Auctions: Mechanisms of Last Resort & Private Resolution of Contention Sets

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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)** |
|  | 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. | Recommendation xx (Rationale 2), The non-exhaustive list of “Factors”, first bullet | Half of five is 2.5. Use a number that is divisible by 2 and results in a whole number. | If an Applicant applies for ***four*** 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 is awarded a top-level domain and sells 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. | Recommendation xx (Rationale 2), The non-exhaustive list of “Factors”, third bullet | “Assigns” more broadly captures movement of TLDs and speaks to ICANN’s “Change of Assignment” process. | If an applicant is awarded a top-level domain and ***assigns*** 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. |
|  | Adding bullet point | Recommendation xx (Rationale 2), The non-exhaustive list of “Factors” | If ICANN isn’t privy to the material terms of settlements, some resolutions could purposely lose without any money changing hands or business combinations being made. Captures possible “paid (not necessarily in cash) to go away” settlements. | * ***If an applicant with multiple applications resolves contention sets by means other than private auctions and does not win any TLDs.*** |
|  | 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. | Rationale for Recommendations xx and xx (Rationale 2) | Include “some” in the designation of WG member positions. | By requiring all applicants to agree to the bona fide use clause, ***some of*** 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. |
|  | 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. | Rationale for Implementation Guidance xx (Rationale 3) | *IF* Susan Payne’s language arguing the counterpoints against second-price, sealed bid auctions is accepted/included,  *THEN* the benefits of second-price, sealed bid auctions should be expounded upon in this section. | The Working Group believes that second-price, sealed bid auctions are preferable to the ascending bid auctions used in the 2012 round, because ***this method eliminates collusion and bid rigging; it is the preferred method used by governments to allocate critical resources;***  ***bidders are forced to value the TLD in absolute terms; and*** second price auctions reduce the risk of “bidding wars” that can occur in ascending bid auctions. |