



ICANN Board Members

RE: SUPPORT TO CORRECT DISCRIMINATORY TREATMENT OF .GAY

February 14, 2017

Dear ICANN Board Members,

LGBT Denmark, the Danish National Organisation for Gay Men, Lesbians, Bisexuals and Transgender persons, is an NGO working with gender identity and sexual orientation. Founded in 1948, LGBT Denmark is one of the oldest existing LGBT organisations. Since 2006, LGBT Denmark has maintained consultative status with the United Nations Economic and Social Council (ECOSOC), one of only several NGOs in the area of sexual orientation and gender identity.

Our community is diverse with numerous identities being identified including e.g. gay men, lesbians, bisexuals and transgender people i.e. the identities designated by L, G, B and T in LGBT. As is well known many other identities are identified and the acronym continuously expands. Common to all these identities is, that we are people who are not both cisgender and heterosexual – we are the non-cishetero.

Our identities evolved all over the world, typically with different identification processes and emancipation history. With the Internet a truly global and diverse community has formed. This does not mean, that everyone adhere to the community. There are many people whose behaviour or attitude makes them qualify to be members of the community yet they do not themselves identify as members. There is a reason why HIV campaigns typically addresses men having sex with men, MSM, because not all MSM identify as e.g. gay men or bisexuals. This, of course, does not imply, that the community does not exist.

In asylum law people persecuted because of their gender identity, gender expression or sexual orientation are recognised as members of a “particular social group” in the sense of the UN Refugee Convention. In many countries and regions anti-discrimination legislation recognizes the group.

There is not a single term that all non-cishetero and allies would use as community designator. But gay would be one term, which has some general use.

LGBT Denmark – National Organisation for Gay Men, Lesbians, Bisexuals and Transgender Persons
NGO in special consultative status with the economic and social council of the United Nations

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In his analysis of the rejection of the application of dotgay LLC by ICANN Yale Law Professor William Eskeridge¹ elaborates on the case:

- The bylaws require the string is "a well known short-form or abbreviation of the community" i.e. no requirements that it be neither the only term nor a complete designation regarding all individuals.
- ICANN introduced a veto option to reject the application if the term "does not sufficiently identify some members of the applicant's defined community".
- Bylaws, however, tests against "over-reaching" (covering more than the intended community), whereas the rejection tests against "under-reaching" (not covering the entire community).
- "Under-reaching" is usually not considered a reason for rejecting, cf. e.g. .Osaka.
- There is a long history of entanglement of terms used by the diverse community, and "gay" is common throughout cf. analysis of frequencies of use of gay and of gay together with other terms.

As part of the global non-cishetero and allied community LGBT Denmark cannot but see the rejection by ICANN of the community application of dotgay LLC as a discriminatory action. As evidenced by the Council of Europe² and prof. Eskeridge the logic of the rejection differs from that applied to other community applications.

The Internet is a tool of paramount importance for the global non-cishetero and allied community. In a global and historical perspective the community is subject to persecution, harassment, discrimination and neglect. Only recently the community is being recognised as a group with human rights, and the ability to communicate in a global digital community has been and continues to be essential for the development of the community and the safety and life quality of its members.

Through its coordination role of the Internet's naming system ICANN has a fundamental responsibility enshrined in the bylaws and references to e.g. openness, transparency and fairness. It is the opinion of LGBT Denmark that these obligations and values have not been adhered to by ICANN in its evaluation of the application of dotgay LLC. LGBT Denmark urges ICANN to take responsibility to enact these values and take action to swiftly correct the inequities identified in the evaluation of the application for Community Priority to .Gay.

Sincerely

LGBT Denmark

Danish National Organisation for Gay Men, Lesbians, Bisexuals and Transgender Persons

Søren Laursen
Chair

¹ <https://www.icann.org/en/system/files/files/reconsideration-16-3-dotgay-letter-dechert-llp-to-icann-board->

² <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806b5a14>