

These comments are submitted on behalf of Neustar Inc., and only respond to questions related to Auctions.

Neustar believes that the implementation guideline associated with contention set resolution remains valid and should not be altered in any way, except as it relates to community applications in the event that the Sub Pro WG makes changes to the consideration of community applications during the course of deliberations. The relevant implementation guidelines is:

Implementation Guideline F: If there is contention for strings, applicants may:

- i) resolve contention between them within a pre-established timeframe
- ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention and;
- iii) the ICANN Board may be used to make a final decision, using advice from staff and expert panels.

Recommendations, Options and Questions

Topic	2.1 Auctions: Mechanism of Last Resort
Type	Preliminary Recommendation
Text	2.1.c.1: Many in the Working Group believes that ICANN auctions of last resort should remain in place within the program.
Neustar supports the continuation of ICANN auctions of last resort.	
Topic	2.1 Auctions: Mechanism of Last Resort
Type	Preliminary Recommendation
Text	2.1.c.2: However, the Working Group considered whether there should be additional options for applicants to voluntarily resolve contention sets by mutual agreement before being forced into an ICANN auction of last resort. The Working Group focused mainly on allowing applicants to change certain elements of their applications as a potential way to resolve contention sets earlier in the process (Please see recommendations in section 2.4 of this report on Change Requests, which discuss aspects like changes to the

	applied-for string and forming a joint venture).
<p>Neustar supports the idea of additional options for applicants to voluntarily resolve contention sets by mutual agreement; however, we do not support an option that would allow applicants to change their applied-for string in order to remove the contention. Parties to a contention set should be encouraged to resolve a contention amicably and any private resolution settlement negotiations should be strictly confidential and not subject to any third party review or judgement.</p>	
Topic	2.1 Auctions: Mechanism of Last Resort
Type	Option
Text	<p>2.1.d.1: Different Types of Auctions. Some Working Group members proposed alternative ways to implement an auction. One such suggestion was to utilize a sealed-bid auction, or sometimes known as a Vickrey auction, where in this instance, applicants would submit their single highest bid upon application submission. If an applicant's applied-for string is in contention, the highest bidder would be placed first in the queue to have their application evaluated and if successful, would pay the second highest bid to ICANN. It was suggested that this type of auction allows for applicants to bid the precise value of the string. This could almost entirely eliminate contention sets at the beginning of the application process. Some noted concerns that evaluators, knowing the value placed on the string by an applicant, could be biased in some manner. Others noted that utilizing a different form of auction is still a mechanism that relies heavily on having deep pockets. It was also noted that this form of auction would need to consider how it handles Applicant Support and community-based applications. Finally, others raised concerns about ICANN securing this highly proprietary information and it was acknowledged that this would need to be factored into the mechanisms that support this auction style.</p>
<p>Neustar is open to the consideration of different auction models, but cautions against any model that would discriminate against any applicant in any way, or be considered anti-competitive. While the Vickrey auction model is worthy of consideration, we do not support the idea that applicants be required to submit a 'bid' for a TLD at the same time that they submit their application.</p>	

Topic	2.1 Auctions: Mechanism of Last Resort
Type	Option
Text	2.1.d.2.1: Request for Proposals. Some Working Group members proposed alternatives to auctions of last resort. The Working Group discussed the possibility of having a request for proposals process that could be used to resolve contention sets. Such an approach could potentially involve third-party evaluators. One proposal was put forward to establish criteria around diversity that could be used as a basis for awarding the TLD. For example, priority could be given to applicants applying for their first TLD, applicants that are more community-focused rather than commercially-focused, and minority-supported applicants.
While this may overcome some of the perceived downsides to auctions, it would potentially only open the door to more challenges, similar to those experienced in 2012 as part of the Community Priority Evaluation where there were unexplained inconsistencies in the way the panelists applied the criteria. Neustar does not support this as a viable option.	
Topic	2.1 Auctions: Mechanism of Last Resort
Type	Option
Text	2.1.d.2.2: Random Draw. Another possible alternative discussed was the use of a determinative drawing mechanism to select a “winner” in the contention set, noting that a drawing is simple, effective, and fair. A determinative drawing seems to eliminate a number of issues with resolving string contention in that it does not favor those with the most money, it does not result in losing applicants receiving a financial benefit (e.g., in the case of most private resolutions), and it could eliminate comparative evaluations. However, it was pointed out that running a determinative drawing could be encounter issues with being considered a lottery and would require proper licensing.
Random Draw could be a valid way to resolve auctions of last resort and could also be an option available to resolve contention sets voluntarily. However, we would not support the Random Draw as a mandated option to resolve private resolution.	
Topic	2.1 Auctions: Mechanism of Last Resort
Type	Option

Text	2.1.d.2.3: System of Graduated Fees. One Working Group member suggested that a system of graduated fees could be established for each additional application submitted by an applicant, which could reduce the size of the pool of total applications and perhaps limit the number of applications that ultimately end in an auction of last resort. Another Working Group member noted that a system of graduated fees would favor larger entities with multiple applications and might also affect applicants' strategies in relation to the formation of applicant entities.
Neustar does not support a system of graduate fees.	
Topic	2.1 Auctions: Mechanism of Last Resort
Type	Question
Text	2.1.e.1: The preliminary recommendation above states that auctions of last resort should remain in place. However, some participants in the Working Group believe that auctions of last resort are inherently unfair and should be modified, restricted or modified. One of the main arguments is that auctions reward only those with the most amount of money rather than those that may best operate the TLD in the public interest. In addition, they believe that auctions discriminate against applicants in the developing world who may not have the resources to compete in an auction. Do you agree or disagree? Please provide a rationale for your response.
<p>Neustar believes that the auction of last resort, or a mechanism of last resort, whereby ICANN becomes responsible for resolving the contention needs to remain in place. We understand the concern that the auctions of last resort are inherently unfair; however, we believe some of this could be addressed by making more options available to those in a contention set to enable them to resolve the contention among themselves thereby removing the reliance on the auction of last resort.</p> <p>A concern with the argument as currently stated, that auctions reward only those with the most amount of money rather than those that may best operate the TLD in the public interest, is that many of the strings that were in contention in 2012, it could be argued, were not necessarily strings that represent any public interest but were generic words or terms that represent a value to those interested in operating the TLD. The concern that auctions discriminate against applicants in the developing world should be addressed through another avenue, such as affording priority to such applicants in a way that could not be gamed.</p>	

Topic	2.1 Auctions: Mechanism of Last Resort
Type	Question
Text	2.1.e.2: Should other aspects (e.g., non-financial) be introduced to make auctions of last resort more "fair"? One mechanism that has been mentioned is to consider auction bids from an entity in the Global South as double or triple that of the same bid from an entity not from the Global South. For example, a bid of \$100 from an entity in the Global South could be comparable to a bid of \$200 from a bidder on the same string that was not from the Global South. Why or why not?
This is an option worthy of consideration, but it needs to be 'means tested'. It simply cannot be assumed that an entity from the Global South is not well-resourced.	

Topic	2.1 Auctions: Mechanism of Last Resort
Type	Question
Text	2.1.e.3: What, if any, other measures should the Working Group consider to enhance "fairness"?
Fairness should not be considered in isolation and the WG needs to be exercise caution in creating new rules to address perceived unfairness in the 2012 round that may result in unfairness to others in subsequent procedures.	

Topic	2.1 Auctions: Mechanism of Last Resort
Type	Question
Text	2.1.e.4: Some participants in the Working Group believe that auctions of last resort should be eliminated and replaced with a comparative evaluation process. Some examples include a request for proposals (RFP) process that advantages community-based applicants, minority-supported applicants, or other factors yet to be determined or relying on a drawing. Do you believe that a comparative evaluation process, a determinative drawing, or some other mechanism could replace auctions of last resort? Why or why not?

Neustar believes there is value in considering other mechanisms of last resort in the event that those in the contention set are unable to resolve the contention amicably among themselves, such as determinative drawing. We do not support the request for proposal process that is largely a subjective exercise conducted by third parties and may result in similar results to those experienced in 2012 as part of the Community Priority Evaluation where there were unexplained inconsistencies in the way the panelists applied the criteria. These inconsistencies were challenged via independent review mechanisms and in some cases remain unresolved.

Topic	2.1 Auctions: Mechanism of Last Resort
Type	Question
Text	2.1.e.5: Some participants noted that auctions of last resort could allow a deep-pocketed applicant to secure all strings within a given market. One potential solution raised was to place a limit on the number of auctions an applicant could participate in though others argued that limiting the number of applications would be considered anti-competitive and difficult to enforce. Do you agree that the identified issue is of concern and if so, what do believe is a potential solution?
There is no evidence to suggest that this would occur and any solution should not be open to claims of anti-competitive behaviour.	
Topic	2.2 Private Resolution of Contention Sets (including Private Auctions)
Type	Option
Text	2.2.d.1: A number of Working Group members expressed concern about the use of private auctions and other forms of contention resolution in subsequent rounds of new gTLD applications. More specifically, they are concerned that there will be some applicants that apply for new gTLD strings for the sole purpose of being paid to withdraw their applications in a contention set for which the applicant would receive compensation greater than the application fee. Thus, many Working Group members are opposed to the usage of private resolution mechanisms to resolve string contention in future new gTLD procedures and recommend that measures should be put into place to prevent their occurrence in the future. However, others think that private resolutions may be acceptable.

	<p>➤ Implementation Guidance under discussion: Should the Applicant Guidebook and program Terms & Conditions should be amended to state that resolution of string contention via private resolution, where a party is paid to withdraw, is disallowed. If so, should the future base Registry Agreement should include a provision that states that if a registry operator is shown to have taken part in a private resolution for their given string, it may result in having that TLD taken away from them?</p>
<p>Neustar does not believe that it is appropriate for ICANN to interfere in private negotiations between applicants attempting to resolve a contention set and that the private parties should not be restricted in the options available to them to resolve the contention.</p>	
Topic	2.2 Private Resolution of Contention Sets (including Private Auctions)
Type	Option
Text	2.2.d.2: Several Working Group members believe that a simple "no private auction" rule could easily be circumvented with other forms of private resolutions of contention sets that amounted to compensating one or all of the other losing members of a contention set. Thus, they proposed a second option of banning all forms of private resolution of contention sets. This would mean modifying Implementation Guidance F by not allowing parties to mutually agree on how to resolve a contention set. All contention sets, by definition, would be resolved through the mechanism of last resort (described in Section 2.1. above).
<p>Neustar does not support this option.</p>	
Topic	2.2 Private Resolution of Contention Sets (including Private Auctions)
Type	Option
Text	2.2.d.3: A third option a Working Group Member proposed was allowing certain types of private resolutions, but disallowing others. For example, as discussed in several sections of the Initial Report and in this Supplemental Initial Report, many Working Group members favored allowing applicants in a contention set to change their applied-for-string if that change is mutually agreed by the

	<p>members of the contention set and the newly changes strings (a) were reasonably related to the original applications and (b) did not move the applicants' newly selected strings into a different contention set. Under this option, the Working Group member proposed that changes would need to be approved by ICANN. Another Working Group member noted that under this option, any proposed newly selected string that ICANN intended to approve would need to be (a) subject to name collision risk assessment, (b) put out for public comment and (c) open to established Objection procedures (note, this line of discussion is also found in section 1.4, on Change Requests). If parties are found to have engaged in non-acceptable forms of private resolution, that will result in (a) the application not being allowed to proceed - if a Registry Agreement was not signed by the time it is discovered, or (b) forfeiture of the registry (if after a Registry Agreement is signed). Some members of the Working Group, however, were not comfortable in putting ICANN in a position of approving (or disapproving) mechanisms of private resolution.</p>
<p>Neustar does not believe that it is appropriate for ICANN to interfere in private negotiations between applicants attempting to resolve a contention set and that the private parties should not be restricted in the options available to them to resolve the contention.</p> <p>As stated previously, we do not support the notion that an applicant be allowed to change their applied-for-string as a way to avoid a contention set.</p>	
Topic	2.2 Private Resolution of Contention Sets (including Private Auctions)
Type	Question
Text	2.2.e.1: Do you believe private resolutions should be continued in the future? If so, should the funds be distributed amongst the remaining applicants within the auction or in some other method i.e. charity, ICANN, etc? If so, what methods are most appropriate?
<p>Neustar supports the continuation of private resolution of contention sets and has no objection to the funds being distributed among those in the contention set.</p>	
Topic	2.2 Private Resolution of Contention Sets (including Private Auctions)
Type	Question

Text	2.2.e.2: Do you believe that issues with private resolutions are, generally speaking, equally problematic across different types of TLDs? Do you believe that the type of TLDs may be a factor in determining whether private resolution should be allowed? Does the type of TLD have any impact on the options above?
No opinion at this time.	
Topic	2.2 Private Resolution of Contention Sets (including Private Auctions)
Type	Question
Text	2.2.e.3: Do you agree with many Working Group members who believe that prohibitions in the Applicant Guidebook, Terms & Conditions, and in the Registry Agreement are the best way to prevent private resolutions in the future. In other words, participation in a private resolution, including private auction, where applicants may profit from withdrawing their applications would result in a cancellation of your application (if discovered during the application process) or forfeiture of its TLD (if it is discovered after the TLD is awarded). Do you agree? Do you believe other suggested mechanisms (e.g., increasing application fees), may be more effective, or could be used in tandem?
Neustar disagrees with this recommendation and we oppose limiting the ability of parties to privately resolve their contention sets if they so choose.	
Topic	2.2 Private Resolution of Contention Sets (including Private Auctions)
Type	Question
Text	2.2.e.4: If you agree that private resolution overall is potentially problematic, do you believe that there is any practical way to prevent private resolution that allows losing applicants to receive a financial benefit? Or is the issue with private resolution one that requires a complete ban? Or is it impossible to prevent private resolutions, and they should therefore be allowed (as noted in option 2 above)? Please explain.
Neustar does not agree that private resolution overall is problematic.	

Topic	2.2 Private Resolution of Contention Sets (including Private Auctions)
Type	Question
Text	2.2.e.5: Do you believe instead that there are practical ways to allow some forms of private resolution but disallow others, as indicated in option 3 above? What would be the acceptable or non-acceptable forms of private resolution and why? Who should determine whether parties in a contention set have or have not engaged in non-acceptable forms of private resolution and how would such a determination be established?
Neustar does not believe that there should be restrictions on private resolution, with the exception that we do not support the ability to for a party in a contention set to change their applied-for-string.	
Topic	2.2 Private Resolution of Contention Sets (including Private Auctions)
Type	Question
Text	2.2.e.6: Some believe that if an application fee for a TLD were high enough, it would deter applicants from applying for TLDs with the intent of profiting from a private resolution. Do you believe that increasing application fees will have that effect? Why or why not? If you agree, at what amount would application fees need to be set at to deter applicants from applying for TLDs with the intent of profiting from withdrawing their applications (e.g., rough estimate or instead, criteria by which an amount could be established)?
Neustar supports maintaining the application fee of \$185,000 for a subsequent round. Raising the fee may deter applicants, but it may be a mechanism that has the unintended consequence of reducing the overall pool of applicants to the detriment of competition and innovation.	