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Tripti Sinha
Chair, ICANN Board of Directors
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536
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March 28, 2023

Re: Subsequent Procedures PDP Public Comment

Dear Tripti,

I am submitting this comment as President/Director and Founder of Right of the Dot, LLC (ROTD), an Internet consulting and advisement firm specializing in selling, brokering, acquiring, auctioning, appraising premium domain names in new and existing TLDs, digital assets and digital real estate. We also specialize in strategy, board advisement, premium domain/NFT and market positioning, sales, stealth acquisition, and consulting services. We are the only company accredited with a professional auction business license specific to the domain name and digital real estate industry.

As a certified auction provider¹, we offer a full suite of auction formats including increased bid auctions (English Auctions), decreasing price auctions (Dutch Auctions) and Vickrey Auctions (a type of sealed bid auctions where bidders are unaware of the bids of other participants). I personally served as the Founder and CEO of Moniker.com, President of SnapNames.com and on the executive team of Oversee.net / DomainSponsor.com. In years past, I, along with my development teams, invented, pioneered, and was responsible for Industry Innovations such as the Domain Name Aftermarket, Whols Privacy, Domain Theft Protection, Registrar Bulk Domain and DNS Management, Bulk Domain Registration, Domain Evaluation and Appraisals, Domain and Digital Asset Escrow Services, Domain and Digital Asset Brokerage, Live and Online Auctions, and much more.

ICANN Board and Community Concerns Regarding Private Auctions

As stated in the Operational Design Assessment,² the ICANN Board and SubPro PDP Working Group raised concerns on how permitting private auctions in future rounds may have the potential for misuse and/or gaming, based on experience from 2012. Specifically, the Board noted in its submission to the initial report: “applications should not be submitted as a means to engage in private auctions, including for the purpose of using private auctions as a method of financing their other applications. In particular, we are concerned about how gaming for the purpose of financing other applications, or with ICANN | New gTLD Subsequent Procedures Operational Design Assessment (ODA) no intent to operate the gTLD as stated in the application.”³ Additionally, the Working Group “further considered that in the future, former 2012 applicants and potential new applicants will be aware that certain parties benefited from losing private auctions in the 2012 round, which will therefore become an incentive for potential applicants to submit applications for purposes other than to operate a gTLD.”

¹ Our Auction License can be viewed at: <https://rotd.com/> I am referred to and recognized as THE expert in auction theory as it relates to domains, TLDs, and digital assets. As one of the only domain and digital asset licensed auction companies in our industry, I/RightOfTheDot, LLC have also been involved in, overseen, and conducted thousands of online and live auctions resulting in more than \$570,000,000 in domain sales and transactions since 1999.

² See <https://www.icann.org/en/system/files/files/subpro-oda-12dec22-en.pdf> at p. 180-181 (“ODA”)

³ <https://www.icann.org/en/system/files/correspondence/chalaby-to-langdon-orr-neuman-26sep18-en.pdf>



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In its public comment on the Subsequent Procedures PDP Initial Report, it stated that:

...the Board believes that applications should not be submitted as a means to engage in private auctions, including for the purpose of using private auctions as a method of financing their other applications. This not only increases the workload on processing but puts undue financial pressure on other applicants who have business plans and financing based on their intention to execute the plan described in the application. In particular, we are concerned about how gaming for the purpose of financing other applications, or with no intent to operate the gTLD as stated in the application, can be reconciled with ICANN's Commitments and Core Values.⁴

In an attempt to address these very real concerns, the Subsequent Procedures PDP recommended that applicants truly have a *bona fide* intent to operate a gTLD Registry when it applies for a TLD. In addition, they recommended a number of new transparency requirements requiring certain disclosures if there is a private resolution of a contention set. However, we believe that this will not truly eliminate or mitigate the very real concerns expressed by the ICANN Board and the Community.

The ODA recommended that the ICANN Board, "... could also consider instructing ICANN org to seek third-party expertise in auction design to assist in determining alternative methods to disincentivize applicants from applying for gTLDs with the purpose of financial gain through private resolution of contention sets, including, but not limited to private auctions."⁵

Proposed Solution by Right of the Dot: Sealed Silent Second Place Auction

Right of the Dot has that third party experience in auction design, having administered many of the private auctions for the 2012 new gTLD round as well as serving as the domain name industry's sole licensed auctioneer that has sold more than \$570,000,000 of domain names since 1999.

ROTD assisted the SubPro PDP in its work to understand some of the mechanics of both public and private auctions and listened to the concerns of the WG. It became apparent that to us that if ICANN were to implement a Sealed Silent Bid Second Place Auction for TLDs where the highest bidder becomes the winner but pays the second highest bid price using the high level processed outlined below, this would eliminate the risk of using private auctions purely for financial gain.

In the Sealed Silent Second Place Auction, all applicants would submit their bids at the time it submits its new gTLD application rather than waiting until the end and the resolution of contention sets. Alternatively, ICANN could collect these bids after all applications are submitted, but after it identifies which applications will be part of a contention set. However, in either case, it is important that neither the identity of the applicants nor the contents of their applications not be disclosed until after all applicants in a contention set have submitted their bids.

ICANN could choose to reveal the winner of the auction prior to the rest of the evaluation process

⁴ See <http://mm.icann.org/pipermail/comments-gtld-subsequent-procedures-initial-03jul18/attachments/20180926/a3fc7066/2018-09-26CherineChalabytoCLOandJeffNeumanBoardCommentonSubproInitialReport2-0001.pdf>.

⁵ See ODA at p. 183.



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(thereby only needing to review the successful auction applicant), or it could proceed with the evaluation process (including objections, comments, etc.) and reveal the successful applicant at the end of the process. However, for economies of scale, we believe the former approach would save a lot of time and resources especially if the successful auction winner also passes the rest of the evaluation processes. As with all of the ICANN Auctions in the prior 2012 round, the Auction proceeds would be utilized by the ICANN and Internet communities as opposed to the new gTLD applicants themselves.

Not only would this mitigate the concerns expressed by the community that applicants would apply purely to receive a financial benefit from NOT being given a new TLD registry, but we believe that this would also reduce the overall costs for applicants in that it would likely prevent overbidding for a gTLD (as can occur in normal rising scale auctions). A sealed silent bid second-place auction would offer a number of key benefits. Firstly, the process would allow for more realistic bids as participants would be encouraged to bid conservatively, which would in turn restrict overbidding. Because bids are sealed, no participant knows who and what price any other participant is bidding. Because the sealed bids are submitted at the beginning of the application process when applications are submitted, no party knows who any other party is when applying for the TLD.

Conclusion

In summary, a Sealed Silent Bid Second-place auction would encourage more reasonable bidding practices, allow for greater fair play, and increase the overall effectiveness of the TLD auction process. It greatly increases the overall success rate of the application process and would save a considerable amount of time and money in resolving contention. In addition, under this auction process, there is no reliance on participating in an online or live auction, connectivity issues, or language translation. As such, we strongly encourage you to consider implementing this innovative approach in the upcoming TLD application round.

ROTD understands that the use of this form of auction mechanism also impacts other parts of the new gTLD application process including public comment periods, objections, GAC Early Warning and Advice, Community Evaluation processes, etc. and has been thinking about how to incorporate each of these into this new auction process. In short, it believes that under the new auction system, each of these processes can be incorporated seamlessly.

We stand ready and willing to assist ICANN with further consideration of this proposal as well as with its implementation.

Sincerely,

Monte Cahn
President /Founder
Right of the Dot, LLC

Cc: Sally Costerton, ICANN Interim President & CEO
Karen Lentz, ICANN VP Policy Research & Stakeholder Programs
Becky Burr, ICANN Board Member
Avri Doria, ICANN Board Member