

July 14, 2004

Dotnet-comments@icann.org

Dotnet-criteria@icann.org

Internet Corporation for Assigned Names and Numbers (ICANN)

4676 Admiral Way, Suite 330

Marina del Rey, CA 90292-6601

Re: Procedure for Designating a Subsequent .net Registry Operator

Dear ICANN and the GNSO:

NeuLevel, Inc. (“NeuLevel”) very much appreciates this second opportunity to offer its thoughts on the .net registry operator selection process and hereby submits its comments on the Final Dot Net Subcommittee Report (the “GNSO Final Report”), which outlines the proposed selection criteria.

The Selection Process

Before commenting on the GNSO Final Report, NeuLevel would like to reiterate several key points made in its original comments submitted on June 18, 2004 (the “Initial Response”) in response to the Draft Procedure for Designating Subsequent .net Registry Operator (the “Draft Procedure”). Although NeuLevel’s original comments were not included in the Final Procedure for Designating Subsequent .net Registry Operator released by ICANN on June 29, 2004, NeuLevel believes that such comments can, and should be, incorporated into the actual Request for Proposals (“RFP”). These include:

- *Criteria for Selecting Evaluators.* In the RFP, ICANN should establish and articulate criteria to govern the qualifications and selection of those individuals who will assist in evaluating the proposals. *See page 2 of the Initial Response.*
- *Maintaining the Impartiality of Evaluators.* ICANN should establish and articulate the processes and procedures to be used to ensure the impartiality of persons selecting the successor .net registry operator and/or evaluating the proposals. *See page 2-3 of the Initial Response.*
- *Putting Changes in Writing.* In the event ICANN needs to change or modify the requirements of the RFP after its issuance, ICANN should do so through written amendments that are made public. *See page 3 of the Initial Response.*
- *Public Disclosure of Contacts with Evaluators.* In order to ensure transparency and fairness, any exchanges between actual or potential bidders and evaluators from the time the RFP issues until the subsequent .net registry operator is announced must occur in writing and be made publicly available. In addition, the RFP should indicate whether ICANN plans to allow a question and answer period once the RFP is released or interview candidates once bids are submitted – both of which should be subject to public disclosure requirements. *See page 3 of the Initial Response.*

- *Form of RFP Response.* NeuLevel would strongly urge ICANN not to so drastically limit .net submissions as it did for the latest round of sponsored TLD applications. 10,000 characters of text with no opportunity for the submission of figures, diagrams or spreadsheets is simply not adequate for a bidder to demonstrate its ability to satisfy the criteria. Indeed, such severe content limitations actually discourage the submission of specific evidence of practical (as opposed to theoretical) experience – the kind of information ICANN should be seeking in the comparative process. *See page 6 of the Initial Response.*

The Selection Criteria

NeuLevel again reiterates that it generally supports the selection criteria identified in the GNSO Final Report. However, more clarification of the criteria is necessary to properly inform bidders and evaluators as to the desired qualifications and to ensure the selection process is fully transparent. Specifically, NeuLevel urges that ICANN (1) make clear the extent to which bidders are comparatively evaluated on the absolute criteria; and (2) further elaborate as to the specific elements and/or level of capability sought with respect to the various criteria, both absolute and relative.

The language of the GNSO Subcommittee Report is somewhat ambiguous on these points. ICANN should use the absolute criteria collectively to separate the bidders into classes of technical competency. As in the .org selection process, only those bidders earning the highest class of technical ranking should be further evaluated based upon the relative criteria.¹ Again, as in .org, once bidders in the highest technical class are identified, their individual technical scores should no longer be considered and selection should be made only on the basis of their scores on the relative criteria.²

With regard to further elaboration of the elements of the various criteria, NeuLevel has already submitted specific suggestions with its Initial Response.³ To further assist ICANN in considering these suggestions, NeuLevel has included as Attachment A a redlined version of the GNSO Final Report that specifically highlights NeuLevel's proposed additions and modifications to that document.. Most importantly, these suggestions include:

- *Appropriate and Specific Minimum Technical Standards.* ICANN should articulate minimum technical standards for .net based upon an appropriate and established level of technical service, including SRS, Nameserver and Whois Availability and frequency of updates. NeuLevel urges ICANN to adopt technical standards similar to those prescribed in ICANN's recently awarded contracts, such as for .org and .biz. In establishing minimum technical requirements for .net and evaluating the technical capabilities of the bidders, ICANN must focus on what is appropriate and relevant to the operation of .net—and *only* .net. For instance, it would be unfair to most bidders and unnecessary to .net's operation to establish minimum standards reflective of certain aspects of .net's current operation in conjunction with .com, a database that alone contains over 26 million domain names, or the equivalent of well over 70 percent of all gTLD domain names.⁴

¹ See *.org Reassignment: Preliminary Staff Report on Evaluation of the Proposals for Reassignment of the .org Registry* at <http://www.icann.org/tlds/org/preliminary-evaluation-report-19aug02.htm>.

² *Id.*

³ Please refer to pages 4-6 of the Initial Response for a further discussion of these and other items.

⁴ For example, it would be unnecessary and unfair to most bidders to require that they demonstrate that they already have experience operating a database of 5 million names, as VeriSign is the only registry that currently has that volume.

- *Clarification that .net Consumers are the Registrars.* Relative Criterion 1 emphasizes that bidders will be evaluated on their ability to maximize and enhance choice, price, innovation and value for the “consumer.” To be clear, the consumers or customers of the .net registry operator are the registrars. ICANN should therefore clarify that this Criterion involves the maximization of choice, price, innovation and value for registrars, not for the general Internet public.
- *Price As a Function of Value.* Statements in Relative Criterion 1 create confusion as to the relationship of price and value for purposes of the .net evaluation process. ICANN should thus make clear that, while price is important, the overall evaluation must be one of value. The relevant inquiry should not be which offering is less expensive, but rather which offering provides the most value for the lowest price.⁵
- *Existing Registry Services Should be Defined as Those Offered at RFP Issuance.* ICANN should make clear that “existing registry services” includes only those services actually being offered by the .net registry on the date the RFP is issued. It would be unreasonable and unfair to bidders to require them to address services that are not launched in advance of the time the RFP is issued, as bidders would not have an opportunity to determine what those services are or how those services are administered. Further, so as not to disrupt users of .net, the .net registry operator should be directed to maintain the *status quo* and be prohibited from introducing any new service beginning on the date the RFP is issued and to release any relevant details regarding the administration of any services launched prior to such date. Such an operational freeze is standard practice with respect to competitive contract rebids. Thus, if the Wait List Service proposed by VeriSign is not launched with respect to .net by the date on which the RFP is issued, such service should not be allowed to be launched in .net until after the .net procurement has been finalized. Allowing the service to go forward after the RFP could not only put any transition of such service in jeopardy if a new operator is selected, but it would also provide an unfair advantage to the incumbent operator – the only entity who would know the details of the new service and how to best support it.

NeuLevel again appreciates the opportunity to offer its thoughts on the .net successor registry operator designation process, specifically on the GNSO Final Report. NeuLevel hopes that ICANN finds these comments to be useful and constructive. Please feel free to contact me should you have any questions or should you require further clarification of the information presented in this letter and the attachment.

Sincerely,

Richard Tindal
Vice President of Registry Services
NeuLevel, Inc.

⁵ For example, a \$6.05 service may offer much more value in terms of additional capabilities than a \$6.00 service, and thus should be evaluated more highly.