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January 14, 2011

Internet Corporation for Assigned Names and Numbers (ICANN)
4676 Admiralty Way, Ste. 330
Marina del Rey, CA, USA
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RE: New gTLD Applicant Guidebook 5th Revision

We appreciate the opportunity to comment on the current revision of the Draft Applicant Guidebook.

We are engaged with several Japanese brands that are in the process of evaluating the New gTLD process. We submit these comments after extensive communication with these prospective applicants.

Aside from the completion of satisfactory Rights Protection Mechanisms, one major aspect of this process that requires resolution is the lack of clear procedures for the application and operation of Brand TLDs. Brand TLDs will generally have only a single registrant and user for each registered domain name in the zone. Therefore, Brand TLDs have requirements that vary considerably to Standard and Community TLDs as currently defined in the Applicant Guidebook.

We submit that the following issues need to be swiftly reviewed and incorporated into the final Applicant Guidebook.

Transition Mechanism for New TLDs.

A TLD identified as a (.brandname) / (.companyname) should have a phase-out mechanism that would allow the registry to discontinue operations after a certain number of years. The details of such a phase-out period should be negotiated between ICANN and the Brand TLD operator and be included in the final Registry Agreement with the brand holder.

Requirement for Non-discriminatory Access to All ICANN Accredited Registrars

Brand owners running a TLD for their own use should not be required to implement non-discriminatory access to all ICANN accredited registrars. In other words, Brand TLDs should have complete control over which registrars can register a domain name in their zone. The verbiage used in section 2.9 of the Draft Registry Agreement should clearly state that Registries, through their ICANN approved Registry-Registrar Agreement, are allowed to control access to their registries. Brand TLDs should be specifically excluded from Specification 9, Part 1 of the Draft New gTLD Agreement.

Issues with Geographical Names at the Second-Level

Brand TLDs may require the use of “jp” or “Japan” at the second level. According to Specification 5 of the Draft New gTLD Agreement, registries must first “initially reserve” names on the ISO 3166-1 list. Brand TLDs pose no threat to governments or geo-name abuses; therefore, Brand TLDs should be allowed to avoid this requirement.

Though ICANN has stated that the overarching issue of trademark protection is considered resolved, there continues to be a great deal of concern from the IP community. We urge ICANN to note the key message of these comments and continue work towards resolution of these concerns without causing further delays.

Respectfully,

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