November 14, 2014

Internet Corporation of Assigned Names and Numbers
Governmental Advisory Committee (GAC)
Sub-Group on Geographic Names

VIA ELECTRONIC TRANSMISSION

Re: Call for Public Input: The Protection of Geographic Names in the New gTLDs Process

Dear Sir/Madam:

The U.S. Council for International Business (USCIB) is pleased to respond to the request of the ICANN Governmental Advisory Committee (GAC) Sub-Group on Geographic Names for public comments about the draft document, "The Protection of Geographic Names in the New gTLDs Process." USCIB is a trade association composed of more than 300 multinational companies, law firms, and business associations, which includes a broad cross-section of the leading global companies in the information and communications technology (ICT) sector. USCIB members, who include members of both the non-contracted and contracted houses of ICANN, welcome this opportunity to offer a cross-community, cross-sectoral perspective on this important issue.

USCIB as well as many of our individual members participate in various ICANN stakeholder groups. Our comments below largely are aligned with those of the ICANN Business Constituency (BC).

Questions about Lawfulness and GAC Scope

Concerns about Compatibility with International Law: The proposed revision to the Applicant Guidebook would prohibit ICANN from awarding a gTLD with a geographic name "unless in agreement with the relevant governments or public authorities." We agree with the Business Constituency in questioning the legal basis for this requirement. International law and trade agreements recognize trademarks *with geographic indicators*. But international law does not give governments exclusive rights to geographic names. Sovereignty alone is not an appropriate basis to assert ownership or exclusive rights to geographic names.

In view of the fact that the GAC is charged with providing advice to ICANN "on matters where they may be an interaction between ICANN's policies and various laws and international agreements and public policy objectives," this proposed revision to the Guidebook therefore exceeds the scope of the GAC's Operating Principles.

In addition, we are concerned that the proposed revision to the Applicant Guidebook includes references to "people descriptions" and "religious significance" – terms that could be used as openings by the GAC to intervene into areas not related to geography, like race, gender, and

religion. We would view this as an inappropriate expansion of GAC authority that ultimately risks undermining the roll-out of new gTLDs.

Problematic Requirements for Government Approval: Another proposed best practice calls on potential applicants to contact relevant authorities "if the selected string if related to a country, city, region, sub-region, or other geographic related spaces." Again, there is an acute lack of clarity about which government agencies constitute "relevant authorities" and how many the applicant should contact.

USCIB further objects to the proposed revision to the Applicant Guidebook that calls on ICANN to "avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant governments or public authorities." This language creates unworkably broad categories of possible geographic strings and imprecise terminology – e.g., "people descriptions" – making it very difficult for business to anticipate what strings may be objectionable. As stated above, the language also does not define what constitutes "relevant governments of public authorities," making it difficult for a business applicant to know whether it has contacted all required government parties for approval.

Furthermore, language calling on a potential business user to enlist a government's "support or non-objection" prior to submitting an application leaves the applicant in a very uncertain position. If an applicant simply does not hear back from a government agency – again, without a complete understanding of whether the correct government entity(ies) have been engaged – does that constitute a "non-objection?" Does the applicant need to receive an affirmative answer from these government entities? The proposed revision to the Applicant Guidebook does not address these critical questions.

Procedural Concerns and Lack of Definitional Clarity

Impractical Aspects of the Proposal: The proposal calls for a new gTLD applicant to undertake a "thorough search . . . to determine whether the string is a geographic name." The proposal further urges applicants to use in these searches, "the Internet, embassies, regional organizations, international organizations, national, regional and city governments, among others." This requirement is overly sweeping, impractical, and ultimately unworkable for business applicants. The absence of a complete and finite list of search sources makes it virtually impossible for an applicant to know when it has fulfilled the search requirement.

The proposed best practices impose the additional burden of requiring potential applicants to consider "different meanings" of string, including translations to another language. This rather open-ended and vague requirement creates an infinite number of objectionable strings and unrealistic burdens on potential applicants.

Further, the draft document states that the list of prohibited strings included in the Applicant Guidebook "should be considered as a general reference for the applicant and not as a strict and only criteria to determine whether a name is geographic or not." It is unclear and confusing why the GAC Sub-Group is proposing a best practice that basically undermines provisions set forth in

the Applicant Guidebook after careful and extensive negotiations.

<u>Lack of Clarity Concerning "Public Interest</u>:" USCIB also finds problematic the proposed "public interest" fallback in cases where governments and users cannot reach agreement on a potential string application. Business certainly has a keen interest in providing goods and services that the public finds useful, beneficial, and in some way serve to enhance the quality of life. Providing benefit to the public is not the issue. Rather, the draft proposal does not define exactly was constitutes "public interest" and, equally important, what entity – governmental? NGO? ICANN?– ultimately will determine how the disagreement should be resolved based on ill-defined "public interest."

In addition, USCIB associates itself with the point made by the Business Constituency that the draft proposal makes the sweeping assumption that the "public interest" will comport with that of the objecting governments. That may not necessarily be the case.

Need for Further Public Discussion

In sum, we have serious concerns with the GAC Sub-Group's proposal. Before proceeding further, we urge the GAC to devote further *public discussion* to the issue of the use of geographic names in new gTLDs at ICANN 52, February 8-12, 2015, in Singapore.

Thank you for considering our comments.

Sincerely,

Barbara P. Wanner
Vice President, ICT Policy

cc: Peter Robinson, President
        Robert Mulligan, Senior Vice President, Policy and Government Affairs