

Google Registry

December 14, 2014

Via Electronic Mail to: comments-new-gtld-auctions-indirect-contention-14nov14@icann.org

RE: Charleston Road Registry Public Comments on New gTLD Auction Rules for Indirect Contention

Charleston Road Registry d/b/a Google Registry appreciates this opportunity to submit comments on the proposed new gTLD auction rules for indirect contention, including the Proposed Concept for Indirect Contention Auction, the Auction Design for Indirect Contention, and the Auction Rules Indirect Contention Edition.

At the onset, we would like to make an important overarching comment before we dive into the auction specifics. The goal of the New gTLD program is that it was developed to increase competition and choice in the domain name space while minimizing risks to security, stability, and user confusion. With regards to string confusion, 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,¹ and the indirection contention set process is one of the last opportunities to correct the bias. However, ICANN has once again stacked the deck in favor of applications advancing, even when at least one string confusion objection has found that two particular strings are, in fact, confusingly similar. We strongly believe that this continued prioritization is harmful to users and the overall process and urge ICANN to reconsider its priorities.

Rules as Stated in the Applicant Guidebook

The new gTLD Applicant Guidebook, in Module 4 §4.1.1, provides that “two strings are in indirect contention if they are both in direct contention with a third string, but not with one another” and “[a] contention set consists of all applications that are linked by string contention to one another, directly or indirectly.” The Guidebook further establishes, in Module 4 §4.3, that “[a]uction is a tie-breaker method for **resolving string contention among the applications within a contention set**, if the contention has not been resolved by other

¹ See e.g. Elisa Cooper, [Letter from ICANN Business Constituency to New gTLD Program Committee](#) (October 22, 2013); Governmental Advisory Committee, [GAC Communique Beijing, People’s Republic of China](#) (April 11, 2013) (“[S]ingular and plural versions of the string as a TLD could lead to potential user confusion”); Thomas C. Indelicato, [Verisign Reply Comments on Proposed Review Mechanism](#) (April 3, 2014) (“Verisign joins with others such as the BC, the IPC and the GAC in calling on ICANN to revisit and reverse its decision to allow singular and plural versions of the same string to proceed to delegation”).

means” (emphasis added). Thus, the Guidebook explicitly mandates singular contention sets, and singular auctions for resolving **all** contention, not merely direct contention, among **all** applicants within a contention set.

However, the Guidebook does not specify any particular auction methodology for resolving indirect contention. The Guidebook does acknowledge, in Module 4 §4.1.4, that “where there are both direct and indirect contention situations within a set, more than one string **may** survive the resolution,” (emphasis added) and, in Module 4 §4.3.1, it further acknowledges that “when a sufficient number of applications have been eliminated so that no direct contentions remain (i.e., the remaining applications are no longer in contention with one another and all the relevant strings can be delegated as TLDs), the auction will be deemed to conclude.” Given the collective ambiguity and conflict inherent in the above language from the Guidebook, ICANN and the stakeholder community are presented with a fundamental choice as to merely awarding the maximum number of new gTLDs in all contention sets, versus minimizing user confusion, and resolving all string contention, not merely direct contention, among all applicants.

Concept for Indirect Contention Auctions

The Proposed Concept for Indirect Contention Auction pits a single applicant, typically a successful string confusion complainant, against all other applicants, rather than pitting all applicants equally against each other as described in the new gTLD Applicant Guidebook. This does not seem appropriate to us, particularly for situations where successful string confusion objectors were attempting to limit user confusion by trying to prevent the co-existence of singular and plural versions of the same TLD.

Accordingly, Google Registry maintains its position that ICANN should, as set forth in the Guidebook, place all applications in a contention set, whether through direct or indirect contention, into a single grouping for the purposes of the auction procedure.² A single contention set, where all applicants bid directly against each other in accordance with the standard auction rules for new gTLDs, remains the fairest and most predictable manner in which to handle indirect contention between applications, and it also removes much of the undue complexity contained within ICANN’s Proposal.

The “feasible set” concept ICANN introduces in their Proposal is an artificial construct which is designed to facilitate the allocation of as many strings as possible, despite the fact that

² See Google Registry, [Public Comment on New gTLD Auction Rules](#) (January 14, 2014); see also Google Registry, Public Comment on Framework Principles for a String Confusion Objection Review Mechanism (March 11, 2014) citing Guidebook Module 4 §4.1.1 and 4 §4.3 (“Two strings are in indirect contention if they are both in direct contention with a third string, but not with one another” and “[a] contention set consists of all applications that are linked by string contention to one another, directly or indirectly,” and “[a]uction is a tie-breaker method for resolving string contention among the applications within a contention set, if the contention has not been resolved by other means”).

consumers will likely be harmed by the coexistence of singular/plural versions of the same string. At the time the new gTLD objection window opened, specific rules regarding indirect contention simply did not exist. At the time of applications, many community members logically (but incorrectly) assumed that ICANN would determine that singular and plural strings would be deemed “confusingly similar” when the applications were reviewed by ICANN. When this did not take place, many applicants for nearly identical strings were unaware that they might need to file multiple, redundant objections against a single applicant in order to create direct contention between all applications in a contention set. ICANN's proposal exacerbates this problem by unfairly weighting the complex auction process against successful string confusion objectors.

Given the confusion around singular and plural strings, Google Registry maintains support for a single, straightforward auction for each contention set, where all applicants bid directly against each other on equal footing and thus limiting the user confusion concern singular and plural strings present. As such, we request that the concept of “feasible sets” be removed and replaced with a simple mandate for only one successful applicant to emerge from each contention set, including all direct and indirect contention.

Auction Design for Indirect Contention and Auction Rules for New gTLDs: Indirect Contention Edition

The negative impact of the Proposal on successful string confusion complainants is clear in the underlying methodology of the Auction Design for Indirect Contention, as well as the Auction Rules Indirect Contention Edition. “Feasible sets” composed of a single application are referred to within the Design as being “positioned worse” in comparison to the “feasible sets” composed of more than one application. This means that in many situations successful string confusion objectors are “positioned worse” because they must ultimately surmount the sum of the total bids within the competing feasible sets. This concept is introduced in the Design as the “second-price” rule, or alternatively as the “second price principle” in the Rules.

The “second-price” rule within the Design is meant to “maximize the incentive of truthful bidding.” However, awarding multiple strings on a proportionate share basis clearly incentivizes minimalist bidding within feasible sets composed of multiple applicants. For example, applying monetary values to the complex scenario depicted in Figure 3 of the Design, the applicant in the C position is clearly incentivized to open and exit with a nominal amount, possibly only one dollar token bid, or not bid at all, in anticipation that one of the many other applicants in an Ax position will ultimately outbid the applicant in the B position. Specifically, C can bid one dollar exiting in the first round, and Ax can bid ten million dollars through several subsequent rounds, together defeating any bid up to ten million and one dollars by B. In this scenario, both Ax and C are winners with C being the “lucky loser” and pays only its proportionate share of the start of round price, rounded up to the nearest dollar. Rather than squarely acknowledging or addressing this imbalanced and improper incentive, examples within the Design consistently show applicants in the C position bidding hundreds of

thousands of dollars through multiple rounds, which we do not feel is likely given the auction design. In addition, although the slide deck for the explanatory webinar held by ICANN on December 3, 2014 did acknowledge this sort of minimalist “lucky loser” scenario, no substantive discussion was offered or introduced.

The negative impact towards successful string confusion objectors is further established in both the Design and the Rules in that the auctioneer is empowered to disclose their contention set positions and identities upon their exit from the auction. This is described in the Design as having “no remaining direct contention” with the reasoning given as “treating bidders symmetrically.” Despite the fact that Google Registry stands to benefit from such disclosures in certain contention sets, we strongly oppose this sort of disparate treatment, and we feel strongly that all bidders (not just remaining bidders in a certain round) should be treated with parity at all times. Accordingly, if ICANN insists on proceeding with the “feasible set” concept, we recommend that ICANN not disclose this information and stop at merely preventing further bids from applicants that are already clearly successful.

Finally, in concluding that “the current recommendation adheres closely to both the letter and the spirit of the [Guidebook]”, the Design overlooks a simpler solution through the logical extrapolation of string confusion determinations to an entire contention set, in order to achieve a single, straightforward auction for each contention set, where all applicants bid directly against each other on equal footing. As established above, such a solution, which Google Registry continues to support, tracks more closely with the Guidebook.³

Conclusion

While we appreciate all the hard work by ICANN staff and by Power Auctions LLC in formulating auction rules for indirect contention, we feel strongly that fundamental changes need to be made in the interest of fairness and parity towards all applicants, and particularly towards successful string confusion complainants.

Sincerely,



Sarah Falvey
Policy Manager and Primary Contact
Google Inc.

³ Indeed, in a twist of semantics, the Design is forced to actually redefine what it means “to exit the auction” in order for the “feasible set” concept and “lucky loser” scenario to comport with the Guidebook prohibition against bidder revival. See Guidebook Module 4 §4.3.1 (June 4, 2012) (establishing that “[i]f a bidder exited the auction in a previous auction round, the bidder is not permitted to re-enter in the current auction round”).