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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

Dear Mr. Twomey:

The City of New York (the "City" or "NYC") has reviewed the publication "New gTLD Program: Draft Applicant Guidebook" (the "Guidebook") released by the Internet Corporation for Assigned Names and Numbers ("ICANN") on October 23, 2008.

NYC commends ICANN's desire to increase innovation in the Internet's addressing system and the detailed analysis behind issuance of the draft Guidebook. NYC also appreciates that ICANN's constituency involves the global Internet community as a whole and that ICANN has attempted to meet the disparate needs of that community in its formulation of the Guidebook.

NYC respectfully submits that the Guidebook overlooks certain essential needs of local governments in order for localities such as NYC to be comfortable participating in the gTLD process and, ultimately, sanctioning particular applicants to operate gTLDs that rely on the names and goodwill of localities. While the support and/or non-objection concept provided for in the Guidebook may have been intended to reassure governmental entities that their concerns will be addressed in the gTLD process, the lack of clarity in the Guidelines may have the effect of inducing governments not to support applications at all rather than risk being subject to procedures and panels that are not clearly defined or that lack clear standards to address their concerns.

The Guidebook does not establish a process to authenticate, or for a panel to consider challenges to, governmental statements of support or non-objection that may be presented by applicants

during the application process. The Guidebook contains no reference as to the composition of the panel reviewing applications or indications that the panel will accurately represent the varied interests of different types of governmental entities; no statement that a governmental entity will have status as a rights holder or a defined community for purposes of a community-based objection; and no standards for objection on morality or public order grounds. Accordingly, localities such as NYC will be put to considerable time and expense in objecting to a particular application and/or challenging the credentials of an applicant in an unfamiliar and expensive forum to which local governments may not readily have access.

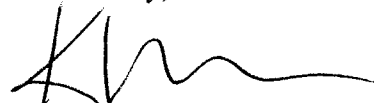
ICANN should take particular note of the dire fiscal problems faced by governmental entities such as NYC (and other states and localities throughout the United States) at this time. NYC currently expects tax revenues for fiscal year 2009 to be down \$2.6 *billion* from tax revenues in fiscal 2008. Tax revenues for fiscal 2008 have declined to date by \$285 million. Further, NYC is currently forecasting a gap of \$1.3 *billion* for the 2010 fiscal year. Employment numbers for national and city economies in the United States have deteriorated and a recession has been officially recognized.

The costs of multiple dispute resolution processes and arbitral panels (as estimated in the Guidebook) are well beyond the means of smaller governments and, in a time of budget deficits and recessionary concerns, are not likely to be a priority for local governments who have primary responsibility for police protection, education and other critical services for their citizens. Failure of governmental entities to take advantage of an ICANN dispute resolution or arbitral process may adversely affect the credibility of a particular gTLD if the government associated with the location name represented by the gTLD is opposed to the gTLD or considers it to be unsanctioned or improperly sanctioned.

More specifically, the Guidebook adopts an ISO 3166-2 standard (which is not freely available for public review) for country and territory names, which in the United States is not comprehensive and fails to include several commonly used longer forms of address for localities. The City recommends that the Guidebook adopt an additional standard, specifically the United Nations Code for Trade and Transport Locations.

The City appreciates the opportunity to weigh in on the Guidebook and its detailed comments with respect to specific Modules of the Guidebook follow as an enclosure and are being submitted to the relevant addresses. 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 'Katherine Winningham', with a stylized, flowing script.

Katherine Winningham
Senior Counsel

Enclosure

COMMENTS OF THE CITY OF NEW YORK

Module 1 - Introduction to New gTLDs Application Process (email gtld-intro@icann.org)

Section 1.1.2.4 Objection Filing

Formal objections to applications can be filed on any of four enumerated grounds by parties with standing to object. The objection filing period will open after ICANN posts the list of complete applications as described in paragraph 1.1.2.2. Objectors will file directly with dispute resolution service providers (DRSPs). Refer to Module 3, Dispute Resolution Procedures, for further details.

Comment – As discussed more fully in separate comments, the four enumerated grounds for formal objection do not provide sufficient grounds to safeguard the interests of national, local and/or municipal governments in the preservation of geographic terms that apply to them. This section requires specific reference to such grounds.

Section 1.1.2.6 Dispute Resolution

Where formal objections are filed and filing fees paid during the objection filing phase, dispute resolution services providers will initiate and conclude proceedings based on the objections received. . . .

The Guidebook suggests that governmental objectors will be relegated to the standard dispute resolution process or other arbitral procedures used by all objectors/applicants. The estimated cost of the dispute resolution process set forth in the Guidebook will be onerous for governmental entities to bear, particularly during the severe fiscal and budgetary restraints currently faced by localities in the United States. Failure to provide a detailed and cost effective process to vindicate the *ex officio* interests of governmental entities in their names and geographic designations apart from any standard dispute resolution system is not conducive to full governmental participating in the gTLD process.

Section 1.1.2.7 String Contention

String contention applies only when there is more than one qualified applicant for the same or similar gTLD strings... In the event of contention between applied-for strings that represent

geographical names, the parties may be asked to follow a different process to resolve the contention.

Comment – The reference to “a different process to resolve the contention” has no other context or reference in the Guidebook or related materials. If a different and separate process is to be applied to the contention between geographically relevant strings, that process should be clearly defined. Such process should also include an invitation, through the relevant GAC representative of the geographic entity/entities concerned, to have any corresponding government entities that believe they may be affected by the decision participate in the process. In addition, the reference to “geographic names” should be changed to “geographic terms,” as more fully explained in other comments.

Section 1.2.2 Two Application Types: Open or Community-Based

All applicants are required to designate each application for a new gTLD as open or community-based.

Comment - The Guidebook is silent as to whether proposed gTLD strings that contain geographic terms should be treated automatically as open or as community-based applications. Unless the applicant clearly indicates to the contrary, any gTLD strings that contain geographic terms should be deemed community-based applications. This will ensure that gTLD applicants evidence the support of the community associated with the geographic term, including the following requirements from proposed Section 1.2.2.1:

1. Demonstrate an ongoing relationship with a defined community that consists of a restricted population.
2. Have applied for a gTLD string strongly and specifically related to the community named in the application.
3. Have proposed dedicated registration and use policies for registrants in its proposed gTLD.
4. Have its application endorsed in writing by an established institution representing the community it has named.

Section 1.2.2.2 Objection/Dispute Resolution

All applicants should understand that an objection may be filed against any application on community opposition grounds, even if the applicant has not designated itself as community-based or declared the TLD to be aimed at a particular community.

Comment – Absent a clearer explanation of the mechanism available for governments to object, it appears this provision is essential to protect the rights of governments connected with geographic terms that are the subject of gTLD applications and have passed through the initial reviews without objection. However, the right of governments to objection should be expressly indicated.

Section 1.2.2.2. Contract Execution and Post-Delegation

A community-based gTLD applicant will be subject to certain post delegation contractual obligations to operate the gTLD in a manner consistent with the restrictions associated with its community-based designation, once it begins operating the gTLD. ICANN must approve material changes to the community-based nature of the gTLD and any associated contract changes.

Comment - If an application for a gTLD containing a geographic term is supported by a letter of support or non-objection by a relevant government, a post-delegation material change to the gTLD, including a post-delegation assignment of rights to another party registry operator, should not be permitted without evidence of support, or evidence of non-objection, from the relevant government that submitted documentation during the application process.

Section 1.2.3 Required Documents

Some supporting documentation will be required only in certain cases:

- 1. Community endorsement – If an applicant has designated its application as community-based, it will be asked to submit a written endorsement of its application by an established institution representing the community it has named.*
- 2. Government support or non-objection – If an applicant has applied for a string that is a geographical term, the applicant is required to submit a statement of support or non-objection for its application from the relevant government(s) or public authorities. Refer to Section 2.1.1.4 for more information on the requirements for geographical names.*

Comment – Regardless of whether an application for a gTLD is community-based or contains a geographic term, it is essential that the support, or non-objection, by any relevant government entity related to the community or geographic term be obtained

and documented in the application process. In addition, the GNP process and decision should be published and communicated specifically to the GAC representatives who would be able to notify their sub-national government constituencies of any problematic applications. Any applications that are competing for the same string and that simultaneously evidence support or non-objection from a concerned government should also be rejected during the GNP review process.

Section 1.3 Information for Internationalized Domain Name Applicants

Applicants for IDN gTLDs will also be required to provide the following at the time of the application:

1. Short form of string (English). The applicant will provide a short description of what the string would mean in English.

Comment – Since applicants for Internationalized Domain Names might use a letter string that could correspond to a geographic term, thereby preventing a future similar string under the contention rules, paragraph 1 should be reworded to indicate that the short form must include an indication of the closest corresponding English letters, not just the English meaning, and must also include an indication of whether either the Internationalized string, or the corresponding short form English string, consists of a known geographic term.

Section 1.5.1 Breakdown of Fees and Amounts

Dispute Resolution Filing Fee – *This amount must accompany any filing of a formal objection and any response that an applicant files to an objection. This fee is payable to the applicable dispute resolution service provider in accordance with the provider's payment instructions. ICANN estimates that non-refundable filing fees could range from approximately USD 1,000 to USD 5,000 (or more) per party per proceeding . . . ICANN estimates that a proceeding involving a fixed amount could range from USD 2,000 to USD 8,000 (or more) per proceeding. ICANN further estimates that an hourly rate based proceeding with a one-member panel could range from USD 32,000 to USD 56,000 (or more) and with a three member panel it could range from USD 70,000 to USD 122,000 (or more).*

Comment - The amounts suggested by this section indicate that it is of utmost importance that governments be protected as early and automatically as possible in the application process without needing to resort to expensive dispute proceedings, which will incur substantial panel costs, as well as costs of representation that governments

cannot afford. This supports the view that governments should be protected at a different stage of proceedings and on a different level of protection so as to minimize the need for their proactive involvement in the process at any stage but maximize the opportunity to voice their objections economically and early in the process. It is entirely possible with the proposed process that a geographically significant gTLD string would get through the GNP process leaving an objecting government no alternative under the proposed structure than to pursue objection via one of the three available proposed dispute procedures and this is unacceptable.