May 15, 2011

Rod Beckstrom, CEO
Peter Dengate Thrush, Chairman of the Board
Internet Corporation for Assigned Names and Numbers
4676 Admiralty Way, Suite 330
Marina del Ray, CA 90292-6601

Re: Electronic Submission of Comments on April 2011 Draft Applicant Guidebook

Dear Messrs. Beckstrom and Dengate Thrush:

The Software & Information Industry Association (SIIA) respectfully submits the
following comments regarding ICANN's generic Top Level Domains proposal, specifically
with regard to the revised discussion draft of the gTLD Applicant Guidebook released on
April 15, 2011.

SIIA is the principal U.S. trade association of the software and digital content industries.
Its membership consists of over 500 software and content companies that range from start-
up firms to the global leaders in the industry. SIIA members have played a central role in
providing the infrastructure and software that have built the Internet into what it is today,
and have introduced some of its most groundbreaking innovations and applications. They
have an interest in maintaining an Internet governance environment that will continue to
encourage innovation and growth, while also meeting the evolving expectations of
consumers and industries as a place where they can reliably do legitimate business.

While SIIA has specific concerns with respect to the Applicant Guidebook, including its
rights protection mechanisms (RPMs) and contractual obligations, SIIA's overarching
concern remains that the planned scope of this project does not seem to correspond to the
demands or needs of the Internet community. A wide spectrum of government
representatives, leading international companies, non-profits, individual users, and even
the economic experts hired by ICANN have called for a more targeted approach that is
focused on specific areas of need or demand (such as, first focusing on gTLDs for under-
served communities and scripts/languages). ICANN should heed these voices and
recalibrate the gTLD program to areas where it is most needed and likely to succeed.

Similarly, SIIA urges ICANN to take the time necessary to resolve the concerns of the
GAC and "brand owners" (the businesses that make up the vast majority of the Internet
economy). It is no exaggeration to suggest that this gTLD project and Applicant
Guidebook will test the long-term viability of the ICANN model of multi-stakeholder

governance. There is much at stake in "getting it right."[1] Rigidly adhering to an arbitrary timeline or June "deadline" for the Applicant Guidebook is not the wise course of action when it is clear that significant issues remain.

With respect to the specific changes in the April 15 Applicant Guidebook, SIIA believes that progress has been made in a number of areas such as RPMs, preventing malicious conduct, transparency of applications, and others. Important shortcomings, however, remain. Other commenters have covered many of these issues, and SIIA will restrict its observations herein to two of them.

First, while changes to the RPMs are moving in the right direction, there seems to be little justification for many of the material limitations still in place. For example, SIIA welcomes the requirement that all registries must provide an IP claims service, but we do not understand why this obligation expires sixty days after launch of a new gTLD. As long as the registration of new domain names continue under that gTLD, so too should the IP claims service. Further, limiting the service to "exact matches" will rob much of its potential benefit. A great deal of cybersquatting is based upon typographical errors, slight variations of a mark, and combining a mark with other common words. Whether the standard is (as some have proposed) "confusingly similar" or something else, the ongoing IP claims service must address this issue in order to be effective. Finally, showing "proof of use" seems inconsistent with the purposes of the Trademark Clearinghouse, when the trademark systems of many nations do not require use.

Second, it is vitally important that new gTLD registries (indeed, all registries) maintain a reliable, publicly searchable Whois database that contains verified, accurate domain name registrant information. Experience has shown that failing to do so, or failing to effectively enforce the contractual Whois requirements, invites a wide range of abuses. The current draft's requirement of "thick Whois" service (a unified database covering all registrations in the TLD) is a positive change. And while SIIA also appreciates that the new draft awards an "extra" evaluation point for registries that authenticate and monitor Whois data, SIIA believes that this is a critically important issue that should be required of all applicants, *i.e.,* necessary to achieve even the required minimum of one point on the "abuse prevention and mitigation" criterion. The registry agreements of recent gTLDs such as .asia, .mobi, and .post include meaningful verification, monitoring and reporting clauses which represent the current industry "best practice." They have not been shown to be

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[1] ICANN surely is mindful that the governments of the world are watching this gTLD project with increasing interest, and that some may welcome the opportunity to move DNS oversight in "a different direction" (as it has been stated) if the new gTLD roll-out causes undue harm and governments feel that their views were not effectively weighed. Their concern is heightened in light of the recent .xxx approval despite the lack of GAC support. Moreover, the IANA contract is now under review and many of the public comments have called for more strict accountability provisions as a condition for renewal of the contract. And as ICANN is aware, Member of the U.S. Congress recently asked that the Board not approve the Applicant Guidebook at the June (Singapore) meeting, to allow further time for all stakeholders to work out remaining concerns. In short, this is an environment that calls for caution and consensus building, not a rush to finish the project – even one that has been years in the making.

unreasonable to implement, and they should be used as a basis for the new gTLD requirements with respect to Whois.

SIIA thanks you for the opportunity to comment on this matter. We support the ICANN model of multi-stakeholder governance, and want to see it succeed. We look forward to continuing to work with ICANN toward developing a gTLD plan and Applicant Guidebook that the Internet community will support and endorse.

Sincerely,

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