Internet Corporation for Assigned Names and Numbers
.org Applications
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29th August, 2002

Dear Sir or Madam,

<u>Organic Names Limited's .org Proposal – Response to Draft Staff Report</u>

Please find enclosed our response to the draft staff report.

Yours sincerely,

Stephen Dyer   **Alex Bligh**
Director - Organic Names Ltd   **Director - Organic Names Ltd**

It appears from the Org-evaluation website that you may be splitting our comments into various categories. Our paragraph no.s relate as shown below:

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DSR.1 General Observations on the Staff Report

Organic Names is disappointed with the Draft ICANN Staff Report, both in terms of its recommendation, but also (and more seriously), in regard to substantive inaccuracies, misunderstandings, and inconsistencies within the process. We would thus like to take this opportunity to highlight, and where possible, correct these, in order to ensure that the ICANN board do not take their decision on the basis of misinformation.

DSR.2 Application of funds to good causes

At their meeting in Accra the ICANN board announced, prior to receiving bids for *.org*, that they would not welcome bids that used funds from .org to help "*good causes*". On this basis alone the bids from ISOC, GNR, IMS/ISC and Register.Org should fail. Yet the Organic Names bid was actually marked down by the NCDNHC evaluation team because it specifically and clearly embraced the ICANN Board philosophy. We find this perverse.

For reference, the Board decision at Accra was recorded as follows:

> STUART LYNN:
>
> *...I'm very sympathetic to what Amadeu was saying about the purpose of the registry should be to serve the registrants of the registry and not be in the business of what's effectively trying to develop funds for other purposes. But I'm not sure how the Board feels about that.*

> VINTON CERF:
>
> *I think that there are at least three very specific points that the Board might wish to make to the President ... I think that we should explicitly recommend against any special provision for support of activities that are not specifically relevant to operating the dot org domain. Any notion that some part of the funding should be diverted for good works I think merely complicates the job of the organization in some very dramatic way. So I would say that we should make no provision for such special activity. I would point out to you that any organization is free, for profit or not, to execute good works. We don't need to direct that.*

> VINTON CERF:
>
> *In order to not prolong this discussion over much, I'm going to suggest several -- first I'm going to suggest that we convey our views to the President by way of a sense of the Board rather than editing the contents of this resolution. ... The next point has to do with the DNSO's or Names Council's recommendation that we could choose a path that involves explicitly authorizing the operation to divert any excess funds to good works. My recommendation to the Board is to convey the sense to the President that we not do that in any explicit way, and that the organization be focused on making the operation safe, secure, efficient, and as inexpensive as possible. If I -- do I hear any disagreement with that recommendation? Thank you.*

DSR.3 Recusal and Conflicts of Interest

As a potential board member of Organic Names Mr Rob Blokzijl rightly recused himself from the ICANN Board decision on this evaluation. The possible conflict due to membership of ISOC of members of the ICANN board was raised in Bucharest and it is apparent that the ICANN board are live to this issue. We wonder whether ICANN has a similar concern in regard to membership of its evaluation teams.

Specifically Harold Feld, who chaired the NCDNHC panel admitted to a significant conflict of interest, which does not appear to have been ruled on by the ICANN board. Moreover, even if such a ruling has subsequently been given, by his own admission work was started prior to such a ruling. We therefore question to what extent (if any) the ICANN staff has ensured that the members of the external panels were screened for conflict of interest prior to the evaluation.

DSR.4 Weaknesses in the evaluation process with regard to all bidders

There are some aspects of the stability and competence of some of the bidders that appear to have slipped through the net of the evaluation. The efforts to make the evaluation objective and measurable have resulted in some very surprising recommendations.

It is notable that both of the top-rated organisations have shown strong evidence of their inability to operate in line with business and operational plans agreed with ICANN in previous gTLD rounds. We contend that the launch of *.info*, during which the CEO of Afilias resigned describing the sunrise operation as "*an abomination*" is not evidence of Afilias' operational or financial stability, but rather the opposite; others have used far stronger language. Equally Neustar's recent major program of restructuring and redundancies reflects adversely on its long term stability and suitability. However these facts appear to have eluded those performing the evaluations.

Instead, it appears that the size of an organisation, rather than its ability, or *successful* past experience, seems to be the main characteristic that brings organisations to the top of the list. Throughout, statements of ability appear to have been taken at face value, without any externally provided verification.

The ICANN board should not choose a registry whose survival is predicated on winning the *.org* bid, even though by doing so it may save an embarrassment in the possible failure of a registry running an existing new gTLD.

It is our understanding that ICANN operates under agreements with the US Department of Commerce, through the NTIA. Organic Names feels that in view of the many flaws in the evaluation and the conflicts which we and others have highlighted that it would be valuable to the legitimacy of this process if the Department of Commerce provides a statement approving the process which has been followed as a suitable and fair evaluation under the rules for procurement by US government agencies and their contractors.

DSR.5 NCDNHC Evaluation

Organic Names submits that this is one of the most inconsistent, ill prepared, and badly argued reports its principals have thus-far encountered.

It is notable that the NCDNHC comments on, and marks down, organisations which did not respond to questions asked by its members on the public forum. We find this both perverse and inconsistent with the terms of the reassignment.

Firstly, ICANN states under the application instructions:

> *A33. As needed, after the application deadline the ICANN evaluation team may gather additional information by sending applicants e-mails asking for the information or by other means. These inquiries will be initiated by the ICANN staff.*

Organic Names has taken scrupulous care to respond to all questions from ICANN staff. Emails that appeared to be from the subcommittees (whose identities were not known to Organic Names) were referred to ICANN to determine whether ICANN wished us to answer them. In each case, the answer was 'no'. ICANN through its instructions discouraged any form of communication with the evaluators other than by email to org-apps@icann.org.

Yet the NCDNHC appears to have penalised some applicants for doing the very things discouraged or prohibited by ICANN.

Specifically, we are criticised for not responding to the NCDNHC's questions. We received no questions from the NCDNHC. We received one question from Harold Feld, whom at that time had not been announced as participating in the NCDNHC, in which he did not identify himself as part of the ICANN evaluation process. The question asked simply for a copy of our application in Word format, which we had already supplied to ICANN on CD. As ICANN had requested all communication go via org-apps@icann.org, we emailed Mr Touton at this address, pointing out that he already had the application in the appropriate format (with appendices in Excel), and asked whether we should communicate with Mr Feld further, or continue to communicate via org-apps. Mr Touton advised us to do the latter. This is the only contact Organic Names received from the NCDNHC.

Furthermore, it has been inconsistent in its approach. Rather ironically given its final recommendation, it makes no mention of bidders who did not respond to other questions on the forum. Thus, for example, Afilias' failure to answer a question about last-minute changes in its ownership goes un-remarked upon.

The NCDNHC appear to have judged demonstrations of "support" to be evinced by the many "form letters" posted by other applicants on the Public Forum. It is quite apparent from some serious and repeated typographical errors that many of these letters were neither written by, read by nor posted by the entities from which they purport to come. There was no requirement in the original specifications for support to be demonstrated in this fashion. It would have been perfectly possible for any applicant to write (or perhaps automatically generate) letters of support and post them to this forum, which is an approach some appear to have taken. Organic Names feels this would not have added any value to the evaluation process, but would instead have clogged up what purported to be a forum for public discussion with even more near identical form letters of dubious provenance. Given the millions of users of *.org*, the self-selecting nature of the sample, and the lack of any form of statistical control, none of the displays of support have any statistical relevance. For the record, however, it is notable that the posting of 224 supporters on the Organic Names website is one of the largest displays of support, and is a genuine indication of third-party support

in stark contrast to the "Public Relations Firm" efforts used to swamp the discussion forum. If it helps ICANN, we can arrange for these to be translated into 224 near identical statements of support and posted to the forum.

Mr Carl Malamud's posting to the forum:
> http://forum.icann.org/cgi-bin/rpgmessage.cgi?org;3D5342EB000001D8

illustrates that this is not a view held merely by Organic Names.

If ICANN wish to ascertain support from others in the community it should commission a market survey company with statistical experience and put relevant questions to a statistically valid sample of people such as "*Do you believe a proportion of registration fees in .org should be applied to good causes chosen by the registry?*"

At the Bucharest meeting, the Organic Names presentation team was (unlike other applicants) not invited to present to the NCDNHC. We believe other applicant's invitations were 'ad-hoc' (i.e. reliant on chance meetings in corridors). Had NCDNHC invited Organic Names to present, we would have been only too happy to do so.

In light of their demonstrably poor communications capabilities, we see it as ironic that NCDNHC describes Organic Names as unresponsive.

Under criterion 4, the NCDNHC evaluation ranks the Unity proposal as best, applauding it for its message (for instance) to commercial registrants that *"registrants will be encouraged to use .org names in a new and positive way, to highlight their social responsibility activities"*. The Organic Names proposal (under C.38) stated (for instance) *"Organic Names seeks to bring a branding of corporate social responsibility to .org. Organic Names wishes to encourage the adoption of the .org name by organisations and corporations that see themselves as having a social dimension, an indication that they are more than just money-making machines."* We would suggest that these two responses are very similar. Without wishing to belabour the point by continuing to point out similarities, so are many other applicants' responses. The same also applies to many other questions, under each of the criteria. However, the NCDNHC appears to assign arbitrary, subjective, irrational and inconsistent evaluations to the questions at hand. These appear to emanate from the unstated but evident position on NCDNHC's part that the registry should occupy some special position as an instrument of manipulation of some unspecified social policy. Whilst we disagree with this point of view, and believe the ICANN board does too, if this is in fact the view of the ICANN board, we would suggest it would have been helpful if ICANN had published it prior to the call for applications.

The NCDNHC claims that Organic Names *"does not appear to have consulted anyone about its bid', 'proposes no formal input structure for the non-commercial community"* and *"no governance structure"*. The governance structure, including the Advisory Board, as well as the main board, shareholdings, memorandum and articles, etc., are documented at exhaustive length in the bid document. The Advisory Board is the formal input structure for the registrants (including the non-commercial community). In contrast to the assertion made about lack of consultation, Organic Names did indeed consult several people, including Rob Blokzijl, ICANN director. Perhaps the point NCDNHC is seeking to make is that NCDNHC were not consulted. We would refer NCDNHC to ICANN's own procedure in terms of not contacting those who were performing evaluations other than via ICANN.

The NCDNHC observes that Organic Names does not propose *"[a] relationship with the NCDNHC, [or a] mechanism for participation in ICANN by the non-commercial community"*. Our impression was that the NCDNHC *was* the current mechanism for 'participation in ICANN' (sic) by the non-

commercial community. Further, that Organic Names relationship was with ICANN, and not with one of its committees. However, Organic Names suggested that ICANN (in any or all its guises, including committees) should join our advisory board precisely to facilitate the sort of relationship which NCDNHC appears to seek.

The NCDNHC states *"The committee observes that this bid most replicates (sic) the existing registry policies"*. We take this to mean *"The committee observes that this bid replicates most existing registry policies"*, which we agree with, and is consistent with ICANN's stated desire for stability. We do indeed make policy changes (for instance Organic Names' move towards a thicker registry by recording registrant details), and we are not the 'least policy change' bid in our view. The committee then continues by observing *"It is the opinion of the committee that ICANN and the non-commercial community can do far better than the status-quo"*. The last substantive change from the status-quo we can think of is the launch of the new gTLDs, and in particular Afilias' handling of the sunrise period for *.info*. On this basis, we put it to ICANN and the NCDNHC that the status-quo is severely underrated.

We suggest that the NCDNHC evaluation is flawed on many levels and we urge the ICANN board and staff to ignore it. We believe many other applicants hold similar opinions.

DSR.6 Gartner Group Evaluation

Organic Names is concerned that none of the evaluators on the Gartner team appeared to be well-known or knowledgeable in matters of the DNS. This fact was noted in particular by Rob Blokzijl (recused member of the ICANN board), whom through his extensive industry experience and contacts, had expected to recognise at least one evaluator's name or organisation as involved in the provision of large scale DNS or registry services. We are confident of our technical ability and of the soundness of our approach and we are considerably surprised to find that Organic Names and the IMS-ISC bid were both marked down on this basis. The Gartner Group appears to have taken resources and size as measures of competence, but then ignored the fact that Organic Names has experience running larger domain name registries than either Neustar or Afilias. Further, we have been running them for considerably longer (since 1995), and (especially in the latter case) with rather fewer public debacles.

In reviewing the Gartner Group's evaluation we seriously wonder if they have read our proposal.

In their detailed comments on Criterion 7 they say "*There is no specific cost model to justify the stated pricing*". The final section of our proposal provides these figures in great detail so we can only conclude that they did not read or were not supplied with this section.

In relation to Criterion 11 they state "*The plan is to replace CentralNic's system with Organic's own developed system at the end of the first year*". Now here in our proposal is there such a statement, and this is quite simply incorrect. The only transition to occur would be from the VGRS system, to the Organic Names system, which is (as detailed exhaustively and repeatedly in the application) supplied by CentralNic. The only difference between the deployed CentralNic system, and the Organic Names system is as follows: Firstly, the Organic Names system, whilst running the same software as the CentralNic system, will run on different hardware to start off with; there is no additional transition involved here. The reason for running a separate, parallel and otherwise empty system is (as detailed) to ensure that any modifications, tests, service interruptions etc. which occur during the transition from VGRS to Organic Names can be done without delay, which would be induced by maintenance windows required for existing CentralNic customers were the existing hardware platform used. Secondly, there are plans to enhance the existing system whilst retaining the functionality of the basic system. Again, these do not constitute a 'transition', merely the addition of new features, which will be subject to the normal procedures of change control and regression testing.

This major error caused Organic Names to be wrongly assessed by Gartner.

DSR.7 Academic CIO Evaluation Report

The Academic CIO appear to have made the same error as Gartner in relation to transitions. We find this surprising as it appears to have been ICANN's intent that they perform the evaluation independently. Since this is one of the characteristics which they use to mark down category 1 "*High Ranking*" proposals to category 2 "*Acceptable Proposals*", we see this as being a significant error here as well. We suspect this may have been the single criterion which dropped us into the "*Acceptable Proposals*" category.

As only scant information was provided about the contents of this report, it is difficult to address it more fully.

DSR.8 ICANN General Counsel Report

In relation to Criterion 2, "*Ability to comply with ICANN-developed policies*" the report relies on the technical evaluation reports which have the major errors detailed above. This wrongly eliminates Organic Names from consideration by the General Counsel in relation to this important criterion.

The ICANN Board has obviously intended applicants to be able to comment on the draft reports prior to consideration of those reports by the board, presumably with the aim that inaccuracies can be corrected, and thus the replies of applicants will have some effect. We find it peculiar that the General Counsel Report does not evaluate all the bids, instead choosing to evaluate only those proposals which the other reports rank highly – reports which might, and indeed in our opinion do, contain significant inaccuracies. We therefore believe that we have been denied the ability to correct any inaccuracies in a yet-to-be-performed evaluation of our application by General Counsel, due to a combination of this procedural shortcut, and the inaccuracies of the other reports.

DSR.9 Summary

We recognise that any applicant which is not recommended is bound to have a negative perception of the process. We further recognise that an evaluation process such as this will inevitably have minor flaws. The assumption is that the different evaluations will help to cancel out such flaws and that overall a clear "winner" will emerge. In this case the flaws appear to be major, and the evaluation has not been carried out in line with the original parameters laid down by the requirements specification and the formally expressed wishes of the ICANN Board.

It is Organic Names' position that the draft report does not achieve the level of professionalism and independence that we should expect from ICANN or any body associated with the United States Department of Commerce. We therefore urge the ICANN Board to remedy this in a fair and equitable manner. We suggest that the NCDNHC report is terminally flawed, and thus should be ignored, and instead the ICANN board should come to their own view on the relative merits to registrants of each proposal. Further the two technical groups should rerun their evaluations based on the updated information supplied by each applicant. If necessary, the somewhat arbitrary handover date should be delayed.