

APPENDIX 1: Timeline of Relevant Events re Reconsideration Request 16-3

6 October 2014

- The First CPE Panel issued its report on the dotgay Application (First CPE Report), which awarded the Application 10 out of 16 points, and concluded that the Application did not meet the CPE requirements for community priority.¹

22 October 2014

- The Requestor submitted Request 14-44, seeking reconsideration of the First CPE Report and ICANN organization's acceptance of that Report.²
- The Requestor submitted a request pursuant to ICANN's Documentary Information Disclosure Policy (DIDP) (First DIDP Request), seeking documents related to the First CPE Report.³

31 October 2014

- ICANN organization responded to the First DIDP Request (First DIDP Response).⁴

29 November 2014

- The Requestor submitted Revised Request 14-44, seeking reconsideration of the First CPE Report and ICANN organization's acceptance of it, and of the First DIDP Response.⁵

20 January 2015

- The BGC determined that reconsideration was warranted with respect to Revised Request 14-44 (BGC Determination on Request 14-44), because the First CPE Panel inadvertently failed to verify 54 letters of support for the Application and that this failure contradicted an established procedure.⁶ The BGC directed that "the CPE Panel's Report shall be set aside, and that new [CPE] evaluators will be appointed to conduct a new CPE for the Application."⁷ In addition to directing that new evaluators conduct the second CPE of the Application, the BGC also recommended that the CPE Provider consider including new members of its core team to assess the evaluation results.⁸

¹ <https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-1-1713-23699-en.pdf>.

² <https://www.icann.org/resources/pages/14-44-2014-10-22-en>.

³ <https://www.icann.org/resources/pages/20141022-02-2014-10-31-en>.

⁴ See <https://www.icann.org/en/system/files/files/lieben-response-31oct14-en.pdf>.

⁵ See <https://www.icann.org/resources/pages/reconsideration-15-21-dotgay-2015-10-26-en>.

⁶ BGC Determination on Request 14-44, at Pg. 31, *available at* <https://www.icann.org/en/system/files/files/determination-dotgay-20jan15-en.pdf>.

⁷ *Id.*

⁸ *Id.*

8 October 2015

- The CPE Provider administered Second CPE, concluding the Application did not prevail in CPE (Second CPE Report).⁹

22 October 2015

- The Requestor submitted Request 15-21, seeking reconsideration of the Second CPE Report and ICANN's acceptance of it.¹⁰
- The Requestor submitted a request pursuant to ICANN's DIDP (Second DIDP Request), seeking documents related to the Second CPE Report.¹¹

21 November 2015

- ICANN responded to the Second DIDP Request (Second DIDP Response).¹²

4 December 2015

- The Requestor submitted Revised Request 15-21, which sought reconsideration of the Second CPE Report and ICANN's acceptance of it, and of the Second DIDP Response.¹³

1 February 2016

- BGC denied Revised Request 15-21.¹⁴

17 February 2016

- The Requestor submitted Request 16-3.¹⁵

15 May 2016

- The Requestor made an oral presentation to the BGC regarding Request 16-3 (2016 Presentation), and submitted a written summary of the arguments raised in its 2016 Presentation, along with other background materials and letters of support.¹⁶ The 2016

⁹ <https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-rr-1-1713-23699-en.pdf>.

¹⁰ <https://www.icann.org/resources/pages/reconsideration-15-21-dotgay-2015-10-26-en>.

¹¹ See <https://www.icann.org/en/system/files/files/didp-20151022-1-lieben-response-supporting-docs-21nov15-en.pdf>.

¹² See <https://www.icann.org/en/system/files/files/didp-20151022-1-lieben-response-supporting-docs-21nov15-en.pdf>.

¹³ See generally <https://www.icann.org/resources/pages/reconsideration-15-21-dotgay-2015-10-26-en>.

¹⁴ Determination on Request 15-21, available at <https://www.icann.org/en/system/files/files/reconsideration-15-21-dotgay-bgc-determination-01feb16-en.pdf>.

¹⁵ Request 16-3, available at <https://www.icann.org/en/system/files/files/reconsideration-16-3-dotgay-request-17feb16-en.pdf>.

¹⁶ See <https://www.icann.org/resources/board-material/agenda-oec-2016-05-15-en>.

Presentation reiterated the arguments raised in Request 15-21 and did not provide any additional information relevant to evaluation of Request 16-3.¹⁷

26 June 2016

- On 26 June 2016, the BGC issued its Recommendation on Request 16-3, recommending that the Board deny the Request because the CPE Provider’s verification process did not violate applicable policies and procedures, and did not materially or adversely affect the Requestor.¹⁸

25 August 2016

- The Requestor asked the Board to consider former ICANN Ombudsman Chris LaHatte’s investigative report concerning Case No. 16-00177 regarding the Application, in connection with Request 16-3.¹⁹

13 September 2016

- The Requestor submitted an “Expert Opinion of Prof. William N. Eskridge, Jr., in Support of dotgay’s Community Priority Application” (First Eskridge Opinion).²⁰

17 September 2016

- ICANN’s Board directed ICANN organization to undertake a review of the process by which ICANN organization interacted with the CPE Provider, both generally and specifically with respect to the CPE reports issued by the CPE Provider as part of the New gTLD Program.²¹

17 October 2016

- The Requestor submitted an “Expert Opinion of Prof. M.V. Lee Badgett, in Support of dotgay’s Community Priority Application No: 1-1713-23699” (Badgett Opinion).²²

18 October 2016

- The BGC discussed potential next steps regarding the review of pending reconsideration requests relating to the CPE process.²³ The BGC determined that, in addition to reviewing the process by which ICANN organization interacted with the CPE Provider related to the CPE reports issued by the CPE Provider (Scope 1), the review should also

¹⁷ *Id.*

¹⁸ <https://www.icann.org/en/system/files/files/reconsideration-16-3-dotgay-bgc-recommendation-26jun16-en.pdf>.

¹⁹ <https://www.icann.org/en/system/files/files/reconsideration-16-3-dotgay-letter-dechert-llp-to-icann-25aug16-en.pdf>.

²⁰ <https://www.icann.org/en/system/files/files/reconsideration-16-3-dotgay-letter-dechert-llp-to-icann-board-redacted-13sep16-en.pdf>.

²¹ <https://www.icann.org/resources/board-material/resolutions-2016-09-17-en#1.a>.

²² <https://www.icann.org/en/system/files/correspondence/ali-badgett-to-icann-board-17oct16-en.pdf>.

²³ <https://www.icann.org/resources/board-material/minutes-bgc-2016-10-18-en>.

include: (i) an evaluation of whether the CPE criteria were applied consistently throughout and across each CPE report (Scope 2); and (ii) a compilation of the research relied upon by the CPE Provider to the extent such research exists for evaluations that are the subject of pending reconsideration requests (Scope 3).²⁴ Scopes 1, 2, and 3 are collectively referred to as the CPE Process Review. FTI Consulting, Inc.'s (FTI) Global Risk and Investigations Practice and Technology Practice were retained to conduct the CPE Process Review. The BGC determined that the then eight pending Reconsideration Requests relating to the CPE process, including Request 16-3, would be on hold until the CPE Process Review was completed.²⁵

15 November 2016

- The Requestor asked the Board to consider the Council of Europe's 4 November 2016 Report on "Applications to ICANN for Community-Based New Generic Top Level Domains (gTLDs): Opportunities and challenges from a human rights perspective" (CoE Report) in connection with Request 16-3.²⁶
- The Requestor again asked the Board to consider the Badgett Opinion, the First Eskridge Opinion, and the Ombudsman's Report, as well as the Dot Registry IRP and the Expert Determination issued in *The International Lesbian Gay Bisexual trans and Intersex Association v. Afiliat Limited*, ICC Case No. EXP/390/ICANN/7 (ICC Determination), which it cited in Request 15-21, but not in Request 16-3.²⁷

13 December 2017

- ICANN organization published FTI's reports issued in connection with the CPE Process Review.²⁸

15 January 2018

- The Requestor asked the Board to take no action with respect to the conclusions reached by FTI until the parties have had an opportunity to respond to the FTI Report and to be heard as it relates to their pending reconsideration requests.²⁹

²⁴ *Id.*

²⁵ <https://www.icann.org/en/system/files/correspondence/disspain-letter-review-new-gtld-cpe-process-26apr17-en.pdf>.

²⁶ See <https://www.icann.org/en/system/files/correspondence/ali-to-icann-board-15nov16-en.pdf>. The CoE Report is available at <https://rm.coe.int/16806b5a14>.

²⁷ See <https://www.icann.org/en/system/files/correspondence/ali-to-icann-board-15nov16-en.pdf>. ICC Determination available at <https://newgtlds.icann.org/sites/default/files/drsp/25nov13/determination-1-1-868-8822-en.pdf>.

²⁸ See <https://www.icann.org/news/announcement-2017-12-13-en>.

²⁹ <https://www.icann.org/en/system/files/correspondence/ali-to-icann-board-15jan18-en.pdf>

- The Requestor submitted a DIDP request seeking disclosure of documentary information relating to 21 categories of documentary information relating to the CPE Process Review (DIDP Request 20180115-1).³⁰

20 January 2018

- The Requestor reiterated its request that the Board consider the CoE Report, the Ombudsman’s Report, the ICC Determination, the First Eskridge Opinion, and the Badgett Opinion,³¹ asserting that these materials “independently and collectively confirm the arbitrary and discriminatory manner in which dotgay’s application was treated by the [CPE Provider] and ICANN.”³²

31 January 2018

- The Requestor submitted to the Board the “Second Expert Opinion of Professor William N. Eskridge, Jr.” (Second Eskridge Opinion), which discussed the Scope 2 and Scope 3 reports.³³

14 February 2018

- ICANN organization responded to the DIDP Request. With respect to those requested materials that were in ICANN organization’s possession and not already publicly available, ICANN organization explained that those documents would not be produced because they were subject to certain Defined Conditions of Nondisclosure (Nondisclosure Conditions) set forth in the DIDP. Notwithstanding the Nondisclosure Conditions, ICANN organization “also evaluated the documents subject to these conditions . . . [and] determined that there are no circumstances for which the public interest in disclosing the information outweighs the harm that may be caused by the requested disclosure.”³⁴ Additionally, in response to three of the items requested, ICANN organization explained that the requested documentary information did not exist.³⁵

18 February 2018

- Sero, a U.S.-based network of people living with HIV and allies fighting for freedom from HIV-related stigma and injustice, submitted to the Board a letter of support for the dotgay Application “and also [to] express our frustration with the inexplicable

³⁰ DIDP Request 20180115-1, *available at* <https://www.icann.org/en/system/files/files/didp-20180115-1-ali-request-redacted-15jan18-en.pdf>.

³¹ <https://www.icann.org/en/system/files/correspondence/ali-to-icann-board-20jan18-en.pdf>.

³² *Id.*

³³ 31 January 2018 Letter from A. Ali to ICANN Board attaching Second Eskridge Opinion, *available at* <https://www.icann.org/en/system/files/correspondence/ali-to-icann-board-31jan18-en.pdf>.

³⁴ Response to DIDP Request No. 20180115-1, *available at* <https://www.icann.org/en/system/files/files/didp-20180115-1-ali-response-redacted-14feb18-en.pdf>.

³⁵ *Id.*

complacency and lack of action on the demonstrative evidence surrounding discriminatory treatment .GAY has received.”³⁶

1 March 2018

- The National LGBT Chamber of Commerce (NLCC) submitted a letter to the Board to express its support for the dotgay Application. The NLCC urged the Board to “review and agree with” the Second Eskridge Opinion, reject the CPE Process Review Reports, and grant Community Priority to the Requestor.³⁷

6 March 2018

- The European Broadcasting Union (EBU) submitted a letter to the Board in support of the dotgay Application, asking the Board to “set aside the FTI reports when addressing the case of [the Requestor].”³⁸

15 March 2018

- The Requestor sought reconsideration of ICANN organization’s response to DIDP Request 20180115-1 (Request 18-2).³⁹ The BAMC recommended that Request 18-2 be denied on 5 June 2018 because it does not state a basis for reconsideration.⁴⁰ The Board accepted the BAMC Recommendation on Request 18-2 on 18 July 2018.⁴¹
- The Board acknowledged and accepted the findings set forth in the CPE Process Review Reports, declared that the CPE Process Review was complete, concluded that, as a result of the findings in the CPE Process Review Reports there would be no overhaul or change to the CPE process for this current round of the New gTLD Program, and directed the BAMC to move forward with consideration of the remaining Reconsideration Requests relating to the CPE process that were placed on hold pending completion of the CPE Process Review (the 2018 Resolutions).⁴² The Board instructed the BAMC to consider the remaining Requests in accordance with the Transition Process of Reconsideration

³⁶ <https://www.icann.org/en/system/files/correspondence/strub-to-chalaby-18feb18-en.pdf>.

³⁷ <https://www.icann.org/en/system/files/correspondence/lovitz-to-board-01mar18-en.pdf>.

³⁸ <https://www.icann.org/en/system/files/correspondence/mazzone-to-baxter-06mar18-en.pdf>.

³⁹ Request 18-2, available at <https://www.icann.org/en/system/files/files/reconsideration-18-2-dotgay-request-redacted-15mar18-en.pdf>.

⁴⁰ <https://www.icann.org/en/system/files/files/reconsideration-18-2-dotgay-bamc-recommendation-request-05jun18-en.pdf>.

⁴¹ <https://www.icann.org/resources/board-material/resolutions-2018-07-18-en#2.c>.

⁴² <https://www.icann.org/resources/board-material/resolutions-2018-03-15-en#2.a>. One Board member, Avri Doria, abstained from voting on the 2018 Resolutions due to concerns “about the rigor of the study and some of its conclusions.” San Juan ICANN Board Meeting, 15 March 2018, at Pg. 12-13, available at <https://static.ptbl.co/static/attachments/170857/1522187137.pdf?1522187137>. However, Ms. Doria nonetheless “accept[ed] the path forward” that the Board was setting. *Id.*

Responsibilities from the BGC to the BAMC (Transition Process),⁴³ and with a Roadmap for the review of the pending Reconsideration Requests (Roadmap).⁴⁴

19 March 2018

- The BAMC invited the Requestor to “submit additional information relating to Request 16-3, provided the submission is limited to any new information/argument based upon the CPE Process Review Reports” by 2 April 2018. The BAMC also invited the Requestor to “make a telephonic oral presentation to the BAMC in support of” Request 16-3. The BAMC requested “that any such presentation be limited to providing additional information that is relevant to the evaluation of Request 16-3 and that is not already covered by the written materials.”

23 March 2018

- The Requestor responded to the BAMC’s 19 March 2018 invitation to submit supplemental briefing and/or make a telephonic presentation concerning Request 16-3.⁴⁵ The Requestor “reject[ed] BAMC’s invitation to make a telephonic presentation limited to 30 minutes” and “reject[ed] ICANN’s attempt to impose an artificial two weeks deadline” for supplemental briefing.⁴⁶

5 April 2018

- The Requestor reiterated to the BAMC that, “[i]n order to provide ICANN with further substantive comments on the CPE Process Review,” the Requestor “must have” certain of the items it sought in its 23 March 2018 letter.⁴⁷

14 April 2018

- The Requestor submitted a new Reconsideration Request (Request 18-4) seeking reconsideration of the 2018 Resolutions.⁴⁸ The BAMC recommended denying Request 18-4 on 29 June 2018.⁴⁹ The Board accepted the BAMC’s recommendation on 18 July 2018.⁵⁰

⁴³ Available at <https://www.icann.org/en/system/files/files/reconsideration-responsibilities-transition-bgc-to-bamc-05jan18-en.pdf>.

⁴⁴ 2018 Resolutions. See also Roadmap, available at <https://www.icann.org/en/system/files/files/roadmap-reconsideration-requests-cpe-15feb18-en.pdf>.

⁴⁵ 23 March 2018 letter from A. Ali to ICANN Board, <https://www.icann.org/en/system/files/files/reconsideration-16-3-et-al-dotgay-dechert-to-icann-board-bamc-redacted-23mar18-en.pdf>.

⁴⁶ *Id.* at Pg. 4-5.

⁴⁷ 5 April 2018 email from R. Wong to ICANN organization (<https://www.icann.org/en/system/files/files/reconsideration-18-4-dotgay-bamc-recommendation-attachment-2-14jun18-en.pdf>).

⁴⁸ Request 18-4, available at <https://www.icann.org/en/system/files/files/reconsideration-18-4-dotgay-request-redacted-13apr18-en.pdf>.

⁴⁹ <https://www.icann.org/en/system/files/files/reconsideration-18-4-dotgay-bamc-recommendation-14jun18-en.pdf>.

⁵⁰ <https://www.icann.org/resources/board-material/resolutions-2018-07-18-en#2.e>.