Your name: Susan Payne

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| **Issue** | **Applicable text (please quote directly)** | **Number and name of applicable report section** | **Cannot live with rationale** | **Proposed changes (taking into account whether others would be able to live with them)** |
|  | Bullet 2 of the “Factors”:  If an applicant’s string is not delegated into the root within two (2) years, this may be a factor considered by ICANN in determining non-good faith intent for that applicant. | 2.1 Auctions: Mechanisms of Last Resort/2.2 Private Resolution of Contention Sets (including Private Auctions) | The wording is unclear as to when the 2 years runs from. Since this requirement to have a good faith intent to operate would appear to apply to all applications, not just those which are in contention, the timing is really only workable if it runs from signature of the RA. | If an applicant’s string is not delegated into the root within two (2) years **of the Effective Date of the Registry Agreement**, this may be a factor considered by ICANN in determining non-good faith intent for that applicant. |
|  | Rationale for Implementation Guidance xx (Rationale 3):  The Working Group believes that second-price, sealed bid auctions are preferable to the ascending bid auctions used in the 2012 round, because second price auctions reduce the risk of “bidding wars” that can occur in ascending bid auctions.  In its deliberations, the Working Group considered a number of possible options, which are included on the group’s Wiki. In some cases, the options combined measures related to mitigating the submission of applications lacking bona fide intent, eliminating private auctions altogether, and the mechanism of last resort. The preference for a second-price, sealed bid auction mechanism was however a constant throughout the majority of the Working Group’s deliberations on the topic.  After carefully considering the pros and cons of each option, the Working Group provided the relevant recommendation and details about timing of bids, how the evaluation process should be conducted, and how the auction process should be conducted. | 2.1 Auctions: Mechanisms of Last Resort/2.2 Private Resolution of Contention Sets (including Private Auctions) | The text for this rationale implies that all in the working group support the whole of the recommendation. This is not the case, particularly with respect to the timing of bid submission. A number of WG members have pointed out that the value of a TLD to a bidding party can vary, depending on who else is in the contention set, and so do not favour bid submission being required before this information is available.  Whilst this is not a view supported by everyone, the draft report does not currently reflect that there is this divergence. | Include a paragraph along the following lines:  Some in the Working Group have argued that requiring submission of sealed bids for auctions of last resort before the identity of the identity of other Applicants is known fails to recognize that the value of a TLD to an Applicant may be different depending on who the other potential owners of the TLD are and that applicants should know all the facts available when determining what is an appropriate level to bid. |
|  | Rationale for Implementation Guidance xx (Rationale 4): By requiring all applicants to agree to the bona fide use clause, the Working Group believes that the Board’s primary concerns are mitigated and that private resolutions (including private auctions) as a mechanism to resolve string contention, **can** be permitted. | 2.1 Auctions: Mechanisms of Last Resort/2.2 Private Resolution of Contention Sets (including Private Auctions) | During the course of this WGs deliberations on other topics there has been strong support for the concept of allowing applicants to find innovative ways to resolve contention, concerns and objection. The word “can” should be replaced by “should” to reflect that. | By requiring all applicants to agree to the bona fide use clause, the Working Group believes that the Board’s primary concerns are mitigated and that private resolutions (including private auctions) as a mechanism to resolve string contention, **should** be permitted. |
|  | Rationale for Implementation Guidance xx (Rationale 4):  ….  Some Working Group members believe that only requiring that “all material information regarding any changes to information contained in the original application(s)(if any)" is inadequate and should extend to ”all material terms of any arrangement." This more expansive language was discussed by the Working Group as an alternative. | 2.1 Auctions: Mechanisms of Last Resort/2.2 Private Resolution of Contention Sets (including Private Auctions) | Not a balanced reflection of the positions | Some Working Group members believe that only requiring that “all material information regarding any changes to information contained in the original application(s)(if any)" is inadequate and should extend to,”all material terms of any arrangement." This more expansive language was discussed by the Working Group as an alternative**, however** **other Working Group members strongly oppose this view and point out that in many of the Working Group’s discussions it has recognised the value of allowing greater flexibility to Applicants to resolve conflicts outside of formal processes. Terms of settlement/resolution may often be highly commercially sensitive, particularly where this might involve the resolution of a contention resolving an Applicant’s brand. Requiring such disclosure would counteract the Working Group’s intent to support amicable conflict resolution. Further, they maintain that Applicants resolving contention by means of private resolution should not be required to disclose any more information than is required of any other Applicant for a TLD.** |
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