November 29, 2010

Re: Comments from the Proposed Not-for-Profit Organizations Constituency on the Proposed Final Applicant Guidebook

Dear Mr. Beckstrom, Mr. Dengate-Thrush and the ICANN Board of Directors:

We thank you for the opportunity to provide comments to the Internet Corporation for Assigned Names and Numbers ("ICANN") on the proposed Final Applicant Guidebook ("AGB") for the new gTLD Program on behalf of the members of the proposed Not-for-Profit Organizations Constituency ("NPOC").

The NPOC is a coalition of not-for-profit organizations/NGOs that are affiliating to represent, specifically, the operational interests of not-for-profit and non-governmental organizations. The focus of the NPOC is to provide the real world perspective of how DNS polices affect the operational readiness of not-for-profit organizations and NGOs, and the execution of their missions and objectives.

We reiterate our concerns about the new gTLD Program that we highlighted with much detail in our Comments to DAGv4 and do not repeat those herein. We request that the ICANN Board of Directors ("Board") consider the additional recommendations below, and direct that corresponding changes be made to the Guidebook and all relevant documents consistent with these recommendations.

Next, we have listed below our recommendations related to the AGB and the new gTLD Program:

1) The Board should instruct the appropriate ICANN staff ("Staff") to initiate the Applicant Support Development Program.
2) The Board should instruct Staff to establish an evaluation fee/application fee that is appropriate for not-for-profit organizations/NGOs.
3) The Board should consider requesting an Issues Report on the feasibility of adding the names of not-for-profit organizations/NGOs to the Reserved Names List.
4) The Board should require its selected Dispute Resolution Service Providers to provide reduced fees for not-for-profit organizations/NGOs for all steps of the New gTLD Dispute Resolution Procedures that incur fees.
5) The Board should instruct Staff to reconsider the impact of the auction procedure on not-for-profit organizations/NGOs.
6) The Board should instruct Staff and the approved Trademark Clearinghouse Service Provider(s) contracted by ICANN to add the names of not-for-profit organizations/NGOs and any trademarks owned by not-for-profit organizations/NGOs into the Trademark Clearinghouse databases without a fee.
7) The Board should encourage the URS Provider to provide discounted fees for complaints brought by verified not-for-profit organizations/NGOs.
8) The Board should instruct Staff to target outreach about the new gTLD Program to not-for-profit organizations/NGOs.

Additional information about these recommendations is provided in the Sections below, organized by module of the AGB. In addition, we are happy to discuss these recommendations with the Board and/or Staff.

I.   MODULE 1:

Section 1.2.10 – Resources for Applicant Assistance

First, we thank the Board for supporting the creation of the Joint SO/AC WG on New gTLD Applicant Support ("JAS WG") through its Resolution on 12 March 2010.   We also support and gratefully acknowledge the addition of "Section 1.2.10 – Resources for Applicant Assistance" in the AGB.

We applaud the efforts of the JAS WG, as expressed in its Milestone Report. Related to Module 1, we note the following recommendation by the JAS WG:

> *"The WG recommends that once the recommendations in this report are endorsed by the respective chartering organizations and ICANN's Board, that text is added to the (Final) Application Guidebook indicating that a Support Development Program will be announced before the start of the first round and that the conditions of this program are established and published separately."*

We strongly support this recommendation and request that the Board to instruct Staff to work with the JAS WG to: (1) initiate the Support Development Program; (2) announce the Support Development Program before the start of the first round; and (3) communicate and widely publish the conditions of the Support Development Program as soon as possible to allow Applicants to benefit from the Program during the first round.

Section 1.5 – Fees and Payments

We ask the Board to consider the benefits to the ICANN community presented by the addition of new gTLDs operated by not-for-profit organizations/NGOs to the Internet, and to reduce the gTLD evaluation fee for not-for-profit organizations/NGOs in order to make registration of a new gTLD more attainable for these organizations. We note that the issue of fees is addressed in one of the recommendations in the JAS WG's Milestone Report:

> *"Review the basis of the US $100,000 application base fee to determine its full origin and to determine what percentage of that fee could be waived for applicants."*

We agree that it is fair for ICANN to be able to recover its actual costs relating to the new gTLD application process from all Applicants, including not-for-profit organizations/NGOs; however, we emphasize that, for not-for-profit organizations, the fees should reflect ICANN's actual costs for direct administration of the application process and should not include overhead for other ICANN activities.

Therefore, we request that the Board instruct Staff to work with the JAS WG and the ICANN community to establish an evaluation fee/application fee that is appropriate for not-for-profit organizations/NGOs.

II.   MODULE 2

Section 2.2.1.2 Reserved Names

In light of the significant costs, communication obstacles and operational challenges, many not-for-profit organizations/NGOs may not be able to apply for a new gTLD and will not have the resources (both financial resources and human resources) to participate in the application objection procedures or the rights protection mechanisms described in Module 5.   Considering the important public good and the services provided by not-for-profit organizations, ICANN should consider a process to add not-for-profit organizations/NGOs to the Reserved Names list. We understand that this is a process that would take time and careful study to develop.

Therefore, we request that the Board consider requesting an Issues Report on the feasibility of adding the names of not-for-profit organizations/NGOs to the Reserved Names List, working with not-for-profit organizations/NGOs to develop reasonable criteria for inclusion in the Reserved Names List.

III.   MODULE 3

Section 3.2

Echoing the comments on Section 1.5 as stated above, we ask the Board to consider the benefits to the ICANN community of the addition of new gTLDs operated by not-for-profit organizations/NGOs to the Internet. In addition to the concerns regarding the evaluation and application fee, we note that other significant fees associated with the new gTLD application process may include dispute resolution fees.

Moreover, we request that the Board require its selected Dispute Resolution Service Providers to provide reduced fees for not-for-profit organizations/NGOs (objection filing fees, response filing fees, fees for panelists, etc) in its schedules (See Section 3.2.2, 3.2.4 and 3.3.7) and add such a requirement to the New gTLD Dispute Resolution Procedure (See Article 14) and associated adjudication fees for the proceeding.

IV.   MODULE 4

Section 4.3 Auction: Mechanism of Last Resort

We reiterate our concerns regarding the auction procedure. The auction procedure will likely place not-for-profit organizations/NGOs with limited budgets at a distinct disadvantage in acquiring new gTLDs that are desired by two or more parties.

V.   MODULE 5

In light of the benefits provided to the public and the ICANN Community by not-for-profit organizations/NGOs, ICANN's Trademark Clearinghouse Service Provider(s) should add the names of not-for-profit organizations/NGOs and any trademarks owned by not-for-profit organizations/NGOs into the databases without a fee.

We request that the Board instruct Staff to work with ICANN's Trademark Clearinghouse Service Provider(s) and not-for-profit organizations/NGOs to develop a reasonable system for adding the names of not-for-profit organizations/NGOs, as well as the trademarks owned by these organizations, into the Trademark Clearinghouse databases. We suggest that the names and trademarks selected for inclusion: (a) meet the same criteria as required for other marks to be included in the Clearinghouse, as stated in Module 5; or (b) be subject to an alternative review procedure to establish use-based rights.

In addition, regarding the Uniform Rapid Suspension System ("URS"), we request that the Board strongly encourage the Provider to provide discounted fees for complaints brought by verified not-for-profit organizations/NGOs.

VI.   GENERAL COMMENTS RELATED TO ICANN'S COMMUNICATION'S PLAN

We recommend that upon approval of the final version of the Guidebook, the four-month global communications campaign include targeted outreach to not-for-profit organizations/NGOs.   We recommend that the information provided during these outreach efforts include both information on the application process, as well as information of interest to third parties who may not be applying for their own new gTLDs, such as the objection procedures, rights protection mechanisms, and other opportunities

to comment on and participate in the process at a policy level. Also, we request that outreach include information about opportunities for Applicant support.

VII.   Conclusion

We hope the ICANN Board will carefully consider the recommendations provided in these Comments and make all corresponding changes to the planned new gTLD Program and Guidebook. Again, we welcome the opportunity for further discussion with the ICANN Board and/or Staff regarding implementation of these recommendations.

Respectfully Submitted,

Members of the proposed Not-for-Profit Organizations Constituency ("NPOC")