

## Comments on Criteria to Be Used in the Selection of New Sponsored TLDs Tralliance Corporation, 13 May 2003

With regard to the Criteria presented by Dr. Stuart Lynn in Rio de Janeiro, Tralliance Corporation would like to thank the Board for the opportunity to comment. Our intent is to make what we trust will be seen as positive comments to improve on what is, in our view, an effective set of Criteria to move forward with an extension of the current Proof of Concept selection round of new TLDs to include a limited number of sponsored TLDs (sTLDs). We see some ineffective limitations or potential points of failure in attempting to meet what we believe are certain objectives of the Criteria. Below we outline these areas, point out some concerns and conclude with recommended solutions.

### 1. Continuity in the Event of Business Failure

Criteria D. *Criteria for Selection, 1 (d) Assure continuity in the event of business failure* notes that it is critical that registry operations can continue through a business failure. As such, while noting regular data escrow is a key pre-requisite, the Criteria Paper recommends that:

*This approach to ensuring business continuity replaces the approach used in the original "Proof of Concept" evaluation round in 2000.*

*[Romanette (ii)] Regular testing of independent third-party backup capabilities and means for quick transfer of operational responsibility in the event of business failure.*

We would respectfully submit the following:

- The selection of a few new sponsored TLDs (sTLDs), as requested by the ICANN Board of Directors in their sTLD mandates directed to the President, has – from the beginning of this exercise – been framed as “an extension of the original Proof of Concept” round. Therefore, we would recommend that there be no new potentially prohibitively expensive and time-consuming Criteria added to the “extension” round.
- As has been recently proven, there is no method today for determining whether a company will remain financially viable or not. Therefore, should ICANN feel compelled to impose this new Criteria on sTLD applicants, then, in the interest of fairness, it must also oblige all existing registry operators to meet this important criteria.
- A standard should be established, and all registry operators compelled to meet it (within a reasonable period of time), to ensure seamless transfer of data management can occur between registry operators to provide for this safeguard. While we agree that such a safeguard is a good thing, ICANN

needs to allow for the necessary time to study and address all aspects of this important issue before imposing it on new registry operators in this extension of the Proof-of-Concept round.

While we understand the logic for this provision – and can agree with the thinking behind it – we feel that this particular Criteria should be part of the larger discussion which has recently gotten underway within the Names Council, i.e., the logical expansion of the names space. Therefore, we respectfully request that this Criteria not be included in the anticipated sTLD RFP for the reasons noted above, but rather be an integral part of future expansion of the name space – where all Sponsors and registry operators are bound by the same requirements.

## 2. Definition of Sponsor

We would respectfully draw your attention to the fact that the definition of “Sponsor” is too restrictive and does not reflect market realities, i.e., *Section D, 2 Conform to requirements of sponsored TLD, Item (b) Appropriateness of the sponsor and policy-formulation environment.*

We base our view and opinion on this item on our involvement and participation within the ICANN Community and observation of ICANN processes over the past two years. In addition we draw our opinion from observing and listening to the discussions around the reassignment of **.org** in the latter part of 2002.

It is our belief that ICANN, at this time, wishes to add a few sponsored TLDs that serve to benefit specific communities/constituencies. And – importantly – that the policy formulation processes for these sTLDs be as open and transparent as possible.

The Criteria for Selection [Section B. Sponsored TLD] defines the Sponsor as *an organization to which is delegated some defined ongoing policy-formulation authority regarding the manner in which a particular sponsored TLD is operated. The sponsored TLD has a **Charter**, which defines the purpose for which the sponsored TLD has been created and will be operated. The Sponsor is responsible for developing policies on the delegated topics so that the TLD is operated for the benefit of a defined group of stakeholders, known as the **Sponsored TLD Community**, that are most directly interested in the operation of the TLD. The Sponsor also is responsible for selecting the registry operator and to varying degrees for establishing the roles played by registrars and their relationship with the registry operator. The Sponsor must exercise its delegated authority according to fairness standards and in a manner that is representative of the Sponsored TLD Community.*

The Criteria [Section D, 2(b)] also states that “*the sTLD sponsoring organization should be a not-for-profit membership organization.*”

We would respectfully like to point out a number of realities with regard to the above-mentioned Sponsor definition:

- A “not-for-profit” organization is difficult to define on a global scale. The Board of Directors of ICANN came to this conclusion, as articulated by Vint Cerf at the Accra Board meeting, while discussing the issue of whether the registry operator for a TLD such as **.org** (created for the not-for-profit sector) should itself be a not-for-profit entity. At that meeting the Board agreed that it did not matter whether the **.org** Sponsor should be a for- or not-for-profit entity.
- “Not-for-profit,” as defined in the Criteria, could be read to exclude inter-governmental organizations such as the World Health Organization (WHO) or the Food and Agricultural Organization (FAO) that theoretically have the wherewithal and representative character to sponsor sTLDs.
- Such a narrow definition of “Sponsor” could lead to the creation of shell companies and special purpose vehicles with a labyrinth of cross holdings and fund flow structures with a for-profit entity especially if the not-for-profit entity does not have the financial and managerial resources to sponsor and develop the sTLD. This arrangement, though legally correct, would undermine the intent of ICANN in this regard.
- For-profit organizations that have the wherewithal and stakeholder (constituency) support, have invested valuable capital in the initiation of an sTLD by creating awareness within the Sponsored TLD Community to build the requisite support and commitment – under the current Sponsor definition – would be de facto excluded.
- The Sponsor’s role being defined as confined to policy development, as it currently reads, inhibits technology innovation required to provide value added services to the sTLD. While there is little objection to not-for-profit organizations investing in this regard, our question is why exclude for-profit organizations by being restrictive? Our view is that it is more beneficial for Sponsored TLD Communities (constituencies), ICANN and the public at large, if the definition of Sponsor is more inclusive rather than exclusionary.

In conclusion, as noted above, we believe that ICANN is attempting to ensure that transparency is maintained in the establishment of fair policies, more than it is trying to impose a specific legal structure on a Sponsor. Moreover, we agree that, if a for-profit entity is a Sponsor of a sTLD, a bifurcation of process and

policy between the Sponsor and the Sponsored TLD Community, respectively, is imperative. The net effect of a broader Sponsor definition would be the ability of ICANN to attract a broader range of Applicants into the sTLD space.

Therefore, we recommend that the criteria be amended to include for-profit entities with language such as the following:

*The Sponsor of an sTLD should be a bona fide entity that has invested or intends to invest financial and managerial resources to develop, promote and administer the sTLD. If the Sponsor is a for-profit entity, it is incumbent upon them to have the sTLD policy formulation responsibilities be delegated to a not-for-profit organization representative of the Sponsored TLD Community (constituency) on a mutually exclusive basis, in perpetuity.*

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Respectfully submitted by Tralliance Corporation  
Ronald N. Andruff, Chief Executive Officer  
May 13, 2003