

ICC International Centre for Expertise
38 Cours Albert 1er
75008 Paris
France
Fax +33 (0)1 49 53 30 49
e-Mail expertise@iccwbo.org

RE: EXP/426/ICANN/43, GOPROUD, INC. (USA) vs DOTGAY LLC (USA)

Dear Ms. Kořak,

Thank you for your resending the correspondence detailing the results of the ICC's administrative review, dated 28 March 2013 (the "Review Results") and we have now had a chance to evaluate its contents. GOProud has noted that the ICC is, for the interim anyway, of the view that its Objection (the "Objection") should be dismissed for failure to timely respond to a procedural issue within an allotted timeframe. However, GOProud strongly urges the ICC to reconsider this position, in light of the inconsistent and haphazard manner in which the communications have been handled by the ICC to date. Among other things, GOProud feels that a number of very salient points should be highlighted:

1. The ICC had initially been in correspondence with GOProud via the email address of its listed official representative (Contact Information Redacted) in an attempt to obtain clarification on the number of objections that GOProud had submitted (copies attached as Exhibit A). The ICC even went so far (and this was very much appreciated) as to attempt to reach out to the Objector by telephone and subsequent email to ensure that this initial procedural issue had been addressed. The ICC only communicated with GOProud via this email address, and did not copy either info@goproud.org or the Applicant via email Contact Information Redacted
2. A second issue, this time dealing with maximum word count (Article 8(b) of the Procedure) was raised by the ICC via the Review Results, which were issued on 28 March 2013 (copy attached as Exhibit B). In issuing the Review Results sixteen (16) days after receipt of GOProud's Objection — which was sent to the ICC on 12 March 2013 — the ICC failed to comply with Article 9(a) of the Procedure. Given that we had not been made aware of any additional concerns, we reasonably assumed that the Objection was otherwise in full compliance.

3. GOProud did not receive the Review Results, and therefore had no fair opportunity to address the concerns raised therein. The ICC has provided a copy of a "delivery receipt" that was purportedly created by the ICC's email server as proof that the email was sent (copy included as Exhibit C). However, GOProud notes that not only are such mechanisms extremely unreliable, the receipt text itself even specifically states that "no delivery notification was sent by the destination server." As such, the delivery of the Review Results seems *at best* unclear and yet to be determined.
4. GOProud's listed representative (again via the listed email address Contact Information Redacted) attempted to contact the ICC to obtain a status update on 05 April 2013. A follow-up was sent to the ICC on 09 April 2013 (copies included as Exhibit D). GOProud did not receive any response to either correspondence, — or communication from the ICC of any kind for that matter — until 09 April 2013, when GOProud was notified (for the first time) that not only had the Objection failed administrative review but was subject to *dismissal*. Copies of the ICC correspondence are included with Exhibit E.
5. In good faith and with every intent to fully comply with the Procedure, GOProud had originally submitted its Objection with what it deemed as the "substantive portion" falling well within the prescribed 5,000 word/20 page limit. However, the ICC summarily stated — with no prompting or mention by GOProud — that "both the 'Objector's Standing to object' and 'Description of the basis for the Objection (Factual and Legal Grounds)' parts of the Form count together towards the 5,000 word or 20 page limit." The ICC was no doubt already aware of the ambiguity of this requirement, yet only seems content to provide guidance *after* hastily pushing GOProud toward the exit door.

On the one hand, GOProud considers the ICC's handling of this matter to be completely inconsistent with both the letter and spirit of the Procedure, which was designed to encourage meaningful discourse *on the merits* of a dispute rather than to prioritize form over substance. However, GOProud is also cognizant of the fact that this is unexplored territory for everyone involved in the objection process, and some growing pains are inevitable. GOProud is also mindful of the fact that the ICC is obligated by external deadlines to communicate the status of the objections that it has validated within a certain timeframe (e.g.

12 April 2013). To that end, a revised objection (along with all annexes) has been included herewith that is fully compliant with Article 8 and its 5,000 word/20-page restriction. GOProud respectfully requests that the ICC validate and include this revised objection in its official list as soon as it becomes available. By way of example, here is the revised word count.

- 1,199 words re standing, including headings
- 27 words fn 1
- 27 words fn 2
- 48 words in fn 3
- 3,374 words in substantive objection portion, including headings
- TOTAL of 4,675 from the foregoing

I will be contacting the ICC to follow up on this letter and ensure its receipt. In accordance with the Procedure, a copy of this letter, the revised objection, and all attachments have been sent to the Applicant via Confidential Negotiation Information.

Sincerely,

/cbl

Chris Barron

(A)

From: KOSAK Spela Contact Information Redacted
Date: Friday, March 15, 2013 5:32 AM
To: Christopher Barron <Contact Information Redacted>
Cc: TUEMPEL Hannal Contact Information Redacted; READE Emma
<Contact Information Redacted>; EXPERTISE Contact Information Redacted
Subject: RE: Community Objection by GOProud (Objector) Against Application for .GAY TLD by dotgay,llc (Applicant)

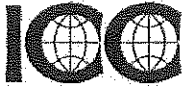
Dear Mr. Barron,
We acknowledge receipt of your above referenced Objection.
Since we have a question regarding the emails you submitted, we tried to reach you by phone yesterday but unfortunately without success. Accordingly, we would appreciate if you could reply to us by email at your earliest convenience and not later than 6pm Paris time tonight. We have noticed that you sent us two different e-mails with the same subject name and with what seems to be the same Objection form and attachments (the first one was sent at Wed 03/13/2013 3:12 PM and the second one at Wed 03/13/2013 6:52 PM). Could you please confirm that you have submitted only one Objection and if so whether you have a preference as to which email we should take into account.
Should we not hear from you by 6pm Paris time tonight, we will assume that it is indeed only one Objection and will proceed accordingly.

Sincerely yours,
Špela Košak
Deputy Manager
ICC Dispute Resolution Services
International Centre for Expertise
Tel.: + 33 1 49 53 30 40
Fax: + 33 1 49 53 30 49
38 Cours Albert 1er
75008 Paris
France

From: Contact Information Redacted
Sent: Wednesday, March 13, 2013 6:52 PM
To: Contact Information Redacted; newgtld@icann.org; EXPERTISE
Subject: Community Objection by GOProud (Objector) Against Application for .GAY TLD by dotgay,llc (Applicant)
To Whom It May Concern

Attached please find the Community Objection by GOProud (Objector) Against Application for .GAY TLD by dotgay, llc (Applicant) along with Annexes and confirmation of wire from GOProud to ICC for fees associated with filing this objection.
Thank you
Christopher R. Barron
Chairman Emeritus, GOProud Board of Directors
Contact Information Redacted

Contact Information Redacted



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EXP/426/ICANN/43
GOPROUD, INC. (USA) vs/ DOTGAY LLC (USA)

GOPROUD, INC.
Mr. Christopher R. Barron
Contact Information Redacted

By email: info@goproud.org

28 March 2013

Dear Sir,

The Centre has conducted the administrative review of the Objection in the above-referenced matter (Article 9 of the Procedure).

We note that your Objection regards the string .GAY.

We note also that the parts of the Objection Form, *i.e.* "Objector's Standing to object" and "Description of the basis for the Objection (Factual and Legal Grounds)", are longer than 5.000 words. Thus, your Objection was not filed in compliance with Article 8(b) of the Procedure. We invite you to send us an Objection Form which respects the word/page count limit within 5 days from the day following this communication (Article 9(c) of the Procedure).

Please note that both the "Objector's Standing to object" and "Description of the basis for the Objection (Factual and Legal Grounds)" parts of the Form count together towards the 5.000 word or 20 page limit.

Next steps

We cannot process the Objection until we receive a correctly completed Objection Form. In the event that the requirements are not met within the time limit granted, we will dismiss the Objection and close the proceedings (Article 9(d) of the Procedure).

Yours faithfully,

Špela Košak
Deputy Manager
CC International Centre for Expertise

c.c. DOTGAY LLC

By email: Contact Information Redacted

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E-mail expertise@iccwbo.org Website www.iccexpertise.org

Delete
 Junk
 Reply
 Reply all
 Forward
 Print
 Add to calendar
 Move to
 Copy
 Find text
 Encoding
 Copy
 Previous
 Next
 Mark as read
 Mark as unread
 Mark as important
 Mark as not important
 Mark as unread
 Mark as read
 Mark as important
 Mark as not important

Relayed: ICC EXP/426/ICANN/43

Microsoft Outlook (Microsoft.Exchange.ExchangeSystem.6.0.7302.1000) Add contact

To: KOSAK Spies

ATT00001.dat
 ICC EXP_426_ICANN_43.eml

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server.
Contact Information Redacted

Subject: ICC EXP/426/ICANN/43

(D)

From: Contact Information Redacted
Sent: Tuesday, April 09, 2013 9:11 PM
To: KOSAK Spela
Subject: GOProud objection to dotgayllc

I am writing to check the status of GOProud's objection to dotgayllc's assertion of community status.

I have heard nothing since the day after GOProud filed its objection.

Please advise.

Thanks

Chris

Christopher R. Barron
Chairman Emeritus, GOProud
Contact Information Redacted

-----Original Message-----

From: Chris Barron Contact Information Redacted
Sent: Friday, April 05, 2013 8:37 AM
To: EXPERTISE
Subject: GOProud's community objection

I am writing to inquire of the status of GOProud's objection to the claim of community status by dotgayllc.

I have not heard anything since we filed our objection outside of confirming receipt of our objection.

Thanks

Chris Barron

Chairman Emeritus, GOProud

Sent from my iPhone

Contact Information Redacted



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EXP/426/ICANN/43

GOPROUD, INC. (USA) vs/ DOTGAY LLC (USA)

(E)

GOPROUD, INC.
Mr. Christopher R. Barron
Contact Information Redacted

By email: info@goproud.org

9 April 2013

Dear Sir,

The Centre acknowledges receipt of your e-mails dated 5 and 9 April 2013, copies of which are enclosed for the Applicant.

We remind you that pursuant to Article 6(b) of the Procedure, a copy of all correspondence with the Centre in this matter should always be directly sent to Applicant.

The Centre notes your indication that you have not received any correspondence from the Centre since its letter dated 16 March 2013.

In this regard we draw your attention to the Centre's letter dated 28 March 2013, which was sent to the contact address as indicated in the Objection.

With reference to the above letter, we note again that your Objection does not comply with Article 8(b) of the Procedure. Further, we note that the Centre granted you 5 days to correct your Objection pursuant to Article 9(c) of the Procedure.

We note that the Centre has not received a corrected Objection within the time limit granted. The Centre shall revert to you with regard to the closing of the case in due course.

Yours faithfully,

Hannah Tümpel
Manager
ICC International Centre for Expertise

Enclosure: Mr. Christopher R. Barron's e-mails dated 5 and 9 April 2013 (*for Applicant only*)

c.c. DOTGAY LLC

By email: Contact Information Redacted

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EXP/426/ICANN/43
GOPROUD, INC. (USA) vs/ DOTGAY LLC (USA)

GOPROUD, INC.
Mr. Christopher R. Barron
Contact Information Redacted

By email: Contact Information Redacted

9 April 2013

Dear Sir,

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Yours faithfully,

Hannah Tümpel
Manager
ICC International Centre for Expertise

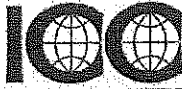
Enclosure: Mr. Christopher R. Barron's e-mails dated 5 and 9 April 2013 (*for Applicant only*)

c.c. DOTGAY LLC

By email: Contact Information Redacted

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NEW GENERIC TOP-LEVEL DOMAIN NAMES ("gTLD") DISPUTE RESOLUTION PROCEDURE

OBJECTION FORM TO BE COMPLETED BY THE OBJECTOR

- *Objections to several Applications or Objections based on more than one ground must be filed separately*
- *Form must be filed in English and submitted by email to expertise@iccwbo.org*
- *The substantive part is limited to 5000 words or 20 pages, whichever is less*

Disclaimer: This form is the template to be used by Objectors who wish to file an Objection. Objectors must review carefully the Procedural Documents listed below. This form may not be published or used for any purpose other than the proceedings pursuant to the New GTLD Dispute Resolution Procedure from ICANN administered by the ICC International Centre for Expertise ("Centre").

References to use for the Procedural Documents

Name	Abbreviation
Rules for Expertise of the ICC	"Rules"
Appendix III to the ICC Expertise Rules, Schedule of expertise costs for proceedings under the new gTLD dispute resolution procedure	"Appendix III"
ICC Practice Note on the Administration of Cases	"ICC Practice Note"
Attachment to Module 3 - New gTLD Dispute Resolution Procedure	"Procedure"
Module 3 of the gTLD Applicant Guidebook	"Guidebook"

Additional References Used by Objector

Name	Abbreviation
GOProud, Inc.	"Objector"
This objection, consisting of pages 1-16 and Annexes A-J	"Objection"
dotgay llc	"Applicant"
New gTLD Application Submitted to ICANN by dotgay llc file:///C:/DOCUME~1/user/LOCALS~1/Temp/1-1713-23699_GAY.html	"Application"

ICC International Centre for ADR Centre international d'ADR de la CCI
38 Cours Albert 1er, 75008 Paris, France
Tel +33 (0)1 49 53 30 52 Fax +33 (0)1 49 53 30 49
E-mail expertise@iccwbo.org Website www.iccexpertise.org

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Identification of the Parties, their Representatives and related entities

Objector

Name	GOProud, Inc. ("Objector")
Contact person	Christopher R. Barron
Address	Contact Information Redacted
City, Country	Contact Information Redacted
Telephone	Contact Information Redacted
Email	Contact Information Redacted

If there is more than one Objector, file separate Objections.

Objector's Representative(s)

Name	GOProud, Inc.
Contact person	Christopher R. Barron
Address	Contact Information Redacted
City, Country	Contact Information Redacted
Telephone	Contact Information Redacted
Email	Contact Information Redacted

Add separate tables for any additional representative ((for example external counsel or in-house counsel)

Objector's Contact Address

Name	GOProud, Inc.	
Contact person	Christopher R. Barron	
Address	Contact Information Redacted	
City, Country	Contact Information Redacted	
Telephone	Contact Information Redacted	
Email	Contact Information Redacted	

This address shall be used for all communication and notifications in the present proceedings. Accordingly, notification to this address shall be deemed as notification to the Objector. The Contact Address can be the Objector's address, the Objector Representative's address or any other address used for correspondence in these proceedings.

Applicant

Name	dotgay llc ("Applicant")
Contact person	Scott Richard Seitz
Address	Contact Information Redacted
City, Country	Contact Information Redacted
Telephone	
Email	

If there is more than one Applicant, file separate Objections.

Other Related Entities

Name	NONE KNOWN BY OBJECTOR
Contact person	
Address	
City, Country	
Telephone	
Email	

Add separate tables for any additional related entity.

Disputed gTLD

gTLD Objector objects to [example]

Name	.GAY
------	------

If there is more than one gTLD you wish to object to, file separate Objections.

Objection

What is the ground for the Objection (Article 3.2.1 of the Guidebook and Article 2 of the Procedure)

Limited Public Interest Objection: the applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law.

or

Community Objection: there is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.

Check one of the two boxes as appropriate. If the Objection concerns more than one ground, file a separate Objection.

Objector's Standing to object (Article 3.2.2 of the Guidebook and Article 8 of the Procedure)

(Statement of the Objector's basis for standing to object, that is, why the Objector believes it meets the requirements to object.)

To have standing, an objector must show that it (i) "is an established institution," and (ii) has "an ongoing relationship with a clearly delineated community." Guidebook § 3.2.2.4.¹ Objector satisfies these elements.

1. Objector is an Established Institution.

Factors that "may be considered" in determining that Objector is an "established institution ... include, but are not limited to," the: (a) level of Objector's global recognition; (b) length of time Objector has existed; and (c) historical evidence of its existence, such as a formal "charter," revealing that Objector did not materialize "solely in conjunction with" new gTLD processes. Widely recognized and existing entirely to advance a written agenda created without concern for new gTLDs, Objector is a well "established institution."

a. Objector's wide recognition.

GOProud is an American association of lesbian, gay, bisexual, transgender and sexuality-questioning individuals (collectively, "LGBTQ"), as well as "straight" (heterosexual) persons, who support free markets, limited government and respect for individual rights. The group works on the federal and state levels in America to build coalitions of conservative and

¹ All community standing elements and quotations in this portion of the Objection come from this single Guidebook section. As such, that provision is not further cited hereafter.

libertarian activists, organizations and policy makers to advance their shared values, and interacts with similar bodies in jurisdictions such as Canada and the UK.

Objector actively promotes its ideals throughout these locations, in political campaigns and in print, internet and social media. The group's name identifies its conservatism. "GOP" refers to the Republican ("Grand Old") Party, the conservative of the major U.S. political parties. "Proud" calls to mind the "gay pride" of the modern, open LGBTQ movement, and similarly stands for pride in and respect for the rights and freedoms of individuals, including to exercise sexual preference without government imposition.

The group now has 12,000 geographically-spread members. Its founders, Jimmy LaSalvia and Christopher R. Barron, had previously worked together at Log Cabin Republicans – a group founded in 1977 to advocate gay, lesbian and Republican causes – where they served in political, media, policy and public relations capacities. LaSalvia has acted as GOProud's Executive Director since its inception in April 2009, and Barron as its Chairman of the Board from then through December 2011, and since as Chairman Emeritus and Chief Strategist.

Lisa De Pasquale is GOProud's current Chair, and for the prior six years directed the Conservative Political Action Conference (CPAC). In 2010 and 2011, Objector sponsored CPAC, which began in 1973, is attended by thousands annually and has featured appearances and speeches by some of the most universally known conservatives, including U.S. presidents Ronald Reagan and George W. Bush, vice-president Dick Cheney, presidential candidates Sarah Palin, Ron Paul, Mitt Romney and Michele Bachmann, Republican strategist Karl Rove, and conservative commentators Glenn Beck, Ann Coulter and Rush Limbaugh. Coulter and Americans for Tax Reform President Grover Norquist sit on Objector's Advisory Council, as does Margaret Hoover of Stanford University's Hoover Institution (and great-granddaughter of the American president whose name it bears). See www.goproud.org/site/c.evKXIaONIIJch/b.8480207/k.9051/Advisory_Council.htm.

The association's leaders and participants have expressed their gay and conservative views frequently in print, television and electronic media, and they come up prominently in internet searches. Representative facts about Objector and its leaders appear at its website, www.goproud.org, and in Wikipedia articles such as <http://en.wikipedia.org/wiki/GOProud>, which includes links to individuals identified above and is accessible throughout the world. The broad recognition of this enterprise cannot be denied.

b. Length of Objector's existence.

Objector was founded in April 2009 by former members of Log Cabin Republicans, established in 1977.

c. Objector's public history apart from the new gTLD program.

Objector was formed and exists to promote its conservative LGBTQ agenda in politics, media and other public forums. It has devoted its entire institutional life to furthering that stated purpose, and no time (except this Objection) on any new gTLD matter.

GOProud promotes the same 10-point policy agenda on which it was founded. *See Annex A.* The movement's approach, documented throughout its existence, emphasizes conservative and libertarian principles aimed at improving the daily lives of LGBTQ and *all* Americans, including in matters of tax, healthcare, social security and education reform; judicial and fiscal restraint; fighting global extremism and promoting basic rights for everyone, including LGBTQs and other minorities; and defending the values and individual rights under the U.S. Constitution.

These principles transcend, come from a tradition that predates, and have nothing to do with the more focused, technical issue of how to organize and use the internet. GOProud was formed and exists just as any corporation, observing corporate formalities of Board meetings and elections of officers. See Annex B. Its "involvement" with new gTLDs goes extends only to this Objection, to protect basic free speech rights consistent with its own charter, which it believes the Application endangers.

2. Objector's Ongoing Relationship with a Clearly Delineated Community.

For this element of standing, the panel "may" consider items that "include, but are not limited to," (a) mechanisms for participation in Objector's activities, membership and leadership; (b) Objector's institutional purpose related to the benefit of its community; (c) Objector's performance of regular activities that benefit the associated community; and (d) formal boundaries around Objector's community. Such tests demonstrate that Objector has an ongoing relationship with the clearly delineated community it represents.

a. Objector's mechanisms for participation.

GOProud is open to all individuals, LGBTQ or straight, with an interest in its core principles. The organization encourages members to get involved in its various programs and activities. It often holds events to promote its agenda, and makes it easy for members to participate. For example, from the GOProud Patriots page (Annex C), members can create accounts giving them access to a plethora of information and activities.

b. Objector's institutional purpose benefitting the community it serves.

Again, GOProud has a stated agenda on issues of interest to the conservative LGBTQ community. Annex A. It has designed its agenda specifically to benefit and advance the interests of that community, which it serves by definition.

c. Objector's regular activities to benefit the community it serves.

Objector hosts regular activities to further its principles, create networking opportunities, and benefit the conservative LGBTQ community. In the last month alone, for example, it held three separate events for members. See Annex D. It also creates many opportunities for members to get involved online, including by fundraising, organizing events and recruiting other members.

d. Objector represents a community with clear boundaries.

While open to all, Objector's members and their community have definable characteristics. The group's stated mission and detailed charter describe its boundaries and constituency; it "emphasizes *conservative and libertarian principles* that will improve the daily lives of all Americans, but *especially gay and lesbian Americans*." Annex A (emphases added). These well-understood terms clearly describe the community.

3. CONCLUSION: Objector Has Standing

As stated in the Guidebook's closing summary of Section 3.2.2.4, ICANN does "not expect[] an objector [to] demonstrate ... each and every factor ... in order to satisfy the standing requirements" for bringing a community objection. Objector here does so nevertheless. By "balancing of the factors listed above, as well as other relevant information" it may consider, this tribunal should conclude that Objector has standing to object.

Description of the basis for the Objection (Article 3.3.1 of the Guidebook and Article 8 of the Procedure) - Factual and Legal Grounds

(Description of the basis for the Objection, including: a statement giving the specific ground upon which the Objection is being filed, and a detailed explanation of the validity of the Objection and why it should be upheld.)

A community objection requires "substantial opposition from a significant portion of the community to which the string may be targeted." Guidebook § 3.5.4.² This entails showing: (i) a clearly delineated community invoked by Objector; (ii) substantial opposition to the application by that community; (iii) strong association between that community and the subject string; and (iv) that "material detriment to the rights or legitimate interests of a significant portion" of the string's "explicitly or implicitly targeted" community is likely from the application. Objector so demonstrates below.

1. Objector's Clearly Delineated Community.

This factor directs that the panel "balance" elements "including but not limited to" the community's (a) public recognition; (b) formal boundaries; (c) duration of existence; (d) global distribution; and (e) number of members. As already largely shown regarding standing, the community Objector invokes satisfies these measures.

a. Objector's community has wide public recognition.

Objector has previously demonstrated its own broad public recognition. More extensive and increasing in visibility is the community for which it speaks.

Objector represents LGBTQ Americans who adhere to conservative political beliefs. Conservative gays have become recognized as a distinct subset of the LGBTQ population. Evidence of this includes the rise of organizations, such as Objector, formed specifically to advance the interests of LGBTQ conservatives. Other such groups include Log Cabin Republicans, where GOProud's founders began their organized efforts; numerous state and local groups, some of which identify themselves as "affiliates" of Objector, and one that also objects to the Application; similar associations in Canada, one of the leaders of which joins in this objection (see **Annex E**); and gay conservative societies throughout the world, perhaps the best known of which is LGBTory, a formal arm of England's conservative party that includes Members of Parliament. See http://en.wikipedia.org/wiki/Gay_Conservatives, http://en.wikipedia.org/wiki/LGBT_conservatism.

Objector's activities have raised public awareness of gay conservatism. Its sponsorship of the 2010 Conservative Political Action Conference (CPAC) caused many anti-gay factions of CPAC to withdraw support for the conference. Two years later, CPAC banned GOProud from participating altogether. Extensive press coverage of such controversies have increased the visibility of the gay conservative movement. See **Annexes F, G and H**, and links and posted comments therein.

Objector also aired television advertisements in 2010 identifying itself as opposing top liberal candidates for U.S. Congress (including one openly gay). The ad appears on YouTube, <http://www.youtube.com/watch?v=qzyBYaFhjk>. The *New York Times* touted it as "the first time that a national gay organization has launched a television ad campaign attacking Democrats." **Annex I**.

Other media sources, including print publications and internet blogs such as Gay Patriot (<http://www.gaypatriot.net>), dedicate coverage to gay conservatism. Undoubtedly, conservatives have become well recognized as a distinct LGBTQ community.

² All community objection standards and quotations in this portion of the Objection come from this single Guidebook section. As such, that provision is not further cited hereafter.

b. Formal boundaries of Objector's community.

The community here has formal boundaries by definition. Objector speaks specifically on behalf of gay conservatives and straight supporters of their efforts and views. Community members share concerns on issues pertaining specifically to the LGBTQs, including as described in the standing section above, and espouse traditionally conservative political beliefs. These values clarify the community's boundaries.

c. History of Objector's community.

Gay conservatives have formed identifiable groups going back decades. Examples include Objector's progenitor, Log Cabin Republicans (1977), and other groups in the United States and elsewhere as discussed above.

Certainly, LGBTQ individuals have long existed. Indeed, the view that sexual preference is inborn, rather than chosen, would suggest that an LGBTQ population has existed as long as humanity itself. History views it as having begun to "come out of the closet," at least in the United States, with the birth and rise of "gay pride" in the 1950s and 60s. See, e.g., http://en.wikipedia.org/wiki/Gay_pride#LGBT_Pride_Month.

While often perceived as liberal – and Objector fears that Applicant exhibits that inclination – there is no reason to believe that gays do not have conservatives among them, or that such elements do not correlate at least somewhat to the distribution of liberals and conservatives in society generally. Indeed, nearly a decade of statistical evidence in the U.S. reveals that a sizable number of gay voters acknowledged voting for conservative candidates. A New York *Times* exit poll from the 2012 Presidential Election showed 22% of self-identified gay voters cast their ballot for Mitt Romney. <http://elections.nytimes.com/2012/results/president/exit-polls>. In similar polls conducted by CNN for the 2010 U.S. elections, almost a third of voters identified as gay voted for Republicans. See <http://www.politico.com/news/stories/1110/44743.html>. Such polls also show 23% voting Republican in 2004, 24% in 2006 and 27% in 2008. *Id.*; see also <http://www.cnn.com/ELECTION/2008/results/polls/#val=USP00p3>. Figures such as this reveal that gay conservatives, going back at least a decade, comprise a meaningful, identifiable population.

d. Broad distribution of Objector's community.

Section 1.a. above identifies a number of areas around the globe where formal gay conservative organizations have developed. Objector itself has members throughout America, where many similar groups exist at both national and more local levels.

Parts of the world, of course, either have few or no organized LGBTQ groups, let alone conservative ones, or they remain largely unknown due to the closed nature of many cultures. However, even where LGBTQs exist openly, there is no reason to believe that they do not reflect ideological discrepancies found among the general public.

e. The many members of Objector's community.

Objector itself has 12,000 members and a growing number of affiliated state and local organizations. Too, the increasing number of gay conservative organizations in the U.S. and elsewhere reflects the appreciable size of that community relative to LGBTQ populations as a whole. The percentage of gay conservative voters in America, as shown above, likewise demonstrates their considerable number. For such reasons, Objector represents a "clearly delineated community."

2. Substantial Opposition by Objector's Invoked Community.

"Substantial opposition" involves the panel "balance[ing] a number of factors ..., including but not limited to" (a) amount of opposition relative to the community's composition; (b) representative nature of those expressing opposition; (c) stature or weight of sources of opposition; (d) distribution or diversity of opposition within the community; (e) historical defense of the community in other contexts; and (f) costs incurred by Objector in expressing opposition. These factors reveal substantial opposition within the community invoked by Objector.

a. Number of gay conservatives opposing the Application.

The Guidebook requires opposition by a "significant portion" of the community objecting. While it does not quantify what that means, neither does it suggest that even a "majority" of the represented community must oppose.

Objector itself currently has 12,000 members across the United States. Further, a number of gay conservative groups across the U.S. identify themselves as its "affiliates," recognizing that GOProud shares their ideology on LGBTQ and political issues. One such organization objects concurrently, and one of the largest of its kind in Canada likewise supports this Objection (**Annex E**).

Objector has found that conservatives within the LGBTQ community feel disenfranchised by the larger and typically more liberal gay population. As such, and when one considers the nearly one-third of gays who have identified themselves as conservative in election exit polls in the U.S., Objector believes that a significant portion of that population opposes what appears would be the selective operation of .GAY by Applicant.

b. Objector represents the views of gay conservatives.

Objector is one of the most prominent and visible gay conservative groups in America. Its founders have a history of representing that community in formal organizations, and of advocating its views in numerous and varied media. The GOProud Advisory Council includes a host of notable conservatives, identified above, and the group's chairperson is an author and National Public Radio personality. By consistently promoting its views publicly and involving such prominent figures in its organization, Objector feels confident that it fairly represents the LGBTQ conservative voice.

c. Objector's weight among gay conservatives.

GOProud has achieved considerable stature among gay conservatives. It is widely recognized as a leading organization in that community in the U.S. See **Annex G**. The cited article, in fact, suggests that the gay conservative vote could well have won the 2012 U.S. presidential election for Republican Mitt Romney had his campaign done more to gain gay support.

The high profile members of GOProud similarly have elevated its community standing, giving the organization great weight and credibility among gay conservatives. So, too, did its 2010 national television campaign against Democratic congressional candidates, prominently identifying itself sponsor and thus establishing itself as a leading voice among LGBTQ conservatives. <http://www.youtube.com/watch?v=qzyBYaFhjfik>; **Annex I**.

d. Broad distribution of opposition in Objector's invoked community.

Objector's varied membership includes LGBTQ as well as straight persons throughout the U.S. It has enlisted state and local organizations, which share Objector's agenda but have their own unique concerns, by chartering such groups as affiliates to carry out localized gay conservative activities. See Annex B. GOProud has consciously sought to diversify its base and reach by such conduct.

Objector also organized and sponsored the popular "HomoCon" political event during the 2012 Republican National Convention in Tampa, Florida. This marked another step in the group's efforts to make the conservative gay community an important factor among mostly liberal LGBTQ viewpoints. HomaCon featured a wide range of leading conservative speakers, including: David Keene, former Chair of the American Conservative Union and Vice-Chair of CPAC; Mary Matalin, author, CNN contributor and GOP strategist; Richard Grenell, U.S. representative to the United Nations and national security spokesperson for Mitt Romney's presidential campaign; Amy Kremer, Chair of Tea Party Express; and Larry O'Connor, radio host and editor of Breitbart.tv. These personalities, both gay and straight, represent conservative viewpoints ranging from relatively moderate to much further right, similar to the gay and straight members of Objector's Advisory Committee.

GO Proud also has relationships with counterpart organizations outside the U.S., including the "Blue Tent" initiative in Canada, which formally supports this Objection (see Annex E), and LGBTQory in the U.K. It represents a range of gay conservative views both in and outside America.

e. Objector's history of defending its community.

Objector has defended gay conservatives among both conservatives and LGBTQs generally. As mentioned above, it faced opposition when it sponsored CPAC in 2010, but returned as sponsor the following year. Objector often has found it necessary to defend its organization and conservative constituency from more liberal factions, for example:

<http://www.mediaite.com/online/dan-savage-calls-gay-conservative-group-goproud-house-faggots-for-romney-endorsement/>

<http://www.goproud.org/site/apps/nlnet/content2.aspx?c=evKXlaONIIJcH&b=8485773&ct=12700969>

<http://dailycaller.com/2011/05/27/glaad-honors-biased-gay-blogger-after-applauding-100k-fine-for-kobe-bryant/>

<http://www.mediaite.com/online/michael-musto-on-jewish-nazis-of-goproud-self-defeating-and-downright-creepy/>

Indeed, this Objection itself represents a similar effort on behalf of LGBTQ conservatives. As discussed more fully below, it appears that Applicant intends to run the registry in a restricted way, and GOProud objects to ensure that conservative voices are not silenced or denied entry.

f. Objector's costs in opposing the Application.

Aside from the known items of cost incurred with this Objection – the filing and additional administrative and professional fees – Objector has occupied itself at the highest levels of its leadership. A co-founder has spent the better part of the last two weeks working on this Objection and diverting his time away from the group's other important work. Such costs far exceed those measured in currency. By this and all other deciding measures, gay conservatives substantially oppose the Application.

3. Strong Association Between Community Invoked and Applied-For String.

The factors to be “balanced” to find a “strong association” between the applied-for string and the community represented by Objector “include but are not limited to” (a) statements made in the Application and publicly by Applicant, and (b) public associations between the string and the objecting community. These exist here.

a. Applicant’s statements.

In its “Eligibility” section, the Application states that “membership organizations ... serve as ... definitive qualifiers for those interested in affirming their membership in the community. The organizations range from serving health, social and economic needs to those more educational and political in nature.” Thus, Applicant *itself* associates the string with political organizations such as Objector. Whether it will *accept* such groups *freely* is unclear, and serves as one of the primary grounds for this Objection.

b. Public association between Objector’s community and the string.

The public would readily understand that, since any sizeable group of potential voters would range from left to middle to right, some meaningful number of LGBTQs must hold conservative political views. Since, as detailed above, a significant and increasing portion of American gays openly support and vote for conservative candidates and policies, abundant justification exists to infer that members of the public would associate the string .GAY with conservatives, among others on the political spectrum.

4. Material Detriment to the Rights/Interests of Objector’s Community.

“Factors that could be used by a panel” to uphold the “material detriment” aspect of a community objection “include but are not limited to” (a) the nature and extent of potential damage to Objector’s community and its reputation; (b) evidence that Applicant does not intend to act consistent with the interests of the invoked community; (c) interference with the core activities of the invoked community; (d) extent the invoked community depends on the DNS for core activities; and (e) the level of certainty that detrimental outcomes would occur.³ Abundant, disturbing evidence from the Application itself starkly reveals the material detriment that the gay conservative community could suffer if Applicant operates the subject string.

a. Actual and reputational harm to Objector’s community.

Applicant’s operation of .GAY portends concrete damage to gay conservatives. For example, in a stated effort to preserve the “community character” of the namespace, the Application proposes an “authentication” system that would restrict registration to “qualified registrants.” However, Applicant fails to define the criteria it would use to determine membership in, or exclusion from, the TLD. A system lacking such definition leaves open the prospect of abuse regarding legitimate registrants, such as gay conservative individuals and groups seeking .GAY domains.

The Application goes on to state that certain “Authentication Partners” would be “responsible for approving all registrations.” However, it does not identify such “partners” or articulate criteria for selecting them.

Further, the Application provides for registering only “qualified registrants.” Again, though, it neither suggests who those may be, nor how it will determine them.

³ ICANN admonishes, “An allegation of detriment that consists only of the applicant being delegated the string instead of the objector will not be sufficient for a finding of material detriment.” Because this Objector has not also applied for the string, this potential issue does not come into play.

Of potentially greater concern is Applicant's proposal that, as a threshold step, those who wish a .GAY domain must first obtain "a Community Identifier Code (CIC) through one of the Authentication Partners." In other words, it appears that potential registrants would have to *prove* and forever *openly identify themselves* as *entitled* to registration by whatever unspecified criteria an "Authentication Partner" may at its unchecked discretion require for "admission" to the .GAY "community."

Applicant's proposal of a "community watch" fails to mitigate this risk. In fact, it poses the hazard of foreclosing topics and ideas not supported by the majority of gays. To the extent liberals historically have controlled the "gay agenda," the conservative community within it faces ostracism not for failing to identify as LGBTQ, but for holding political and ideological views contrary to those of the majority. Applicant thus could impede a substantial minority, such as that exemplified by Objector, which properly should have a .GAY presence.

Applicant's operation of the TLD as it proposes similarly would cause immeasurable damage to the reputation of the community represented by Objector. Failing to secure registration would undercut GOProud's credibility as a gay organization. The restrictive operation of the TLD suggested by the Application could potentially alienate an entire segment of gays holding conservative views, perpetuating stigmas against them and leading to their further marginalization. This is anathema to the concept of an open internet that ICANN seeks to promote by its new gTLD program.

b. Applicant's intent not to act in the interests of the invoked community.

The "gatekeeper" function that Applicant proposes creates a potential obstacle at each step of the process for gaining access to the .GAY namespace. By interposing Authentication Partners to admit only "qualified registrants," and to require registrants to obtain what amounts to a "gay ID card" and subject them to an ongoing "community watch," Applicant has constructed repeated opportunities for rampant abuse and discrimination.

c. Interference with core activities of Objector's community.

Applicant's operation of .GAY could stifle gay conservatives' free speech. In contrast to the liberal elements that have largely dictated the "gay agenda" in America and around the world, GOProud and its community emphasize conservative and libertarian values that they want heard. Advocating these values constitutes one of the key activities of Objector and its community – "getting the word out" to and on behalf of gay conservatives that their ideology and interests have a place and voice among LGBTQs and society in general. The ability of gay conservatives to do just that is critical to the growth and agenda of their community, and .GAY domains would represent a logical, expected medium for their discourse.

Applicant's operation of the namespace threatens to interfere with such core activities of advancing the values and beliefs of LGBTQ conservatives, and of enhancing interaction among them in an environment responsive to, or at least tolerant of, their interests. The Application, however, expressly proposes to limit entry to the domain to those deemed "qualified registrants" by unnamed "Authentication Partners," and those who do gain entry to that closed society remain subject to an Orwellian "community watch" insulting to the beliefs of gay conservatives.

The very creation of such structures suggests that Applicant's criteria will be selectively applied. The Application reflects contact with and endorsements from numerous liberal gay organizations, yet none with GOProud or other conservative elements. Objector, therefore, has grave concerns that Applicant, which should make its TLD accessible to the *entire* gay population, intends to commandeer it for the liberal majority, silencing a core activity of conservative gays.

Moreover, unlike a driver's license or membership in a professional society, no set of "credentials" can or should be imposed on anyone regarding their sexual orientation. Applicant's irresponsible proposals for "authentication" and third party monitoring of one's sexual orientation or gender status – as if some "test" could appropriately prove one's "gayness" – demonstrates that Applicant (i) will use mechanisms harmful in the beliefs of gay conservatives, and (ii) has given little if any consideration to managing the TLD appropriately. This fact alone justifies sustaining the Objection.

d. Community's utilization of DNS for core activities.

GOProud and similar groups depend upon the global reach of the internet, by access to the DNS, as by far the most effective means of advancing their agendas and growing their ranks into organized LGBTQ conservative voices. Advocacy and promotion represent their core activities, and a .GAY TLD the most obvious domain space in which to carry them out. Limiting their access or message, as Applicant appears it would do, would cripple that essential function.

e. Certainty of detrimental outcomes.

Again, the Application proposes a number of questionable devices that create a true peril of misuse and omission of entire gay subgroups such as conservatives. Operating the domain as Applicant suggests makes the detrimental outcome of quashing free speech virtually certain to occur.

The same is true with respect to privacy. Sexual orientation has long been regarded as, and remains, a highly personal matter. While individuals may *choose* to identify themselves openly as gay, they should not be *required* to do so, as Applicant proposes by its "authentication" process and gay identification information that would reside permanently on the internet. This would trample the privacy rights, and potentially bar entry and squelch free expression, of prospective .GAY participants.

5. CONCLUSION: The Panel Should Sustain this Objection.

Objector has established the necessary elements for its success, and demonstrated the critical need for close scrutiny at this stage of the infant new gTLD program. The panel should not allow it to be run as a repressive regime, when its whole goal is to open the internet even further. As such, Objector respectfully urges the panel to sustain the objection and either deny the Application in its entirety or, at minimum, reject its purported community status so that it is treated on equal footing with all others, where its apparent desire to restrict the registry will appropriately face a free market solution.

Remedies Requested

(Indicate the remedies requested.)

Sustain this objection by either (i) rejecting the Application in its entirety, or (ii) disallowing its putative community status.

Communication (Article 6(a) of the Procedure and Article 1 of the ICC Practice Note)

A copy of this Objection is/was transmitted to the Applicant on March 13, 2013, by e-mail to the following address: **Contact Information Redacted**

A copy of this Objection is/was transmitted to ICANN on March 13, 2013, by e-mail to the following address: newgtld@icann.org.

Filing Fee (Article 1 Appendix III to the Rules and Article 8(c) of the Procedure)

As required, Euros 5 000 were paid to ICC on March 13, 2013.

Evidence of the payment is attached as **Annex J** for information.

Description of the Annexes filed with the Objection (Article 8(b) of the Procedure)

List and Provide description of any annex filed.

Annex A: 10-point agenda from GOProud website

Annex B: GOProud announcement of election of officers and affiliate program

Annex C: GOProud Patriots web page

Annex D: GOProud events web page

Annex E: March 11, 2013 letter from Canada "Blue Tent Committee"

Annex F: *Metro Weekly* article re GOProud

Annex G: *National Review* article re GOProud

Annex H: *Washington Post* article re GOProud

Annex I: *NYTimes* article re GOProud TV ad

Annex J: Confirmation of wire transfer to ICC

Date: ~~March 13, 2013~~ April 11th, 2013

Signature: _____

/cb/
Christopher R. Barron
Board Chairman Emeritus and Chief Strategist
GOProud, Inc.



International Chamber of Commerce

The world business organization

International Centre for Expertise • Centre international d'expertise

EXP/426/ICANN/43

GOPROUD, INC. (USA) vs/ DOTGAY LLC (USA)

GOPROUD, INC.
Mr. Christopher R. Barron
Contact Information Redacted

Contact Information Redacted

By email

12 April 2013

Dear Sir,

The Centre writes to you with reference to its letters dated 28 March 2013 and 9 April 2013.

We acknowledge receipt of your e-mails dated 10 and 11 April 2013 and their enclosures, sent on behalf of the Objector, copies of which were directly sent to the Applicant.

The Centre has taken note of your comments and all submitted documents.

The Centre notes that your Objection was not filed in accordance with Article 8(a) of the Procedure. Further, the Centre notes that your Objection was not corrected within the time limit granted.

Therefore the Centre dismisses the Objection and will close the proceedings (Article 9(d) of the Procedure).

We remind you that the € 5 000 Filing Fee is non-refundable.

Yours faithfully,

Hannah Tümpel
Manager
ICC International Centre for Expertise

Contact Information Redacted

c.c. DOTGAY LLC

By email:

ICC International Centre for ADR • Centre international d'ADR de la CCI

38 Cours Albert 1er, 75008 Paris, France
Tel +33 (0)1 49 53 30 52 Fax +33 (0)1 49 53 30 49
E-mail expertise@iccwbo.org Website www.iccexpertise.org

From: Christopher Barron Contact Information Redacted

Date: Tuesday, April 16, 2013 11:02 AM

To: Contact Information Redacted

Subject: Community application put forth by DotGay, LLC

Dear Fadi,

Please excuse the self-introduction. My name is Chris Barron and my organization is GOProud, Inc., representing conservative gays and their allies. My constituency is opposed to the community application for .gay put forth by DotGay, LLC for a few reasons, but particularly because they do not represent all gays, especially those with differing political beliefs.

I have carefully and in good faith followed the objection process put forth by ICANN, but have been thwarted by a ridiculous technicality and need your attention. I realize your time is at a premium so I will try to make this brief.

The ICC claims that my objection was over the 5,000 word limit. This is only accurate if one counts every word in the headings, footnotes and standing section – as opposed to the “substantive portion” which “shall be limited to 5,000 words,” per ICANN Procedure Art. 8(b). This was not at all clear from the Procedure. I have since fixed this easily by deleting a few words.

The ICC claims to have given me notice, but I DID NOT receive it, and am prepared to so swear under oath. They claim to have sent it to an email address different from the address through which they had previously communicated with me – and which the Objection identifies as my contact address as Objector’s representative – but we have checked all mail at that address and the notice does not appear anywhere, including in the spam folder. Nevertheless, they have cancelled my objection.

Fadi, I realize I am a newcomer to ICANN, but please allow me and my organization to have a fair chance to participate in the process and not be silenced without merit.

Yours truly,

Chris Barron

Christopher R Barron

Chairman Emeritus, GOProud

Contact Information Redacted

From: "Christopher R. Barron" Contact Information Redacted
Date: April 30, 2013, 7:37:15 PM GMT+02:00
To: Fadi Chehade Contact Information Redacted
Cc: Contact Information Redacted
Contact Information Redacted

Subject: Follow up

Dear Fadi,

It's been almost two weeks since I first e-mailed you regarding my objection to DotGay's community application being blocked on a completely unfair technicality. I have not heard back from you at all.

I have read your blog posts and believe that you want all voices to be heard. I know I am a newcomer to the process, but from where I stand ICANN is not honoring that commitment.

To recap, the ICC claims that my original objection was over 5,000 characters. This is only accurate if one counts every word in the headings, footnotes and standing section - as opposed to the "substantive portion". This was not at all clear from the instructions. I have since fixed this easily by deleting a few words and have resubmitted it. The ICC took my 5,000 euros and cancelled my objection on the basis that I didn't fix this in time. My concerns are:

First, I was unable to address the issues because I did not learn of them in time. To that end, I am prepared to swear under oath that I did not receive the supposed e-mail notification. Further, the only "proof" that the ICC has provided to me is a Microsoft Exchange-based "receipt" that actually states that "no response was received" from the destination server (i.e. mine).

Second, and on a related note, the ICC is supposed to notify all parties and ICANN within fourteen (14) days of compliance issues - but they did not do so. Given that I did not receive any notification of the 5,000 word issue (but was notified of a separate compliance issue via a different email address Contact Information Redacted that I had specifically listed as GOProud's official "representative" in the Objection) within the 14-day timeframe, I proceeded under the completely reasonable assumption that my objection was fine. The ICC claims that they (and other DRSPs) had been granted an extension to the admin review deadline, which was supposedly posted to ICANN's new gTLD site at an earlier stage, yet no one has been able to locate the specific page where it is located.

ICC started communicating with me using one of my e-mail addresses Contact Information Redacted and then for no apparent reason switched to using my other address Contact Information Redacted and refused to even CC the first email address (that they had already been using) notwithstanding the fact that the subsequent correspondence had a much greater and more prejudicial impact (namely, complete dismissal of the objection with prejudice).

I have carefully followed the rules in good faith, but the ICC refuses to honor my objection. They have no problem taking my fee, however.

Please be fair and resolve this or at the very least respond and tell me why you think my objection to DotGay's "community" application should not be heard.

Yours truly,
Chris Barron
Christopher R Barron
Chairman Emeritus, GOProud

Contact Information Redacted

Contact Information Redacted

From: Christine Schachter

Date: May 2, 2013, 7:18:40 PM EDT

To: Contact Information Redacted

Cc: Cassia Oliveira Contact Information Redacted

Subject: Re: Follow up

Dear Mr. Barron,

On behalf of Mr. Fadi Chehadé, and the Internet Corporation for Assigned Names and Numbers (ICANN), I hereby acknowledge receipt of your letters dated 16 April, 20 April, and 30 April 2013.

Your correspondence and inquiries have been forwarded to the New gTLD Program Staff for processing.

Thank you,

Christine Schachter

Executive Communications Coordinator

Direct Dial: Contact Information Redacted

Mobile: Contact Information Redacted

Contact Information Redacted

Internet Corporation for Assigned Names and Numbers (ICANN)

12025 Waterfront Drive, Suite 300

Los Angeles, CA 90094-2536

June 26, 2013

Ombudsman Recommendation on Late Objection

Filed under: [Uncategorized](#) — Chris LaHatte @ 5:27 pm

This is a letter which I sent to the Board on 31 May 2013:-

Steve Crocker

Chair

ICANN Board

Scott Seitz

dotgay LLC

Christopher R Barron

Chairman Emeritus, GOProud

Objections for String .gay by GOProud

I have received a complaint in relation to the rejection of an objection to the string .gay lodged by the community group called GOProud. The objection was filed within time but then rejected because it exceeded the prescribed word length, by approximately 500 words. The notice of the rejection was sent to an email address which was not the one used to file the objection, and therefore notice of the rejection arrived later than expected, which meant that the amended objection was then not filed on time. GOProud made some enquiries about progress of their objection and assert they did not get any response until they were told the objection had been rejected. They make the point that if the rejection had been sent to the correct email address, they could have easily lodged the amended objection within time.

I am concerned about the fairness of such a decision to reject the objection, when there appears to be a valid reason why notice of the initial rejection was not received. It is of course possible for the objector and the applicant to meet to discuss the objection, which is contemplated by the objection process outlined in the guidebook. However my concern as the ombudsman, is that there is some unfairness in the subsequent rejection given the apparent error in the use of the wrong email. It seems to me that it would be relatively easy to unwind that decision, and permit the late filing of the objection. I can of course only make a recommendation, but in this case where there is some unfairness I think the matter should be revisited.

Please contact me if you have any queries about this matter. I believe a quick decision does need to be made.

I have sent a copy of this letter to the objector and to the applicant. I have already offered to facilitate or mediate the objection, but the position of GOProud is that they want the objection in place before they would consider such a process. Given the unfairness in the rejection, that does not seem to be an unreasonable position.

Yours faithfully,

Chris LaHatte

ICANN Ombudsman

Resolved (2013.07.13.NG03), the New gTLD Program Committee directs the President, Generic Domains Division, or his designee, to forward to the ICC the Ombudsman's report about GOProud's objection to a .GAY application and ask the Centre for Expertise of the International Chamber of Commerce to revisit its decision in light of the facts and analysis stated in the Ombudsman's report.



International Chamber of Commerce
The world business organization

International Centre for Expertise • Centre international d'expertise

Ms. Christine A. Willett
Vice President, gTLD Operations
ICANN
12025 Waterfront Drive, Suite 300
Los Angeles
CA 90094
USA

By email: Contact Information Redacted

Paris, 19 July 2013

Dear Ms. Willett,

The International Centre for Expertise (“Centre”) of the International Chamber of Commerce (“ICC”) acknowledges receipt of your letter dated 18 July 2013, addressed to the Centre, as well as of your letter also dated 18 July 2013, addressed to all three dispute resolution providers (“DRSPs”).

Further, we acknowledge receipt of Mr. LaHatte’s letter dated 18 July 2013, addressed to the Centre, Steve Croker, Chair of the ICANN Board, Scott Seitz, representative of dotgay LLC and Christopher R. Barron, Chairman Emeritus of GOProud Inc. (“GOProud”).

We note that we only received said letter through you and not directly from Mr. LaHatte.

The Centre has taken note of the resolutions of the NGPC.

ICC does not intend to comment at this juncture on the question of the ICANN Ombudsman’s jurisdiction to facilitate resolution of problems and complaints affecting members of the ICANN community under Bylaw V of the ICANN bylaws.

Further, ICC does not intend to comment on the possibility of the NGPC to order the Centre, one of the independent DRSPs, to revise procedural decisions it has taken on the basis of the New gTLD Dispute Resolution Procedure (see Attachment to Module 3 of the Applicant Guidebook) (“Procedure”) in cases filed with the Centre.

Accordingly, this response should not be construed as an acceptance of the Ombudsman’s jurisdiction to enquire about the appropriateness of the decisions taken by ICC pursuant to the Procedure agreed upon or as an acceptance of the NGPC’s jurisdiction to direct the Centre, or as an acceptance of the terms and accurateness of the Ombudsman’s letters.

.../...

ICC International Centre for ADR • Centre international d’ADR de la CCI

38 Cours Albert 1er, 75008 Paris, France
Tel +33 (0)1 49 53 30 52 Fax +33 (0)1 49 53 30 49
E-mail expertise@iccwbo.org Website www.iccexpertise.org

However, taking note of the NGPC's resolution asking the Centre to revisit its decision not to register the Objection filed by GOProud against the string .gay applied for by dotgay LLC, the Centre is prepared to revisit its decision.

Independent of the above, and in order to facilitate the general understanding of the case management practice followed by ICC pursuant to the Procedure, we wish to share with you some information regarding the above-mentioned case.

Administrative Review

Pursuant to Article 9(b) of the Procedure, each DRSP after receipt of an Objection has to conduct an administrative review, in order to verify compliance with the requirements set out in the Procedure.

Should the DRSP hold that an Objection does not comply with Articles 5-8, it shall, pursuant to Article 9(c), *"request that any administrative deficiencies in the Objection be corrected within five (5) days."* Further, Article 9(d) provides that if the *"DRSP finds that the Objection does not comply with Articles 5-8 of this Procedure and the applicable DRSP Rules, and the deficiencies in the Objection are not corrected within the period specified in Article 9(c), the DRSP shall dismiss the Objection and close the proceedings, without prejudice to the Objector's submission of a new Objection that complies with this Procedure, provided that the Objection is filed within the deadline for filing such Objections."*

Chronology of Events

Please find hereafter a chronology of relevant events regarding the Objection filed by GOProud. Please note that for all below mentioned emails sent by the Centre to the official notification address of GOProud, the Centre has an automatic delivery notification on file.

On 13 March 2013 at 03:13pm, the Centre received an Objection filed by GOProud against an Application for the string .gay filed by dotgay LLC.

On 13 March 2013 at 06:53pm, the Centre received a further email with an Objection which seemed to be identical than the one received previously. Both emails were received from the email address Contact Information Redacted

For courtesy reasons only, the Centre tried to contact Mr. Barron by telephone on 14 March 2013 and by email to the address Contact Information Redacted on 15 March 2013, to inquire which of the two Objections filed should be considered by the Centre.

On 15 March 2013, Mr. Barron informed the Centre that only the later Objection sent should be considered by the Centre.

Accordingly, the Centre confirmed that it would only take the second Objection filed into account. The Objection was attributed the case reference EXP/426/ICANN/43.

.../...

In accordance with the applicable rules, the Objection was filed on a Model Form provided by the Centre. In this Model Form the Objector *inter alia* had to specify the Objector's Contact Address with the Name, Contact Person, Address, Contact details. In this regard, the model form further specifies that *"This address shall be used for all communication and notifications in the present proceedings. Accordingly, notification to this address shall be deemed as notification to the Objector. The Contact Address can be the Objector's address, the Objector Representative's address or any other address used for correspondence in these proceedings."*

Objection EXP/426/ICANN/43 specifies the following data:

Identification of the Parties, their Representatives and related entities

Objector

Name GOProud, Inc. ("Objector")

Contact person Christopher R. Barron

Address **Contact Information Redacted**

City, Country

Telephone

Email

If there is more than one Objector, file separate Objections.

Objector's Representative(s)

Name GOProud, Inc.

Contact person Christopher R. Barron

Address **Contact Information Redacted**

City, Country

Telephone

Email

Add separate tables for any additional representative ((for example external counsel) or in-house counsel)

Objector's Contact Address

Name GOProud, Inc.

Contact person Christopher R. Barron

Address **Contact Information Redacted**

City, Country

Telephone

Email

This address shall be used for all communication and notifications in the present proceedings. Accordingly, notification to this address shall be deemed as notification to the Objector. The Contact Address can be the Objector's address, the Objector Representative's address or any other address used for correspondence in these proceedings.

Accordingly, the Centre noted the indicated contact address as notification address, in particular the indicated email address ^{Contact information Redacted} for notification purposes.

On the next day, *i.e.* on 16 March 2013, the Centre sent a letter to the Objector informing it of the receipt of the Objection and reminding the Objector that the Filing Fee had to be paid. This letter was sent electronically to Objector to the indicated notification address, *i.e.* ^{Contact information Redacted}

.../...

On 16 March 2013, the Filing Fee was credited to ICC's bank account.

Accordingly, on 19 March 2013, a second letter was sent to the Objector to confirm receipt of the Filing Fee and to inform Objector that the Centre would now conduct the administrative review. This letter was again sent to the notification address, *i.e.* ^{Contact information Redacted}

On 28 March 2013 at 10:05pm, the Centre sent a further letter to the Objector informing it that the Objection did not comply with the Procedure as it did not respect the set word / page limit.

In accordance with Article 9 of the Procedure, the Centre set a 5-days deadline for correcting the Objection accordingly. This letter was again sent to the notification address, *i.e.* ^{Contact information Redacted}

On 2 April 2013, the 5-day deadline for the correction of the Objection terminated.

On 5 April 2013 at 2:38am, the Centre received an email from Mr. Barron indicating that he had not heard anything with regard to his Objection.

On 9 April 2013 at 3:11pm, the Centre received a further email from Mr. Barron with the same question.

On the same day at 9:00pm, the Centre sent a letter to the parties acknowledging receipt of Mr. Barron's e-mails. Further, the Centre reminded the parties about the deadline it had set pursuant to the Procedure for the correction of the non-compliant Objection. For courtesy reasons, the Centre also sent a copy of the said letter to Mr. Barron's private email address ^{Contact Information Redacted}

On 10 April 2013, the Centre was informed by Mr. Barron and his assistant that he had never received any of the emails sent to the notification address as indicated in the Objection. Mr. Barron *inter alia* also asked the Centre to re-send its letter dated 28 March 2013 to him. On the same day, the Centre re-sent to both parties its letter dated 28 March 2013, as well as the delivery confirmation it had received when sending that email. This email also went to Mr. Barron's private email address ^{Contact Information Redacted} for courtesy reasons.

At 5:35pm on 11 April 2013, the Centre received an email from Mr. Barron enclosing the corrected Objection.

On 12 April 2013 at 7:26pm, the Centre informed the parties that the Objection would not be registered, since its procedural deficiencies were not cured within the time limit granted.

Summary

The Centre conducted the administrative review of the Objection filed by GOProud in accordance with the provisions of the Procedure. The administrative deficiencies of the Objection were not cured within the time limit granted. Accordingly, the Centre did not register the Objection.

Pursuant to Article 9(d) of the Procedure, such dismissal was without prejudice to the Objector's submission of a new Objection that complies with this Procedure, provided that the Objection was filed within the deadline for filing such Objections. However, since GOProud filed its Objection on the last day of the deadline for the filing of the Objection as set by ICANN, a subsequent re-submission was not possible.

.../...

Finally, the Centre wishes to point out that the cut-off date for the submission of Objections was fixed by ICANN.

We hope that this information will contribute to clarify the matter and the Centre's administrative decisions.

As announced, the Centre will now proceed to revisit its disputed decision.

In the meantime, please do not hesitate to contact us should you have any further questions.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Tümpel', written in a cursive style.

Hannah Tümpel
Manager
ICC International Centre for Expertise

c.c. (by email):

- Mr. Steve Croker, Chair, ICANN Board
- Mr. LaHatte, ICANN Ombudsman
- Mr. Scott Seitz, dotgay LLC
- Mr. Christopher R Barron, GOProud
- Mr. Andrea Carlevaris, Director, ICC Dispute Resolution Services
- Mr. Emmanuel Jolivet, General Counsel, ICC



International Chamber of Commerce
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EXP/426/ICANN/43
GOPROUD, INC. (USA) vs/ DOTGAY LLC (USA)

GOPROUD, INC.
Contact Information Redacted

By email: Contact Information Redacted

DOTGAY LLC
Contact Information Redacted

By email: Contact Information Redacted

2 October 2013

Dear Sirs,

The Centre writes to you with reference to its recent correspondence.

Standing Committee's Decision

The Centre informs you that on 1 October 2013, the Standing Committee reconsidered this matter and decided not to revise the Centre's decision not to register the present matter.

Therefore, this matter will not be registered.

Accordingly, the Centre has now terminated this matter and will close the file.

We remind the parties that the Filing Fee is non-refundable.

Yours faithfully,

Špela Košak
Deputy Manager
ICC International Centre for Expertise

c.c.: GOPROUD, INC

By email: Contact Information Redacted

ICC International Centre for ADR • Centre international d'ADR de la CCI

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