
ICANN Transcription

New gTLD Subsequent Procedures Working Group

Thursday, 17 October 2019 at 2000 UTC

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JULIE BISLAND

Good morning, good afternoon, good evening. Welcome to the new gTLD Subsequent Procedures Working Group call on Thursday the 17th of October 2019.

In the interest of time, there'll be no roll call. Attendance will be taken via the Zoom room. If you're only on the audio bridge at this time, could you please let yourself be known now?

I would like to remind all participants to please state your name before speaking for transcription purposes and to please keep your phones and microphones on mute when not speaking to avoid any background noise.

With this, I will turn it back over to Jeff Neuman. You can begin, Jeff.

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JEFF NEUMAN: Thank you very much. Alright, welcome everyone. For some of you, this may be your second, third or fourth call today, or within a short amount of hours, so thank you for joining.

The agenda is up on the screen. I would like to add under Any Other Business just a five-minute discussion on ICANN 66 in Montréal in a few weeks so we can just go over our four sessions for that meeting.

Before we get into the core of our subjects, which is to finish up mechanisms of last resort, and then have a discussion on private resolution of contention sets, let me just ask if there are any updates to statements of interest or any other Any Other Business.

Anne, please.

ANNE AIKMAN-SCALESE: I was wondering if I somehow missed the slides that went around this morning in your GNSO presentation. Did we get those slides or a link to those slides? I think there was a new timeline and everything in it and all that.

JEFF NEUMAN: Yeah. Thanks, Anne. Sure, if I can just ask [the policy team,] if you guys can post the link. I'm not exactly sure where those are being stored at the moment. Alright, Julie said that they'll get a link and post it.

The timeline is pretty much the same as has been discussed. I think there have been two timelines that we've shown in general for the past several ICANN meetings, and I think it's pretty clear that they'll be a comment period at least on some things, and that's part of our ICANN 66 discussion.

So I spent the time in the call earlier today talking about that second timeline. There's the link. Julie Bisland has put the link on there, so I think that's where you can find all the slides this morning, and we were second, I believe, to go on. So it's after the RPM group. Anne, your hand's still up. Is there any other question?

ANNE AIKMAN-SCALESE: Yeah, just one clarifying question, Jeff. I think I heard in this morning's call that you indicated that as the working group, we are proceeding on the basis that there are no interdependencies with any other projects within ICANN. I'm not sure that ... I think that your summary for example has been correct as to results that could affect our process, but it seemed like stating that our assumptions are there are no interdependencies goes contrary to what has been discussed in the working group and in the face-to-face in Barcelona.

JEFF NEUMAN: Yeah. Thanks, Anne. The point I was trying to make – although I may not have done it successfully – was that there's no interdependencies for us finishing our work. So while there may

be interdependencies in the program itself, we're not waiting for any other group to finish its work before we finish our work.

ANNE AIKMAN-SCALESE: Okay, great. Thanks. That's very helpful, that's a good clarification. Thank you.

JEFF NEUMAN: Thanks. Sorry for the mix-up there, and I hope others understood it that way. If not, we'll make that clarification.

CHERYL LANGDON-ORR: Jeff, I also was very specific to try and make that clear in the associated chat at the time, so the chat record should also make sure that that is absolutely crystal clear to everybody. It isn't going to hold us up finishing our work, and what happens with other people's work – I even capitalized a few words – when and if that happens, will have to be dealt with then. Thanks.

JEFF NEUMAN: Yeah. Thanks, Cheryl. I think Paul McGrady says on the chat that the council would play the traffic cop, not this working group. Right, we're not holding ourselves up – obviously, if the board or the council comes back and says, "No, wait a minute, we need to do this, this and this," then that's a different story. But at this point we're going to move forward with our work and continue on our timeline, unless and until someone takes us off that timeline.

Okay, great. Thanks. I don't know if that's Julie or Steve that's putting stuff in the AOB. That's great. We'll get to that after an AOB with a few minutes left to go, so if someone could remind me. But for now, let's go back into the discussion on the mechanisms of last resort.

We spent the entire time on Monday talking about different mechanisms of last resort. We spent a bunch of time talking about the other alternatives that were presented either in the initial report or that have been discussed.

I think we came to the conclusion that there's no general agreement on any other form of mechanism of last resort that was presented other than the auctions in general. We had gone through things like random draw and the RFP/beauty process and [prioritization] exercises other than community, and again, the comments from not only this working group but also those that submitted comments in response to the supplemental initial report were all kind of all over the place.

There were some groups that supported different mechanisms, others opposed those different mechanisms. So in general, it didn't seem to us that there was any mechanism that seemed to get more support than auctions.

But what did seem to get a good level of support is the notion of doing Vickrey auctions or sealed bid auctions as opposed to the way we held auctions the last time, kind of the rising bids period over 24 hours or whatever it is to see who bids the highest. This would be a form of sealed bid where at the appropriate time, bids would be submitted for a string, and the highest bid would win.

The way that's usually discussed is that the winning bid would get it at the second highest bidding price.

Now, one issue left over that we kind of saved – but certainly comments addressed it – was two issues. One is when are the bids submitted, and the second one is when are the bids revealed. And by revealed, I don't necessarily mean revealed to the public as a whole but that those that need to know the bids are made aware of the price or the bid itself.

Anne, your hand's up and I didn't look to see if that's a new hand or an old one. Okay, I'm not hearing Anne, so I'll assume that's left over.

ANNE AIKMAN-SCALESE: No, it's an old hand. Sorry. I'll put it down.

JEFF NEUMAN: Okay, so there were options that were presented in the initial report. Should that bid be collected upfront, so before you know or an applicant knows if there is any contention? And the other option was bidding at some point after all of the applications are revealed, so you do know in theory who you're going up against, and a third option I guess is that a bid could be submitted at a time at which everything else has been finalized, including all the required evaluations, all objections have been heard and everything else. You're really at the mechanism of last resort, and that's when bids could be submitted.

So on those options, what we seemed to get back are the following. We're at the bottom of page 10, which is up on the screen, where the IPC did support the notion of a Vickrey as an alternative to the ascending clock auction, but they support seal bids being submitted once a contention set was finalized and the participants were known to all the parties so that applicants could properly assess their willingness to pay.

I think the language in blue is the specific language that was used. The ALAC, while it was more supportive of the notion of RFP processes, I think, it was more supportive of the Vickrey auction, but I don't know if it specified when bids would be submitted, if we could scroll down. I'm trying to remember.

They also talked about a multiplier in cases for those that have qualified for applicant support, but I don't remember seeing anything on the timing. The Registries Stakeholder Group, some were supportive of the Vickrey auction, and Neustar was also supportive of the Vickrey auction, but Neustar specifically was not supportive of the idea of submitting a bid at the time you submit your application.

BC seemed to agree with the Vickrey, and I don't remember if they specified whether that should be at the time of application or not. The BRG just reiterated its support for the 2012 model.

So as a group, we need to try to come to some decision as to if we recommended a Vickrey sealed bid auction, which it seems like there's some level of agreement to do, the question then becomes, when would we expect bids to be submitted, and when would they be opened up?

For example, you can have a system where you get bids at the very beginning when you submit your application, but no one looks at the bids until we get to the spot in which we are at the last resort, meaning no private agreements have been reached and there are multiple applications still for that string, or we could open up those bids at the very beginning and only evaluate the application with the highest bid, and that makes it all the way through to being approved, and then you can just go with that one not having reviewed the other ones and spent the money.

Steve – so just going through the chat – the blue text is the new idea that the IPC had. Kristine is saying multiple registry operators shared the Neustar view. Alright. Discussion is open. I'd love to spend a few minutes hearing what members of the group think. Or is it just people in line with the general comments that have been received so far? Steve has his hand up. Steve, please, and then Kristine.

STEVE CHAN:

Thanks, Jeff. I guess I just want to raise a comment I made at the very end of the last meeting in that determining when the bids should be submitted, when they should be opened, when they should be evaluated, some of those factors might be driven on what you're intending to accomplish as a working group. Without trying to assume what those objectives are, but just by way of example. Maybe the working group wants to reduce gaming, maybe you're trying to enhance fairness, maybe you're trying to resolve string contention as early as you can in the process, maybe you're trying to make the bidding process as competitive as possible, trying to reduce impulsive bids, or whatever those

objectives are, I think some of those may drive your decision on, I guess, where the bids are open, when they are evaluated, and all these different factors.

So I guess to summarize, the comment I made last week or last meeting is that if you're able to come to agreement on those objectives, maybe you don't actually have to make a determination at this point and you could actually leverage the auction provider, whoever that might be, if there needs to be one, and they can help design a process that meets those objectives. Thanks.

JEFF NEUMAN:

Yeah. Thanks, Steve. I think we'll go into a little bit of the pros and the cons of each one, because I think that what we're intending to do as a group I think fits into all the categories, some better than others. But let me go to Kristine.

KRISTINE DORRAIN:

Thanks. And to be clear, I actually don't support changing the system at all, but I just wanted to introduce a thought, much like Steve did, for consideration. One of the things that the registries really wrestled over when we were discussing what some options that we could live with might look like is this idea that there's not one – almost to Steve's point – path for every application.

Some applicants have one business model in mind and they have one or two applications, and that's so they can put all their eggs in that basket. Other applicants have different models in mind, and I'm thinking specifically of, let's say, applicant A has three applications because they have an idea and they've got three

alternatives, and they don't know if they'll all be available so they submit three applications.

Applicant A may think that [we may] weight all of these applications equally as a sealed bid or Vickrey auction or something, but as the applications work their way through, they may find that one or two of those applications is kicked out for one reason or another. Either it was part of a contention set and they didn't win it, or whatever the reason was.

Suddenly, that third application for their one single business model that they wanted to launch is the only option they have. So if you've pre-submitted all of your bids, you have no way to adjust to that reality of "Uh oh, now I can't even launch my business if my last and remaining option ... I can't put all the money from pots A and B into the third pot in order to hopefully win my auction."

So that's just one of the things as we think about ... I think one of the temptations as we think about these applications and the order and the sealed bid and how we're auctioning is we sometimes assume that it's one on one. That particular applicant against that particular other applicant for that particular string.

But in reality, there's a lot of dynamics that go on behind the scenes with applications, and business models that may be challenged based on the inability to kind of adjust to the what's happening at the time.

So again, I'm not necessarily in support of any of these, but I just wanted to throw that out there so that when we do have this

discussion, we consider the unique situations that each applicant is facing. Thank you.

JEFF NEUMAN: Thanks, Kristine. I thought I saw Jim's hand up, and then Martin. Jim, please.

JIM PRENDERGAST: Thanks, Jeff. I guess first thing, I wasn't familiar with this auction until it came out in our discussions and I went back and did some research on it. I guess that's the old policy analysis major in me.

If you do not submit the bid at time of application, then it's not considered a Vickrey auction. So I think we need to get the terms synced up here. If you do bids at any other time, it's some other type of auction but it's not a Vickrey auction.

One of the things that is attractive to me at least with submitting bids at the time of application is it checks off a lot of things that we've seen come back in the comments that people were concerned with. First, once you pick a winner of the "contention set," even though there isn't a contention set, you've got the highest bidder, not every applicant has to go through the evaluation that ICANN puts them through. Therefore, significant refunds could be made, if not entire refunds could be made to those applicants who were not the first or second highest bidder.

I know there's a possibility of someone with a bid bailing the application and then you'd have to revert to the second one, so

maybe you don't necessarily refund all of the applicants, maybe refund all but the top two or three.

The other thing that by allowing people to submit bids after the reveal is it opens the door up for collusion between applicants. You take a look at the playing field, you see who's bid for what, you make a phone call and you say, "Hey, I see we're both in these three different contention sets. I'm not as interested in this one as you may be. Why don't we adjust our bids so that you get it and I'll take a backseat on the other one?" So I think that's a glaring problem that you would have where you would allow bids any time after the initial application.

And then from a purely economic standpoint, forcing people to actually sit down and truly evaluate what the TLD is worth to them at the time of application is what we should be doing when we're talking about an Internet resource, a public good that ICANN is making available to interests out there.

I understand what Kristine said about different models, but at the end of the day, ICANN is a steward of providing this resource to the community and folks should be thinking about, "What is that value to me on its standalone?" Not exactly, "What's the cost of that TLD to me across 60 or 80 different applications?" Thanks.

JEFF NEUMAN:

Thanks, Jim. I think, Jim, you successfully transitioned us into the pros and cons versus the different models. Vickrey is a type of sealed bid auction, so as you said, we should be clear on the nomenclature. So Vickrey auction is a sealed bid at the time of the

submission of the application, and it is commonly used in other types of government and other public resource auctions where you're submitting that right away and then it doesn't end up being a long, drawn out process.

So I think between Kristine and Jim, you've now heard the different thoughts, both of which have lots of merit and both of which have to play into the ultimate question of what Steve has asked, which is, what is our goal? What do we want to do?

Jim has talked about the potential gaming aspect, the not having to evaluate everything, and therefore less cost. Kristine has emphasized the flexibility, the business realities of submitting applications. So let me open it up to Kristine and then hopefully others either on the chat or on this call will weigh in. Thanks. So Kristine.

KRISTINE DORRAIN.

Thanks. Just a follow up on what you mentioned a moment ago about timing and things. I think you summarized at least my position fairly succinctly.

I think that you talked about things going a little bit faster. However, as we know, contention sets are still being resolved from 2012. So so much changes, and having to rely on a bid that you submitted, at this point it would be seven years ago now and resolving some issues that are still trying to work their way through.

My concern, of course, isn't the sealed bid bit. I think there's certainly a lot of merit to discussing the sealed bid, and I think

that's what the Neustar comment was saying, that we absolutely should talk about this idea of a sealed bid, and if that meets one of the goals that Steve was talking about, then I think we should talk about it.

From my perspective, the timing is really the biggest issue. I understand that it's not a Vickrey then if the timing is different, but I think that the nuances and the realities of how the application process plays out will very deeply impact people. And I'll be perfectly honest with you, they're going to impact small to medium sized players far more than big players that are going to be able to put a big number on every application.

So let's really think about who's going to win and lose if we make everybody declare their bid price right up front. Thanks.

JEFF NEUMAN:

Thanks, Kristine. Looking at the chat, then I'll go to Donna. We have a comment from Justine said – agrees with Jim – “That’s why I said last meeting bids must be put in without applicant identity in the contention set being revealed.”

“From a personal point of view – this is from Cheryl – your evaluation desirability and resource –“ Sorry, MX. “I wholeheartedly agree with you.”

CHERYL LANGDON-ORR: Management. Mx is management.

JEFF NEUMAN:

Thank you. I'd not seen that abbreviation before. Justine says, "Because the ALAC didn't consider the timing of bids, their support for Vickrey is a qualified one." I guess Justine needs to go back and get that clarified.

Jim says, "Unless there are two parties submitted the same exact bid, there by definition wouldn't be a contention nest. So you'd look at it and you'd only do the evaluation of the top one and move forward until – or unless – that didn't succeed."

Sarah Langstone says, "If I recall, didn't the independent auction expert that this group invited to talk to this group suggest Vickrey would be the recommendation?" They did, Sarah. They talked about that.

Kristine said, "I thought I heard Jeff say the last resort auction would be after private mechanisms were exhausted, but perhaps I misunderstood." Kristine, that would be if we adopted a sealed bid where the bids wouldn't be revealed until that last resort. That would be the case. But if we chose the Vickrey where only the top bid would be analyzed, then there wouldn't be a private resolution period beforehand.

Paul says, "Jim, except in cases where one of the bidders is a community-based application. That has to go through a community evaluation." That's correct. Kristine, "Thanks for clarifying." Kathy, "What's the timing up for discussion now?" Let me go to Martin, then to Cheryl, and then hopefully Kathy will catch up. Martin, please.

MARTIN SUTTON:

Thanks, Jeff. Similar to Kristine, I didn't have too many opinions on this to start with, and it's really interesting to hear the different points of view coming in here which I think are equally worthwhile.

I'm just trying to think from an applicant point of view coming in, whether they've got one or more application that they're trying to pursue is trying to put that value on at that stage when experience so far says that it could be five years before you even get to that stage.

And there could be a lot of things that happen between submission of an application and a five-year delay, including what happens to that business in-between times.

So my personal feeling on this is that it may be better suited to err towards the time where it ends up going to the last resort auction process, and that's when sealed bids would be submitted.

The other thing that I think is worthwhile to bear in mind is that we did see some issues in terms of data breaches and security of systems. And again, over a period of time, that creates more risk for those sorts of bits of information to be acquired. So again, I'm just trying to think this through. I do enjoy the conversations on this, and just no strong opinion either way at this stage. Just trying to make sure we understand what the implications may be. Thanks.

JEFF NEUMAN:

Thanks, Martin. Let me go to Cheryl and then Jim.

CHERYL LANGDON-ORR: Thanks, Jeff. Perhaps this is an extraordinarily naïve question, or just perhaps less a question and more of a “this is how I thought about it” declaration. Kristine mentioned about the people with the deepest pockets and biggest businesses just putting in the largest bids.

I thought – and this is where I might be being very naïve – that that was partly ameliorated or at least attempts were made to ameliorate that by using the second highest bid as winner process.

I suspect – and Jim’s research may have unearthed this too – that one can equally take the third highest or the fourth highest. There's a bunch of ways I think in implementation, at least by my very limited understanding, of how that can be not, obviously, totally avoided, but at least risk managed and made a little bit fairer for the small and medium sizes. And do remember my 40-odd years in business was all in the small to medium and micro end of the spectrum, although I did have big business clients. So I do understand there's concerns.

By the same token, I guess I should also declare -and this is purely personal – that from my point of view, we don’t need to be deeply concerned, although we certainly need to be aware, of the risks to business and business modeling for their particular way of looking at a new gTLD. Our job is to try and improve predictability, absolutely, but to totally risk manage or minimize the risks that all businesses have to calculate – and I think Martin put a number of those very clearly and concisely – that isn't our overarching concern. Predictability in those sorts of things certainly are, but

business will always have risk, and they have to be risk managed within those businesses. Thank you.

JEFF NEUMAN: Thanks, Cheryl. Let me go to Jim, and then I'll go back to some of the comments on the chat.

JIM PRENDERGAST: Thanks, Jeff. I'm just looking through the chat, questions about data breaches and bids and stuff like that. If we can't solve for that, what are we even doing here? ICANN's got to do better than they did last go around with those types of things, so I think as Steve said, that's an implementation issue. I don't think we need to get into that now.

One of the things too that I know across the community there was a lot of head scratching and in some cases genuine disdain for was the fact that we did see during the last round that there were several parties that participated in this and walked away with millions of dollars and added nothing to the industry.

I think pretty much everyone does not want to see a repeat of that. I think having private parties go into private auctions with folks walking away with millions of dollars in their pockets is not the purpose of this program. And I think, again, it's kind of an elegant solution in some aspects that as you keep talking about some of the challenges that we saw and some of the concerns that people have raised about the length of processing, side deals, things like that, this tends to tick off a lot of those concerns and address it.

It may not be the perfect solution, and I still don't know how we adjust for applicant support and how they participate in that, but there's a lot of other things that it kind of does tie up nicely and does address. So thanks.

JEFF NEUMAN:

Thanks, Jim. One of the items you mentioned is on the private resolution which we are going to get to in the next subject, but certainly, doing a Vickrey auction – a sealed bid auction would – or could – essentially eliminate a lot of the concerns over the private resolution financial aspects that you were referencing.

So if we do look at which option ticks off the mot boxes, that certainly could be considered. And just to go back to those, there was concern about gaming, there's concern as you can see – or we'll get into in the next section – from the board about seeing parties financially benefit without receiving a TLD. So it does tick off those boxes, but Kristine and Martin raise a great point about what you put in the sealed bid, things can change a number of years after and you're kind of stuck with something that may not be evaluated and finalized after everything for several years.

So with all of that said, let me go to Cheryl, Alan and Jim, and then see if we can tie this up.

CHERYL LANGDON-ORR: Thanks. I thought you could still withdraw even a sealed bid at any stage, so if your business circumstances change, you should still be able to withdraw, I thought. But again, that needs checking and obviously, should we make a recommendation along these lines to

look further into this, we'd have to do a lot more digging down – or the implementation team certainly would. Thanks.

JEFF NEUMAN:

Thanks, Cheryl. Yes, I guess certainly nothing would ever stop an applicant from withdrawing, so in theory, at that point you would need to go to the next in line and the one after that, etc.

Alan, and then Jim.

ALAN GREENBERG:

Thank you very much. I guess the summary is I find some of Jim's arguments rather compelling. The one that struck me most is we've learned an awful lot about how the first round ran, but so have the applicants.

Given the prevalence towards the end of private auctions and the people who walked away with money, I could see a really good business venture in putting in a whole bunch of applications without the intent of ever running a TLD, knowing that the strings you're putting in, many of them are going to be ones that other people will be contending for, and therefore all you have to do is make sure that out of the auction, you make more than whatever the fee is we're charging. And you have a moneymaking business. That's a rather attractive business to be in, and relatively low capital cost to invest in it. you could invest in half a dozen TLDs for less than the cost of opening a small restaurant or setting up a small factory with a much higher potential for income.

So I think we really have to protect against that one way or another, and what we're talking about here I find rather attractive. Yes, the details have to be worked out, but I think we want to make sure we're in the business of getting new TLDs operated, not just creating interesting income streams for various people. Thank you.

JEFF NEUMAN:

Thanks, Alan. I'll go to Jim, and then I do want to get back to the chat. Jim, please.

JIM PRENDERGAST:

Thanks, Jeff. I guess I missed, or I'm not understanding why there would be a delay in selecting who is the winner of the string or the successful bidder of the string and how that would cause business cases to change. Cheryl talked about it, you can withdraw your application at any time, in fact folks did that all the way six years into it and probably still more will once some of these final auctions are completed, but the way I understand it working is that everybody puts the bid in and then you've got a winner.

Now, we talk about CPE which Paul raised. So you do the CPE right away, which I know addresses a concern that many of the community applicants had from the last go around that they were getting sniped at over the course of years, not a six-month comment window, because that would be done upfront.

But I don't understand what would cause the applications to linger on for years where your bid might have to change. Thanks.

JEFF NEUMAN: Thanks, Jim. What you could do is, as you said, do everything but the initial evaluation so you'd have to have the public comments and other things done, then you can do the CPE and then you're right, it could be done on a shorter basis.

It's all in how it gets designed in theory – [done] as well – if someone's got a sealed bid and they're selected as the top bid, ICANN could say, "Okay, you've got X number of days to put 10% down" so we know that you can actually meet that, and if you can't, then it goes on to the next one.

So I think a lot of the questions that are in the chat can be dealt with if this group supports that. I think a lot of that is implementation. The big issue, as Kristine said, or the two big issues are it does not give the flexibility for applicants to evaluate – or use a strategy in evaluating the relative value of applications, doesn't allow for the private resolution. So there are aspects that would be cut out, some of which were valued the last time. Donna, please.

DONNA AUSTIN: Thanks, Jeff. Neustar's comment was a qualified support for the Vickrey auction model, but I think only in the sense of resolution of last resort, content, whatever that phrase was. I think we still see value in what's happened in the past and trying to work out private considerations and all those other steps that happened in between.

I share the same concerns that Kristine has, and one of the other things that strikes me with this is that you could have a portfolio applicant that could submit a sealed bid for, I don't know, \$5 million for every TLD that they submitted. Do they have the funds to cover that? I don't know, but I just think we're creating more administrative complications than we necessarily need to.

If we go back to Steve's questions, what are we trying to achieve here, I'm not confident that the Vickrey model is the answer at the time of submitting the application. Maybe at another point through the process, but I don't believe it's reasonable at the time of submitting the application. Thanks.

JEFF NEUMAN:

Okay. Thanks, Donna. It's clear that we have different viewpoints, and we'll have to continue to solicit viewpoints on e-mail. What there seems to be support for is whether, regardless of the timing, that a sealed bid seems like the option that does have support. Again, we need to have an understanding of the pros and the cons of different – sorry, not the pros and cons. I think the pros and cons are understood. I just don't think that they're valued the same from each of the members of the working group. So we have different values.

I think Jim did a really good job talking about the benefits or what it would eliminate if we did it at the beginning, and I think Kristine did a good job talking about the benefits of doing it afterwards. So I think it's a value judgment. This group needs to decide what is more important if it's going to come to a consensus on this. Sarah, please.

SARAH LANGSTONE: Really, just to follow on from I think what Cheryl said before, the reason that the auction winner pays the second bid amount and not the first is because the bid is sealed. You never really get a chance to know what your fellow bidders value the asset at, which kind of makes it an artificial bidding situation, kind of unlike a traditional auction when you can watch the bids going up.

So to help make sure that the winning bidder doesn't pay way over the odds, then that's the reason that they pay the second amount, not the first amount. It's just to make sure that the winning bidder doesn't pay an amount that really was unrealistic. Thanks.

JEFF NEUMAN: Yeah. Thanks, Sarah. So Jim's personal prediction, I'm going to save reading that until we get to the next subject because I think that's part of the rationale for the next subject, which is private resolution as well. So I think we have some that support – while most of the group seems to support the sealed bid, we have a difference in timing, and we'll have to see if we can, on the list, work that out.

In the meantime, I would like to move on to private resolution, because I think that gets into some of these areas too and the concerns.

So if we can scroll ahead – and for those of you that were not on the call or Monday – or keep going ahead to the next subject. We did cover all of this on the last call in terms of the mechanisms of

last resort, so I'm not skipping those items, but it was something I wanted to come back to, or we covered things I wanted to come back to that we didn't, I feel, hit very well on the last call.

So private resolution of contention sets. This I have a feeling is going to turn out very similar to the last discussion. While this was part of the supplemental initial report, it used to be called private auctions, but then we certainly had discussions in the working group about other mechanisms of private resolution that weren't exactly auctions but could have the same impact or effect, and so we don't really have too much in the way of implementation guidance except that in guideline F – this is back in 2007, 2008 – it did say that there should be a period of time where there are contention sets, parties should be able to mutually agree on some sort of – I'll call it a settlement or agreement – before we do this mechanism of last resort.

I will also just put the record straight that auctions were not in the original GNSO policy, but certainly came about as a result of research done at the time from ICANN staff and comment that was solicited from the community.

So if we scroll down a little bit – first, I think we had put that there was no high-level agreement, and I think that still correct, but I did want to refer us back to section 2.4 when we talked about that section which is changes to applications.

It did seem like there was high-level agreement to allow the formation of joint ventures to address contention sets, and so the language that we had in that section was commenters generally

supported allowing application changes to support the formation of joint ventures.

So I think that is a form of private resolution, so if we did auctions as a last resort, whether it be a sealed bid or an ascending clock auction. This joint ventures would be something that could happen as prior to the mechanism of last resort.

But then if you scroll down, I tried to do a little bit of – take stock of where groups were and comments were in terms of supporting the notion of what I call a private financial resolution, whether that’s a private auction or paying others to withdraw or some form of that. You have some of the Registries Stakeholder Group, registrars, BRG, IPC, and Neustar, which supported basically doing things the way they were done before without having much in the way of regulating what types of private resolution could be done.

For various reasons which you can see below throughout the section, those groups did not support changing what we had, or at least did not support getting rid of the notion of parties being able to settle things financially.

But if you look at the comments from the ICANN board, the GAC, some others in the Registries Stakeholder Group, Noncommercial Stakeholder Group, the ALAC and the .in ccTLD which chose to comment on that, you definitely get at least concerns about financial benefit.

And to read the ICANN board, which is the third bullet in the next section, one of their concerns in reading the discussions in the supplemental – it should say supplemental initial report – relates

to new procedures that may be open to abuse in ways we've not yet understood and would like to better understand the analysis that's gone into determining the likelihood and types of abuse that may open up with any new procedures.

But more relevant to this section is "We believe that any new recommendation should guard against bad faith applications. These concerns mostly center on the issues of auctions of last resort and on private auctions. We take special note of the possible practice of participating in private auctions for the sole purpose of being paid to drop out. We also take note of the abuse that becomes possible in alterations to the change requests mechanisms. The board has concerns about whether and in what ways the availability of private auction incentivizes applications for purposes other than actually using the string and we're interested in how these incentives for abuse might be minimized."

I read that out because as I said, it was from the ICANN board, so it obviously remains a concern of theirs that we should address, but again, like the last issue, we certainly have good arguments on both sides of either allowing it or not allowing it, and then of course, there's always the enforcement argument about how do you really enforce this type of thing, and does that insert ICANN into the middle of evaluating settlements? And is ICANN or someone going to be able to interpret a mutual agreement to be one that's not just a financial settlement but rather a joint venture or something that could be enforced?

So let me go back into the chat here and then I'll take Alexander. Donna says "A sealed bid is not the only way to overcome that situation. You could also raise the amount of the application."

Donna, that was an option that's presented in this section here, and I will tell you that nobody supported that option. Raising the price of an application, that was an option that was brought up.

I see at the bottom there, that was a question we asked, "Would increasing price of an application ..." and then you look below that, you'll see there's generally not support, so page 21, from any of the commenters on raising the price. So while that was an option we present, that was one that seemed to be universally rejected.

I've missed Rubens because someone said, "Good point Rubens." Ruben says, "The board comment's contradictory. They mention new procedures but actually raise issues with the 2012 implementation." That's true. And then Kathy says, "Donna, you're suggesting we raise application fees to preserve private auctions." So I think we've kind of covered that. Let me go to Alexander.

ALEXANDER SCHUBERT: Yeah, hi. It ties a little bit in with Donna, and she talked about raising the fees, but I think what we're going to see is that the fees will go down, and maybe significantly.

So what we're discussing here is obviously very much tied in to the business model that is behind it, so if for example the application fee floor would go down to \$25,000, then people would go for all kinds of domain names, even brands. If you know that there are so many brands that have a generic name like United, Mango, Apple and whatnot, well, then you go for all kinds of global brand TLDs that can do nothing if you apply for [inaudible] being applied for. But if you would go for .apple and say it's for apple

[inaudible] Apple could do exactly absolutely nothing against it, and they would be forced to pay money.

So we are discussing something in the vacuum of not knowing what the application fee is, and if it is \$185,000 like last time, which was a good number, the risk of people trying to make money just by applying for strings never intending to use them is obviously lower than if the application fee is, say, \$25,000. Thank you.

JEFF NEUMAN:

Yeah, thanks, Alexander. I do understand that there's going to be a lot of things that are dependent on the price. All I'm saying is that there was certainly no support for raising the price to resolve these issues.

So I hear what you're saying, but I actually think that there's going to be risk, even if it was \$185,000. You stated it right, the risk may be lower than if it was \$25,000, but I don't think the risk is low in either case. I think there's certainly a risk, certainly a lot of groups that have seen what happened in the last round, and many groups that made a lot of money that publicly reported their making lots of money on it, and that served them well without going into examples. But I'm sure you can find them.

So raising price was not considered a viable option, at least according to our group's discussions at that point in time, and according to the comments. So there, if we go back, what we do see again is certainly very strongly held beliefs on both sides, both

for allowing private resolution and not allowing financial – sorry, both allowing it and not allowing it.

So I read the comment from the ICANN board, GAC are very similar. This next part is really on the enforcement. So the question was if we were to ban private auctions, how would we do that? And one of the options was to amend the applicant guidebook and the terms and conditions, which was module five or six of the applicant guidebook, and then you basically – what you're saying is you disallow the private string contention resolution, and if you find at a later point in time that someone acquired the string through that, ICANN would have the ability to take the string away.

ALAC agreed with this approach, Noncommercial Stakeholder Group agreed with respect to private auctions, the Registries Stakeholder Group did not agree with this. Some registries opposed ICANN's interference in private negotiations between applicants. They believe the rules should be to encourage more creative contention resolution rather than stifling the options, but other registries did support prohibiting private resolution, I think for reasons similar to what Jim said earlier in the chat.

The BRG, IPC, Neustar talk about the merits of private resolution and therefore don't agree on the restrictions, and registrars in support of private resolution because of basically addressing this through the marketplace.

Let me go look at the chat here. Kristine had to leave. Kathy, "I thought we were planning the fees on a cost recovery basis." That's true, Kathy. We are. Or that's where it seems like the group

is heading. Paul McGrady says, “Has whether or not making money on private auctions is good or bad ever been put to the community?” Yes, Paul, in the supplemental initial report, we talked about this and the groups that came back opposing private auctions stated their thoughts on why they did not like it and those that supported it stated why they did think it was a good idea. So yes, that’s where we came out.

Alexander thinks cost recovery is a bad idea. Kristine says “Plus one Paul.” Rubens says cost recovery is both this working group consensus and 2012. Kathy, at staff, “Could you kindly repost the link to the full doc?” And so Steve did.

Some more discussion, “We’re trying to improve the way Internet users navigate the Internet, not to enrich vulture capitalists.” Okay. Let’s try to keep the judgments on this chat and in this group down and do the best we can not to judge.”

Jim says, at Paul, “I don’t think the question was ever asked, so it’s a good question to put to the community in the next comment period.” Jim, I do think it’s been asked several times, and both in constituency comment one and also in the supplemental initial report. So I think what we’ll put out in the comment period will be if we come up with some solution that’s different. I think then that could be put out.

Sarah Langstone, “I’m not sure if I misheard the conversation, but I just wanted to point out that application fees and sealed bids are separate.” The application fee is the application fee, and in addition to paying the application fee, an applicant would include a sealed bid amount.”

Yes, correct, Sarah. I think application fee was mentioned as – put in the supplemental report, although not accepted by many, but it was put in there as a way to reduce gaming. So if you had an initial application fee that was high, in theory you would have less contention sets and less auctions. At least that’s the theory.

Donna at Paul, “And has anyone done an analysis of the extent to which applicants really profited from the program?” Donna, that would be a very difficult analysis because it depends on what it means to profit from the program, but again, there are public reports of profit and loss statements from at least some public companies on what happened as a result of the auctions. So those are easily attainable, but not with the private companies.

This is from Rubens, “Paul, in general, money paid in private auctions made less money available to marketing.” There's not been a study on that, Rubens, but thanks.

Then Cheryl says, “Sorry, I've been dropping in and out.” I was hoping someone raises their hand. And then Jim say, “Donna, if you thought getting the providers to talk about auctions was tough, trying to get auction participants to disclose is going to be worse.” And yeah, Jim, that’s right. We did make an attempt to get all the auction providers to provide comments, but only one wanted to present and the others were more afraid of disclosing confidential information. So we’re not highly successful at that.

Okay. Where are we? Hard to say, to be honest. It does seem like there are a number of members of the community that want to reduce the financial incentives for applying for names where you're doing so to make money off of that, but it does seem like

there are a number of people that just believe it should continue the way it was and let the marketplace work these things out and that private resolution is something important to preserve.

I'm looking for you all to provide some input. Martin, please.

MARTIN SUTTON:

Hi, Jeff. I'm just wondering how this links back to the last topic discussion and the auction of last resort. If that is made more tempting for anyone that ends up in a contention set to work towards, then that presumably – if there's just one in a contention set that feels that that's more appropriate, then that steers them away from private auctions anyway.

Perhaps I'm just doing a checking point at this stage, but to me, if we get something more concrete and accommodating in the ICANN auction of last resort, perhaps that starts to alleviate this concern that we've seen voiced on the private auctions. Just something to think about and consider as we carry on the discussion.

JEFF NEUMAN:

Thanks, Martin. And if I were to do this all over again, I probably would have done this section before the auction section simply because I think they're absolutely dependent. So if we chose to do a Vickrey auction where the bids are submitted at the beginning, then none of this would really need to come into play.

So that is true, but if we do a sealed bid or any kind of auction after the fact as a last resort, which is in line with the Neustar proposal, then this all would come into play.

So let me ask the question, Martin -so you say if we were to make it more – you didn't say enticing, I forget exactly what you did say. What kinds of things would make the ICANN auction more enticing? And that's my word, not yours.

So let me go to Martin, then Sarah, then Alexander.

MARTIN SUTTON:

Good point, Jeff. I've not been in that position, so I've tried previously to avoid it at all costs. Personally – and I think that if I could see that as a more reasonable and cost effective route rather than a private auction that may go far too high to acquire the TLD, then that would be reasonable and keep everything as low as possible, I suppose. And in some respects, it could try and keep the bids down to a reasonable level, yeah. And that's just me thinking out loud, I'm not sure how these all work through.

JEFF NEUMAN:

Thanks, Martin. Maybe a sealed bid auction where the losers of a contention set split 50% and ICANN gets 50%. That in theory could be done. I'm not sure that would send the right message, but that is in theory something that would make it a little bit sweeter, I guess.

Let me ask Sarah and Alexander to weigh in, please.

SARAH LANGSTONE: Thank you, Jeff. I wasn't sure if you said this, but I thought I'd just say it anyway, that under the Vickrey model, the auctions of last resort are almost eliminated. I guess the only time that two or three applications or applicants may end up going to an auction of last resort would be if all of their sealed bids had been exactly the same, which would really reduce them.

And I seem to think that the auction –I think it was [Monte] who had said that the best practice there is to not use rounded numbers. You may have said that, I'm just saying it in case you didn't.

JEFF NEUMAN: Yeah, Sarah, I think I tried to make that point that, yes, the Vickrey auction would essentially eliminate the mechanisms of last resort, especially if you, let's say, required a bid that ... dollars and cents for example. It would be a statistical improbability that two bids would be the same. But yeah, that absolutely would eliminate the private auctions as well as the – yes.

Let me go to Alexander and then Donna.

ALEXANDER SCHUBERT: Yeah. Hi. So Jeff, your question was what can we do to incentivize not to go into private auction but to use the ICANN last resort mechanism, right?

JEFF NEUMAN: Sorry, Alexander, that was my question to Martin. It wasn't a generalized comment.

ALEXANDER SCHUBERT: Oh, okay. But anyway, I want to answer to it. So if we had the Vickrey auction model whereby people would submit a sealed bid, regardless whether it's before or during the application or after the application, as long as people are forced to submit a sealed bid in the Vickrey auction at some point in time.

And if we would inform just the entity that had the highest bid, not about any amount, but just that they submitted the highest bid, that would be a very small information they get, so they don't know anything about money yet, they just know they have the highest bid.

Then if I would be that entity and my bids wouldn't be astronomically high, I would think, okay, let's grab the private contention set mechanism because I know roughly whatever I have to pay, and I say no to private auctions, and if there's one member in the contention set that doesn't agree to the contention set resolution, it comes to the ICANN contention set resolution which is the Vickrey auction.

So it would create an incentive for applicants if the highest bidder would get the signal from ICANN, "Hey, you are the highest bidder if you go into the ICANN mechanism of last resort." Thank you.

JEFF NEUMAN: Thanks, Alexander. I'm not sure what ancillary issues that might cause, but it is certainly something that would have an impact on whether the parties went to a private auction or not.

Martin, I think your hand is left up, so I'm going to go to Donna.

DONNA AUSTIN: 5 Thanks, Jeff. I'm going to propose something here that might overcome the problem of profiteering and might overcome some of Neustar's concerns and perhaps what Kristine was saying.

One of the concerns that Neustar has – and I think we discussed this with [Monte] – is that if you submit a sealed bid at the time that you submit your application, it really is – you have no idea of the market, so you have no idea of what the competition is you're coming up against because you don't know at the end of the day whether you're going to end up in a contention set or not.

So what if once the applications were submitted, would it be possible for applicants who applied for the same string to – because now they know whether they're in contention set with one other or three others or six others – and if they're a portfolio applicant, they know what others are in the group.

And to Kristine's point, you don't know whether – if you lose one or two, you want more money for three. So what if you submit the applications, once the applicants know that they're in a contention set, they submit sealed bids at that time, and then the winner comes out of that?

Because the applicant will know at that point in time whether they're up against two or three and they will have an idea in their mind about what they want to pay for – what they think the value of the string is to them. But they're doing it in a realistic manner rather than in this artificial thing where they don't know how many applications are going to be submitted anyway. From this process to next process, there could be 100, there could be 5000 applications. We don't know.

So that would give the applicant a little bit more certainty about what they're actually bidding against, so you would have the sealed application – the sealed bid comes into play once you know you're in a contention set. Thanks, Jeff.

JEFF NEUMAN:

Yeah, thanks, Donna. So that is a form of compromise, and that was one of the options. I do agree that if you, let' say, require the sealed bids to come in – I'm making this up – 30 days after reveal day, that certainly does minimize the chances for private auctions. Doesn't eliminate it, but it certainly minimizes it and it certainly minimizes other forms of potential abuse.

I don't think it solves Kristine's issue if I'm thinking of this correctly, because Kristine would say that it doesn't help – because I think one of her points was that if you lose two auctions, you may then have more money or may want to put more emphasis into getting a third because you definitely want at least one and you've now lost out on two.

So I do think it solves some more issues, and let me see, Jim says the problem with that scenario is it allows for collusion between applicants. Right, so it does give a time period where applicants can talk with each other.

Now, Jim, you can actually put in the terms and conditions that you are not allowed to do certain types of things, which is what auctions do sometimes, have those terms and conditions, and in fact, there are laws in certain states of what things you can and can't do. That's not going to solve all the issues, but I think it may present a compromise there where you can eliminate or mitigate a lot of it but not all of it.

So I do agree with you that it doesn't eliminate those, but it can reduce it if it's a limited time period after reveal day, let's say. Let's see. Kathy says, "Huh" to me, and I don't know which part, so I will let – Donna says, "With a Vickrey auction, does the money go to ICANN?"

Presumably it would go to – well, I don't want to say ICANN. I'll just say I think the recommendation further on down in the section basically says – or it actually was in the [inaudible] sections on auctions, says that if there are auctions, they would support distributing them in a manner that is similar to what was decided in the auction proceeds group, or at least reserving judgment on that issue. So I don't know where it would go.

Jim's saying "I have zero confidence that we would prevent the collusion if we were to do the sealed bid auction within a time period after bids are revealed," and Cheryl says, "There are implementation aspects we can explore if we go down this

pathway of course, but the identification of concerns and risks need to come first.”

Okay. Donna, and then Martin.

DONNA AUSTIN:

Thanks, Jeff. What if before reveal day – so the application window closes, ICANN does initial assessment to understand who’s in the contention set, the parties are contacted separately by ICANN to say you are now in a contention set, and you will need to submit a sealed bid.”

And then reveal day comes after that, and maybe at that point in time, once the applicant knows that they’re in a contention set, they could decide, “Well, we’re going to withdraw. We’re not interested.”

So I’m just trying to put a suggestion out there to Steve’s point about what’s the objective here, what’s the harm that we’re trying to get rid of. So that to me seems like a possible option.

JEFF NEUMAN:

Yeah, so if I could just repeat your idea, it would be that before reveal day, there would be contact made with each of the applicants that are in a contention set or at least a known contention set, that they’re in a contention set, without disclosing who they’re in a contention set with, and then that party could submit a bid or withdraw.

I suppose the other way to do the same thing could be you get a bid upfront or you ask the question if you are in a contention set, would you – or you could choose an option, either place a bid or check here if you don't want to participate in any form of auction if you're in a contention set. I think it would do the same thing, or a similar thing.

Let me go to Martin, Alexander, Paul, and then we do need to cut it off because we have Any Other Business. So let's try to make this quick.

MARTIN SUTTON:

Thanks, Jeff. I'm just trying to recall back to my experience last time in terms of preparations for an application. Whilst it was reasonable to assume that here may be scenarios which required going into a contention set, you also went through the process of trying to say, "Well, how likely is that?"

And I'm kind of thinking, why would we need to get every applicant to submit a sealed bid with their application right up front? So I'm kind of warming to the idea – Donna's suggested at least that next stage of when there is a known contention set that you will be in that triggers a requirement to say, "Okay, we're going to flag this with you now, and here's the guidance we've already provided you with, providing sealed bids once you're in a contention set, and other options, i.e. you can back out at a very early stage."

I think that's quite a good and useful scenario to explore so that we don't rely on every applicant having to do this upfront sealed

bid, especially where there is no likelihood that they'll end up in a contention set, which is a high proportion.

But at the moment that there is a trigger that says "Yes, you are going to be in a contention set," that feeds an alert out to the applicant, "You need to do this and here's your options." I think that seems to me quite a sensible approach. And thanks for the suggestion, Donna.

JEFF NEUMAN:

Thanks, Martin. Paul, Jim, and then I do need to stop it and go to our AOB.

PAUL MCGRADY:

Thanks. So in that scenario, would the applicant who submitted a bid then be precluded from taking any other action to knock out the other applicant? For example, if I was notified blindly – I applied for a .brand, I was notified blindly that somebody else applied for my same .brand – which happens, by the way – and I submit a sealed bid, would there be anything then that would preclude me from filing a legal rights objection, assuming we could get that in shape good enough to file? Because right now, they stink, but maybe we could fix that. Or taking whatever other action I wanted to take to knock out that other application so that at the end of the data accuracy, if the other guy goes away, then my sealed bid doesn't matter because I'm the only one in the contention set. Does that make sense? Thanks.

JEFF NEUMAN: Yeah, thanks, Paul. I think I understand. It's a good question, should think about that, and that's actually one I might send an e-mail on and re-ask that question, because it's a much more involved question, but a good one.

Jim, let me go to you to close this out, and then I'll go to AOB.

JIM GALVIN: Yeah, thanks a lot. Paul does actually raise a good point, and clearly, we need to continue to talk this through because there are little wrinkles along the way that probably do need to be solved for.

The one thing that I'm not clear with Donna's proposal is you would be notified that you're in a contention set before the actual strings have been revealed. Is that correct? Because otherwise, you could deduce that –

DONNA AUSTIN: That's correct, Jim.

JIM GALVIN: Okay. Thanks. Conscious of time, so I'll give it back to you, Jeff.

JEFF NEUMAN: Thanks. Let's continue this discussion on e-mail. I do want to just say – this has been a great discussion, obviously great points on all sides of this issue, all around.

I just want to quickly cover in the last minute that ICANN 66, we have four sessions, Work Track 5 is definitely on their timeline to finish and to present to the full working group on the Saturday. Those are the two sessions on Saturday, the first session, and second session will be used for the presentation of their findings and discuss with the full working group.

The second two sections on Monday, one will be devoted to talking about which areas at least leadership has been thinking about would need to go out for public comment, and then obviously engage in discussion about whether others agree or have other things, and then the second session will be devoted to some of the topics that we have for smaller groups that really haven't progressed as much as we wanted to, but some of those issues like the predictability model, closed generics, and I'm trying to think what the other ones were, but that's not – there we go, RSP approval, preapproval, and I'm sure there'll be another one in there.

So thank you again for the discussion. Our next call is Tuesday at 03:00 UTC for 90 minutes. It's Tuesday because we don't do calls on Sunday which it would be for some people if we had Monday, October 21st at 03:00. So that is Tuesday, October 22nd, 2019, 03:00 and I look forward to talking to everyone next week. Thanks, everyone.

JULIE BISLAND:

Thanks, Jeff. Thanks everyone.

CHERYL LANGDON-ORR: Bye for now.

[END OF TRANSCRIPTION]