

1-1846-66020 Response to GAC Advice

10 May 2013

Steve Crocker, Chairman
Members of the Board of Directors
Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536
USA

Dear Mr. Chairman and Members of the Board:

The Rezolve Group, Inc. (“Rezolve” or the “Registry”) submitted an application (the “Application”) to operate the “.FINANCIALAID” top-level domain (“.FINANCIALAID” or the “TLD”) as an authoritative domain providing all the resources needed to research and identify education financial aid options.

In its Beijing Communiqué, the Governmental Advisory Committee (“GAC”) listed the application for .FINANCIALAID in (i) Category 1 - strings likely to invoke a level of implied trust from consumers; (ii) Category 1 Further Advice - strings associated with regulated market sectors; and (iii) and Category 2 - exclusive access. The GAC Communiqué included certain advice (the “Advice”) with respect to such strings. We are pleased to have this opportunity to provide our response to the GAC Advice with respect to .FINANCIALAID.

Summary Response

As our response below demonstrates, the Registry’s Application for .FINANCIALAID already reflects virtually all of the GAC’s recommendations with respect to strings “likely to involve a level of implied trust from consumers” and strings “associated with market sectors which have clear and/or regulated entry requirements.” To the extent certain aspects of the GAC’s Advice with respect to those two categories are not already explicitly reflected in the Application, the Rezolve Group is happy to confirm its willingness to comply with that Advice.

The GAC also advised that applications for certain “closed generic” names, including .FINANCIALAID, should serve a public interest goal. As explained below, the Application contemplates second level registrations in the TLD by fully vetted and authenticated (i) colleges and universities and (ii) financial aid providers (scholarships and lenders). In addition, we contemplate a limited number of fully vetted, authenticated, and reputable providers of complementary products and services. These registration restrictions are appropriate for the types of risks associated with the TLD. In addition, as discussed below, the Application clearly sets out the important public interest goals that will be served by the TLD and the registration restrictions. Rezolve’s operation of .FINANCIALAID will deliver public interest benefits to both Internet users and providers of higher education. Accordingly, the Application for .FINANCIALAID is fully consistent with GAC Advice with respect to “exclusive use” of generic terms.

Background

The Rezolve Group is an innovative technology and services company that focuses exclusively on postsecondary student financial aid. We believe that every individual with the interest and capability to complete a postsecondary education should be able to do so regardless of their (or their family’s) financial or personal circumstances. We believe passionately in the importance of student financial aid and seek to increase access to, and understanding of, student aid. Our work with educational institutions involves over 6,800 U.S. colleges and universities, issuing more than \$199 billion annually to 14 million individuals via an array of student aid programs including 9 federal, 605 state and 16 military aid programs, as well as thousands of individual institutional aid programs. We also assist students and families, state agencies, non-profits, and major employers by delivering technology solutions and

high-quality, personalized services to streamline the process of issuing, estimating, advising, and applying for student financial aid and the associated challenge of understanding how to pay for college.

We serve students from around the world, as well as universities throughout the world. More than 750,000 foreign students were enrolled in American colleges and universities in the 2011-2012 academic year. We also serve U.S. students who seek to study abroad, many of whom use U.S. sourced tuition assistance to attend Australian institutions. While our institutional services are currently focused on U.S.-based colleges and universities, we would expect the domain to serve other countries and other areas of financial aid as the need and opportunity grows, and could well include the student financial assistance programs that are operated in countries throughout the world. <http://www.usatoday.com/story/news/nation/2012/11/12/record-number-of-international-students-enrolled-in-colleges/1698531/>.

GAC GENERAL ADVICE

The GAC Advice calls on all registry operators to take a number of steps to enhance WHOIS accuracy, mitigate malicious and abusive registrant conduct, and ensure accountability. As Table 1 below demonstrates, our application for .FINANCIALAID is directly and fully responsive to each of these recommendations.

TABLE 1. COMPLIANCE WITH GAC “GENERAL ADVICE”

GAC Recommendation	.FINANCIALAID Response
Statistically Significant WHOIS Accuracy Check	The Registry will conduct a manual review of a random sample of WHOIS data at least twice a year to identify prima facie evidence of inaccuracy, notify registrars of any identified inaccuracies, and in appropriate cases suspend registrations until the information is corrected. <i>Application Section 28.4.</i>
Prohibit Malicious/Illegal Activity and Conduct Technical Review of Registrant Compliance	The .FINANCIALAID Acceptable Use Policy will prohibit phishing, pharming, malware distribution, fast-flux hosting, botnetting, hacking and other illegal conduct, and the registry will reserve the right to use computer forensics and information security technology to enforce those policies. <i>Application Section 28.2.1.</i>
Prohibit Violation of Intellectual Property Rights	The Acceptable Use Policy will prohibit registration and use of registrations in the .FINANCIALAID TLD in violation of third party intellectual property rights.
Registry-Provided Complaints Mechanism	The Registry will publish on its website a single abuse point of contact to receive and respond to complaints about malicious and abusive conduct. Once a complaint is received and verified, the Registry will notify the sponsoring registrar and give it 12 hours to investigate the activity and either take suspend or delete the domain name or provide a compelling argument to the Registry to keep the name in the zone. <i>Application Section 28.2.2.</i>
Meaningful Consequences	The Registry’s Acceptable Use Policy enables us to quickly lock, cancel, transfer or take ownership of any .FINANCIALAID domain name, either temporarily or

	<p>permanently, if the domain name is being used in a manner that appears to threaten the stability, integrity or security of the Registry, or any of its registrar partners and/or that may put the safety and security of any registrant or user at risk. The process also allows the Registry to take preventive measures to avoid any such criminal or security threats. <i>Application Section 28.2.1</i></p> <p>The Acceptable Use Policy may be triggered through a variety of channels, including private complaint, public alert, government or enforcement agency outreach, and the on-going Registry monitoring. In all cases, the Registry or its designees will alert THE Registry’s registrar partners about any identified threats, and will work closely with them to bring offending sites into compliance. <i>Application Section 28.2.1</i></p> <p>If a registrar does not take the requested action (i.e., is unresponsive to the request or refuses to take action), the Registry will place the domain on ServerHold. <i>Application Section 28.2.2.</i></p>
Auditable Compliance Records	The Registry agrees to maintain auditable records with respect to these obligations.

GAC Category 1 Advice

The GAC Advice provides additional recommendations regarding strings “likely to invoke a level of implied trust from consumers, and carry higher levels of risk associated with consumer harm. “ The GAC Advice identifies a “non exhaustive” list of several hundred strings, including .FINANCIALAID. As Table 2., below, demonstrates, the .FINANCIAL AID application is fully responsive to each of these recommendations.

TABLE 2. COMPLIANCE WITH GAC “CATEGORY 1 ADVICE”

GAC RECOMMENDATION	.FINANCIALAID RESPONSE
Acceptable Use Policy Requiring Compliance With Applicable Law, e.g., Data and Consumer Protection	<p>Resolve Group will monitor the privacy standards of all sites in this domain to ensure that best practices for privacy protection standards are met. Third-party registration of second-level names in the .FINANCIALAID TLD will be limited to (i) fully vetted and accredited colleges, universities, and other educational institutions; (ii) fully vetted product and service providers; and (iii) fully vetted</p> <p>The privacy policy http://www.mymilitaryaid.com/privacy.html is generally representative of the privacy policies on the websites that Resolve Group, Inc. currently maintains. Our privacy policies may be updated from time to time in order to accommodate changes in the law, changes in our business, requirements of the marketplace, and evolving customer orientation. Such updates could have the effect of either narrowing the scope of the policy or broadening it, depending on prevailing circumstances. We will consider this as the standard requirement for all sites on the domain</p>
Require Registrars to Make Registrants Aware of Acceptable	All registrants will be fully vetted by the Resolve Group and made aware of our Acceptable Use Policy at or before registration.

Use Policy at Time of Registration	
Require Appropriate Security Practices for Registrant Collection of Sensitive Health and Financial Data	<p>The Rezolve Group, Inc. and our back-end operator, Neustar recognize the vital need to secure the systems and the integrity of the data in commercial solutions. The .FINANCIALAID registry solution will leverage industry-best security practices including the consideration of physical, network, server, and application elements. Neustar’s approach to information security starts with comprehensive information security policies. These are based on the industry best practices for security including SANS (SysAdmin, Audit, Network, Security) Institute, NIST (National Institute of Standards and Technology), and CIS (Center for Internet Security). Neustar’s information security team reviews policies annually. Application Section 30(a) describes the security requirements that will apply to Registry Data.</p> <p>Rezolve treats web site security just as seriously as a financial institution and has implemented a defense-in-depth security model utilizing industry best practices. We have state-of the art monitoring, prevention, and active response systems to guard against external and internal attacks as well as 24x7 monitoring of all data in motion. Additionally, MacAfee Secure performs exhaustive, daily penetration tests on our systems. We maintain their highest level of certification as well as being fully PCI certified. With these high data security standards, users will have the confidence not only to trust the content provided on this domain but also to provide information when necessary. All registrants will be required to comply with these best practices. <i>Application Section 18(b)5</i></p>
Relationship with Regulatory, Self-Regulatory Bodies and Strategy to Mitigate Risk of Fraud/Illegal Activities	<p>One of the reasons for which Neustar was selected to serve as the back-end registry services provider by .FINANCIALAID is Neustar’s extensive experience with its industry-leading abusive domain name and malicious monitoring program and its close working relationship with a number of law enforcement agencies, both in the United States and internationally. For example, in the United States, Neustar is in constant communication with the Federal Bureau of Investigation, US CERT, Homeland Security, the Food and Drug Administration, and the National Center for Missing and Exploited Children.</p> <p>Neustar is also a participant in a number of industry groups aimed at sharing information amongst key industry players about the abusive registration and use of domain names. These groups include the Anti-Phishing Working Group and the Registration Infrastructure Safety Group (where Neustar served for several years as on the Board of Directors). Through these organizations and others, Neustar shares information with other registries, registrars, ccTLDs, law enforcement, security professionals, etc. not only on abusive domain name registrations within its own TLDs, but also provides information uncovered with respect to domain names in other registries’ TLDs. Neustar has often found that rarely are abuses found only in the TLDs for which it manages, but also within other TLDs, such as .com and .info. Neustar routinely provides this information to the other registries so that it can take the appropriate action. <i>Application Section 28.2.3.3.1.</i></p>
Collect Registrant Single Point of	The Rezolve Group agrees to require registrants to provide a single point of

Contact	contact for responding to complaints.
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GAC Category 2 Advice – Exclusive Access

The GAC Advice posits a “general rule” that the gTLD domain name space should be operated in an open manner and that the exclusive use of “strings representing generic terms” should serve a public interest goal. The GAC concedes, however, that registration restrictions may be appropriate for strings mentioned in Category 1, including .FINANCIALAID, where such restrictions are appropriate for the types of risks associated with the TLD.

Resolve Response:

As we have previously explained in our attached response to an Early Warning by the Australian Communications and Media Authority (ACMA):

- “Financial Aid” is one of many phrases used to describe the industry, and does not preclude robust competition among companies across TLD.
- Operation of the TLD as proposed is fully consistent with competition law principles. Indeed, precluding the closed use of generic strings such as .FINANCIALAID will constrain competition by eliminating an important vehicle for competition.
- Resolve has a legitimate interest in the “.FINANCIALAID” string.
- Our application to operate .FINANCIALAID is fully consistent with ICANN’s new gTLD policy, which was the product of a multi-year policy development process.

These points are explained below and in our response to ACMA.

The .FINANCIALAID Mission - Delivering Value to Schools and Students – Serves Important Public Interest Goals.

Today’s college applicants must sift through a barrage of information available online to understand the financial aid process, distinguish among the variety of programs available, identify relevant deadlines, and apply for financial aid. This information is complex, not uniformly reliable, and presented in a variety of formats that make comparisons difficult. In addition, application deadlines vary by school and by program. Our proposal for .FINANCIALAID contemplates the creation of an innovative web space that provides accurate, consistent and up-to-date information surrounding the student financial aid process. To that end, we propose to provide second level registrations and content creation and delivery tools to colleges and universities to distribute their financial aid information via the .FINANCIALAID platform. For example, a school could create and maintain pages that give an overview of financial aid including detailed information about specific school deadlines, policies, procedures or guidelines. These school-maintained pages would flow seamlessly with the third party products and services we provide to educational institutions, students, and families including, for example, our Net Price Calculator.

Based on more than twenty years of experience in this field, we are convinced that the .FINANCIALAID TLD will deliver tremendous benefit to both Internet users and colleges. Internet users would benefit from clear, authoritative information, research tools to understand what information is relevant to their unique situation, and an intuitive “apples to apples” process of understanding and contrasting financial aid across the different institutions. Colleges and universities would benefit from access to “school.FINANCIALAID” second level registration and the technology to deliver more standardized content organization and intuitive experience for current and prospective students.

The Proposed Registration Restrictions are Appropriate for the Risks Identified by the GAC.

The registration restrictions set forth in the .FINANCIALAID Application are appropriate and necessary to prevent dishonest or misleading content of any kind. Because students and families are desperate for financial aid information, they often fall prey to dishonest or other misleading services. Users will be able to access the content of this domain knowing that all information is accurate and that all services offered are legitimate and valuable. The only financial cost that an Internet user may incur would be if he or she elects to use a service offered on the domain and chooses to pay the associated fee. Rezolve will ensure that industry best practices are in place as it relates to the use, collection and storage of financial and/or credit card information. *Application Section 18.c.*

Operation of .FINANCIALAID in the Manner Proposed Does Not Raise Public Policy Concerns Regarding Competition.

As the very complete and detailed response to the Australian government’s Early Warning demonstrates, operation of .FINANCIALAID as proposed would not constitute unlawful anticompetitive behavior in United States, Australia, or – to our knowledge – any other country. In general, competition law prohibits exclusionary conduct where (1) a company possesses substantial market power, (2) that market power causes the exclusionary conduct, and (3) the behavior is motivated by a desire to eliminate or damage a competitor, prevent entry of a competitor into the market, and/or constrain competitive activities in the market.¹ In other words, in order to “misuse market power” one must first possess it.² Here, it is quite clear that the threshold requirement of market power does not exist. Numerous economic studies have been undertaken in an effort to promote or thwart ICANN’s plan to introduce new top-level domains. Although these reports reach different conclusions on many issues, none of them makes the case that new closed gTLDs will be in a position to exercise market power. Indeed, the Antitrust Division of the U.S. Department of Justice affirmatively concluded that while new TLDs could impose costs on third parties in the form of defensive registrations, most new TLDs are “unlikely to possess significant market power.”³

Even if one assumes, for the sake of argument, that a closed TLD could acquire sufficient market power to harm competition, there is no basis for this conclusion with respect to .FINANCIALAID. Financial service providers, including lenders, financial planners, and student consulting services currently offer a wide variety of products and services to help universities operate their tuition assistance programs and to help families pay for college – and they currently use a wide variety of terms to describe and market those services. The “National Institute of Certified College Planners” certifies U.S. financial planners that advise clients on paying for college. Numerous other examples can be readily identified on the Internet including, for example, 123college.com, Scholarship.com, Studentloans.com, CollegeData.com, ProEd.Com, and many others. Delegation of .FINANCIALAID to Rezolve will not foreclose continued vigorous competition by providers through different names and across TLD platforms. While a number of universities use the phrase “financialaid” on their websites (e.g., American.edu/financialaid or financialaid.gmu.edu), under our proposal they would be entitled to use the corresponding string in .FINANCIALAID.

Our March 7, 2013 response to the ACMA’s Early Warning, which is attached, provides detailed, objective evidence that the term “financialaid” is just one of numerous terms used under the broad umbrella of tuition assistance for students. We respectfully request the ICANN Board to evaluate our Application based on the facts contained in that response rather than on speculative concerns about competition that are not backed by competition theory or economics.

Conclusion

¹ George Hay and Rhona Smith: “*Why Can’t a Woman Be More Like a Man?*” *American and Australian Approaches to Exclusionary Conduct*. 31 Melb. U. L. Rev. 1099 (2007) at 1114-1115.

² Organization for Economic Cooperation and Development: *Competition Policy in Australia* (2010) at 20.

³ *Letter from James J. Tierney, U.S. Department of Justice, Antitrust Division to Lawrence E. Strickling, NTIA* dated June 14, 2011 at 3.

We appreciate – and share - the GAC’s concerns regarding consumer trust and accountability. Indeed, our Application anticipated virtually all of the recommendations contained in its Advice. As discussed above, we are prepared to implement all applicable GAC Advice with respect to Category 1 Names.

The introduction of new top-level domains is intended to promote innovation and facilitate competition. That is what the Rezolve Group intends to do through its operation of .FINANCIALAID as proposed. Although we do not agree that operation of the .FINANCIALAID TLD as proposed raises competition issues, the proposed registration restrictions for .FINANCIALAID are entirely appropriate given the consumer protection concerns expressed by the GAC. Moreover, there is a clear public interest goals for both institutions of higher education and students that is served by operation of .FINANCIALAID as proposed by the Rezolve Group. Accordingly, our Application is also consistent with GAC Advice for “exclusive use” names.

We appreciate your consideration and remain available at your convenience to discuss this matter more fully.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Reeder', with a long horizontal flourish extending to the right.

Robert T. Reeder, CIO
Rezolve Group, Inc.
rreeder@rezolvegroup.com

Attachment: Rezolve Group’s Response to Early Warning Australia EW #1-1846-66020



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March 11, 2013

Peter Nettlefold,
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Members of the ICANN Governmental Advisory Group
gacearlywarning@icann.org

RE: Early Warning on “.financialaid” Australia EW # 1-1846-66020

Dear Mr. Nettlefold and members of the GAC:

I am writing in response the Early Warning filed by the Australian Communications and Media Authority (**ACMA**) regarding the application of the Rezolve Group, Inc. (**Rezolve**) to operate the “.financialaid” Top Level Domain (the **TLD**) as a “closed TLD.” We welcome this opportunity to engage in a constructive dialogue with ACMA on these important issues.

We understand ACMA’s concern to be that exclusive use of a common generic string that “relates to a broad market sector” could have a “negative impact on competition.” Having carefully considered ACMA’s Early Warning, and for the reasons explained below, however, we respectfully submit that operation of the TLD in accordance with Rezolve’s application is permitted by the ICANN policy on new gTLDs, and fully consistent with the principles of Australian competition law. Indeed, we believe that operation of the .financialaid TLD in the manner we have proposed will promote innovation, enhance competition, and deliver real benefits to both colleges and universities and the students they serve.

In short:

- “Financial Aid” is one of many phrases used to describe the industry, and does not preclude robust competition among companies across TLD.
- Rezolve’s operation of the .financialaid TLD will deliver benefits to both Internet users and providers of higher education.
- Our application fully complies with established ICANN policy.
- Operation of the TLD as proposed would not violate Australian competition law (or any other competition law).
- Australia itself permits - and actually promotes - the exclusive use of generic terms in commerce.



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- Resolve has a legitimate interest in the “financialaid” string.
- Our application to operate .financialaid is fully consistent with ICANN’s new gTLD policy, which was the product of a multi-year policy development process.
- Precluding the closed use of generic strings such as .financialaid will constrain competition by eliminating an important vehicle for competition.

Background on the Resolve Group

The Resolve Group is an innovative technology and services company that focuses exclusively on postsecondary student financial aid. We believe that every individual with the interest and capability to complete a postsecondary education should be able to do so regardless of their (or their family’s) financial or personal circumstances. We believe passionately in the importance of student financial aid and seek to increase access to, and understanding of, student aid. Our work with educational institutions involves over 6,800 U.S. colleges and universities, issuing more than \$199 billion annually to 14 million individuals via an array of student aid programs including 9 federal, 605 state and 16 military aid programs, as well as thousands of individual institutional aid programs. We also assist students and families, state agencies, non-profits, and major employers by delivering technology solutions and high-quality, personalized services to streamline the process of issuing, estimating, advising, and applying for student financial aid and the associated challenge of understanding how to pay for college.

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1. Exclusive Use of the TLD “.FinancialAid” Does Not Foreclose Competition.

Even if one assumes, for the sake of argument, that a closed TLD could acquire sufficient market power to harm competition, there is no basis for this conclusion with respect to .financialaid. Financial service providers, including lenders, financial planners, and student consulting services currently offer a wide variety of products and services to help universities operate their tuition assistance programs and to help families pay for college – and they



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currently use a wide variety of terms to describe and market those services. U.S. financial planners that advise clients on paying for college can be certified by the National Institute of Certified College Planners. Numerous examples can be readily identified on the Internet including, for example, 123college.com, Scholarship.com, Studentloans.com, CollegeData.com, ProEd.Com, and many others. Delegation of .financialaid to Resolve will not foreclose continued vigorous competition by providers through different names and across TLD platforms. While a number of universities use the phrase “financialaid” on their websites (e.g., American.edu/financialaid or financialaid.gmu.edu), under our proposal they would be entitled to use the corresponding string in .financialaid.

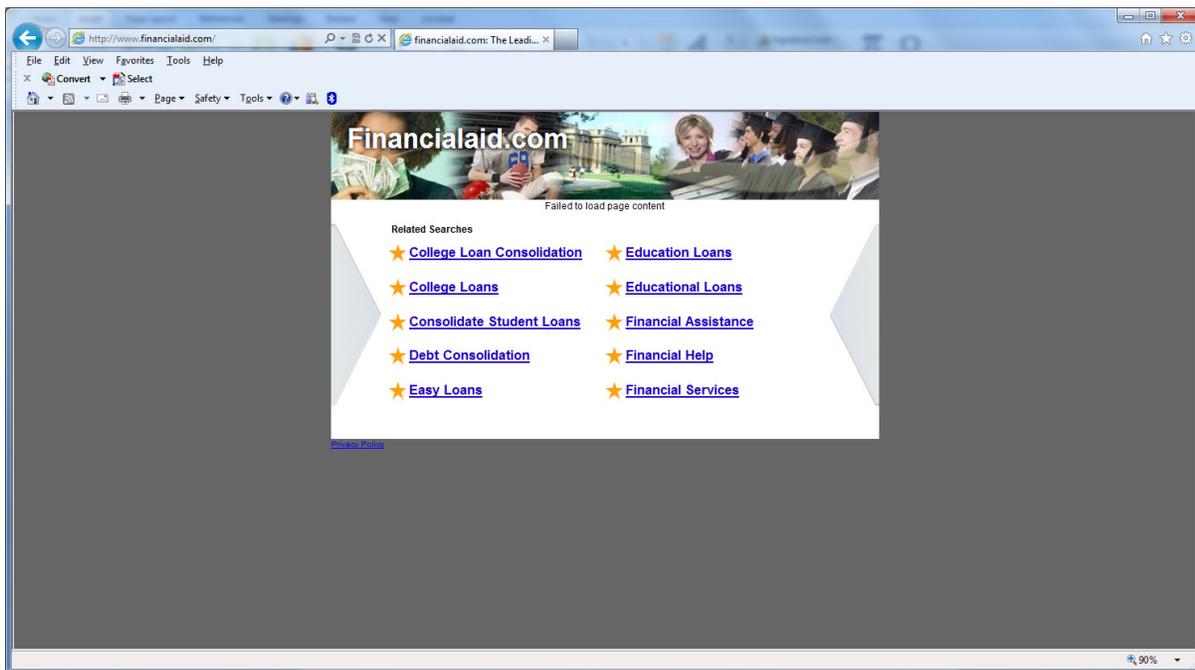
Additionally, the term “financialaid” is just one of numerous terms used under the broad umbrella of tuition assistance for students. Student aid, student financial assistance, student loans, grants, scholarships, education financing, government loans, and government grants are just a few of the many terms and variations used to describe tuition assistance for students. In fact, the U.S. Department of Education maintains the web site studentaid.ed.gov. Interestingly, they do not have a financialaid.ed.gov site.

Even within the U.S. secondary education system, there are many terms that are used to describe the department that administers tuition assistance: Office of Student Financial Planning, Office of Student Aid Programs, Office of Student Financial Services, Office of Student Loan Programs, Office of Student Loan Process, Office of Scholarships and Student Aid, and sometimes just Loan Department.

And with respect to Australia, the terms “bursary” and “bursaries” are far more relevant, recognizable, and valuable as Internet assets. Therefore, not only does “financialaid” not restrict competition, it isn’t even the top Internet property in the world, and more specifically Australia and the U.S., to describe the umbrella of tuition assistance to students.

Moreover, the “strength” of the term “financial aid” can be easily tested. First, while this process was open to all competitors, only Resolve applied for .financialaid, and to date the application has not received negative comment. Indeed, “financialaid.com” and “financialaid.com.au” both appear to be parked pages.

According to the WHOIS records, financialaid.com is owned by a domain name speculator.¹

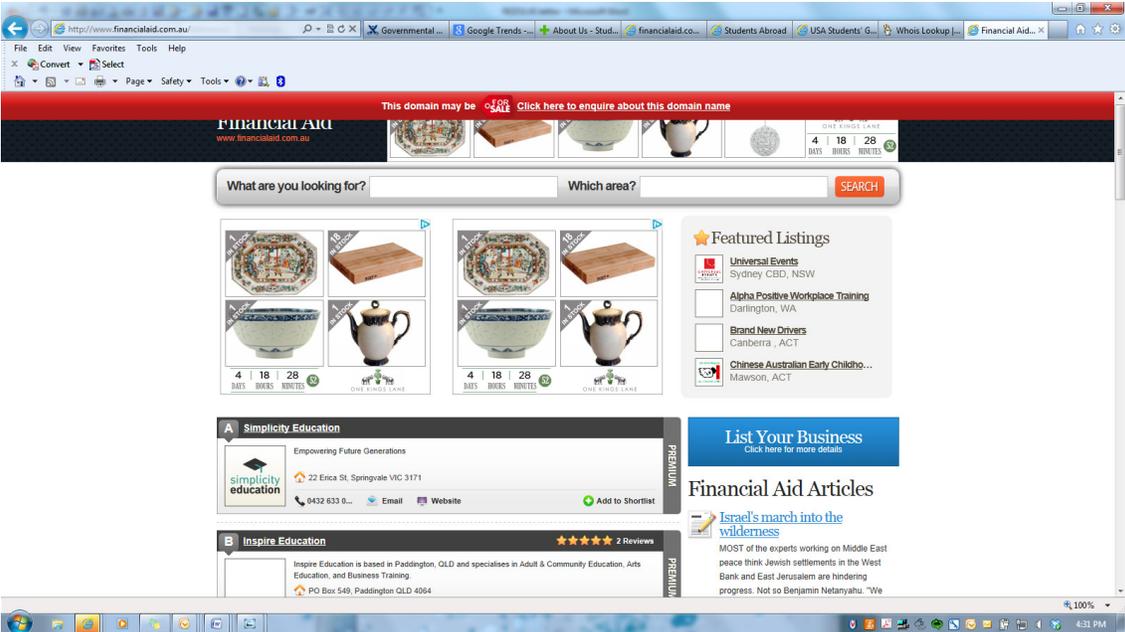


¹ According to the WHOIS Records, "financialaid.com" is held by a domainer, Fabulous.com, which advertises itself as specializing "in generating revenue through pay per click (PPC) links from the traffic your domains receive." <http://www.fabulous.com/informationcenterhttp://www.fabulous.com/informationcenter/index.htm?formcode%5bobjective%5d=&formcode%5bevent%5d=&formcode%5bregistrytime%5d=1361827002&formcode%5bcertificate%5d=1c166dfeded459abeaf979836cacd422&formdata%5bqid%5d=46>

WHOIS Record Information:

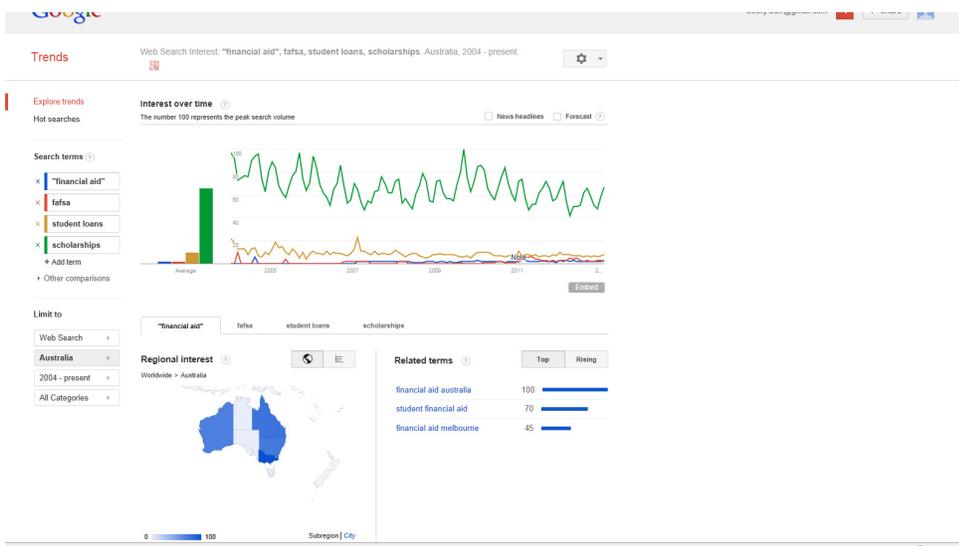
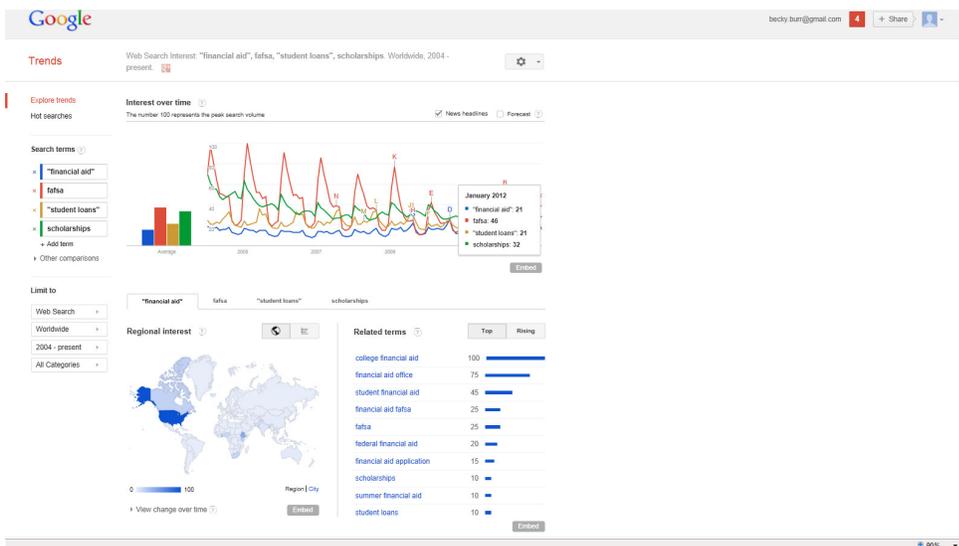
Domain Name: FINANCIALAID.COM	Registrar: FABULOUS.COM PTY LTD.
Whois Server: whois.fabulous.com	Referral URL: http://www.fabulous.com
Name Server: BUY.INTERNETTRAFFIC.COM	Name Server: SELL.INTERNETTRAFFIC.COM
Status: clientTransferProhibited	Updated Date: 16-aug-2012
Creation Date: 16-apr-1996	Expiration Date: 17-apr-2015

Likewise, financialaid.com.au, is a parked site that “may be for sale.”



If the phrase “financial aid” were so powerfully associated with the entire industry sector, one would expect to see that reflected in offline marketing and the existing gTLD structure.

Similarly, the phrase “financial aid” by itself does not appear to be a powerful search term. According to Google trends, “scholarships,” “student loans,” and “fafsa” are more likely to be used than “financial aid,” and when “financial aid” is used, it is almost always combined with a modifier such as “federal” or “summer” or “college” or “student.” The following results from Google Trends reflect the relative popularity of various search terms in both the US market and the Australian market.





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Accordingly, we do not believe that operation of .financialaid as a closed registry would diminish competition or unfairly disadvantage Rezolve's competitors.

2. The Mission of the .financialaid TLD: Delivering Value to Schools and Students

Today's college applicants must sift through a barrage of information available online to understand the financial aid process, distinguish among the variety of programs available, identify relevant deadlines, and apply for financial aid. This information is complex, not uniformly reliable, and presented in a variety of formats that make comparisons difficult. In addition, application deadlines vary by school and by program. Our proposal for .financialaid contemplates the creation of an innovative web space that provides accurate, consistent and up-to-date information surrounding the student financial aid process. To that end, we propose to provide second level registrations and content creation and delivery tools to colleges and universities to distribute their financial aid information via the .financialaid platform. For example, a school could create and maintain pages that give an overview of financial aid including detailed information about specific school deadlines, policies, procedures or guidelines. These school-maintained pages would flow seamlessly with the third party products and services we provide to educational institutions, students, and families including, for example, our Net Price Calculator.

Based on more than twenty years of experience in this field, we are convinced that the .financialaid TLD will deliver tremendous benefit to both Internet users and colleges. Internet users would benefit from clear, authoritative information, research tools to understand what information is relevant to their unique situation, and an intuitive "apples to apples" process of understanding and contrasting financial aid across the different institutions. Colleges and universities would benefit from access to a "school.FINANCIALAID" second level registration and the technology to deliver more standardized content organization and intuitive experience for current and prospective students.

3. The .financialaid Application Complies with Established ICANN Policy.

The ICANN community spent many years developing the policy to govern the allocation of new top level domains. That policy clearly permits applications for closed use of generic strings. In fact, participants in the new gTLD policy development process deliberately avoided prescriptive rules on gTLD types, choosing instead to promote innovation and to let market forces determine the variety of new TLDs. The policy contained built-in competitive safeguards, including the right for competitors to object to applications on a variety of grounds. There is no



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justification for reversing the conclusions reached during ICANN’s policy development process and introducing an entirely new policy based on general and speculative concerns about competition that are not backed by competition theory or economics.

4. *The .financialaid Application Does not Violate National Law or Raise Sensitivities.*

The mission of the ICANN’s Government Advisory Committee (GAC) in general is “to consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN’s policies and various laws and international agreements or where they may affect public policy issues.” Within this context, the role of the GAC in the new gTLD program is to advise ICANN on applications “that potentially violate national law or raise sensitivities.” Neither the string itself, nor the proposed operation of .financialaid, raises cultural or other sensitivities. To the best of our knowledge, as discussed below, operation of .financialaid as a closed TLD does not offend principles of competition law including, in particular, Australian competition law. Indeed, ACMA’s ongoing auction of telephone numbers corresponding to generic terms leaves little doubt that Australian competition law would permit this use.

5. *The .financialaid TLD Does not Violate Australian Competition Law.*

It seems very clear that operation of the .financialaid TLD as proposed would not constitute unlawful anticompetitive behavior in your country. To begin with, Section 46 of the Trade Practices Act 1974 (TPA) prohibits exclusionary conduct where (1) a company possesses substantial market power, (2) that market power causes the exclusionary conduct, and (3) the behavior is motivated by a desire to eliminate or damage a competitor, prevent entry of a competitor into the market, and/or constrain competitive activities in the market.² In other words, in order to “misuse market power” under Australian law, one must first possess it.³

Here, it is quite clear that the threshold requirement of market power does not exist. Numerous economic studies have been undertaken in an effort to promote or thwart ICANN’s plan to introduce new top level domains. Although these reports reach different conclusions on many issues, none of them makes the case that new closed gTLDs will be in a position to exercise market power. Indeed, the Antitrust Division of the U.S. Department of Justice

² George Hay and Rhona Smith: “*Why Can’t a Woman Be More Like a Man?*” *American and Australian Approaches to Exclusionary Conduct*. 31 Melb. U. L. Rev. 1099 (2007) at 1114-1115.

³ Organization for Economic Cooperation and Development: *Competition Policy in Australia* (2010) at 20.



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affirmatively concluded that while new TLDs could impose costs on third parties in the form of defensive registrations, most new TLDs are “unlikely to possess significant market power.”⁴

While some observers have argued that there may be a market for “defensive registrations,” that cannot be an issue with respect to our application *precisely because .financialaid will be closed*. Closed TLDs by their nature do not raise concerns about cybersquatting or trademark infringement, nor do they have the potential to impose costs on commercial actors in the form of defensive registrations.

6. Australia Permits Exclusive Use of Generic Terms in Commerce

Australia permits – and in fact actively promotes – the exclusive use of generic terms that describe industry sectors by a single company, as the Australian government’s auction of “SmartNumbers” clearly demonstrates. A “smartnumber” is a free phone number (1-800) or local rate telephone number (13 or 1-300) allocated by ACMA through an online auction system. The winning bidder is awarded the enhanced right to use the smartnumber, including the right to sell or lease that number. Thus, for example, a Brisbane law firm purchased 1-300-Lawyer for \$20,000. Similarly, Telstra is offering 1-3-studentloan for sale on its website. ACMA itself promotes “smartnumbers” as a “valuable tool” to market ones business. According to the auction site:

Phonewords can be easier for callers to remember, particularly if they can be linked to an organisation’s name, product or function. For example 1300 POTATO is much easier to remember than 1300 768 286, especially days or weeks after first seeing or hearing the number advertised.⁵

Apparently, ACMA has in the past considered competition issues in the context of this program. In its *Consultation Paper on Amendments to the regulatory arrangement for the auctioning of SmartNumbers*, ACMA took the position that:

hoarding is a competition issue which may be a matter for the *Trade Practices Act 1974* (‘TPA’) and the Australian Consumer and Competition Commission (‘ACCC’). There are provisions of the TPA which prohibit behaviour that leads to a substantial lessening of

⁴ Letter from James J. Tierney, U.S. Department of Justice, Antitrust Division to Lawrence E. Strickling, NTIA dated June 14, 2011 at 3.

⁵ http://www.acma.gov.au/WEB/STANDARD/pc=PC_2477



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competition in a specific market. ACMA's practice is to refer possible examples of hoarding to the ACCC for its consideration.⁶

Likewise, Australian law appears to permit registration of generic words that reference industry sectors in its country-code TLD. For example, Banks.com.au is an independent reviewer of the Australian banking industry and its products. Likewise, studentloans.com.au is registered to Pick Home Loans, according to Melbourne IT's Whois service (although it appears to be parked). Loans.com.au is registered to a private company for its exclusive use. According to the web site, "Loans.com.au is an online home loan company, established with the aim to be Australia's leading online lender."

We are not aware of any principled basis for distinguishing the exclusive use of a generic term as a TLD from the exclusive use in commerce at the national level of a telephone number or a second level registration in a country-code TLD.

7. The Rezolve Group has a Legitimate Interest in the String.

Rezolve has been using the term "financial aid" to market its products and services for many years. Rezolve's Student Financial Aid Services business unit was established almost 20 years ago, and provides a multi-dimensional service, aiming to help clients prepare complex financial forms, reduce anxiety, understand their eligibility for the various federal, state and military aid programs, understand both the true cost of college, as well as how to pay for it, meet various applicable state and institutional deadlines in order to maximize their eligibility for aid, and answer both general and specific questions relating to the various financial aid programs. Rezolve's Student Aid Services business unit is the leading provider of net price calculator technologies and services to college enrollment and financial aid offices, serving over 700 campuses nationwide.

Conclusion

The introduction of new top level domains is intended to promote innovation and facilitate competition. That is what the Rezolve Group intends to do through its operation of .financialaid as proposed. Our proposal was based on close study of and reliance on the New gTLD Policy developed by ICANN's bottom up process over a number of years. ACMA's objection to TLDs such as .financialaid seems inconsistent with this goal. It is clear that both institutions of higher education and students can benefit from the operation of .financialaid as proposed by the Rezolve Group. Use of the string as proposed is fully consistent with

⁶ http://www.acma.gov.au/webwr/_assets/main/lib100652/smartnumbers_auction_discussion_paper.pdf



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competition law, and top regulators have opined that new gTLDs, TLDs where defensive registrations are not an issue, are unlikely to gain sufficient market power to impose costs on competition or competitors. ACMA has recognized and acknowledged this in its operation of the SmartNumbers program. Indeed, precluding the closed use of generic strings such as .financialaid will constrain competition by eliminating a vehicle for competition. We are available at your convenience to discuss this matter more fully.

Sincerely,

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