

13 September 2024

RE: CONTENTION SETS

Greg DiBiase
Chair, Generic Names Supporting Organization (GNSO) Council

Dear Greg:

During our recent Los Angeles workshop (6-8 September 2024), the ICANN Board spent considerable time discussing the resolution of contention sets for the New gTLD Program: Next Round (Next Round). These Workshop discussions are part of a long series of conversations the Board has had about what rules would be in the best interest of ICANN and the ICANN community to resolve situations where more than one applicant is seeking to operate the same gTLD string.

Overview

The Board is in alignment that private resolution of contention sets will not be permitted during the Next Round. To accomplish this goal, the Board will have to take the difficult decision to reverse its [adoption](#) of the [SubPro Final Report](#) recommendation 20.6. Additionally, the Board believes that applicants should be provided with the option to submit one or more alternate strings at the time of application, meaning before the applications are revealed. Once the application window closes, ICANN would identify applications for identical strings. The current thinking is that ICANN would then reach out to those applicants before reveal day to provide them with the option to switch to their alternate string. An applicant could only do so if the alternate string does not join an existing or form a new contention set. Finally, the Board agrees to maintain the [2012 method](#) of the ascending-clock second-bid method to resolve contention.

We understand that these are important decisions and believe they are in the best interest of the ICANN community and ICANN, reflecting the global public interest of conducting a fair, transparent, and accountable approach to the resolution of contention sets. We hope that the detailed explanation in this correspondence answers any questions you may have as to the rationale behind the Board's position.

Community concerns re: private resolution and private auctions

The community has long grappled with the question of how to resolve contention in the Next Round, as evidenced, for example, in the [SubPro Final Report](#): Policy recommendation 35.2 that would have explicitly permitted private resolution and private auctions. This recommendation received “strong support and significant opposition” from the Working Group but failed to reach consensus-level support. Consequently, the Council did not adopt this recommendation (see [GNSO Council resolution](#), dated 18 February 2021). Similarly, the At-Large Advisory Committee (ALAC) in June 2024 [advised](#) the Board to “ban all forms of post-application private resolution of contention sets, including joint-ventures regardless of claims as good-faith joint ventures [...]”. The Governmental Advisory Committee (GAC) also advised the Board “to ban or strongly disincentivize private monetary means of resolution of contention sets, including private auctions” in its [ICANN77 Washington Communiqué](#). On 29 July 2024, the Board [accepted](#) GAC Consensus Advice from its ICANN80 [Kigali Communiqué](#) to “prohibit the use of private auctions in resolving contention sets in the next round of New gTLDs.”

In this context, it is worth noting that in the Report '[Addressing monetary means of private resolution](#)', delivered to ICANN in May 2024, NERA, a leading economic advisor on the design and implementation of auctions, stated that “a ban on private resolution” would “bring ICANN to the mainstream practice among governments and companies resolving contention”. The Report also states that “it is extremely rare for a party organizing an allocation process to allow participants in contention to decide major allocation and pricing decisions among themselves”.

Focus of the Board’s discussion

During the Los Angeles workshop, the Board focused its discussion on how to move forward on three items: (1) the extent to which applicants should be able to organize private agreements to resolve contention; (2) whether, and if so, how to provide less-well-resourced applicants a chance to obtain a desired string if they are in a contention set; and (3) whether to rely on ICANN auctions using the ascending-clock second-price methodology to resolve contention or to adopt an alternate methodology such as Vickrey auction, or even a raffle.

Private Resolution of Contention

Private resolution of contention sets was encouraged during the 2012 round of the New gTLD Program (2012 Round). As a consequence of that implementation decision, the majority of contention sets were resolved privately - anecdotally involving large amounts of money. Many in the ICANN community have since stated their unease with this practice, not least because permitting private resolution may also have encouraged gaming in that application round. Some applicants might have submitted applications with the intent to receive a payout for exiting a contention set, rather than to operate a gTLD. The SubPro PDP Working Group acknowledged this to be an issue, recommending that “applications must be submitted with a bona fide (“good faith”) intention to operate the gTLD” (see [Final Report](#) recommendation 35.3). The Working Group noted further in its rationale for recommendation 35.3 that “[t]he Working Group has elected to primarily target concerns about an applicant submitting an application with no intent to operate the gTLD.”

The Board also documented its own concerns around private resolutions, asking the SubPro PDP Working Group on [30 September 2020](#) “to provide a rationale why the resolution of contention sets should not be conducted in a way such that any net proceeds would benefit the global Internet community rather than other competing applicants.”

Similarly, during the 13-14 August 2024 [community discussion on resolution of contention sets](#) (Community Discussion) some community members expressed the view that private resolution should be prohibited during the Next Round in order to avoid a repeat of the gaming that occurred allegedly in the 2012 round.

Less-Well-Resourced Applicants

One of the goals of the Next Round is to increase the diversity of applicants. Implementation Guidance 17.2 of the Final Report notes “diversity and distribution of the applicant pool: geographic diversity, languages, scripts” as metrics that should be prioritized in the Next Round. However, applicants from less-well-represented regions often do not have the same resources as those from the global north, particularly Europe and North America, where the majority of today’s registry operators are located. While the Applicant Support Program (ASP) includes a bid credit “to increase [ASP recipients’] chances of success at auction” (see rationale for recommendation 17.15), such a bid credit - unless it is very high (which in turn could be seen as unfair by better-resourced applicants) - may still not be sufficient to

prevail at auction. This sentiment is also reflected by the GAC issuing advice to “take steps to avoid the use of auctions of last resort in contentions between commercial and non-commercial applications” (see [ICANN77 Washington Communiqué](#)). Some participants in the [Community Discussion](#) shared this opinion, suggesting that a goal for the Next Round should be to provide better chances for less-well-resourced applicants to obtain a gTLD string.

Auction Methods and Raffle

The Board also received [advice from the ALAC](#) to use the Vickrey auction method (sealed-bid second price) to resolve contention, an idea that was discussed, but did not reach consensus level of support in the SubPro PDP Working Group. Following the GAC’s advice to consider “alternative means for the resolution of such contention sets, such as drawing lots” (see the [ICANN77 Communiqué](#)), participants in the Community Discussion explored the possibility of using a raffle to resolve contention. Some participants showed interest in this method. However, the Board also noted that some concerns around using raffles were since raised on the SubPro Implementation Review Team (IRT) [mailing list](#).

The Path Forward

Considering this diverse input and ICANN's responsibility to act in the global public interest, the Board decided to have a holistic approach to contention resolution in the Next Round. As a result, the Board aligned on the following path forward:

1. **No private resolution:** Private resolution of contention sets will not be permitted during the Next Round. As pointed out in the [NERA report](#), joint ventures constitute a form of private resolution for which “it would be necessary to allow side payments to promote good faith joint ventures”. Therefore, to achieve the goal of prohibiting private resolution, the Board will have to reverse its adoption of the SubPro recommendation 20.6.
2. **Ability to submit alternate strings:** The Board views the ability to submit an alternate string at the time of application as a path to reduce the number of contention sets, providing more applicants with the ability to operate a gTLD. This may be particularly of interest to less-well-resourced applicants who, if in contention, are less likely to prevail in an auction. The Board is aware that the SubPro PDP WG considered string changes after the application window closes but did not include a recommendation to permit this as this would “necessitate a repeat of the string similarity evaluation of all applications, causing delays and disruptions to all applications, including those that are not in contention. This would impact program timelines and costs.” However, allowing applicants to submit alternate strings at the time of application, when it is unknown what strings others are applying for, would address these concerns. The approach of alternate strings provides all applicants, including less well-resourced ones, with an easy and efficient way to help avoid contention. No applicant would be obliged to submit alternate strings or to switch to their alternate as they may choose to remain in contention for their initial string. Also, a switch to an alternate string must not create a new contention set and applicants would not be allowed to join an existing contention set. The Board notes that an alternate string could not be used to escape contention sets that are formed after string similarity review or string confusion objection period, for the above reasons noted by the SubPro PDP WG.

- 3. Continue to use the 2012 ascending-clock second price auction method:** The Board agrees that auctions are a tested and effective method to allocate scarce resources and that introducing a raffle system is not preferable over the auction approach. In this context, the Board refers back to the 2008 Report '[Economic Case for Auctions in New gTLDs](#)'. NERA also noted that "Lotteries, like private auctions could, increased the number of speculators, [and] increased the number of monetary transfers between applicants [...]".

While some in the community have voiced support for the Vickrey sealed-bid auction method, the Board is not aware of any specific concerns around the ascending-clock second-price method used in the 2012 Round that might warrant a change in ICANN's auction methodology. Further, the Board noted that imposing the Vickrey method could negatively impact applicants, particularly applicants that are benefitting from the Applicant Support Program as their financial situation may change, as a result of third-party funding or other fundraising efforts undertaken by these applicants between the submission period, i.e., when a closed envelope sealed bid would be due, and the time when contention is resolved.

Implication for SubPro Policy Recommendation 20.6

The Board understands that in order to prohibit private resolutions of contention sets, it will have to reverse its [16 March 2023 adoption](#) of SubPro recommendation 20.6, which allows for the formation of joint ventures to resolve contention. The Board is not taking this approach lightly and is offering to work closely with the GNSO Council on this issue.

The Board continues to support the idea that applicants form joint ventures to help avoid potential contention, but these need to be formed prior to submission of the application and are not an appropriate vehicle for contention resolution. However, in order to avoid a situation where joint ventures are used as a vehicle to circumvent the prohibition of private resolutions, especially considering the implicit use of side payments (whether monetary or other forms of value exchange), the Board believes it is necessary to reverse its adoption of recommendation 20.6.

The Board remains firmly committed to the goal of opening the Next Round application window no later than April 2026. Therefore, the Board anticipates passing a resolution to reverse its decision on policy recommendation 20.6 in the coming weeks to avoid any delays to the implementation timeline. Once the Board has passed the resolution, the GNSO Council will have the opportunity, per Bylaws Annex A Section 9, to submit a supplemental recommendation to the Board, following the applicable procedures.

We appreciate the work of the whole community on this difficult topic and the opportunity to openly engage with the Council and the wider community as the Board moves towards conclusions on its decision on how to resolve contention sets in the Next Round

Best regards,



Tripti Sinha
Chair, ICANN Board of Directors