



THE CITY OF NEW YORK  
**LAW DEPARTMENT**

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April 13, 2009

Mr. Paul Twomey  
President and CEO  
ICANN  
6 Rond Point Schuman, Bt. 5  
B-1040 Brussels  
Belgium

Re: Comments of the City of New York on gTLD Draft Applicant Guidebook,  
Version 2

Dear Mr. Twomey:

The City of New York (the "City" or "NYC") has reviewed the publication "Draft Applicant Guidebook, Version 2" (the "Guidebook 2") released by the Internet Corporation for Assigned Names and Numbers ("ICANN") on February 18, 2009, as well as the accompanying "Analysis of Public Comment February 2009" (hereafter "Analysis").

NYC again wishes to express its appreciation to ICANN for its diligence in considering the comments submitted in response to the initial Guidebook, and the detailed analysis and explanation provided by ICANN in connection with its preparation of the Guidebook 2 and Analysis.

For purposes of commenting on the current version of the Guidebook 2, the City will focus on the pricing structure for the application process, operation of and dispute resolution costs associated with the new gTLDs, while reserving further comments as new reports and/or versions of the guidebook are issued.

In its analysis of comments received in response to the initial Guidebook and its issuance of the Guidebook 2, ICANN indicates that the \$185,000 evaluation fee on particular classes or types of applicants and states that this potential impact it "is not a factor in the development of the evaluation fee". Analysis at p. 20. However, ICANN acknowledges that some types of

applications will have lower processing costs than others. *Id.* In addition, ICANN acknowledges that “[t]he GNSO policy recommendations allow for different pricing for different applications.” *Id.* Other than citing general principles of “fairness and conservatism”, ICANN states that “[n]o policy decisions indicate that the fee should be altered”. *Id.* at pp. 20, 23. The City respectfully suggests that ICANN provide a more detailed explanation for its refusal to consider an alternative basis for establishing differential evaluation fees based on differences in the anticipated types of applications that ICANN expects to receive and the GNSO recommendations.

In response to public comment received on the initial Guidebook, ICANN has revised its initial position that registry fees would be calculated as the greater of \$75,000 or a fixed percentage (5%) of registry transaction revenue. Analysis at p. 21. Instead, a base amount of \$25,000 annually (or \$6,250 per quarter) has been adopted. February 2009 Revised Proposed Draft New gTLD Agreement, Article 6 Fees (“Agreement”) at pp. 5-6; Analysis at pp. 23-24. Registries with 50,000 or fewer second-level registrations would pay only the base amount, while registries exceeding 50,000 registrations would pay an additional \$0.25 per year. Agreement at pp. 5-6. While the City commends ICANN’s decision to make a downward adjustment in these amounts, the City suggests that this adjustment fails to take into consideration differences among potential gTLDs apart from registry size and asks that ICANN articulate why the base amount so far exceeds the annual registry fees for some existing TLDs (\$10,000 annually in registry fees for .cat, .travel and \$500 annually in registry fees for .museum). In light of ICANN’s mandate that any fees represent only cost recovery and its non-profit status, it is unclear what the basis is for a \$0.25 per year additional fee for registries exceeding 50,000 and what cost ICANN would be recouping by imposing this fee. Analysis at p. 20.

With respect to dispute resolution costs, ICANN states in its analysis of public comment that community and morality and public order objections are likely to more diverse or varied and to involve two phases and are therefore expected to be more expensive than legal rights objections. Analysis at 91; Guidebook 2 at 3-3. From this statement, ICANN draws the conclusion that these types of disputes are more appropriate for variable fee pricing. *Id.* Of course, it is likely that sovereign or governmental entities may well be the most appropriate to raise community or morality and public order objections and will therefore be more likely than other objectors to face higher, variable fees in pursuing objections of this type.<sup>1</sup> Notwithstanding the fact that these types of objections may be necessary to protect the overall integrity of the gTLD program and that sovereign or governments may be best suited to make these types of objections, ICANN states that it will allow each dispute resolution provider to set its own fees and not to establish any maximum level for such fees, *id.*, thereby imposing an additional fiscal burden on potential objectors.

Based on the current economic situation and its impact on governmental entities, the City again wishes to voice its concern that the application, operational and dispute resolution fees for the

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<sup>1</sup> The City will await further development of the procedural process to be used to determine these objections before submitting any comments concerning them.

new gTLD program will be beyond the means of governments who are already hard pressed during a time of acute budget deficits to provide for core governmental services and functions. The City urges ICANN to adopt evaluation and operational fee models that will encourage a broad base of new gTLDs that serve the broader public interest.

Again, the City wishes to express its thanks for being given the opportunity to weigh in on Guidebook 2. Should further information about the City's comments be required, ICANN is encouraged to contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read 'KW', with a long horizontal flourish extending to the right.

Katherine Winningham  
Senior Counsel