21 December 2018

Registrar Stakeholder Group (RrSG) response to the Supplemental Initial Report on the New gTLD Subsequent Procedures Policy Development Process (Overarching Issues & Work Tracks 1-4)

The Registrar Stakeholder Group (RrSG) thanks the New gTLD Subsequent Procedures Working Group (WG) and supporting ICANN staff for the work involved in preparing the Supplemental Initial Report.

The RrSG feedback and responses to the WG questions are as follows:

2.1 Auctions: Mechanism of Last Resort

The RrSG is in support of exploring alternate means of resolution. Auctions of last resort, if maintained, should, in fact, be a last resort and only used when all other viable options have been exhausted. Therefore, the RrSG is in support of allowing applicants to voluntarily resolve contention sets by mutual agreement and/or allowing applicants to change elements of their application(s) to resolve contention sets earlier in the process.

2.2 Private Resolution of Contention Sets (including Private Auctions)

It's important to remember that private auctions developed from within the community since the original policy was neutral on this means of resolution. It's also important to keep in mind that an applicant does not have to use a private auction to resolve a contention set. They may refuse. Similarly, if someone files an application with the intent of losing, they are still risking quite a lot, relatively. With this in mind, one way to reduce concerns could be to keep application fees high. We should also consider and encourage joint ventures or the merging of partnerships. Given private auctions were community-developed the RrSG is reluctant to suggest we "ban" the practice. That said, we believe the community should consider alternate means of resolution which could potentially decrease the practice of "playing to lose."

Given that private auctions were the result of a free marketplace, addressing private auctions within the Applicant Guidebook (or ICANN Org) does not seem appropriate.. Additionally, the RrSG is concerned that any action ICANN might take to try and prevent private resolution or private auctions could put them in a conflict of interest, as it would appear they are simply

trying to ensure they get funds. Perhaps the only solution is to have one more round and then move to a first-come first-served model since contention only happens because of artificial rounds.

2.3 Role of Application Comment

The key here is transparency. If a comment is going to be made public, then there needs to be transparency in who is commenting, and ICANN must verify the identity of commenters. Anonymous comments or comments where ICANN is unable to identify the commenter should not be permitted/posted. Furthermore, once a comment is received, the Applicant should be permitted to address/rebut all comments.

2.4 Change Requests

The RrSG believes the Change Request process must be more flexible; mis-types should be allowed to be fixed; updating directors should be an easier process; the venture associated with the application should be able to be amended, for example, to reflect a joint venture that arose from a contention set.

Optionally, an Applicant could specify alternative TLDs in the application process that could be used in place of their primary choice in an effort to encourage the reasonable resolution of string contention. Alternatives would need to be held private and only be optionally leveraged should a contention set occur. The predefined alternative(s) would be submitted at the time of the application and alternatives provided/arranged in order of ranking. While the RrSG understands the community would ultimately need to create rules regarding when to use and how to use such an option could potentially reduce on the number of auctions due to contention.

The ability to change the applied-for string should be limited to correction of typos or in resolution of contention via the proposed predefined alternatives as discussed above.

2.5 Registrar Support for New gTLDs

The RrSG strongly opposes creating any requirements for registrars to carry specific and/or all TLDs. In a competitive free market there are winners and losers. Not only would it be highly inappropriate for ICANN to force registrars to carry TLDs it is also outside of ICANN's mandate.

All Registry Operators have the option to vertically integrate and serve as a "registrar of last resort" for itself. That said, the RrSG believes that Registrar and Registry Agreements should be held separate and not bundled for vertically integrated companies.

Additionally, the RrSG opposes the idea of ICANN acting as a 'clearinghouse' for payments as this would insert ICANN into the marketplace, which is inappropriate.

Finally, specifically regarding 2.5.d.1.4 and amending the Application Guidebook to include communication with Registrars regarding the TLD market, the RrSG does not support this notion. A more appropriate option would be to include a section in the Newcomer's Guide suggesting outreach with registrars to better understand marketplace demands.

Sincerely,

Graeme Bunton
Chair, Registrar Stakeholder Group