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January 20, 2018

**VIA E-MAIL**

ICANN Board of Directors  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094

**Re: ICANN Board Determination Regarding dotgay**

Dear Members of the ICANN Board:

We write on behalf of our client, dotgay LLC (“**dotgay**”) with reference to our letter of 15 January 2018, in which we requested that the ICANN Board take no action with respect to the conclusions set out in FTI Consulting reports prior to receiving dotgay’s detailed comments on the reports’ methodological and substantive flaws.

We further request that before the Board places any reliance on the FTI reports, it carefully review and consider dotgay’s previous submissions prior to making a decision relating to dotgay’s community application and Reconsideration Request 16-3.<sup>1</sup> We direct the Board, in particular, to the following – which independently and collectively confirm the arbitrary and discriminatory manner in which dotgay’s application was treated by the EIU and ICANN:

- (i) the Council of Europe’s Report on “Applications to ICANN for Community-Based New Generic Top Level Domains (gTLDs): Opportunities and challenges from a human rights perspective;”<sup>2</sup>
- (ii) the ICANN Ombudsman Chris LaHatte’s Report;<sup>3</sup>

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<sup>1</sup> Reconsideration Request 16-3 (17 Feb. 2016), <https://www.icann.org/en/system/files/files/reconsideration-16-3-dotgay-request-17feb16-en.pdf>.

<sup>2</sup> Council of Europe, “Applications to ICANN for Community-Based New Generic Top Level Domains (gTLDs): Opportunities and challenges from a human rights perspective,” <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806b5a14>.

<sup>3</sup> Chris LaHatte, Dot Gay Report (27 July 2016), <http://www.lahatte.co.nz/2016/07/dot-gay-report.html>.

- (iii) the ICC Expert's Determination regarding .LGBT;<sup>4</sup>
- (iv) the Expert Opinion of Professor William N. Eskridge of Yale Law School;<sup>5</sup> and
- (v) the Expert Opinion of Professor M.V. Lee Badgett, Professor of Economics and Director of the School of Public Policy at the University of Massachusetts.<sup>6</sup>

Dotgay reserves all of its rights in law and equity in any forum worldwide.

Sincerely,



Arif Hyder Ali  
Partner

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<sup>4</sup> *The International Lesbian Gay Bisexual Trans and Intersex Association v. Afiliat Limited*, ICC Case No. EXP/390/ICANN/7, Expert Determination (16 Nov. 2013), ¶ 22, <https://newgtlds.icann.org/sites/default/files/drsp/25nov13/determination-1-1-868-8822-en.pdf>.

<sup>5</sup> Letter to ICANN Board from A. Ali, enclosing the Eskridge Report (13 Sept. 2016), pp. 2-3, <https://www.icann.org/en/system/files/correspondence/ali-to-icann-board-13sep16-en.pdf>.

<sup>6</sup> Letter to ICANN Board from A. Ali, enclosing the Badgett Report (17 Oct. 2016), pp. 1-2, <https://www.icann.org/en/system/files/correspondence/ali-badgett-to-icann-board-17oct16-en.pdf>.