gTLD Registries Constituency Comments

regarding

City TLD CONSTITUENCY PETITION AND CHARTER

July 10, 2009

The GNSO gTLD Registries Constituency (RyC) submits these comments in response to the City TLD Constituency Petition and Charter posted on 5 June 2009 for discussion by the ICANN community. Details regarding the level of participation and support for the comments are included at the end of the document.

Note: The RyC recognizes that the City TLD Constituency Petition and Charter may ultimately not need Board approval if the recommendations of the Board Structural Improvements Committee's (SIC) regarding constituencies/interest groups for the Contracted Party House are adopted. We also recognize that the City TLD applicants drafted the Petition and Charter before the SIC had communicated its recommendations. With both of those facts in mind, we decided to go ahead and submit comments because final decisions have not yet been made regarding the role of constituencies/interest groups in the Contracted Party House.

SUMMARY:

RyC has three major concerns about this Petition and Charter:

1. The proposal to become part of the Registries Stakeholder Group (RySG) is misplaced. The RySG is part of the Contracted Party House of the new GNSO, and the entities that compose the CTLDC have no contracts with ICANN. Until their applications to manage registries are accepted and they execute contracts with ICANN, they do not qualify as a constituency within the RySG.

2. The proposal to include government agencies in a constituency is inconsistent with the fundamental structure of ICANN in which governments participate in an advisory capacity through the Governmental Advisory Committee (GAC). Furthermore it

opens the possibility of two areas of voting influence and one area of significant advisement for a single government hierarchy.

3. The application proposes a method of voting representation which directly conflicts with the currently proposed charter (http://gnso.icann.org/en/improvements/rysg-proposed-petition-charter-22jun09.pdf) of the new RySG as reviewed and edited by the Structural Improvements Committee (SIC).

For any and all of these reasons, if the Board decides to act on this Petition and Charter, the RyC urges ICANN to postpone acceptance of it until these concerns are addressed. If the proposed City TLD Constituency becomes a City TLD Interest Group within the Registries Stakeholder Group (RySG) as proposed by the SIC, the RyC encourages the members of that Interest Group to modify the charter accordingly as well as to bring it in line with the RySG Charter.

DISCUSSION:

In listing membership criteria the Petition and Charter states:
"We propose to apply as a constituency in the Registry [sic] Stakeholder Group"; and

"i. An organization incorporated or otherwise legally established as a commercial entity; or non-commercial entity (in countries that have such a provision in their corporation law); or

ii. An unincorporated organization, or organization operating in a country without provisions for non-commercial incorporation, and has at least ten (10) members; or

iii. An organization incorporated based on laws as a government, authority, institution or otherwise legally established official body. "

In addition to the problem of not having contracts with ICANN, the above criteria.of representation raises distinctly challenging questions about the current structure of ICANN. In particular it challenges the concept of a non-voting role for governments in ICANN's structure. To date, governments have acted in an advisory role in the ICANN structure. This application, were it accepted as is, could enable governments to have direct impact on voting in the GNSO. City TLDs through their inherent involvement with government raise some of the same representational issues that resulted in the

existence of the ccNSO in the current ICANN structure. It is important to note that it is very possible, through inheritance, that government organizations involved with City TLDs may be influenced or directed by hierarchal levels of government that already exert influence in both the GAC and the ccNSO. ***Specifically this application if accepted as is, creates the possibility of two bodies (ccNSO and GNSO) of voting influence for a single government hierarchy as well as one area of advisement (GAC).***

Although an aside, it is worth noting that these same representational issues can extend to a number of potential geographical applicants in the new GTLD process. This problem is pervasive across any number of potential new constituency applications and requires both a direct solution and subsequent guidance for both existing and future applicants.

DISCUSSION:

This application describes a representative role elected by the city constituent membership called a "RySGR" and assumes that this representative will be able to exercise a direct vote against GNSO Council considerations.

"Each RySGR shall represent in the GNSO Council the goals and priorities of the CTLDC Members to the best of his/her ability and in accordance with the principle of consensus building, as follows:

a. Positions that reach consensus within the CTLDC are presumptively binding on the RySGRs' votes. This presumption may be rebutted only with the consent of the Members of the CTLDC and in the event of very significant countervailing concerns, which concerns must be disclosed to the Members;

b. On issues without CTLDC consensus, RySGRs are authorized to vote on GNSO Council matters as they think best with a reasonable effort to reflect the positions held by Members of the CTLDC."

This concept of voting representation conflicts with the representative mechanism described for membership in the proposed Registries Stakeholder Group (RySG) charter. The ability to vote is first and foremost dependent on membership. The RySG, being part of the contracted parties side of the GNSO house, requires members to have

an active contract with ICANN. Constituencies in turn are comprised of RySG members who share common interests. There is no direct voting representation for a constituency as an entity or organized body under the RySG charter since the members *are already granted their own direct voting rights at the RySG level*. Lastly it is important to note that the public posting of SIC proposed changes (http://gnso.icann.org/en/improvements/rysg-proposed-petition-charter-22jun09.pdf) to the RySG charter acknowledges this structure and goes so far as to propose replacing "constituency" with "interest group" in affirmation.

CONCLUSION:

For the foregoing reasons, RyC urges ICANN to postpone acceptance of the Petition and Charter until:

1. The members of the CTLDC have contracts with ICANN;

2. "government agencies" are removed from the proposed Constituency;

3. ICANN adopts procedures as recommended by the President's Strategy Committee (PSC) to prevent double voting; and

4. changes are made to the application regarding its proposed voting representation at the GNSO Council level. These changes must acknowledge and be consistent with the membership requirements in the proposed and SIC reviewed RySG charter (http://gnso.icann.org/en/improvements/rysg-proposed-petition-charter-22jun09.pdf) and the subsequent voting representation described for "Interest Groups" and members within the RySG.

GNSO gTLD Registries Constituency Statement of Support

Issue: **City TLD Petition and Charter**

Date: 20 May 2009

General RyC Information

- Total # of eligible RyC Members[1]: 14

- Total # of RyC Members: 14

- Total # of Active RyC Members[2]: 14

- Minimum requirement for supermajority of Active Members: 10

- Minimum requirement for majority of Active Members: 8

- # of Members that participated in this process: 14

- Names of Members that participated in this process:

1. Afilias (.info)
2. DotAsia Organisation (.asia)
3. DotCooperation (.coop)
4. Employ Media (.jobs)
5. Fundació puntCAT (.cat)
6. mTLD Top Level Domain (.mobi)
7. Museum Domain Management Association – MuseDoma (.museum)
8. NeuStar (.biz)
9. Public Interest Registry (.org)
10. RegistryPro (.pro)
11. Societe Internationale de Telecommunication Aeronautiques – SITA (.aero)
12. Telnic (.tel)

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[1] All top-level domain sponsors or registry operators that have agreements with ICANN to provide Registry Services in support of one or more gTLDs are eligible for membership upon the "effective date" set forth in the operator's or sponsor's agreement (Article III, Membership, ¶ 1). The RyC Articles of Operations can be found at http://www.gtldregistries.org/about_us/articles .

[2] Per the RyC Articles of Operations, Article III, Membership, ¶ 4: Members shall be classified as "Active" or "Inactive". A member shall be classified as "Active" unless it is classified as "Inactive" pursuant to the provisions of this paragraph. Members become Inactive by failing to participate in a Constituency meeting or voting process for a total of three consecutive meetings or voting processes or both, or by failing to participate in meetings or voting processes, or both, for six weeks, whichever is shorter. An Inactive member shall have all rights and duties of membership other than being counted as present or absent in the determination of a quorum. An Inactive member may resume Active status at any time by participating in a Constituency meeting or by voting.

13. The Travel Partnership Corporation – TTPC (.travel)

14. VeriSign (.com, .net & .name)

- Names & email addresses for points of contact:
    - Chair: David Maher, dmaher@pir.org
    - Alternate Chair: Jeff Neuman, Jeff.Neuman@Neustar.us
    - Secretariat: Cherie Stubbs, Cherstubbs@aol.com

Regarding the issue noted above, the level of support in the RyC for the Constituency statement is summarized below.

1. **Level of Support of Active Members**:

    1.1. # of Members in Favor: 12

    1.2. # of Members Opposed: 0

    1.3. # of Members that Abstained: 0

    1.4. # of Members that did not vote: 2

2. **Minority Position**(s): n/a