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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.

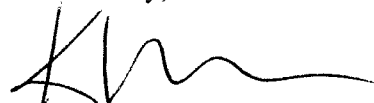
ICANN should take particular note of the dire fiscal problems faced by governmental entities such as NYC (and other states and localities throughout the United States) at this time. NYC currently expects tax revenues for fiscal year 2009 to be down \$2.6 *billion* from tax revenues in fiscal 2008. Tax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



Katherine Winningham
Senior Counsel

Enclosure

**Module 2 - Evaluation Procedures
(email gtld-evaluation@icann.org)**

2.1.1.2 Review for Reserved Names

The Reserved Names review involves comparison with the list of top-level Reserved Names to ensure that the applied for gTLD string does not appear on that list.

Comment – ICANN should not be allowed to reserve its own names without offering the same opportunity to governments or non-governmental organizations. There is support among the GAC for such early listing opportunities and that possibility should be included.

Section 2.1.1.4 Geographical Names

ICANN will review all applied-for strings to ensure that appropriate consideration is given to the interests of governments or public authorities in country or territory names, as well as certain other types of sub-national place names. The requirements and procedure ICANN will follow is described in the following paragraphs.

Comment – This provision is not consistent with the recommendations of the GNSO which recommended, by a supermajority, that a dispute process be used and that governments and the GAC would have standing to file a dispute. The GNSO clearly contemplated the possibility of an *inter partes* dispute by governments against applications if necessary. However, ICANN has provided only an *ex officio* review, with unclear suggestions of alternate mechanisms and an ambiguous dispute process that does not expressly apply to governments. ICANN must clearly define what rights governments have to object and what mechanisms are available to assert such objections.

2.1.1.4.1 Requirements for Strings Intended to Represent Geographical Entities

Applications for any string that represents a subnational place name, such as a county, province, or state, listed in the ISO 3166-2 standard.

Comment – A review by ICANN for all applied-for strings is appropriate provided that the review is transparent and ensures compatibility with existing norms that determine geographical significance. However, reference to the ISO 3166-2 standard may not be completely appropriate. The ISO 3166-2 standard is not complete and is not freely available to the public.

In addition, the ISO 3166-2 standard is mostly inapplicable to proposed gTLDs. Under the *Policy Requirements for Generic Top-Level Domain*, the Guidebook states that “applied-for strings must be composed of three or more visually distinct letters or characters in the script, as appropriate.” The ISO 3166-2 standard consists of combinations of ISO 3166-1 country codes combined with two alphanumeric characters and in some cases three alphanumeric characters) designations of subdivisions. Examples include DK-025 for the Danish county Roskilde, IT-MI for the Italian province of Milan and MG-T for the Antananarivo province in Madagascar. Therefore, since the majority of the subdivision designations would not consist of “three or more visually distinct letters or characters in the script”, they would be ineligible to serve as gTLD strings. Accordingly, most references found in ISO 3166-2 would be meaningless. A better reference would be the United Nations Code for Trade and Transport Locations, which is universally accepted, with specific reference to the non ISO 3166-1 (two-letter) code elements used therein. This section should, therefore, be rephrased to read:

Applications for any string that represents a subnational place name or abbreviation, such as a county, province, or state, such as those listed in the ISO 3166-2 standard or the United Nations Code for Trade and Transport.

2.1.1.4.1 Requirements for Strings Intended to Represent Geographical Entities

Applications for a city name, where the applicant clearly intends to use the gTLD to leverage from the city name.

Comment - The limitation to “city name” is too restrictive and should be expanded to include “city name or abbreviation” consistent with the naming protocols of virtually all TLDs that are abbreviations for a longer designation. The requirement that an applicant must “clearly intend to use the gTLD to leverage from the city name,” places an unusual burden on municipalities. A more appropriate standard to safeguard the interests of municipalities would be to include “Applications for a string that contains a city name or abbreviation is likely to be associated with a city, unless the applicant can establish independent rights in the string.” Therefore, if the applicant were to demonstrate independent trademark or other IP rights in a string, such as a trademark for the letters NYC, the applied-for string (e.g. .NYC) would not be considered to fall into this category.

Finally, the Guidebook references the **New gTLD Program Explanatory Memorandum - Proposed Process for Geographic Name Applications** dated 22 October 2008. That Memorandum states “the capital cities of the countries or territories on the ISO 3166-1 list are more readily identifiable and will require evidence of support, or non-objection, from the relevant government of public authority for the use of the name.” This capital city requirement is not reflected in the Guidebook. Moreover, even a capital city requirement is inadequate to protect major cities of the world that may be important cities in a country, yet may not be the capital city, such as Mumbai, Sydney, Melbourne, Toronto, Rio, Shanghai, Zurich, Milan, Venice, Barcelona, Munich, Chicago, New York or Miami. These large cities have the populations that would be able to support a city-based gTLD yet there are inadequate protections for them should a third party propose a new gTLD containing a city designation. Reference to the United Nations Code for Trade and Transport discussed above would ameliorate this condition.

In view of the above, the phrase should be amended to read:

“Applications for a city name or corresponding abbreviation, in particular names or abbreviations of cities referred to in the United Nations Code for Trade and Transport, where the name or abbreviation is likely to be associated with a city, unless the applicant can establish independent rights in the string.”

2.1.1.4.1 Requirements for Strings Intended to Represent Geographical Entities

The evidence of support or non-objection from the relevant government or public authority should include a signed letter of support or non-objection from the minister with the portfolio responsible for domain name administration, ICT, foreign affairs or the Office of the Prime Minister or President of the relevant jurisdiction. If there are reasons for doubt about the authenticity of the communication, ICANN will consult with the diplomatic authorities or members of ICANN’s Governmental Advisory Committee for the government or public authority concerned on the competent authority and appropriate point of contact with their administration for communications.

The letter must clearly express the government’s or public authority’s support or non-objection for the applicant’s application and demonstrate the government’s or public authority’s understanding of the string being requested and what it will be used for.

The requirement to include evidence of support for certain applications does not preclude or exempt applications from being the subject of objections on community grounds (refer to section 3.1.1 of Module 3), under which applications may be rejected based on objections showing substantial opposition from the targeted community.

Comment – In order to ensure the rights of governments to object to applications that have passed the ICANN reviews yet do not satisfy the concerns of affected governments, the last sentence should be modified to read:

The requirement to include evidence of support for certain applications does not preclude or exempt applications from being the subject of objections on community grounds (refer to section 3.1.1 of Module 3), under which applications may be rejected based on objections showing substantial opposition from the targeted community, or from being the subject of objections by concerned governments.

2.1.1.4.2 Review Procedure for Geographical Names

A Geographical Names Panel (GNP) will be established to evaluate applications and confirm whether each string represents a geographic term, and to verify the authenticity of the supporting documentation where necessary. The Geographic Names Panel may consult with additional experts as they consider appropriate.

Comment – ICANN needs to define the membership of the Geographical Names Panel, in particular to define who the members will be, how many members there will be, how they will be chosen and what their qualifications must be. As drafted, this provision is wholly inadequate. Representation on the GNP should be required to include government representatives of not only national governments but also sub-national and/or municipal governments as well as include geographically diverse representation. NYC's experience is that there is almost no awareness of the issues potentially facing municipalities and other sub-national governments in the new gTLD process. Moreover, the interests of such governments are not actively represented in any ICANN panel or governing body.

2.1.1.4.2 Review Procedure for Geographical Names

2. ICANN forwards applications considered complete to the GNP for confirmation that:

- *The strings are a meaningful representation of a country or territory name or a subnational place name*

Comment – This section should be modified in order to avoid ambiguity, in order to be consistent with the TLD naming philosophy regarding abbreviations, and in order to protect the rights of municipalities, consistent with Section 2.1.1.4.1, as follows:

“The strings are a meaningful representation of a country or territory name or abbreviation, or a subnational place or city name or abbreviation.”

2.1.1.4.2 Review Procedure for Geographical Names

3. The GNP also reviews applications that are not self-identified as a geographical name to ensure that the applied-for string is not a meaningful representation of a country or territory name or a sub-national place name.

Comment – This section should be modified in order to avoid ambiguity, in order to be consistent with the TLD naming philosophy regarding abbreviations, and in order to protect the rights of municipalities, consistent with Section 2.1.1.4.1, as follows:

“The GNP also reviews applications that are not self-identified as a geographical term to ensure that the applied-for string is not a meaningful representation of a country or territory name or abbreviation; or a sub-national place name or abbreviation; or, a city name or corresponding abbreviation, where the string is likely to be associated with a city, unless the applicant can establish independent rights in the string.”

2.1.1.4.2 Review Procedure for Geographical Names

The results of the evaluation will be publicly posted on ICANN’s website at the conclusion of the Initial Evaluation, and will also be available to applicants.

Comment – In view of the importance of preserving geographical terms from being used as new gTLDs without corresponding authorization from the respective governments, it is essential that governments be given the opportunity to object to decisions of the GNP. At a minimum, there should be an open period following the issuance of the GNP decision for governments, national and local, to file objections and in effect appeal the decision.