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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.

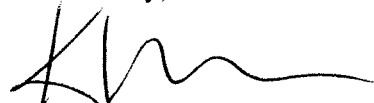
ICANN should take particular note of the dire fiscal problems faced by governmental entities such as NYC (and other states and localities throughout the United States) at this time. NYC currently expects tax revenues for fiscal year 2009 to be down \$2.6 *billion* from tax revenues in fiscal 2008. Tax 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

Module 3 - Dispute Resolution Procedures (email gtld-dispute@icann.org)

Section 3.1.1 Grounds for Objection

An objection may be filed on any one of the following four grounds:

String Confusion Objection – The applied-for gTLD string is confusingly similar to an existing TLD or to another applied for gTLD string.

Legal Rights Objection – The applied-for gTLD string infringes existing legal rights of the objector.

Morality and Public Order Objection – The applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under international principles of law.

Community Objection – There is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.

The rationales for these grounds are discussed in the final report of the ICANN policy development process for new gTLDs. For more information on this process, see <http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>.

Comment – Although the GNSO recommendations clearly stated that the guidelines should contain mechanisms for national or local governments to initiate a challenge to an objectionable gTLD string, such a procedure is not clearly stated in the grounds provided. A Legal Rights Objection may only be filed by a rightsholder and governments may not qualify under that criterion. It is entirely unclear whether an objection by a government on geographic grounds would constitute a “morality and public order objection.” Reference is made to the Explanatory Memorandum on Morality and Public Order Objection Considerations in New gTLDs dated 29 October 2008 yet that document is neither binding nor is it comprehensive. The definitions of parties that have standing to file a community objection do not expressly include governments in the context of geographically significant gTLD strings so it is unclear whether governments in that capacity could object on community grounds. Either ICANN should provide for a separate proceeding that addresses the objections of governments to the adoption of an objectionable gTLD application, or the Guidebook should clearly delineate which mechanism should be used for such objections. It should also be considered that many governments, whether national or local, may be small with limited economic resources and any corresponding fees to be paid should be minimized accordingly.

Section 3.4.6 Decision

The DRSPs' final decisions will be in writing and will include:

- *A summary of the dispute and findings; and*
- *The reasoning upon which the decision is based.*

Comment – In view of the lack of clear guidance on what objection mechanism would be available to governments, it is probably premature to comment on this.

Section 3.4.7 Dispute Resolution Fees

Comment – The costs envisioned by ICANN for Dispute Resolution proceedings would be a tremendous burden on governments, particularly during the severe fiscal and budgetary restraints currently faced by localities in the United States.

Section 3.5.3 Morality and Public Order Objection

Comment – This concept is wholly undefined and does not merit comment in its current form. NYC advocates that governments be expressly included in the parties who would have standing to bring a dispute under this ground.

3.5.4 Community Objection

Comment – This ground completely omits reference to governmental entities who may be the primary objectors to certain geographically significant gTLD strings, barring any other effective vetting procedures in the application process. Governments should be explicitly recognized as having standing to pursue a Community Objection.