

union of international associations union des associations internationales



SECRETARIAT GENERAL: RUE WASHINGTON 40 – 1050 BRUSSELS (BELGIQUE)
tel (32 2) 640 18 08 – fax (32 2) 643 61 99 – email: uia@uia.be – web: <http://www.uia.org/>

Stuart Lynn
President and CEO
Internet Corporation for Assigned Names and Numbers (ICANN)
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292-6601
USA

1 October 2002

Final ICANN staff report for .org reassignment

Dear Mr Lynn,

The final ICANN staff report does little to make us feel more comfortable with the fundamentally flawed process associated with the .org bid.

We believe that we played a straight game on a field in which the goal posts had been relatively poorly defined and seemed to shift as the process moved along.

A good U.S. lawyer could have a field day with the way the process was structured, with the fundamental flaw being a lack of weighting of the various criteria upon which the bidders were judged.

Our association with VeriSign could be a particular focus, for example. Either this was a partnership prohibited by ICANN rules or it was admissible on equal basis with all other bidders. If prohibited then it should have been so stated (and our application refused) and not be inferred after the fact (and make us subject to penalization of undefined weighting). It is equally interesting that it was asserted in the Final Staff Report – again after the fact – that no positive weighting was attached to a “non-profit” bid but a negative weighting was attached to association with VeriSign.

We invested substantial resources into the .org bid in good faith and yet we discover in the Final Staff Report the following two contradictory quotes which, with an apparent and newfound clarity absent in the RFP and all other ICANN evaluation materials, consign our efforts to oblivion. On the one hand, ICANN indicates that our proposal was effectively disqualified as a result of criterion #3:

“The UIA proposal employs VeriSign as its registry operations provider, at least for the first three years of operation. As such, as detailed in the General Counsel’s report, it is the only proposal that ranks low on Criterion 3: Enhancement of Competition for Registration Services. Since this is the overarching goal for the entire undertaking of re-assignment of the .org registry, we believe that UIA / VeriSign should not be favorably considered, unless there was no other satisfactory proposal of sufficient merit – which is clearly not the case.”

On the other hand, ICANN implies that it should have been clear to the bidders that all the criteria were weighted equally, with the exception of criteria 1 and 9, and with no mention of the exceptional standing accorded criterion #3:

“The weights being given to the criteria were derived from the words of the criteria themselves. The Usage Evaluation Team weighted them equally because there was nothing in the words to suggest otherwise. The Gartner team gave 70% of the weight to Criteria 1 and 9 because the words clearly stated that primacy of consideration had to be given to stability of operation and transition.”

We suggest that there were no words in criterion #3 that would suggest a UIA / Diversitas bid – with VeriSign as a back-end subcontractor – would invalidate our bid unless no other organization had the basic ability to manage .org. Yet this is exactly what ICANN is now arguing – after the fact.

Further, ICANN states that:

“No weights were indicated in the draft RFP that was posted, and neither UIA nor any of its partners commented that this was a deficiency.”

On the contrary, UIA asked for a clarification of the weighting of the criteria during the proposal evaluation process immediately following the closure of the bid. The letter seeking clarification was addressed to the Chairman of the ICANN Board and publicly posted. Our subcontractor VeriSign also sent a letter on this subject to ICANN well before the final posting of the RFP. On May 13, 2002, VeriSign sent a 9 page letter to ICANN regarding “Comments and Questions Concerning ICANN Draft RFP Materials” which focused upon the difficulties that would be created without clearly defining how the criteria would be weighted. ICANN chose not to respond to this letter, but the concerns were very clearly expressed. For ICANN to suggest otherwise is incorrect. Perhaps the fact that ICANN has never replied specifically to any of our questions concerning the process and evaluation is its own method of denying that questions or comments were ever made?

We also feel that arguments we put forward relating to our century of statutory dedication to the nonprofit community -- and the recognition of decades of registry function by intergovernmental organization resolutions -- were set aside in favour of methodologically flawed surveys of “community support”.

Basically, therefore, the report only partially addresses our concerns, glosses over several indicated errors (which we have not restated here), and offers further trivial errors which we regret – for example our HQ is in Belgium and not in Switzerland as indicated. But, given our current ranking, our concern is more about the process as indicative of how the internet is to be managed in the future.

We regret, for example, the forthright affirmation that there is no possibility of conflict of interest between the ICANN Board and their membership of ISOC. The focus of the ICANN staff argument on this point is financial interest. This contrasts markedly with the wider recognition of non-pecuniary conflict of interest as indicated in the following quote from a working paper by Transparency International on which ICANN might have modelled its decision process.

Conflict of Interest: Legislators, Ministers and Public Officials

http://www.transparency.org/working_papers/carney/2-nature.html

Most discussion of conflict of interest focuses on the advancement of pecuniary interests. Indeed at times a conflict of interest is defined solely by reference to the obtaining of a financial benefit. This narrow view of conflict of interest avoids having to deal with the wide range of non-pecuniary interests, such as, membership of a sporting, charitable, cultural or environmental body or organisation.

Yet these interests are just as capable of raising a real or apparent conflict of interest which may distort government decision-making.

At least a requirement to disclose a non-pecuniary interest when it arises in the decision-making process allows appropriate weight to be accorded to the view expressed.

Admittedly, there may often be a readiness to make such a disclosure since the official obtains no pecuniary benefit and may revel in the disclosure of one's charitable pursuits. Nonetheless, to ignore non-pecuniary interests increases the likelihood of distortion of government decision-making. Accordingly, this study considers all conflicts of interest whether or not of a pecuniary nature.

The UIA/Diversitas team has learned a great deal about ICANN during our involvement in the .org bid process, and we hope that ICANN will fundamentally reform itself and change its arbitrary, subjective approach to Internet governance that has been so clearly demonstrated during the .org process.

Without such change, and in the light of our experience, we predict that ISOC / PIR / ICANN will be severely challenged in particular by the following:

- Simplistic assumptions about the degree of homogeneity and shared values of .org registrants
- Unproductive marketing competition between .org and the ccTLD analogues in endeavouring to uniquely distinguish .org
- Perceptions by non-US domain holders, in the light of the ICANN / DoC relationship and now with the US-based ISOC / PIR, that a supposedly global .org domain may become biased in support of developing USA foreign policy priorities, and notably its recently announced national security strategy.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Judge', written in a cursive style.

Anthony Judge
Assistant Secretary General
Director Communications and Research