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<http://www.dotShop.com>

Bringing .shop to the Internet

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Commercial Connect, LLC. the senior application for .shop welcomes the opportunity to comment on the proposed new gTLD auctions rules for indirect contention. While we also appreciate the time and effort taken by ICANN staff and Power Auctions LLC, we also feel as do most commenters that fundamental modifications still need to be made to the process in the interest of fairness and parity towards all applicants.

The new gTLD Auction Rules for Indirect Contention is based on major deviations from ICANN's mission, the definition of the internet itself as well as the Applicant Guidebook. In addition, this auction proposal is grossly unfair to the certain applicants that have to bid in excess of the combined bids of two other applicants.

As a reminder, the Applicant Guidebook was to be used as a guide to ICANN's policies and procedures. It in no way replaces nor changes any of these policies or procedures.

The basic misconception here is that indirect contention does exist in the cases ICANN is referring to. Whether or not indirect contention could exist is not being addressed here. It simply does not exist in the cases addressed in this proposal.

It has clearly been established and communicated to ICANN on literally hundreds of occasions, by multiple factions and experts that the name similarity issue was never properly addressed nor acted upon. See <http://www.ecwr.net/showthread.php?9771-letters-to-ICANN>

As Sarah Falvey with Google Registry has commented, **"ICANN has consistently favored advancing applications over minimizing the risk of consumer confusion. A broad swath of the ICANN community has objected to this prioritization, and the indirection contention set process is one of the last opportunities to correct this prioritization."**

ICANN has continued to ignore the issue that, simply stated, **TLD's are Categories** as stated in **RFC 1592** it clearly discusses the concept of name space as follows: **"Each of the generic TLD's was created for a general category of organizations."** See <http://www.ietf.org/rfc/rfc1591.txt>

For example, the general category of commerce, .Shop, .Store, Shopping, or any other commerce related gTLD are to be considered one group. In no instance can any of the commerce TLD's co-exist as written in the policies and procedures. Therefore indirect contention cannot exist.

All of the applicants for a commerce gTLD should be grouped and treated as one and the same whereby only one TLD can be allowed to exist.

As the senior applicant for .shop, Commercial Connect was forced to spend an additional \$200,000+ asking ICANN and the AAA to determine what commerce strings had similar meanings simply because



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ICANN did not follow the GNSO procedures on having a linguistics panel make this determination. As is evidenced today, this request was futile. Domain name industry experts were not used in making determinations and what resulted were inconsistent and/or incoherent decisions. We lost the Chinese idn version of .shop against our English version of .shop stating that they did in fact mean the same but we still lost. It is now a separate contention set. We won the Japanese idn version of .store as the impartial decision maker clearly stated that it could easily be confused with .shop. We objected to the Chinese decision stating that the guidelines speak of any similarity including visual, aural, meaning and/or confusion and Amazon objected to our winning of .Store in Japanese stating that if we lost the Chinese version then we should also lose the similar Japanese string as well. In this instance one or the other objection should have clearly prevailed. ICANN chose to simply ignore the requests and refused to make a ruling on what similarity should be. Hundreds of professionals spent thousands of hours in the past to define name similarity and a simple vague statement in the Applicant Guidebook does not negate these set ICANN Policies. ICANN has simply chose to ignore this issue and continue their current course of chaos hoping that by threatening delays, everyone would simply cave in and allow the injustice and apparent gross negligence to continue. Ignoring a problem only allows it to become more pronounced in the future.

As of this date we have finally been invited to Community Priority Evaluation and even though we have now worked over 15 years to help unify and clearly establish an eCommerce community and have followed every ICANN mandate to get the .shop delegation which we were promised in the 2000 round, it seems unlikely that we will pass this evaluation due to continued manipulation of the system and certain biased parties working together to make it virtually impossible. Hitting a constant moving target, such as ICANN's ever changing Community definition, becomes almost impossible when so much money and manipulation is involved.

If our application does end up in auction, this proposal states that not only do we have to be the highest bidder, but our highest bid must now be higher than the combined bid of two or more other bids. How is this fair?

On page 1-10 of the Applicant Guidebook it clearly states **“For applications identified as part of a contention set, the entire contention set will be kept together in the same batch.”** There should be no dividing of this set and two entities in this set should not be allowed to get together and have their bids considered to be twice as important any other applicant. Nor should ICANN base this issue on the simple issue that it would benefit ICANN financially to have two TLD's in existence instead of one. The real issue here should be what benefits the stakeholders which include the end users. ICANN has made enough out of this fiasco. At some point ICANN needs to remember who and what is important – the structure and stability of the internet as well as the access and use ability for all users should always be paramount.

In closing, while we do appreciate the time and effort expended in making this proposal, we feel that the time would have been better spent on fixing the issue on name similarity. Having multiple TLD's in existence with fewer than 100 registrants benefit no one. We are against this auction proposal and will continue to work with the community for a fair and equitable use of new gTLDs which includes reminding ICANN and/or whomever may be allowed to govern the internet of what a gTLD should be and what the word category means. We also urge ICANN to read and act upon the tremendous outcry



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requesting them to step up and correct the domain name similarity issue by following GNSO documented and annotated guidelines.

Sincerely,

Jeffrey Smith
CEO
Commercial Connect, LLC.