

**THE INTERNATIONAL CENTRE FOR EXPERTISE OF THE
INTERNATIONAL CHAMBER OF COMMERCE**

CASE No. EXP/446/ICANN/63

METROPLEX REPUBLICANS OF DALLAS

(USA)

vs/

DOTGAY LLC

(USA)

This document is an original of the Expert Determination rendered in conformity with the New gTLD Dispute Resolution Procedure as provided in Module 3 of the gTLD Applicant Guidebook from ICANN and the ICC Rules for Expertise

EXP/446/ICANN/63

METROPLEX REPUBLICANS OF DALLAS

vs.

DOTGAY LLC

Expert Determination

Objector

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Applicant

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Procedure

1. On 13 March 2013, Metroplex Republicans of Dallas ("Metroplex") filed a Community Objection against the application by dotgay llc ("dotgay") for the string .GAY. On 10 May 2013, dotgay filed its response. On 7 June 2013, I, Professor Dr. Bernhard Schlink, was appointed by the Chairman of the Standing Committee of the International Centre for Expertise ("Centre") of the International Chamber of Commerce ("ICC") to proceed with this matter in accordance with the Rules for Expertise of the ICC ("Rules"), supplemented by the ICC Practice Note on the Administration of Cases ("ICC Practice Note") under the Attachment to Module 3 of the gTLD Applicant Guidebook, New gTLD Dispute Resolution Procedure ("Procedure") of the gTLD Applicant Guidebook ("Guidebook"). On 2 July 2013, the Centre confirmed the full constitution of the Expert Panel and transferred the file to me. On 20 July 2013, I informed the parties that I had received the file and did not intend to invite additional submissions. The parties did not submit any further submissions or statements nor did they request to be granted leave to submit additional submissions.

2. The language of all submissions was English (Procedure Article 5(a)). All communications by the parties, the Expert Panel and the Centre were submitted electronically (Procedure Article 6(a)).

3. The draft Expert Determination was rendered for scrutiny to the Centre on 29 July 2013, within 45 days after receipt of the files transmitted by the Centre on 2 July 2013.

Summary of Parties' Positions

Objector's Position

4. Metroplex presents itself as an established institution that has an ongoing relationship with a clearly delineated community. It describes itself as a political "grassroots" organization in Texas that has been in existence for 30 years, that raises public awareness of gay conservatism and builds political ties to conservative leaders. To demonstrate that it has an ongoing relationship with a clearly delineated community, it claims to advance the interests of the conservative LGBTQ ("lesbian, gay, bisexual, transgender, and sexuality questioning") community by promoting monthly dinner meetings, hosting political events, and endorsing candidates for office in Texas. It further asserts its affiliation, together with six other state and local conservative gay groups, with GOProud, a national conservative LGBTQ organisation.

5. Metroplex claims substantial opposition from a significant portion of the conservative LGBTQ community to which the string .GAY may be targeted. It argues that the conservative LGBTQ community is a clearly delineated community, having readily identifiable formal boundaries, being formed by LGBTQ people who hold conservative political views and vote for conservative candidates. Such conservative LGBTQ community, it claims, has existed since the early days of political participation, and is represented in every corner of the world, numbering between one third and one fourth of all LGBTQ voters.

6. Metroplex also argues that the opposition is substantial and shared by a significant portion of the conservative LGBTQ community. It believes that most conservative LGBTQ voters feel the way the members of Metroplex feel. It sees itself as a well-recognized, extensively involved, and actively engaged organization with a diverse membership and a history of

defending the conservative LGBTQ community by being active in social media and submitting editorial pieces to the "Dallas Voice".

7. Metroplex further argues that the strong association between the string .GAY and the conservative LGBTQ community is obvious, because even the applicant, dotgay, sees gay political organizations as entry points into the gay community, and because the fact that a part of the LGTBQ population is conservative must lead to the conclusion that the string .GAY will in part be identified with gay conservatives.

8. Metroplex finally argues that the application for the string .GAY creates a likelihood of material detriment to the rights and interests of a significant portion of the conservative LGBTQ community. Metroplex points to the operational model for the string .GAY that includes an authentication system that allows registrants in or shuts them out, and also includes a community watch that may lead to users being removed or barred. Metroplex asserts that both the LGBTQ community and the gay agenda are dominated and controlled by liberals. It therefore expects discrimination, in the authentication system and the community watch, against conservative LGBTQ groups and individuals. While Metroplex cannot be certain of this outcome, it feels that the potential for abuse of the operational model for the string .GAY is unacceptably high.

Applicant's Position

9. dotgay challenges Metroplex's standing. It does not doubt the existence of a conservative segment of the LGBTQ community, nor, that Metroplex is a part of it, but it challenges Metroplex's claim to represent this segment. It asserts that Metroplex is globally neither active nor known; that the available documentation does not prove, but rather casts doubt on Metroplex's purported 30-year existence; that there is no evidence of an ongoing relationship between Metroplex and the conservative segment of the LGBTQ community, nor, of Metroplex having discussed, planned, or organised its objection with that segment.

10. dotgay further argues that the authentication system and the community watch cannot create any likelihood of material detriment to groups or individuals of the conservative segment of the LGBTQ community, for several reasons. First, the string .GAY will be operated in strict political neutrality. Second, its authentication system relies on authentication partners from all segments of the LGBTQ community and could rely on Metroplex itself as one of the authentication partners. Third, the community watch's only function is to raise alarm in cases of hate speech. Finally, an Ombudsman and an appeals mechanism are in place to deal with complaints as to the political neutrality of the operational model of the string .GAY.

11. dotgay finally mentions that it has made several attempts to contact Metroplex and to open a dialogue about its concerns, but that emails were not answered and certified letters were returned unopened.

Findings

12. The Objection should be dismissed.

13. On the basis of the submitted documents and arguments, Metroplex lacks standing. To have standing the objector has to be an established institution associated with a clearly

delineated community (Guidebook 3.2.2.4), i.e. with a group that is publicly recognized as a community at a local and/or global level and has formal boundaries that enable a determination of what persons or entities form the community (Guidebook 3.5.4). There is no disagreement between the parties that the gay or LGBTQ community is a clearly delineated community. But while the conservative segment, with which Metroplex claims association, is a segment of the clearly delineated gay community, it is not a clearly delineated community in and of itself. That some LGBTQ people hold conservative political views and vote for conservative candidates may bring them into a statistical category, but does not make them connect, gather, interact, or do anything else together that would constitute a community, or, that would make them publicly visible as one. That people hold a political view or vote for a political candidate also does not mean that they do so consistently and stably over time. People change their political views, and have different views on different issues; and whether a political view is to be characterized as conservative, liberal, or something else is often debatable. Votes are cast in secret and not always as voters declare they will vote, or have voted; voters divide their votes within a ticket and swing from election to election. No LGBTQ person is bound by his or her last political view, or, his or her last vote as a formal boundary.

14. For a community objection to be successful, the whole community need not oppose the application; proof of substantial opposition within the community is sufficient (Guidebook 3.5.4). Given this, one might consider a different interpretation of Metroplex's objection. In this interpretation the community, for which Metroplex wanted to express opposition to dotgay's application for the string .GAY, were not the conservative segment of the LGBTQ community, but rather the LGBTQ community itself, and the conservative segment would be the source of substantial opposition within the community. But Metroplex would still lack standing. It is not an established institution that has an ongoing relationship with the gay community, i.e. it is not a globally or internationally or nationally recognized institution that participates in the community's activities, membership, and leadership and has a purpose and performs activities related to the community's benefit (Guidebook 3.2.2). Based on its own submissions, Metroplex does not have an ongoing relationship with the wider LGBTQ community; it does not reach out to it, and does not participate in its mechanisms to organize, act, lead, or speak out. Affiliation with six other state and local conservative gay groups does not constitute an ongoing relationship with the wider LGBTQ community; it is not even a substantive relationship within the conservative segment that in and of itself is not a clearly delineated community.

15. Even if Metroplex had standing, its objection would have to be dismissed on the merits. For an objection to be successful, the objector has to prove that the application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted (Guidebook 3.5.4). The application by dotgay for the string .GAY does not create a likelihood of material detriment to the rights or interests of the conservative segment of the LGBTQ community. Nothing in the operational model of the string .GAY casts doubt on dotgay's claim that the string .GAY will be operated in strict political neutrality. In fact, it is in dotgay's social, political, and economic interest to be as encompassing as possible and to embrace the conservative segment of the LGBTQ community as fully as other segments. If an LGBTQ individual or group of whatever leaning should be discriminated against despite this, the operational model has, as pointed out in dotgay's application under 20(e), an Ombudsman and an appeals mechanism to rectify the wrong.

Decision

For all the above reasons and according to Art. 21(d) of the Procedure, I hereby render the following Expert Determination:

1. Metroplex's objection fails and is dismissed.
2. Applicant dotgay llc prevails.
3. dotgay llc's advance payment of costs shall be refunded by the Centre to dotgay llc.

3 September 2013

A handwritten signature in blue ink, appearing to read 'Schlink', is positioned above the printed name of the expert.

Prof. Dr. Bernhard Schlink, Expert