

## ICANN Registry Request Service

### Name of Proposed Service:

Afilias Limited respectfully submits this funnel request for the “Phased Equitable Reallocation of Non-Compliant .INFO Sunrise Domain Names” on this 20th day of August 2008.

***Technical Description of the Proposed Service:*** During the original launch of the .INFO TLD in 2001, a significant number of non-compliant registrations were made during Afilias’ Sunrise Period. Afilias was one of the first gTLD registries to employ a Sunrise Period where qualified trademark owners were permitted to register their domain name in advance of the general registration period. However, the lack of a pre-verification mechanism led to abuse of the Sunrise Period as documented in ICANN’s Evaluation of the New gTLDs: Policy and Legal Issues, see <http://www.icann.org/tlds/new-gtld-eval-31aug04.pdf>.

In order to preserve the integrity of the Sunrise Process, Afilias challenged likely non-compliant registrations through the Sunrise Challenge Process administered by the World Intellectual Property Organization (WIPO). This proactive response by Afilias resulted in upwards of 20,000 of the original 50,000 plus Sunrise registrations being cancelled for non-compliance. The vast majority of these names were equitably reallocated on a first-come, first-served basis in the Spring of 2002. However, there was a group of names that had remained in a registry lock status pending further review. Afilias has now completed the final review of these names and it is the intention of Afilias to equitably reallocate these domain names.

Afilias proposes to employ the following variety of equitable reallocation mechanisms in three phases.

#### Phase #1 (RFP)

The first stage will be a request for proposal process (RFP) where Afilias will seek to allocate domain names to qualified applicants who will use the name in a manner likely to enhance the .INFO brand. Additional information regarding the RFP is set forth in more detail in the Business Descriptions section below. The RFP may be submitted either via a secure web interface or e-mail. Consistent with the operational practice that it has followed in connection with the release of .INFO country names covered under ICANN Board Resolution 01-92, Afilias will provide the successful applicant with a unique Auth Code for the domain name in question that can then be taken to a registrar of their choice for registration.

Afilias will incorporate into its RFP process a binding arbitration clause to resolve disputes in connection with the RFP. This is consistent with the industry practices adopted by both .MOBI and .ASIA in their respective RFP documentation. Based upon our best information and belief, there were no arbitrations filed in connection with either the .MOBI or .ASIA RFP processes.

#### Phase #2 (Auction)

With respect to domain names for which no RFP responses have been received, or for which no suitable or clearly preferred proposal was received, Afilias would make all or a subset (as determined by Afilias) of such domain names available for purchase by auction.

There are a variety of industry acknowledged auction providers that have been involved in the .MOBI and .ASIA auction processes. Afilias will consider employing one or more of these auction providers conditioned upon a review of their practices to ensure that the previous auction processes were conducted in an equitable and neutral fashion

The specific auction format to be implemented will be determined by Afilias.

Consistent with the auction process utilized by .MOBI and .ASIA, Afilias will release the authorization code assigned to that domain name to the successful bidder. That bidder can then take that auth code to any Afilias authorized registrar to register the domain name. This is the same safeguard previously referenced in Phase #1.

#### Phase #3 (FCFS)

If domain names remain unallocated after the RFP and Auction processes have been completed, Afilias will make such domain names available on a first-come, first-served basis.

As is clear from the staged processes by which these domain names will be equitably allocated (i.e., RFP, Auction and first-come, first-served), Afilias does not anticipate releasing all of the domain names at the same time. Instead it will likely allocate these names in batches similar to the approach adopted by .MOBI in connection with their Premium Name process. The manner of which names appear in which batches is in large part going to be driven by the RFP responses and other market conditions, i.e. other auctions, new gTLDs, etc. This staged approach also allows Afilias to fine tune the process, and address any unforeseen issues that may arise.

## Consultation

***Please describe with specificity your consultations with the community, experts and or others. What were the quantity, nature and content of the consultations?***

Because there were various legal proceedings brought against Afilias in connection with the original Sunrise allocation, all of which Afilias ultimately prevailed in, Afilias has not engaged in extensive consultations with the community regarding this subset of names. However, in designing the proposed equitable allocation model, Afilias has modeled its proposal in large part upon already accepted, approved and proven practices within the industry.

a. ***If the registry is a sponsored TLD, what were the nature and content of these consultations with the sponsored TLD community?***

Not Applicable

b. ***Were consultations with gTLD registrars or the registrar constituency appropriate? Which registrars were consulted? What were the nature and content of the consultation?***

No. Afilias proposes to use similar equitable allocation processes that have been implemented by other gTLD registries. Prior to the launch of these respective equitable allocation processes, Afilias will notify registrars so that they or their customers can participate in the process.

Afilias believes that the proposed equitable reallocation process is an internal business decision best left to Afilias, subject to ICANN's approval, that the proposed registry service does not raise competition and/or security and stability concerns.

c. ***Were consultations with other constituency groups appropriate? Which groups were consulted? What were the nature and content of these consultations?***

No. Afilias does not believe that consultation with constituency groups were either appropriate for the reasons previously outlined above.

***d. Were consultations with end users appropriate? Which groups were consulted? What were the nature and content of these consultations?***

Afilias does not believe that consultation with end users were appropriate for the reasons previously outlined above. Additionally, Afilias believes that its proposed equitable allocation principles have been successfully utilized by other gTLD registries and pose no adverse risk/impact on end users. In fact, the allocation processes Afilias plans to implement should maximize the ability of the average end user to obtain a desired domain name.

***e. Who would endorse the introduction of this service? What were the nature and content of these consultations?***

Afilias believes that the proposed equitable reallocation process should be generally accepted by most members of the community. The problem with the some commonly used allocation processes is that they may provide an advantage to certain registrants. For example in the first-come, first-served allocation process, registrars that have aggregated numerous ICANN registrar accreditations may be at a competitive advantage to those registrars that have sought just a single accreditation. No consultations with these groups were undertaken for the reasons previously noted above.

***f. Who would object to the introduction of this service? What were (or would be) the nature and content of these consultations?***

Potential registrants and registrars that have developed methods or systems to create an advantage in a first-come, first-served allocation model may object to this proposal due to the more equitable nature of the process which is designed to provide a more wide spread opportunity for all interested parties to register these domain names.

**Timeline**

Afilias would like to offer this service in connection with the remaining Sunrise names as soon as possible. Following approval by the ICANN Board, Afilias would undertake a process outlined below.

**Business Description**

**Describe how the Proposed Service will be offered:**

Currently Afilias allocates .INFO domain names on a first-come, first-served basis, the traditional method of domain name allocation. Since the .INFO Sunrise in 2001, a number of other registries have successfully developed and deployed other equitable processes to allocate domain names to registrants that have expressed an interest in

promoting/ advertising the registry brand via a specific second level domain. In its continuing effort to provide consumers a viable choice in the domain name marketplace other than legacy gTLD domains, Afilias believes that it should be provided this same opportunity to exercise some equitable discretion regarding the allocation of domains similar to the actions of other ICANN accredited registries.

Following approval by ICANN, Afilias would promptly publish a Request for Proposals in connection with these domain names. The period of time for interested third parties to submit a proposal would be a minimum of six weeks. This publication would be done through the registrar channel and through other existing media contacts that Afilias maintains. Concurrent with this publication, Afilias would provide the appropriate notification to registrars regarding any necessary contract changes associated with this funnel request.

Afilias would impose a non-refundable application fee associated with this RFP process, not to exceed \$500 US. This application fee is in line with those processing fees charged by both the .MOBI and .ASIA registries. Since it is impossible to predetermine the number of responses that would be submitted in connection with these domain names, it is not possible for Afilias to provide a specific timeline for rendering a decision. However, given the experience of both the .MOBI and .ASIA registries in connection with similar processes, this is likely to take several weeks or months.

Following the RFP process and prior to the domain name being finally allocated, Afilias will provide interested third parties a challenge period in which they can raise an objection to any intellectual property rights that might be negatively impacted. This is similar to the challenge processes administered by W.I.P.O. in connection with both the .MOBI and the .ASIA registries. Having had the benefit to review both processes, Afilias will likely use the processes adopted in connection with the .ASIA Pioneer Process. Afilias has already engaged in preliminary discussions with W.I.P.O. regarding the use of their services in connection with this process.

For those domain names in which an RFP was not submitted, or the RFP process was not able to produce a satisfactory or clearly preferred bidder, Afilias will follow one of two courses: (i) either auction the domain name via an equitable auction model as outlined above, or (ii) reallocate the domain name through the traditional first-come, first-served process.

Afilias will decide in its discretion which domain names to make available via auction. In the event that a domain name that is posted for auction receives no bids within the term of the auction, the domain name will be reallocated through the traditional first-come, first-served process.

Afilias will contractually agree with ICANN to distribute any excess proceeds (i.e., proceeds in excess of Afilias' standard wholesale registration fee, plus Afilias' direct costs of conducting the RFP and auction processes, including without limitation, third party auction fees) from the allocation methods of these domain names in one or more of

the three areas as originally specified in the ICANN's Allocation Framework Document in connection with single and two character domain names; namely:

- Returning a portion to registrants of .INFO domain names in the form of registration fee reductions to registrars;
- Funding initiatives associated with ICANN's security and stability role; and/or
- Improving accessibility to the Internet and to the ICANN multi-stakeholder model.

The specific uses of proceeds within these three categories would be at the discretion of Afilias. Afilias is willing to engage an accountant to conduct a compliance audit with this commitment, provided that any such audit fees are paid from the proceeds of the allocation process.

**Describe quality assurance plan or testing of Proposed Service:**

Afilias has been closely monitoring the equitable allocation processes that both .MOBI and .ASIA have employed as it is the registry backend infrastructure provider for both of these TLDs. Afilias' legal team has also been reviewing the various legal documents utilized by both .MOBI and .ASIA. Afilias contemplates no issues whatsoever with regard to quality assurance.

**Please list any relevant RFCs or White Papers on the proposed service and explain how those papers are relevant.**

Afilias is not aware of any relevant RFC or White Papers, although ICANN may find the documentation utilized by both the .MOBI and .ASIA registries informative.

**Contractual Provisions**

***List the relevant contractual provisions impacted by the Proposed Service:***

To the extent proceeds of the various allocation methods in excess of Afilias' standard registration fees would be collected via registrars, the proposed service would impact the schedule of fees, Exhibit A of the Registry Registrar Agreement (Appendix 8).

***What effect, if any, will the Proposed Service have on the reporting of data to ICANN?***

None

***What effect, if any, will the Proposed Service have on Whois?***

None. Those names that are in a pending reallocating state will show Afilias listed as the registrant of record, and the domain name pending equitable reallocation. This is the current practice that Afilias has employed for the past several years. When the name has

been successfully reallocated, the Whois data will be promptly updated according to existing obligations.

***What effect, if any, will the proposed service have on the price of a domain name registration?***

While the base registry fee with respect to the registration of these domain names in the proposed reallocation process will be equal to Afiliias' standard fee, we anticipate that proceeds to the registry resulting from the RFP and auction processes will vary among the different domain names.

### **Contract Amendments**

***Please describe or provide the necessary contractual amendments for the proposed service:***

To the extent proceeds of the various allocation methods in excess of Afiliias' standard registration fees would be collected via registrars, Afiliias' proposes to modify the appropriate fee schedule in the Registry Registrar Agreement (Appendix 8) to incorporate the necessary changes as set forth in this proposal. Following approval of the proposed service, Afiliias and ICANN staff will enter into discussions regarding specific language.

### **Benefits of Service**

***Describe the benefits of the Proposed Service:***

The proposed allocation plan sets forth an equitable process whereby all potential registrants have an equitable opportunity to register a highly sought after domain name.

Further, a benefit to Afiliias is that it provides an opportunity to enhance brand awareness in the marketplace by employing a process whereby highly sought and/or intuitive names are equitably allocated to third parties demonstrating a commitment to building the .INFO brand.

### **Competition**

***Do you believe your proposed new Registry Service would have any positive or negative effects on competition? If so, please explain:***

As stated above, Afiliias believes that providing more registrants an opportunity to register these likely highly sought after domain names will have an overall positive effect on competition.

Further, Afiliias believes that one of the clearly positive effects on competition is the ability for Afiliias to further promote its brand and provide registrants a viable alternative to other gTLDs.

***How would you define the markets in which your proposed Registry Service would compete?***

Afilias does not believe that this service as currently proposed in connection with the small subset of Sunrise domain names competes in any established “market” other than the general domain name registration market.

***What companies/entities provide services or products that are similar in substance or effect to your proposed Registry Service?***

As previously mentioned, both the .MOBI and the .ASIA registries have utilized non-first-come, first-served equitable allocation processes.

***In view of your status as a registry operator, would the introduction of your proposed Registry Service potentially impair the ability of other companies/entities that provide similar products or services to compete?***

Afilias does not believe that its proposed service would negatively impair the ability of other companies/entities that provide similar services any more than the similar/identical services offered by the .MOBI and .ASIA registries.

***Do you propose to work with a vendor or contractor to provide the proposed Registry Service? If so, what is the name of the vendor/contractor, and describe the nature of the services the vendor/contractor would provide.***

Afilias may employ the services of a third party auction provider to assist in auction phases of the equitable reallocation process. The nature of services such a vendor would provide would be traditional online auction services.

***Have you communicated with any of the entities whose products or services might be affected by the introduction of your proposed Registry Service? If so, please describe the communications.***

No. Afilias has provided existing registrants of non-complying registrations numerous opportunities (and 7 years time) to establish their compliance with the original Sunrise registration terms and conditions.

***Do you have any documents that address the possible effects on competition of your proposed Registry Service? If so, please submit them with your application. (ICANN will keep the documents confidential).***

No.



## **Security and Stability**

***Does the proposed service alter the storage and input of Registry Data?***

No.

***Please explain how the proposed service will affect the throughput, response time, consistency or coherence of responses to Internet servers or end systems:***

Afilias anticipates no impact on the throughput, response time, consistency of coherence of responses to Internet servers of end systems.

***Have technical concerns been raised about the proposed service, and if so, how do you intend to address those concerns?***

Afilias is not aware of any technical concerns regarding the proposed service.

## **Other Issues**

***Are there any Intellectual Property considerations raised by the Proposed Service?***

No. Any domain name that is reallocated will be subject to the UDRP.

***Does the proposed service contain intellectual property exclusive to your gTLD registry?***

No

***List Disclaimers provided to potential customers regarding the Proposed Service:***

Afilias legal counsel has not yet finalized the RFP and auction documentation that will be provided to registrants in connection with this service; however, it will be modeled upon the terms of services included in the .ASIA and .MOBI service offerings.

***Any other relevant information to include with this request:***

None