

NEUSTAR'S RESPONSE TO THE FINAL ICANN STAFF REPORT FOR THE REASSIGNMENT OF THE .ORG REGISTRY

The following constitutes NeuStar's comments on the Final Staff Report. Given the limitation on the length of the document, NeuStar has only included those issues the Board should most carefully consider in its deliberations.

Following are the key issues and recommended Board actions, which are described and fully supported within the document.

- The NCDNHC evaluation was flawed and biased rather than neutral, objective and independent.
- The Final Staff Report improperly relied on a flawed and biased NCDNHC evaluation as the basis for its recommendation.
- The Board should disregard the Final Staff Report recommendation and make its own neutral and objective determination.
- PIR introduces a complicated organization structure, major formation tasks, and additional unknowns resulting a great deal of unnecessary risk and uncertainty to the transition of the registry, and ultimately to the stability of .org.
- NeuStar has the strongest solution overall when measured against the ICANN-specified criteria.

The NCDNHC evaluation was flawed and biased rather than neutral, objective and independent.

As set forth by the ICANN staff, the purpose of the Staff Evaluation was supposed to be "to assist the Board in its decision by providing guidance that would help to ensure that the decision is as neutral and objective as possible, grounded in independent evaluations."¹ NeuStar maintains that because the Final Staff Report ("Final Report") and recommendation was based in large part on a biased, subjective, and flawed evaluation process, as discussed below, it can neither be described as neutral, objective, nor grounded in independent evaluations.

The ICANN staff appointed a biased, non-neutral, non-independent evaluator: the NCDNHC to evaluate the "Usage Criteria." Although the Board was correct when it suggested in Accra that the NCDNHC should provide input into the selection process (just as any other interested constituency should be able to provide input), the notion that the NCDNHC could be an independent and neutral evaluator of the Usage Criteria, much less the sole evaluator, is inappropriate. NeuStar submitted over fifty-pages of comments detailing the numerous flaws and biases in the evaluation process in its Preliminary Response, expecting that the ICANN Staff would take that opportunity to reassess those portions of the evaluation that were flawed and biased. Rather than correcting the inaccuracies and flaws, the ICANN Staff disregarded the overwhelming number of indisputable criticisms by dismissing them as immaterial.

¹ Final Staff Evaluation Report, <http://www.icann.org/tlds/org/final-evaluation-report-23sep02.htm>

The NCDNHC evaluation was fundamentally biased and flawed for the following reasons:

- The NCDNHC and its members were structurally predisposed to selecting a noncommercial entity (or one partnered with a noncommercial entity) to be the successor operator of .org.
- The NCDNHC deliberately added new criteria and misapplied criteria, based on DNSO policy that had explicitly been rejected by the Board. This blatant disregard for Board direction and specific written instructions from the ICANN President, Stuart Lynn, heavily skewed the evaluation results in favor of noncommercial applicants such as ISOC.
- The NCDNHC Report rewarded those applicants that agreed to financially support the evaluators.

The facts below clearly point to a NCDNHC effort to engineer a scoring system that predetermined the outcome in the favor of noncommercial organizations. When one looks at the *overall evaluations of all three criteria*, the Final Report confirms this. The fact is that all four proposals that were rated the highest by the NCDNHC were all either noncommercial entities, were partnered with, or were in some way already affiliated with, a noncommercial entity. For example, the stated reason that Unity was rated so high is because of the already existing “long-standing and broad relationships its parent Poptel has with the global noncommercial community.”

NCDNHC was structurally predisposed to selecting either a noncommercial entity or a registry operator that partnered with a noncommercial entity.

Given that the NCDNHC is exclusively comprised of representatives from the noncommercial community, it seems obvious that putting it in the position of deciding whether a noncommercial or commercial registry operator should operate the .org registry could not yield an objective or independent evaluation. This is even more apparent when one reviews the policy positions advocated by the NCDNHC and incorporated into the DNSO policy document submitted to ICANN Staff (see <http://www.dnso.org/clubpublic/council/Arc09/msg000>), in which it states that, “Responsibility for .org administration should be delegated to a non-profit organization...”.

The NCDNHC also has a strong self-interest in preserving its role as the primary voice of the noncommercial Internet community. This self-interest predisposes the NCDNHC toward selecting applicants that proposed to have the NCDNHC serve in some official capacity within proposed responsiveness mechanisms or by favoring those who offered financial assistance to the NCDNHC (as discussed below). ICANN Staff should have sought an objective evaluator with no financial or other vested interest outside of the stated criteria.

NCDNHC added criteria against the mandate of the Board and the ICANN Staff and specific direction by ICANN's President, Stuart Lynn.

In our response to the Preliminary ICANN Staff Report, NeuStar explained in detail that the NCDNHC added and misapplied a number of criteria in its evaluation that

rewarded noncommercial applicants (or those associated with noncommercial applicants) by relying upon a DNSO policy that was expressly rejected by the Board in Accra and later reaffirmed by the ICANN staff in the Final Report.

Moreover, in response to a question raised by an applicant regarding a preference to a non-profit organization as recommended by the DNSO, the ICANN Staff responded that that policy “was specifically not accepted by the ICANN Board of Directors. As such it was not reflected in the RFP. We note that the applicant submitted its proposal knowing this to be the case.”

However, the NCDNHC report, which the ICANN staff used to differentiate PIR and NeuStar, states that “Overall, our evaluation criteria were directly derived from the Request for Proposals (RFP) and the *DNSO Policy consensus*.”² In addition, in response to the questions and concerns raised by NeuStar, that the NCDNHC added criteria, the NCDNHC Report states that its “scoring elements are grounded in the *DNSO policy consensus* and the RFP.”

This clear contradiction shows that not only was the NCDNHC report flawed due to the use of added criteria, but also that the ICANN staff used this flawed evaluation in order to justify its initial and final recommendation of ISOC/PIR. It does not consistent for the ICANN staff to state to one applicant that the ICANN Board rejected the DNSO recommended policy, and then allow the NCDNHC Report to rely almost entirely on the same policy. NeuStar believes that this is not a minor discrepancy that can be disregarded.

NCDNHC rewarded those applicants that proposed to grant money to the evaluators themselves.

The NCDNHC report was clear in its evaluation in rewarding those applicants that promised to provide financial support to the evaluators themselves. As we stated in our Preliminary Response, the NCDHNC specifically stated that contributing to its favorable evaluation were the promises of ISOC, GNR, and UIA in pledging financial support for the NCDNHC or its activities. Despite the fact that the ICANN staff knew that the applicants had proposed these financial incentives to the NCDNHC, it asked that same organization to evaluate the bids.

ICANN's own “conflict of interest” policies would seemingly prohibit any organization from being the ultimate decision maker if that person or organization stands to financially benefit from the decision. In fact, as the General Counsel notes in his response to concerns that members of the ICANN Board might have a conflict of interest concerning the Internet Society bid, the conflict of interest policy prohibits “each ICANN Director from participating in decisions on ‘any matter in which he or she has a material and direct financial interest that will be affected by the outcome of the vote.’”

This situation is no different. The NCDNHC explicitly rewarded those applicants that pledged to support that organization financially. For example, in its evaluation of the ISOC application, the NCDNHC explicitly states:

² <http://www.icann.org/tlds/org/ncdnhc-supplemental-report-12sep02.pdf>, page 2

“ISOC has participated on the public forum and answered the questions of the NCDNHC. It has also, in its application, expressed a commitment to working with the NCDNHC constituency and ICANN and to help support the NCDNHC financially. Accordingly, the Committee awarded a rating of “High” in both categories.”

Even if the General Counsel is correct in its assertion that a true conflict of interest is only implicated once a person or organization stands to financially benefit from the decision, surely it must be recognized that having the NCDNHC conduct an evaluation (which was the primary basis for the ICANN Staff recommending ISOC over NeuStar), presents an improper conflict of interest.

The Staff Final Report improperly relied on a flawed and biased NCDNHC evaluation as the basis for its recommendation.

The ICANN RFP stated that its “first priority is to preserve the stability of the Internet, including the domain-name system (DNS)³” As part of that stability, it is no surprise that the number one criterion for evaluating the .org TLD proposals is the “Need to reserve a stable, well-functioning .org Registry.” In that regard, the Final Staff Report states:

“The NeuStar proposal was ranked the strongest overall by the Gartner team in its highest tier. Furthermore it scored highest in 4 of the 5 criteria considered by Gartner, including the important Criterion 1 and Criterion 9. Gartner had no management advisories regarding NeuStar in Gartner's letter of transmittal. If the technical evaluation were the sole determinant, staff would recommend NeuStar to the ICANN Board to be the successful bidder.⁴”

Therefore, as the ICANN staff clearly indicates, the determining factor for its recommendation of ISOC/PIR as the primary candidate for .org was that ISOC received a higher ranking by the NCDNHC.

The Board should disregard the Final Report recommendation and make its own neutral and objective determination.

Since Staff utilized the flawed and biased NCDNHC evaluation as the primary basis for the selection of ISOC, the Board should reject the Staff recommendation in the Final Report and make its own neutral and objective determination. In making its own assessment, the Board should compare the ISOC and NeuStar applications based on the criteria that were improperly assessed by the NCDNHC, and give proper weighting to the technical evaluation given ICANN's “first priority is to preserve the stability of the Internet.”

³ Reassignment of .org Top Level Domain: Criteria for Assessing Proposals, <http://www.icann.org/tlds/org/criteria.htm>, Criteria No. 1.

⁴ Final Staff Evaluation Report, <http://www.icann.org/tlds/org/final-evaluation-report-23sep02.htm>

PIR introduces a complicated organization structure, major formation tasks and additional unknowns resulting a great deal of unnecessary risk and uncertainty to the transition of the registry, and ultimately to the stability of .org.

The organizational model proposed by ISOC raises a number of questions and concerns and introduces very real business and organizational risks that place the timely transition and stability of .org at risk.

Under the ISOC proposal, the ISOC organization would have very limited, if any, involvement or responsibility for the .org registry. A separate legal entity that ISOC intends to call PIR ("Public Internet Registry"), and not ISOC itself, would be the contracting party and would have overall responsibility for the .org registry. This has been confirmed in a recent statement issued by ISOC and posted to its Web site (<http://www.isoc.org/dotorg/icann-response.shtml>), where ISOC states the following:

"ISOC will form a new not-for-profit company to run the .ORG registry - the "Public Interest Registry" (PIR) - whose Board will be appointed by ISOC, but which will operate independently...As a separate, not-for-profit entity, PIR will support .ORG operations, service improvements, and the marketing and other outreach programs detailed in the proposal."

Based on the above, it is unclear that ISOC itself, "the applicant of record", will play any significant role in the .org registry, other than selecting the Board of Directors of PIR. Although ISOC will not have any significant role in the registry, throughout its proposal it relied upon its own credentials and qualifications to respond. This calls in to question whether evaluators should have even considered the ISOC organization in their evaluations. In fact, considering this very limited role, it is not clear that ISOC is the applicant.

Putting aside the organizational ambiguity, there are a number of issues that call into question PIR's business and organizational model, and the organizational risk associated with PIR including:

- Unformed organization;
- No directors, management, or staff;
- No articles of incorporation or by-laws;
- No existing funding, and complete reliance upon a line of credit provided by a potential sub-contractor;
- No offices, phone numbers, or website;
- No bank account;
- No operating procedures;
- No working relationship with the current .org registrars;
- Has yet to qualify for legal 501(c)(3) non-profit status; and
- No definitive agreement with the registry sub-contractor.

The activities required to responsibly transition the .org registry are sufficiently challenging and complex even for an existing organization with the proper resources in place. In addition to the technical, logistical, and operational challenges, the selected registry operator will have to negotiate and finalize an agreement with ICANN. Doing so, while addressing the issues above, may prove impractical, thus placing the timely transition and stability of .org at risk.

Despite ICANN Staff dismissal of several applicants' comments, financial stability *is* a factor. ISOC does not plan to provide any funding to PIR. According to the ISOC proposal, "Afilias will provide a \$250,000 line of credit to PIR". Given the scale of the .org registry and level of activity required to ensure the timely and stable transition of the TLD, and the other business formation activities noted above, a \$250,000 credit line will not adequately support the transition. In its evaluation of Criterion #10 (VeriSign Endowment), ICANN states that ISOC "appears qualified" to receive the endowment. For many of the unresolved formation issues outlined above, receipt of the endowment is not certain and therefore should not be considered in determining level of financial risk associated with PIR. Given the above, the evaluations should have considered the additional financial risk that the ISOC organizational model for PIR introduces to the successful transition of .org.

Further, under the current schedule, there is less than a 90-day timeframe for transition of the .org registry. The additional unknowns and major formation tasks associated with PIR introduce a great deal of unnecessary risk and uncertainty to the transition of the registry, and ultimately to the stability of .org. Although some might argue that PIR's potential contractor (Afilias) can accept responsibility for all activities associated with the transition, ultimately PIR—not Afilias—will be contractually responsible and accountable for the transition.

Given all of the unknowns that surround PIR, including the identity and credentials of the people who will ultimately be held accountable for its administration, the evaluations should have concluded that the ISOC proposal does not include a strong business and organizational model and that PIR is not prepared to operate a registry without significant organizational risk. The unformed organization described includes a complicated organizational model that carries less than a 100% chance of execution.

In response to the above, it has been suggested by other applicants that the formation of PIR to support the transition of .org is not unlike NeuStar's formation of the NeuLevel joint venture to support the introduction of .biz. This is not the case since NeuLevel was formed prior to submitting an application to ICANN and both NeuStar and Melbourne IT contributed existing people and financial resources. In other words, all of the resources outlined above, which are not in place for the unformed PIR, were in place in the case of NeuLevel. NeuStar would also point out that the transition of an existing TLD with over 2 million existing domain names within a 90-day period represent far greater risk than the introduction of a new TLD within a year of award.

NeuStar has the strongest solution overall when measured against the ICANN-specified criteria.

In order to assist the Board in making its own neutral and objective determination, the table below provides a summary of the NeuStar proposal relevant to each of the ICANN-specified criteria.

ICANN criteria	NeuStar solution	NeuStar's experience
Need to preserve a stable, well-functioning .org registry	<ul style="list-style-type: none"> Secure, high-availability registry infrastructure. Proven transition plan. Sound policy. Stringent service level agreements. Use of open standards. 	<p>NeuStar successfully operates registries for:</p> <ul style="list-style-type: none"> .biz and .us NANPA NPAC Number Pooling Number Translation Services.
Ability to comply with ICANN-developed policies	Effective mechanisms for compliance with policy requirements.	All NeuStar lines of business operate under strict, Industry-developed policy requirements.
Enhancement of competition for registration services	<ul style="list-style-type: none"> Independent, neutral third-party operation. Low - cost migration path from RRP to EPP. Registrar support 24x7x365, multiple languages. Use of open standards. 	<ul style="list-style-type: none"> NeuStar has a legacy of providing trusted, neutral third-party services in highly competitive industries. NeuStar is a proven leader in open standards development.
Differentiation of the .org TLD	Focus on the needs of the global noncommercial community.	Targeted marketing campaigns for: .biz; .us; CARE; and ETNS.
Inclusion of mechanisms for promoting the .org registry's operation in a manner that is responsive to the needs, concerns and views of the noncommercial Internet user community	Comprehensive plan for outreach, independently and through the GPC.	NeuStar facilitates policy and develops solutions that enhance competition in all of our lines of business.
Level of support for the proposal from .org registrants	Endorsements from prominent noncommercial organizations.	NeuStar effectively serves the needs of diverse communities in all of its lines of business.
Type, quality and cost of the registry services proposed	At a price of USD 5.00 per name, NeuStar will provide high-quality registry services.	NeuStar traditionally provides significant value while offering TLD registrations at a rate well below market.
Ability and commitment to support, function in and adapt protocol changes in the shared registry system	<ul style="list-style-type: none"> Low -impact EPP migration plan. Development support for open standards. 	NeuStar has been directly involved in the development of the EPP protocol and will also support RRP.
Transition considerations	NeuStar has developed a proven, "zero impact" registry transition plan.	NeuStar has successfully transitioned mission-critical registries, including .us and NANPA.
Ability to meet and commitment to comply with the qualification and usage requirements of the VeriSign endowment and proposed use of the endowment	NeuStar's business plan, model, and vision for transitioning and maintaining the .org TLD is not based upon receipt of the endowment.	NeuStar provides many services at low, transaction-based prices.
The completeness of the proposal submitted and the extent to which it demonstrates realistic plans and sound analysis	NeuStar's proposal represents a comprehensive, well-designed solution for all facets of the .org transition and operation.	NeuStar's team has leveraged direct experience to provide the most comprehensive plan for the transition and operation of the .org registry.

The following highlights several key criteria where NeuStar's solution is significantly differentiated as compared to the ISOC proposal. These criteria include:

- Need to preserve a stable, well-functioning .org registry;
- Enhancement of competition for registry services; and
- Responsiveness mechanisms to ensure the registry is responsive to the needs, views and concerns of the noncommercial community.

Need to preserve a stable, well-functioning .org registry.

NeuStar, as demonstrated in our application and validated by Gartner's independent evaluation, singularly represents the strongest technical solution for registry management. In ICANN Staff's own words:

The NeuStar proposal was ranked the strongest overall by the Gartner team in its highest tier. Furthermore it scored highest in 4 of the 5 criteria considered by Gartner, including the important Criterion 1 and Criterion 9. Gartner had no management advisories regarding NeuStar in Gartner's letter of transmittal. If the technical evaluation were the sole determinant, staff would recommend NeuStar to the ICANN Board to be the successful bidder.⁵

Experience is an important factor in assessing the ability of a registry operator to transition and maintain a stable .org. Our proven, robust, scalable and secure registry platform was designed, implemented and is operated solely by NeuStar. NeuStar's experience also includes successfully managing a first-come-first-serve landrush. NeuStar is the only applicant with experience transitioning a TLD from VeriSign.

ISOC's chosen registry operator Afilias has not operated the .info registry from its inception. In fact, it was acquired less than six months ago from the Liberty RMS subsidiary of TUCOWS.

As highlighted in the response to ICANN Staff questions, the technical solution proposed by NeuStar employs technology that has been proven in real world applications to support the reliability, scalability and security required to maintain the stability of the .org TLD. Oracle and Sun technology are widely deployed for supporting mission critical applications. While the technology that Afilias proposes to support .org (PostgreSQL), although useful for some applications, has not been proven to support mission-critical applications that require the reliability, scalability and security on a scale required by the .org TLD.

Enhancement of competition for registration services

The NeuStar application for .org demonstrates how we are uniquely positioned to maximize competition at both the registry and registrar level. The selection of NeuStar to operate the .org registry will best foster competition because of the following attributes:

⁵ Final Staff Evaluation Report, <http://www.icann.org/tlds/org/final-evaluation-report-23sep02.htm>

- Trusted, neutral third-party model;
- Binding Code of Conduct;
- Experience promoting competition;
- Creation of a globally diverse .org Global Policy Council representing ALL sectors of the noncommercial community;
- No affiliation with the incumbent dominant registry provider;
- Well capitalized to ensure long-term viability and competitiveness of the registry market;
- No conflicting gTLD; and
- A highly competitive price of \$5.00 that also allows for maintaining high levels of service quality while representing a significant cost savings vs. the proposed ISOC status quo price of \$6.00.

NeuStar believes strongly that a neutral third party model will best promote competition in the domain name industry. Below, NeuStar compares the “Trusted Neutral Third Party Model” with the “Consortium Model” employed by ISOCs sub-contractor and NeuStar.

Consortium model—The Consortium model, in which a number of registrars own an entity that operates the registry, does provide a means of pooling common interests and funds for registry operations. However, this model also is not optimal in terms of fostering competition for the following reasons:

- The registrar members of the consortium enjoy incremental revenue and profits for names registered whereas non-consortium registrars do not, thereby creating a pricing advantage;
- Potential delays in important decisions could occur due to the need to gain consensus or input from multiple consortium owners;
- Potential difficulties encountered in obtaining capital from multiple owners, particularly in volatile markets;
- Potential conflicts of interest in Registrar policy and contract enforcement; and
- The consortium model inherently limits the incentive for the registry operator to increase the number of registrars since this creates more competition for the consortium members.

Neutral, third-party model—In the neutral, third-party model, the registry operator does not operate as a registrar and therefore it does not offer any services that compete with the registrars. The neutral, third-party model is the optimal model for promoting competition for the following reasons:

- All registrars have equal access to registry services, technology, support, and resources;

- Competitively sensitive information is not available to a single registrar or select group of registrars;
- No registrar receives disproportionate pricing or promotional advantages by virtue of serving as both the registry and registrar in the same TLD space; and
- No conflicts of interests arise with respect to uniformly enforcing policies designed to combat anti-competitive behavior.

NeuStar does not and will not accept .org registrations directly from registrants. By maintaining NeuStar's focus on providing registry services to registrars, the registrar community is effectively served in a manner that supports fair and open competition.

Inclusion of mechanisms for promoting the registry's operation in a manner that is responsive to the needs, concerns, and views of the noncommercial Internet user community.

NeuStar's proposal includes a detailed description of the proposed mechanism for ensuring that the registry is responsive to the needs of the noncommercial Internet community. The major elements of NeuStar's proposal are as follows:

Establishment of an independent Global Policy Council (GPC)—NeuStar proposes the formation of a representative Global Policy Council to ensure that the .org registry is responsive to the needs of the noncommercial community.

Framework to ensure diverse representation—NeuStar specifies that members of the Global Policy Council must be selected within a framework that ensures representation from all sectors of the noncommercial community, large and small organizations and is geographically diverse. The initial Council, at its sole discretion can make changes to the framework as long as such changes are consistent with the principles of representativeness. No such detailed framework is provided by ISOC for its "Advisory Council".

Selection by the community (not NeuStar)—A Selection Committee comprised of representatives from the noncommercial community (not NeuStar) will select the Council members. ISOC proposes that the yet unformed PIR Board will select members of the Advisory Council.

System of checks and balances—NeuStar has committed to system of "checks and balances" in which NeuStar is required to solicit written comments for all proposed changes to .org org policies, pricing and services, and committed to a requirement to include all such input in any proposals to ICANN. The ISOC proposal does not contain any such commitment. The PIR Board has the ability to simply reject or ignore comments from the community. NeuStar has also committed to publicly post all such proposals.

Proposed operating procedures and principles—The NeuStar proposal includes proposed .org Global Policy Council Operating Procedures and Principles which is subject to change and modification, within the principle of representativeness, by the independent GPC once formed. Among other things, this document specifies

procedures for forming the GPC, duties, representativeness principles, meetings, term lengths, policy process, etc. The ISOC proposal does not include operating procedures of any kind.

Commitment to fund activities— The NeuStar proposal commits funds to support staffing and related activities for the GPC. Such Staff will be selected solely by the GPC and operate under the direction of the GPC and not NeuStar. ISOC has not committed to find any staff for its proposed Advisory Council.

CONCLUSION

The above supports the conclusion that NeuStar has the strongest solution overall when measured against the ICANN criteria. NeuStar is the safest choice for ensuring the timely and stable transition of .org and will best ensure that the noncommercial community is served in a highly responsive manner. Had the evaluation been conducted in an independent and objective manner, consistent with the criteria specified by ICANN, then NeuStar should have been recommended to the Board. For this reason, NeuStar asks only that the Board deliberate based solely on the ICANN criteria and on the merits of the proposals before it and not based on the flawed Staff Report.

In order to assist the Board in its deliberations, NeuStar has provided a list of questions, which we believe will be useful in selecting the new .org registry operator.

- Should ICANN select the technically superior registry operator with infrastructure that has proven to be scalable or a second best infrastructure that may not scale?
- Does selecting a unformed entity (PIR) with unknown staff and no resources of its own represent additional risk to the timely transition and stability of .org?
- Is competition best fostered by a consortium controlled by only eighteen of the more than one hundred ICANN accredited registrars, or by a neutral third party that does not compete with the community it is serving?
- Which applicant proposal—NeuStar or ISOC—included a more complete description of a mechanism for ensuring representation from all sectors of the community?
- Does ISOC's proposal inappropriately rely on ISOC's credentials when ISOC's only role will be the selection of the PIR Board?
- Does a proposal, which includes outsourcing the registry to a third party who in turn outsources to several other third parties, represent additional risk due to the additional coordination requirements in what is a very short timeframe?
- Who will be contractually responsible and accountable to ICANN and the Internet community?

NeuStar appreciates the opportunity to comment on the ICANN Staff Report. We stand ready to move quickly to work with ICANN and VeriSign to transition .org in a seamless manner, and to serve the noncommercial community in a highly responsive manner.