

October 12, 2009

Peter Dengate Thrush
Chairman of the Board
Internet Corporation for Assigned Names and Numbers
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292-6601

Dear Peter,

Afilias, Neustar and PIR thank you for making time to meet with us on September 30 on the critical issue of vertical separation of registry and registrar functions in the domain name marketplace. This was particularly important to us following several recent statements by ICANN that inaccurately represented the position of the Registry Constituency on this matter. This letter recaps our formal position on this issue and responds to the questions posed in your follow-up email of October 1, 2009.

We believe the key policy of registry-registrar separation has been one of ICANN's great organizational successes to date. The breakup of the legacy monopoly structure with a requirement for a separation between registry and registrar functions has enabled healthy and vibrant competition among registrars to the ultimate benefit of the consumer in the form of expanded choice and lower registration fees. During the last decade, this successful market structure has prohibited registries from acting as a registrar in their own TLD, which has guaranteed equal access to all registrars without fear of preferential treatment or insider trading of registry data.

To reiterate our position, Afilias, Neustar and PIR welcome registrars as registries for new TLDs, and believe they should be permitted to own new TLD registries and/or providers of technical back-end registry services, *provided* they abide by the current rules and are restricted from selling second-level domain names in their own TLD. Further, we believe ICANN has failed to make an informed argument for removing that restriction.

Unfortunately, it has become clear in recent weeks that ICANN staff is favoring the reversal of this successful policy. Our position and arguments have been repeatedly misunderstood, mischaracterized and/or intentionally misrepresented by ICANN staff and the few self-interested parties arguing for a relaxation in structural separation. We are troubled that the very limited telephone questionnaire conducted by ICANN's two contracted economists focused only on questions of market dominance and not other critical questions including registrar abuse of the system, harms to consumers, harms to non-affiliated registrars, and insider access to sensitive registry data.

If the current policy is eliminated or undermined for the new round of TLDs, particularly without adequate market-specific analysis of the negative consequences, the result will be increased variety and intensity of consumer abuse. ICANN has yet to conduct an informed, market-specific analysis of these risks and harms to consumers. Even ICANN's own commissioned study (the CRA Report) identified these significant concerns and recommended maintaining vertical

separation of registry and registrar functions except in very specific, limited cases, which we also support.

If allowed to go forward, this proposed deregulation will facilitate “insider trading” that will open the door to abusive domain registration practices and higher domain name prices for some registrants. It will provide the affiliated registrar access to sensitive registry data that includes the entire universe of data for potential and existing domain names from all registrars that sell the TLD. A registry has the unique power to see DNS traffic in its domain; with access to this data, an affiliated registrar would be in a unique position to identify potentially high value names and monetize them through auctions, traffic sites or secondary market sales.

Domain name tasting and front running are just two recent examples of the type of abusive practices that will result if a vertically integrated registry can sell its TLD through its affiliated registrar. Both practices could result in registrars withholding valuable names from average registrants and have the effect of *raising prices* for the average consumer who seeks to register names in what is supposed to be a first-come-first-serve system. ICANN’s proposal will make it possible for a combined registry-registrar entity to eliminate nearly the entire financial penalty on tasting. A vertically integrated registry registrar eliminates 94% of the current cost imposed on a registrar that engages in tasting. With regard to front running, ICANN’s recent survey was insufficient and not a valid investigation because, in at least one material instance, it actually looked in the wrong place for evidence of that activity.

Finally, the newly released Draft Applicant Guidebook version 3 (Section 2.9 – Use of Registrars) includes four proposed models for addressing registry-registrar separation, none of which represent our actual position on this critical matter; namely that **entities providing registry services should not be involved directly or indirectly in the distribution of those domain names at the retail level**. Instead, each of the four “alternatives” presented by ICANN focuses more on restricting ownership as opposed to functionality. Moreover, there is no discussion of where these alternatives came from and why these were the only ones selected. We’re concerned that ICANN staff has misunderstood, misrepresented, or simply ignored our position and our recommended model.

Importantly, in addition to the Registry Constituency, several other ICANN constituencies have expressed significant concern or outright opposition to a reversal in the policy of vertical separation of registry and registrar functions. These include the Business Users Constituency, the Intellectual Property Constituency, the Non Commercial Users Constituency, and the Government Advisory Committee. Also, many registrars have noted concern over the effect of competing registrars acting as a registry in their own TLDs and selling directly to the public.

In the Affirmation of Commitments, ICANN agreed to *“ensure that its decisions are in the public interest, and not just the interests of a particular set of stakeholders, ICANN commits to perform and publish analyses of the positive and negative effects of its decisions on the public, including any financial impact on the public, and the positive or negative impact (if any) on the systemic security, stability and resiliency of the DNS.”* ICANN’S own economists, as well as the U.S. Department of Justice, have said that ICANN needs to undertake sufficient economic analysis and carefully weigh the potential consumer benefits *and harms* resulting from ICANN’s

proposal. ICANN has not yet met these minimum obligations on the issue of vertical integration vs. registry-registrar separation.

In light of commitments made in the affirmation document and for the purposes of transparency and information sharing, we respectfully request that ICANN now take the following actions:

1. Correct the record where our position has been misstated, including in your 9/22 letter to the GAC Chairman and the 9/23 Congressional Testimony of ICANN's COO.
2. Use the scheduled October 19th Webinar and/or workshops held during the ICANN meeting in Seoul on this issue, as the opportunity to share with the community the reports/briefs/opinions of the ICANN economists and ICANN staff, enabling a healthier understanding, not to mention greater transparency into the process.
3. Explain the provenance of the four options for vertical integration in the DAG version 3, including any documentation that could shed light on the origin and evolution of the four proposed options.
 - a. Include an explanation as to why our proposal though was summarily excluded from consideration.
4. Complement whatever studies have been undertaken on the benefits with a commissioned economic study on the potential harms and risks to registries, registrars, and registrants.
5. Move the Panel Discussion on this issue, currently scheduled for Wednesday, October 28th at lunchtime to be a part of the DAG version 3 discussion agenda on Monday. Again this allows for the two issues which are critically integrated to be examined at the same time, enabling a rational and joined dialogue.

Finally, we recognize that ICANN's Board Members are extremely busy and don't always have time to read everything submitted to them, or to delve into the details of every matter. We understand that in many cases, Board Members rely heavily on guidance and recommendations from ICANN staff. In light of this, we are very troubled that our position has been misrepresented by ICANN staff and others as being anti-competitive and protectionist behavior by incumbent registries. It is not. We submit this letter to you and to the ICANN Board to ensure our actual position is clearly heard and understood.

We look forward to your continued interest and involvement on this important matter.

Sincerely,

Hal Lubsen, CEO, Afiliis

Alexa A. S. Raad, CEO, Public Interest Registry

Keith Drazek, Director, Government and Industry Relations, Neustar

Cc: Members of the ICANN Board of Directors
Rod Beckstrom, ICANN CEO