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ARIF HYDER ALI



January 30, 2017

**VIA E-MAIL**

ICANN Board of Directors c/o Steve Crocker, Chair 12025 Waterfront Drive, Suite 300 Los Angeles, CA 90094	Mr Göran Marby President and Chief Executive Officer ICANN 12025 Waterfront Drive, Suite 300 Los Angeles, CA 90094
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Dear President Marby and members of the Board

We are writing on behalf of our client, dotgay LLC (“dotgay”), to complain about ICANN Board’s (the “Board”) failure to issue its final decision on the Board Governance Committee’s (“BGC”) 26 June 2016 Recommendation on Reconsideration Request 16-3 (“Reconsideration Request”). Pursuant to Section 4.2(r) of ICANN’s Bylaws (October 1, 2016):

The Board shall issue its decision on the recommendation of the Board Governance Committee within **45 days** of receipt of the Board Governance Committee's recommendation or as soon thereafter as feasible. Any circumstances that delay the Board from acting within this timeframe must be identified and posted on the Website. In any event, the Board’s final decision shall be made within 135 days of initial receipt of the Reconsideration Request by the Board Governance Committee. ICANN Bylaws (October 1, 2016) (emphasis added).

Likewise, under Article IV(2)(17) of ICANN’s Bylaws (February 11, 2016):

The Board shall not be bound to follow the recommendations of the Board Governance Committee. The final decision of the Board shall be made public as part of the preliminary report and minutes of the Board meeting at which action is taken. The Board shall issue its decision on the recommendation of the Board Governance Committee within **60 days** of receipt of the Reconsideration Request or as soon thereafter as feasible. ICANN Bylaws (February 11, 2016); *see also* ICANN Bylaws (July 30, 2014) (same).

Here, *seven months* have passed since the Board received the BGC's final recommendation on Dotgay's Reconsideration Request, yet the Board has failed to make a final decision on dotgay's Reconsideration Request. We understand that on September 15, 2016, the Board delayed making a final decision on dotgay's Reconsideration Request in order to "review the recent 60-page report submitted by dotgay LLC on the matter." The Board had more than *four months* now to review the "60-page report" (*i.e.* an independent expert opinion by Prof. William N. Eskridge) and there is no reason why the Board cannot now make a final decision on dotgay's Reconsideration Request.

This delay is troubling given dotgay's various submissions, including: (1) an independent expert opinion of Professor William N. Eskridge; (2) an independent expert opinion of Professor M.V. Lee Badgett; (3) the Council of Europe's November 4, 2016, Report; (4) the former ICANN Ombudsman Chris LaHatte's Report; (5) the ICC Expert's Determination regarding .LGBT; and (6) the Dot Registry IRP Decision, have unequivocally demonstrated to the Board that the Economic Intelligence Unit's review of dotgay's application was riddled with arbitrariness and opaqueness, which resulted in a decision that discriminated against dotgay. Thus, we reiterate our request that the Board grant dotgay's application for community priority status that it rightfully deserves.

Likewise, we understand that: (1) on September 17, 2016, the Board directed "the President and CEO, or his designee(s) to undertake an independent review of the process by which ICANN staff interacted with the CPE provider, both generally and specifically with respect to the CPE reports issued by the CPE provider" ("Independent Review"); and (2) on October 18, 2016, the BGC requested "from the CPE provider the materials and research relied upon by the CPE panels in making their determinations with respect to the pending CPE reports" ("Request for Information from the CPE Provider"). Again, dotgay has not received *any* communication from ICANN regarding the status of the Independent Review or Request for Information from the CPE Provider. ICANN cannot (and should not) rely on these processes to delay dotgay's application.

We look forward to receiving a response from you.

dotgay reserves all of its rights at law or in equity before any court, tribunal, or forum of competent jurisdiction.

Sincerely,

A handwritten signature in black ink, appearing to read 'Arif Hyder Ali', with a long horizontal stroke extending to the right.

Arif Hyder Ali