


ARIF HYDER ALI


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25 August 2016

Via E-Mail

Mr Göran Marby
President and Chief Executive Officer
Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

Re: ICANN Ombudsman Report dated 27 July 2016

Dear Mr. Marby:

I am writing on behalf of my client, dotgay LLC (“dotgay”), to request that ICANN: (1) promptly, and by no later than Monday, August 29, 2016, post the Ombudsman’s investigative reports for Case No. 16-00177 issued on 15 July 2016 and 27 July 2016, regarding ICANN and the Economist Intelligence Unit’s treatment of dotgay’s application for .GAY (the “Report” or the “Ombudsman’s Report”); and (2) include the Report amongst the briefing materials that will be provided to the ICANN Board.

Dotgay notes that the Ombudsman’s conclusion that ICANN’s Board grant community priority status to dotgay, on the basis that such a step was required under ICANN’s own Articles and Bylaws, already has been broadly publicized within the ICANN community and in media outlets.¹ The posting of the Report by ICANN, however, is crucial to promote an understanding of the issues raised by the Ombudsman regarding the treatment of dotgay’s application in the ICANN community.²

¹ See, e.g., http://www.theregister.co.uk/2016/07/29/give_gays_dot_gay/.

² See, ICANN Ombudsman Framework.

In addition, we note with concern that the Ombudsman's Report was not amongst the board briefing materials provided to ICANN's Board for consideration at its Special Meeting of 9 August 2016.

In the Recommendation to the Board issued by the Board Governance Committee ("BGC") on 26 June 2016, the BGC dismissed the request on technical grounds (improperly, in our view) and *specifically* encouraged dotgay to approach the Ombudsman with any complaints of unfairness:

"If the Requester believes that it has been treated unfairly in the process, it is free to ask the Ombudsman to review this matter" (Recommendation of 26 June 2016, § V, p.16).

Dotgay subsequently followed the BGC's Recommendation and cooperated with the Ombudsman's Investigation. The Ombudsman issued his report after completing his investigation, which included seeking comments from ICANN staff and dotgay. His conclusions vindicated dotgay's complaints about being treated unfairly and in a discriminatory manner. Accordingly, the ICANN Board must thoroughly and properly consider the Ombudsman Report during its future deliberations regarding dotgay's Reconsideration Request No. 16-3.³

We look forward to seeing the Ombudsman's Report posted on ICANN's website and included amongst the briefing materials provided to the ICANN Board when dotgay's application is tabled for consideration.



Arif Hyder Ali

³ See Reconsideration Request No. 16-3 (17 Feb. 2016), <https://www.icann.org/en/system/files/files/reconsideration-16-3-dotgay-request-17feb16-en.pdf>.

cc: Steve Crocker, Chairman of the ICANN Board (steve.crocker@icann.org)
John Jeffrey, General Counsel and Company Secretary (john.jeffrey@icann.org)
Scott Seitz, Chief Executive Officer, dotgay LLC ([REDACTED])