

October 12, 2016

*via email only: board-ops-team@icann.org  
secretary@icann.org*

ICANN Board of Directors  
% Dr. Steve Crocker, Chair  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094

Dear Chairman Crocker and Members of the ICANN Board:

We, the undersigned applicants for the .gay new generic top-level domain name (gTLD), feel compelled, yet again, to write in response to the most recent unprecedented action by dotGay, LLC (dotGay).

The application process for .gay has now gone from the extreme to the ridiculous. Despite losing three objections, two complete community priority evaluations (CPE), and failed attempts to overturn two BGC recommendations to reject dotGay's Reconsideration Requests, dotGay's tactics have reached new heights with its recent letter to the ICANN Board and accompanying 62 page "expert report" from a law school professor. We urge the ICANN Board to summarily reject this latest unsolicited letter and the report as irrelevant and outside the application and appeal processes as set forth in the Applicant Guidebook (AGB).

There is nothing in the AGB application process, objection process, CPE process, or appeals process that allows for an unaffiliated individual or group to submit an overwrought "expert" opinion at the 11th hour and thereby call for both the dismissal of two CPE panel decisions and demand delegation in favor of the community applicant. We trust that the Board also recognizes this latest action as improper and outside the AGB rules and therefore will not consider the submission as part of its decision whether to adopt or reject the BGC's recommendation to deny dotGay's Motion for Reconsideration.

It seemed clear to us in 2011 and in 2012, as we were preparing our respective applications for .gay, that a community applicant for .gay would have a very difficult time passing CPE. The CPE was devised to be intentionally rigorous in order to prevent purported community applicants from unfairly winning generic terms as community TLDs. This has proven to be the case, **twice**, for dotGay.

Four years later, it remains clear that dotGay should not succeed in any CPE, as it has not for the reasons well articulated by two independent CPE panels. We stand by [our 2013 analysis](#), first submitted as a comment to the initial CPE (attached as well). Should

the Board decide to consider dotGay's most recent attempts to manipulate the process to obtain community priority, we will be forced to look into other means of objecting to this extraordinary subversion of the process as laid out in the AGB.

We look forward to resolving the .gay contention set in an appropriate, legal manner as described by the AGB as soon as possible.

Sincerely,

*United TLD Holdco Ltd.* (trading as Rightside Registry)  
*Top Level Domain Holdings, Ltd.*  
*Top Level Design, LLC*

cc: Akram Attallah, President, Global Domains Division

Nov. 6, 2013

Mr. Cherine Chalaby, Chair, NGPC, ICANN  
Ms. Christine Willet, VP of New gTLD Operations, ICANN

**RE: CPE Analysis of .gay TLD**

Mr. Chalaby and Ms. Willett:

On behalf of the undersigned of the subsequent document, I am offering a group analysis of the Community Priority Evaluation process as defined by the Applicant Guidebook with regards to a specific Community Priority Application for the .gay TLD (ID# 1-1713-23699).

We presume the appointment of a CPE Panel for .gay is forthcoming and respectfully request that this is forwarded along to it at that time, or that you specify another route of communication. We would also like to see the attached posted as public correspondence.

We hope that this is a useful perspective as ICANN and the CPE Panels prepare for this important process.

Respectfully yours,

Andrew Merriam  
Business Development Coordinator  
Top Level Design, LLC  
andrew@tldesign.co

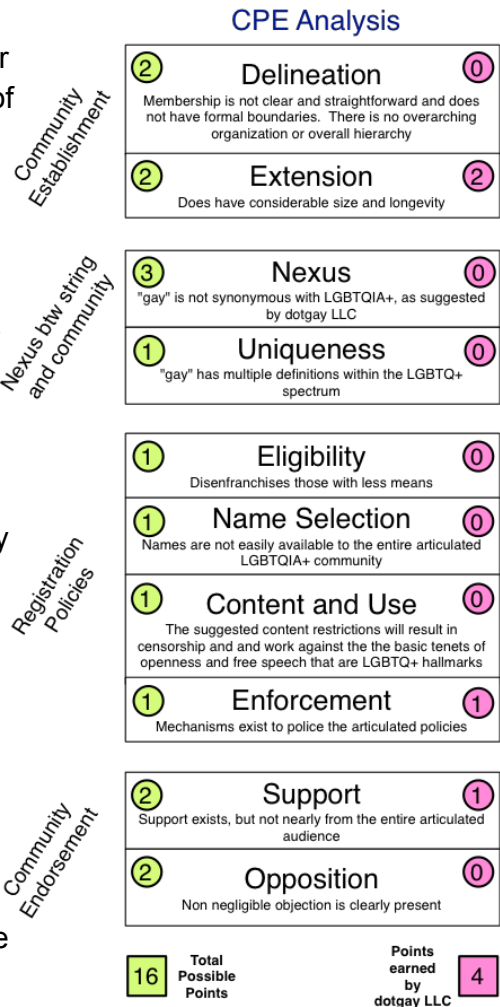
# Evaluation of the Community Priority Application for the .gay TLD

## Executive Summary

We, competitive applicants for .gay, and the applicant for .lgbt, have endeavoured to cooperate on an evaluation of dotgay LLC’s Community Priority application for .gay, which we hope will be of use to the Community Priority Evaluation (CPE) Panel to assist in its determination. There has been increasing concern across the ICANN community that ICANN and the CPE panel may feel constrained to pass a certain percentage of community applications in order to show that the system “works.” If the rules set forth in the Applicant Guidebook (AGB) are followed, many community priority applications for generic strings will fail, and rightly so, given that ICANN has set the entry barrier quite high. The .gay TLD, or any other, must not be used to fill a quota of community priority applications to be passed. Furthermore, with so much opacity surrounding the process and results from other external panels related to the New gTLD process, and the cultural misunderstandings regarding the LGBTQ+ spectrum and terminology,<sup>1</sup> there is potential room for error on the part of the CPE Panel.

We nevertheless recognize our vested business interests in this discussion and offer our evaluation in the spirit of the multistakeholder model and as an insistence that all CPEs rely solely on the rigorous criteria put forth in the AGB. The undersigned applied for .gay and .lgbt despite dotgay LLC’s publicly-announced plans to seek Community Priority for .gay and we have each spent a considerable amount of time and resources investigating dotgay LLC’s publicized business plans and the criteria for CPE; therefore, it must be clear to all involved parties that evaluation is to follow the letter of the AGB and not rely in any way on more emotional or extemporary judgements.

dotgay LLC is creating a “community” around a TLD rather than creating a TLD for a clearly delineated community. ICANN’s community rubric is specifically designed to separate the two and, as would be expected, dotgay LLC’s application does not pass, scoring only 4 of the 14 points necessary. Here is a summary of the key areas of concern:



<sup>1</sup> LGBT acronyms are discussed below, but its most popular form stands for “Lesbian, Gay, Bisexual Trans\*”, and in this case, with the addition of “Q+,” also “Queer, Other”

- There is no clear **delineation** to either the “Gay Community” and/or LGBTQ+ spectrum, and the former is actually fabricated by dotgay LLC to conflate and represent the later. dotgay LLC suggests that membership is achieved by “coming out,” which is a dangerous and incorrect assertion. There is no official gay and/or LGBTQ+ structure and no formal boundary as these individuals and their groups self-identify as such (pp. 8-9).
- dotgay LLC suggests that “gay” and LGBTQIA+ are synonymous and therefore “gay” establishes **nexus** as the best identifier for LGBTQIA+, which is incorrect and offensive to the heterosexual trans\* and intersex or queer identifying individuals that dotgay LLC callously co-opts as “gay.” dotgay LLC and its partner, The International Lesbian and Gay Association (ILGA), have further demonstrated their hostility to letting LGBTQ+ constituents self-identify by officially objecting to the application for .lgbt (pp. 11-14).
- dotgay LLC’s definition of “gay” is incorrect; Furthermore, there is not a single, **unique** definition of "gay," but rather several definitions, which are appropriate in varying circumstances, and largely dependent on context and self-identification (p. 15).
- In its attempt to construe the LGBTQ+ spectrum into an ICANN-defined community, dotgay LLC has put in rigorous access and **eligibility barriers** that will disproportionately disenfranchise those without the means to formally engage one of its “Authentication Partners” (pp. 16-17).
- dotgay LLC cannot fulfill its promise to represent all of the “gay community” (Read: LGBTQ+ spectrum) and restrict **name selection** accordingly given that large swathes of this population do not have the privilege or ability to formally engage “Authentication Partners” for .gay domain registration (pp. 18-20).
- dotgay LLC suggests significant **content restrictions** related to “sensitive words” and promises a still-undefined policy to restricting adult content. This will result in controversial censorship given that the LGBTQ+ spectrum is self-identifying and there is no consensus on what is “sensitive” (pp. 20-22).
- dotgay LLC has only **nominal support** to represent the entire LGBTQ+ spectrum; its claims to represent 7+ million people account for 0.5-1% of the estimated global LGBTQ+ population (p. 25).
  - dotgay LLC’s most active partner, ILGA, has officially objected to Afilias Limited’s application for .lgbt. ILGA’s objection to .lgbt, presumably on behalf of its partner dotgay LLC, is a clear indication that ILGA and dotgay LLC believe that all who self-identify as lesbian, bisexual, and trans\* will feel equally represented by the term “gay.” This is blatantly untrue and not within their power to claim (pp. 25-26).
  - It is clear that in many of its most prominent supporters’ letters, that some entities do not support dotgay LLC the company outright, but instead the .gay TLD as a concept (p. 26).
  - dotgay LLC has promised to reimburse its supporters, and consistently makes a point of its superficial commitment to give 67% of its profits to its “community;” this is irrelevant as not-for-profit status is not involved with CPE. dotgay LLC is a for-profit entity and a commitment to donate a portion of “net profits” rather than actually incorporate as a non-profit entity belies its own interest for financial gain (p. 26).

- Its support is limited to a few recognizable USA based organizations; it has extremely scant trans\* specific support, and the direct affiliates of its most active supporter, ILGA, constitute the large majority of its organizational support. Furthermore, some of its supporters have a history of disenfranchising vulnerable LGBTQ+ groups (pp. 26-27).
- There have been two **official objections** filed by politically conservative USA based gay organizations that presumably feel disenfranchised (pp. 27-28).

The undersigned are applicants for .gay or .lgbt and we see dotgay LLC's Community Priority application as an attempt to game ICANN's New gTLD Program to the widespread detriment of the very individuals and groups that dotgay LLC claims to represent. We look forward to the CPE Panel's evaluation and an equitable resolution of the .gay contention set.

Top Level Design, LLC (open applicant for .gay)  
Top Level Domain Holdings, LTD (open applicant for .gay)  
United TLD Holdco Ltd. (open applicant for .gay)  
Afilias, LTD (open applicant for .lgbt)

## CPE Overview

The CPE process was designed to be inherently rigorous, identifying all qualified communities while preventing “false positives,” in which an applicant claims an overly generic word as its own community.

The Applicant Guidebook notes in §4.2.3 that, “a qualified community application eliminates all directly contending standard applications, regardless of how well qualified the latter may be. This is a fundamental reason for very stringent requirements for qualification of a community-based application.” Clearly, the intent was not to compromise fair and competitive processes to resolve string contention as provided for in the AGB, but instead to provide for an exception process to permit an applicant in contention for its legitimately established name the opportunity to prove community status in order to achieve priority against all others.

As was noted in ICANN’s Analysis of Public Comments of a 2009 draft of the AGB, “The threshold for winning is intentionally set with a view to prevent gaming attempts and identifying true Community applications. The risk for “false negatives” in the scoring can be moderated by a lowering of the threshold, but this has to be balanced against an increased risk for “false positives.” In cases of generic words submitted as Community based strings, test runs by [ICANN] staff have also shown that the threshold is difficult to attain...”<sup>2</sup>

Furthermore, we stress that “community” for ICANN is strictly defined and does not use the commonly-used, dictionary definition.<sup>3</sup> Rather, it is defined by the Applicant Guidebook to refer to the unique form of community required to pass CPE. What might be termed the “gay community” by some is not a singular, homogeneous group and is not nearly as broad in its inclusion as dotgay LLC is claiming, given that it offensively suggests it as an appropriate identifier for the entire LGBTQ+ umbrella.

In its preparation of the CPE Panel, and in order to protect the integrity of the process, all applicants should be able to trust that ICANN staff has thoroughly communicated the intentionally rigorous standards for Community Priority Evaluation, particularly “in cases of generic words submitted as Community based strings.”

## LGBTQ+ Terminology

LGBTQ+ individuals identify in a variety of ways to describe themselves and their communities.

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<sup>2</sup> ICANN. (2009). *New gTLD Draft Applicant Guidebook: Analysis of Public Comment*. Retrieved from, <http://archive.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf>

<sup>3</sup> “Community: a unified body of individuals: as a group linked by a common policy; a body of persons or nations having a common history or common social, economic, and political interests. Common character, LIKENESS.” In *Merriam-Webster Dictionary*. (n.d.). Retrieved from, <http://www.merriam-webster.com/dictionary/community>

There is cause to provide an overview of LGBTQ+ identities and terminology given that dotgay LLC offensively seeks to give hegemony to “gay” as representative of the entirety of LGBTQIA+ spectrum of individuals and groups, portraying it as a universally celebrated umbrella term in its application and even going so far as to object to the application for .lgbt via its partner, ILGA.<sup>4</sup> Indeed, dotgay LLC is portraying “gay” as the all-inclusive term that is, in reality, better suited to one of the LGBTQ+ oriented acronyms.<sup>5</sup>

The identity categories that describe those whose sexual orientations, gender identities, and/or physical anatomies differ from socio-cultural norms have been and continue to be in flux and debated. These identity categories range in scope, from incredibly specific to incredibly broad. The broadest “umbrella terms,” are used to speak about a varied group of people en masse who generally share some experiences or needs. The more broad an umbrella term is, the more it risks erasing the important differences among those included within its definition and of marginalizing the least privileged. dotgay LLC problematically employs the word “gay” as an incredibly broad umbrella term that spans sexual orientation, gender identity, and sex. It uses “gay” to refer to “male or female homosexuals, bisexuals, transgender, queer, intersex, ally...” as well as “other terminology,” while qualifying that all the identities included lie “outside of the norms defined for heterosexual behavior.”<sup>6</sup> This definition conflates sexual orientation with both gender identity and sex and, in so doing, erases and marginalizes those who it claims to represent. Not all transgender and intersex individuals’ sexual orientations are, “outside of the norms defined for heterosexual behavior.” That is, some transgender and intersex individuals identify as heterosexual and therefore conform to the norms of heterosexual behavior. White-washing these individuals as necessarily gay is offensive and a regressive step in their fight for awareness and equality.

Trans\*<sup>7</sup> and intersex individuals—and therefore their specific needs—are erased and misrepresented by the definition of “gay” that dotgay LLC utilizes due to its qualification of all

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<sup>4</sup> International Chamber of Commerce. (2013). *List of Objections Filed with the ICC International Center for Expertise*. Retrieved from, <http://www.iccwbo.org/Products-and-Services/Arbitration-and-ADR/Expertise/ICANN-New-gTLD-Dispute-Resolution/Pending-Cases/>.

<sup>5</sup> Our discussion of LGBTQ+ acronyms is found below, though we would like to note that we have chosen to specifically use LGBTQ+ as it creates a distinct space for many and allows others to represent themselves through the other/plus sign, “+.” When we refer to either LGBT or LGBTQIA+ it is in reference to the context created by another party, such as dotgay LLC’s claim to represent all of LGBTQIA+ with the term “gay,” or LGBT population figures from the National Gay and Lesbian Task Force. We also use omit the “G,” in situations where “gay” is pulled out as distinct from the other identifiers and the acronym.

<sup>6</sup> dotgay LLC. Application ID 1-1713-23699. Response to 20(a)

<sup>7</sup> “Transgender: Someone who does not identify with the sex they were assigned at birth. ‘Transgender’ is an umbrella term - it encompasses multiple identities, including genderqueer identities, FTM identities, MTF identities, and so on. The term transgender\* or trans\* (with an asterisk) is also used to denote not just transgender people, but transgender people and all gender non-conforming identities. (Whether or not the use of the term ‘transgendered’ is appropriate is debated amongst transgender and non-transgender people. To be safe, using ‘transgender’ is most appropriate. Also, never use ‘transgender’ as a noun.) ‘Transgender’ is often shortened to ‘trans.’” Stanford University’s Vaden Health Center. (n.d.). *Glossary of Transgender Terms*. Retrieved from, [http://vaden.stanford.edu/health\\_library/transgendertermglossary.html](http://vaden.stanford.edu/health_library/transgendertermglossary.html)



people within the gay community as “outside the norms defined for heterosexuality.” Gay should *never* be used to refer to trans\* or intersex individuals unless they also happen to identify as gay. The commonly agreed-upon and contemporary definition of “gay,” when used as an umbrella term, relates solely to sexual orientation. GLAAD, the self-proclaimed, “LGBT Movement’s Communications Epicenter,” defines gay as, “*sometimes* used as a shorthand term encompassing gay, lesbian and bisexual orientations (though not transgender people or gender identity).”<sup>8</sup> This definition is far more culturally competent in that it recognizes that the word “gay” should not be used to speak about gender identity, which is not the same as sexual orientation.

The acronym, LGBT (lesbian, gay, bisexual, trans), in perhaps its best-known form,<sup>9</sup> is an umbrella term that attempts to recognize all of the differences between the identities it groups together and refers to *en masse*. Unlike dotgay LLC’s use of the word “gay,” these acronyms position trans\* and intersex individuals, among others, as distinct from those who are gay, lesbian, bisexual, or represented by another distinct letter or symbol. That is, they are explicitly separated from those who have non-normative sexual orientations. Gayatri Spivak coined the term, “Strategic Essentialism” to describe the phenomenon whereby a marginalized group of people with significant differences between them may essentialize themselves under a single umbrella in order to have a larger, stronger, and louder coalition to attain goals such as rights.<sup>10</sup> The strategic essentialism of gender and sexual minorities would only be beneficial if the needs of trans\* individuals, for example, were not lost among those of gay and lesbian people’s. When “gay,” a term that describes sexual orientation, is used as a broader umbrella term, those who differ from the norms of gender identity or sex are invisible.

Even the form and use of the acronym is in flux, as the structure of the term inherently imposes a hierarchy. For example, there is a historical background to the “L” generally being placed before the other letters, as it was a concession to lesbian groups of the 1970s that sought to establish lesbian rights groups independent of gay men’s groups. More recently, trans\* individuals have stood up against the marginalization of their needs within the greater “LGBT Rights” movement and their use and affinity with the acronym is not necessarily uniform. This dynamism and debate around LGBTQ+ terminology is completely glossed over by dotgay LLC’s application and its incorrect and offensive use of “gay” as an all-inclusive and equitable LGBTQ+ umbrella term.

The complexity surrounding how LGBTQ+ individuals may identify on both personal and group levels demands a high-level of cultural sensitivity from the CPE Panel.

### **Community Priority Evaluation, Point-by-Point**

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<sup>8</sup> GLAAD. (2012). *An Ally’s Guide to Terminology*. Retrieved from, <http://www.glaad.org/files/allys-guide-to-terminology.pdf>. Emphasis added.

<sup>9</sup> There are many variations of the acronym, some that put the “G” first, others that add on many more placeholders; Perhaps its longest form is LGBTQQ2IPPA (lesbian, gay, bisexual, trans, queer, questioning, two-spirit, intersex, pansexual, polyamorous, asexual).

<sup>10</sup> Spivak, G. (1993). *Outside in The Teaching Machine*. New York, NY: Routledge.

The CPE is comprised of four tests, each of them divided into sub-sections that are individually evaluated, these are:

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

We will now evaluate dotgay LLC's application for .gay using its application and the rubric and evaluation criteria published by ICANN in its Applicant Guidebook, bringing our own knowledge of LGBTQ+ issues to bear, and also expert and primary sources, which are cited throughout. All references to community evaluation scoring and defined terms come from §4.2.3 of the Applicant Guidebook.

We note that the CPE Panel may rely on some level of outside research, though this remains undefined.<sup>11</sup>

### **Criterion 1: Community Establishment**

The first criterion for CPE, Community Establishment, is worth 4 points in total, split equally between two sub-sections: Delineation and Extension.

#### **“Delineation” Criterion**

To receive 1 or 2 points for delineation, the AGB states that an application must invoke a “clearly delineated, organized, and pre-existing community.”

- Definition of “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 understanding of the community's existence prior to September 2007 (when the new gTLD policy recommendations were completed); and (c) extended tenure or longevity—non-transience— into the future.
- "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.
- "Organized" implies that there is at least one entity mainly dedicated to the community,

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<sup>11</sup> ICANN. (2012). gTLD Applicant Guidebook. *Version 2012-06-04* (§4.2.3).

with documented evidence of community activities.

- 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.” With respect to “Delineation,” if an application satisfactorily demonstrates all three relevant parameters (delineation, pre-existing and organized), then it scores a 2.

### **“Delineation” Analysis**

Note that the “ICANN-community” definition is far more specific and stringent than cultural usage of the word, “community.” There is a commonality of interest, such as equal rights and social education, across the global LGBTQ+ identity groups, though the actual cohesion of its members is tenuous. The wide variety of gay, queer, and trans\* groups predate 2007 and their influence and diversity is set to grow over the future, not diminish.

There is not a “clear and straightforward membership definition,” as someone may identify within one or many LGBTQ+ umbrellas, but may not qualify themselves as “gay,” given that they may prefer other terms. There are not formal boundaries around the global LGBTQ+ community and there is a significant amount of inter-queer discourse on prejudicial treatment between majority factions, such as older gay cisgender white men,<sup>12</sup> and marginalized factions, such as youth, people of color, and trans\* people. Furthermore, there is no universal acceptance of who may self-identify as “gay,” or “LGBT,” and how to do so, and what that necessarily means.

dotgay LLC acknowledges the lack of delineation in its application, stating that, “Unlike sports teams who have uniforms to identify them, or airlines that use branding to differentiate themselves from the competition, the Gay Community [sic] does not have such a common or consistent method of identification. The .gay TLD offers the solution to creating a single, universal method of identification for the community.”<sup>13</sup> This further underscores the fact that dotgay LLC is creating a “community” around a TLD rather than creating a TLD for a clearly delineated community.

dotgay LLC states that “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

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<sup>12</sup> “Cisgender: Someone who identifies as the sex they were assigned at birth. For example, a woman who was assigned female at birth and identifies as female is regarded as cisgender.” Stanford University’s Vaden Health Center. (n.d.). Retrieved from, [http://vaden.stanford.edu/health\\_library/transgendertermglossary.html](http://vaden.stanford.edu/health_library/transgendertermglossary.html)

<sup>13</sup> dotgay LLC. Application ID 1-1713-23699. Response to 18(b)iii

more clearly, dotgay LLC is also requiring community members to have registered with one of its Authenticating Partners[.]”<sup>14</sup> This is problematic in that not all LGBTQ+ individuals have the opportunity and safety to live completely out of the closet; many stay closeted for a variety of reasons and denying them entry and participation in .gay is a missed opportunity to empower some of the most persecuted and deprived members of the population. Note that dotgay LLC goes beyond the misguided requirement that delineation is the same as “coming out,” to further restrict participation to those that have the resources and desire to participate as formal members of its “Authentication Partners.”<sup>15</sup>

The LGBTQ+ spectrum is not clearly delineated, and it is not organized in any type of official or hierarchical manner. The only aspect of the “Dilention” Criterion that dotgay LLC satisfies is that the groups in question have been pre-existing for some time. However, the wide array of organizations and individuals that constitute these pre-existing groups has never been hierarchically structured and there has never been any uniform cohesion among LGBTQ+ individuals and organizations as dotgay LLC so claims. dotgay LLC itself notes that, “While there isn’t a hierarchical structure that organizes the community, there is a cooperating *loose mesh* of organizations that represent the diverse segments and various interests of the gay community[.]”<sup>16</sup> Indeed, many prominent and local groups have a history of cooperation and there is a great deal of shared interest, however, there is no authoritative umbrella organization and the history of debate and distrust between LGBTQ+ groups at various times cannot be denied.

### **“Delineation” Scoring**

Given that there is no strong and clear delineation and no authoritative organization structures, dotgay LLC’s application merits a 0 on this section. Scoring either 1 or 2 on this section is dependent on “clear” delineation, which is notably absent across the global LGBTQ+ spectrum, especially when many individuals therein may remain wholly or partially “closeted” to the general public. Anonymity on the Internet may give these individuals the ability to more truthfully represent themselves online, providing a level freedom that is absent elsewhere in their lives. dotgay LLC should not be able to shut these already disadvantaged individuals out of a .gay TLD. Furthermore, the general fluidity in certain sexual or gender identifications, and the fact that the word “gay,” along with other LGTBQ+ identities, is self-identifying, means that there is no “clear” delineation. The fact that the LGBTQ+ groups are pre-existing must be considered alongside the facts that there is no overall structure, and delineation has changed throughout history and has remained amorphous.

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<sup>14</sup> dotgay LLC. Application ID 1-1713-23699. Response to 20(a)

<sup>15</sup> One wonders what its “Authentication Partners” considers sufficiently “authentic” to be considered worthy, or “gay enough,” to merit a domain name in the .gay TLD. The inequitable process of a select group of “Authentication Partners” brings to mind the many times that LGBTQ+ individuals have been called out, marginalized, segregated, and isolated from society at large in order to disenfranchise the people who were so identified. The choice to come out, as even dotgay LLC agrees, is “unique for every individual” and, unfortunately, in many parts of the world still “involv[es] a level of risk” that the undersigned will not force anyone to undertake simply for the privilege of registering for a domain name.

<sup>16</sup> dotgay LLC. Application ID 1-1713-23699. Response to 20(a). Emphasis Added.

## **“Extension” Criterion**

To score the full 2 points for “extension,” the AGB states that the applicant must demonstrate that its proposed community is of considerable size and longevity.

- “Extension” relates to the dimensions of the community, regarding its number of members, geographic reach, and foreseeable activity lifetime, as further explained in the following.
- "Size" relates both to the number of members and the geographic reach of the community, and will be scored depending on the context rather than on absolute numbers—a 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—all these can be regarded as of “considerable size.”
- "Longevity" means that the pursuits of a community are of a lasting, non-transient nature.

## **“Extension” Analysis**

The global gay “community,” which dotgay LLC erroneously claims is synonymous with the LGBTQIA+ umbrella, is so large and diverse, with varying interpretations of who exactly qualifies, that it is both of considerable extension and size. The pursuits of these often disparate groups are varied, but their most common aspects can perhaps be simplified as pertaining to equal rights, social education, and justice; these are not transient in nature. Insert actual population size and the size of dotgay LLC’s support.

dotgay LLC notes this in its application, stating, “[G]ay individuals have always existed” and “The Gay community [sic] is global. Since the Gay community [sic] is self-identifying, it becomes a difficult challenge to measure accurate statistics using tradition [sic] standards.”<sup>17</sup> It correctly notes that the “community” is so large, and participation and identification therein is a personal and subjective choice, and so it is impossible to quantify the group with exact numbers.

In fact, an estimate for the global LGBT populace ranges from 350,000,000 - 700,000,000 individuals. We explore in the forthcoming “Support” criterion the fact that dotgay LLC claims to have support of 7 million individuals, and therefore can only claim to represent between 0.5-1% of the total global LGBTQ+ population. However, the “Extension” criterion is only focused on the size and extent of the intended community, and support will be evaluated in due course.

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<sup>17</sup> dotgay LLC. Application ID 1-1713-23699. Response to 20(a).

## **“Extension” Scoring**

While we know that the global “gay community” is not synonymous with the global LGBTQIA+ identifying spectrum, we note that dotgay LLC has fabricated the former to necessarily include trans\*, intersex, and queer identifying individuals, but that the latter is of considerable size and longevity. dotgay LLC scores 2 out of 2 points.

**Total, Criterion 1 “Community Establishment:** 2 out of a possible 4 points.

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

Criterion number two, “Nexus between Proposed String and Community,” is worth a total of 4 points and is composed of two sub-criteria. The first, nexus, is worth 3 points, while the second, Uniqueness, is worth 1 point.

### **“Nexus” Criterion**

To score the full 3 points, the AGB states that, “the string [must match] the name of the community or is a well-known short-form or abbreviation of 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.
- “Identify” means that the applied for string closely describes the community or the community members, without over-reaching substantially beyond the community.
- With respect to “Nexus,” for a score of 3, the essential aspect is that the applied-for string is commonly known by others as the identification / name of the community.
- With respect to “Nexus,” for a score of 2, the applied-for string should *closely* describe the community or the community members, without over-reaching 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.<sup>18</sup>

### **“Nexus” Analysis**

“Nexus” is arguably the most critical issue in dotgay LLC’s application. It claims that “gay” is an

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<sup>18</sup> ICANN. (2012). gTLD Applicant Guidebook. *Version 2012-06-04* (§4.2.3). Emphasis Added.

umbrella term that is embraced and used by the whole of the the global LGBTQIA+ identifying spectrum. It does not draw the boundaries around homosexual men but includes “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.”<sup>19</sup>

The application of “gay” as an umbrella term beyond sexual orientation is offensive, as its use as an umbrella term for all non-normative sexual orientations is not preferred by many who self-identify as lesbian, bisexual, queer, or other non-normative sexual orientations. The term, “gay,” does resonate with some LBQ individuals as an umbrella term under which people of various sexual orientations may unite in coalition, but this is by no means true for all. For example, a person may self-identify as a lesbian and not gay because it is important to her to distinguish that she has an experience of a woman within society and is marginalized in different ways than a gay man. Under the umbrella of the word “gay,” due to its broad boundaries of inclusion, she may feel marginalized by those who hold male privilege and may feel her needs as a woman with a non-normative sexual orientation are not valued. “Gay,” as an umbrella term for those who do not self-identify as gay, is not preferred by those who prefer LGBT (or an extended variation, such as LGBTQIA+, or a specific term therein).

dotgay LLC states in its application, “The Gay Community [sic] has also been referred to using the acronym LGBT, and sometimes the more inclusive LGBTQIA.”<sup>20</sup> We do not know how else to read this other than an admission by dotgay LLC that there exist alternative terms, including options that are more inclusive, to better describe those whose sexual orientations and/or gender identities differ from socio-cultural norms, and differ from the most appropriate definition of “gay,” which pertains solely to homosexual men. They seem to prefer to use the word “gay” as it is more approachable for those outside the LGBTQ+ umbrella, but for those that have been fighting for the implementation of more respectful and appropriate terms, this is a major regression; LGBT communities should not be forced to coalesce around the word “gay” for the benefit of individuals who incorrectly understand the word “gay” to mean the LGBTQ+ spectrum.

<sup>21</sup>

dotgay LLC states in its application, “The term “gay” today 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 [...] Notably, “gay” is used to super-identify all these groups and circumstances. Whether homosexual, bisexual, transgender, intersex or ally, all members

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<sup>19</sup> dotgay LLC. Application ID 1-1713-23699. Response to 20(a).

<sup>20</sup> Ibid.

<sup>21</sup> Or another form of the acronym as there are many people who are are not served by the term “gay” yet have been involuntarily co-opted by dotgay LLC to be part of its “community.”

of the Gay Community march in the “gay pride parade” read the same “gay media” and fight for the same “gay rights.”<sup>22</sup>

We do not know on what authority dotgay LLC is able to posit that all members under the global LGBTQ+ umbrella are comfortable with self-identifying as “gay,” both to other LGBTQ+ identifying individuals as well as to heterosexual, cisgender people. Rather, it can be found within public discourse and the historical fractionalization of “gay” as all-inclusive term that this is not true. The word “gay” is not the concrete umbrella term that dotgay LLC claims it is, and it should acknowledge that many members of the so-called “community” that it purports to represent prefer to call, for example, the “gay pride parade,” “Pride,” and/or “LGBT Pride,” or the “gay media” the “queer media,” and the fight for “gay rights” is for some more aptly a fight for “equal rights” and/or “human rights.” It is incredibly demeaning that dotgay LLC willfully ignores the more marginalized members of the so-called “community” it ostensibly speaks for.

dotgay LLC seeks to monopolize the conversation on “gayness” and its most active sponsoring partner, ILGA, has officially objected to the separate application for .lgbt, presumably on dotgay LLC’s behalf. This is wrong and preventing .lgbt to delegate would fundamentally limit the ability of self-identifying individuals to use their preferred identifier as a TLD and further belies dotgay LLC’s interest in fabricating a global cohesion of a singular, homogenic, gay community encapsulated in “.gay” rather than “.lgbt” or any other applicable term, such as “.queer.” It is absolutely wrong for dotgay LLC and ILGA to claim that their .gay application represents the will of the whole of the LGBTQ+ community and then to simultaneously oppose the delegation of .lgbt; indeed, dotgay LLC recognizes in its own application that “LGBTQIA” is a more inclusive term than “gay,” so the objection to .lgbt shows its preference in using a common but exclusionary term, “gay,” over a more inclusive and representative term, “lgbt.” In spite of its application’s wording, dotgay LLC’s CEO, Scott Seitz, has disclosed to the media that he acknowledges that the trans\*, intersex, and queer communities are not inherently “gay,”<sup>23</sup> but dotgay LLC nonetheless seeks to co-opt them in its application.<sup>24</sup>

dotgay LLC’s understanding of how LGBTQ+ individuals relate to the term “gay” is outmoded and derogatory, and clearly a regressive step for those that identify as queer, trans\*, intersex, and for others on the global LGBTQ+ spectrum, especially those individuals that have fought so hard to create safe and empowering spaces using the terms they feel visible within, whether it be “lesbian,” “trans,” “queer,” or another term, of which there are many.

### **“Nexus” Scoring**

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<sup>22</sup> dotgay LLC. Application ID 1-1713-23699. Response to 20d

<sup>23</sup> March, Sid. (September, 2012). *The Race to Become your .gay Place on the Web*. Retrieved from <http://www.lesbian.com/the-race-to-become-your-dotgay-place-on-the-web/>

<sup>24</sup> This is clear evidence that dotgay LLC are gaming the ICANN process by putting forth in its application a definition of a word and “community,” that it has recognized elsewhere is, in fact, fabricated to achieve its overall goal of managing the .gay TLD.



Those that are not aware of the nuances of self-identification and terminology in queer and trans\* communities may be quick to lump them all together as “gay,” which, unfortunately, is exactly what dotgay LLC’s application encourages. This marginalizes and erases those that have carved out their own space under the global LGBTQ+ umbrella and perpetuates ignorance on the complexities of the issues. The new gTLD program is an amazing opportunity to spread education and awareness on an entirely new scale; dotgay LLC’s tactics and plan represent a shamefully regressive step and abuse of the empowering possibilities of new gTLDs.

The word “gay” may be one of the more widely understood terms to describe the global LGBTQ+ spectrum by those who do not identify under the LGBTQ+ umbrella, however, dotgay LLC is claiming to represent a “community” by using the term that they call themselves, not the term that others call them.

We conditionally agree that while “gay” may very well be one of the more widely understood terms to describe an aspect of the LGBTQ+ umbrella, there are more inclusive and appropriate labels, including “LGBT.” Therefore, we cannot conclude that it is a “well-known short form or abbreviation of the community.” Note that dotgay LLC did not apply for .lgbt as a community, nor did it restrict its “community” to only gay men; it has applied for .gay to represent everyone that identifies as under the LGBTQIA+ umbrella,<sup>25</sup> which it undeniably does not.

Recall that “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.” Gay when used as an umbrella term to refer to sexual orientation is an adjective, not a noun, and furthermore, its use as a singular noun is considered to be offensive, and its plural version, “gays,” is used largely as a last resort in particular circumstances, such as in newspaper headlines.<sup>26</sup>

It would be a regressive step if dotgay LLC’s definition and use of the term “gay” were to become a commonplace shorthand for the entire LGBTQ+ spectrum. Indeed, many individuals and organizations have been fighting for representation in gay and LGBT resources; to suggest that they must default to the “gay” umbrella term given that it is especially well-known by non-LGBT+ identifying individuals is extremely problematic. Since the 2 points available for “Nexus” are awarded together or not at all, dotgay LLC is clearly not eligible for any points.

### **“Uniqueness” Criterion**

The second sub-criterion in Nexus between Proposed string and community is “Uniqueness.” It is worth a total of 1 point, and according to the AGB, is earned if the “string has no other significant meaning beyond identifying the community described in the application.”

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<sup>25</sup> We have intentionally inserted the “IA+” to our standard LGBTQ+ given that dotgay LLC has claimed in its application to also represent transgender and intersex individuals, “and many other terminology.”

<sup>26</sup> GLAAD. (2010). *Media Reference Guide*. Retrieved from, <http://www.glaad.org/files/MediaReferenceGuide2010.pdf?id=99>

- “Identify” means that the applied for string closely describes the community or the community members, *without over-reaching substantially* beyond the community.<sup>27</sup>
- “Significant meaning” relates to the public in general, with consideration of the community language context added

### “Uniqueness” Analysis

dotgay LLC states in its application, “Like most words in most languages, “gay” has an interesting and complicated history that moves across cultures, definitions and meanings before eventually settling on one culturally agreed upon definition,” and as it quotes the OED, “Gay by the early 20th century progressed to its current reference to a sexuality that was non-heterosexual.”<sup>28</sup> We would not argue that “gay” today could be easily mistaken with its outdated definition of “happy” or any of the other dated use cases, however, there are a variety of ways “gay” can be defined when referring to sexual orientation.

As previously noted, dotgay LLC’s definition of the term “gay” *significantly* over-reaches, as it conflates gender identity, sex, and sexual orientation and includes transgender and intersex people as necessarily within its boundaries. This is incorrect and offensive.

In order to earn the 1 point for “Uniqueness,” the string must have *no other* significant meaning. “Gay” has two other significant meanings, neither of which are the incorrect definition used by dotgay LLC to identify its “community.” At its broadest, “gay” can be defined as “...a shorthand term encompassing gay, lesbian and bisexual orientations (though not transgender people or gender identity).”<sup>29</sup> The Human Rights Campaign (HRC) defines “gay” as, “A word describing a man or a woman who is emotionally, romantically, sexually and relationally attracted to members of the same sex.”<sup>30</sup> These definitions are focused on sexual orientation, not gender identity or sex, as the dotgay LLC definition is. Another meaning of “gay,” is more specific in that it is used to describe specifically male-identified individuals who are attracted to other male-identified individuals. The Oxford Advanced Learners Dictionary defines “gay” as “(Of people, especially men) sexually attracted to people of the same sex.”<sup>31</sup> Oregon State University’s Pride Center defines “gay” as, “Someone who is male-identified who seeks to be emotionally, spiritually and/or physically involved with other people who are male-identified.”<sup>32</sup> While these definitions differ slightly in their wording, they confirm that “gay,” is most commonly used to refer specifically to men who are attracted to those of their same gender, and that this is a significant meaning of the

<sup>27</sup> ICANN. (2012). gTLD Applicant Guidebook. *Version 2012-06-04*. (§4.2.3). Emphasis Added.

<sup>28</sup> dotgay LLC. Application ID 1-1713-23699. Response to 20d

<sup>29</sup> Gay. GLAAD. (2012). *An Ally’s Guide to Terminology*. Retrieved from, <http://www.glaad.org/files/allys-guide-to-terminology.pdf>

<sup>30</sup> Gay. Human Rights Campaign. (2011-2013). *Glossary of Terms*. Retrieved from, <http://www.hrc.org/resources/entry/glossary-of-terms>

<sup>31</sup> Gay. (2013). In *Oxford Advanced Learners Dictionary*. Retrieved from, [http://oald8.oxfordlearnersdictionaries.com/dictionary/gay\\_1](http://oald8.oxfordlearnersdictionaries.com/dictionary/gay_1)

<sup>32</sup> Gay. (2013). Oregon State University Pride Center. *Terms and Definitions*. Retrieved from, <http://oregonstate.edu/pridecenter/terms-and-definitions>

word. Both meanings are significant, common, and differ from the incorrect definition that dotgay LLC has put forth.

### **“Uniqueness” Scoring**

dotgay LLC scores 0 out of 1 point on “Uniqueness” given that its definition of “gay” substantially over-reaches and is proposed as a stand-in for “LGBT” or similarly broad terms that include gender in addition to sexual minorities. In addition, there are two significant meanings that differ from the flagrantly incorrect definition for the string that dotgay LLC uses.

**Total, Criterion 2 “Nexus between Proposed String and Community”:** 0 out of 4 points

### **Criterion 3: Registration Policies**

Criterion 3 is broken up into 4 sub-criteria, each worth 1 point, they are: Eligibility, Name Selection, Content and Use, and Enforcement

#### **“Eligibility” Criteria**

In order to score the full 1 point for “Eligibility,” the AGB states that the registration policies must be restricted registration only to community members.

- “Eligibility” means the qualifications that organizations or individuals must have in order to be allowed as registrants by the registry.
- 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.

#### **“Eligibility” Analysis**

The interesting failing for dotgay LLC’s registration policies is that they are overly rigorous; in order to restrict registration to a fabricated “community,” dotgay LLC has had to create hard and fast rules for who qualifies as “gay enough” to be part of said “community,” and thus be able to register for a .gay domain. It has outsourced this gate-keeping to its partners, which are LGB-centric organizations that can vouch for their members.<sup>33</sup> Thus, only those individuals that are in social, geographic, financial, and personal dispositions to participate within a formal

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<sup>33</sup> We have intentionally left of the “T” in LGBT given that dotgay LLC has produced nearly no trans\* specific support; in our review of their supporters we only found “Trans-Fuzja,” a Polish organization that wrote a letter in December 2011, and KANHNHA from Cambodia, which wrote in December 2012.

LGBTQ+ organization that is also a dotgay LLC “Authentication Partner”<sup>34</sup> will be able to register .gay domain names. Gay (or LBTQ+) -identified people who are not activists will have no immediate recourse to register a .gay domain name; those living outside of Western, urban city centers will have a disproportionately difficult time involving themselves with a dotgay LLC “Authentication Partner;” those living in countries that are prejudicial to gay organizations and individuals will have no recourse to register a .gay domain; those individuals that do not have the financial capability to pay for membership dues or otherwise participate fully in certain LGBTQ+ organizations will not be able to register a .gay domain; those individuals who are involved with the “wrong” organizations, that is those that are not dotgay LLC “Authentication Partners,” will have no access to .gay domain registration. These many factors will result in serious disenfranchisement for huge swaths of gay and LBTQ+ identifying individuals and groups.

This is exactly why closed registration policies do not create an inclusive environment that respects the diversity of individual circumstances found throughout the global LGBTQ+ spectrum. dotgay LLC is required by the ICANN-community priority specifications to have restricted registration policies, and its attempt at reconciling these for a self-identifying and extremely dynamic group means that it is disenfranchising many of those who it claims to represent.

We again point to the above quote from dotgay LLC’s application, that “the Gay Community [sic] is self-identifying.”<sup>35</sup> Since individuals self-identify, there is no proof or approval needed to become part of a spectrum of people who use the similar words to describe themselves. The “gay community” does not have official membership, nor is it a unified body. Therefore, there is no clear way to restrict registration to those who are “officially” members of a “gay community.” Since gay (and LBTQ+) individuals are self-identifying, how are dotgay LLC and their “Authentication Partners” able to fully represent all who claim the term “gay” and restrict eligibility accordingly?

dotgay LLC goes on to note the difficulty, or perhaps impossibility, of reaching the whole of the gay identifying populace, stating that its “Authentication Partners” will act as a “minimum pool from which potential registrants will stem.”<sup>36</sup> By admitting that it will be restricting registration to a subsection or “minimal pool,” dotgay LLC shows that it is not, in fact, representing the entire LGBTQIA+ spectrum that it elsewhere claims to represent.<sup>37</sup> In reality, this “minimum pool” represents only a tiny subsection of those who self-identify via the term “gay” *within* the LGBTQ+ spectrum and have the means to participate. That is, its “minimum pool,” is a subsection of a subsection.

It must be clearly emphasized that registration restrictions for ICANN-communities are intended to keep non-members out, not allow only some members in.

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<sup>34</sup> The alleged arbiters of the eligibility of one’s “gayness.”

<sup>35</sup> dotgay LLC. Application ID 1-1713-23699. Response to 20a

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

## **“Eligibility” Scoring**

dotgay LLC proposes policies that would restrict registration to only a portion of who it defines as within the so-called “Gay Community.” The LGBTQ+ spectrum is self-identifying and so there is no way to fabricate appropriate eligibility guidelines that allow only “members” into the name space, as is required for Community Priority status. dotgay LLC has itself admitted that its registration will be restricted to a “minimum pool,” and unfortunately this will restrict registration to only the most privileged of LGBTQ+ identifying individuals, and subsequently disenfranchise those that are unable or unwilling to formally engage a dotgay LLC “Authentication Partner.” Being gay and/or LGBTQ+ identifying has no official membership criteria, and does not rely on paying dues to an official LGBTQ+ organization or “Authentication Partner.” dotgay LLC scores 0 out of 1 point on “Eligibility.”

## **“Name Selection” Criterion**

In order to score the 1 total point for the “Name Selection” sub-criterion, the AGB states that the applicant must demonstrate that their registration rules are “consistent with the articulated community-based purpose of the applied-for gTLD.”

- “Name selection” means the conditions that must be fulfilled for any second-level domain name to be deemed acceptable by the registry.
- With respect to “Name selection,” “Content and use,” and “Enforcement,” scoring of applications against these sub- criteria will be done from a holistic perspective, with due regard for the particularities of the community explicitly addressed. [...] 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.

## **“Name Selection” Analysis**

dotgay LLC’s registration policies do not allow it to cater to the all who may have an interest in using a .gay TLD. There are serious issues with the fact that registration will be disproportionately available to a certain portion of the global LGBTQ+ population, that is, those that have the resources, access, and desire to formally participate via membership in one of dotgay LLC’s “Authentication Partners.”

dotgay LLC’s “Name Selection” requirements are in fact not consistent with the articulated community-based purpose of the TLD, given that dotgay LLC claims to represent all LGBTQIA+ identifying individuals but restricts its registration to only those that are active within the official

hierarchy of its various “Authentication Partners.” As discussed earlier, there is no single organization or coalition that represents all who identify as gay (or LBTQIA+) and so name selection through “Authentication Partners” is intrinsically flawed. Even if every gay and LBTQIA+ organization, worldwide, were to become an “Authentication Partner,” there would still be gay and/or LBTQ-identified individuals that avail their right to not participate in public organizations as well as those who have no access to these organizations who are consequently excluded from .gay domain registration.

Queer youth are an increasingly marginalized population, especially trans\* youth, who oftentimes do not have the resources to engage in formal LGBTQ+ structures; there are a number of countries, such as Uganda, where legalized discrimination prevents any LGBTQ+ organizations from operating; there are portions of the population that are questioning and/or closeted for their safety, and their ability to register a .gay domain is dependent on them publicly identifying themselves.<sup>38</sup> These are all serious issues that are overlooked as a technical necessity in order for dotgay LLC to restrict its space enough for ICANN’s Community Priority criteria. This is one of the fundamental reasons that the LGBTQ+ spectrum is not an ICANN-defined community; it is too large, diverse, and at times and in some places underground, to sufficiently restrict without disenfranchising those who it claims to represent. Furthermore, the idea of restricting registration and content is against the very nature of the inclusive ethos that many LGBTQ+ identifying individuals and groups continually strive to embody.

dotgay LLC states, “membership organizations are the single most visible entry point to the Gay Community [sic] around the world. They serve as the ‘hubs’ and are recognized as definitive qualifiers for those interested in affirming their membership in the community.”<sup>39</sup> However, as noted above, dotgay LLC more correctly states that individuals “self-identify...” as LGBTQ+. The fact that a gay and/or LBTQ+ individual is self-identifying as such, but only welcomed as a registrant in the .gay namespace if they, “willingly associated themselves with these organizations” (i.e., its “Authentication Partners”),<sup>40</sup> is an intolerable inconsistency in dotgay LLC’s application.

Furthermore, not all LGBTQ+ organizations will qualify to be “Authentication Partners” for dotgay LLC. Perhaps the most worrisome requirement for organizations to become “Authentication Partners” is that they must “[h]ave a secure online member login area that requires a username & password, or other secure control mechanisms.”<sup>41</sup> This is presumably aimed at ensuring that the organizations in question have sufficient membership policies in place.<sup>42</sup> However, this will

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<sup>38</sup> Even in countries where it is *not* legal to openly discriminate against LGBTQ+ people, queer youth are often stigmatized by peers and afraid of queer-antagonism from their parents and others. Trans\* youth are disproportionately more likely to be homeless than their cisgender counterparts and are less likely to find succor in—often conservative and religious—institutions intended to aid the homeless.

<sup>39</sup> dotgay LLC. Application ID 1-1713-23699. Response 20e

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> Sufficient enough for dotgay LLC, the ultimate arbiters of “gayness,” who not only demand that LGBTQ+ identifying individuals be members of its “Authentication Partners” but require that, to qualify to be an

once again disenfranchise under-funded and under-resourced organizations, such as those that are active in developing countries, those that are still fledgling efforts, those that do not require any online participation from their members, and, most importantly, those that avoid collecting personal information for the safety and security of its membership. Furthermore, it remains unclear how this will be implemented in an equitable way to give the majority of the LGBTQ+ spectrum access and the ability to register a .gay domain given that neither ILGA nor HRC have member logins on their sites now.<sup>43</sup> So, if the most prominent supporters of dotgay LLC do not have the mechanisms in place to automatically qualify as “Authentication Partners” now, how can smaller, and under-resourced organizations be expected to qualify?

### **“Name Selection” Scoring**

This is one of the many criteria that dotgay LLC could score 1 point on if the CPE evaluators happen to overlook the size, extent, and diversity of the LGBTQ+ spectrum. We must stress, however, that its registration policies will only make .gay available to a subsection of LGBTQ+ organizations and disenfranchise many individuals and organizations that have every right to add their voice to the .gay TLD.

dotgay LLC earns 0 out of 1 total point on “Name Selection.”

### **“Content and Use” Criterion**

As the AGB states, the “Content and Use” sub-criterion is in place to ensure that “Policies include rules for content and use consistent with the articulated community-based purpose of the applied for gTLD.” It is also worth 1 point.

- “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.
- Again, with respect to “Name selection,” “Content and use,” and “Enforcement,” scoring of applications against these sub- criteria will be done from a holistic perspective, with due regard for the particularities of the community explicitly addressed. [...] 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

### **“Content and Use” Analysis**

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“Authentication Partner,” an organization has to have sufficient funds, sophistication, and access to create an online portal for its membership. This stringent control over who is “gay” and what is appropriate for them to create on a domain name is frankly abhorrent.

<sup>43</sup> See, <http://ilga.org/> and, <http://www.hrc.org/>

Once again, dotgay LLC has had to put in place restrictions in order to try to portray the global LGBTQ+ umbrella as a single, ICANN-defined community; this has resulted in draconian policies that are overly closed-off, censored, and unwelcoming to the individuals it purportedly empowers.

Simply put, .gay needs to be open to anyone who self-identifies as gay, as well as those who may be amenable to the term but prefer other titles used to describe the LGBTQ+ spectrum. However, those who do not self-identify as gay should not be necessarily included under the term “gay,” and should have the option of selecting another gTLD, such as the proposed .lgbt, that may better align with their self-identified term. We believe that many LGBTQ+ organizations and individuals who identify as LGBTQ+ will be wary of a model that proposes to censor the content and use of a .gay TLD, even with the overarching goal of attempting to create a hate and discrimination free space. Would a self-deprecating gay individual, critical of those who identify as gay, be able to create a website on .gay? Would a trans\* individual who feels marginalized by the gay and lesbian centrism of many of dotgay LLC’s supporters be able to create a website that speaks to their issues with trans\* exclusion from the “gay rights movement?” Would a heterosexual, cisgender ally be able to create a site that highlights their support of LGBTQ+ issues?

dotgay LLC’s proposed content restrictions include reservation of “sensitive words or phrases that incite or promote discrimination or violent behavior, including anti-gay hate speech” and a terribly vague policy towards adult content, which merely states that “dotgay LLC will have an established policy regarding adult content.”<sup>44</sup> Broad-brushing all pejorative words used against those who identify as LGBTQ+ as “hate speech” is not as simple as dotgay LLC claims, and is a highly nuanced topic. Reclamation of historically pejorative or derogatory words has a deep-rooted history within LGBTQ+ movements. The term “gay” itself has a long use history as a negative term, and educational campaigns discouraging the use of “gay” in a pejorative manner continue to this day,<sup>45</sup> however, as evidenced by the many prideful uses of “gay,” the 4 applications for the .gay TLD included, it is a term that has been nearly universally appropriated for prideful identification rather than hateful uses. A more recent example is “queer,” which was and continues to be a slur in some regions, but also has been reclaimed by many who “deviate from the norms” of sexual orientation and gender, and may be used as a positive, empowering, self-identifying term. Additionally, there are other terms that have been less widely reclaimed, that people who identify as lesbian, gay, or trans\* may use with others who identify similarly. These individuals are not using these words as hate speech, but as a way to reclaim hurtful terms and reinvigorate them with power and pride. Would such reclaimed terms, which may be used to bond and empower LGBTQ+ identifying people, be restricted as necessarily hateful?

We are highly skeptical that space would be made for those individuals that challenge their own

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<sup>44</sup> dotgay LLC. Application ID 1-1713-23699. Response 20e

<sup>45</sup> GLSEN & The Ad Council have a “Think B4 You Speak” campaign, educating youth about the hurtful consequences of saying homophobic slurs, such as “That’s so gay,” being used as a pejorative opinion. See, <http://www.thinkb4youspeak.com/>



LGBTQ+ identity group(s). There have been a number of historic challenges to the politics and priorities of supporters of dotgay LLC and its presumed “Authentication Partners.” For example, The Human Rights Campaign (HRC), a supporter of dotgay LLC, has come under fire from queer, trans\* and immigrant advocates.<sup>46</sup> It is unclear where dotgay LLC would situate itself should content be created that disparages the policies and behavior of its supporters. We firmly believe that freedom of speech and press should not be sacrificed in order to create a “hate”-free space. This is especially relevant when perceived “hate”—or, in actuality, “dissent”—is coming from disenfranchised groups and individuals who identify within the LGBTQ+ spectrum.

### **“Content and Use” Scoring**

Again, to someone that does not understand the complexities of the dynamic LGBTQ+ umbrella, it may seem that dotgay LLC has constructed sufficient mechanisms to limit content and use to gay-centric material. However, given that there is no one interpretation of what it means to be gay, and given that minorities who identify along the LGBTQ+ spectrum can often find their voices marginalized within that very spectrum, and also given the history of inter-LGBTQ+ debate and disagreement, there is no effective way that dotgay LLC or its “Authentication Partners” can police and censor what is appropriate for the “community” to do and say on a .gay domain name.

dotgay LLC earns 0 of 1 total points on “Content and Use.”

### **“Enforcement” Criterion**

The last of the 4 sub-criteria of “Registration Policies,” “Enforcement,” is also worth 1 point. According to the AGB, “Enforcement” is met when “policies include specific enforcement measures (e.g. investigation practices, penalties, takedown procedures) constituting a coherent set with appropriate appeal mechanisms.

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<sup>46</sup> A variety of opinions and research can be found simply by an Internet search of “Trans Exclusion HRC,” “Transphobic HRC,” etc. One trans blogger’s history of trans-exclusion and trans-phobia on the part of the HRC can be found at, <http://transgriot.blogspot.com/2007/10/why-transgender-community-hates-hrc.html> Well documented examples of disagreements in how the HRC has handled trans\* issues and inclusion include a 2013 incident wherein an HRC staff member repeatedly asked for the trans\* pride flag to be removed from a position near the podium of a prominent March 2013 marriage equality rally at the U.S. Supreme Court. A summary of that incident can be found at, [http://www.huffingtonpost.com/2013/04/02/human-rights-campaign-apologizes\\_n\\_2994939.html](http://www.huffingtonpost.com/2013/04/02/human-rights-campaign-apologizes_n_2994939.html) or at, <http://www.advocate.com/politics/marriage-equality/2013/04/01/hrc-and-coalition-apologize-silencing-undocumented-trans> The HRC is reported as having resisted a public apology, though one was eventually posted on its blog, at, <http://www.hrc.org/blog/entry/human-rights-campaign-statement-on-march-27-events>. A scholarly article that details the HRC’s controversial stance on the 2007 Employment Non-Discrimination Act (ENDA), wherein it was accused of having sacrificed trans\* inclusion for political expediency, can be found at, [http://www.academia.edu/4139911/A\\_Defining\\_Moment\\_in\\_Civil\\_Rights\\_History\\_The\\_Employment\\_Non-Discrimination\\_Act\\_Trans-Inclusion\\_and\\_Homonormativity](http://www.academia.edu/4139911/A_Defining_Moment_in_Civil_Rights_History_The_Employment_Non-Discrimination_Act_Trans-Inclusion_and_Homonormativity)

- “Enforcement” means the tools and provisions set out by the registry to prevent and remedy any breaches of the conditions by registrants.
- Again, with respect to “Name selection,” “Content and use,” and “Enforcement,” scoring of applications against these sub- criteria will be done from a holistic perspective, with due regard for the particularities of the community explicitly addressed. [...] 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

### **“Enforcement” Analysis**

All of the sub-criteria within the criterion of “Registration Policies” are intended to be viewed holistically, meaning that they each support each other to create a defensible plan to adequately restrict the registration and use of the second-level domains (SLDs) to the intended community. An overarching issue with dotgay LLC’s registration policies is that, in its quest to construe the global LGBTQ+ spectrum as an ICANN-defined community, united under the term “gay,” it has restricted it to such a degree that it marginalizes important populations that lay claim to the term “gay” or identify within the LGBTQIA spectrum, which dotgay LLC problematically co-opts as its own “gay community.”

dotgay LLC’s unique enforcement mechanisms mostly revolve around the use of an Ombudsperson as an investigator of complaints; “Registry will utilize an Ombudsman [sic] function to be the initial point of contact for reports, including complaints, disputes and matters related to abuse of policy. [...] Registry will use a Community Watch mechanism, wherein the members of the community can easily report any infraction of Registry policies. A web-based reporting system established by the Registry will be the suggested method of contact for all matters related to enforcement.”<sup>47</sup>

Its application clearly does have enforcement mechanisms in place to support its exclusionary and disenfranchising registration policies. While we vehemently oppose its registration policies, we must note that its enforcement policies exist as a means of enforcing irrational registration policies.

### **“Enforcement” Scoring**

We score dotgay LLC as earning 1 out of 1 total points on “Enforcement,” for having enforcement mechanisms. We do, however, refer the Panel to our previous discussion of the discriminatory aspects of its registration policies when evaluating the related sub-criteria of “Eligibility,” “Name-Selection,” and “Content and Use.” This point was earned through

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<sup>47</sup> dotgay LLC. Application ID 1-1713-23699. Response 20e

demonstration of a technical policy addressing registration enforcement, not through sufficiently justifying its closed registration policies.

**Total, Criterion 3 “Registration Policies”:** 1 out of possible 4 points

#### **Criterion 4: “Community Endorsement”**

The final criterion, “Community Endorsement,” analyzes whether or not the applicant has assembled the support of the authoritative organizations and structures that govern or facilitate functioning within the purported community.

Community Endorsement is split between the sub-criteria of “Support” and “Opposition.” Each is worth 2 points.

#### **“Support” Criterion**

To qualify for the full 2 points, the AGB states, “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 that community.
- “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.
- 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.
- 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.
- 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.

- 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.

### **“Support” Analysis**

dotgay LLC states that, “With over 125 community endorsements, representing hundreds of organizations and 7+ million members of the community in more than 110 countries, the Gay Community [sic] has voiced their support for the .gay TLD through participation.” Let’s compare this figure to an estimate of the size of the LGBTQ+ identifying spectrum. While we note that it is difficult to quantify the size of the LGBTQ+ spectrum, or any self-identifying group, it is still a compelling way to analyze the extent to which dotgay LLC is supported by its “community.”

The National Gay and Lesbian Task Force has estimated that the total LGBT population is between 5-10% of the general population.<sup>48</sup> The United States Census Bureau puts the global population at over 7 billion;<sup>49</sup> thus, while it is far from exact, a figure for the global LGBT populace can be estimated to range from 350,000,000 - 700,000,000.

So, taking its support figures at face value, at totaling about 7 million individuals, dotgay LLC is therefore claiming to represent between 0.5-1% of the total global LGBTQ+ population.<sup>50</sup> This figure and its claims can be further tempered by the fact that official membership in LGBTQ+ organizations is often duplicative, in that one individual may be an official member of a multitude of organizations. This extremely nominal figure of supporters unequivocally demonstrates that dotgay LLC and its supporters do not have the standing or reach to speak on behalf of the global LGBTQ+ population.

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<sup>48</sup> The National Gay and Lesbian Task Force. (2010). *How Big is the LGBT Community?* Retrieved from, [http://www.thetaskforce.org/downloads/release\\_materials/tf\\_lgbt\\_community.pdf](http://www.thetaskforce.org/downloads/release_materials/tf_lgbt_community.pdf). We note that this study generally concludes that the exact size of the population will remain forever elusive, and we agree and further note that trying to concretely estimate the size of a self-identifying community is only necessary to the extent that it is able to bring greater voice, representation, and understanding to these individuals and their issues.

<sup>49</sup> United States Census Bureau. *U.S. and World Population Clock*. Retrieved from, <http://www.census.gov/popclock/>

<sup>50</sup> We note that this figure is extrapolated from the population data in the preceding paragraph, with regards to the general population and the worldwide LGBT population, and is an estimate but a defensible and compelling figure nonetheless.

ILGA, a supporter, has taken on the most active position for dotgay LLC, filing official community objections against all other applicants for .gay and the applicant for .lgbt. We regret that their opposition to .lgbt is not more widely publicized, as this is a far more inclusive term than “gay” and is used much more widely across the global LGBTQ+ spectrum; the fact that this supporter is opposed to a more inclusive and appropriate term to empower LGBTQ+ communities at the top-level, as dotgay LLC erroneously claims “.gay” does, is very troubling. We believe that many ILGA members and supporters would be deeply troubled by their objection, and, on this note, believe that an overwhelming majority of the “7+ million” members that “support” its application are likely completely unaware that an organization that they have been affiliated with has in turn become involved with the .gay TLD and is listed as a supporter of dotgay LLC.

Recall that, “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.” This raises a number of issues given that a large amount of dotgay’s support does not specifically mention its bid or process, but rather just refers to the .gay TLD as a concept. Also, dotgay LLC seems to have made financing commitments to its supporters as these may or may not also be its “Authentication Partners.” We implore the CPE panel to duly investigate any “description of the process and rationale used in arriving at the expression of support,” that may be inexplicit or lacking.

We believe that many of dotgay LLC’s organizational supporters are not aware of the actual policies defined by dotgay LLC in its application, or ILGA’s objection to .lgbt, as the majority of its letters of support were collected before either were made publicly available. Many of its supporters seem to have been more excited for a .gay TLD than dotgay LLC’s specific stewardship of the TLD, given that their “letters of support” do not specifically mention dotgay LLC. We implore the CPE Panel to clarify this fact when reaching out to dotgay LLC’s supporters.

It is unclear how dotgay LLC’s financing commitments and promises to reimburse “Authentication Partners” may have affected its level of support. It is also important to note that dotgay LLC is a for-profit entity that has only made claims that it intends to distribute 67% of its profits to LGBTQ+ organizations. This is an excessively vague promise, and if dotgay LLC seriously intended to act as a public beneficiary it would have formed itself as a non-profit. In the case that dotgay LLC does not report a profit, with any gross revenue being spent internally, then external LGBTQ+ organizations will see 67% of nothing. Its vague financial commitments are further muddled by the fact that the recipients of the 67% of profits will be “LGBT *client* organizations.”<sup>51</sup>

Once again, we stress that some of dotgay LLC’s most prominent supporters have a history of disenfranchising vulnerable groups within the LGBTQ+ spectrum. Again, the HRC has had a long history of not engaging trans\* and other minorities under the LGBTQ+ umbrella, and has

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<sup>51</sup> dotgay LLC. *dotgay Team, CEO Scott Seitz bio*. Retrieved from, <http://dotgay.com/the-dotgay-team>.

been regularly critiqued for their behavior and public stances. ILGA was previously known as the IGA,<sup>52</sup> presumably because its prior title was not sufficiently representative of its constituents, just as “gay” is not sufficient for LBGTQIA+. Furthermore, ILGA’s objection to .lgbt is a clear abandonment of the constituents it claims to represent. Another sizable supporter, InterPride, recently acknowledged that white, gay men make up 85% of its membership; and board members are wrestling with their failure to effectively outreach to and represent females, transgender identifying, and other minority groups.<sup>53</sup>

It is extremely relevant, given that dotgay LLC proposes to represent trans\* individuals and groups in its application for .gay, that it has the support of only 2 regional trans\*-centric organizations: Trans-Fuzja from Poland and KANHNHA from Cambodia. It does not have the support of the most authoritative and respected organizations involved in and supportive of trans\* individuals, such as the National Center for Transgender Equality.

### **“Support” Scoring**

Despite its outreach, which we applaud, it is clear that dotgay LLC cannot score the full 2 points as there is simply no authoritative organization in the space. It does have support from ILGA and HRC, both sizeable organizations with high profiles and significant reach, but it is important to note that these organizations have themselves been critiqued for their gay and lesbian focus, to the detriment of trans\*, queer, and other minority members of the LGBTQ+ spectrum. It cannot be stressed enough that ILGA’s official objection to Afilias Limited’s open applicant for .lgbt belies an interest in using what is perceived by many as exclusionary and outdated term, “gay,” over a more inclusive and relevant term, “lgbt.” dotgay LLC and ILGA cannot effectively claim that they represent all LGBTQ+ interests if they are in fact opposed to a .lgbt TLD.

dotgay LLC receives 1 of 2 total points; it has done significant outreach and received non-negligible support, but to take their support figures at face value means it only represents .05-1% of the total population that may identify as gay and/or LGBTQ+.

### **“Opposition” Criteria**

The AGB states that to score 2 points there needs to be, “no opposition of relevance;” while 1 point may be scored if there is, “opposition from one group of non-negligible size.” 0 points will be scored if there are two or more relevant groups in opposition.

- "Recognized" means the institution(s)/organization(s) that, through membership or

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<sup>52</sup> Williams, R. (2010). *The Divided World: Human Rights and its Violence* (p.24). Minneapolis, MN: University of Minnesota Press.

<sup>53</sup> Houston, A. (2013, October 13). InterPride’s Lack of Diversity a Problem, say Board Members. *DailyXtra*. Retrieved from, <http://dailyxtra.com/toronto/news/interpride%E2%80%99s-lack-diversity-problem-say-board-members?mark-et=208>

otherwise, are clearly recognized by the community members as representative of the community.

- “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.

### **“Opposition” Analysis**

Two formal Community Objections were filed with the ICC; one of these objections has apparently been rejected due to a non-compliance with formatting issues, namely a word limit that was surpassed.<sup>54</sup>

The remaining objection, from the Metroplex Republicans of Dallas, seems to represent a localized Republican and gay-centric organization. A web search turns up its homepage; it seems to be regionally focused but notes that, its “membership is diverse. It includes allies in the gay, straight community and multi-cultural people.”<sup>55</sup> Given that these members identify as gay and gay allied then we must note that the organization is non-negligible when considering the entirety of the LGBTQ+ spectrum.

While the text of these official objections remains undisclosed, we can surmise that these politically conservative groups likely feel neglected and/or disenfranchised by dotgay LLC’s outreach and registration strategies. It is worth noting that there do not seem to be any politically conservative groups within dotgay LLC’s listed supporters.

### **“Objection” Scoring**

Given that there are two organizations that filed official objections, dotgay LLC receives 0 out of 2 points in the “opposition” sub-criterion.

**Total, Criterion 4: “Community Endorsement”:** 1 out of possible 4 points

**Total CPE Score for dotgay LLC’s application for .gay:** 4 out of 16 total points

### **Conclusion**

This in-depth analysis closely follows the CPE process defined over many years of work across ICANN’s many stakeholder groups. Community Priority was designed to be rigorous and avoid

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<sup>54</sup> LaHatte, C. (2013). *Ombudsman Recommendation on Late Objection*. Retrieved from, <https://omblog.icann.org/?p=937>

<sup>55</sup> Metroplex Republicans of Dallas. (n.d.). *About Us*. Retrieved from, <http://www.metroplexrepublicans.com/about-us.html>.

false positives. We trust that the CPE Panel’s application of appropriate rigor to dotgay LLC’s community application for .gay will come to the same result.

Unfortunately, dotgay LLC sought to create a community around a TLD rather than creating a TLD for a community, and it shows in its misuse of the “gay” umbrella term in a way that damages those who self-identify under the LGBTQ+ umbrella, which further jeopardizes the progress surrounding awareness and LGBT+ education made by LGBTQ+ individuals that consider themselves part of the umbrella but not necessarily “gay.” Its fabrication of a “community” is also evident in its overly restrictive and disenfranchising registration policies that only allow a select—and generally more privileged—subsection of the LGBTQ+ identifying populace to register a .gay domain name. The offensively marginalizing way in which dotgay LLC has sought to exploit the ICANN Community Priority process should raise significant concerns about its ability to judiciously administer the .gay namespace, especially given the significant gatekeeping functions it has proposed for itself.

We note that dotgay LLC’s application will not be disregarded after it fails CPE and that it will enter the wider contention set for .gay. The undersigned look forward to an open and equitable process for determining the responsible registry for the .gay TLD.

Top Level Design, LLC (open applicant for .gay)  
Top Level Domain Holdings, LTD (open applicant for .gay)  
United TLD Holdco Ltd. (open applicant for .gay)  
Afilias, LTD (open applicant for .lgbt)