

QUESTION FROM JAMIE BAXTER ON BEHALF OF DOTGAY LLC DURING PUBLIC FORUM 1

Almost a decade ago, the global gay community began engaging in an opportunity aimed at changing the trajectory of the online experience for lesbian, gay, bisexual, transgender, queer, intersex and allied individuals and organizations.

The response produced a unified community application for .GAY, built on the foundation of stakeholder input and endorsed by over 260 LGBTQIA organizations from every corner of the world where it is safe enough to be vocal & visible.

Community priority was designed to avoid gTLD showdowns between community interests and others, yet instead it has attempted to rewrite history on the common & universal use of 'gay' to encapsulate the community of LGBTQIA.

Criticism of the CPE providers and CPE process have been far-reaching and with cause. The record for .GAY already shows that CPE providers were charged with not complying to CPE procedures, raising further questions about training, due diligence & oversight.

The Board's call for a CPE investigation has unfortunately missed the mark during implementation, squandering the opportunity to look hard at CPE issues such as Cherine Chalaby's observations about "inconsistencies applying AGB scoring criteria."

Also, it hasn't fallen on deaf ears that the FTI admits in their own report that guardrails were imposed on their investigation. Without the freedom to "dig deep," the FTI reports should not be mistaken as exoneration of inconsistent CPE scoring.

What are the Board's plans for addressing the claims of discriminatory treatment not addressed by FTI, and what is the explanation for barring FTI from investigating all claims of inconsistency in CPE standards and scoring?

CLARIFICATION FROM JAMIE BAXTER ON BEHALF OF DOTGAY LLC ON 15 MARCH 2018

First I'd like to thank and congratulate ICANN's tremendous effort for keeping the remote participation active over the past few days. Bravo!

I'd also like to take a moment to address something with the Board that we feel important to clarify in the larger picture of our ongoing accountability efforts at ICANN. To simplify things, the claim we have before the Board is that .GAY was treated in a discriminatory manner during CPE in relation to other community applicants. Acknowledging that the word "discrimination" can be a trigger for many, we'd like to be certain that the Board is interpreting our use of the word properly.

To be absolutely clear, dotgay's claim of discriminatory treatment is not related to any belief that ICANN or its representatives are anti-gay or that discrimination has occurred

because we are gay. It is however directly linked to the promise of non-discrimination for our application according to the ICANN bylaws.

dotgay's focus has always been on bringing attention to the discriminatory treatment that resulted from how the CPE providers executed the CPE process among the various community applicants, and which has ultimately kept our application from achieving community priority. Evidence from numerous sources has underscored the unequal application of CPE standards and scoring among applicants, and many stand with us in the belief that this behavior is not in alignment with ICANN's commitments to non-discrimination.

Knowing that the FTI investigation offered only a narrow scope, we look forward to seeing how the ICANN Board is considering the evidence provided in reports and expert opinions it has received on .GAY, and how it plans to reconcile these findings with ICANN's commitments to non-discrimination.

We hope this clarifies any misunderstanding or public misperception about our efforts.

QUESTION FROM JAMIE BAXTER ON BEHALF OF DOTGAY LLC DURING THE Q&A SESSION WITH ICANN ORGANIZATION EXECUTIVE TEAM

Which parties were involved in determining the scope of the CPE investigation following the Board's request to launch an investigation and was the board required to approve the final investigation to FTI?

RESPONSE

The following is a response to the questions posed by dotgay LLC (dotgay) during the first Public Forum and the Q&A session with the ICANN organization Executive Team. The Board understands that dotgay is asking three questions:

1. What are the Board's plans for addressing the claims of discriminatory treatment not addressed by FTI?
2. What is the explanation for barring FTI from investigating all claims of inconsistency in CPE standards and scoring?
3. Which parties were involved in determining the scope of the CPE investigation following the Board's request to launch an investigation and was the Board required to approve the final instructions provided to the FTI?

With respect to the first and third questions, the Board acknowledges receipt of submissions from various stakeholders, including dotgay, raising claims of discriminatory treatment in CPE process. In response to these claims, the Board initiated the CPE Process Review as part of its oversight over the New gTLD Program. The CPE Process Review was not intended to be a substantive reevaluation of the 26 evaluations completed by the CPE Provider. Instead, the Board determined in [Resolution 2016.09.17.01](#) that the scope of the Review should include: a review of the process by which ICANN organization interacted with the CPE Provider (Scope 1).

Thereafter, the Board Governance Committee (BGC), in discussing the potential next steps regarding the pending Reconsideration Requests relating to the CPE process, determined that in addition to reviewing the process by which ICANN organization interacted with the CPE Provider related to the CPE reports issued by the CPE Provider (Scope 1), the review would also include: an evaluation of whether the CPE criteria were applied consistently throughout and across each CPE report (Scope 2); and a compilation of the research relied upon by the CPE Provider to the extent such research exists for the evaluations that are the subject of pending Reconsideration Requests relating to the CPE process (Scope 3).

The first question posed by dotgay relates to Scope 2 of the CPE Process Review. FTI Consulting, Inc., which was retained to perform the CPE Process Review, concluded for Scope 2 that “FTI found no evidence that the CPE Provider’s evaluation process or reports deviated in any way from the applicable guidelines; nor did FTI observe any instances where the CPE Provider applied the CPE criteria in an inconsistent manner.” ([Scope 2 Report](#), Pg. 3.) If dotgay believes that FTI did not address certain claims of discriminatory treatment with respect to dotgay’s application for the .GAY gTLD, it will have an opportunity to make an oral presentation regarding those concerns to the ICANN Board Accountability Mechanisms Committee (BAMC) in connection with its pending Reconsideration Request. It will also have the opportunity to submit supplemental materials on how the CPE Process Review is relevant to dotgay’s pending Reconsideration Request. In considering the merits of the pending Reconsideration Requests, the BAMC’s and Board’s review will take into consideration any additional written submissions made by a requestor, any materials presented in any oral presentations, any materials previously submitted in support of the reconsideration request, as well as the findings set forth in the CPE Process Review Reports issued by FTI.

With respect to the second question posed by dotgay, it appears that dotgay is claiming that FTI should have been – but was not – tasked with conducting a substantive reevaluation of all 26 evaluations performed by the CPE Provider. That was never the intent of the CPE Process Review. The ICANN Board seriously considered the various concerns raised by community stakeholders regarding the CPE process, and determined that an evaluation by FTI of “whether the CPE criteria were applied consistently throughout each CPE report” – among the other scopes – was the most appropriate way to address the claims of disparate treatment.

Further, as FTI made clear in its Scope 2 report, “Throughout its investigation, FTI carefully considered the claims raised in Reconsideration Requests and Independent Review Process (IRP) proceedings related to CPE. FTI specifically considered the claim that certain of the CPE criteria were applied inconsistently across the various CPEs as reflected in the CPE reports.” (Scope 2 Report, Pg. 3.) Accordingly, FTI was not “barred” from considering the claims of discriminatory treatment that dotgay made in connection with its Reconsideration Request. Rather, FTI states that it did consider those claims.