Comments on the Draft Applicant Guidebook Version 3 (DAG-V3)

The Coalition Against Domain Name Abuse (CADNA) appreciates the opportunity to offer comments on the third version of the Draft Applicant Guidebook (DAG-V3).

Since trademark protection, security and stability, and malicious conduct are the most pressing concerns associated with the potential launch of new TLDs, **CADNA believes that it is still premature to proceed with the new TLD launch at this time. This launch should not move forward without a more detailed and well thought out plan in place that will ensure the safety of Internet users and protect the rights of all parties.**

CADNA supports ICANN's decision to delay any possible launch of new TLDs and appreciates that the latest version of the DAG provides more details on many of the processes that had been left vague in earlier versions. By clarifying the steps, requirements and timeframes involved in applying for a TLD, potential applicants and the general public can better evaluate the proposed new TLD application process. However, there are still many areas that are problematic and require further development.

As a Coalition of brand owners, CADNA is particularly concerned with trademark issues that may arise in the new TLD space. CADNA is disappointed to see that another Guidebook has been published without adequately addressing issues of brand and Internet user protection. While the Coalition appreciates that the latest version of the Guidebook begins with a note that assures an ongoing "discussion and debate" on several unresolved issues including "solutions for trademark protection," the Coalition would like to see concrete improvements incorporated into the next Guidebook. Specifically, at a minimum we expect to see improvements such as some of the recommendations provided by the IRT that are not currently included in the Guidebook. For example the Global Marks Protection List (GMPL) and the IP Clearinghouse, should (with some development and the modifications that CADNA has suggested in the DAG-Version 2 comment period) be included in the next draft of the Guidebook.

As for specific issues with the content found within DAG-V3, CADNA has the following reactions:

1) String evaluation: In DAG-V3, ICANN details the process for evaluating whether or not an application string is confusingly similar to reserved names, other strings already in existence or strings currently in the application stage. DAG-V3 states that this evaluation will be handled by the String Similarity Panel; however, ICANN offers very little information about who will comprise this Panel. The Guidebook mentions that it will consist of third-party providers and lists some requirements, but greater detail on these points is necessary. The establishment of a Reserved Names list has been one of the cornerstones of the IRT's recommendations, and given the Panel's role in determining whether or not applicant strings are similar to those names, CADNA is disappointed by the lack of information in the DAG-V3 about who will serve on that panel.

2) Application objections: Module 3 of the DAG mentions that one of the standings for objecting to an application is a "Morality and Public Order Objection," which states that objections may be raised against an applicant string if the applied-for TLD is "contrary to generally accepted legal norms of morality and public order that are recognized under international principles of law." In the second version of the Guidebook, ICANN indicated that it was still considering how to limit "frivolous" objections. The latest version attempts to address this by stating that Morality and Public Order Objections will be subject to a "quick look" procedure to determine whether or not they are valid objections. However, DAG-V3 does not clarify what a "quick look" entails or how the decision about which objections are unfounded would be reached. Given ICANN's dedication to a bottom-up policy development process, it is important for substantive concerns and objections to be considered in the application process; ICANN must clarify what it envisions in this "quick look" evaluation of objections so that the organization's stakeholders can ensure that their role as conscientious participants in policy development is retained.

The description of the "Legal Rights Objection" is similarly lacking in detail. Specifically, the description of this objection makes no mention of the threshold of legal rights one must surpass in order to be considered a "rightsholder." This section could include information about how many trademarks must be filed, in which geographic areas the marks must be valid and other pertinent information. Unfortunately, the DAG leaves these requirements unspecified, allowing for potential confusion.

CADNA has concerns about the lack of detail in the description of the Independent Objector (IO), who may file objections against "highly objectionable" TLD applications to which no objection has been filed. While the DAG mentions that this figure will be selected through "an open and transparent process," it does not provide details about what that process will entail and what the qualifications will be required of IO applicants. Given that the IO could potentially hold a lot of power in determining which TLD applications would be allowed to continue on through the application process, the next Guidebook should clarify the IO's role.

3) Domain infringement at the second level: A final issue of particular importance to CADNA is that of cybersquatting and malicious behavior. While the DAG-V3 does list past history of cybersquatting as grounds for denying applications, the document does not adequately provide provisions that will prevent cybersquatting of names within new TLDs once they are established. The expansion of the domain name space will dramatically increase the opportunity for cybersquatting and trademark infringement, and it is an issue that needs to be addressed in the DAG.

The Coalition Against Domain Name Abuse (CADNA) is a 501(c)(6) nonprofit organization dedicated to ending the systemic domain name abuses that plague the Internet today.