
ICANN Transcription

New gTLD Subsequent Procedures Working Group

Monday, 02 December 2019 at 1500 UTC

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MICHELLE DESMYTER: Welcome everyone. Good morning, good afternoon, good evening to all Welcome to the New GTLD Subsequent Procedures PDP Working Group meeting on the 2nd of December, 2019. In the interest of time today, there will be no roll call, attendance will be taken via the Zoom Room.

As a friendly reminder, if you would please state your name before speaking for transcription purposes, and if you would also please keep your phones and microphones on mute when not speaking, to avoid any background noise. With this, I'll hand the meeting back over to Jeff Neuman. Please begin, Jeff.

JEFF NEUMAN: Thank you, Michelle. Welcome, everyone, welcome back for those of you that took some time off last week, or those of you that were at the IGF, and it was a busy week last week. So, welcome back everyone. Before we get started, let me just see if there are any updates to any statements of interest I'm looking at the chat,

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I'm looking at the participant list. Okay, no one's got their hand raised, great.

Okay, then the agenda today is going back to the content, some of this we had been planning on discussing at the ICANN meeting to just kind of go through the format of how we're talking about some of these new topics. These are ones that we indicated as certainly ones that will likely go out for public comment later on, as well as areas that we had initially said we were forming smaller groups.

We made some real progress on the predictability model at the ICANN meeting, so we're going to try to see if we can make some progress, Spring contention, Mechanisms of Last Resort, and then back to the Limited Appeals Mechanism that we were talking about just before the last ICANN meeting. So, any questions on the agenda? Thanks, Susan for the note on reappointment.

Okay, no questions, great. If you click on that link, actually, if someone could post that link into the chat, then we'll post up the document. There we go. On the String Contention, and if you want to follow along there is a Google Doc link that someone I'm sure will put in there, in the chat.

Okay, so the way we're talking about this now is trying to just get some discussion on some of the narrow issues that we think still need to be discussed as opposed to the entire topic that we've been doing on each of the calls. So, you'll notice that there's some narrow questions here again, as opposed to just leaving everything open, because we're trying to get ultimately to final recommendations.

So, with that said, what is the issue that we're trying to address with this topic of string contention mechanisms of last resort? What we're trying to do here is we've discussed a number of potential issues with what happened in 2012 and what we're talking about now are going to be some ideas that have come up. Although the working group ultimately believes that when a string contention of an auction process should be used to select who gets invited to contracting, what we're still talking about here are points of resolution should be, if any.

So, what are the goals that we're trying to accomplish? Scroll down a little bit. So, the existing implementation guideline which was Guideline F from the 2007/2008 policy that was approved.

The first two I think were pretty much as our discussions have evolved in agreement with those, which are to resolve contention between them within a pre-established timeframe, and if there's no mutual agreement, then one party, this is what it said, a claim to support community would have priority, but if there's no claim for community, no community achieved, and no agreement, then an auction process would be put in place. Well, this just says "a process will be put in place," in 2007/2008, but ultimately that was an auction.

The third one we have highlighted here and a question of do we really still need this? So, at the time as the 2007/2008 policy was approved it was not yet understood that it would be an auction mechanism that would be used to select the ultimate party to enter a contract. In fact, it left open the entire process to be anything pretty much from a random draw to what's been coined as a beauty contest or request for proposal process.

So this third one ultimately said that the ICANN Board may be used to make a final decision using advice from Staff and expert panels. In rereading that from the policy and with the understanding that most people still favor going with some form of an auction as the ultimate mechanism, the question is should we remove this #3 in favor of some of the topics and things that we will be discussing shortly.

So I wonder if there's any comment on that, or just something to think about as we go through this call, so it's not something we need an answer on now, but just in rereading that, it didn't make sense to keep that as part of the policy if we are ultimately going with an auction and to substitute that Part 3 in for what we ultimately decide.

Okay, so some other goals that we've been talking about in trying to figure out which auction mechanism we should use, we've been talking about other possible goals like reduce the risk of bidding wars, in which the ultimate registry operator overpays for the TLD. Also kind of related to this is the notion of encouraging applicants to bid what the true value is for the top level domain.

Some other potential goals that we've been discussing include reducing collusion, profiteering, speculation, a bunch of terms have been used, especially as it relates to financial transactions that are external to the program. While this is not an explicit goal for the mechanisms of last resort, we've certainly been discussing it as a reason to alter the auction mechanism.

Other goals that we've talked about with this last process include increasing transparency, resolving contention sets more quickly

than has been done in 2012, certainly increasing predictability, encouraging new entrants into the field, this has been discussed several times, which could include making it easier to implement multipliers which has been discussed.

And then, of course, thinking about how the auctions relate to the applicant support program. So, although we have these potential goals up there, if we do consider including these goals in there as not just possible goals but certain definitive goals, we will have to work on some definitions of some of these terms and objectives. So, let me go to the chat and see what's up there, see if anyone's got any questions.

Anne Aikman-Scalese says the ICANN Board says it doesn't make policies, decision will be subject to the request for reconsideration and IRP which is very messy, so it may be better to stick with what we have developed earlier.

So, I think, Anne, the reason we were thinking about taking out that third point, if we can scroll up just a bit again, was not because this is about the Board making policy or affecting the ultimate challenge mechanism, but it's to make it clear that it's an auction process being used as opposed to the Board overriding that with some sort of request for proposal process or some other form of the Board making a decision.

Again, that implementation guideline was drafted at a time when it wasn't certain what the mechanism of last resort would be, so the GNSO Council just drafted something fairly general, but ultimately that's not what came to pass. Okay, thanks Anne. I think Anne is okay with that now.

Any other discussion on the possible other goals? Do we think there should be made not just possible but as we evaluate the solution I think these are good criteria to use in thinking about the next steps, but I want to open that up to see if there's any other goals as we talk about the alternative mechanisms that we should be thinking about.

Okay, so Anne is saying in the chat that there should be a reference to auctions, right. So, again, assuming that's the way we go forward I think that's the intention of substituting that Roman numeral III with what we're actually going to propose.

Jim Prendergast says I agree they are good goals, so suggest a possible qualifier. Alright, why don't we do that, so just cross out the word "possible" and other, just include those other goals in the above discussion. Okay, so let's then move down, I know they're trying to do two things at once, so thanks guys I know you're trying to put the edits in, that's great. So, what are we proposing ultimately? Or what are we discussing proposing?

So, I think in the discussions of talking about the actual auction mechanism it seemed to me that we were leaning towards a sealed bid auction as the ultimate form, but with that as the selected mechanism, there are still several options or alternatives of when that sealed bid auction would be held and under what conditions. And so It could be used, for example, prior to evaluating any applications or it could be used after we evaluate all the applications or some sort of hybrid in between.

But ultimately with the sealed bit auction each applicant submits that sealed bid, it's one bid, if you use dollars and cents, the

chances of having two party submit the exact same bid are drastically reduced, but the ultimate winner would pay the amount submitted by the second highest bidder. This is also one of those protections in place to make sure that the ultimate registry operator doesn't necessarily overpay for the TLD.

And then as a note, regardless of when the sealed bid auction is held, if there are more than one community based applications we are still proposing that those applications would go through the community priority, and if they get community priority, those would take precedence before looking at the auction bids. Any questions before we get to the different alternatives and try to agree on an alternative? Okay, let me scroll down, okay, there we go, I'm not seeing any hands. Okay, so let's go into the different alternatives.

So, Alternative 1 is the so called Vickrey auction. Again, these are all sealed bid types of auctions that we're going to be talking about but this one is where bids would be submitted along with the applications, so you would not know anything about anyone else that, well you wouldn't know whether there are other applications for the string, nor would you know if there were other applications, I'm sorry if everyone can please mute their phones, thank you.

So, you wouldn't know if there are any other applications and you wouldn't know who those applications belong to and ultimately there would be no private resolution, no opportunity to work out something before the winner is decided.

So, then the other part of this would be, or the benefit of this would be that ICANN would or could only process the application that

had the highest bid. Again, this is assuming no community priority evaluation or after that process actually takes place. So, if the application of the highest bid gets through, the evaluation objection process to contracting stage, and it would be responsible for paying the second highest bid. If the application doesn't make it through, then you start processing the next highest bidder who would pay the third highest price, et cetera.

Of course, if there are only two bidders and the person who comes in second is ultimately the one that goes to contracting, it would pay the price that it bid, because there is no third highest bidder.

So, if we look at this alternative again there would be no room for private resolution and there were some, I don't know if you all recall, but I had submitted a bunch of things that we would need to figure out in terms of hearing of objections, when objections are submitted, again we're talking here about only evaluating the first one, but presumably there will be a public comment period and an objection process for any or all of the applications. If we decide this is the best way to go, there's a bunch of sub-questions that we're going to have to figure out.

So, how well does this alternative meet the objectives? If we look at the objectives above, we think that It supports or at least doesn't get in the way of Objectives 1, 2, and possibly 4 and 6. The strongest emphasis is on 1 and 2, so why don't we go back to that, just to reiterate what those were. So 1 and 2 were reducing the risks of bidding wars, 2 is reducing collusion profiteering speculation as it relates to financial transactions, so this is the whole private resolution.

We think it would resolve contention or could resolve contention more quickly, so that's #4, and #6, this in theory could encourage new entrants into the field and if we decide to have multipliers for certain types of applicants such as those eligible, for applicant support. Sorry, I know we're going back and forth in this document and I, oh that's great actually, yeah that's perfect, if you can keep those goals up there, thanks, I don't know if that's Steve or Julie or Emily, but thank you for doing that.

So the principle here, this would eliminate private resolution but of course there's a bunch of complications and That will be below, that was the email I was talking about. If you eliminate private resolution for financial benefit and bids would be submitted with no contextual information. So going to the chat while people are thinking if they want to speak I see that Anne has a comment. There was a good draft that was put out by Staff for ICANN66. Are we working off that or this different language?

By the way, I would definitely need to ask the IPC for its position on no private resolution retaining private resolutions, I can do that this week. Great. Sorry, the draft that was put up by Staff, this is the same version that we were working on before ICANN66. Maybe someone, Steve or Jim, thanks, please, come on in.

JIM PRENDERGAST: Thanks, Jeff. I was not actually to address Anne's comment, so I can hold off and wait until that has been satisfied.

JEFF NEUMAN: Okay, Thanks Jim. Steve confirmed that this is the same draft, so that's Awesome. Jim, please.

JIM PRENDERGAST: Jim Prendergast for the record. So, the first bullet point and the third bullet point seem somewhat incompatible, and the reason I say that is the notification that an applicant is in a contention set where the number of other parties in the contention set and the actual parties in the contention set are not revealed, sort of eliminates the opportunity to resolve through other means, which I'm not sure if that's clear to everyone or not, so that third bullet point just seems moot at this point, if that's the way it would be set up. Thanks.

JEFF NEUMAN: Sorry, Jim, the third bullet point, you mean above in Alternative 1?

JIM PRENDERGAST: Maybe I'm looking at the wrong section. I'm down in Alternative 2, did I jump ahead?

JEFF NEUMAN: Yeah, we're still on Alternative 1.

JIM PRENDERGAST: Sorry, alright, my bad.

JEFF NEUMAN: We'll keep that in mind as we go through Alternative 2.

JIM PRENDERGAST: Yeah, I was going to say, table that comment for the appropriate time.

JEFF NEUMAN: Okay, thanks Jim. So anybody with any additional comments on Alternative 1? I suppose we'll go for different alternatives and then come back and see if there are any alternatives that jump out as better at least from participants on this call than others, to see if we can try to work on one of the alternatives. But again, we'll see where we are towards the end of the call.

So as Jim was starting to get us into Alternative 2, this is a sealed bid auction but allowing private resolution, so it wouldn't technically be the Vickrey, but what we would have here is at some point prior to reveal day, ICANN would notify all the parties that they are in a contention set, maybe even telling them how many other applicants there are, but not revealing who is in the contention set.

Applicants would be given a period of time to either withdraw their application or submit a sealed bid and then the part that Jim was addressing, the third bullet point which may not actually work, would be applicants would still have an opportunity to resolve the contention set through other means such as private auction, joint venture arrangement, or to choose another string as was suggested for brands of the same name.

But as Jim said, if you're not telling anyone, I guess what they're saying here is although you would have submitted your bids without knowing who's in the contention set, eventually or on reveal day, so you've decided, am I staying in and submitting a bid or am I withdrawing, assuming you stayed in, then only those applicants who stayed in would be listed on reveal day and then in theory you could have a period, let's say of 30 days to work it out, otherwise the bids that you originally submitted would control.

So I think that's how the third bullet point could fit in with the first one, Jim, I hope that makes a little bit of sense. And again, you wouldn't have to do that, the third bullet point is just a suggestion of how you could still have private resolution but still have had to bid submitted at the beginning.

Again, you wouldn't know who you are submitting a bid against before reveal day, but you become aware of it after the fact and then you can resolve the contention privately for a period of time, and if you don't resolve it privately in some way then they would just rely on the sealed bids. Evaluation would take place similar to 2012, which would be all of them are evaluated at the same time, objections are received and resolved, then you would open the bids at the very end of the process. So before we get into whether it meets the objectives, I see Justine, Jim, and Kathy. So, let's go with Justine.

JUSTINE CHEW:

Thanks, Jeff, this is Justine for the record. I have one comment and a question. The first one is if I may suggest for purposes of clarity perhaps what the third bullet with the fourth bullet in terms

of positioning and also at such words as "post-review day, applicants would still have an opportunity to resolve the contention set," et cetera, I think the flow would make more sense. And the question I had was I had the impression that that one of the possible recommendations was to outlaw private auctions. So I'm a little bit iffy about that mechanism still appearing in bullet #3, as it is. Thank you.

JEFF NEUMAN:

Thanks, Justine, and I agree with you that changing the wording or putting in for the third bullet after reveal day would make it much more clear as to what we're talking about. And Justine, right, so if we went with Alternative 1 we would pretty much eliminate the private resolution. If we went with Alternative 2, you are correct that it would not have the effect or at least according to this discussion it would not necessarily have the effect of eliminating the private auction.

So, that is one of the drawbacks, and certainly depending on when the bids are submitted and how close to when they're evaluated and things like that, we'll look at the objectives in a second, but let me go to Jim, Kathy, and then Susan. Jim, please.

JIM PRENDERGAST:

Thanks, Jeff. I have the same concern that Justine has. If one of the goals is to try and eliminate the collusive sort of private auctions and the activity that drew so much scrutiny from the last

round, then allowing the private auction as a potential resolution is probably not where we should be headed. Thanks.

JEFF NEUMAN: Thanks Jim. Kathy and then Susan.

KATHY KLEIMAN: Thanks Jeff, can you hear me? This is Kathy.

JEFF NEUMAN: Yes.

KATHY KLEIMAN: Hi, everybody, and welcome back to everybody coming back from Berlin. Okay, so Jeff I'm supporting Justine and Jim and what's interesting is I didn't think that this Alternative 2 was designed with all the features that we're talking about. I thought the reason it came to pass was not to allow private resolution but because certain participants in the working group wanted to know how many contention sets there were.

So, if you submit in Alternative 1 you're submitting bids without knowing how many contention sets you're in, you're submitting them blind, and the idea was X amount of money, we want to know how many contention sets we're in, and I thought when it was offered, it was offered with the obligation, once you know that information not to have time to act on it and not have a lot of time, but to submit those bids very quickly. If we're allowing private resolution even without knowing, even before reveal day, if we're

allowing a lot of time, we're basically creating a situation for insiders to play and try to figure out who's in the contention set.

Again, I thought what we were doing here was simply providing one more piece of information, how many contention sets you're in, the sealed bids go in quickly and then we're bound by them, no private resolution. If that's a third option, let's put it down, but that's what I remember us talking about. Thanks.

JEFF NEUMAN:

Thanks, Kathy, so you're right, that is kind of like an Alternative 2b, or actually, no, it is an Alternative 3, so it's basically a sealed bid auction, later on in the process it would encompass the first bullet, the second bullet, and not the next two. So yeah, I think you're right, we should put that as a third alternative.

Kathy, I know that's what we were talking about, there were some that were not in favor of getting rid of the private resolution completely, and so this was an attempt to provide some sort of hybrid or compromise with those that still wanted to have a private resolution. So again, depending on this call and the discussions that take place after this through email and other discussions, we will hopefully hone down on one of these alternatives. Susan?

SUSAN PAYNE:

Thanks Jeff, looking at both Alternative 1 and Alternative 2, I'm struggling at the moment as to how this timing would work with a string contention objection process. Because the outcome of that objection process would be potentially to put another string into contention and at that point that particular applicant knows who

else is in the contention set in a way that the previous applicants haven't, so how do they put a bid in, in that scenario? Because they have information that the others in the contention set don't have.

JEFF NEUMAN:

Yeah, thanks Susan. So that's in the Additional Considerations, which is the next section below for Alternative 1. So if it seems like that's the way we're heading, that's one of the things we need to consider. It was one of the things that was in the email, there's a whole bunch of other ones, string contention is obviously a very important one because you have to know who's in the contention set, but you also have to know should I be filing an objection against the other applications even though they're not the one that's considered first, but I need to stake my claim in case it doesn't go to the first one, it goes to the second one, how does all that work?

And that's what we'll get into after we talked about this alternative. But that's a great point and it's certainly something again if we like Alternative 1, we have to figure out. Anne, please.

ANNE AIKMAN-SCALESE: Thanks Jeff, it's Anne. I just wanted to mention with respect to Alternative 2 that I think that if private resolution remains as a choice that we either recommend or want to get public comment on, that there should just be a limited time in which private resolution could resolve the issue, it should not go on forever.

Somebody said something about 30 days, is the 30 days in there? I'm kind of looking for that. Also I just want to be super clear that I believe that public comment on this would be helpful and certainly as regards the IPC, I would need to explore that within membership and leadership and see maybe a ranking mechanism or a favorite among these alternatives. Thanks.

JEFF NEUMAN:

Thanks, Anne. So, a couple things. I think yes this absolutely is one of those things that will go out for comment. I would love for us to have a recommendation as to which one our group prefers if there is a preferred one, or maybe it is a ranking, as you said, but so that we can at least give an indication before public comment which way we're leaning, that would be I think helpful so that's hopefully the goal.

The 30 days I just mentioned as an example, so we would absolutely need to decide if we went with Alternative 2 and did allow some time for private resolution, we would absolutely have to recommend a time period, whether that's 30, 60, 90, whatever it is. I just threw out 30 as kind of just to illustrate, but that's not part of the proposal at this point.

ANNE AIKMAN-SCALESE: Yeah great, Jeff, and then just as a followup to what Susan was mentioning, I think there was some discussion before about the objection deadline not being triggered until a winner was determined, but I guess what Susan is saying is that if we have a reveal of all the applicants on that after the reveal day under

Alternative 2 then I think she was saying that parties won't know whether or not to object, but I was thinking that objections would only be triggered when a winner emerged either via the private resolution process or via the sealed bid process. Was that correct or incorrect? Thanks.

JEFF NEUMAN:

Thanks, Anne. Certainly with respect to string confusion objection, you would have to have that heard right away because the remedy for the string confusion objection is either if it's confusing to an existing TLD that's already delegated, then the remedy would be to throw out that application, but if it is similar to another application that's in that same round, then it would be put in the contention set, so you would absolutely have to at least have those objections heard right away before the contention set was resolved, but with respect to the other objections, that's one of the additional considerations that we have below that we'll talk about. So hopefully that makes sense. So we can treat string confusion objections different than the other ones or we can treat them the same, when we get to that below, we'll discuss.

So, let's talk about Alternative 2. It doesn't sound like it's got a huge amount of support at least on this call but let's talk about how it measures up with the goals that we had. So it would seem to address goal number one in the sense that we wouldn't necessarily have bidding wars, because it's still a sealed bid and it's still a onetime bid, and in theory it would encourage applicants to bid the true value for the TLD.

Number two, this is kind of questionable, I think, even though it says here that would help with 2, could support Number 2, which is reducing collusion if the time period is short enough, but there is still room to have a private auction or some other financial transaction that's external to the program as a way to resolve it.

So, Number 2 in some ways it supports it, but in a lot of ways it impedes Number 2. Could it help #6 by encouraging new entrants in the field? Potentially. You still could do the multipliers by virtue of having a sealed bid and things like that. But again, we've heard some certain disagreements with this Alternative 2 because of the fact that it still has the potential for the collusion profiteering speculation.

And then just to read further, the maker of this alternative has acknowledged that it doesn't fully address the concerns around collusion but some benefits derived by obtaining sealed bids which could reduce incentive for parties to agree to private resolution if the applicant knows they have the highest bid. The other main point in favor here is simplicity. You wouldn't have to hire an auctioneer and all that other kinds of stuff, you would do with just a straight non-sealed bid auction.

Okay, so if we went with Alternative 1 and I know we've been talking about some of the additional considerations already, but if you scroll down, okay, so for reveal day, as we talk about all the applications that have not been withdrawn would be posted regardless of whether they are first in the queue or not, so that the next steps can be completed. The order of the bids and respective applicants could be posted but not the amount, so

there's different options we can do even with Alternative 1. Of course public comments now we start to get to the complications.

So in the normal process or in 2012, and as we're recommending, absolutely, we keep public comments, but the question is do you comment on all of the applications or just the one that's first in the queue. I think from a simplistic standpoint without making things too complicated, comments should be solicited on all the applications no matter where they are on the queue.

If we didn't do it that way, you'd have to open up separate public comment periods depending on whether and when there's a need to go to the second highest bidder and to monitor something like that for the community, whether it's government, civil society, or others to just make comments, it would be impossible to monitor for each string when the next public comment period would open and it would be very fluid variable, so whenever it's decided that the highest bidder couldn't meet their expectations, that's when you'd open up a new public comment period and I think at least as I think through it, I think that would get incredibly complicated and pretty much impossible to monitor.

But I want to test that with everyone. It seems to make most sense to have public comments on all the applications upfront regardless of where it places in the queue. Are there thoughts on that? Jamie says strongly support one public comment period for the exact same length of time for all. Right, okay, yes, that would also be part of it. This would mean again no matter where it is in the queue, if it's first or 15th in the queue, you would see all the public comments. Justine says that seemingly makes sense and

Gigi, as well, and Susan, that it would not be practical. Okay, that's good.

For string similarity evaluation, now this is what Susan was bringing up before, we've already talked about when we were discussing string similarity evaluations we were leaning towards recommending or I think we are recommending that plurals and singulars should be treated as in the same contention set, so what we would have to say here is that for exact matches plurals and singulars, it will be clear who is in a contention set at least for the string similarity, although the string similarity evaluation would happen after reveal day if the panel decides that another string should be added to an existing contention set or it results in the creation of a new contention set, then the following could happen.

So if it creates a new contention set then all of the applicants in the new contention sets would be asked to submit bids. So in the Unicorn/Unicom example, if that were to happen again whenever we do the next round, Unicorn and Unicom in 2012 were found to be visually similar, so neither of those were initially in a contention set before the string similarity evaluation, it was only after the evaluation they ended up in the same contention set.

So at that point if that were happening in the next round and we went with Alternative 1 or even 2, they would be asked, okay, well now Unicorn and Unicom are in the same contention set so it's now time, you're given X amount of days to submit a bid for an auction if that's what it ultimately comes to. Does that makes sense?

Now if new applications are added to an existing contention set, then the new applicants will be asked to submit a bid but the old applicants would not. Does that sound fair? Not fair? Should everyone be asked to submit a bid or does that have the potential for gaming? What does everyone think? Anne and then Susan.

ANNE AIKMAN-SCALESE: Thanks Jeff, I really like this idea of the intent to file an objection and I'm not sure, it seems to me that even in string similarity that that intent to file an objection still works because at that point if you have even the private resolution alternative, folks are notified by intent to file an objection how they might want to proceed in private resolution because somebody knows, hey there's going to be an objection out there.

So that was the main reason I had raised my hand, I haven't really gotten my head around this new submitted bids yet, but it doesn't seem to me that all string confusion objections have to be filed and have a full proceeding on them prior to determining a winner, I think you would only need to know that there's an intent to file an objection when the applications come in and the potential objector knows what the string is, at least in the initial part.

JEFF NEUMAN: Okay, thanks Anne, and we'll get to the intent to file an objection in a minute. Susan, please.

SUSAN PAYNE: Thanks, Jeff. So this is a slightly different scenario to the one that I was mentioning before we and I guess we need to think about string similarity evaluation and string confusion objections somewhat separately although they to my mind give rise to the same issue.

But looking at this evaluation particularly, I just don't see how this fits with the notion of the closed bids at the timing that you were talking about them, because you now then have a scenario where Unicorns, and Unicoms know who each other are and know the basis of their contention set and who the other applicant is and so even if they're the only two in the contention set, they're now being treated in a completely different way to every other applicant in that they know who they're bidding against and everyone else doesn't.

And then it gets even worse when you get into the scenario where someone else is being added into a contention set later, because then everyone else has put their bids in not knowing who's in the set and then some final applicant gets put in the set and knows everyone who's in the contention set and gets to put their bid on that basis, it's completely unfair. I just I just don't see how this works.

JEFF NEUMAN: Yeah, thanks Susan. So that is certainly one of the complications of this one. So yes, in the scenario where the result of a string similarity evaluation is to create a new contention set or add to an existing one, you are correct, those that end up now being placed in a contention set would have insight into who else is there, so it

is one of those unfair results but I don't think it's avoidable if we chose Alternative 1, so it might be one of those things we have to live with.

As Jim said, how many of those contention sets were created in the last round? So there was only one contention set from this string similarity evaluation created, there may be more here. If we go with the plural singular, it would be fairly obvious to ICANN before reveal day to pick those plurals and singulars and say that they're in a contention set, so that shouldn't be too much of an issue, but with the ones that go through string similarity evaluation, yes, I think unfortunately it's something we're going to have to live with, it's going to be an edge case, as I think Jim's question is kind of getting towards, and it would be treating those applicants a little bit differently, but then again, those applicants were not assuming they were in the contention set at the beginning.

So, you're treating them differently but they are applicants who didn't know until after a string similarity evaluation that they were in a contention set. So, I don't know, does that offset? We have to kind of figure that out. Kathy, please.

KATHY KLEIMAN:

Thanks Jeff, coming off mute. So, several things, one, I have the same question I think Justine put into the chatroom, how many of these situations occur, the Unicorn and Unicom in the first round? Two, wouldn't Alternative 1 solve the situation that Susan has raised and we've just been talking about?

So even though you don't know you're in a contention set, you still submitted a sealed bid, and so that sealed bid now transfers to whatever contention sets you get moved into because it was all done up front. You didn't know you were in a contention set when you came in at the beginning, you submitted a sealed bid, so it would seem actually that it works perfectly with Alternative 1.

And then the question is plurals and not plurals. I put in three versions of hotels and I just wanted to see if by our rules the ES which is not the traditional English plural of hotels would also be part of the contention set that we creating, and then the other question is are IDNs part of these contention sets as well for string similarity? So, game and games in English and Chinese, are we putting those in the same contention set? Thanks Jeff, lots of questions, I can go back and repeat them one by one If you want.

JEFF NEUMAN:

Thanks, Kathy, I think I got most of them. A lot of them are related to string similarity in general the evaluations. For this discussion I just want to get into the notion, just assume -- we talk about string similarity evaluations in a separate topic, so I don't want to go over all of that here, but I just want you to put that aside for the moment to have this discussion. There was only one case in 2012, the Unicorn and Unicom, that was found to be similar, I believe. That was it.

Now with the rules we're setting up now, could there be additional ones? Sure. Elaine has an interesting proposal on the chat which is what if we mandate that string similarity evaluation, well, she's asking the question why is it done after the reveal date and I think,

Elaine, you're implying why couldn't we make it before reveal day, and that's a good proposal. So, it wouldn't solve the ones with string confusion objections, but that again would be even more of an edge case, so that is a possibility.

We can recommend string similarity evaluation be done prior to reveal day, in fact prior to ICANN letting the applicants know that they're in a contention set. So if they do the string similarity evaluation then they notify all the applicants who are in the contention set without telling them who they're against, but just saying how many there are, the edge case there is that if someone wanted to file an appeal on that, question the decision, and again now we're talking about edge of edge, and at some point we would have to acknowledge that some applicants may be treated differently than others, but I think if we have the string similarity in advance where again whittling down the potential number of applicants that would fall into this situation, I would hope.

Jamie says is string similarity not subject, sure, it is subject to appeals. So, Jamie, essentially what you'd have is you'd have the string similarity figured out, people would have to get notified as to what they were similar to, how many applications there were, certainly they could appeal, again we're talking the edge of an edge, of an edge case. So, at some point we would have to draw the line, but yes, the accountability mechanisms would still come into play.

Anne is saying that you could require bids, yeah, so if someone's found to be in a contention set and they disagree with the string similarity evaluation they would have to still file a bid but they can

appeal as well. So they still submitted their bid, but they have appealed. If they win, they're taken out of the contention set and their bid doesn't mean anything. If they lose the appeal, then the bid that they submitted would be applied towards the auction of last resort. That make sense? Okay.

So let's now talk about something that Anne had gotten into a little bit with one of her questions earlier on, which is what do you do with objections? So, what we would say at that point is once the highest bidder was determined, we could open up the objection period for those that are first in the queue because of their bid. But with respect to the other applications, we could create a system of like filing an intent to file an objection type of thing, where you wouldn't have to put in all the full objection against that second place or third place, et cetera, application, but you could just at least put in a marker that you're going to file an objection if it turns out that it gets to the second bid.

You can also indicate that your objection that you file against the first one is filed against all of them, in which case you wouldn't have to again file if the second application were to come up, and of course if your objection is the same for all the applications then you'd be asking the panel to make a determination on all the strings, not just the first one in the queue. Thoughts on that one? I know it sounds a little complicated, but if you are submitting the bids up front this is the kind of thing that would happen.

KATHY KLEIMAN:

Jeff, this is Kathy with a question. What types of objections are we talking about here? Are we just on the string objections or

other forms of objections as well? And I'll pause and then have a followup.

JEFF NEUMAN: Yeah, all of them.

KATHY KLEIMAN: Okay, the idea of filing, so what happens with the applicants then? You're number 2 or 3 or 17 in the queue for a contention set and someone indicates that they're filing a community objection and they're filing it against all of the applicants for string. How do you defend yourself? This gets complicated.

JEFF NEUMAN: In talking that through, it would seem to me if you file against all of them, then all of the applicants should have a chance to respond, I think that would make the most sense. And then someone, if they're 15th in the queue, would have to decide, you know what, it's not worth staying there, I'll just withdraw and get whatever refund I can get at that stage.

But yes, you're absolutely right, Kathy, going with Alternative 1 or 2, meaning a sealed bid auction at the beginning of the process, would introduce all of these complicated situations, so it's one of those tradeoffs. Justine says sounds good, can we add text to relay your comment on can indicate that an objection will apply to all applications for the same string? Yes, we need to add that in there. So, after the call I know that our policy staff is trying their

best to keep up but they certainly after the fact do that. Susan. Please.

SUSAN PAYNE:

Thanks Jeff, it's sort of a question, actually. On the scenario where the objection applies to all, is the idea that, let's say there are 3 in the set, so you obviously are objecting to number 1 in the contention set or in the listing, if you like, and you've indicated that the same objection would apply to 2 and 3, but presumably 2 and 3 don't have to incur the cost of actually fighting that objection at that stage, bearing in mind that they may never ever get to the point where one has been knocked out. Or are you proposing that they would all become some big mega objection from the outset?

JEFF NEUMAN:

Yeah, thanks Susan. The way I'm proposing it, but of course it could change, would be it would be sort of this mega objection because you wouldn't want a panel to have to consider the exact same issues if they are the exact same issues multiple times and therefore incur the cost of multiple objections if they're all to the same kind of grounds.

So, in other words if you're deciding as Kathy said a community based objection and the objector then says look, all of these should be refused because none of them represent the community, and we have a community here and none of them would be any good, so you'd want one panel to consider that for all of the strings at once, and so yeah, unfortunately the applicant would be in a situation of saying well look, if I don't respond then

I'm stuck with whatever the defense was from that first applicant, and I could in theory lose my chance to respond.

But if I do respond, I could be spending money on a response for which I may never get an opportunity to have my application heard. So it's kind of that balancing act and as Justine said, this is what would need to happen in order to avoid inconsistent results. Let me go to Kathy, Susan, and Anne.

KATHY KLEIMAN:

This is Kathy, I'm not sure we should be doing this standing on one foot with objections, there is another section for this. The idea that you have to file the objection against the highest bidder's application makes sense, the idea that you might file and intend to file an objection against the other objectors, but the grounds for filing say a community objection or certainly an intellectual property objection may be different, depending on who the applicant is.

And so I think we're not doing this with proper evaluation and proper thought. Consolidation in the first round was done on a case by case basis and you had to make the argument to the objector filed individually against the application. The applicants could choose whether to be consolidated or not in which they petitioned the arbitration, The International Chamber of Commerce.

So, I really don't think we should be making these determinations right now, I think the text here is kind of generally right but there are unforeseen dangers that I don't think go to the section on

string contention, but we'll go into other types of objections when we get there. So, sorry for the cold.

JEFF NEUMAN:

That's okay Kathy, tis the season for those colds. So, yeah, I don't want to get too deep into the objections, and I certainly take your point that certain objections are very applicant-specific. So an objector would have the choice of whether it's filing only against the one that's first in the queue or against all of them. There would be a new objection period if it gets to the second one, the objector could then file a separate one against the second one. But if it's on the same grounds and the same fact, then they may want to initially file it against all of them.

So, I think we just need to think about these complications as we decide on which mechanism we want to use. So we could just high level touch it and say yes we understand we've got to figure this stuff out and wait until we get back to that section, or we can talk about it now, I think that's totally fine. Let me go to Anne.

ANNE AIKMAN-SCALESE: Thanks, Jeff, this is Anne. Just to kind of try to clarify, we are agreeing on the principle that the intent to object is a good idea and that would happen before, well at what point in time would that happen? And then are we saying that in filing an intent to object that one party would have to state not only the type of objection but also the grounds per se behind that objection?

Or could it just be a party filing very simple intent to object just to indicate that hey there's a risk associated with this application, so

that then people could withdraw if they don't want to take that risk or they get to say you know yeah, I'll take that risk because I know who the party is who intends to object and so I can evaluate what my risk is if I'm engaged in a private resolution negotiation or whatever.

I would see this intend to object as a really barebones thing and that if we could somehow make it in the implementation phase that you never get to a full proceeding until you have the final parties determined that would be in that proceeding. Just as a principle.

JEFF NEUMAN:

Thanks, Anne. When I put this down in the email as a potential proposal, I think I had in mind the barebones that you were talking about, not the full grounds but just so that you would file your intent to object and then if it got to the second application or third, or whatever you intended to object to, at that point for you and those that filed an intent to object, those parties would be given a certain period of time to actually file an objection if it came to pass that the second or third applicant were on top of the list, but of course you could check off that your same objection, the same facts and everything apply to all of the applications, you can do that up front, in which case you wouldn't need more time and you'd be essentially asking the panel to make a decision about all of the strings.

ANNE AIKMAN-SCALESE: Just let me ask a quick followup question, is it necessary to convene a panel on an intent to object process? I'm not sure, I'm a little confused by these continuing references to the decision of the panel. It kind of seems to me that with an intent to object you're just really notifying the other parties that have applied and that a panel need not be convened in connection with an intent to object.

JEFF NEUMAN: Thanks, Anne. Yeah, I I think if all you're doing is saying as an objector that you intend to file a new objection if that part party's application comes up next in the queue, then no, there's no panel. But you as an objector could say look, I'm filing an intellectual property, a legal rights objection and you know what, it's the same objection to all 15 of the applications based on the same facts. And so to avoid inconsistent results, I want that panel to consider my objection against all of the applications.

ANNE AIKMAN-SCALESE: Sure, but how do you get inconsistent results if you only have one winner? I mean, for example let's say that I have legal rights and I file an intent to object against whoever the winner is. Well, I may not object if the winner is somebody so far outside my legal rights or concern about confusion or counterfeiting or misleading the public or consumer protection, I may elect when there's a winner I may say well, you know what, I pass because it just isn't going to be a problem.

Why do you end up having multiple legal rights objections? That's different obviously from community, but I keep wondering why we're not willing to whittle this down to the final winner.

JEFF NEUMAN: So, Anne, so what we're saying here is okay, let's say there's 3 applications for .neuman, for me, and let's say there's one trademark owner, me, and I object to all three of the applications for .neuman based on my trademark for a salad dressing, let's say, and so I file an initial objection against the first applicant that's in the queue, that's top of the queue.

ANNE AIKMAN-SCALESE: Okay, wait I've got to interrupt you because I don't know who's at the top of the queue at this point.

JEFF NEUMAN: You would, objections are not filed until after you know who is at the top of the queue.

ANNE AIKMAN-SCALESE: But you could file an intent to object before you know who's at the top of the queue. I'm just talking about intent to object without going to a proceeding.

JEFF NEUMAN: So, the way in a proposal it would be is you would know who's first, second, third, fourth, fifth, whatever. You would file your

objection with respect to the person who's first in the queue, and then you would say if it turns out that number 2, 3, 4 come up, then I intend to file an objection against those, if that ever comes to pass.

So, you file the actual objection to the party that's at the top of the queue, and an intent for all of the others. Or, you could say, "I have the same objection," whether it's to the one that's at the top of the queue, or all of them, and therefore I want the panel to consider it.

ANNE AIKMAN-SCALESE: I guess my comment on that, Jeff, is that parties that may be engaging in private resolution should probably know, prior to that point in time, that there's a risk of objection. I would favor a system where we can have an objector, a potential objector file an intent to object before we get a top bidder.

And that way, the parties that are in private resolution negotiation know that that risk is out there. But maybe I'm not really understanding you, in terms of whether both processes would occur, but I think it's important for private parties to know if they're negotiating that that intent to object is on record.

JEFF NEUMAN: Okay, thanks, Anne. I'm going to go to Jamie and then we'll come back. I think if we go with alternative one, remember, there is no opportunity for private resolution. Alternative two would be a little bit different. Alternative one; there's no private resolution. Let me

go to Jamie, and then we can come back if we still need to then cover this. Let me go to Jamie.

JAMIE BAXTER:

Thanks, Jeff. Jamie Baxter, for the record. I'm very intrigued by this idea of the intent to file an objection, but what I would like to focus on, I think, for those who didn't have to experience this in the last round, is that time is a funny thing and if you don't submit the actual objection in the period provided, and you give those who may want to object to you time -- and we're not talking days; we're talking years in some cases, to be able to formulate that objection and make it, perhaps, even stronger than it may have been in the given time, do you all really want to have that force working against you? I would not.

I think, to keep it consistent and fair for everybody, that the objections should be submitted within a time period, written in full. I would not recommend that we start engaging panelists or engaging in the fees that are required to that until the appropriate time, but I would be against allowing people who wait for years to actually write and submit their objection, just because the process took a little bit longer. So, I think everybody should think long and hard about that before committing to this. Thanks.

JEFF NEUMAN:

Thanks, Jamie. That's certainly one of the risks, but again, that's balanced against -- what people need to think about is, that's balanced against why would you force an objector to file an objection if it only has a problem with the party that's fifteenth in

the queue, and they may never, likely ever, get to the top of the queue.

So, you're right; it gives them a longer period of time to file an objection, but if the first one, or second one, get awarded the TLD, then you're not forcing the objector to spend a bunch of money objecting to an application that was never going to get considered.

JAMIE BAXTER:

Yes, sorry Jeff. Jamie again. That's my point; I don't think you should require any fees be collected but submitting the paper document with the objection noted and having that done before the necessary time, I think is a prudent step to take.

JEFF NEUMAN:

Yes, thanks Jamie. I was more talking about -- we've got an echo here -- I was talking more about the cost to actually, whether you hire an attorney, the resource costs of actually putting together the objection, and then spending all the money on that as opposed to the filing fees. I definitely agree; you shouldn't have to pay the filing fees unless your objection is heard. But I was, again, talking about the costs of putting that objection together.

I want to move on, because I know that there's a lot more complications. And again, this all stems from the fact, when we talk about liking the whole Vickrey Auction or deciding this on a sealed bid at the beginning of the process, these are the questions that come up.

And so, the reason it's important is we need to resolve these; we can't just say, "We're going to do the Vickrey Auction at the beginning, pick a winner, and that's it, we pass it on to an implementation team." We need to consider all of these complications. I think we can work through all of them, I think they've all got potential solutions, but it certainly makes things more complicated.

You don't only just have objections, but what if there are objections but then there is more than one community application? So, if you remember, if there were multiple community applications, which I don't think this actually happened where multiple past the CPE, then you're dealing with waiting for the community applications to figure it out.

If one, or both or all of the community applications get approved, then you would obviously have to wait for some of the sealed bid auction between those applicants that qualified before you would even touch the other applications. That adds an additional complication, and so there's some text in here about that.

Then of course, as we were talking about earlier; what do you do with the string confusion results where it creates a new contention set or adds to an existing contention set? I think we talked about that.

And then, in that whole mix, as was pointed out by a couple of people in the chat, we also have to deal with the impact of the appeals mechanism, or an accountability mechanism, and how that interplays with each of the alternatives. Can we scroll down a little bit?

And then, finally, if we did go with the alternative one or two, we certainly need to consider the impact of the applicant support program. So, if they are given a multiplier, that would have to be addressed in determining the order of the queue.

So, we would have to hear if there's a contention set, we would have to hear -- and an applicant for any applicant support program, we'd certainly need the results of whether they qualified under the applicant support program or not before we processed who's at the top of the queue for the purpose of filing objections and public comments and all that.

I know, again, this adds a lot of complications, but it all stems from the notion of not wanting private resolution and going with a sealed bid auction up front. The questions at the bottom here, again, I think we asked and dealt with. The goals seem to make sense. The objectives that we had at the beginning. Are there other alternatives? I think we came up with a third alternative that we'll put on here, which is sort of the middle ground there.

But is there a way to encourage, because we did talk about at one point, the potential of creating toward ventures as a way to resolve contention sets, but if you do the Vickrey Auction at the beginning, you may not be able to do that. So, we'd have to consider how that impacts the other recommendations we have, especially with changing an application. And then, once we consider these alternatives, we need to add some things into different parts of this program.

I happen, at least putting on a personal hat, I think what Jim says is right; I think that it adds complication here, but I do think that

nothing is insurmountable. I think we just have to work through all of the details. It makes things more complicated, but I think it's something we can do if we think that having that Vickrey type Auction at the beginning resolves or helps us achieve those other goals. Steve, please?

STEVE CHAN:

Thanks, Jeff. This is Steve from Staff. Just an observation from listening on your conversations here. Looking at all of the complications that were all just discussed about objections, the string confusion objections, the string similarity reviews, all of those things are, I think, a result it seems from trying to take advantage of knowing what the order of the queue is for string contention resolution.

So, in other words, it seems like there's an attempt to gain efficiencies from knowing the order of the applications in the string contention set, so trying to front-load the reviews, the objections for the first one in the queue.

I guess I would just throw out the consideration that if you don't try to take advantage of knowing the order of the string contention set, you could actually, seemingly, leave elements of the program untouched. It's certainly not as efficient, but I guess I would just, it seemed like an observation that these complications are born from trying to take advantage of knowing the order of the contention site. I hope that made sense. Thanks.

JEFF NEUMAN:

Yes, thanks, Steve. I think that you're absolutely right; that it does stem from trying to achieve some efficiencies. I think if you go back to the goals, which I know are kind of behind this sheet here, I think knowing the order of the contention set certainly goes to number three, four and five. Applicants would know where they stand, objectors would know what they would have to object to, they wouldn't have to spend as much money in theory to fight it; they would only have to fight those applications that have a chance in actually getting delegated.

So, I think that you're right, as we go through this, we should balance each of these complications and see if leaving it untouched would be better than actually changing it in this kind of way. Ann says she agrees with Jim and Jeff; details can be worked out. If they can be worked out either with alternative one or two, yes. I'm saying this because I think IPC could want to retain free market private resolution, not personal preference. So right, these are the areas we need to balance.

I think, I know we're getting towards the end of the call, we'd really like to consider this offline. There has been a group that's been, I think, did we set up a group for this? Maybe not. Maybe this is the one we didn't set a smaller group up to discuss. We can just discuss this on the list.

What I'm really interested in hearing is; whether one of these alternatives, and again, we'll put the third one in here after this call, strikes you as better than the other alternatives, or whether none of them do and just go back to the way we did it in 2012. These are also the things that we'd like to hear.

And then, Steve added this number seven as a new goal, let's think about that. Because most of the things we've been talking about, these complications, as Steve said, go towards that new seventh goal, so think about that as well. And what we'll try to do is see if we can do a flow chart on this type of thing so people could have a visual of how this would all fit in, and maybe we'll create a fictitious application for a dot Neumann or something like that to see how it could work in real life. Not that anyone would apply for dot Neumann in real life, I'm just saying. Susan, please?

SUSAN PAYNE:

Thanks, Jeff. I just scrolled back and looked at the goals again, and I understand why we're having this conversation, obviously, but I think we've been very focused on the other goals, the new goals that we've just identified, it was six, but it's now seven, and we're not really paying attention to the original goals, which included allowing the parties to resolve contention between themselves in a pre-established time frame.

I just wanted to flag that; that I think we talk about, we maybe will lose the opportunity for private resolution and many people seem very comfortable with that, but that was one of the original goals, and we seem to be trying to come up with a solution which ensures that this isn't available anymore, and I certainly don't think that that is a positive.

JEFF NEUMAN:

Absolutely Susan, yes. So, when we put this goals list together, we'll actually have eight, or whatever there was on top of that. I

can't see it because it's not up on the screen, but yes, that would be the -- choosing alternative one would absolutely contradict that original goal. Choosing option two may still allow that goal, or sorry, alternative two, may allow at least somewhat to achieve that goal, but one, you're absolutely right; the Vickrey would eliminate that. Absolutely we'll do a new list of goals and have all of them on there, and maybe even do some sort of cross referencing as to what goals are not achieved and what are.

It is too late to start the next one, though we will absolutely do that the next call. That will be on Thursday, December 5th, 20:00 UTC. Thanks, Michelle. Let's try to keep this discussion going on e-mail. I think we've got good momentum here; we're starting to get towards a solution or recommendation to put out at least for comment.

Like I said, we'd really like it if we could put out a recommendation as opposed to options. I know we were criticized in our last report for not putting together a recommendation, and just options, so if we can have a recommendation, that would be preferable. Okay, thanks everyone, and we'll talk later this week. Thanks!

MICHELLE DESMYTER: Thanks so much, Jeff. Meeting has been adjourned. Have a great day, everyone.

[END OF TRANSCRIPTION]