

February 3, 2015

Mr. Chris Disspain, Chairman
ICANN Board Governance Committee (BGC)

Re: BGC Reconsideration Request No. 14-44

Dear Chairman Disspain and BGC Members:

The undersigned, applicants for the .GAY top-level domain name (TLD), write to object to the BGC's recent determination (issued 20 January 2015) to set aside the entire CPE Panel Report issued by the Economic Intelligence Unit (EIU) on the CPE application for .GAY, filed by dotGay LLC (dotGay).

While we do not dispute the BGC's finding that the EIU inadvertently failed to verify 54 letters of community support for dotGay's CPE application, we do not believe this finding justifies setting aside the *entire* Panel Report and ordering a *new* CPE for dotGay's application. Instead, it is proper only that the letters be verified and perhaps, if appropriate, additional points be given under the Community Endorsement Criteria (Criterion #4)—the criteria used to evaluate such letters of community support. However even this is unlikely, as the original EIU panel recognized in its ruling that there was no cause to give full points for Community Support since there is no recognized organization to represent the claimed community. The addition of 54 letters from regional businesses and organizations does not change that. Under these circumstances, where the BGC denied all other basis for granting reconsideration, the EIU's inadvertent failure to properly verify letters amounts to a "harmless error" which does not justify throwing out the entire CPE Panel Report and appointing different evaluators to perform a new CPE for the Application.

dotGAY's CPE SCORE for Community Endorsement

In the CPE Panel Report, dotGay's application scored 2 out of a possible 4 points for Community Endorsement (Criterion 34). Under Section 4-4, the CPE Panel wrote:

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.

...

*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** [emphasis added]. 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 [emphasis added]. The Community Priority Evaluation Panel has determined that the applicant partially satisfies the requirements for Support.

We do not dispute that during the CPE review, all letters of support submitted by dotGay should have been validated by the EIU and scored under Criterion #4. However, the letters of support are wholly separate from the other three criteria, which are given separate scores under the CPE rules, namely: Community Establishment; Nexus between Proposed String and Community; and Registration Policies. Even if the EIU had validated the letters and had given dotGay a “4 out of 4” possible points for Criterion #4, doing so would not have given dotGay enough points to meet the required minimum total score.

Criteria	Earned	Achievable with A Review of Letters
#1: Community Establishment	4	4
#2: Nexus between Proposed String and Community	0	0
#3: Registration Policies	4	4
#4: Community Endorsement	2	4
Total	10	12

The BGC should not order a complete review of the CPE application simply because the EIU inadvertently failed to verify the letters, especially when the verification of the letters would not have materially changed dotGay’s total CPE score. Ordering a complete review gives dotGay the unfair advantage of having three “bites at the apple”, beginning with the filing of an objection and now undergoing two separate CPE Panel reviews.

DotGay has already had sufficient opportunity under the Applicant Guidebook to assert its community applicant status. It should not be given a third opportunity because of a technicality that amounts to a harmless error that cannot and should not change the outcome of the CPE review.

The undersigned strongly urge the Board to reconsider its decision and require only a re-evaluation of Criterion #4, rather than of all four Criteria. Anything more than that is not only unfair to the remaining applicants but—worse—casts doubt into the entire Community Priority Evaluation process created painstakingly by the ICANN Community and codified in the Applicant Guidebook we all agreed to when filing our applications.

Signed,

Top Level Design, LLC

United TLD Holdco Ltd.

Top Level Domain Holdings, Ltd.