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Sent via electronic mail (4gtld-guide@icann.org)

Dear ICANN:

We thank you for the opportunity to provide comments to the Internet Corporation for Assigned Names and Numbers ("ICANN") on the gTLD Draft Applicant Guidebook, Version 4 ("DAGv4").

The Association of American Medical Colleges ("AAMC") represents all 131 accredited U.S. and 17 accredited Canadian medical schools; approximately 400 major teaching hospitals and health systems, including 68 Department of Veterans Affairs medical centers; and nearly 90 academic and scientific societies. Through these institutions and organizations, the AAMC represents 125,000 faculty members, 75,000 medical students, and 106,000 resident physicians. Through its many programs and services, the AAMC strengthens the world's most advanced medical care by supporting the entire spectrum of education, research, and patient care activities conducted by our member institutions. The AAMC and our members are dedicated to the communities we serve and steadfast in our desire to earn and keep the public's trust for the role we play in improving the nation's health.

I. Introduction

As you know, not-for-profit organizations rely upon the Internet to communicate with the public about their mission and services, to distribute educational, informational or lifesaving information to members of their communities, or to collect donations to support their operations in a reliable, secure and safe DNS environment. Issues such as the security, stability and resiliency of the Internet, increasing social inclusion of non-governmental organizations with technology, and increasing public participation, communication and global outreach are important to this collective of not-for-profit organizations. Therefore, the below comments are presented with the goal of detailing concerns in the DAGv4 regarding the above vital aspects of our not-for-profit organizations' use of the Internet, as well our broader policy concerns about the Internet. We strongly urge ICANN to review these comments carefully and consider the particular needs of not-for-profit organizations when preparing the final version of the Applicant Guidebook. In addition, we recommend that ICANN improve communication with a wider variety of its stakeholders, particularly not-for-profit organizations, to ensure they are adequately prepared for both the opportunities and challenges presented by the introduction of the new gTLDs to the landscape of the Internet.

We offer four major overarching concerns regarding not-for-profit organizations and their ability to fully participate in the new gTLD program with the current DAGv4:

- A. *Threats to the security and stability of the Internet.*** These threats include DNS abuse, WHOIS concerns, and trademark issues.
- B. *ICANN community compliance.*** These include concerns regarding the Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) and Registry Restrictions Dispute Resolution Procedure (RRDRP).

- C. *Budgetary issues and concerns.*** These include concerns regarding the various fees relating to the new gTLDs, including fees for the new gTLD application and other ICANN fees, such as dispute resolution fees, as well as other ongoing technical legal fees and costs.
- D. *Accessibility, awareness and participation.*** These include concerns regarding the accessibility of ICANN information and processes, and the ability of all organizations, especially not-for-profit organizations, to participate in these processes.

The following chart tracks each of our concerns to its corresponding module in DAGv4. A detailed explanation of each concern, organized by overarching category, follows the chart.

MODULE	TITLE	ISSUES OF CONCERN
1	Introduction to the gTLD Application Process	<ul style="list-style-type: none"> ICANN should reveal and detail its <u>actual</u> costs for reviewing each new gTLD application and should consider a pricing structure for not-for-profit organizations that will allow ICANN to recover its actual costs without imposing additional overhead on the not-for-profit Applicants. This transparency and pricing consideration should also apply to extended evaluation fees, objection filing and proceeding fees. Applicants for new gTLDs are not permitted to supplement their applications after submission, thus placing organizations such as not-for-profits that may have a learning curve to understand the process at a disadvantage. Therefore, ICANN should allow supplements to applications after submission.
2	Evaluation Procedures	<ul style="list-style-type: none"> ICANN should provide greater detail and instruction regarding how to prepare for the technical requirements associated with the new gTLD application and process, and should provide education and training for organizations such as not-for-profits that are new to ICANN activities.
3	Dispute Resolution Procedures	<ul style="list-style-type: none"> Participation in dispute resolution procedures during the new gTLD application process requires a level of resources that is particularly burdensome to not-for-profit organizations, increasing the likelihood of these organizations being subject to DNS abuses by bad actors. Factors considered by panels deciding legal rights objections should be clarified, and should not provide a “how to” guide for formulating arguments against accusations of infringement. “Experts” appointed to dispute resolution panels should include individuals well versed in the operations and specific needs of not-for-profit organizations. Fees relating to the filing and adjudication of objections should be determined as soon as possible so that organizations such as not-for-profits that must prepare budgets far in advance will be able to budget adequately for the new gTLD process.

MODULE	TITLE	ISSUES OF CONCERN
4	String Contention	<ul style="list-style-type: none"> • The auction procedure will likely place not-for-profit organizations with limited budgets at a distinct disadvantage in acquiring new gTLDs that are desired by two or more parties.
5	Transition to Delegation	<ul style="list-style-type: none"> • Participation in post-delegation dispute resolution procedures requires a level of resources that is particularly burdensome to not-for-profit organizations, increasing the likelihood of these organizations being subject to DNS abuses by bad actors. • Thick WHOIS, as recommended by the IRT, should be required by the Registry Agreement. • The URS procedure does not truly provide a rapid or efficient means of disabling infringing domain names, and should be shortened and simplified. • By requiring Complainants' trademarks be registered in jurisdictions requiring "substantive review," ICANN is making the eligibility requirements for the URS unreasonably high. • Marks included in the Trademark Clearinghouse should generally include the text elements of stylized marks and marks containing both text and design elements, rather than only word marks. • Requiring "substantive" review for marks belonging to Registrants participating in Sunrise services eliminates many rightsholders. • "Identical" match for the Trademark Clearinghouse should be expanded slightly to avoid numerous potential instances of typosquatting. • Registries should be required to offer both a Sunrise service and a Trademark Claims service, not only one or the other. • Standards for filing a PDDRP should be more reasonable, and expected elements of a PDDRP Complaint should be described in greater detail. • Trademarks should not be required to have undergone "substantive review" to be eligible to be the subject of a PDDRP Complaint. • The Expert Panel adjudicating a PDDRP should have the discretion to delete domain name registrations in certain cases, and decisions provided by a PDDRP Expert Panel should be considered final in most cases. • The RRDRP should be available to any interested party to enforce the requirements agreed to in a community tld in its registry agreement.

MODULE	TITLE	ISSUES OF CONCERN
		<ul style="list-style-type: none"> • Decisions provided by a RRDRP Expert Panel should be considered final in most cases, without ICANN setting aside the decision in favor of a different determination. • The discretion of ICANN to add experts to RRDRP proceedings, in addition to the already-appointed Expert Panel, should be eliminated or greatly curtailed to extraordinary cases. • The Expert Panel adjudicating an RRDRP should have the discretion to delete, transfer or suspend domain name registrations in certain cases. • ICANN should reveal and detail its <u>actual</u> annual costs for maintaining each registry and should consider a pricing structure for not-for-profit organizations that will allow ICANN to recover its actual costs without imposing additional overhead on the not-for-profit registry operators. • Fees relating to the Trademark Clearinghouse and URS procedure should be determined as soon as possible so that organizations such as not-for-profits that must prepare budgets far in advance will be able to budget adequately for the new gTLD process. • ICANN should provide greater detail and instruction regarding the technical requirements associated with operating and maintaining a registry, and should provide education and training for organizations such as not-for-profits that are new to ICANN activities.
N/A	Glossary	<ul style="list-style-type: none"> • Definitions are often circular and do not adequately describe technical terms for those new to ICANN processes.

II. Threats to the Security and Stability of the Internet

A. DNS Abuses (Modules 3 and 5)

Bad actors in the domain name space, such as cybersquatters and others registering domain names in bad faith, have existed for many years in the existing domain name space. The new gTLDs will present numerous and increased opportunities for these bad actors to continue and expand their bad faith behavior. This behavior will result in a great deal of confusion in the marketplace, as well as opportunities for fraud.

The possibility of such confusion and fraud is particularly devastating for not-for-profit organizations. As indicated above, these organizations rely on the Internet to distribute information that is educational and even potentially lifesaving. The existence of bad faith Registrants who may be committing fraud in their domain name registrations greatly

increases the likelihood that the organizations' membership will be misled in a manner that is both financially devastating and dangerous. For example, the bad faith registration of a new gTLD that uses the mark of a not-for-profit organization, or that is confusingly similar to the name of a not-for-profit organization, might result in donations being collected in a fraudulent manner or physically dangerous information being distributed.

Commercial stakeholders, even large companies, have already expressed concerns that enforcement, both within the new gTLDs themselves and with the corresponding second-level domains, will require an inordinate and unmanageable level of resources. Given that not-for-profit organizations have even more limited resources, and that their resources are largely earmarked for serving their membership rather than for administrative overhead, these concerns are further heightened for not-for-profit organizations. Given the provisions for new gTLDs as currently detailed in DAGv4, it is likely that only a few, if any, not-for-profit organizations will have the resources necessary to monitor and address all of the examples of infringement that would be potentially devastating to the organizations' ability to administer their critical missions.

ICANN is already anticipating that the application process for and existence of new gTLDs will increase users' needs for enforcement mechanisms, as detailed in Module 3 of DAGv4, Dispute Resolution Procedures, and in the post-delegation processes described in the appendices to the draft Registry Agreement included in Module 5, Transition to Delegation. However, participation in these mechanisms requires a significant investment of both time and financial resources, both of which are often at a premium in not-for-profit organizations. Thus, we urge ICANN to consider including in the Applicant Guidebook mechanisms that allow not-for-profit organizations to conduct enforcement activities in a more efficient and cost-effective manner.

B. WHOIS Concerns (Module 5)

The undersigned not-for-profit organizations strongly urge ICANN to reconsider implementing the recommended Thick WHOIS model, as detailed in the Final Report of the IRT. In Module 5, DAGv4 requires registry operators to provide a publicly available WHOIS service, but fails to emphasize the importance of providing accurate and accessible registry information.

The broad accessibility of WHOIS information is critical for being able to address bad faith uses of the Internet domain space in a timely, efficient, and cost-effective manner. Without the accessibility of accurate and verifiable rRegistrant information, reporting and addressing domain name infringement is much more time-consuming and expensive. Once again, not-for-profit organizations usually operate with limited administrative budgets, as well as limited human resources, and having to track down accurate rRegistrant information creates an undue burden on these organizations. Thus, we recommend that registries operating new gTLDs be **required** to provide Thick WHOIS information, and that a Thick WHOIS should not merely be a "best practice." In

addition, we recommend that ICANN educate the registries regarding the importance of providing reliable Registrant contact information that is available to users in a fair manner.

C. Trademark Issues for New gTLDs

First, the not-for-profit organizations applaud the inclusion of some trademark rights protection mechanisms, including the pre-delegation Legal Rights Objections and the post-delegation Trademark Clearinghouse and URS, in DAGv4. However, we believe that ICANN should consider the specific trademark-related concerns of not-for-profit organizations, as indicated below. The ability of not-for-profit organizations to protect their intellectual property rights in the new gTLD space is critical to ensuring that they are able to distribute their educational, lifesaving, and other beneficial information, as well as to conduct fundraising activities, in a reliable manner that is deemed trustworthy by their membership.

- 1. Legal Rights Objections (Module 3).** Section 3.4.2 of DAGv4 presents the criteria by which Legal Rights Objections will be evaluated. We have some concerns about the factors laid out and how they will be applied.

In particular, the third factor discusses the “relevant sector of the public” and its recognition of the “sign”. What standards are to be used to make this determination, and how will the panelists determine who the “relevant sector of the public” is for a particular mark or application? Will the Applicant be required to submit evidence and arguments with regard to this factor or will the panel conduct its own research to try to ascertain these facts? We request that ICANN clarify these points, as they will affect the level of time and other resources necessary to devote to participation in a Legal Rights proceeding.

For factor four, how will “intent” be assessed? We request that ICANN clarify how this will be determined.

There are four factors laid out, namely five through eight, which appear to provide defenses regarding the potential use of a third party’s mark by the Applicant. These factors seem to provide a “how to” guide for what Applicants need to do begin doing now, before the new gTLDs are opened for application, to argue they are not infringing a third party’s mark. We urge ICANN to rephrase these factors, emphasizing the penalties associated with infringement and bad faith use.

Finally, we urge ICANN to ensure that the “experts” appointed to the dispute resolution panels include experts who have experience with and knowledge of the workings of not-for-profit organizations. It is important that the panels not be biased, even unintentionally, against not-for-profit organizations due to their different organizational structures, budgetary needs, and use of trademarks.

- 2. Uniform Rapid Suspension System (URS) (Module 5).** The URS is, according to ICANN, designed to provide an expedited procedure to disable infringing

domain names in instances of clear fraud and abuse. However, in its current form, as detailed in an appendix to the draft Registry Agreement included in Module 5 of DAGv4, the URS provides neither adequate expediency nor an adequate remedy. Indeed, according to the current timeline, a URS proceeding may take as long, or longer, than a UDRP proceeding.

Our first concern with the proposed URS procedure is that few would-be complainants will actually meet the eligibility requirements for filing a URS complaint. Namely, the requirements state that the complainant must hold a valid registration, for a mark that is identical or confusingly similar to the domain name at issue, issued by a jurisdiction that conducts a substantive review of trademark applications. Many jurisdictions do not conduct a substantive review before granting a trademark registration. This provision is especially troubling because the procedure does not allow for any other form of validation of a mark. We recommend that the eligibility requirements be broadened to make the URS a more broadly accessible remedy for rightsholders who find instances of egregious trademark infringement.

The proposed length of a URS complaint, 5,000 words or 20 pages (plus exhibits), does not lend itself to any form of expediency. Drafting a complaint of this length would likely require the extensive use of legal counsel, a resource that may not be readily available to many not-for-profit organizations from both a staffing and budgeting perspective. Instead, we recommend that ICANN develop simple forms that can be used for the Complaint, as well as for the Answer and Decision, with a requirement that complaints that are too lengthy or complex to make use of such a form be instead filed as UDRP Complaints or that the complainant seek other remedies. In addition to reducing the administrative burden on the complainant, the use of forms would likely expedite the remainder of the URS process.

Next, we recommend that time frames for elements of the process be shortened so as to further distinguish the URS from a UDRP. First, we recommend that the Registrant be granted 14, rather than 20, days to file an Answer. With the use of a form for the Answer, rather than a lengthy response with exhibits, this time frame should not place an undue burden on any Registrant. In addition, the examiner should be required to render a decision within seven (7) business days, rather than being allowed up to 14 days, with a goal and best practice of providing the Answer within three (3) days. Once again, the use of a form Decision should greatly increase the ability of examiners to provide their Decisions in a rapid manner.

Next, in the view of the not-for-profit organizations, a two-year period for a defaulting Registrant to be allowed to reopen the proceeding is much too long, and greatly reduces the effectiveness of the remedy. Trademark rightsholders who have pursued the URS should be entitled to a much more rapid final resolution to their infringement concerns. Instead, we recommend that the window be reduced to 90 days from the issuance of the Notice of Default.

Finally, we recommend that the window in which to file an appeal after the issuance of a Decision be reduced to 14 days, from the current 20 days. Again, this is to differentiate the URS from the UDRP and to ensure that it is truly useful as a rapid means of obtaining relief from egregious domain name infringement.

3. **Trademark Clearinghouse (Module 5).** The not-for-profit organizations hereby offer several concerns regarding the proposed adoption of a Trademark Clearinghouse, as detailed in an appendix to the draft Registry Agreement included in Module 5 of DAGv4.

Our first comment concerns the statement that only “text” marks are to be included in the Trademark Clearinghouse. We recommend that the text elements of marks consisting of stylized text, or designs plus text, also be included in the Clearinghouse, provided that the mark is not a generic term and that the text is presented in a prominent manner as compared with the design element. For budgetary reasons, many not-for-profit organizations do not have extensive trademark portfolios, but choose to register only one or a few select marks. They may choose to register a stylized mark, or a mark that includes a design, if it is most characteristic of the organization and it is not cost effective to register the corresponding word marks as well. These organizations should not be penalized by being denied the opportunity to participate in the Clearinghouse.

Next, we are concerned that the proposed Sunrise services are available only for marks that have been reviewed on “substantive” grounds. We recommend that ICANN provide further clarification regarding what constitutes “substantive” review and what validation processes will be required for marks registered in jurisdictions that do not require a “substantive” review. Without clarifying and potentially changing this requirement, many trademark Registrants, such as those who have registered marks only in the CTM, may be ineligible for participation in the Sunrise services. If they are ineligible to participate, not-for-profit organizations will be placed at a significant disadvantage in terms of both registration of domains in the new gTLDs and enforcement of their marks in this space.

Additionally, the not-for-profit organizations would like to request at least a slight expansion of the “identical” match that currently applies to Trademark Claims service notices. At a minimum, we recommend that the match include the plural forms of domain names containing the mark, as well as domain names that contain the exact mark in its entirety. Without these inclusions, domains registered in the new gTLDs will be ripe for typosquatting, creating a particular burden on not-for-profit organizations with limited resources to address infringement.

Finally, the not-for-profit organizations are concerned that registries will be required to offer either a Sunrise service or a Trademark Claims service, but not both. Our concern is that most or all registries will pick the Sunrise service, which is likely to result in a revenue stream for the registries. However, not-for-profit organizations that do not have the financial resources to register numerous domains may not be able to take part in all (or any) of the Sunrise services

offered by the registries. We recommend that ICANN consider suggesting or requiring alternative domain name pricing for not-for-profit Registrants. In addition, we recommend that registries be required to offer both a Sunrise service and a Trademark Claims service in order to provide some level of continuous trademark protection in each new gTLD.

III. ICANN Community Compliance

A. Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) (Module 5)

Not-for-profit organizations are, in general, strong advocates for alternative dispute resolution procedures that offer more affordable and expedient means to resolve conflicts. Often, because not-for-profits often have limited financial resources, alternative dispute resolution mechanisms are the only realistic avenue for not-for-profit organizations to resolve disputes. Therefore, this group highly values the opportunity for the PDDRP to ultimately resolve registry disputes without the expense and time investment required for civil litigation. However, this group recommends several improvements to the current proposal, as detailed in an appendix to the draft Registry Agreement included in **Module 5** of DAGv4, to allow it to function effectively as an alternative to civil litigation.

- 1. Standards.** As currently drafted, the PDDRP requires Complainants to prove its allegations by “clear and convincing evidence.” We believe this standard should instead be replaced with the “preponderance of the evidence” standard that is required in most civil actions. Again, in order for the PDDRP to be an effective alternative dispute resolution procedure, it should be more attractive to Complainants than civil litigation, and the standard required to obtain relief is a critical component for the potential Complainant when analyzing its options. In addition, we respectfully point out that the same standard we are recommending is used in the current draft of the Registry Restrictions Dispute Resolution Procedure (RRDRP), and therefore we see no reason why a higher standard should be required in the present procedure.

In addition, we recommend ICANN reconsider the current requirement that Complainants must prove that a registry have a bad faith “intent to profit” for disputes with regard to second-level domain names. Again, in order for the PDDRP to be successful, it must be a reasonable alternative to other procedures available to Complainants. This current standard is higher than the standard required in the ICANN UDRP, which requires proof of a Registrant's bad faith, but there is no similar requirement to show a specific “intent to profit.” Our main concern is that this standard will be extremely difficult for Complainants to meet in many cases, thereby undermining the efficacy of the PDDRP as currently drafted.

- 2. The Complaint.** The DAGv4 currently provides only a limited description of the elements required for the complaint, as well as the evidence that would be

required to support a complaint filed against a registry using the PDDRP. We respectfully request a more detailed description of both the elements required for the complaint, and the evidence required to support it.

Furthermore, in order to increase the effectiveness of the PDDRP, we recommend that a mechanism be added that will provide for Complainants who file similar complaints against the same registry to request the matters be joined into a single proceeding. This would prevent multiple Complainants from having to lodge nearly identical complaints against a registry, and proceed with separate proceedings. The creation of a joinder of Complainants would greatly increase the efficiency and effectiveness of the PDDRP.

- 3. Threshold Review.** As stated previously, many not-for-profit organizations have limited budgets and resources to seek registration of all marks in its portfolio. Therefore, sometimes not-for-profit organizations take advantage of multi-jurisdictional filing systems that do not require “substantive examination.” We are therefore concerned about the current draft of the PDDRP, as it requires that the mark at issue be registered in a jurisdiction that administers a “substantive examination” before registration. For purposes of the PDDRP, a registration that is valid in the eyes of the sovereign nation that granted it should be a valid registration. In addition, under trademark law globally, there is no single standard for what constitutes “substantive examination” – and we see no effort in the current draft to properly define “substantive examination.” We recommend the PDDRP be amended to accept trademark registrations from any valid sovereign nation as a basis for a PDDRP complaint.
- 4. Remedy.** The current PDDRP prohibits the Expert Panel from recommending that an infringing domain name be deleted, transferred or suspended. While in general we support this position, we recommend where there is demonstrable connection between the registry and the Registrant of an infringing domain, the Expert Panel should be given discretion to delete the domain name registrations at issue. This would include cases where the Registrant of the domains is the registry, or where a relationship can be shown between the Registrant and the registry at issue. This would prevent the domains in these instances from remaining with the registrar, making the PDDRP more effective in these cases.
- 5. Expert Panel Determination.** We believe that the Panels Determination should be final in order to increase the predictability and reliability of the PDDRP as an alternative to civil litigation. The current PDDRP as drafted allows for ICANN to make its own determination of what remedies to impose, and thereby treating the Expert Panel’s conclusion as merely advisory. We recommend that ICANN’s discretion be limited to cases where the decision contradicts or falls outside the scope of the substantive terms of its Registry Agreements. Otherwise, we

suggest that the Registry Agreement include a provision that parties must abide by the decision of an Expert Panel in the case of a PDDRP.

B. Registry Restrictions Dispute Resolution Procedure (RRDRP) (Module 5)

As stated above, not-for-profit organizations are generally eager for alternative dispute resolution mechanisms that save time, money and resources to resolve disputes in a fair and effective manner. While we applaud the efforts to include such alternative dispute procedures in the DAGv4, similar to our comments on the PDDRP, the RRDRP, as detailed in an appendix to the draft Registry Agreement included in Module 5 of DAGv4, also requires some revisions to obtain the goal of being an attractive alternative for potential Complainants to civil court actions.

1. **Standing.** As not-for-profit organizations generally have broad concerns about the safety and stability of the Internet, we believe that mechanisms such as the RRDRP should be available to any interested party to enforce the requirements agreed to in a community tld in its registry agreement. The current draft of the RRDRP uses the standards of “defined communities” in Section 5 and “strong association” in Section 6. We believe both these requirements may preclude legitimate RRDRP claimants from having standing who are outside these definitions.
2. **Expert Panel Determination.** As with the PDDRP, we believe that the Panels Determination should be final in order to increase the predictability and reliability of the RRDRP. The current RRDRP, similar to the PDDRP, allows for ICANN to make its own determination of what remedies to impose, and thereby treating the Expert Panel’s conclusion as merely advisory. As recommended above for the PDDRP, we recommend that ICANN’s discretion be limited to cases where the decision contradicts or falls outside the scope of the substantive terms of its Registry Agreements. Otherwise, the unfettered discretion of ICANN to go against the Expert Panel decision undermines the utility of the RRDRP, and goes against the ability of all organizations, including not-for-profit organizations, to truly benefit for the RRDRP.
3. **Experts.** Furthermore, as currently presented, the RRDRP allows for the use of third-party experts at the sole discretion of the Expert Panel, with the cost being passed on to the parties. The need for such experts seems to be eradicated by the experts appointed to the Expert Panel, and adds potentially large unknown costs to the RRDRP. We believe the discretion to add experts should be eliminated or greatly curtailed to extraordinary cases.
4. **Remedy.** As with the PDDRP, we recommend that where the registry is the Registrant, or where there is a demonstrable relationship between the registry and

the Registrant, then the Expert Panel should have the discretion to delete, transfer or suspend the domains at issue as a remedy.

IV. Budgetary Issues and Concerns (Modules 1, 3, 4, 5)

As previously stated, one of the particular concerns of not-for-profit organizations is that costs relating to the new gTLDs, including both application-related costs and costs relating to the enforcement efforts that not-for-profits will need to implement, will be prohibitive. Some of the cost issues of greatest concern are as follows.

First, the not-for-profit organizations are concerned that the \$185,000 application fee, as listed in **Module 1**, places the registration of a new gTLD out of the reach of most not-for-profit organizations. We request that ICANN provide greater transparency regarding its actual costs relating to the application process, and then consider setting a lower cost for not-for-profit organizations that can provide adequate documentation as to their not-for-profit status. 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; 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.

We note that, although the \$185,000 fee is, in itself, prohibitive for many not-for-profit organizations, there are many additional potential costs for which organizations need to budget when anticipating the registration of a new gTLD. First, the fees for an extended evaluation (also described in **Module 1**), if required for an Applicant to continue the application process, may add considerably to the application costs. Next, an Applicant will need to budget to defend against any objections that are filed, as briefly discussed in **Module 1** and as discussed in greater detail in **Module 3**. We note that, in most cases, parties participating in an objection need to pay the entire anticipated fee for the objection proceeding up front. We recommend capping the fees required, especially for not-for-profit organizations; if an overall fee cap is not possible due the variables that may influence the final cost of an objection proceeding, at a minimum, we recommend capping the initial fees that must be paid as a "deposit" on the proceeding.

Next, we are concerned with the \$25,000 annual registry fee that is to be paid to ICANN, as described in **Module 5**. As with the registration fee, we request that ICANN provide greater detail as to its costs relating to ongoing maintenance of a registry, and consider offering a reduced fee for verified not-for-profit organizations that recovers ICANN's actual administrative costs without imposing additional overhead.

In addition, we have significant concerns regarding the auction procedure, as described in **Module 4**, which is currently the only alternative for standard applications that are involved in string contention when the parties cannot resolve the dispute amongst themselves. Due to budgetary restrictions, it is highly unlikely that a not-for-profit organization would be the highest bidder in an auction that also includes parties with commercial interests. This process thus places not-for-profits that face string contention at a distinct disadvantage. One solution is for ICANN to offer a third application category for not-for-profit organizations, in addition to standard and community priority applications, with consideration given to the public importance of the not-for-profit's mission when the string is in contention.

Finally, we are especially concerned that many of the fees relating to the new gTLDs are yet to be determined. For example, exact fees relating to the filing and adjudication of objections (*Module 3*) are only estimated at this time, as are fees relating to the Trademark Clearinghouse and URS procedure (*Module 5*). The not-for-profit organizations urge ICANN to keep in mind that the budgets of most not-for-profit organizations are approved well in advance of their effective dates, by their boards of directors. The current lack of concrete information regarding costs renders the budgeting process extremely difficult. The not-for-profit organizations urge ICANN to finalize these costs well in advance of the opening of the application period for new gTLDs so that the organizations will have the opportunity to budget appropriately. Please note that the budgeting needs for not-for-profit organizations include not only application-related fees, but costs relating to potential objections and URS proceedings that may need to be filed against third parties, as well as registration in the Trademark Clearinghouse in order to protect intellectual property rights.

In summary, we request that, when evaluating the needs of different types of organizations, ICANN considers that “fair” does not always mean “equal” in terms of costs. We urge ICANN to consider a two-tiered cost structure in order to separate commercial uses of the new gTLDs from the informational, educational, and lifesaving functions served by not-for-profit organizations.

V. Accessibility, Awareness, and Participation

It is a primary goal of this collection of not-for-profit organizations to ensure that ICANN processes and procedures, including the new gTLDs, are accessible to and available to not-for-profit organizations so that they are not excluded from the process.

Overall, the not-for-profit organizations are concerned that DAGv4 contains a great deal of technical jargon and terminology that is not explained well, thus making the information inaccessible to organizations that are new to ICANN processes. The *Glossary* provided at the conclusion of DAGv4 often defines terms in a circular manner. For example, the definition of a Community-based TLD is, “A community-based gTLD is a gTLD that is operated for the benefit of a clearly delineated community.” However, no specific explanation is provided as to what comprises a “community.”

The application process as a whole will likely be difficult for not-for-profit organizations that are just now getting organized to engage as a constituency in ICANN. For example, *Module 1*, Introduction to the New gTLD Application Process, states that Applicants are not allowed to supplement their applications after submission. This does not allow for the learning curve that may be necessary for not-for-profit organizations to learn the rules and procedures required in a timely manner for the application process.

DAGv4 contains a fair amount of detail regarding the technical requirements for operating a new gTLD, especially in *Modules 2 and 5*; these details are likely to be daunting for not-for-profit organizations that have not previously operated a registry. ICANN states explicitly in its new gTLD application that it will answer questions relating to the application itself, but that it will not provide technical support, legal services, or any other advice that not-for-profits might need.

We recommend that ICANN consider improving its outreach and education services, especially to not-for-profit organizations, to ensure that its user community is able to navigate the process effectively. In our view, such outreach should begin immediately, but should especially be increased once the final Applicant Guidebook is released so that parties seeking guidance on the new gTLD process will have access to the final policy information.

We would 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, such as the objection procedures and rights protection mechanisms. We strongly recommend that ICANN conduct outreach in all of its five regions to ensure that the new gTLDs are truly accessible on a global scale, and that ICANN provide live, in-person seminars that are open to the public, rather than only posting educational information on the ICANN website or hosting webinars.

Overall, we believe that providing such outreach would likely benefit ICANN as well by increasing awareness of and interest in the new gTLD program.

Sincerely,

Amber Sterling
Senior Business Development Specialist