

5 March NGPC Meeting

Consent Agenda:

- Approval of Minutes

Main Agenda:

- Update and discussion on New gTLD Program matters
 - Update on Auctions
 - PICDRP
 - Name Collisions
 - Correspondence from Governments
- Reconsideration Request 13-13, Christopher Barron/GOProud
- Update on accountability mechanism processes
- Update on Registry Agreement
- AOB

ICANN New gTLD Program Committee PAPER NO. 2014.03.05.NG2a

TITLE: Briefing on New gTLD Program Auction Rules

PROPOSED ACTION: For Information

EXECUTIVE SUMMARY:

Contention sets are groups of applications containing identical or confusingly similar applied for gTLD strings. Contention sets must be resolved prior to the execution of a Registry Agreement for an applied-for gTLD string. An ICANN facilitated auction is a last resort for resolving String Contention Sets, as described in the [Applicant Guidebook \(AGB\)](#) section 4.3.

Auctions will be conducted over the Internet using a procedure known as an *ascending-clock* auction, where the auctioneer successively increases the start-of-round and end-of-round range of prices, on a per auction round basis. Applicants within the contention set must submit bids to indicate their willingness to pay an amount within the defined price range in the auction round. As the price ranges of the auction rounds increase, applicants may successively choose to exit the auction. When a sufficient number of applications have exited the auction process, so that the remaining application(s) are no longer in contention with one another, and all the relevant string(s) can be delegated as gTLDs, the auction will be deemed concluded. At this point, prevailing applicants that remained in the auction will pay the finalized price and proceed toward delegation.

The AGB describes the general auction approach including ascending-clock auction methodology. Additionally, many detailed rules and procedures to facilitate the execution of auctions had to be developed. This following describes those rules and the process which they were developed.

Developing Auction Rules through Community Consultation

ICANN staff consulted with the community, including new gTLD applicants, to solicit input and develop a preliminary set of Auction Rules published on 31 October 2013. Staff presented these rules to the community through webinar as well as presentation at

ICANN 48 in Buenos Aires. Feedback and suggestions received were incorporated into a Final Draft set of Auction rules and Draft Bidder's Agreement published for Public Comment on 17 December 2013. The public comment period concluded on 4 February 2014. ICANN has reviewed and analyzed the input received during the public comment period and expects to publish a Final set of Auction Rules and a Final Bidder's Agreement in early March.

Auction Eligibility

A String Contention Set will be eligible to enter into a New gTLD Program Auction only when all of the following criteria are met:

- All active applications in the contention set have:
 - Passed evaluation
 - Resolved any applicable GAC advice
 - Resolved any objections
 - Finalized any and all change requests
 - No Pending ICANN Accountability Mechanisms
- Each applied-for gTLD in the contention set is:
 - Not classified as "High-Risk" per the Name Collision Occurrence Management Plan
 - Has received the Name Collision Occurrence Assessment from ICANN, or has waived such

Auction Rules for Indirect Contention Sets

The Auction Rules discussed above pertain exclusively to contention sets including direct contentions exclusively. At this time, these rules apply to 161 out of 165 anticipated contention sets. Rules for the conduct of Auctions for contention sets including indirect contentions are still under development. The procedures for indirect contention auctions are more complex and require further consultation with the ICANN community. It is anticipated that the rules for indirect Auctions will apply to 4 of the 165 anticipated contention sets. Direct contention auctions will proceed while indirect auction rules are finalized.

Summary of Public Comments

Feedback during the public comment period generally fell into the following categories:

1. *The use of Auctions or the Ascending Clock Auction method prescribed in the AGB to resolve string contention.*

Some comments suggested eliminating Auctions as the last-resort contention resolution method, while others suggested alternative types of auctions in lieu of the ascending-clock auction

Response: Numerous methods of contention resolution were considered during the development of the AGB. ICANN does not intend to modify the AGB at this juncture and intends to move forward with ascending-clock auctions.

2. *Comments relating to timing, scheduling and Auction logistics.*

A comment expressed the opinion that a fixed auction start time (16.00 UTC) was unfair to auction participants in the Asia Pacific Region. Other commenters urged ICANN to complete all Auctions in 2014.

Response: ICANN will work with the Auction provider to identify at least two auction start times to be alternated, so as to better accommodate auction participants from around the world. ICANN intends to schedule and conduct auctions at a predictable pace. Presently, plans call for auctions of up to twenty (20) contention sets per month.

3. *Suggestions to modify details of the Auction Rules and the Bidder's Agreement.*

Various suggestions were made to clarify the rules around anti-collusion, changes to rules, and remedies for violation of rules. A few comments including those from the NTAG suggest that the winner of an auction be given 9 months rather than 90 days, as per the AGB, to sign a Registry Agreement.

Response: ICANN is incorporating many of the suggestions to improve and clarify the terms and conditions of the auction rules. ICANN does not intend to extend the period which an auction winner has to sign a Registry Agreement. The AGB was written with a shortened timeline for contract execution of contended strings versus non-contended strings.

4. *The use of Auction proceeds*

A few commenters urged ICANN to develop a plan for the use of Auction proceeds.

Response: The ICANN Board intends to engage with the community to develop plans for the use of auction proceeds.

5. *The handling of contention sets with indirect contention relationships.*

Some comments suggested that ICANN publish the auction rules for Indirect Contention sets before holding any Auction events.

Response: While ICANN appreciates this perspective, rules for Indirect contention set Auctions are anticipated to pertain to four (4) contention sets out of 165. Staff will continue work to finalize indirect auction rules while moving forward with auctions for the remaining 161 direct content sets.

Anticipated Auction Timeline

- Early March 2014 - Publish public comment summary and Auction Materials
- Mid-March 2014 - Publish first set of Auction Dates and send Intent to Auction Notices
- Early May 2014 - Finalize Rules for Indirect Contention
- Late May 2014 - Conduct first Auctions

STAFF RECOMMENDATION:

Revised Auction rules and supporting documentation will be published in early March 2014. No further action is recommended at this time.

Signature Block:

Submitted by: Christine A. Willett

Position: Vice President, GDD Operations

Date Noted: 27 Feb 2014

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ICANN NGPC PAPER NO. 2014.03.05.NG2a

TITLE: **Contractual Enforcement of Public Interest
Commitments in the New gTLD Registry Agreement**

PROPOSED ACTION: **For Discussion**

EXECUTIVE SUMMARY:

Over the past several months, the ICANN Board New gTLD Program Committee (NGPC) has approved additional public interest commitments (PICs) to be included in the New gTLD Registry Agreement (Specification 11) to address certain items of advice issued by the GAC. The NGPC has requested an update on how PICs will be contractually enforced in the New gTLD Registry Agreement.

The PICs in the Registry Agreement can be enforced through the Public Interest Commitments Dispute Resolution Procedure (PICDRP), which is designed to specifically address complaints that a new gTLD registry operator may not be complying with the PICs. To effectively and efficiently resolve any issues that might arise regarding non-compliance with PICs, ICANN Contractual Compliance will administer the PICDRP. Any person or entity that believes they have been harmed as a result of a registry operator's act or omission in connection with the operation of its gTLD that is non-compliant with its PICs may report the alleged non-compliance by the registry operator at the following link <http://www.icann.org/en/resources/compliance/picdrp>. It should be noted however, that nothing in the PICDRP is intended to limit the authority of ICANN itself to enforce any provision of the Registry Agreement, including Specification 11.

As part of the PICDRP process, ICANN will conduct an initial review of the complaint to ensure that it is complete, has a claim of non-compliance with at least one PIC, and the reporter is in good standing. If the complaint passes the initial review, the complaint will be sent to the registry operator for resolution. If the complaining party does not believe the registry operator has resolved the complaint within 30 days, ICANN may choose to undertake a compliance investigation or forward the complaint to a standing panel of experts to determine whether there is non-compliance. If ICANN or the standing panel

determines that there is a non-compliance, the registry operator will be sent a notice of breach and have 30 days to cure the non-compliance and notify ICANN of the remedial measures taken.

In addition, ICANN is in the process of defining and detailing the audit approach, scope and criteria as it relates to the new gTLD agreement. PICDRP is in scope of the audit.

On 5 February 2014, ICANN requested Expressions of Interest to serve on the PICDRP standing panel. It is anticipated that the standing panel membership will be announced by the end of March 2014.

The PICDRP also has provisions to address registry operators or reporters that have been determined to be “repeat offenders” (e.g. this may apply if a registry operator has a pattern or practice of noncompliance with the PICs or if a reporter has a pattern or practice of filing frivolous reports). Registry operator repeat offenders may be subject to financial sanctions, and reporter repeat offenders may be barred from filing future reports.

Signature Block:

Submitted by: Akram Atallah

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Date Noted: 28 February 2014

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Pages 8/24 - 20/24 removed.

Consideration of Agenda Item regarding Reconsideration Request 13-13, Christopher Barron/GoProud postponed to 22 March 2014 Meeting.

**Briefing Materials are available for review here:
<https://www.icann.org/en/system/files/bm/briefing-materials-1-22mar14-en.pdf>;
<https://www.icann.org/en/system/files/bm/briefing-materials-8-22mar14-en.pdf>**

ICANN NEW gTLD PROGRAM COMMITTEE SUBMISSION NO. 2014.03.05.NG2c

TO: ICANN New gTLD Program Committee

TITLE: Accountability Mechanisms Update

PROPOSED ACTIONS: For Discussion

EXECUTIVE SUMMARY:

As the New gTLD Program Committee (NGPC) is aware, ICANN has established certain accountability mechanisms under Articles IV and V of the ICANN Bylaws. These include: (1) Reconsideration Process, (2) Independent Review Process, and (3) Ombudsman. Module 6 of the Applicant Guidebook provides that “applicants may utilize any accountability mechanism set forth in ICANN’s Bylaws for purposes of challenging any final decision made by ICANN with respect to the application.” (Guidebook, Section 6.6.) Over the past year, these mechanisms have been invoked to challenge decisions relating to new gTLD applications. Below is an update on the accountability mechanisms that have been invoked.

Reconsideration Requests

Reconsideration is a mechanism by which any person or entity materially affected by an action (or inaction) of ICANN Board or staff may request review or reconsideration of that action (or inaction) by the Board. For Reconsideration Requests brought regarding staff action or inaction, and actions by third party panels in the New gTLD Program (including the expert dispute resolution panels) are being treated as staff actions, the BGC has the option to issue final Determinations or to issue Recommendations to the Board or the NGPC. (*See* Article IV, Section 2.16 of the Bylaws; *see also*, BGC Recommendation on Reconsideration Request 13-5 at

<http://www.icann.org/en/groups/board/governance/reconsideration/recommendation-booking-01aug13-en.doc>.)

• **2013 Requests**

- There were 23 Requests filed in 2013. Of the 23 Requests filed, 21 Requests related to the New gTLD Program.
- 19 out of 23 Requests have been resolved.

- Four out of 23 Requests are pending:
 - Request 13-9: Amazon EU S.a.r.l. (Japanese characters for “online shopping” vs. .SHOP) , submitted 4 September 2013 – The BGC issued its Recommendation on 10 October 2013. The NGPC deferred consideration of this Request pending the Report on String Confusion Expert Determinations.
 - Request 13-10: Commercial Connect, LLC (Chinese characters for “shop”/“shopping” vs. .SHOP) submitted on 5 September 2013 – The BGC issued its Recommendation on 10 October 2013. The NGPC deferred consideration of this Request pending the Report on String Confusion Expert Determinations.
 - Request 13-13: Christopher Barron/GOProud, Inc. (.GAY), submitted on 19 October 2013 – The BGC issued its Recommendation on 12 December 2013. The NGPC considered Request 13-13 at its 9 January 2014 meeting and ask staff to request additional information. Request 13-13 is on the NGPC agenda at its 5 March 2014 meeting.
 - Request 13-14: DERCars, LLC (.CARS/.CAR), submitted on 21 October 2013 – This Request is pending consideration by the BGC. The BGC deferred consideration of the Request pending the Report on String Confusion Objection Expert Determinations and potential approaches to address some perceived inconsistent string confusion expert determinations.
- **2014 Requests**
 - Seven Requests have been filed in 2014. all relate to the New gTLD Program.
 - Three out of seven Requests have been resolved by the BGC.
 - Four out of seven Requests are pending:
 - Request 14-1: Medistry, LLC (.MED), submitted on 17 January 2014
 - Request 14-4: Union of Orthodox Jewish Congregations of America (.KOSHER), submitted on 30 January 2014
 - Request 14-6: Dot Rugby Limited (.RUGBY), submitted on 17 February 2014

- Request 14-7: Asia Green IT System Ltd. (.ISLAM, .HALAL), submitted on 27 February 2014
- Of the four Requests pending, one (Request 14-7) seeks reconsideration of a Board action.

COOPERATIVE ENGAGEMENT PROCESS

The Cooperative Engagement Process (CEP) is a process invoked by a complainant prior to the initiating an Independent Review Process (IRP) or the purpose of resolving or narrowing the issues that are contemplated to be brought to the IRP. (*See* Bylaws, Art. IV, § 3.14.)

There are currently five CEPs pending.

- Non-Commercial Stakeholders Group regarding the Trademark Clearinghouse
- Booking.com BV regarding .HOTELS vs. .HOTEIS
- Commercial Connect, LLC regarding .SHOP
- GCCIX, W.L.L. regarding .GCC
- Asia Green IT System Limited regarding .ISLAM and .HALAL

INDEPENDENT REVIEW PROCESS

The IRP is a process for independent third-party review of Board actions alleged by an affected party to be inconsistent with the Articles of Incorporation or Bylaws. (*See* Bylaws, Art. IV, § 3.) There is one IRP pending. This IRP was filed by DotConnectAfrica Trust (DCA Trust) regarding ICANN's decision to accept GAC consensus advice on DCA Trust's application .AFRICA and ICANN's decision that DCA's application should not proceed.

OMBUDSMAN

The Office of the Ombudsman was established pursuant to Article V of the Bylaws to evaluate and where possible resolve complaints about unfair or inappropriate treatment by ICANN. To date, ICANN is aware of four complaints that have been filed with the Ombudsman relating to the New gTLD Program. These complaints relate to applications for .INSURANCE, .BANK, .RUGBY, and .SPORT.

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