

DOC4. NEUSTAR'S RESPONSE TO THE EVALUATION OF USAGE CRITERIA BY THE NCDNHC USAGE EVALUATION TEAM

ICANN states that its “first priority is to preserve the stability of the Internet, including the domain-name system (DNS).¹” 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.”

Although not as significant, ICANN also asked applicants to address responsiveness, differentiation, and support from the global noncommercial Internet community (“Usage Criteria”). It is undisputed that the Gartner Evaluation, combined with the CIO Report’s tiered ranking, concluded that NeuStar had the most advanced, stable and well thought out technical solution and transition plan. Despite this fact, the ICANN staff recommended ISOC to be the successor operator for the .org TLD, although ISOC did not rank higher than NeuStar in either of the Technical Evaluations (in fact, it was ranked lower in the Gartner Evaluation). Therefore, the only documented basis for the ICANN staff’s recommendation of ISOC as the primary candidate for .org was: ISOC received a higher ranking by the Noncommercial Domain Name Holders Constituency (“NCDNHC”).

Given the importance that the Usage Criteria played in the ICANN staff’s recommendation, NeuStar notes that only one evaluation team, the NCDNHC, was assigned to this task, whereas there were two independent teams for the technical evaluation “in order to lend confidence to the final results.²”

The ICANN staff was correct in pointing out, “. . . many individuals on [the NCDNHC] team had previously carefully considered many of the issues and concerns surrounding the relationship of the .org registry to the domain name aspirations of the non-commercial community (or communities).³” However, NeuStar submits that the NCDNHC members’ prior consideration of the issues surrounding the reassignment of .org resulted in an evaluation process that was by no means independent, neutral or unbiased.

NeuStar believes that the evaluation conducted by NCDNHC was fundamentally flawed for the following reasons:

- The NCDNHC members were predisposed to selecting a noncommercial entity (or one partnered with a noncommercial entity) to be the successor operator of .org.
- The NCDNHC deliberately added criteria above and beyond those that were set out by the ICANN Board resulting in the awarding of extra points to noncommercial and nonprofit applicants, for the sole purpose of giving preferences against the mandate and advice of the ICANN Board, Staff and CEO.

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

² Preliminary Staff Report on Evaluation of the Proposals Reassignment of the .Org Registry, (“Staff Report”) <http://www.icann.org/tlds/org/preliminary-evaluation-report-19aug02.htm>.

³ Staff Report at page 10.

- The newly fabricated criteria are inconsistently applied to each proposal;
- The NCDNHC created a weighting schema that resulted in prioritizing its own unpublished criteria over those published criteria that was set out in the RFP.
- The NCDHNC Report contains numerous flagrant material mathematical errors that diminish NeuStar's ranking.

NeuStar response table

Error	Reference	ICANN Staff required action
4.2.1.1 Subjective interpretation of defined criteria	NCDNHC, pages 3-11	Remove NCDNHC-constructed criteria Focus exclusively on the stated ICANN RFP materials of market plans and new service offerings
4.2.1.2 Inconsistent evaluation across proposals	NCDNHC, page 6	Assign value to new service offerings NeuStar detailed in the proposal Assign value to NeuStar's defined co-marketing initiatives Assign value to NeuStar's support from and experience working with registrars
4.2.1.3 Biased weighting	NCDNHC, pages 3, 4	Assign equal weight to the ICANN-defined evaluation criteria – marketing plans and defensive registration discouragement Assign no value to NCDNHC-constructed criteria
4.2.2.1.1 Factor 1, Input/Governance: inconsistent application of Actual Criterion	NCDNHC, pages 14, 16, 18	Correct NeuStar's and ISOC's relative scores to accurately reflect NCDNHC's documented evaluation
4.2.2.1.2 Factor 2, Pre-bid survey: mechanism for responsiveness evaluated incorrectly	NCDNHC, pages 14-20	No action
4.2.2.1.3 Factor 3, Post-bid responsiveness – higher scores for quicker response time?	NCDNHC, page 17	Correct each applicants' score to eliminate any preference for a quick response
4.2.2.1.4 Factor 4, NCDNHC's self-serving criteria creates inherent conflict of interest and bias	NCDNHC, pages 14, 16	Disregard Factor 4 in any evaluation by ICANN Staff or Board
4.2.2.1.5 Factor 5, Relationship with the noncommercial community: added criterion rewards noncommercial applicants	NCDNHC, page 14, 15	Disregard Factor 5 in any evaluation by ICANN Staff or Board
4.2.2.1.6 Factor 6, Services targeted at noncommercial community: inconsistently applied and duplicative criteria	NCDNHC, page 14-20	Correct inconsistent evaluation
4.2.2.1.7 Factor 7, "Good Works": newly added criterion in conflict with instructions from the ICANN Board	NCDNHC, page 14, 15	Disregard Factor 7 in any evaluation by ICANN Staff or Board
4.2.3.1 Arbitrary reclassification from Class A to Class B using new criteria	NCDNHC, page 22, 22	All 26 NeuStar endorsements should be scored as Class A

NeuStar response table

Error	Reference	ICANN Staff required action
4.2.3.2 Incorrectly reclassified endorsees with valid .org registrations	NCDNHC, page 22, 24	Classify NeuStar letters to Class A
4.2.3.3 Incorrectly eliminated endorsement – not able to validate existence	NCDNHC, page 22; Annex 4, page 38	Add one additional Class A endorsement
4.2.3.4 Improper consideration of ineligible endorsements	NCDNHC, page 22, 25	Disallow the listed ineligible endorsements
4.2.3.5 Omission of NeuStar endorsement letters	NCDNHC, page 22, 24, 25	Add five additional Class A endorsements
4.2.3.6 Use of “estimates” and “guesstimates” to determine valid endorsements	NCDNHC, page 23, 34	Perform thorough, even-handed count of all applicants’ letters
4.2.3.7 Inconsistent recognition of pre-bid outreach activities	NCDNHC, page 22, 24, 25	Classify NeuStar letters to Class A
4.2.3.8 Incorrectly awarded ISOC a Class A endorsement for endorsing its own proposal	NCDNHC, page 22, 23	Disallow ISOC’s own Class A endorsement
4.3.1 Material error in calculation of NeuStar score for Criterion 6 in the Normalized Ranking necessitates increase in overall ranking.	NCDNHC Annex 5	Accurately assign values in table, recalculate table normalized ranking, and reassign tiers
4.3.2 Contradictory assignment of value to support letters	NCDNHC, page 21-25, Annex 5	Assign consistent value to support letters
4.3.3 Inconsistent scales and normalization complications.	NCDNHC Annex 2 and Annex 5,	Choose and substantiate a single weighting and apply consistently.
4.3.4 No relevance and foundation for two overall scoring methods.	NCDNHC, page 26	Choose a single method that is only used for overall consideration.

4.1 Usage evaluation team: Neither independent, neutral, nor unbiased

The “Usage Evaluation Team” (“NCDNHC”) established by ICANN to review Criteria 4, 5, and 6 of the RFP were all members of the Non-commercial Domain Name Holders Constituency of the Domain Name Supporting Organization of ICANN (“NCDNHC”). Although, as the ICANN staff report explains, many members of the NCDNHC had familiarity with the .org solicitation, having participated directly or indirectly in the DNSO task force on .org that led to the DNSO recommendation to the ICANN Board⁴, many of these same members were unable to prevent the findings of the DNSO Task Force Report from influencing their work on the actual RFP that was finalized by ICANN on May 20, 2002.

⁴ See <http://www.icann.org/accra/org-topic.htm>.

Moreover, the NCDNHC Report was inconsistent and biased in favor of noncommercial applicants. The NCDNHC seems to have been predisposed to selecting a noncommercial applicant (or one that partners with a noncommercial applicant) to administer the .org TLD since long before the formal solicitation process and this bias carried over into the selection process when several key leaders of the NCDNHC were appointed by the ICANN staff to serve on the NCDNHC. In addition, the NCDNHC was predisposed to selecting an applicant that financially supported their own constituency. This is evidenced in Resolution #2 of the NCDNHC at the ICANN third annual meeting in Marina Del Rey in November 2001 which resolves “[t]hat sponsorship of the .org TLD should be placed in the hands of an organization that has strong support from the NCDNHC and that will use revenues from the sale of registrations to support the participation of noncommercial interests in the ICANN process.”⁵

During July or August, 2001, Dr. Milton Mueller, a Names Council representative elected by the NCDNHC, was appointed to serve as a co-chair of the DNSO's Task Force analyzing issues surrounding the reassignment of the .org TLD. The Task Force's final report (“Task Force Report”) to the Names Council (which was subsequently forwarded to the ICANN Board), stated that “[r]esponsibility for .org administration should be delegated to a non-profit organization that has widespread support from and acts on behalf of that community.” Although the ICANN Board expressly rejected⁶ the notion that the successor operator of .org had to be a nonprofit entity, and encouraged both for-profit and not-for-profit entities to apply to become the successor operator of .org, several members of the NCDNHC, including Dr. Mueller, were unhappy with the ICANN Board's decision to allow bids from commercial entities. In fact, Dr. Mueller called it “bizarre” when the ICANN board failed to adopt the entirety of the Task Force Report⁷ and subsequently stated on the NCDNHC listserv (<http://www.icann-ncc.org/pipermail/discuss/2002-April/001865.html>) :

It's not my purpose to point fingers of blame, but I still believe strongly that a major mistake was made, possibly through just confusion or fear or ignorance. And contrary to Alejandro's typically divisive and unconstructive assertions, it's not about my role at all - it's about the role of the DNSO in ICANN policy formulation. You just can't set up a formal structure for policy development and ignore it at crunch time.

The DNSO has been effectively killed by this decision. There are numerous other decisions and processes that undermined the DNSO, but this one was the coup de grace.

Even as late as May 5, 2002 (almost two months after the ICANN Board stated that their would be no preference given to a nonprofit bidder), in commenting on the proposed RFP, Dr. Mueller, in an e-mail to the Task Force, assumed that only a nonprofit entity (partnered with a registry operator) could be selected as the successor operator for the .org TLD. See <http://www.dnsso.org/clubpublic/nc-org/Arc00/msg00397.html>

⁵ See <http://www.ncdnhc.org/docs/resolution/LosAngeles/LA-resolution-1-bis.html>.

⁶ See <http://www.icann.org/accra/captioning-afternoon-14mar02.htm>

⁷ See <http://www.icann-ncc.org/pipermail/discuss/2002-March/001693.html>.

(stating that “The RFP could tell registry operators to avoid exclusive agreements with Non-Profit organizations [sp.] that are bidding for control of .org, so that any non-profit would have access to the same commercial operator on the same terms. This would address many of the concerns about fake non-profits being put forward, and would make it easier for the board to choose both the best non-profit bidder and the best registry operator).” In fact, just before the proposals were submitted, Dr. Mueller engaged in dialogue with another member of the NCDNHC prejudging ISOC’s bid by commenting on whether or not an entity submitting bids was truly a “nonprofit entity.”⁸ Despite these statements of his own bias, Dr. Mueller was appointed to serve as one of the co-chairs of the NCDNHC, an evaluation team that was established to provide an independent, neutral and unbiased evaluation of the eleven proposals.

In addition to Dr. Mueller, the other appointed co-chair of the NCDNHC, Harold Feld, also indicated on various occasions his own disappointment at the ICANN Board’s Decision to reject the Task Force Report in its entirety.⁹ More specifically, he was amazed by the fact that the ICANN Board refused to mandate that the successor operator not be a noncommercial entity.¹⁰ Yet another member of the NCDNHC, Marc Schneiders, sent an e-mail around the NCDNHC list proclaiming support for the ISOC bid even prior to the applications being submitted and encouraging others in the NCDNHC to join ISOC to “influence the future running of .org.”¹¹

As is discussed below, this team carried its bias throughout the analysis.

4.2 Criteria Evaluations – biased, inaccurate, and inconsistent

4.2.1 Criteria # 4. Differentiation of the .org TLD.

A key objective is differentiation of the .org TLD from TLDs intended for commercial purposes. Appropriate marketing practices are a primary tool for achieving that objective. Proposals should include detailed planned marketing practices designed to differentiate the .org TLD, promote and attract registrations from the global noncommercial community, and minimize defensive and duplicative registrations.

⁸ <http://www.icann-ncc.org/pipermail/discuss/2002-June/002393.html>.

⁹ <http://www.icann-ncc.org/pipermail/discuss/2002-March/001682.html>

¹⁰ <http://www.icann-ncc.org/pipermail/discuss/2002-March/001689.html>

¹¹ <http://www.icann-ncc.org/pipermail/discuss/2002-June/002363.html>.

In developing this statement and adding it as a criterion, ICANN places responsibility on the registry operator to focus the .org namespace on the non-commercial community the domain space was initially intended to support. This task is very achievable if the Registry Operator meets certain factors:

- An understanding of how to reach the non-commercial Internet community and a commitment to involve them in the administration process;
- A demonstrated understanding of the non-commercial community and their needs from the namespace;
- Experience jointly working outreach programs independently and with registrars; and
- An ability to define illustrative services and applications that will support the community's on-line needs.

Such factors to define and review differentiation were enumerated by ICANN in the RFP, specifically, providing marketing plans and new service applications for the non-commercial community. NeuStar submits that differentiation of the .org TLD is an important evaluation criterion, but the evaluation as conducted by the NCDNHC was flawed in its execution. The NCDNHC evaluation strayed from ICANN's stated evaluation criteria, which all applicants used to structure their proposals, by introducing its own set of criteria.

The NCDNHC's new criteria introduced new evaluations metrics used in evaluation of proposals other than the ICANN-defined criteria. Further, these new criteria were deemed more important by the NCDNHC evaluators, as demonstrated in their weighting schema that gave more value to new criteria than ICANN's defined criteria.

The evaluation took objective criteria and reviewed and assigned scoring in a subjective fashion. The NCDNHC essentially added new criterion in its evaluation process—market research, positioning, defensive registration, unrestricted, innovation, and registrars. NeuStar has three specific issues with the new criteria introduced by the NCDNHC:

1. Newly constructed sub-criteria are subjective interpretations and are not defined;
2. The new criteria are not uniformly applied to each bid and the NCDNHC did not consider the proposals in totality, and;
3. The NCDNHC developed a weighting schema that prioritizes their constructed criteria over ICANN's defined criteria.

These evaluation discrepancies and specific examples are defined below.

4.2.1.1 Subjective interpretation of stated criteria

What is extrapolated as new criteria or 'factors' for market research and the resultant positioning were not explicit criteria in the final ICANN RFP ¹². While conducting market research is a strong method for gaining an understanding of the non-commercial community, conducting such research was not a requirement for the proposal. Subsequently, resultant positioning (specifically, the NCDNHC's evaluation of "reinvigorating" the TLD and creating a clear "brand identity") are improper metrics of evaluation, as applicants were not instructed by the ICANN RFP to detail specific messaging and brand campaigns.

On positioning specifically, NeuStar refers ICANN to Section C38 of our proposal. As is discussed there, the idea of a .org 'brand' is clear – our survey indicated that, despite its polluted base, .org has an inherent meaning that resonates with people – that it is for "non-profits", i.e., the intended non-commercial community.

Our targeted plan, in conjunction with our covenant to forbid the use of NeuStar co-marketing funds for outside the non-commercial community, provide a powerful marketing program, centered around an existing brand identity to that of "non-profits." NeuStar explicitly commits to abiding by a strict Code of Conduct that clarifies that "NeuStar shall not market .org domain names or offer promotions or incentives that are specifically targeted at encouraging commercial registrations within the .org TLD."

4.2.1.2 Inconsistent evaluation across proposals

The NCDNHC evaluation failed to properly recognize and compare proposals in a consistent and objective manner. Within each proposal, there are items presented that are not given consideration in the NCDNHC's evaluation. As demonstrated, the evaluation was not thorough, and specific services and commitments were ignored in whole or part. This problem is specifically seen in two areas: "Innovation" and "Registrars".

Innovation

With respect to innovation, NeuStar is given a score of 0, equivalent to 'no innovation,' when in fact NeuStar posits five (5) new proposals to introduce in the .org space. We were not alone in this misjudgment; none of the applicants were properly recognized for innovations such as these. Additional confusion around this new criterion is that it is duplicative with the new evaluation criteria added to stated Criteria #5 (Responsiveness) - "services targeted at the non-commercial community". It is highly suspect that NeuStar, and others, received points for these services in the Responsiveness criterion, but received no points under this criterion.

¹² See final RFP materials at <http://www.icann.org/tlds/org/rfp-20may02.htm>.

The services proposed by NeuStar are not currently available to .org name holders, and thus, by definition, are 'innovations' to the namespace. Specifically, this is seen in:

- **Registry services**—NeuStar refers ICANN to Section C25 of our proposal for specific examples of additional registry service including:
 - **.org Name recovery program**—a voluntary mechanism for commercial companies to relinquish their names directly to the corresponding non-commercial registrant.
 - **Enhanced Whois**—a service that allows end users to submit criteria for searching a string or sub-string in up to three fields in the Whois database to facilitate trademark research, dispute resolution, domain name management, and domain research-related activities.
- **New service concepts**—NeuStar refers the reviewers to Section C38.2 of our proposal for illustrative examples of other product ideas for the non-commercial Internet community, including:
 - **Global non-commercial entity directory**—a comprehensive compilation of non-commercial organizations on the Internet that will facilitate discovery.
 - **Non-commercial entity web promotion service**—low cost search engine and directory submission services.
 - **Non-commercial search engine service**—a proposal that will allow anyone anywhere to get instant access to the millions of “invisible” experts and enthusiasts who are already online at any one time.
- **Code of conduct provisions**—Within NeuStar's Code of Conduct, we proposed stringent rules on marketing to ensure the .org TLD is focused on the intended non-commercial community. As stated in Section C21, “NeuStar shall not market .org domain names or offer promotions or incentives that are specifically targeted at encouraging commercial registrations within the .org TLD.” This is more than “a simple pledge;” it is a part of a code that we voluntarily created and will be contractually obligated to meet.

Registrars

With respect to the new criterion, “Registrars”, theoretically, those applicants with existing registrar relationships and contacts should rank equivalently, barring any new stated programs to be introduced. Despite this, there are applicants with no existing registrar relationships and no innovative plans for creating and/or managing those relationships that earned scores that outranked those of existing TLD registry operators.

NeuStar has a strong commitment to working with our registrars and providing high-quality service in an equivalent manner and exploring ways to cooperatively bring success to the namespaces we manage. As part of our outreach efforts and proposal process, we contacted some of our existing registrars, who are also the existing .org registrar community. This resulted in several letters of support from existing registrars that endorsed NeuStar's proposal to manage the .org TLD.

Nominal consideration is given to the fact that NeuStar has relationships with registrars that either account for over 99% of all .org domain registrations or with which we have collaborated on co-marketing programs for both the .biz and .us TLDs. NeuStar has a vast internal registrar support network that covers such functions as technical access, new business development, marketing relations and legal and policy support. As stability is a primary concern in evaluation, no changes to the way we interact with registrars were introduced.

Relative to co-marketing efforts, NeuStar is committed to focusing resources at the intended registrant community, as we currently do in our existing TLD management. Specifically, NeuStar detailed vertical marketing programs in Section C8 of our proposal - much like those we currently undertake today with our channel - that include "HTML e-mail campaigns, online newsletters, sponsored events and conferences, co-marketing print and/or direct mail to the targeted vertical, and sales incentive programs."

These initiatives, combined with our experience and commitment to targeting a specific Internet community and the support by the existing channel are clear examples of our commitment to working with the registrar community.

4.2.1.3 Biased weighting

The weighting assigned to the newly constructed sub-criteria for final scoring in Criteria #4 gives greater value to interpreted criteria than to those explicitly defined in the RFP. The stated criteria, specifically those related to marketing plans, defensive registrations, and keeping the registrations unrestricted, should have at least equal value to the interpreted criteria. Arguably, these factors should be given greater weight than those introduced post-submission.

In its assignment of points, NCDNHC again demonstrated a bias to non-commercial applicants and provided them with scores higher than those of commercial applicants. The criteria that received the greatest weight are, coincidentally, the categories where the commercial entities received the lowest scores. The converse of this argument holds true as well, where the commercial entities scored highest - "market research" and "discouraging defensive registrations" were given the lowest weighting for final score determination.

4.2.2 Criteria #5. 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.

The successor operator's policies and practices should strive to be responsive to and supportive of the noncommercial Internet user community, and reflect as much of its diversity as possible. Consideration will be given to mechanisms proposed for achieving this responsiveness and supportiveness. A broad variety of mechanisms are possible, such as teaming between for-profit and non-profit organizations and establishment of governing or advisory groups for the operation of the .org registry that include representatives of the noncommercial Internet user community.

Where representative governing or advisory groups are proposed, the proposal should ensure a mechanism for providing all .org registrants with the opportunity to participate in that mechanism, either through the selection of members, or through some other means. The bylaws or other documents establishing the groups should provide explicitly for an open, transparent, and participatory process by which .org operating policies are initiated, reviewed, and revised in a manner that reflects the interests of .org domain name holders and is consistent with the terms of its registry agreement with ICANN.¹³

4.2.2.1 Against the mandate of the ICANN CEO, NCDNHC introduced new unpublished criteria, and inconsistently applied criteria, giving preferential treatment to noncommercial applicants.

Although ICANN's explanation of the above criteria stated that there could be different models and/or mechanisms for providing for participation from .org registrants in the governance of the .org TLD, it also stated clearly in both its letter to the NCDNHC as well as in the board statements made in both Accra and Bucharest, that no special preference was to be given to (or against) any bidder based solely on whether that bidder was a noncommercial or for-profit entity.¹⁴ Despite the guidance given by the ICANN Board and the CEO, the NCDNHC, biased towards selecting a nonprofit entity (or a for profit entity partnered with a nonprofit entity), specifically added new criteria within this category that "stacked the deck" against for-profit entities, including NeuStar. The addition of these unpublished new criteria, which were *never* made available to any of the 11 bidders, was done in contravention of ICANN's CEO's explicit instructions.¹⁵ In addition, in applying these unpublished new criteria, there was an extreme lack of uniformity among the reviewers, presumably caused by the NCDNHC's desire to award .org to a noncommercial entity.¹⁶

Finally, not only did the NCDNHC create additional unpublished new criteria, but it also created its own definition of "Responsiveness" which was not provided in the RFP or any of the documents presented by ICANN to the 11 applicants prior to their submissions of their respective proposals.

NeuStar commissioned an independent third-party study and met directly with noncommercial organizations prior to developing its proposal to gain an understanding of the needs of the noncommercial community. This study revealed that the real concerns of the noncommercial community with respect to .org were:

¹³ See <http://www.icann.org/tlds/org/criteria.htm>.

¹⁴ See <http://www.icann.org/accra/captioning-afternoon-14mar02.htm>.

¹⁵ "It is very important that ICANN's evaluation of each application be done in a thorough and evenhanded manner, according to the published criteria, and only according to publicly posted documentation." See Annex 1 of the NCDNHC Report (Page 28).

¹⁶ For example, The DotOrg Foundation describes a governance model virtually identical to NeuStar's Global Policy Council that will be initially chosen by the bidder but ultimately elected by .org registrants. Both were recognized as having the same limitation in that the bidder may influence the outcome of the Board and could ignore the Council. Unlike NeuStar's GPC, which pledges to have all proposals go before ICANN in the event that NeuStar and the GPC were not able to agree on the proposed policy governance, the DotOrg Foundation did not make that pledge. Yet for an undocumented reason, the DotOrg Foundation was given "6 points" in that category, while NeuStar was given only "3". (See Pages 16, 18).

1. Ensuring a smooth transition from VeriSign;
2. Maintaining the service at the lowest possible price;
3. Maintaining a reliable registry; and
4. Providing a voice for the noncommercial community.

These factors are most important to those surveyed and those most responsive of the needs of the noncommercial community. Despite these findings, the NCDNHC creates their own definition of responsiveness, which places no emphasis on factors (1) through (3) above. In fact, the NCDNHC Report specifically states that:

“Responsiveness” does not mean merely on matters of policy, but includes general responsiveness to the needs of the community on an ongoing basis. The Committee notes, however, that the criterion asks for responsiveness to the noncommercial community specifically. Accordingly, general commitments to maintain a reliable registry, promises of lower prices for registration and pledges to provide general customer support, while important to noncommercial registrants, are important to all customers and do not address responsiveness to the noncommercial community specifically. By contrast, mechanisms designed to differentiate .org or to seek input from or representation of the noncommercial community specifically—even on non-policy matters—were considered within the proper scope of the evaluation for this criterion.¹⁷

NeuStar respectfully asks the ICANN staff to clearly state where NCDNHC obtained such a definition of “responsiveness,” and why NCDNHC chose to ignore the actual survey results provided in NeuStar’s study that was so highly commended by the NCDNHC (see NCDNHC Factor #2: Pre-Bid Survey).

In addition to unilaterally introducing criteria into the evaluation process, NCDNHC misapplied the new and RFP-driven criteria inconsistently to arrive at a flawed conclusion. What follows is NeuStar’s assessment of the seven factors in the NCDNHC Evaluation.

4.2.2.1.1 Factor 1, Input/Governance: Inconsistent application of actual criterion

The NCDNHC only used one criterion that was actually contained within ICANN’s RFP related to the Input and Governance mechanism proposed by each of the eleven applicants. In its own previously unpublished interpretation of these criteria, the NCDNHC commented that:

... [T]he highest ratings were given to detailed plans that were the most self executing, thus avoiding the need for any continuous monitoring and enforcement by ICANN. The Committee also considered critical the level of details provided by the bidders, as this will serve as benchmarks for ICANN to measure the performance of the successful bidder and will serve as a

¹⁷ NCDNHC Report at Pg. 12.

definite guideline for enforcement. . . [a] vague promise to allow the community to elect the entire board might rank lower than a detailed plan to create a truly representative advisory council¹⁸.

The importance of this new criterion was recognized by the NCDNHC in that they decided to give it “double weight.”

Although the NCDNHC seemingly provided a glowing review of NeuStar's proposed Global Policy Council (“GPC”), compared to many of the other applications, the points the NCDNHC awarded NeuStar did not reflect such a positive review. In fact, NeuStar was awarded the same, if not fewer points, than those *noncommercial or nonprofit* bidders that were given less positive evaluations.

More specifically, with respect to NeuStar's proposal, the NCDNHC Report provides that:

NeuStar has put forward a well-thought out governance plan that meaningfully involves the noncommercial community. Although the decisions of its proposed “Global Policy Council” are not binding, NeuStar's guarantee of presenting the GPC's recommendations to ICANN when ICANN must approve a new registry service provides some check on NeuStar's ability to ignore a GPC recommendation. Nevertheless, the Committee does note the limitations of the GPC. In addition, NeuStar's outreach and input channels, while transparent, are passive rather than active. The Committee therefore awarded NeuStar a “Moderate” in this category [3 points out of 6].

The significance of this “moderate” rating becomes more apparent when comparing the evaluations of the other bidders.

For example, The DotOrg Foundation describes a governance model in which it selects the initial policy council. The NeuStar GPC, on the other hand, will appoint a diverse selection committee, completely independent of NeuStar, to elect an initial Policy Council. Both proposals were recognized as having the same limitation in that the bidder may influence the outcome of the Board and could ignore the Council. Unlike NeuStar's GPC, which pledges to have all proposals go before ICANN in the event that NeuStar and the GPC were not able to agree on the proposed policy governance, the DotOrg Foundation did not make that pledge. Yet, without any explanation, the DotOrg Foundation was given “6 points” in that category, twice that of NeuStar¹⁹.

In addition, although Global Name Registry (“GNR”) proposed a governing body to be made up of members of the noncommercial community, it provided absolutely no details on the governance model. It also scored higher than NeuStar, despite NeuStar being recognized for having a “well-thought out governance plan that meaningfully involves the noncommercial community.” NeuStar's proposal was the only application to include:

¹⁸ See NCDNHC Report at Pg. 12.

¹⁹ See NCDNHC Report at Pgs. 16, 18.

- Draft Bylaws of the Global Policy Council;
- Explicit instructions on the exact makeup of the Council;
- Specific detailed procedures for the election of the first Global Policy Council;
- Both geographic and sectoral diversity; and
- Independent staff support for the Global Policy Council funded exclusively by NeuStar.

In addition, in an effort to promote global outreach within the noncommercial community, NeuStar proposed having public meetings for the Global Policy Council to correspond with each ICANN meeting.²⁰ Finally, unlike NeuStar's GPC, which pledges to have all proposals go before ICANN in the event that NeuStar and the GPC were not able to agree on the proposed policy governance, GNR did not make a similar pledge. Conversely, the NCDNHC Report sets forth that, "[i]ndeed, although it commits to remaining responsive, GNR ultimately have the power to entirely ignore any input."²¹ Despite this negative review, GNR was given a higher score in this category than NeuStar. One can only conclude that this higher score (despite a less positive review) was the result of GNR's partnership with a noncommercial entity rather than the actual merit of their proposal.

As a final example of inconsistency, NeuStar received the *same amount of points* in this category as ISOC. The NCDNHC Report stated that:

Under ISOC's proposed governance structure, PIR (a subsidiary of ISOC) retains final decision making authority for the registry, and has no avenues for input outside its own organization. Also, the relationship between ISOC chapters, membership and its governance board are in flux at the moment, so it is not clear how much influence that would give .org registrants. Thus, the Committee rated ISOC **"Low"** in Input/Governance.

ISOC received a "LOW" rating on this category, yet it was somehow awarded the SAME amount of points as NeuStar, who according to the NCDNHC Report received a "MODERATE" score. This type of inconsistency in ratings was typical of the NCDNHC evaluation and further demonstrates the bias of the evaluators in favor of noncommercial applicants.

4.2.2.1.2 Factor 2, Pre-bid survey: Mechanism for responsiveness evaluated incorrectly

According to the ICANN RFP's Criteria for Evaluation, "Consideration will be given to mechanisms proposed for achieving this responsiveness and supportiveness." One such mechanism to achieve responsiveness is through a survey of the needs of the global noncommercial community.

²⁰ See NeuStar submission to ICANN for the reassignment of .org, <http://www.icann.org/tlds/org/applications/neustar/>, at Section C35.

²¹ See NCDNHC Report at 15.

Although NeuStar appreciates the high score it received in this criterion, it is particularly difficult for NeuStar to respond to the NCDNHC's evaluation of this criterion, given that there is absolutely no explanation of this criterion in either the ICANN RFP or the NCDNHC Report. That being said, it is interesting to note that NeuStar, who conducted two extensive independent global surveys (both online and in-person), interviewing hundreds of individuals and noncommercial organizations from over 65 countries around the world²² scored exactly the same number of points in this category as RegisterOrg, whose "analysis was largely based on bulk Whois data information of the five largest ICANN-Accredited Registrars (as measured by share of .com, .net, and .org registrations under management as of March 31, 2002, by the Snapnames, State of the Domain Report, April 23, 2002).²³"

4.2.2.1.3 Factor 3, Post-bid responsiveness: higher scores for quicker response time?

This new criterion, "Post-bid responsiveness", NeuStar can only presume, was created by the NCDNHC in an attempt to evaluate general responsiveness of the applicant. NeuStar notes that although it scored high in this category (5 out of 6 points), it is unsure where in the published criteria it required bidders to respond to inquiries of the NCDNHC. Although bidders may have been required to answer questions posed by the ICANN staff or the Board, nowhere was it required that any applicant respond to those questions posted in the public forum. That being said, NeuStar, actively participated in the public forum and did respond to the official questions presented by the NCDNHC because we believed that giving such responses were important, not for scoring purposes, but because of general responsiveness. NeuStar did respond to questions Vint Cerf specifically requested from the NCDNHC.

However, NeuStar will note that although it did respond within a few days of the posting of such questions, IMS, a nonprofit applicant, received a higher score. The only reason NeuStar was able to ascertain from the NCDNHC report for the higher score was that IMS "responded within hours to the questions posted by the NCDNHC."²⁴ In general, NeuStar approaches answers to these questions carefully and wants to ensure that any response it provides is true, accurate, and answers all of the questions presented. Speed does not figure into the equation. The fact that NeuStar took a few extra days to answer each of the questions (although it was the second or third applicant to respond) should hardly be grounds to give fewer points to NeuStar than IMS. Such an evaluation of this new criterion appears extremely arbitrary and should be corrected to reflect that each of the applicants that responded to the questions (and answered them) be given the same number of points.

²² See <http://www.icann.org/tlds/org/applications/neustar/> at Section 38.1.2.1 (and associated supporting documentation).

²³ See http://www.icann.org/tlds/org/applications/register/proposal_38.html).

²⁴ See NCDNHC Report at Pg. 17.

4.2.2.1.4 Factor 4, NCDNHC's self-serving criteria creates inherent conflict of interest and bias

Perhaps the most blatant example of bias among the NCDNHC-created criteria is that entitled "ICANN/NCDNHC." Under this criterion, the NCDNHC evaluates each of the eleven applicants on the extent the applicant sought to work with the existing ICANN community, such as by responding on the public message board to questions formulated by noncommercial domain name registrants. Equally as important, the NCDNHC also took account of the relationship the applicant proposes with the Noncommercial Domain Name Holders' Constituency (NCDNHC) after winning the bid and whether the applicant will attempt to facilitate participation by the noncommercial entities in ICANN generally. Although the "NCDNHC recognizes that [the NCDHNC] is not synonymous with the entire noncommercial user community," the mere addition of this criterion demonstrates the evaluators bias and deliberately uses the .org solicitation process to pursue its own non-.org specific agenda. More specifically, the newly added unpublished criterion states:

"Applicants who wish to facilitate participation of the noncommercial community within ICANN on an ongoing basis should either express an interest in facilitating participation in the NCDNHC and facilitating the NCDNHC's ability to work within ICANN, or provide alternative methods that are equally likely to bolster noncommercial .org registrants' ability to participate in and influence ICANN's affairs."

Although no doubt, the NCDNHC would *itself* be served by having a formal role in the future .org space, or by having the operator of the .org TLD subsidize the activities NCDNHC, it was improper and inappropriate for the evaluators to presume that (1) such activity would actually be in the best interests of the noncommercial community as a whole, and (2) if an applicant did not give such a role to the ICANN *constituency*, that it was not giving a role to the noncommercial community as a whole. In addition, nowhere in the RFP, or in any published documents was supporting the NCDNHC *ever* made a criterion or a requirement for being awarded the .org TLD. In fact, many have argued that the fact that several applicants expressly gave benefits to the NCDNHC conditional on being awarded the .org TLD, created an inherent conflict of interest that should have prevented such members of the NCDNHC from evaluating any of the proposals.²⁵

To demonstrate the preposterous nature of this unpublished criterion one only needs to look at the organizations that received any points under this category: GNR, ISOC and UIA. All three of these bids have one thing in common: They each pledged to support the activities of the NCDNHC financially.²⁶ For these reasons, coupled with the fact that neither the RFP nor any published document regarding the .org Reassignment process, contained any requirement that the successor operator for the .org TLD must provide

²⁵ See <http://www.icann-ncc.org/pipermail/discuss/2002-July/002605.html>.

²⁶ See Pages 14-20 of the NCDNHC Report. NeuStar will note that Unity did receive 1 point in this category although it can find no evidence either in Unity's bid or in the NCDNHC Report any mention of the NCDNHC as to why the NCDNHC gave Unity this 1 point again showing the complete lack of uniformity in the evaluations.

financial benefits to, or include a role for, the NCDNHC, that this new criterion should be disregarded in the Staff Report and excluded from any future evaluation.

In hindsight, asking an organization that may view proposed responsiveness mechanisms that do not directly involve their own organization as a threat to their desired role in the ICANN process, many not have been advisable.

4.2.2.1.5 Factor 5, Relationship with the noncommercial community: added criterion rewards noncommercial applicants

The ICANN RFP states:

Consideration will be given to mechanisms proposed for achieving this responsiveness and supportiveness. A broad variety of mechanisms are possible, such as teaming between for-profit and non-profit organizations and establishment of governing or advisory groups for the operation of the .org registry that include representatives of the noncommercial Internet user community.

The NCDNHC has interpreted this criterion to mean that “[b]ecause past performance may prove to be an important indicator of future performance and commitment, the Committee did take notice of longstanding relationships between the bidders (whether for-profit or non-profit) and the noncommercial community available in the public record.²⁷” Although the NCDNHC states that received instructions from ICANN management to not automatically assign any preference to a non-profit entity over a for profit entity²⁸, this is precisely the effect of the NCDNHC’s addition of this new unpublished criterion. In NeuStar’s case, the NCDNHC awarded 0 points because, in the words of the NCDNHC, “Neustar has no general relationship with the noncommercial community and has not partnered with any noncommercial entity that could provide such a relationship.” Inconsistent with the ICANN criteria, *only those entities that were themselves a nonprofit organization or those organizations that had formally partnered with a nonprofit entity were awarded points in this category.*

Creating a new criterion evaluating the general historical relationship of the eleven applicants to the noncommercial community (rather than evaluating the proposed relationship between the applicants and the noncommercial community – i.e., in NeuStar’s case, through the activities of the GPC), inherently does exactly what the ICANN management advised the NCDNHC not to do – give a preference to the noncommercial applicants. NeuStar asks how could it possibly be consistent with ICANN’s mandate that no preference be given to a non-profit bidder over a for-profit applicant to award points to only those entities that are themselves a noncommercial organization or those entities that have partners who are noncommercial organizations . For these reasons coupled with the fact that neither the RFP nor any published document regarding the .org Reassignment process, contained any requirement that the bidder have an *existing* relationship with the noncommercial community, this new criterion must be stricken from consideration in the Staff Report and excluded from any future evaluation.

²⁷ See Page 12-13 of the NCDNHC Report.

²⁸ See Page 12 of the NCDNHC Report.

Further, one need only look at the following statement in the NCDNHC Report to see the bias: “Unity receives a “High” rating in community relationship *although* it is a for-profit enterprise because of the long-standing and broad relationships its parent Poptel has with the global noncommercial community.” (Page 14)(Emphasis Added). The addition of the word “although” indicates an extra obstacle that has to be overcome for a for-profit entity in order to earn any points in this criterion. The extra obstacle here was that it had to partner with a nonprofit entity.

In fact, only a noncommercial entity, or one affiliated with a noncommercial entity, could have scored any points in that category, although such a relationship was never a published criterion set forth in the RFP. To illustrate the preference for noncommercial entities, the three for-profit applicants (that did not have formal partnerships with noncommercial entities (i.e., NeuStar, .Org Foundation (ENOM) and Organic Names)), were lumped in the bottom half of the evaluations in this category. Moreover, *in each of those evaluations, the NCDNHC Report states that the bidder has no general relationship with the noncommercial community nor has it partnered with any noncommercial entity that could provide such a relationship.*

4.2.2.1.6 Factor 6, Services targeted at noncommercial community: inconsistently applied and duplicative criteria

It is particularly difficult for NeuStar to respond to the NCDNHC's evaluation of NeuStar's services targeted at the noncommercial community given that there is absolutely no explanation of this newly added criterion in the NCDNHC Report. Again, this new unpublished criterion gave the opportunity to the NCDNHC to raise the scores of those noncommercial proposals that they preferred.

Of particular note, however, is the fact that Unity was one of two proposals that received the highest possible score in this particular category. Although the NCDNHC provides no commentary as to why this applicant scored the highest in this category, upon our own review of Unity's application, Unity only proposed one new service targeted at the noncommercial community (a .org-branded directory). NeuStar, on the other hand not only proposed the same identical service, the “Noncommercial Global Directory Service” (See Section 38.2), but also described several other new and innovative services, including:

1. A noncommercial website promotion service;
2. A noncommercial search engine service;
3. An Enhanced Whois service (See Section 25); and
4. A new innovative mediation service called the “.org Recovery Program”.

Given the fact that there were clearly more quality services offered by NeuStar, it is difficult to imagine what led the NCDNHC to give Unity a much higher rating. The only possible explanation again seems to be that Unity is affiliated with a noncommercial partner (Poptel).

4.2.2.1.7 Factor 7, "Good Works": Newly added criterion in conflict with instructions from the ICANN Board

In addition, to several of the above artificially created new criteria, the NCDNHC also awarded points to those applicants that proposed to grant money to charitable organizations or causes completely separate and apart from the operation of the .org TLD.

NeuStar reiterates that the NCDNHC's sole responsibility was to evaluate the criteria set out by ICANN in the published RFP and associated posted documents. See Letter From Stuart Lynn to Harold Feld, Annex 1 of the NCDNHC Report. Nowhere was it ever published prior to the submission of proposals that the .org applications would be evaluated on whether, or how much, it gives to a charitable organization. Although the NCDNHC states that the ICANN Board "expressed skepticism on the relationship between good works and the running of the registry," this "skepticism" was actually a rejection of the principle that "good works" should play any role in the evaluation of the .org bids. The Chairman of the ICANN Board, Vint Cerf, even called an informal vote on this issue. Not one board member disagreed with Mr. Cerf's statements.

More specifically, the transcript of the Accra board meeting (which many of the .org bidders, including NeuStar, relied on) reflects the following²⁹:

AMADEU ABRIL I ABRIL:

...Secondly, and more important, the assumption made in the [DNSO's] recommendation is that the registry could be, and it seems also to support that, a registry that uses surplus funds for different activities. I oppose that for a series of reasons. I don't think it's practical... I don't think the DNS should be the mechanism for funding other alternative initiatives regardless of how well-intentioned they are. And also thoroughly, I think it was Alex who earlier pointed it out, this is not bringing in any sense more money from parts of the world to the -- noncommercial goals. It's simply taking money from the noncommercial registrants to fund what the management of that registry believes are adequate political issues to fight for. And I don't think that the DNS should be a money-making mill for any political-oriented, in any sense, activity. I don't think this is the goal of a registry. And I think we will comment on that, but I think we should make that very explicit, this charge very explicit. We want a registry that runs the dot org on the benefit of the dot org registrants; that is, the noncommercial, in the large sense, users of the DNS that choose to use that concrete top-level domain.

²⁹ See <http://www.icann.org/accra/captioning-afternoon-14mar02.htm>.

STUART LYNN:

...I'm very sympathetic to what Amadeu was saying about the purpose of the registry should be to serve the registrants of the registry and not be in the business of what's effectively trying to develop funds for other purposes. But I'm not sure how the Board feels about that.

VINTON CERF:

I think that there are at least three very specific points that the Board might wish to make to the President...I think that we should explicitly recommend against any special provision for support of activities that are not specifically relevant to operating the dot org domain. Any notion that some part of the funding should be diverted for good works I think merely complicates the job of the organization in some very dramatic way. *So I would say that we should make no provision for such special activity. I would point out to you that any organization is free, for profit or not, to execute good works. We don't need to direct that.*

Not only did the NCDNHC's evaluation blatantly disregard the actual criteria stated in the published RFP, but also by adding these new criteria, it actually dismissed the explicit instructions of the ICANN Board. For this reason coupled with the fact that neither the RFP nor any published document regarding the .org Reassignment process, contained any requirement that the bidder pledge money for "good works", this new criterion *must* be stricken from consideration in the Staff Report and excluded from any future evaluation. One can only presume that this new criterion was added by the NCDNHC to give preferential treatment to those noncommercial and/or nonprofit applicants.

4.2.3 Criteria #6. Level of support for the proposal from .org registrants.

Demonstrated support among registrants in the .org TLD, particularly those actually using .org domain names for noncommercial purposes, will be a factor in the evaluation of the proposals. Noncommercial registrants do not have uniform views about policy and management, and no single organization can fully encompass the diversity of global civil society. There will likely be significant difficulties in ascertaining the level of support for particular .org proposals from throughout the .org registrants and noncommercial community. Nevertheless, proposals to operate the .org TLD should provide available evidence of support from across the global Internet community.

In his letter to the NCDNHC, Stuart Lynne directed the evaluation be conducted in a "thorough and evenhanded manner, according to published criteria, and only according to publicly posted documentation." Accordingly, the following principles should have been to be adhered to when conducting the evaluation:

- Ensure support received is actually from .org registrants;
- Do not introduce any new criteria;
- Ascertain the level of support for particular .org proposals from throughout the .org registrants and noncommercial community;

- Do not use materials outside of those posted on the ICANN site;
- Apply criteria consistently across applicants; and
- Do not rely upon estimates or sampling to ensure analysis is “thorough”.

Lynne acknowledged that “[t]here will likely be significant difficulties in ascertaining the level of support for particular .org proposals from throughout the .org registrants and noncommercial community”.

Part of that challenge is differentiating between support that is based on (1) a thorough understanding of the proposal or (2) the ability of the provider to meet the RFP requirements, or (3) support that is driven primarily by self-interest, for example:

- Existing business relationships;
- Familiarity with the applicant; and
- Endorsement provided merely out of loyalty.

Despite explicit direction from Lynne, the NCDNHC made mistakes into its evaluation of the noncommercial community's support of applicants' proposals. A detailed description of the issues NeuStar has identified relative to community support appears below:

4.2.3.1 Arbitrary reclassification of endorsements from Class A to Class B using new criteria

The NCDNHC evaluation reclassified NeuStar endorsements from noncommercial organizations who are .org registrants to Class B, based on new criteria that do not appear in the ICANN criteria or instructions to the NCDNHC in the letter from Stuart Lynn in which he states:

It is very important that ICANN's evaluation of each application be done in a thorough and evenhanded manner, according to the published criteria, and only according to publicly posted documentation.

The following new criteria were introduced and improperly used as the basis for reclassifying endorsements from Class A to Class B and materially affected NeuStar's and other applicant scores and associated rankings:

Form letter penalty—The NCDNHC decided that the use of a “form letter” was an indication of a lower degree of commitment by the endorsee. Although NeuStar did provide assistance in drafting letters for potential endorsees, NeuStar encouraged changes to the draft letter as endorsees saw fit. Many of the endorsees agreed with the letter as written and therefore elected not to make any changes to the draft. A representative of the relevant organization, indicating full agreement with its content signed the letters in question. Therefore, the letters should carry no less weight than a letter written by an endorsee.

“Endorsement of bids as a whole”—The NCDNHC declared that NeuStar endorsement letters “only endorses the concept of a Global Advisory Council” and did not “endorse the bid as a whole.” These letters are considered Class B endorsements. This reclassification included nineteen (19) letters that were from noncommercial organizations that use .org domain names for noncommercial purposes and materially impacted NeuStar’s score and associated ranking.

ICANN properly did not specify that endorsees must endorse all aspects of an applicant’s proposal (“endorse the bid as a whole”). NeuStar would also submit that many endorsees that endorsed other proposals “as a whole”, likely did not review the entire proposal they endorsed or the proposals of other applicants in order to comment “in relation to other bidders”. Even if they had reviewed the entire proposal, many noncommercial organizations in non-technical fields of endeavor would not be in a position to evaluate the technical merits of the proposals or the ability of the bidder to ensure the stability of .org.

Many endorsements of proposals “as a whole” were likely based on pre-existing relationships (existing customers, vendors, or members of the bidders organization) and not necessarily based on the content of the proposal. NeuStar would also note that a number of endorsements were received while the proposals were under development, making it impossible for endorsees to endorse a “bid as a whole” or to review other proposals. This would be impossible, of course, since the entire proposal was not available for review.

Most, if not all, of NeuStar’s endorsees, when presented with the concept of a Global Policy Council including the representative framework and the associated responsiveness mechanisms, along with the reliability of service, were of the utmost importance to them, and therefore agreed to endorse a letter that expressed such support.

It is proper and acceptable, therefore, for organizations to endorse aspects of proposals they were able to review and considered important to them.

Exclusive support requirement—The NCDNHC evaluation improperly reclassified twelve (12) NeuStar endorsement letters that were from .org registrants who use a .org domain name for noncommercial purposes because they “did not necessarily endorse the specific bidder in relation to other bids”.

ICANN properly did not specify that endorsees demonstrate exclusive support for the applicant. Indeed, it should be acceptable for a noncommercial organization to endorse multiple proposals if it finds more than one to be responsive to its needs. As noted above, applicants received a number of endorsements while proposals were under development, making it impossible for endorsees to review the entire proposals “in relation to other bids”. This new requirement, therefore, improperly introduces a new criterion to the evaluation.

The NCDNHC also incorrectly states that twelve (12) NeuStar letters “explicitly disclaim any intention to support NeuStar’s bid over others”. This sentiment is actually only expressed in one NeuStar letter (from NARUC). All other NeuStar letters use language

that is similar or identical to that in the other letters (support for NeuStar's concept of the .org Global Policy Council).

The endorsees clearly did not “disclaim any intention to support NeuStar's bid over others”, but rather were making it clear that they endorsed NeuStar's responsiveness mechanism and would also endorse this same approach if taken by others. The NCDNHC admits that it received only one response to inquiries on this topic. Drawing conclusions based only on one response is clearly inappropriate.

4.2.3.2 Incorrectly reclassified endorsees with valid .org registrations

NCDNHC incorrectly reclassified the following endorsement letters based on an erroneous finding that they did not have a .org domain name:

- Incorrectly indicated that the Stargazer endorsement was from a org.uk registrant. Stargazer's does have a .org domain name (www.stargazer.org) and therefore does qualify.
- Incorrectly indicated that the Food and Agricultural Organization of the United Nations (FAO) does not have a .org address. FAO does have a .org address (www.fao.org) and therefore does qualify.

4.2.3.3 Incorrectly eliminated an endorsement because it was not able to validate its existence

- We Save Our World exists; their registered domain name is - www.wesaveourworld.org. (Registered with TuCows.)

4.2.3.4 Improper consideration of ineligible endorsements

The NCDNHC report incorrectly allowed endorsements from commercial entities and individuals that are not .org registrants. This is contrary to the criterion, which specifies, “Demonstrated support among registrants in the .org TLD”. The tables in Annex 4 indicate which endorsees do not have a .org address, yet they were incorrectly counted and scored as Class B endorsements.

The following highlights the applicants who received credit for invalid endorsements. Also listed are the number of endorsements, by applicant, that subsequently do not meet the ICANN-stated criteria:

- Unity—36 endorsements with no .org address
- GNR—6 endorsements with no .org address
- IMS/ISC—32 endorsements with no .org address

Including such endorsements in the evaluation materially altered the ICANN criteria and therefore the scoring system NCDNHC relied heavily upon to measure support from the noncommercial community.

4.2.3.5 Omission of NeuStar endorsement letters

The NCDNHC incorrectly did not consider or include five NeuStar endorsement letters which were posted to the ICANN website prior to August 5th, the NCDNHC's specified cut-off date. The letters in question are from noncommercial organizations that are .org registrants and therefore meet the ICANN criteria. Inclusion of these letters would have increased the number of NeuStar endorsements and the associated scoring. Three (3) of the letters represented endorsements from the Asia-Pac region and should have been considered in assessing geographic diversity.

Letters received from the following .org registrants were included in NeuStar's proposal or posted to the ICANN discussion forum prior to August 5th, but are missing from the NCDNHC list of NeuStar endorsees:

- Personal Communications Industry Association (PCIA)
- Hong Kong - China Foundation
- Far Eastern Memorial Group
- Association of Chinese Scientists
- SRI International

Omission of the above endorsements resulted in the NCDNHC underscoring the NeuStar proposal.

4.2.3.6 Use of "estimates" and "guesstimates" to determine valid endorsements

In a number of instances, the NCDNHC evaluation relied upon what are characterized as "estimates" or "guesstimates" to determine the validity of endorsements or to determine the classification of an endorsement (see NCDNHC pg. 23 and pg. 34). Given the dramatic impact reclassification has on an applicants score, using "guesstimates" for such purposes is not consistent with the "thorough and evenhanded manner" ICANN President, Stuart Lynn, requested in his written instructions to the NCDNHC.

4.2.3.7 Inconsistent recognition of pre-bid outreach activities

The evaluation states that Unity is "the only bidder to consult with the noncommercial organizations widely and publicly prior to the deadline for the proposals".

NeuStar commissioned an independent third-party study and also met directly with noncommercial organizations to prior to developing its proposal. The purpose of these meeting was to gain an understanding the needs of the noncommercial community as well its perceptions and attitudes towards the .org domain name. NeuStar's outreach activities involved hundreds of organizations. The findings of this outreach activity are reflected in our proposed marketing plan for .org and summarized in NeuStar's presentation to the ICANN Board in Bucharest.

Although the outreach methodologies differed, the NCDHNC statement above is inaccurate or at the very least misleading since it implies that NeuStar and other bidders did not conduct outreach activities.

4.2.3.8 Incorrectly awarded ISOC a Class A endorsement for endorsing its own proposal

After stating that, “with one exception, the British Computer Society, ISOC does not seem to have sought or received organizational endorsements from outside of ISOC.” The NCDHNC goes on to conclude that all of the internal expressions of support are to be considered one Class A endorsement from the Internet Society itself.

If all of the endorsements ISOC received from its members are to be considered internal, it is illogical and inconsistent with the ICANN criteria that a bidder should be awarded points for endorsing its own proposal. Since commercial bidders, such as NeuStar, would not be eligible to endorse their own proposal based solely on their commercial status, this means that the point system used by the NCDNHC favors noncommercial bidders and therefore is in direct conflict with ICANN criteria.

Furthermore, a number of ISOC's letters were not considered Class A by the NCDNHC because the endorsees would benefit financially from the selection of the bidder. Specifically, in evaluating GNR against this criterion, the NCDNHC stated that: “We could not classify any of those as Class A endorsements, however, because each organization has a financial interest in the success of the bid” (NCDNHC, page 25). Given that ISOC would certainly benefit financially from its own selection, if the NCDNHC consistently follows its own methodology, ISOC's endorsement of its own proposal should not be considered.

4.3 Mathematical Inconsistencies and Errors in NCDNHC Evaluations

The NCDNHC made egregious errors when calculating scores during criterion evaluation and in the normalized scoring and ranking of the applicants.

NeuStar has four substantial issues with application of this unsubstantiated conversion in criterion 6:

1. The values assigned during the conversion are all inaccurate for NeuStar;
2. The weighting reassigns value to the Class B support letters to increase their value, effectively obviating all comments the NCDNHC makes about their being of lesser value than Class A letters;
3. The inconsistency in the scale of each criteria evaluation further complicating and creating a need for normalization, and;
4. The inability of the NCDNHC to determine a single method for overall applicant rankings results in their analysis receiving double weight in the overall applicant ranking.

Each of the calculations addressed in this section deal exclusively with mathematical errors in the NCDNHC’s report, and do not make any adjustments for the arrant mistakes in scoring each of the criteria as discussed earlier in this document. The tables also do not include adjustments that should be made for endorsement letters that were omitted or incorrectly classified.

4.3.1 Material error in calculation of NeuStar score for Criterion 6 in the Normalized Ranking necessitates increase in overall ranking

On the first matter, NeuStar submits the following table as demonstrating the error in the assignment of value in the second criterion 6 conversion:

	Class A	Class B	Geographic Diversity	Score
Original Value (page 22)	1	25	Medium	6
Annex 5 Conversion Metrics (page 43)	N=0, 0	N<5, 0	Low=0	N/A
	1<N<5, 1	5<N<20, 1	Medium=1	
	N>5, 2	N>20, 2	High=2	
Weighting	1	3	1	N/A
Annex 5 Results (page 43)	0	1	0	3
Correct Value	1	2	1	8

The variance in the final scores for NeuStar is 5 points (from 3 to 8), effectively giving NeuStar less than a third the score it mathematically earned. When carried through to the final analysis, “Normalized Ranking”, this has a dramatic effect on the overall scoring of NeuStar. NeuStar submits the following table that adjusts the Normalized Ranking table only for this error:

	Responsivene ss	Support	Differentiation	Score
Weighting	.27	1	.4	N/A
Original Value (page 47)	14	3	15	12.73
Proper Value	14	8	15	17.78

This results in a full-rank move upward for NeuStar (from fifth to fourth), and an increase in score by 5 points (17.78 as compared to 12.73). This also makes the variance between the number 3 and number 4 rankings less than 1 point, and the variance between ranks 4 and 5 over 3.5 points. This correction supports moving NeuStar to the first tier of applicants, thereby earning an “A” in the staff report, rather than a “B.” For further discussion on this, please see NeuStar’s response to the Staff Report.

4.3.2 Issue 2: Contradictory assignment of value to support letters

The additional weighting of the second conversion of criterion 6 represents a second adjustment to the value of the Class B support letters – this time, giving it three times the value of the other categories (Class A letters and geographic diversity). This effectively amounts to readjusting upwards the value of the Class B letters (note, within the scoring in the analysis of Criterion 6, the Class B letters are given a value of one-fifth that of a Class A). The original penalty for having a Class B support letter is all but removed in this weighting.

Clouding matters further, this issue is not mentioned either in the text of the report or any of the appendixes though great discussion is made in both the report and Annex 2 regarding the first value-adjustment of Class A and Class B letters. This move in weighting – where a Class B is reduced to 20% of a Class A, but then is given three times the value in the second conversion – represents a dramatic, unsubstantiated assignment of value to a criterion that is ultimately given very high weight in the overall ranking.

4.3.3 Issue 3: Inconsistent scales and normalization complications

The report utilized various methods of ranking and scoring techniques throughout their analysis and the overall synthesis developing final recommendations. Each criteria analysis used a different scoring methodology:

- **Criterion 4** A 6-point scale was used for the 6 new sub-criteria, where the evaluators use two specific weighting categories to determine a final score;
- **Criterion 5:** A 7-point scale was implemented against 7 new sub-criteria, using four different weights to calculate a final score for each applicant, and;
- **Criterion 6:** A system assigning relative value to types of support letters was used, in addition to a high-medium-low system against geographic diversity criteria.

The final scores in Criterion 6 are adjusted a second time, and those tabulations then used in the overall analysis. This conversion is discussed nowhere in the text; one is forced to weed through the annexes to find the conversion table (Annex5, page 43). This conversion is a multi-step process: first, the support levels and the geographic diversity scores are converted from their tabulated values (as shown on page 22) to a 3-point scale. Next, new tabulations are weighted to produce a final score for each applicant – a weighting of 1-3-1 for the Class A letters, Class B letters, and Geographic diversity, respectively.

Both these criteria and their haphazard scales beg the question of consistent ranking and make a difficult task of comparing the criteria fairly.

4.3.4 Issue 4: No relevance and foundation for two overall scoring methods

The synthesis of these discreet analyses is presented in two manners, as the NCDNHC could not determine what an accurate ranking method should be. The two methods presented offer very different looks at how to unite the three distinct evaluations into an

overall score and ranking. The first method, "Average Ranking", simply takes the average of the applicants ranking from each of the three criteria evaluated. The second, more complex method, the Normalized Ranking first converts the data from the "Support" criterion as described above, takes the scores from criteria 4 and 5 as-is, and finally assigns a weighting to each to determine a final score for each applicant. This method attempts to normalize the three criteria, but the actual statistical method (e.g., normalizing around the mean, or to make the standard deviation closer to 1, etc.) is not explained.

The NCDNHC's inability to make a decision resulted in their analysis yielding two different overall rankings of applicants in the staff report. This glaring indecisiveness is yet another indication that the evaluation was not conducted in a thorough manner as directed by ICANN's President and CEO, Stuart Lynn and was not conclusive.