The Internet Corporation for Assigned Names and Numbers

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Dear Heather

GAC Comments on new gTLDs and Draft Applicant Guidebook version 3

Thank you for the GAC's letter of 10 March 2010, providing comments on new gTLDs and version 3 of the Draft Applicant Guidebook. I believe the Board and GAC share a similar viewpoint that it would be in the global public interest that "… the opening up of the gTLD space is undertaken in a way that does not compromise the resilience and integrity of the DNS and serves the global public interest". The Board is pleased with the way in which the various iterations of the guidebooks are evolving, and is particularly pleased by the mechanism whereby the overarching issues are being resolved through working groups comprised of members of the ICANN community and independent experts.

 I respond below to each of the areas of concern raised by the GAC.

Root scaling implications

ICANN supports the principle that the scale and rate of changes must not negatively impact the resilience, security and stability of the DNS. In February 2009, the ICANN Board requested the Root Server System Advisory Committee (RSSAC), the Security and Stability Advisory Committee (SSAC), and the ICANN staff (including ICANN Staff members dealing with technical issues and the IANA functions) to study the potential issues regarding the addition of IDNs, IPv6 addresses, DNSSEC and substantial numbers of new TLDs to the root zone. This study was completed in August 2009 and posted for comment at
http://www.icann.org/en/committees/dns-root/root-scaling-study-report-31aug09-en.pdf. A complementary report (http://www.icann.org/en/committees/dns-root/root-scaling-model-description-29sep09-en.pdf) describes the characteristics of the quantitative model developed by TNO for dynamic analysis of root scaling issues.

In addition, and as part of ongoing efforts to ensure the stability of the DNS, ICANN contracted with the DNS Operations, Analysis and Research Center (https://www.dns-oarc.net/) as independent and well-respected experts to provide an analysis of the impact of adding IPv6, DNSSEC, and additional top-level domains to the ICANN-operated L root server. This study, while independent of the Root Server System

Root Scaling study and focused specifically on the impact to the ICANN-operated L root server, has been used as input in the more comprehensive study undertaken by the Root Scaling Study Group. The final report of the DNS-OARC study was published at http://www.icann.org/en/topics/ssr/root-zone-augementation-analysis-17sep09-en.pdf.

Regarding the number of strings in an application round, this was considered in the analysis and model for anticipated new gTLD delegation rates published by staff, and is available at http://www.icann.org/en/announcements/announcement-03mar10-en.htm. This analysis indicates that processing constraints will limit delegation rates to a steady state even in the event of extremely large numbers of applications, so that even in a scenario where there are very many applications for new gTLDs, the rate of growth of the root zone would remain linear.

The SSAC and RSSAC are considering the data and analysis in each of these reports and are expected to prepare recommendations for the Board on concrete steps (such as any limitations or emergency removal procedures) to be implemented prior to the initial gTLD application round.

Malicious conduct and abuse of the DNS

Some have made the case that the introduction of new gTLDs will result in an increase in malicious conduct. While this has not been quantitatively demonstrated, significant steps have been taken to ensure that malicious conduct is mitigated in the new environment of new gTLDs through the introduction of several protections.

These protections, described below, were the result of a study undertaken of malicious conduct as it related to the new gTLD space. During the study, ICANN staff solicited and received comments from multiple outside sources, including Intellectual Property Constituency (IPC), Registry Internet Safety Group (RISG), the Security and Stability Advisory Committee (SSAC), Computer Emergency Response Teams (CERTs) and members of the banking/financial, and Internet security communities. As a result of this work, nine measures were recommended to increase the benefits to overall security and stability for registrants and trust by all users of these new gTLD zones, and each of these requirements will be implemented in the program:

- Vetted registry operators (background checks)

- Demonstrated plan for DNSSEC deployment

- Prohibition of DNS redirection or "wildcarding"

- Removal of orphan glue records to eliminate a tool of spammers and others

- Maintenance of thick WHOIS records

- Centralized method of zone-file access

- Documented registry abuse contacts and procedures

- Participation in an expedited registry security request process.

These are the recommendations of the experts in this area when asked the same question that was posed by the GAC. More detailed information about these recommendations is available in the Mitigating Malicious Conduct explanatory memorandum, available at:
http://www.icann.org/en/topics/new-gtlds/mitigating-malicious-conduct-memo-update-28may10-en.pdf.

Intellectual Property Rights

The GAC comments, in concert with other comments, were taken in account in version 4 of the Applicant Guidebook that, for the first time, included the set of proposed intellectual property rights protection mechanisms. In particular, ICANN has broadened the types of trademark registrations that must be honored in offering a "Sunrise" service and all new registries employing an IP Claims service must honor trademarks registered in all jurisdictions. The types of registrations offered protections have also been broadened for the Uniform Rapid Suspension Service, one of the new post-delegation rights protection mechanisms. The Post Delegation Dispute Resolution Policy has also been amended in response to specific recommendations from the ICANN community. Rather than recount all the changes here, please see the redlined proposals for:

- The Clearinghouse Procedures
  (http://www.icann.org/en/topics/new-gtlds/trademark-clearinghouse-redline-28may10-en.pdf)
- URS Procedures
  (http://www.icann.org/en/topics/new-gtlds/draft-urs-redline-28may10-en.pdf)
- Post Delegation Dispute Resolution Procedures
  (http://www.icann.org/en/topics/new-gtlds/pddrp-redline-28may10-en.pdf)

Economic studies

The issues of costs and benefits to the expansion of the namespace, the possible impacts on users, the relevance of market power, and the use of defensive registrations are discussed in "An Economic Framework for the Analysis of the Expansion of Generic Top-Level Domain Names," an independent study completed by economists Michael Katz, Gregory Rosston, and Theresa Sullivan and published by ICANN for comment in June 2010. See
http://icann.org/en/topics/new-gtlds/economic-analysis-of-new-gtlds-16jun10-en.pdf.

The report examines the current status of the gTLD market and surveys existing work that has been done on this set of economic issues. The report also outlines a number of potential case studies that would seek to quantify the net costs and benefits involved in the introduction of new gTLDs. Selected studies recommended in the report are now

being initiated. It is possible that these second-phase studies will recommend particular measures for the gTLD evaluation process that would minimize external costs (including, for example, the cost of defensive registrations) while allowing socially beneficial innovation. In this case, any such recommendations will be considered by ICANN and subject to public consultation before being implemented.

ICANN has published additional economic studies:

• Report Of Dennis Carlton Regarding ICANN's Proposed Mechanism for Introducing New gTLDs (http://www.icann.org/en/topics/new-gtlds/carlton-re-proposed-mechanism-05jun09-en.pdf)

• Preliminary Report of Dennis Carlton Regarding Impact of New gTLDs on Consumer Welfare (http://www.icann.org/en/topics/new-gtlds/prelim-report-consumer-welfare-04mar09-en.pdf)

• Preliminary Analysis of Dennis Carlton Regarding Price Caps for New gTLD Internet Registries (http://www.icann.org/en/topics/new-gtlds/prelim-report-registry-price-caps-04mar09-en.pdf)

• Report from CRA International "Revisiting Vertical Separation of Registries and Registrars" (http://www.icann.org/en/topics/new-gtlds/crai-report-24oct08-en.pdf)

In addition, the GNSO considered whether new gTLDs should be introduced and the net benefits of new gTLDs in its final report on the introduction of new gTLDs (http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm).

Country and territory names prohibited in version 4 of the Draft Applicant Guidebook

As you are aware, the treatment of country and territory names in the DAG4 Guidebook was developed specifically to adhere to paragraph 2.2 of the GAC principles on new gTLDs, i.e., the GAC view that governments should not be denied the opportunity to apply for, or support an application for, their respective country or territory name. However, the GAC's clarification of their interpretation of GAC principle 2.2[1] has resulted

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[1] "The GAC interprets para 2.2 of the GAC gTLD principles that the strings that are meaningful representation or abbreviation of a country or territory name should be handled through the forthcoming ccTLD PDP, and other

in a reconsideration of the treatment of country and territory names in the new gTLD process. This has resulted in a change of approach as reflected in the recently published draft version 4 of the Applicant Guidebook: namely, that country and territory names will not be available for delegation in the first round of the new gTLD application process.

With regard to the definition of country names, the Board has sought to ensure both clarity for applicants, and appropriate safeguards for governments and the broad community. A considerable amount of time has been invested in working through the treatment of country and territory names to ensure it meets these two objectives. Following discussion at the Mexico City meeting, the Board recommended that the Applicant Guidebook be revised in two areas regarding this subject: (1) provide greater specificity as to what should be regarded as a representation of a country or territory name in the generic space, and (2) provide greater specificity in defining the qualifying support requirements for continent names, with a revised position to be posted for public comment.

The resulting definition for country and territory names is based on ISO 3166-1 and other published lists to provide clarity for potential applicants and the community. It seeks to remove the ambiguity created by use of the term 'meaningful representation.' Therefore, the definition of country and territory names has not been amended in the recent Guidebook draft and remains consistent with the Board goals and resolution on this issue.

While the revised criteria may have resulted in some changes to what names are afforded protection, there is no change to the original intent to protect all names listed in ISO 3166-1 or a short or long form of those names (and, importantly, translations of them). This level of increased clarity is important to provide process certainty for potential TLD applicants, governments and ccTLD operators – so that it is known which names are provided protections.

The definition is objectively based on the ISO list, which is developed and maintained by a recognised international organisation.

It is acknowledged that ICANN has used the concept of 'meaningful representation' of a country or territory in the context of the IDN ccTLD Fast Track. This reflects the objective of rapid initial deployment of IDNs and the associated need to remove as many potential obstacles as possible. There have always been particular sensitivities about geographic names where non-Latin scripts and a range of languages are involved. It does not follow that these considerations should automatically apply to the broader ccTLD and gTLD spaces. It is reasonable that the criteria for including names (the Fast Track) could be different than the criteria for excluding names (gTLDs).

geographical strings could be allowed in the gTLD space if in agreement with the relevant government or public authority."

The ccNSO will be undertaking policy discussions, which may result in a change in position on these two issues. In particular, defining the distinction between country code and generic names may warrant a broader cross-SO/AC policy discussion. Once policy is developed, it will be appropriate for the Board to reconsider these positions.

Definition of geographical strings insufficient and not in line with paragraphs 2.2 and 2.7 of the GAC principles regarding new gTLDs

As mentioned above, the Board has sought to ensure, throughout the process of developing a framework for new gTLDs, that there is 1) clarity for applicants, and 2) appropriate safeguards for the benefit of the broad community. The current criteria for defining geographic names as reflected in version 4 of the Draft Applicant Guidebook are considered to meet the Board's objectives and are also considered to address to the extent possible the GAC principles. The current definitions, combined with the secondary avenue of recourse available by way of objections are considered adequate to address the GAC's concerns.

It should be noted that much of the treatment of geographic names in the Applicant Guidebook was developed around the GAC Principles regarding new gTLDs, and conversations and correspondence with the GAC on this issue going back to 2008.

On 2 October 2008, (http://www.icann.org/correspondence/twomey-to-karklins-02oct08.pdf) following a teleconference with the GAC on 8 September 2008, the then CEO & President, Paul Twomey, wrote to the GAC explaining proposed principles to guide a procedure for implementing elements of paragraph 2.2. Place names were split into two categories, as follows: 1) sub-national geographical identifiers such as countries, states, provinces; and, 2) city names. Regional language or people descriptions were considered difficult to develop an implementation plan for this element of paragraph 2.2, because it will be difficult to determine the relevant government or public authority for a string which represents a language or people description as there are generally no recognised established rights for such descriptions.

As described in the 2008 letter, city names were considered challenging because a city name can also be a generic term, or a brand name, and in many cases city names are not unique. Therefore, where it is clear that an applicant intends to use the gTLD for purposes associated with the city name evidence of support, or non-objection is necessary. However, provision is made in the Guidebook to protect sovereign rights by requiring government approval for capital city names in any language, of any country or territory listed in the ISO 3166-1 standard.

During the teleconference of 8 September 2008, GAC members identified the ISO 3166-2 List, as an option for defining sub-national names. Accordingly, version 4 of the Applicant Guidebook provides protection for all the thousands of names on that list. Also during this call the idea of the GAC creating a list of geographic and geopolitical names was discussed, however, it is understood that the GAC moved away from this suggestion because it would be a resource intensive effort for all governments to undertake.

In relation to paragraph 2.7, at the Board's request, Paul Twomey (who was ICANN's CEO and President), wrote to the GAC on 17 March 2009 (http://www.icann.org/correspondence/twomey-to-karklins-17mar09-en.pdf), requesting the GAC's input on possible options to resolve the outstanding implementation issues regarding the protection of geographic names at the second level. The end result of this request was a letter from the GAC to Paul Twomey, dated 26 May 2009 (http://www.icann.org/correspondence/karklins-to-twomey-29may09-en.pdf), which proposed a solution, that was accepted by the Board and ultimately reflected in the draft Registry Agreement developed for new gTLDs. On this basis, the Board considers that this matter has been dealt with to the satisfaction of the Board and the GAC.

Mechanisms for dealing with post-delegation deviation from conditions of government approval

The GAC's suggestion of including a clause in the registry agreement requiring that in the case of a dispute between a relevant Government and the registry operator, ICANN must comply with a legally binding decision in the relevant jurisdiction has been adopted. The Registry Agreement has been amended accordingly.

In addition, the processes and remedies of the Registry Restrictions Dispute Resolution Procedure are available to governments in cases where the geographic name is applied for as a community-based TLD. The remedies that can be recommended to ICANN under this procedure include:

- remedial measures for the registry to employ to ensure against allowing future registrations that do not comply with community-based restrictions;

- suspension of accepting new domain name registrations in the gTLD until such time as violation(s) is cured; or, in extraordinary circumstances;

- providing for the termination of a registry agreement.

Other protections have been added to ensure ongoing government approval of the delegation. Further information is available in explanatory memoranda. The following "Withdrawal of Government Support – Post delegation procedures" (http://www.icann.org/en/topics/new-gtlds/withdrawal-government-support-28may10-en.pdf) and "Registry Transition Procedures" (http://www.icann.org/en/topics/new-gtlds/registry-transition-processes-28may10-en.pdf) were posted on 31 May 2010.

Objection mechanisms should be improved

I reiterate my response of 22 September 2009, to the GAC on this issue:

"It is difficult to predict with accuracy whether the costs of the objection procedure will prove to be a barrier to legitimate objections; however, it is felt that the existence of a fee to lodge an objection is necessary as a deterrent to frivolous objections. Interested parties may pool their resources to finance an objection that they consider to be legitimate and important. The rule that the prevailing party will be fully reimbursed for the filing fee and advance payment of costs that it paid (Article 14(e)) is intended to lessen the financial burden upon parties that file a well-founded objection. Finally, it should be recalled that the Independent Objector may also file an objection where, for various reasons (including cost), no other objection had been filed."

"Governments that are members of the GAC have a mechanism to provide advice to ICANN's Board, in accordance with ICANN's Bylaws; however, it is not clear that Bylaw was intended to provide an avenue for governments to provide advice on operational matters of this nature. The ICANN Board wishes to have a neutral, expert determination, based upon certain published standards, when deciding whether to accept an application for a new gTLD or if an objection should be upheld."

Reviewing that response and the issues posed in your letter, I would add the following. ICANN (and the community) devoted substantial resources to develop the policy and implementation models to protect important interests through an objection based dispute resolution benefit. Still, specific suggestions for improvements are encouraged and I understand some Supporting Organizations and Advisory Committees are forming groups to study the issue. ICANN staff will support that work. The costs of that process are paid directly to the dispute resolution provider – no fees are added as a deterrent to potential objectors. In fact, one intended result of the process is to discourage applicants of controversial names that may infringe upon those important interests.

We note that governments pay fees for other services, enter into agreements, and pursue conflict resolution. We do not believe that governments should be afforded special consideration by exempting them from paying fees associated with filing an objection. To do so would result in an inflation of costs for other objectors to cover the costs incurred by government requests. This is different, however, from arrangements to assist impecunious governments. If the GAC is able to provide the principle on which

they base their request for exemption, it will be considered for inclusion into the procedure.

Resolution of competing string applications does not give rise to auction-derived surpluses, but is decided on the respective value of the applications for end users

The purpose of an auction is to resolve contention in a clear, objective manner as the avenue of last resort in resolving contending applications.

Possible uses of funds from this source include formation of a foundation with a clear mission and a transparent way to allocate funds to projects that are of interest to the greater Internet community, such as grants to support new gTLD applications or registry operators from communities in subsequent gTLD rounds, the creation of an ICANN-administered/community-based fund for specific projects for the benefit of the Internet community, the creation of a registry continuity fund for the protection of registrants (ensuring that funds would be in place to support the operation of a gTLD registry until a successor could be found), or establishment of a security fund to expand use of secure protocols, conduct research, and support standards development organizations in accordance with ICANN's security and stability mission. That is, funds will be used in a manner that supports directly ICANN's Mission and Core Values and also maintains its not for profit status.

Potential benefits of categories (or track differentiation) should be fully explored.

ICANN is a strong proponent of innovative uses of new TLDs. This is especially so in cases where TLDs can be delegated to address the needs of specific communities such as intergovernmental organizations, socio-cultural groups and registered brands. Rather than having ICANN limit this type of innovation and identification with certain TLD models, more creativity might be spawned by allowing different groups to self-identify the type of TLD they purport to be and promote that model among their community. If a self-declaration program is instituted and contractual accommodations are eliminated or minimized, fees can remain constant. Socio-economic groups, brand owners and other groups all can be accommodated under the existing structure and self-identify as a particular type of TLD. Over time, the market and community interests will sort TLD types – a model preferable to having ICANN make that determination a priori. To reiterate, it is not for ICANN to develop these distinctions *a priori*.

It may well be that as definitive categories of applicants emerge in practice, and as ICANN and the respective communities gain further experience of possible benefits of additional gTLD categorization over time, organizational structures might be developed with ICANN to reflect these categories. That will be a consequence of bottom-up policy developments by affected participants, according to the ICANN model. Nothing in the current implementation procedures forecloses those future developments.

Significant consideration has been given to the issue of the introducing category-based TLDs in the new gTLD process. The policy recommendations of the GNSO and the GAC principles have resulted in the creation of three gTLD categories or types:

> Community-based TLDs
> Geographic Name TLDs
> Everything else (called standard or open TLDs)

Community comment suggests the creation of several TLD categories: for example, single-owner, country, intergovernmental organization, socio-cultural, community and open. Depending on the category, various accommodations are suggested: for example, no requirements for an ICANN contract, or to use accredited registrars, or to follow consensus policy, or policy provisions outlined in the GAC's ccTLD principles. Some might be restricted to not-for-profit status, be eligible for reduced fees, require registration restrictions, and have names reserved in anticipation of registration by certain parties.

Beyond the accommodations sought, many or all of the suggested categories seem to be variations of community-based TLDs. The preference for community-based TLDs in the evaluation/contention process is based on policy advice from the GNSO and is intended to ensure that community-based applicants receive the TLD string to which their community is strongly related. Perhaps the most important aspect of the suggested categories is that an applicant within these categories does, in fact, receive the string associated with its community, and that is what the existing process is designed to do.

The introduction of a number of new gTLD categories with a number of different accommodations will lead to a complex and difficult application, administration and evaluation process, in addition to a very complicated contractual compliance environment. Additionally, there will be considerable debate and discussion in the community as to whether certain accommodations should be made. Should certain gTLDs not be required to have an agreement with ICANN or not be required to follow consensus policy? Should certain TLDs be required to maintain not-for-process status?

These discussions and debates will take considerable time and resources and may ultimately not result in consensus.

The structure of TLD categories, if granted different accommodations with differing contractual obligations, would result in significantly higher compliance costs and therefore, annual fees.

I thank the GAC for their continued effort in considering the implementation of the new gTLD program.

As the Board's resolution (http://www.icann.org/en/minutes/resolutions-25jun10-en.htm#11) from the Brussels meeting sets out, there will be a Board Workshop focusing on new gTLDs on 24 and 25 September 2010. The Board will use this time to consider all of the outstanding issues

relating to the implementation of the new gTLD program. We will likely follow the Board Workshop with a Special Board Meeting focusing on the new gTLD topics.

I understand the GAC is preparing their comments on version 4 of the Draft Applicant Guidebook, and we very much look forward to the GAC's input for use in that Board Workshop.

Yours sincerely

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Chair
ICANN Board of Directors

CC: Rod Beckstrom, CEO and President, ICANN