

Annex A

RELEVANT PROVISIONS OF THE DAA

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ANNEX B

Positions Taken by ICANN in the First IRP	The Resolution and Rationale
<p>The Guidebook provisions do not “squarely” address arrangements like the DAA:</p> <p>“There is no Guidebook provision that squarely addresses an arrangement like the DAA.”</p> <p>ICANN Rejoinder in the IRP (1 June 2020), ¶ 82.</p>	<p>The Guidebook provisions do not “directly” address arrangements like the DAA:</p> <p>“After careful review of and discussion regarding the Guidebook and Auction Rules, the BAMC, and the Board, found that there is no Guidebook or Auction provision that directly addresses arrangements such as the DAA”</p> <p>ICANN Rationale (30 April 2023), at 73.</p>
<p>Hundreds of applicants have agreed to post-delegation assignment agreements:</p> <p>“Hundreds of others [applicants] have assigned or transferred their gTLDs to other entities for financial gain or other reasons.”</p> <p>ICANN Response to Amended IRP Request (31 May 2019), ¶ 25.</p>	<p>Dozens of applicants have agreed to post-delegation assignment agreements:</p> <p>“The BAMC also noted, as does the Board, that Registry Agreements for new gTLDs have been assigned dozens of times, if not more, following contracting and/or delegation of the gTLD”</p> <p>ICANN Rationale (30 April 2023), at 74.</p>
<p>The Anti-Transfer Clause only prohibits transfer of the <u>entire application</u>:</p> <p>“[F]rom an operational or transactional perspective, we viewed this Paragraph 10 about not assigning the rights and obligation of the application to be of the total application. You couldn’t sell your application in total to someone else.”</p> <p>Testimony of Ms. Willett (5 Aug. 2020), Merits Hearing Tr. (Vol. III) at 568:3-8</p>	<p>The Anti-Transfer clause only prohibits transfer of the <u>entire application</u>:</p> <p>ICANN concluded that NDC did not violate the Anti-Transfer Provision of the Terms and Conditions that provides that “Applicant may not resell, assign or transfer any of applicant’s rights or obligations in connection with the application” because, according to the Rationale, “NDC did not sell or transfer the application Accordingly, the BAMC and Board agree with NDC and Verisign that no assignment of NDC’s application has occurred”</p> <p>ICANN Rationale (30 April 2023), at 73-74.</p>
<p>The Auction Rules “are “concerned” only with the “mechanics” of the Auction:</p> <p>“[T]he Auction Rules are concerned only with the mechanics of the Auction and each applicant’s participation in the Auction”</p> <p>ICANN’s Rejoinder in the IRP (1 June 2020), ¶ 85.</p>	<p>The Auction Rules “primarily relate” to the “mechanics” of the Auction:</p> <p>“The Auction Rules and the Bidder Agreement primarily relate to the mechanics of the Auction”</p> <p>ICANN Rationale (30 April 2023), p. 76.</p>

<p><u>ICANN “could” determine that the Auction Rules were not violated because NDC was bidding on its own behalf:</u></p> <p>“ICANN could certainly determine that, despite Afiliias’ technical reading of the definitions in the Auction Rules, NDC was, in fact, bidding on <i>its</i> application, was submitting bids on <i>its</i> behalf, and was submitting bids <i>it</i> was willing and able to pay, despite the DAA.”</p> <p>ICANN Rejoinder in the IRP (1 June 2020), ¶ 86 (emphasis in original).</p>	<p><u>ICANN determines that the Auction and Bidder Rules were not violated because NDC always remained the bidder:</u></p> <p>“In terms of the Auction Rules and Bidder Agreement, the BAMC and the Board found that NDC did not violate those provisions because NDC always remained the bidder, the bids that it submitted were legitimate, and NDC was in fact able to fulfill its bid when it became the prevailing party to the auction.”</p> <p>ICANN Rationale (30 April 2023), p. 76.</p>
<p><u>ICANN does not use the mission/purpose section of the IRP as part of the evaluation process:</u></p> <p>“Mr. Rasco also states that NDC’s mission/purpose statement did not need to be updated in light of the DAA because of the Guidebook’s statement that <i>the mission/purpose statement is not part of the evaluation process</i>.[.]”</p> <p>ICANN’s PHB in the IRP, ¶ 146 (12 Oct. 2020) (quoting Rasco Witness Statement, ¶¶ 16, 18-20).</p>	<p><u>ICANN does not use the mission/purpose section of the IRP as part of the evaluation process:</u></p> <p>“NDC and Verisign are correct that <i>ICANN does not use the mission and purpose information ... as part of the evaluation or scoring</i> of an application.”</p> <p>ICANN Rationale (30 April 2023), p. 76.</p>
<p><u>NDC did not violate any duty to update its application because it always remained the applicant:</u></p> <p>“Mr. Rasco further states that the terms of the DAA make clear that ‘<i>NDC remained the applicant</i>”</p> <p>ICANN’s PHB in the IRP, ¶ 146 (12 Oct. 2020) (quoting Rasco Witness Statement, ¶ 47).</p>	<p><u>NDC did not violate any duty to update its application because it always remained the applicant:</u></p> <p>“In terms of any Guidebook requirement to update an application for a gTLD, the BAMC and the Board found that NDC did not violate that requirement by entering into the DAA. First and foremost, <i>NDC is still the Applicant; that has not changed</i>.”</p> <p>ICANN Rationale (30 April 2023), p. 75-76.</p>