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December 12, 2008

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.

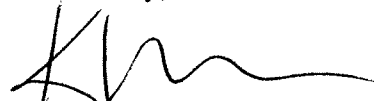
ICANN should take particular note of the dire fiscal problems faced by governmental entities such as NYC (and other states and localities throughout the United States) at this time. NYC currently expects tax revenues for fiscal year 2009 to be down \$2.6 *billion* from tax revenues in fiscal 2008. Tax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

Katherine Winningham
Senior Counsel

Enclosure

Module 5 - Transition to Delegation **(email gtld-transition@icann.org)**

Section 5.4 Ongoing Operations

ICANN will continue to provide support for gTLD registry operators as they launch and maintain registry operations. ICANN's gTLD registry liaison function provides a point of contact for gTLD registry operators for assistance on a continuing basis.

The registry agreement contains a provision for ICANN to perform audits to ensure that the registry operators remain in compliance with agreement obligations.

Comment – Just as ICANN will have an ongoing interest in the successful and compliant operations of a registry operator, so will any governmental organization that provided support in connection with the operator's initial application. Consideration should be given to providing within the registry agreement a process for governmental entities to raise concerns as to operator compliance or which permits audit of the operations of a gTLD by the relevant government(s) or public authorities if the operator is granted a string that is a geographical term. Alternatively, ICANN should consider providing that an operator's departure from its obligations to the government or public authority shall constitute a material breach of its registry agreement obligations.