

DOC1. NEUSTAR'S RESPONSE TO THE PRELIMINARY ICANN STAFF REPORT FOR THE REASSIGNMENT OF THE .ORG REGISTRY

Highlights

- **ICANN designed a sound, comprehensive Request for Proposal process**
- **The Preliminary Staff Report brings into question the transparency and accountability of this process as implemented. At a minimum, it ...**
 - **Is based on flawed evaluation reports**
 - **Applies inconsistent weighting to the evaluation reports**
 - **Inappropriately and prematurely selects ISOC**
- **ICANN staff must ensure a clean, stable, and timely transition of .org**

1.1 ICANN staff must revise the Preliminary Staff Report to avoid improper prejudice in the .org selection process

Consistent with ICANN's core principle of openness and transparency, NeuStar, Inc. ("NeuStar") appreciates the opportunity to comment on the "Preliminary Staff Report on Evaluation of the Proposals [for] Reassignment of the .org Registry" (the "Preliminary Staff Report"), as well as the individual evaluation reports (the "Evaluation Reports") relied upon as the basis for that report. ICANN's request for proposal and evaluation process was well thought out and should ultimately provide a solid basis for a decision. NeuStar is concerned, however, that the implementation of this process, as evidenced by the Preliminary Staff Report, as well as the recommendations underlying that report, is flawed and may not lead to the selection by the ICANN Board of Directors (the "Board") of the best .org registry operator.

In order to correct the flaws in the process, ICANN staff must revise its preliminary report to provide the Board with sufficient information to make an informed decision from among the candidates. In particular, the revised report must:

- Address, or at least acknowledge, identified discrepancies and flaws within the various Evaluation Reports;
- Base any recommendations upon the properly published RFP criteria only; and
- Avoid prejudice to the Board's decision-making process with premature or inappropriate selection recommendations.

ICANN must ensure that its final selection of a new .org registry operator cannot be criticized, or overturned, as arbitrary and capricious.¹ By revising its Preliminary Staff Report, ICANN Staff will make an important step forward in ensuring a continued, fair, and proper selection process. The following comments provide more detailed discussion of NeuStar's concerns.

1.2 Preliminary Staff Report is based on flawed evaluation reports

NeuStar respectfully submits that the Preliminary Staff Report does not demonstrate sufficient consideration by the Staff of the specific evaluations contained in the Evaluation Reports. Given the severely flawed nature of some of the analysis contained within those reports, the recommendations contained within the Staff Report are premature and improper.

ICANN Staff, as well as the Board, must take the following discrepancies into account in any final evaluation of the bids and selection of the new .org registry operator:

- The introduction of new criteria;
- The reintroduction of previously rejected criteria;
- The misapplication of published criteria;
- The existence of severe internal inconsistencies;
- The existence of mathematical errors;
- The introduction of biased interpretations; and
- The existence of incorrect interpretations of the proposal responses.

More importantly, however, the Staff and Board must take steps to ensure that flawed evaluations do not improperly influence the final Staff Report, or the Board's decision.

NeuStar has submitted detailed comments on each of the Evaluation Reports and incorporates these comments by reference here (a summary of NeuStar's comments follows)².

Because of the prominent weight afforded the NCDNHC Evaluation Report ("NCDNHC Report") in the Staff's analysis, specific comment on this report is warranted here as a prime example of NeuStar's concerns.

1.2.1 The NCDNHC Evaluation Report

The NCDNHC Evaluation Report (the "NCDNHC Report"), in particular, cannot be accepted on its face, if it is considered at all. The NCDNHC Report demonstrates a

¹ Although the Administrative Procedures Act ("APA") applies only to government process, the quasi-regulatory nature of ICANN's activities suggests that the APA can serve as a good source of guidance for sound ICANN decision-making. It is unclear that, if it were a final decision of a government agency, the Preliminary Staff Report could withstand APA scrutiny.

² As per ICANN Staff instructions, NeuStar's comments on this or other evaluation reports do not, in any way, amend our proposal or other material provided to ICANN relative to the reassignment of .org.

biased and deterministic analysis designed from the outset to favor applicants that are non-profit entities, regardless of their ability to properly operate the .org registry. For example, the NCDNHC Report included, as a strongly weighted factor, whether the applicant supports and participates in the NCDNHC. Given that only non-profit entities have any meaningful ability to participate in this organization, adding this new, unpublished criterion clearly favors non-profit applicants. Moreover, as documented in their report, NCDNHC's application of points within their own criteria were inconsistent with their stated analysis of the rankings. For example, although NeuStar was ranked "moderate" on the input/governance criterion and ISOC was ranked "low", both applicants were given three points. Thus, this report, if it is considered at all, must be read with an understanding of its underlying biases and flawed assumptions.

Of particular note regarding the NCDNHC Report is the existence of certain mathematical errors in evaluation scoring. As NeuStar discusses in Document 4, Section 4.3, correction of one of these errors warrants placement of NeuStar in NCDNHC's top evaluation category rather than the second. This fact is worthy of note because the Preliminary Staff Report selected ISOC because it was the only proposal that "was ranked top-tier in each evaluation." Upon correction of the identified mathematical error, this statement is no longer accurate.

The problems with this report demonstrate a fundamental flaw in ICANN's selection of evaluators of the non-technical aspects of the .org applications. Two independent evaluators that were completely unaware of the other's efforts evaluated the technical questions in the proposals. A team chosen from the ranks of ICANN's non-commercial constituency, on the other hand, conducted the Usage Evaluations. It's worth noting that Stuart Lynn, in an email dated July 9, 2002, to Harold Feld, co-chair of the NCDNHC, requested that the NCDNHC perform the evaluation of the proposals. However, the group that performed the evaluation was an "all volunteer team"..."composed of individuals active in the NCDNHC" according to the Preliminary Staff Report, not the NCDNHC. This group is an insider in this process with a significant stake in its outcome. Importantly, the organization, and particularly the voluntary team, does not represent even the .org Community, much less the entire non-commercial community. Rather, it represents participants in the ICANN process that will benefit from the selection of a .org operator that commits to participation in and support of that constituency group. Although NeuStar supports the constituency and will continue to participate in meetings, such participation is irrelevant to NeuStar's ability to serve the global non-commercial community and should not be allowed to be a scoring factor.

1.3 Preliminary Staff Report ignores Board-established priorities of the criteria discussed in the evaluation reports

The Staff Report notes the Board's position that "proposals that rank very high with respect to [the continuing stability of operation of the .org registry as indicated through demonstrated experience] should be given primacy of consideration above all others". The report also recognizes that the Gartner evaluation ranked NeuStar the highest applicant in this category. In addition, NeuStar received the highest score on criterion 11, which measures the overall completeness of the bidder's proposal and ability to execute on it

promises. While ICANN staff used this criteria to support ISOC's recommendation, they did not assign appropriate and relative weight of this criterion to the other bids.

Despite the Board's clear guidance, and despite the fact that NeuStar was given the highest score on both these criteria by an independent evaluator, ICANN staff recommended the ISOC bid because it scored higher on the Usage Evaluations of the NCDNHC. This recommendation ignores the importance assigned by the Board to two published criteria by giving greater weight to lesser criteria. Such a decision cannot be supported and must be revised.

1.4 The inappropriate "Selection" of ISOC must be reconsidered

Given the significant issues raised here and in NeuStar's assessment of the Evaluation Reports, it is clear that the Staff Report prematurely selects ISOC as the best candidate for transition of .org. In particular, the highly flawed NCDNHC analysis is an insufficient basis for the final selection of the ISOC bid.

The Staff Report recommends "that the Board authorize the President to enter into negotiations immediately on a schedule that would allow Board approval of the negotiated agreement and ultimate transition of the registry so that ISOC could commence operations on 1 January 2003." Further, the Staff Report would appear to recommend that the Board only consider other potential registry operators if "negotiations with ISOC fail in the allowed timeframe".

In order for the ICANN process to function in the public interest, the Board must have at its disposal accurate information and recommendations regarding the decisions that it is called upon to make. In the case of .org, it must be provided with a report from staff that will assist it in analyzing the various bids and allow it to use its own judgment as to the weighting and value of the various considerations included within the Evaluation Reports. By prematurely recommending a single operator for Board approval, the Staff Report limits the discretion of the Board to the "selection" of a single operator based entirely upon the staff's acceptance at face value of the flawed statements in the Evaluation Reports. This is an improper limitation of Board's discretion. To this end, the staff's final report must provide a list of the most qualified applicants and the relative strengths and weaknesses of each. The Preliminary Staff Report, however, makes a summary recommendation based upon an incomplete analysis. Thus, it does not properly assist the Board, but rather leads to the selection of a less qualified candidate.

1.5 ICANN staff must ensure a clean, stable and timely transition of .org

The Staff must carefully consider NeuStar's and other applicants' comments and release a final Staff Report that ensures a fair and even-handed evaluation based upon all of the published RFP criteria. Only then will the Board be capable of making an informed and well-documented decision that can survive public scrutiny.

ICANN is at a critical point in its existence. The organization is under attack at all levels from both national and international sources. ICANN can be sure that the .org decision will be closely scrutinized to ensure that ICANN is operating consistent with the principles outlined in the ongoing reform efforts. Most specifically, as Ms. Nancy



Victory, NTIA Assistant Secretary, noted in her letter to Stuart Lynn, people will seek to ensure that ICANN decision-making processes “provide for transparency and accountability”. A challenge of the final decision of ICANN in the .org selection process will bring undue scrutiny on ICANN. The preliminary recommendations of the Staff Report will not withstand such scrutiny and will bring into question the organizations reform efforts as a whole.

CONSOLIDATED NEUSTAR RESPONSE

NeuStar response table

Error	Reference	ICANN Staff required action
ICANN Staff Report		
1.1 Preliminary Staff Report is tainted by the flawed nature of the evaluation Report.	Preliminary Staff Report, pages4-9	ICANN Staff must ensure that flawed evaluations do not influence the final staff report or the Board's decision.
1.3 Preliminary Staff Report ignores Board-established priorities of the Criteria discussed in the evaluation report.	Preliminary Staff Report, pages9-10	Apply proper Board-established priorities to documented RFP criteria.
1.4 Based upon flawed input, the preliminary Staff Report inappropriately selects ISOC as the preliminary winner.	Preliminary Staff Report, page 10	Revise the Preliminary Staff Report to identify the strengths and weaknesses of the primary candidates in support of a final Board determination.
Gartner Report		
2.1.1.1 NeuStar has considerably more registry experience than the other four candidates.	Gartner letter, pages 5 and 6	Correct inconsistency.
2.1.1.2 NeuStar <i>does</i> provide an OT&E environment.	Gartner letter, page 5	Correct evaluation.
2.2.1.1 Evaluation of this criterion omitted critical proposal sections related to stability.	Gartner RFP review, mapping, page 8	Include omitted sections in evaluation.
2.2.2.1 The logic is simple—lowest cost + highest quality = best value.	Gartner RFP review, findings details, page 26	Disregard Gartner evaluation and conduct their own evolution.
2.2.3.1 Gartner incorrectly interpreted a dual-protocol environment as a benefit to the community, rather than a fundamental threat to the stability of .org.	Gartner RFP review, findings details, page 27	Correct discrepancy in Gartner's evaluation and rectify in Staff report.
2.2.3.2 Gartner also omitted credit for NeuStar's fluency over other applicants when it came to the SRS protocol.	Gartner RFP review, findings details, page 26	Correct discrepancy in Gartner's evaluation and rectify Staff report.
2.2.4.1 Gartner's evaluation overlooked the inherent risk of some bidders' transition solutions.	Gartner RFP review, findings details, pages 22-23	Correct discrepancy in Gartner's evaluation and rectify Staff report.
2.2.5.1 ICANN Staff omitted Gartner's evaluation of Criterion 11.	Gartner RFP review, findings details, page 22-23	Include evaluation of Criterion 11 and provide appropriate weighting.
CIO Team Report		
3.1 CIO Team Evaluation incorrectly concludes that the ISOC bid has a strong, low-risk organizational model.	CIO Team Evaluation, page 2	The ISOC proposal should be rated in the second category.

NeuStar response table

Error	Reference	ICANN Staff required action
NCDNHC's Usage Evaluation Team Report		
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
4.2.3.2 Incorrectly reclassified endorsees with valid .org registrations	NCDNHC, page 22, 24	Classify NeuStar letters to Class A

NeuStar response table

Error	Reference	ICANN Staff required action
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.

NeuStar response table

Error	Reference	ICANN staff required action
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ICANN General Counsel Report

5.1 The Report's conclusion that the ISOC proposal satisfies Criterion 2 is not supported.	Procedural evaluation, criterion 2	Reconsider the assessment of ISOC's ability to comply with ICANN policies.
5.2 The analysis of the enhancement of competition for registration services is too narrow.	Procedural evaluation, criterion 4	Broaden the review of the evaluation to include the business model, the registration price, and financial stability.
5.3 The Report does not adequately assess the potential consequences of failure to obtain the VeriSign endowment.	Procedural evaluation, criterion 10	Discount applicants who are reliant upon the VeriSign endowment to fund their registry services.
5.4 The Report does not assess Gartner's evaluation of Criterion 11.	Procedural evaluation, criterion 11	Include criterion 11 in the procedural evaluation.