

October 10, 2006

John Jeffrey  
General Counsel & Secretary  
Internet Corporation for Assigned  
Names and Numbers  
4676 Admiralty Way  
Marina del Rey, CA 91206

Re: Response of Afilias Limited to Secretary's Notice

Dear John:

Afilias welcomes the opportunity to respond to your Secretary's Notice, dated 27 September 2006, in which you requested on behalf of the ICANN Board that Afilias respond to certain issues raised with respect to the proposed .INFO registry agreement during the public comment forum.

Specifically, you note in your Secretary's Notice that the ICANN Board had engaged in discussions during its 9 September 2006 meeting "on comments received regarding the requests for pricing limitations, renewal terms and requests to delay the decision until the results of the pdp-feb06 were completed." Further, you state that the Board, during its 25 September 2006 meeting, "again discussed the public comments, including 1) the comments regarding the delay of the registry agreements until the pdp-Feb06 is completed and 2) comments regarding requests for limitations on price increases during renewal, as opposed to differential pricing for individual registrations."

Accordingly, we provide the following responses to those issues.

**PDP-FEB06**

Section 3.1(b) of the proposed Registry Agreement between ICANN and Afilias for the .INFO registry requires that Afilias fully comply with and implement any consensus policy validly adopted pursuant to ICANN's Bylaws and subject to the terms and conditions of the proposed .INFO registry agreement. The particular terms and conditions regarding consensus policies set forth in the proposed .INFO agreement are consistent with those set forth in the .NET registry agreement currently in place, as well as the proposed .COM registry agreement as approved by the ICANN Board. There is no valid reason to delay consideration of the .INFO registry agreement pending the outcome of any policy

development process, including the pdp-Feb06. Afilias reiterates its commitment to abide by any validly derived consensus policy per the stated terms of the proposed agreement.

### **RENEWAL**

Over the past two years, the ICANN Board has approved renewal provisions similar to the provisions in the proposed .INFO registry agreement in the following top-level domains: .NET, .COM, .JOBS, .TRAVEL .MOBI .CAT and .TEL.

Under the Section 2.1 of the .INFO registry agreement as currently in effect, ICANN is obligated to “not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and not single out Registry Operator for disparate treatment unless justified by substantial and reasonable cause.”

Given the ICANN Board’s actions over the past two years, Afilias respectfully submits that denying Afilias the renewal provisions granted to the operators of the above-listed registries would be singling Afilias out for arbitrary, unjustifiable, and inequitable treatment that cannot be justified by a substantial or reasonable cause.

Further, although Afilias believes that there is a sufficient legal basis to guarantee the inclusion of the proposed renewal clause in its new contract, we reiterate our position that there are compelling economic arguments in support of a presumptive renewal clause.

For instance, the inclusion of a presumptive renewal provision in its proposed registry contract will grant Afilias the confidence to continue making long term infrastructure investments that will enhance the security and stability of its registry operations. Also, Afilias will find it more strategically sound to continue marketing programs that will result in savings to registrars that can be passed on to registrants.

### **PRICING ISSUES**

We do not believe that tiered pricing, per se, should cause concern to the ICANN community. Rather, it should be noted that Afilias has been providing tiered pricing under its existing contract in connection with various marketing campaigns for the past several years. In fact over the past three years, Afilias has provided tiered pricing discounts that have resulted in over 25 million dollars in registration fees savings to its registrars, much of which was passed on to registrants. Indeed, several smaller registrars have taken advantage of Afilias’ marketing initiatives to grow their businesses and enhance competition within the marketplace.

Further, other ICANN accredited registries have used tiered pricing mechanisms under their existing registry contracts in connection with marketing initiatives or as part of their registry roll-out processes where the registry charges different price points during the launch cycle: Sunrise; Land Rush and Steady State.

We submit that Afilias does not have market power that would make it economically attractive to abuse the right to impose a uniformly applied tiered pricing model to the detriment of the registrar or registrant communities.

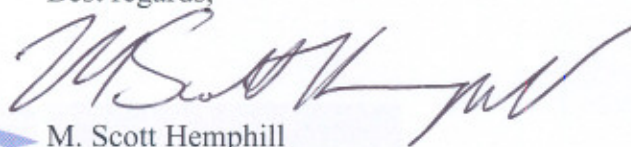
The concern that seems to have been raised the most during the public comment process seems to be the issue of charging disparate pricing on renewal of an active domain name based on the perceived economic value of that particular domain name. Afilias has never had any intentions of implementing such a pricing model, and do not believe any changes to the proposed agreement are required in that regard. In a spirit of cooperation, however, and as a gesture of good faith in that regard, we are willing to include the following language in our agreement:

Registry Operator shall not impose any variable pricing model on renewal of any active .INFO domain name registration. This restriction shall not apply: (i) to any uniformly applied fee schedules; (ii) to any active .INFO domain name that was initially registered pursuant to a marketing program employed by Registry Operator; (iii) to any active .INFO domain name registered through any new Registry Service approved through the process set forth in Section 3.1(d)(iv) above (Registry Service Process) or (iv) to the extent a variable pricing model for active domain names has been implemented in any other new or existing gTLD.

We believe that with respect to Afilias, a registry operator without market power, the proposed agreement as currently drafted, with the additional provision set forth above, will provide an appropriate balance between the desire to allow the free market to regulate the conduct of a registry operator with the concerns of the public raised during the comment period regarding pricing on renewal.

Please let us know if we can be of further assistance in this matter.

Best regards,



M. Scott Hemphill  
VP & General Counsel