, whether their classmates seem to appreciate differences, and how satisfied they are with the atmosphere. But so far only 18 colleges have opted to participate.

Another small group of colleges is taking a different approach to improving the atmosphere for gay students. Spelman College has led a three-year project with nine other historically black institutions, including North Carolina Central University, in Durham, and Southern University, in Baton Rouge, La., to "put these issues on the table in a public way," says Beverly Guy-Sheftall, founding director of the Women's Resource & Research Center and a professor of women's studies at Spelman.

Recognizing historic homophobia in the black community, top administrators at all the colleges have committed to complete the Campus Pride Index and form working groups to discuss related issues.

At a summit in April, they will share their progress, and professors will present research on LGBTQ issues at historically black colleges and in the black church. In another effort, the UNCF (formerly the United Negro College Fund) is collaborating with the national Human Rights Campaign to expand awareness of gay issues on historically black college campuses. "The UNCF project," Ms. Guy-Sheftall says, "will allow us to keep the momentum going."

Room for discussion has already grown at Philander Smith College, a small, United Methodist institution in Little Rock, Ark., that is part of the Spelman and UNCF groups. Last month, when a gay student complained of derogatory comments, the student senate organized an event called "Practice What You Preach," set up as a debate between Scripture and human behavior. It built on a couple of forums last year, "Gay Questions, Straight Answers" and "Sex in the Closet," that "fueled conversation on campus," says Carissa Rodgers, a 2010 graduate.

"I didn't realize until I got to Philander how strong stigma could be," says Ms. Rodgers, a lesbian. The public events were important, she says, but so were chats with her classmates one on one. "Meet me as a person," she would say. "Don't meet my sexuality."

"I feel like I helped open a lot of people's eyes," Ms. Rodgers says.

Even at Morehouse College, where there is a gay-straight alliance, the campus isn't open, says Keith Sylvester, a junior and the group's new co-president. In 2009, officials at the all-male college announced a dress code prohibiting feminine clothing and accessories, a code that students largely supported.

"Straight people do not want to come to our organization," Mr. Sylvester says. A transfer student from Virginia State University, he spent winter break at home in Brooklyn, N.Y., pondering whether he wanted to lead the group and how it might limit him-maybe from pledging a fraternity, which he had hoped to do. "That question sits in the back of my mind," he says.

Morehouse continues to hold forums on homosexuality and masculinity, he says, but he is looking forward to a festival, Morehouse Pride, this spring. Dialogues are necessary, but

so is fun, Mr. Sylvester says. "I feel like the change in the climate needs to be to lighten up a bit."

### Small Steps

People trying to change a campus climate do well to mark progress incrementally. At North Dakota State University, students who signed a pledge to "walk the talk" and stop bullying drowned out a derogatory chant at football games this fall by cheering for the team: "Let's go, Bison!" Last month a group of gay and lesbian alumni wrote an open letter to Westmont College, a small, Christian institution in Santa Barbara, Calif., to encourage dialogue on a campus whose behavior code prohibits "homosexual practice." Nearly four dozen professors responded affirmatively, and the letters are likely to come up in a previously planned series of events on human sexuality this spring.

Belmont University, a Christian institution in Nashville, just officially recognized a gay-student group. Bucknell University, in Pennsylvania, now boasts seven sororities and nine fraternities identified as safe spaces, and Towson University, near Baltimore, recently designated a gender-neutral restroom.

Still, challenges persist. In various abbreviations, the "T" for "transgender" tends to get lost, says Genny Beemyn, director of the Stonewall Center, a bisexual, gay, lesbian, queer, and transgender educational research center at the University of Massachusetts at Amherst. Beemyn, who prefers not to use gender-specific titles, has researched resources for transgender students and identified the most essential-and rarely offered-including gender-neutral restrooms, locker-room space, and housing, as well as a process for changing name and sex on college records.

Advocates frequently struggle to win resources for a small, often invisible population. According to the American College Health Association's National College Health Assessment, 0.2 percent of students are transgender and 7.2 percent are bisexual, gay, lesbian, or unsure. But most individual colleges take no such census. Despite lobbying from Campus Pride and other groups, in January the Common Application opted neither to offer an option beyond male and female nor to include an optional question about sexual orientation.

Because data often drive money at universities, lacking numbers may mean seeing fewer dollars. Amy E. Schlag, program adviser for the **new LGBTQIA Resource** Office at UNC-Wilmington, has recruited about 10 faculty and staff members to make monthly donations. "To go where I would like for us to go, we're going to have to raise a lot more money," she says, "and that's going to be incumbent on me."

At Rhode Island, the **GLBT Center** is moving forward with a total budget of \$181,000 this year (compared with \$276,000 for the university's multicultural center). Next month it will hold a symposium, a weeklong series of speakers and other events. The student-led Gay-Straight Alliance is helping organize Marriage Equality Week in the state and planning to cosponsor a campus show with the Asian Student Association.





Using Lexis/Nexis which has full text searching capabilities for over 15,100 global newspapers, blogs, newsletters and newscast transcripts (including the largest and most influential newspapers globally), I looked at the use of various words used to commonly refer to homosexuals: “gay,” “lesbian,” “queer,” “LGBTQ,” “LGBT,” “GLBT,” “GLBTQ,” and “LGBTQIAA.” At random, two one week sample frames were drawn (April 1 2008-April 8, 2008 and April 1, 2013- April 8, 2014). Results showed that overwhelmingly sexual minorities refer to themselves and are referred to by journalists and other parties as “gay” more than any other term. For both samples, duplicated stories were removed from the sample and any references to “gay” as a proper name or “gay” meaning anything other than sexual orientation were removed. Notably, for both sample periods, apart from someone’s surname, “Gay” never referred to anything other than an individual or community sexual orientation.

In the first sample period (April 1-8, 2013), “gay” was used 2,342 times, “LGBT” 272 times, “lesbian” 1008 times, “queer” 76 times and “LGBTQ” 19 times. “LGBTQIAA” and “GLBTQ” were not used at all. An overwhelming amount of the time, these terms beyond gay were used in articles that also used gay. Said another way, “LGBT” was used in only 35 articles that did not also use the term “gay,” “lesbian” in 43 articles, “queer” in 55, and “LGBTQ” in 3. Data shows, thus, that “gay” is both the most frequently used term when referring to non-heterosexual sexual orientation and is used as an umbrella term to cover many different sexual orientations. Of course, this can be explained by the common use of phrases like “gay marriage” and “gay rights” that drive the high number of times “gay” appears without any other descriptive phrases. “Gay and lesbian” marriage, as an example, was never used while “gay marriage” was used numerous times in articles that referred to both male and female homosexuals.

Interestingly, the same search conducted during the same one week period 5 years earlier returned almost identical results. While the total number of articles that referenced “gay” was significantly less (1530), there were corresponding decreases for the other terms as well so that “gay” maintained a clear dominance in terms of frequency of use.

The fact that “gay” is a preferred term to reference an entire community of individuals is further buttressed by the fact that a separate search of the terms within one word of the word “community” shows that “gay community” was used twice as much as the next most prevalent descriptor – “LGBT community” which appears just 31 times. Importantly, “lesbian community” as a phrase is the next most prevalent neighbor to the word “community” and this happens just 16 times. When used, all 16 examples are actually “gay and lesbian community.” “Queer community” is used in just 4 articles and “LGBTQ” in 11. Taken together, then, while there is some discrepancy in how journalists and sources refer to a community of sexual minorities, the term “gay community” is more than twice as likely to be used than any other phraseology. In short, this is overwhelmingly the most common.





April 30, 2014

**RE: Media Research on GAY**

Dear ICANN,

I submit the following research findings in support of the community application submitted by dotgay LLC (Application ID# I-1713-23699), and to further support the statements made by dotgay LLC that the word "gay" is a word commonly used to refer to:

*"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."*

I am Dr. David Gudelunas. I am a Associate Professor of Communication at Fairfield University and also serve as Chair of the Department of Communication and the Co-Director of the program in Women, Gender and Sexuality Studies. I completed my MA and Ph.D. at the Annenberg School for Communication at the University of Pennsylvania and have been a researcher and professor for over a decade. I have published a book and numerous peer-reviewed articles on the intersections of media, technology and sexuality and am frequently called on as an expert on related issues by the national and international media and not-for-profit groups. I have made over 100 academic presentations and have served as the Chair of the National Communication Association's Caucus on Sexuality.

As I understand from the CPE scorecard, community applicants are required to show a nexus between their proposed string and the community they have identified. To score 3 points for 2-A Nexus the applicant must show that "the string matches the name of the community or is a well-known short-form or abbreviation of the community" and to score 1 point for 2-B Uniqueness the applicant must show that the "string has no other significant meaning beyond identifying the community described in the application." Neither of these qualifiers indicates that the string is required to be "the best" or the "least imposing" as it relates to the community, especially since communities are capable of wearing several handles of identification simultaneously.

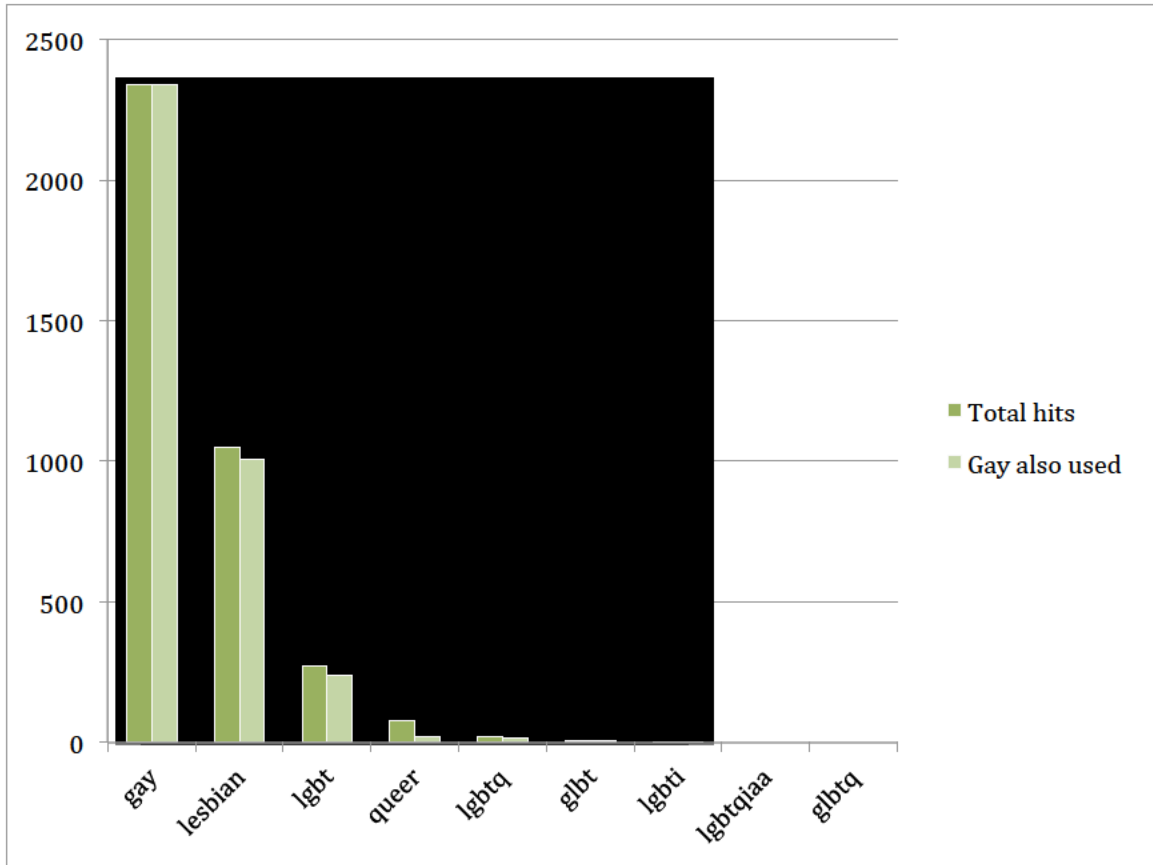
Using Lexis/Nexis which has full text searching capabilities for over 15,100 global newspapers, blogs, newsletters and newscast transcripts (including the largest and most influential newspapers globally), I looked at the spectrum of words used to refer to individuals whose gender identities and sexual orientation are outside the norms defined for heterosexual behavior of the larger society. My search included "gay," "lesbian," "queer," "LGBTQ," "LGBT," "GLBT," "GLBTQ," "LGBTI" and "LGBTQIAA." At random, two one week sample frames were drawn (April 1-8, 2008 and April 1-8, 2013). Results showed that overwhelmingly gender and sexual minorities refer to themselves and are referred to by journalists and other parties as "gay" more than any other term. For both samples, duplicated stories were removed from the sample and any references to "gay" as a proper name. Notably, for both sample periods, apart from someone's surname or other proper name, "Gay" never referred to anything other than an individual or community as it pertains to gender identity and sexual orientation.

**This sample of news and commentary from Lexis/Nexis provides a snapshot of not just how journalists use language, but rather how language helps structure reality. The sources that have been culled together for this analysis represent the best possible non-biased representation of how people, on a global level, use language. This is not just a study in media, this is a look at how language and communication reflects reality. In other words, this is the best possible non-biased look at how people globally refer to non-heterosexuals and the language that is used most often and without variance to refer to non-heterosexuals.**

In the first random sample period (April 1-8, 2013), "gay" was used 2,342 times, "LGBT" 272 times, "lesbian" 1008 times, "queer" 76 times and "LGBTQ" 19 times. "LGBTQIAA" and "GLBTQ" were not used at all. An overwhelming amount of the time these terms beyond gay were used in articles that also used gay. Said another way, "LGBT" was used in only 35 articles that did not also use the term "gay," "lesbian" in 43 articles, "queer" in 55, and "LGBTQ" in 3. Data shows, thus, that "gay" is both the most frequently used term when referring to non-heterosexual gender identity and sexual orientation and is used as an umbrella term to cover

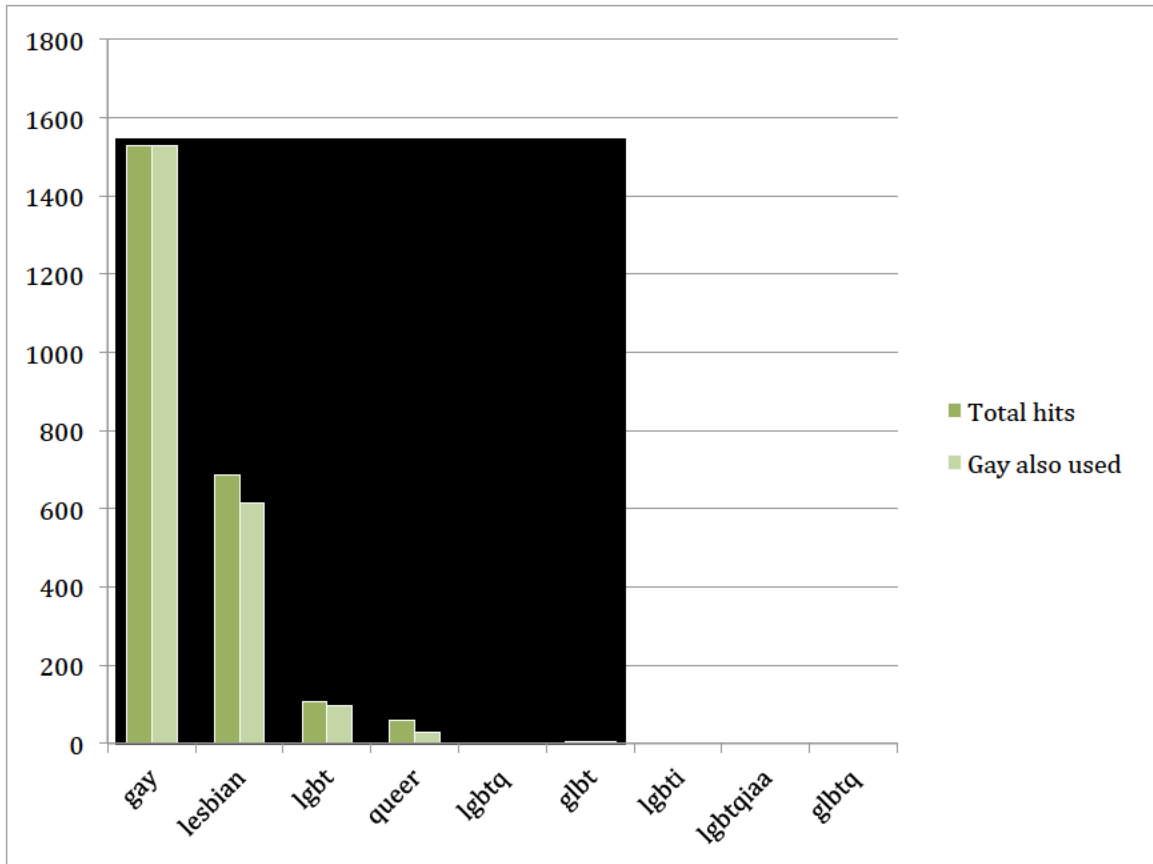
the diversity. Of course, this can be explained by the common use of phrases like “gay marriage” and “gay rights” that drive the high number of times “gay” appears without any other descriptive phrases. “Gay and lesbian” marriage, as an example, was never used while “gay marriage” was used numerous times in articles that referred to same sex marriage.

**Exhibit A: Lexis/Nexis: Article Search by Word (April 1-8, 2013)**



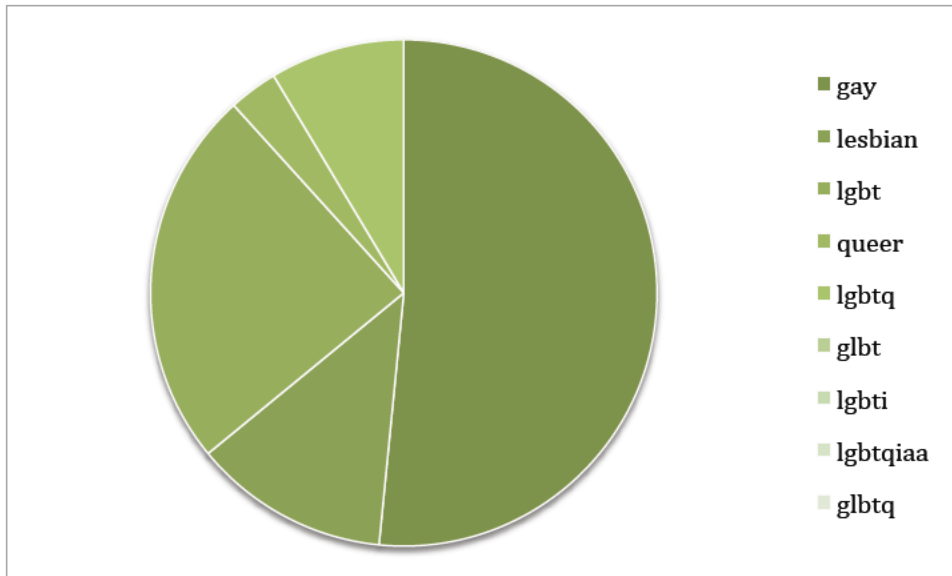
Interestingly, the same search conducted during the same one week period 5 years earlier returned almost identical results. While the total number of articles that referenced “gay” was significantly less (1,530), there were corresponding decreases for the other terms as well so that “gay” maintained a clear dominance in terms of frequency of use.

**Exhibit B: Lexis/Nexis: Article Search by Word (April 1-8, 2008)**



*The fact that “gay” is a commonly used term to reference an entire community of individuals is further buttressed by the fact that a separate search of the terms within one word of the word “community” shows that “gay community” was used more than twice as much as the next most prevalent descriptor – “LGBT community” which appears just 31 times. Importantly, “lesbian community” as a phrase is the next most prevalent neighbor to the word “community” and this happens just 16 times. When used, all 16 examples are actually “gay and lesbian community.” “Queer community” is used in just 4 articles and “LGBTQ” in 11. Taken together, then, while there is some discrepancy in how journalists and sources refer to a community of non-heterosexual gender and sexual minorities, the term “gay community” is more than twice as likely to be used than any other phraseology. In short, the word “gay” this is overwhelmingly the most common.*

**Exhibit C: Lexis/Nexis: Article Search within one word of “community” (April 1-8, 2013)**



The use of the term *gay* was also not limited to exclusively US contexts. Though Lexis-Nexis does over-index in US based publications, the use of the term “*gay*” as an umbrella term for sexual orientation is global. From the 2013 sample discussed above where *gay* is used as a term to refer to sexuality, just over 50% of the articles came from North America (and this is in line with the overall universe of the Lexis Nexis database). Of the remaining 50%, all major world continents were represented: Africa (4%), Australia (10%), Europe (22%), South America (4%), Asia (7%) and the Middle East (3%). What is important to note here is that the other terms tested were used almost exclusively in North America. The data shows that 70% of the articles that used “LGBT,” as an example were from North America. Similarly “queer” was more prominent in North American publications (80%) by far. This indicates that on a global level of language, *gay* is by far the most preferred term by journalists to refer to sexual orientation.

In conclusion, I present the following research as data that “*gay*” is not only a clear match of the string and the name of the community, but that “*gay*” also has a clear and common use for identifying the community. Without ever needing to explain how or why the word “*gay*” continues to be the word most “commonly” associated with the community of people described in dotgay LLC’s application, or if it is “the best” or “least imposing,” it cannot be disputed that it is a word most commonly understood by its members and “others” as defined by the EIU Evaluation Guidelines.

As ICANN considers whether the string “*gay*” matches the name of the “*gay* community,” it warrants restating that what appears as obvious to most can also be supported as “fact” when research data is analyzed.

Best regards,

David Gudelum, Ph.D.  
 Associate Professor of Communication and Chair, Department of Communication  
 Co-Director of Women, Gender and Sexuality Studies  
 Fairfield University  
 Contact Information Redacted



ECOSOC MEMBERS	
ABGLT	BRAZIL
Coalition Gaie et Lesbienne du Quebec (CGLQ)	CANADA
COC Nederlands	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 Federación 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
Český 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 Inakosť	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 integraci3n y Liberaci3n Homosexual)	CHILE
Mr Bear CZ	CZECH REPUBLIC
National Association of GLBT in Isreal	ISREAL
National Gay & Lesbian Task Force	USA
Nefes (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
<b>BUSINESS</b>	
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
<b>MEDIA</b>	
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
<b>TRAVEL &amp; ENTERTAINMENT</b>	
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 C-18**

**From:** Contact Information Redacted

**On Behalf Of** Benjamin Parisi

**Sent:** 30 June 2014 07:57

**To:** Contact Information Redacted

**Subject:** Confirmation of authenticity of support for new generic Top Level Domain .gay

To whom it may concern:

I am writing to you on behalf of the Internet Corporation for Assigned Names and Numbers (ICANN) in relation to the New gTLD Program. The Economist Intelligence Unit (EIU) has been selected as the Community Priority Evaluation Panelist to authenticate letters from entities providing letters of support or objection to community-based applications.

DotGay, LLC has applied for the gTLD .GAY, for which we received documentation of support from your organization, and which is attached to this email for your review.

Consistent with the New gTLD Program rules, we seek confirmation of the authenticity of your organization's letter as well as confirmation that the sender of the letter had the authority to indicate your organization's support for the application.

We kindly request that you respond to this request via email to Benjamin Parisi

Contact Information Redacted

A short email response confirming the above points are correct would be greatly appreciated.

We would be grateful if you could respond to this request by June 24, 2014. We will follow up via email and telephone in the interim on a regular basis.

Thank you for your assistance in this matter.

Regards,

Benjamin Parisi

Contact Information Redacted

This e-mail may contain confidential material. If you are not an intended recipient, please notify the sender and delete all copies. It may also contain personal views which are not the views of The Economist Group. We may monitor e-mail to and from our network.

Sent by a member of The Economist Group. The Group's parent company is The Economist Newspaper Limited, registered in England with company number 236383 and registered office at Contact Information Redacted. For Group company registration details go to <http://legal.economistgroup.com>

## **Annex C-19**

**From:** Benjamin Parisi Contact Information Redacted

**Sent:** 30 June 2014 07:51 AM

**To:** Contact Information Redacted

**Subject:** Confirmation of authenticity of support for new generic Top Level Domain .gay

To whom it may concern:

I am writing to you on behalf of the Internet Corporation for Assigned Names and Numbers (ICANN) in relation to the New gTLD Program. The Economist Intelligence Unit (EIU) has been selected as the Community Priority Evaluation Panelist to authenticate letters from entities providing letters of support or objection to community-based applications.

DotGay, LLC has applied for the gTLD .GAY, for which we received documentation of support from your organization, and which is attached to this email for your review.

Consistent with the New gTLD Program rules, we seek confirmation of the authenticity of your organization's letter as well as confirmation that the sender of the letter had the authority to indicate your organization's support for the application.

We kindly request that you respond to this request via email to Benjamin Parisi

Contact Information Redacted

A short email response confirming the above points are correct would be greatly appreciated.

We would be grateful if you could respond to this request by June 24, 2014. We will follow up via email and telephone in the interim on a regular basis.

Thank you for your assistance in this matter.

Regards,

Benjamin Parisi

Contact Information Redacted

This e-mail may contain confidential material. If you are not an intended recipient, please notify the sender and delete all copies. It may also contain personal views which are not the views of The Economist Group. We may monitor e-mail to and from our network.

Sent by a member of The Economist Group. The Group's parent company is The Economist Newspaper Limited, registered in England with company number 236383 and registered office at Contact Information Redacted For Group company registration details go to <http://legal.economistgroup.com>



## **Annex C-20**

**From:** Benjamin Parisi Contact Information Redacted

**Sent:** 30 June 2014 07:53 AM

**To:** Contact Information Redacted

**Subject:** Confirmation of authenticity of support for new generic Top Level Domain .gay

To whom it may concern:

I am writing to you on behalf of the Internet Corporation for Assigned Names and Numbers (ICANN) in relation to the New gTLD Program. The Economist Intelligence Unit (EIU) has been selected as the Community Priority Evaluation Panelist to authenticate letters from entities providing letters of support or objection to community-based applications.

DotGay, LLC has applied for the gTLD .GAY, for which we received documentation of support from your organization, and which is attached to this email for your review.

Consistent with the New gTLD Program rules, we seek confirmation of the authenticity of your organization's letter as well as confirmation that the sender of the letter had the authority to indicate your organization's support for the application.

We kindly request that you respond to this request via email to Benjamin Parisi

Contact Information Redacted

A short email response confirming the above points are correct would be greatly appreciated.

We would be grateful if you could respond to this request by June 24, 2014. We will follow up via email and telephone in the interim on a regular basis.

Thank you for your assistance in this matter.

Regards,

Benjamin Parisi

Contact Information Redacted

**This e-mail may contain confidential material. If you are not an intended recipient, please notify the sender and delete all copies. It may also contain personal views which are not the views of The Economist Group. We may monitor e-mail to and from our network.**

Sent by a member of The Economist Group. The Group's parent company is The Economist Newspaper Limited, registered in England with company number 236383 and registered office at Contact Information Redacted . For Group company registration details go to <http://legal.economistgroup.com>

## **Annex C-21**

**From:** Benjamin Parisi Contact Information Redacted

**Sent:** 30 June 2014 06:42

**To:** Contact Information Redacted

**Subject:** Confirmation of authenticity of support for new generic Top Level Domain .gay

To whom it may concern:

I am writing to you on behalf of the Internet Corporation for Assigned Names and Numbers (ICANN) in relation to the New gTLD Program. The Economist Intelligence Unit (EIU) has been selected as the Community Priority Evaluation Panelist to authenticate letters from entities providing letters of support or objection to community-based applications.

DotGay, LLC has applied for the gTLD .GAY, for which we received documentation of support from your organization, and which is attached to this email for your review.

Consistent with the New gTLD Program rules, we seek confirmation of the authenticity of your organization's letter as well as confirmation that the sender of the letter had the authority to indicate your organization's support for the application.

We kindly request that you respond to this request via email to Benjamin Parisi

Contact Information Redacted

A short email response confirming the above points are correct would be greatly appreciated.

We would be grateful if you could respond to this request by June 24, 2014. We will follow up via email and telephone in the interim on a regular basis.

Thank you for your assistance in this matter.

Regards,

Benjamin Parisi

Contact Information Redacted

This e-mail may contain confidential material. If you are not an intended recipient, please notify the sender and delete all copies. It may also contain personal views which are not the views of The Economist Group. We may monitor e-mail to and from our network.

Sent by a member of The Economist Group. The Group's parent company is The Economist Newspaper Limited, registered in England with company number 236383 and registered office at Contact Information Redacted For Group company registration details go to <http://legal.economistgroup.com>

**Annex C-22**



November 28, 2014

RE: Reconsideration Request (14-44) – CPE for dotgay LLC (ID# 1-1713-23699)

To members of ICANN and the ICANN Board Governance Committee,

We and the undersigned organizations and individuals are writing to express our deep concern over the CPE results for the .GAY top-level domain (TLD) community application by dotgay LLC.

Without question the Internet has changed the lives of LGBTQIA people, allowing those who thought they were alone to find others like themselves, opening doors for social and economic opportunities unavailable for our predecessors, and providing life-saving information. For those living in oppressive regimes, communities, and families, the Internet and the information and community-building resources of the Internet have been truly transformative.

The Federation of Gay Games and those joining us in this message applaud the efforts of ICANN to preserve the Internet as a space open to all, and have consistently hoped that the new TLD program would offer vital and unique opportunities in the Internet namespace, especially for communities identified as suspect classes, vulnerable to discrimination or at risk like LGBTQIA people.

We share your goal of making the Internet a tool for making opportunities a reality. For us, it's about sport: ensuring that the Olympic principle of sport for all is a reality for as many athletes as possible. Others focus on improving access to government and corporate contracts, on promoting participation in businesses and institutions, on removing legal obstacles to equality, on enhancing the ability for entrepreneurs and activists to organize.

Education within our community and to the wider world remains a crucial part of achieving success at each juncture. The understanding of the gay community that comes from the ongoing advocacy and outreach from our community organizations opens doors for the LGBTQIA. Our actions reach inside hearts and minds as well as inside governments and corporations. Biases, misconceptions, and misinformation about LGBTQIA people clearly remain a barrier to opportunity, so many of our organizations exist to engage and provide support to victims of such obstacles. Today, we are writing because we strongly believe that the CPE results on the community application of dotgay LLC is an obstacle we need to overcome through education, information, and collaboration.

In creating a community application, dotgay LLC sought open and transparent input from the gay community. It also developed a strategy to encompass and enhance the ability and safety of the greater gay community to advance and thrive online. Hundreds of national and international community groups have been part of this process, yet their endorsements have been almost totally ignored in the CPE review. We are amazed that so

much has rested on semantics. Are we a “community”, and does the string .GAY “represent” us? For all who have supported dotgay LLC's CPE application, the answer has been clear: yes, we are a diverse community, and yes, we want to find ourselves at .GAY.

This claim is not ours alone: abundant research, which seems to have been unconsulted, shows that “gay” is an important term for identifying ourselves. Our organization hosts the “Gay Games”, and they are for everyone who expresses solidarity with LGBTQIA people. It would be absurd for anyone to tell us that we cannot be the “Gay” Games because we welcome everyone who supports sport for all.

We urge you to not let those would benefit financially from an auction for .GAY to cloud your understanding of what our community is, and what we want. The EIU ignored our reality: we want you to hear us and our call for an Internet that reflects our interests and needs, and that offers real opportunities for LGBTQIA people everywhere, even in places where they face persecution, imprisonment, and even death. The Internet is a space of opportunity and solidarity for our community: we need .GAY for our community.

For .GAY to be a space that serves our community, it needs to be administered for our benefit, and not for commercial interests. Without community participation or oversight in .GAY, no tangible opportunity or benefit exists for LGBTQIA people. Instead, confusion and harm are sure to be the result. Our strong and unified message to ICANN is that the limited perspective from which the dotgay LLC application has been evaluated does not reflect the reality, beliefs and opinions of our organization, our community, or those partners and allies endorsing this letter. We collectively view the CPE evaluation of dotgay LLC as flawed, one that inadequately represents a true understanding of our community. It provides a great disservice and disadvantage to LGBTQIA people worldwide.

Serving the public interest includes serving the needs and desires of LGBTQIA people, too. To force the community application into an auction in competition with Standard applications puts the community at great risk. Without a proper and transparent CPE evaluation, given that our community is deemed a “suspect class” and a group “vulnerable” to discrimination, we collectively struggle to understand whose interests are being served by ICANN.

Below you will find the list of affiliates, members, partners, friends and corporations who have lent their signature in support of this Federation of Gay Games statement of concern regarding the ICANN CPE process for community applications and our disagreement with the ICANN CPE result which denies LGBTQIA people community priority status for .GAY.

You have been able stewards for the general interest. We hope and expect that you will continue to do so, and recognize that the general interest requires a space for LGBTQIA people around the world to come together online, and that that space should be .GAY.

We thank you in advance for your consideration of the profound impact your decision will have on so many people around the world.

Les Johnson, Vice President for External Affairs, Federation of Gay Games, [les.johnson@gaygames.net](mailto:les.johnson@gaygames.net)

(Please find on the following pages the businesses and organizations that offer their complete support for this letter.)

## SUPPORTING BUSINESSES AND ORGANIZATIONS

### **Ackerman Brown PLLC**

is a full service law firm located in the District of Columbia. The firm's attorneys are licensed to practice in the District of Columbia, Maryland, Virginia, Ohio, Pennsylvania, New York, Texas and Illinois. The firm is the largest gay owned law firm in the United States certified by the National Gay and Lesbian Chamber of Commerce.

### **AIDS Interfaith Ministries**

Compassionate care, community education / awareness, assertive advocacy.

### **Arosa Gay Ski Week in Switzerland**

Our organization became one of Europe's favorite Ski Pride Festival and will celebrate its 11th Annual next January.

### **Balady Promotions**

The source for unique promotional products for over 20 years.

### **BeLonG To**

is the national organization for lesbian, gay, bisexual & trans young people in Ireland.

### **BUEGay**

is an Argentinian company with more than 13 years of leadership in the LGBT market.

### **Capital Area Gay and Lesbian Chamber of Commerce**

Advocating, empowering, promoting and facilitating the success of LGBT businesses, professionals and allies in metropolitan Washington.

### **Çavaria**

is the Flemish LGBT umbrella organization and represents more than 120 organizations in the Dutch-speaking region of Belgium.

### **CenterLink**

The Community of LGBT Centers.

### **Coalition of Activist Lesbians Australia**

is a UN-accredited organization working for the equitable inclusion and participation of lesbian women. This organization supports the mission of dot.GAY to their use of their domain. Commercialization and fiscal interests should not over-rule the rights and equitable participation of minority groups. LGBTI people have a right to control their internet use.

### **Columbia FunMap, Inc. and [www.gayosphere.com](http://www.gayosphere.com)**

have been providing valuable information to the gay community for over 33 years.

### **Community Alliance and Action Network (C.A.A.N)**

is a grassroots, volunteer, self-funded, advocacy organization for LGBTQ concerns.

### **Danny Pryor**

an AP award-winning journalist with 15 years' experience in website development and 26 total years in broadcasting and web.



**Diverlex Diversidad e Igualdad a Través de la Ley**

is a Venezuelan collective organization founded in 2004, aiming at obtaining equal rights for LGBTI population. It has served as the World Trans Secretary of ILGA from 2012 to 2014.

**Durban Gay & Lesbian Film Festival**

is the only city-based LGBTI film festival in Africa and in 2015 celebrates its 5th festival providing space for human rights workshops, creative workshops, community and public film screenings.

**Equal India Alliance**

is a non-profit working towards increasing acceptance for LGBTIA individuals in India.

**The Fund in the Sun Foundation**

was established in 2005 as a not-for-profit public charity dedicated to the LGBT community and Fire Island Pines.

**i freedom Uganda**

is a sexual minority led digital security and internet freedom organization based in Uganda, we work with sexual minorities in Uganda and their allies the sex workers.

**Gay Travel Exchange**

is a community of travelers and hosts that makes traveling easier, less expensive and more rewarding.

**Greater Palm Springs Pride (pspride.org)**

is a 501(c)(3) non-profit community enhancement organization founded to promote the public education and public awareness of individual rights and civil liberties of the lesbian, gay, bisexual and transgender community and to promote the history, diversity and future prosperity of the Greater Palm Springs LGBT community.

**Immigration Link**

Canadian immigration consultant specializing in Family Class applications for same sex couples.

**IGLTA, the International Gay & Lesbian Travel Association**

is the leading member-based global organization dedicated to LGBT tourism.

**ILGA, the International Lesbian, Gay, Bisexual, Trans and Intersex Association**

is a world federation of more than 1200 national and local LGBTI organizations. It is based in Geneva, Switzerland and enjoys consultative status with the UN Economic and Social Council.

**InterPride**

is the international association of Pride organisers.

**James A. Hoffman, LMT****JBaxterDC Web Solutions**

is an out and proud web-based business serving the globe for web solutions.

**KaleidosScot**

is the hub and online cultural and news centre for the LGBTI community of Scotland.

**LEGIT-Toronto**

Canadian immigration for same sex couples. We help same sex couples with their Canadian immigration needs. Most couples are a foreigner and a Canadian or Canadian Permanent Resident, some are both foreigners.

**LGBT Forum “PROGRESS“**

is a non-profit organization that gathers LGBTIQ (Lesbian, Gay, Bisexual, Transgender, Intersex and Queer) people in Montenegro and it stands for respect and protection of their human rights and equality in society.

**LGBTS Global at Stark State College**

A student organization providing a comfortable safe space - where diverse and accepting people socialize, educate, advocate and serve.

**MAD MultiMedia, LLC**

is a full service printing company complete with traditional offset to digital printing which includes variable data/imagery and also website, storefront and mobile apps development.

**Maui Sunseeker LGBT Resort**

One of the top hotels for same-sex weddings and honeymoons.

**Mosaic LGBT Youth Centre**

offers support, education and empowerment to LGBT young persons in London.

**The National Association of Gay & Lesbian Real Estate Professionals (NAGLREP)**

is a mission based trade organization combining business and advocacy to advance homeownership for the LGBT community.

**The National Center for Lesbian Rights (NCLR)**

has been advancing the civil and human rights of lesbian, gay, bisexual, and transgender people and their families through litigation, legislation, policy, and public education since it was founded in 1977.

**OutCentral**

has a mission to connect, educate, empower, and build a positive, energy-filled space for greater Nashville's diverse lesbian, gay, bisexual, and transgender community.

**Parents and Friends of Lesbians and Gays South Africa**

Our aim is to help parents with lesbian and gay children to come to terms with the fact, and to reconcile them with their children. We raise awareness of the Human Rights issue in regards to the LGBT situation.

**Prague4gay**

is a guiding agency which takes great pride in having provided exclusive tours to members of the LGBTQIA community visiting Prague since 2005.

**Prague Pride Civic Association**

is a non-governmental, non-political, non-profit organization promoting a tolerant civil society, fighting homophobia and increasing public awareness of the gay, lesbian, bisexual and transgender community in the Czech Republic.

**The Pride Shelter Trust**

is Africa's ONLY LGBTI Crisis Shelter based in Cape Town – and we had the pleasure of hosting the FGG annual Meeting in 2008, and support this initiative.

**Pride United**

is committed to combat state-sponsored homophobia and build social acceptance for LGBTI's around the globe using the strategy of high profile politics.

**Q Magazine**

is the only A5 free to street monthly glossy magazine of its kind in Australia.

**Rainbow Community Kampuches (RoCK)**

is an LGBTQ organization run by and for Cambodian LGBTQ. We advocate for recognition and respect for human rights and needs of LGBTQ in Cambodia.

**Rainbow Link**

We gather LGBT books, CDs and DVDs and give them free to LGBT groups across Canada. We also give them to university, college and school libraries.

**Rainbow Wellington**

is a community group based in New Zealand's capital city, which advocates on behalf of the local LGBTI communities, offers networking and social opportunities within the communities, and supports other community groups and projects.

**Rodan Media**

is a media development company specializing in domain and website development and video production for small business.

**SPI Marketing**

is a boutique LGBT agency with BIG capabilities.

**Story Center Productions, LLC**

is a film production company based in DC. The company produced CODEBREAKER, an award winning drama documentary about the life and legacy of gay hero Alan Turing.

**TierPM**

is an Audio Visual and Information Technology staffing and talent solutions agency.

**TourGuidePeru**

Our compromise is to promote Peru, its heritage and the important message of responsible tourism around the world.

**United Belize Advocacy Movement, UniBAM**

is an LGBT led human rights advocacy organization that uses rights-base approaches to reduce stigma and discrimination.

**Whistler Pride and Ski Festival**

.GAY must remain within the community to ensure the interests of the LGBT community are protected and avoid being exploited by commercial interests that do not give back or build community.

**The Yerger Group**

is the parent company for the entrepreneurial ventures of Ross Yerger, which currently include Yerger Tech, a web and social media development and management company, and Chez Yergs, an elite, not elitist Caribbean Resort.

## **Annex C-23**

# ILGA - International Lesbian, Gay, Bisexual, Trans and Intersex Association



Operations:  
Contact Information  
Redacted

Registered office:  
Contact Information  
Redacted

[www.ilga.org](http://www.ilga.org) • Contact Information Redacted

17 November 2014

To: ICANN Board Governance Committee  
CC: Fadi Chehade, Steve Crocker, Akram Atallah, Christine Willet, Thomas Schneider

**RE: Reconsideration Request (14-44) – CPE for dotgay LLC (ID# 1-1713-23699)**

Dear ICANN and the ICANN Board Governance Committee,

It remains an observation of ILGA that the new gTLD program is falling short of achieving the specific goals of innovation and diversity, especially for LGBTQIA people who have relied on ICANN perusing these goals passionately.

For the past 5 years, LGBTQIA people have openly and transparently engaged in the design of a community .GAY TLD in conjunction with dotgay LLC, which has received global and uncontested support from all segments and sectors in our community, yet has been met with the most unimaginable suspicion and misinterpretation by the ICANN process and competitive interests. ICANN must take a serious look at flaws and inconsistencies of the CPE that have once again failed the LGBTQIA and further threaten the integrity of the new gTLD program.

ILGA has at multiple times been acknowledged by the ICANN process as holding proper standing to represent the community and as a global entity dedicated to the community. This recognition has then been tainted by the EIU with claims that LGBTQIA people do not “recognize” ILGA, despite providing any such evidence or supporting research to validate their claim. ILGA’s annual report, which the EIU acknowledges having had access to, clearly shows our membership has global reach. Visibility and LGBTQIA recognition of local, regional or national members of ILGA (like Human Rights Campaign in the USA or International Day Against Homophobia & Transphobia in France) is the connection the EIU has failed to make. Faulting ILGA for not being a household name is not only a weak metric for such an important evaluation, it undermines the collaborative community effort that has helped ILGA advance the rights and protections of LGBTQIA people on an international stage for the past 36 years.

What ILGA feels is important to make clear, is the fact that LGBTQIA people continue to be one of the most misunderstood and vulnerable populations around the world. The new gTLD program, and now specifically the CPE, have failed to offer results that encompass a full understanding of LGBTQIA people and our community at large. Ensuring that a fair examination of claims being made by the gay community are properly and transparently weighed against calculated yet unsupported claims and

**ILGA, the world federation of LGBTI organisations**  
*1100 members from 120 countries committed to equal human rights  
for lesbian, gay, bisexual, trans and intersex people*  
[www.ilga.org](http://www.ilga.org)

statements made by competitive interests is essential to ensuring that misinformation and misunderstandings do not continue to taint this gay community effort, which quite importantly remains uncontested from within the community. If ICANN is serious about recognizing communities in the new gTLD program, that extend beyond just industries, it must first understand the community and its constituents and ensure balance of competitive assumptions.

To highlight our claim of being “misunderstood,” ILGA simply encourages ICANN to examine the long history LGBTI groups have experienced with gaining consultative status in the Economic and Social Council (ECOSOC) at the United Nations. After extensive effort and time, ILGA was the first LGBTI group to be accepted into ECOSOC in 1993. The approval process for other LGBTI groups however, even 20 years later, continues to be extremely difficult involving lengthy in-depth dialogue, explanation and examination of those who make up our community and how it functions.

The experience of LGBTI groups is unlike the majority at ECOSOC, viewed by many as discrimination but officially described as a “need to understand.” Often faced with years of questioning before final ECOSOC acceptance is achieved, the review process highlights the overarching claim that as a population, and as a community, there is essential need for greater understanding of LGBTI people to ensure equal treatment and access. ILGA believes this continues to be the key issue with evaluations carried out on the community application for .GAY in ICANN’s new gTLD program, including the CPE which has been riddled with inconsistencies.

As ICANN and the Board Governance Committee prepare to review the CPE reconsideration request from dotgay LLC, ILGA urges the review team to take a hard look at how misinformed and incomplete facts about LGBTQIA people and the gay community has led to uninformed decisions in the new gTLD program. The gay community is not trying to “game” ICANN, we are simply striving to contribute to the innovation and diversity goals we understood to be pillars of the new gTLD program.

Best regards,

A handwritten signature in black ink, appearing to read "Renato Sabbadini". The signature is fluid and cursive, written on a white background.

Renato Sabbadini  
Executive Director

## **Annex C-24**

November 17, 2014

Open Letter To ICANN Board Governance Committee

Re: Reconsideration Request 14-44 (.GAY)

For the past four years, the National Gay & Lesbian Chamber of Commerce of the United States (NGLCC) has been a supportive partner of dotgay LLC and its efforts to bring a community-friendly .GAY domain to the Internet. Our support is part of a larger global network of community endorsements from over 100 countries around the world, including lesbian, gay, bisexual, transgender, queer, intersex, and ally (LGBTQIA) businesses and organizations. With a clear mission to address issues related to safety, visibility, and support for LGBTQIA people, dotgay is the only applicant for .GAY committed to building a trusted domain, community governance, and a 67% giveback from profits.

Founded in 2002, NGLCC is the business advocate and direct link between lesbian, gay, bisexual, and transgender (LGBT) business owners, corporations, and the U.S. government, representing the interest of more than 1.4 million LGBT businesses and entrepreneurs with the United States. Via the NGLCC Global™ division, we also promote the growth of small businesses abroad, recognizing entrepreneurship as the quickest and most effective path to broad-based economic advancement and empowerment of the global LGBT community. NGLCC, NGLCC Global, and our affiliates connect LGBT-owned and allied companies, multinational corporations, domestic and international affiliate chamber leaders and members around the world. We submit this letter through collaboration and endorsement from the Argentina Gay & Lesbian Chamber of Commerce, the Canadian Gay & Lesbian Chamber of Commerce, the Colombian LGBT Chamber of Commerce, and the Mexican Federation of LGBT Entrepreneurs.

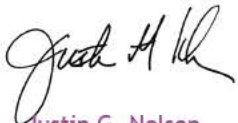
NGLCC learned that ICANN has published a scorecard on dotgay's Community Priority Evaluation (CPE) that rejects the widespread desire and need for a community operated .GAY. Despite dotgay receiving praise on a business model and registration policies developed through extensive engagement in the community, we are troubled by claims the application is "overreaching" to include segments beyond "male homosexual" as part of the "inclusive" community model for .GAY. The claim is not only shortsighted and misinformed, it highlights a double standard being applied to dotgay's application that would be exposed with simple research confirming widespread use and understanding of "gay" to identify our varied segments, both within the community itself and as documented in mainstream media. Does the ICANN believe "gay pride" and "gay rights" are unique to homosexual males?

This signal from ICANN is one with which the NGLCC takes serious issue. Although NGLCC agrees with the fact that "gay" is not the singular term to encapsulate our community, it is also our understanding that singularity was not a requirement of CPE. "Well-known short form" or "abbreviation" was the documented criteria, with more points given for "corresponding to" than "closely describing the community." NGLCC is concerned by ICANN accepting the EIU's denial that the term "gay" meets these qualifiers, especially from a global perspective beyond just the English language. ICANN's role, as we see it, is to acknowledge that "gay" meets the Nexus criteria of the Applicant Guidebook, so that valuable CPE points are not incorrectly or unjustly lost.



As a not-for-profit public-benefit corporation, ICANN has without question strayed from its mandate to serve the public interest in the case of .GAY. It is troubling that ICANN has accepted an under-researched, narrowly viewed, and unjust evaluation that disadvantages LGBTQIA people because of semantics that defy common use and understanding of the word “gay” around the world. Forcing an auction for .GAY with non-LGBTQIA interests is shortsighted, undermining, and not in the best interest of the LGBTQIA community.

By denying access and opportunity to those identifying as LGBTQIA because of a poorly executed evaluation and inconsistent application of the CPE guidelines, ICANN is sending a harmful message that fails to align with the fundamental goals of the new gTLD program.

A handwritten signature in black ink, appearing to read "Justin G. Nelson".

Justin G. Nelson  
Co-Founder and President  
National Gay & Lesbian Chamber of Commerce

A handwritten signature in black ink, appearing to read "Charles McNeill".

Charles McNeill  
Co-Founder and CEO  
National Gay & Lesbian Chamber of Commerce

A handwritten signature in black ink, appearing to read "Pablo de Luca".

Pablo de Luca - Co-Founder and President  
Argentina Gay & Lesbian Chamber of Commerce

A handwritten signature in green ink, appearing to read "R. Bruce McDonald".

R. Bruce McDonald - Co-Founder, Board Chair  
Canadian Gay & Lesbian Chamber of Commerce

A handwritten signature in black ink, appearing to read "Felipe Cárdenas G.".

Felipe Cárdenas G. - CEO  
Colombian LGBT Chamber of Commerce

A handwritten signature in black ink, appearing to read "César Casas Ferrer".

César Casas Ferrer - President  
Mexican Federation of LGBT Entrepreneurs

