**NONCOMMERCIAL CONSTITUENCY COMMENTS
SUBMITTED TO THE GNSO IN RESPONSE TO THE CALL FOR
COMMENTS ON THE TERMS OF REFERENCE FOR NEW gTLDs**

January 31, 2006

The Noncommercial Users Constituency has duly considered the questions and issues raised by the GNSO in this proceeding, and we respectfully submit our comments below.

However, before addressing the specific points raised by this call for comment, we note that the Noncommercial Users Constituency (and its predecessor) have adopted positions on new gTLD policies many times before. In its 18 February 2003 statement to the ICANN GNSO Council new gTLDs committee we wrote:

> "The NCUC supports a demand-driven approach to TLD additions. ICANN should allow new names to be proposed by interested communities, entrepreneurial registry operators, or a combination of both. We believe that ICANN should define a process that permits addition of a maximum of 30 new TLDs each year. […] ICANN's assessment of these applications should be based on adherence to a minimal set of ICANN-defined technical specifications and conformity to established ICANN policies, such as UDRP. Approving a TLD should be - and could be - as simple as accrediting a registrar. Whether the business models proposed were "sponsored" or "unsponsored," "restricted" or not, would be up to the applicants. Contention among applicants for the same name would be settled by auction, with the proceeds going to ICANN."

Likewise, in a motion passed at the Montevideo ICANN meeting September 7, 2001, the NCDNHC by a vote of 18 in favor, 1 against, and 2 abstentions resolved:

> "ICANN should approve all new Top-Level Domain applications that can meet fair and reasonable technical criteria."

1. [Should new generic top level domain names be introduced?]

Absolutely. ICANN was created for the purpose of overseeing a well-defined, efficient and fair TLD addition process.   It is time to open up that process as quickly and as broadly as possible.

The Noncommercial Users Constituency submits that the domain name market, like the Internet itself, must not be frozen or static. A refusal to add any new gTLDs is not an option. The operation of gTLD registries is currently confined to a tiny handful of operators in the countries where the Internet developed first (mostly the U.S.). About 80% of the gTLD market is concentrated in the hands of one operator.

The introduction of "internationalized" or multilingual DNS and the growth of the Internet in developing countries with different scripts, cultures, and naming ideas – among other positive pressures – will inevitably create legitimate demand for new gTLDs.

We know for a fact that periodic addition of a limited number of new TLDs has not created any adverse technical consequences, both from experience and from expert studies such as the U.S. National Research Council study "Signposts in Cyberspace." As long as there is growth in the Internet, there will be interest in a broad range of new gTLD names. As a technical coordinator, ICANN should accommodate demands for new gTLDs so long as there are no adverse technical consequences.

Overall, ICANN must not shut off the opportunity for new businesses and new constituency groups to propose and operate new gTLDs. To do so would be to permanently block two-thirds of the world from the expertise and wealth that can be gained from participation in this industry, and subject most of the world to the market power of ccTLDs or the current dominant operator. Any attempt to shut the door on the rest of the world at this time is not viable from a political or economic standpoint. ICANN must abandon the fantasy that it can freeze the TLD name space and accept the need for a well-defined, efficient and fair TLD addition process.

2. [Selection Criteria for New Top Level Domains]

a. [Taking into account the existing selection criteria from previous top level domain application processes and relevant criteria in registry services re-allocation, develop modified or new criteria which specifically address ICANN's goals of expanding the use and usability of the Internet. In particular, examine ways in which the allocation of new top level domains can meet demands for broader use of the Internet in developing countries.]

The Noncommercial Users Constituency rejects the premise of this statement. ICANN has no mandate in its mission or core values to "expand the use and usability

of the Internet." ICANN does, however, have the promotion of competition as one of its core values (see Section 2, Core Values No. 5 and 6 in the ICANN Bylaws). Fundamentally, it is ICANN's job to coordinate the unique technical parameters of Internet identifiers in a way that fosters the openness, diversity and competitiveness of the domain name registration market.

The best way to do this is to make ICANN's selection criteria as simple, predictable and content-neutral as possible. Such a politics-free environment would make it much easier for innovators, from whatever locations, social origins or economic status, to propose and implement new ideas. NGOs, entrepreneurs and applicants from developing countries (and elsewhere) must be allowed to come up with their own ideas for new TLD names and business models. ICANN'S role could and should be simple: to provide a predictable, fair and efficient process by which those ideas can be accepted or rejected, coordinated and implemented. Doing otherwise will definitely prevent realization of "the true opportunity, promise and full participatory nature of the Internet", particularly at the edges of the network.[1]

The NCUC further submits that ICANN's only role in the acceptance process should be to determine whether a gTLD application meets the minimal technical and operational criteria that the GNSO and ICANN together should establish, thus ensuring that registry operations do not harm the global compatibility of the DNS.

b. [Examine whether preferential selection criteria (e.g. sponsored) could be developed which would encourage new and innovative ways of addressing the needs of Internet users.]

Sponsored Top Level Domains provided a valuable, and at the time controversial, point of discussion for our constituency. They definitely showed that the Internet and DNS survive and thrive with the introduction of new gTLDs. The NCUC submits that sponsored gTLDs are a beginning, and must not be an end.

The Noncommercial Users Constituency finds it unnecessary and overly restrictive to build sponsored-unsponsored concept into ICANN's permanent framework of new registry contracts. We expressly support an open, transparent and neutral approach to new gTLDs that will encourage Internet users, organizations and companies worldwide to come forward to the ICANN community with their ideas.

The NCUC expressly does not support any attempt to declare sponsored domain names to be better than unsponsored domain names. It is for individual users to decide for themselves, by selecting when and where to register. ICANN's role is not

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[1] Comments of the United States government on the WGIG report.

to tilt the Internet community's preferences in one way or the other, especially not to favor sponsored TLDs over the unsponsored. ICANN's clear role is to coordinate the introduction of all new gTLDs in a way that preserves global DNS compatibility, allows a broad and diverse range of innovations, and gives all a clear sense that a single root broadly serves Internet communities worldwide.

c. [Examine whether additional criteria need to be developed which address ICANN's goals of ensuring the security and stability of the Internet.]

The Noncommercial Users Constituency submits that any criteria adopted by ICANN must be carefully targeted to issues that are part of ICANN's core mission and competence, specifically global domain name compatibility.

NCUC strongly submits that ICANN should develop a simple and objective "registry accreditation" process, similar to the registrar accreditation process. We submit there should be fewer criteria, not more.

3. [Allocation Methods for New Top Level Domains]

ICANN and our entire community learned from our painful past experience that the comparative evaluation or "beauty contest" model as a method for picking new top level domains/registries is slow, politicized, manipulable and unpredictable, no matter how carefully it is administered. The results have been disastrous.

The current selection process badly hurt the reputation of ICANN because so many people question the right of a few committees consisting of a small number of ICANN selected "experts" to decide for a vast, diverse global market which names are desirable and legitimate. Further, ICANN's political supervisors in the U.S. and GAC have clearly demonstrated to the world that a discretionary selection process can be and will be manipulated, as pressure will be placed on the ICANN Board and staff by political interests and vested economic interests.

Under ICANN's current method, applicants for new TLDs are always subject to insider lobbying by incumbents and must bargain individually with staff. The legal costs they incur for such lobbying unfairly raise the bar of entry only to those with strong and well-funded connections.

The only escape route from this unfortunate situation is a completely neutral and objective process, such as lotteries and auctions. In particular, domain names for single companies should be auctioned, and those involving general and/or noncommercial communities should be distributed by lottery. These objective, non-discriminatory methods are pro-competitive and they will vastly reduce costs for new

entrants by making it clear to applicants what they have to do to get a TLD, what are the anticipated expenses and what is the time line.

4. [Policy to Guide Contractual Conditions for New Top Level Domains]

The Noncommercial Users Constituency favors a simple, template registry contract that is uniformly applicable to all registries. We oppose individual negotiation between ICANN and prospective top level domain contractees. We believe that the GNSO should set general policy guiding the contracts - including whether there should be price caps or not, or a renewal expectancy or not - and that the ICANN staff should translate those policies into generally applicable contractual terms. The addition of new TLDs should be predictable in timing and procedure, transparent and rule-driven.