

November 22, 2004

net-rfp-comments@icann.org

Internet Corporation for Assigned Names and Numbers (ICANN)

4676 Admiral Way, Suite 330

Marina del Rey, CA 90292-6601

Re: Draft .net Request for Proposals

Dear ICANN:

NeuLevel, Inc. ("NeuLevel") appreciates the efforts to date of ICANN to adopt a competitive and transparent process for the selection of the successor operator for the .net registry and provides the following comments on the Draft .net Request for Proposals ("Draft RFP") released on November 12, 2004.

General Comments on the Draft RFP

a) Schedule. NeuLevel supports the schedule laid out in the Draft RFP". The proposed timeline provides adequate time for the selection of a successor registry by the end of the existing contract term. NeuLevel also believes that the timeline and proposed selection process comports fully with the requirements of the .net Registry Agreement.

b) Proposal Format. In addition to ensuring that the appropriate evaluative criteria are clearly and adequately described, ICANN should also ensure that bidders are afforded sufficient latitude to demonstrate their qualifications and expertise under each of the criteria. The Draft RFP currently seems to follow the same format used in the recent round of sponsored top-level domains and does not indicate whether ICANN will limit the quantity or type of information submitted by each bidder. NeuLevel would strongly urge ICANN not to so drastically limit .net submissions as it did for the latest round of sponsored TLD applications. Ten thousand 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 and makes evaluating the proposals much more difficult. Indeed, such 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. Instead, NeuLevel recommends that applicants be allowed to submit, along with a hard copy, a pdf copy of their proposals allowing ICANN to quickly and easily post the proposals on the ICANN website while at the same time allowing applicants to effectively use diagrams, charts, and other graphics for easier evaluation.

c) Public Comments. NeuLevel is satisfied that the timeline affords multiple opportunities for public comment. These multiple opportunities for public comment are consistent with ICANN's bottom-up policy development approach. Affording adequate opportunities for affected entities to provide input will help to ensure that the right applicant is selected and that the designation process is fair for all. However, NeuLevel also urges ICANN and the evaluators to use caution when relying on the public comments submitted to the official comment forum. In the past, several bidders have used "strawmen" to post favorable comments on the forum about their bids and negative comments about competitors' bids. Therefore, NeuLevel strongly recommends that the commenter reveal the complete extent of its commercial interests or otherwise with any of the potential or actual bidders and that if a commenter does not include such information, that the bidder be

required to clarify such a relationship. We feel this will give evaluators a more sound basis for objectively assessing such comments and making an informed and fair recommendation.

d) *Length of Contract Term.* According to the consensus resolution passed by the GNSO Council on August 5, 2004, the Council recommended that all material provisions of the new .net Agreement should be made known to the public in the draft and final RFPs. NeuLevel appreciates the fact that ICANN has disclosed the amount of fees that will be required to be paid to ICANN over the term of the contract, but ICANN has not indicated precisely what will be the length of the contract. NeuLevel believes that this information should be disclosed in the final RFP in order to propose a realistic, viable, and appropriate business, technical and financial model. We believe that the term should be at least six (6) years, which would mirror the term in the latest .org agreement signed in 2002.

RFP-Specific Comments

a) *Online Question Period.* On page 3, the Draft RFP states that an online question period will “open at 23:59 UTC 1 November 2004 and close at 15 November 2004 at 23:59 UTC.” As these dates have already passed, and the final RFP has not yet been issued, we assume that these dates are no longer accurate. We would recommend that the question period occur in December 2004 and that answers to these questions be posted well before 1 January 2004, to give ample time for the applicants to consider the answers to such questions in their submissions.

b) *Confidentiality.*

- i. On page 4 of the Draft RFP, ICANN states that Sections 2, 3a, and 6c of Part 2 will remain confidential. NeuLevel asks that ICANN revisit these sections, as the numbering seems to be in error. For example, in the current draft, Sections 2 and 3, labeled “Equivalent Access for Registrars” and “Registry Operations” are exactly the type of sections that should be displayed to the public and have never been held confidential in any previous procurement sponsored by ICANN. We believe that sections 2 and 3 are precisely the topics that should be subject to public scrutiny and therefore do not recommend that these two sections be subject to confidentiality requirements.
- ii. In addition, the one section that many believe should be confidential, namely Criteria 4(a), labeled “Revenue and Pricing Model” is currently slated by ICANN to be publicly disclosed. In fact, this information was kept confidential in the most recent sponsored TLD selection process. As a private company, NeuLevel strongly recommends that to the extent audited financials are required of the applicants, they be kept strictly confidential by the ICANN and the evaluators and subject to an appropriate non-disclosure agreement. As ICANN is currently and appropriately requiring that financials be audited by an independent third party, and that they undergo further scrutiny by the evaluators, NeuLevel sees no reason that disclosure of such financials would serve the public interest. If anything, it may discourage potential private companies from applying, thereby reducing the potential for beneficial competition, and therefore should not be made public.
- iii. As stated in NeuLevel’s letter to Paul Twomey, dated November 1, 2004, <http://www.icann.org/correspondence/tindel-to-twomey-01nov04.pdf>, NeuLevel believes that letters of reference are wholly appropriate to demonstrate an applicant’s qualification to operate the .net registry. However, in order to protect the personal privacy of such references, NeuLevel asks that the names of each reference submitted in response to Part I

of the Draft RFP and their contact information are kept confidential by the ICANN and the appointed evaluators.

c) Data about Current .net Operation. In letters dated September 1, 2004 and October 25, 2004, NeuLevel strongly argued that to the extent that ICANN adopted criteria for the .net procurement that require a comparison of an applicant's proposal with the incumbent's current performance levels, a level playing field and a fair and open procurement process demand that all applicants receive information about such performance levels. Failure to do so significantly disadvantages all applicants except the incumbent.

In the Draft RFP, ICANN requires a comparison of the applicant's proposal with the incumbent's current performance levels. These comparisons are required in Criteria 5(a), 5(b)(iii), 5(b)(v), 5(b)(xvii) and in Criteria 6. It is important to note that all of the aforementioned criteria are "absolute" and therefore, according to the Draft RFP, an applicant's inability to propose that it is able to meet the incumbent's current levels and expected growth projections, will result in the immediate disqualification of that applicant. VeriSign's failure to provide such information to each of the applicants, however, requires that each applicant estimate what the incumbent's performance levels are and therefore risk disqualification if it guesses incorrectly. NeuLevel believes that rewarding the incumbent for the incumbent's own failure to disclose its current performance levels with respect to .net is not only unfair to the other applicants, but also makes it more difficult for the evaluators to adequately assess each of the applications.

If ICANN is unable to obtain such information from the incumbent and distribute that data to each of the applicants in a timely manner, then ICANN should either eliminate the criteria in its entirety or provide a reasonable baseline level which needs to be met by each of the applicants in order to qualify under the absolute criteria. Absent a baseline by which to measure performance, the evaluators will have a difficult time in assessing whether an applicant has met the absolute criteria. As just one example, Section 5(b)(iii) of the Draft RFP states "The technical plan should address the following factors . . . (iii) Operational scalability sufficient to handle existing registry database and projected growth; DNS queries including peak periods and projected growth. . ." As stated in each of NeuLevel's prior letters, although VeriSign has filed ".NET monthly reports", VeriSign has failed to comply with its own registry agreements by not separating the .net data from the .com data. The incumbent should not be given an advantage over each of the other applicants, when such advantage has only arisen due to the incumbent's apparent breach of its .net agreement.

An even more extreme example is set forth in Criteria 6 of Part 2 that states that the "ability and commitment to provide even higher levels of security and stability than those offered in the current operation of the .net registry is a relative criterion". How can any applicant commit to a higher level of security and stability than those currently offered by the incumbent, when no applicant (other than the incumbent) has any information about VeriSign's current operation?

As NeuLevel has previously stated, we would be willing to sign an appropriate nondisclosure agreement that would protect the data while at the same time allowing the use of such data in our response to the RFP.

d) Transition Plan.

- i. Criteria 8 in the Draft RFP requires that all applicants other than VeriSign document their plan for migrating .net from the incumbent "with specific attention paid to maintaining existing functional capabilities as defined at the time of the Draft RFP, performance specification and protocol interfaces (i.e., registry-registrar protocol RRP to extensible registry protocol EPP migration)." NeuLevel would like to point out that to the extent that

the incumbent is either proposing to transition .net from RRP to EPP, changing from a thin to a thick registry, or in any way adding additional feature functionality, it too should be required to provide a transition plan. Just as switching from one registry operator to another involves a number of security stability issues, if the incumbent proposes any material changes to its current operations, like those described above, it can also involve stability and security issues to end-users and registrants, and therefore, should require evaluation.

- ii. In addition, the current Draft RFP does not set forth whether the Transition Plan is an “absolute” or “relative” criteria.

e) Revenue and Pricing Model. Section 4 of the Draft RFP states that “the per name price charged to registrars is a relative criterion, with lower committed prices being preferable to higher prices.” NeuLevel notes, however, that the criteria as worded by ICANN differ substantially from the wording in the GNSO Consensus recommendation adopted by the GNSO Council on August 5, 2004. The GNSO criteria states that “preference should be given to proposals offering lower overall costs to the registrar including the registry price” and “An assessment based on price should be balanced with the value proposition offered.” NeuLevel believes that ICANN should follow the interpretation offered by the GNSO consensus recommendation rather than the definition set forth in the current Draft RFP.

f) Directors, Officers and other Staff. In Part One, under the heading Directors, Officers and other Staff, subsection (iii) states “the top two financial officers of the *registrant*.” We believe that the wording of this should read “the top to financial officers of the *applicant*.”

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NeuLevel appreciates the opportunity to offer comment on the draft .net Request for Proposals. 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.