Your name: Marc Trachtenberg

Auctions: Mechanisms of Last Resort & Private Resolution of Contention Sets (Including Private Auction)

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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)** |
|  | The non-exhaustive list of “Factors” may include, but are not limited to:* If an Applicant applies for five or more strings that are within contention sets and participates in private auctions for more than fifty percent (50%) of those strings for which the losing bidder(s) receive the proceeds from the successful bidder, and the applicant loses each of the private auctions, this may be a factor considered by ICANN in determining non-good faith intent for each of those applications.
* 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.
* If an applicant is awarded a top-level domain and sells [attempts to sell] the TLD (separate and apart from a sale of all or substantially all of its non-TLD related assets) within (1) year, this may be a factor considered by ICANN in determining non-good faith intent for that applicant.

Consideration of whether an application was submitted with a bona fide intention to operate the gTLD must be determined by considering all of the facts and circumstances surrounding the impacted Applicants and Applications.  The above factors may be considered by ICANN in determining such intent provided that there are no other credible explanations for the existence of those Factors.  | 2.1a | These factors are not good proxies for determining whether an application was submitted with a bona fide good faith intent to operate the registries. Any one of them could occur for other reasons than a lack of bona fide good faith intent to operate the registry. If the evaluators can take anything into account then fine, let them – but we should not be specifying factors that they “may” consider which are not good proxies for this dtermination. The effect of this will be obvious – these factors will be given more weight. If they won’t then there is no need to specify them.  | Eliminate this section language completely |
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