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Dr. Stephen D. Crocker, Chairman of the Board  
Mr. Fadi Chehadé, President & CEO  
Mr. Cherine Chalaby, Chair of the New gTLD Committee  
Internet Corporation for Assigned Names and Numbers (ICANN)  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094

Re: New gTLD Board Committee Consideration of GAC Safeguard Advice

On behalf of the Association of American Publishers (AAP)<sup>1</sup>, I am writing in response to ICANN's April 23, 2013 Notice soliciting public comment regarding how the New gTLD Board Committee should address Government Advisory Committee (GAC) advice regarding safeguards applicable to broad categories of New gTLD strings. In particular, the Notice seeks public comment with respect to advice provided in Section IV.1.b and Annex I of the GAC Beijing Communique, which was issued on April 11, 2013.

**AAP Comment on Section IV.1.b. — “Safeguard Advice for New gTLDs”**

AAP commends the GAC for its endorsement in the Beijing Communique of six specific safeguards related to WHOIS registration records and potentially abusive activities by registrants, and for its recommendation that these safeguards “should apply to all new gTLDs and be subject to contractual oversight.”

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<sup>1</sup> AAP is the national trade association of the U.S. book publishing industry, with over 300 member companies and organizations that include most of the major commercial book and journal publishers in the United States, as well as smaller and non-profit publishers, university presses, and scholarly societies. AAP members publish literary works in hardcover and paperback formats in every field of human interest, and are active in the ebook and audiobook markets, and also produce computer programs, databases, Web sites and a variety of multimedia works for use in online and other digital formats.

The recommended requirements in Annex 1 for registry operators to verify, check, document and impose “real and immediate consequences” for any registrant’s provision of deliberately false, inaccurate or incomplete data in WHOIS records reasonably appear to be the minimum safeguards necessary to ensure the integrity of the WHOIS registration system and prevent it from being exploited for copyright infringement and other illegal or inappropriate purposes. Similarly, the GAC recommendations that would require registry operators to utilize “terms of use” prohibitions, periodic technical security analyses, and a complaint mechanism to combat a broad range of other abusive activity – including copyright and trademark infringement, piracy, counterfeiting, phishing, fraudulent or deceptive practices, or otherwise engaging in actions contrary to applicable law – invoke common-sense measures that any responsible registry operator should expect and have the capability to implement.

AAP is gratified to note that the GAC has explicitly included “.book (and its IDN equivalent),” along with other intellectual property-related gTLDs, among the non-exhaustive list of strings to which these safeguards should apply. We urge the New gTLD Board Committee to accept the GAC’s advice regarding the requirement of these safeguards, and to allow registry applicants to use the still-pending Public Interest Specifications process to modify their applications to incorporate and implement them.

### **AAP Comment on Restricted Registration Policies**

As a threshold matter, AAP believes that it is particularly important for ICANN to thoroughly consider any advice from GAC that addresses whether applications for particular gTLDs can be expected to promote competition in the provision of registry services, which consistently has been a leading rationale for introducing new gTLDs. *See, e.g.,* Final Report of the Generic Names Supporting Organization (GNSO), Part A, at <http://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-part-a-08aug07.htm>.

None of the four permissible grounds for formal public objection, especially when viewed in terms of their highly-limiting “standing” requirements, provides a basis for a public objection that is grounded in the concern that an application will not promote competition in the provision of registry services but will, instead, give a registration monopoly to a private entity for its exclusive commercial use. This is true even where a “closed registry” application pertains to a generic gTLD, such as “.book.” *See ICANN Application Handbook*, Module 3, Sections 3.2.1. and 3.2.2.

The Independent Objector, who purportedly is authorized to act “solely in the best interests of global Internet users” and “can lodge objections in cases where no other objection has been filed,” has already refused to object to any “closed generic” gTLD application “on this sole ground.” See <http://www.independent-objector-newgtlds.org/english-version/the-issue-of-closed-generic-gtlds/>.

Only the GAC, which can provide advice to ICANN on any registry application based on concerns that reach beyond the limited grounds for formal public objection, has the scope of authority to raise the “competition” issue in broadly addressing the “concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues.” See *ICANN Application Handbook*, Module 3, Sections 3.1.

One GAC member, Australia, expressed its concerns about closed generic gTLD applications in a GAC Early Warning submission in November 2012 addressing the Amazon EU S.a r.l. application for “.book.” Specifically citing “Competition” as its policy concern, Australia noted that “.book” is a common generic term relating to a market sector, and that Amazon EU S.ar.l. “is proposing to exclude any other entities, including potential competitors, from using the TLD.” It went on to state the obvious: “Restricting common generic strings for the exclusive use of a single entity could have unintended consequences, including a negative impact on competition.” As possible remediation steps, Australia urged that the applicant “should specify transparent criteria for third party access to the TLD...[that] should be appropriate for the types of risks associated with the TLD, and should not set anticompetitive or discriminatory conditions relating to access by third parties.” “These criteria should form part of any binding contract with ICANN,” the submission concluded, “and be subject to clear compliance oversight by ICANN.” See <https://gacweb.icann.org/download/attachments/27131927/Book-AU-44051.pdf?version=1&modificationDate=1353389945000&api=v2>.

In Annex 1 of its Beijing Communique, the GAC gives the ICANN Board less prescriptive but more succinct advice on such closed generic gTLD applications, urging that “exclusive registry access” for strings representing generic terms “should serve a public interest goal.”

It is unclear what, if any, specific “public interest goal” could be served by any private, commercial entity’s purely self-interested commercial operation of a registry for generic gTLDs that was intended to promote competition in the provision of registry services. Given the long-presumed “public interest” in ensuring the promotion of such competition, it is also unclear what other “public

interest goal” would justify ICANN’s foreclosure of any realistic prospects for such competition by virtue of its approval of such a registry application.

AAP urges the New ICANN gTLD Board Committee to accept the GAC’s advice on “exclusive registry access” and implement it so that the Amazon application for “.book” and others of its ilk will not be approved without an affirmative objective showing by the applicant – and a corresponding finding by ICANN – that it would be in the public interest to permit the particular applicant to operate a “closed registry” for the particular generic gTLD at issue. We also urge the New gTLD Board Committee to add relevant meaning to the “public interest” concept in this context by applying the GNSO rationales regarding the promotion of competition, consumer choice, market differentiation, and geographical and service-provider diversity as the standards for such affirmative objective showings and findings. .

On behalf of AAP, thank you for giving these Comments your prompt and thorough consideration.

Sincerely,



Allan Adler