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Maarten Botterman
Chair, ICANN Board of Directors
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536
USA

May 28, 2021

Re: Subsequent Procedures PDP Public Comment

Dear Maarten,

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 provider, 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. Through these ventures, we have managed more than 10,000,000 domain names, been involved in more than 1000 live and online auctions and \$560,000,000 in domain names, digital real estate, and asset sales since 1995. Because of our unique experience and knowledge of both domains and auctions, we were an active participant in the 2012 new gTLD Program and assisted a number of entities in privately resolving their contention sets through consultation and auction.

More specifically, we have been following the work of the New gTLD Subsequent Procedures Policy Development Process closely over the past five years and assisted the PDP Working Group on the topic of Private Resolution of Contention Sets. In fact, we were the **only provider** of such services willing to participate in the multi-stakeholder process and presented information on our services as well as best practices to resolve contention based on current auction theory. It is our understanding that none of the other providers of such services other than us responded to the PDP Working Group's call for information. We commend the Working Group for its careful consideration of the enormous amount of issues it considered.

Our comments relate to Topic 35 (Mechanisms of Last Resort/Private Resolution of Contention Sets). Although not all of the recommendations got consensus from the GNSO, we note that even the ones that didn't still had strong support. And it is clear that when the next round launches, these issues and opportunities still must be addressed. It is therefore with this in mind that we provide the following comments.

Right of the Dot, LLC

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First, we applaud the PDP Working Group's affirmation that as a last resort must be resolved through auction. Although there is no perfect way to ultimately handle contention sets, auctions provide a balanced mechanism that accurately reflects the value of the TLD in the minds of those seeking to administer and operate the TLD. We also agree with the notion that prior to any last-resort auction, parties should be able to, if possible, work out arrangements amongst themselves to resolve the contention sets, including the ability to create joint ventures and other vehicles that may allow for joint ownership of these important assets. And, we support that any resulting changes to applications as a result of such combinations must be made available for public comment, objections, etc.

Second, we also support the notion that all applications be submitted in good faith and with an intent to operate the gTLD. It is clear in the last round, although not originally intended, some applicants recognized that they could profit off of losing auctions that were handled privately. We believe that the 2012 applicants all intended to operate their TLDs (if they prevailed in the contention sets), but we are concerned that future applicants may try to take advantage of this unintended consequence and therefore we should only encourage true bona fide applications.

However, we want to focus the Board on Recommendation 35.4 dealing with the actual mechanism of the Last Resort Auction. Although this was not one for which there was consensus, we do note that the recommendation had **strong support**. Much of this recommendation was derived from our presentation as experts on auctions to the Working Group. And although the entire recommendation was not included in this comment period, we believe that there are parts of the recommendation that should nonetheless be implemented.

- a) All Auctions of last resort must be conducted using the second-price auction method. This is what ICANN used during the 2012 New gTLD Round and we believe had the recommendation been split within the Working Group, this part would have had consensus.
- b) ICANN Auctions should use a sealed bid process. We understand that this potentially limits the strategic bidding of portfolio applicants, but we believe it will also reduce gaming and artificially driving up the price. Sealed bids are VERY common in auctions of public resources and we see no reason for drawn out escalating price auctions. The sealed bid auction method also eliminates the need to rely on internet connectivity, the learning of an auction application and system, and the time and expensive resources needed to participate in an online auction event which generally took multiple hours and even days to prepare and participate in.
- c) We offer no view at this point in time as to whether such sealed bids should be collected before or after contention sets are revealed. We see the merit of the multiple sides of this issue and therefore offer no comment.

Finally, we strongly support the Working Group's recommendations regarding transparency of processes. As the latest decision by the Independent Review Panel clearly demonstrates, when information is hidden, despite the best of intentions, the legitimacy of the process breaks down.



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Therefore, prior to any auction of last resort, ICANN must impose terms and conditions that clearly identify the applicant, its backers, and whether there are any arrangements that would transfer ownership of the top-level domain after the auction. Only through transparency can we build trust, and in turn legitimacy.

We again applaud the community in its hard work and diligence thus far and recognize that although there is more we must do to make the next round a reality, we want to offer our help in those areas for which we specialize which include live, online, and sealed bid auction types in various formats.

Sincerely,

A handwritten signature in black ink, appearing to be "MC", with a long horizontal line extending to the right.

Monte Cahn
President / Founder
Right of the Dot, LLC