



# Internet Corporation for Assigned Names and Numbers

4 May 2006

Mohamed Sharil Tarmizi  
Senior Advisor, Office of the Chairman  
Malaysian Communications and Multimedia Commission  
Chair of the Governmental Advisory Committee of ICANN  
63000 Cyberjaya, Selangor Darul Ehsan  
MALAYSIA

Dear Mr. Chairman and Members of the GAC:

We are writing in response to the GAC's request for information regarding the decision of the ICANN Board to proceed with several sTLD applications, notwithstanding negative reports from one or more of the independent evaluation teams as set out in the GAC's Communiqué from the Wellington Meeting dated 28 March 2006.

For a complete explanation of the process that has been utilized relating to this current round of sTLD applications and in particular the .XXX application, we refer the GAC to the 11 February 2006 letter. We note that the GAC has requested additional information beyond the 11 February letter to explain "the Board decision, particularly with regard to the sponsored community and public interest criteria outlined in the sponsored top level domain selection criteria."

It is important to note that the Board decision as to the .XXX application is still pending. The decision by the ICANN Board during its 1 June 2005 Special Board Meeting reviewed the criteria against the materials supplied and the results of the independent evaluations. After additional consultation with ICM, the board voted to authorize staff to enter into contractual negotiations without prejudicing the Board's right to evaluate the resulting contract and to decide whether it meets all of the criteria before the Board including public policy advice such as might be offered by the GAC. The final conclusion on the Board's decision to accept or reject the .XXX application has not been made and will not be made until such time as the Board either approves or rejects the registry agreement relating to the .XXX application. In fact, it is important to note that the Board has reviewed previous proposed agreements with ICM for the .XXX registry and has expressed concerns regarding the compliance structures established in those drafts.

Additional information about the independent evaluation team's work may also help to respond to the questions raised by the GAC. In selecting the members of the independent evaluation teams for the 2004 round of sTLD applications, ICANN sought the input of recognized, well-regarded experts in relevant fields. Identifying appropriate individuals to serve as technical evaluators was a straightforward task, and ICANN was lucky enough to secure the services of three highly skilled DNS engineers. Identifying evaluators possessing the necessary skills to review the business and financial aspects of the various proposals was also straightforward, and we secured well-respected members of the business and finance community to perform this service. The skills

needed by members of the sponsorship evaluation team ("Sponsorship Evaluation Team") and other issues evaluation team were, however, considerably less concrete. The skills and expertise needed to determine whether or not an sTLD proposal meets the sponsorship criteria do not correspond neatly with any particular discipline or profession. ICANN therefore engaged thoughtful and analytic individuals possessing an appropriate degree of familiarity with the technical coordination functions of ICANN. All of the independent evaluator's for all three groups were carefully vetted for significant conflicts of interest and served with professionalism throughout the process.

As was also outlined in the 11 February letter, the evaluators determined that only two applications - .CAT and .POST - required no further discussion. Nonetheless, additional information was requested from .CAT to ensure that its application was consistent with public policy concerns that had been discussed by some GAC members.

Where an evaluation team indicated that a set of criteria was not met, or there were other issues to be examined, ICANN staff requested and received additional information and materials. Each applicant was afforded an opportunity to submit clarifying or additional documentation before presenting the evaluation panel's recommendations to the Board for a decision on whether the proposal could proceed to the next stage. Nine of the ten applications were in this category -- all but .POST. Two of the applicants submitted no additional information or materials, .TEL (Pulver) and .MAIL.

The applicants for sTLDs for .ASIA, .JOBS, .MOBI, .TRAVEL, .TEL (Telnic), and .XXX have all provided additional documentation supporting their applications in one or more of the evaluation categories. Two of the three evaluation teams, those for business and technical issues, were asked to continue to provide advice and entered into new rounds of discussions with the applicants. In each instance the applicant providing more information to the technical and business evaluation teams was able to gain the approval and support of those evaluation teams following additional review.

Due to the subjective nature of the sponsorship related criteria that were reviewed by the Sponsorship Evaluation Team, additional materials were requested from each applicant to be supplied directly for Board review and consideration. In deciding whether to allow these applicants' proposals to move forward into contractual negotiations, in each instance the Board took into account documents and presentations provided to the Board in response to the independent evaluator's comments and such other information as was requested directly by the Board. In some instances, such as with .XXX, while the additional materials provided sufficient clarification to proceed with contractual discussions, the Board still expressed concerns about whether the applicant met all of the criteria, but took the view that such concerns could possibly be addressed by contractual obligations to be stated in a registry agreement.

The Board eventually approved registry agreements for .JOBS, .TRAVEL and .MOBI, even though there had been negative evaluations by the Sponsorship Evaluation Team, by making its own collective comparison of the applications and supplemental materials against the established sponsorship criteria. sTLDs .TEL (Telnic), .ASIA and .XXX have all proceeded into negotiations following the Board's initial review of the overall criteria, including the sponsorship criteria, and review of the negative evaluations prepared by the evaluation teams. None of the registry agreements for these three sTLDs have been approved, and the Board will not approve the registry agreements until they are assured that the agreements demonstrate the applicant's ability to comply with the

representations made in the application and the supporting materials that have been provided in support of the applications.

In all instances where the evaluators' negative reports were reevaluated by the Board of Directors, the applicants answered questions and clarified issues that had been of concern to the evaluators to the satisfaction of a majority of the Board and/or a majority of the Board concluded that there was enough additional or clarifying information provided beyond the initial information, that a different result was appropriate..

In short, the Board's consideration of all sTLD applications has been and will continue to be made with careful, rigorous, and well-considered judgment based upon all materials available to them. It is important to note that this is an effort to summarize ICANN's positions in a manner consistent with actions taken by the ICANN Board, but individual board members may have different individual views which differ from the collective group's actions. Additionally, please be advised that ICANN's Board will act consistently with the ICANN Bylaws as they relate to any and all public policy advice that is formally received from the GAC. I hope the information contained in this letter and its attachments is responsive to the request and the needs of the GAC.

Sincerely yours,

A handwritten signature in cursive script that reads "Paul D Twomey".

Dr Paul Twomey  
President and CEO

cc: Vinton Cerf, Chairman, ICANN Board of Directors  
ICANN Board of Directors  
John O. Jeffrey, ICANN General Counsel and Secretary