



# **Comment on Proposed New gTLD Auction Rules for Indirect Contention Sets**

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**Business Constituency Submission**

**GNSO//CSG//BC**

## Background

This document is the response of the ICANN Business Constituency (BC), from the perspective of business users and registrants, as defined in our Charter:

The mission of the Business Constituency is to ensure that ICANN policy positions are consistent with the development of an Internet that:

1. promotes end-user confidence because it is a safe place to conduct business
2. is competitive in the supply of registry and registrar and related services
3. is technically stable, secure and reliable.

## Comment

The ICANN GNSO Business Constituency (“BC”) welcomes the opportunity to comment on the proposed new gTLD auction rules for indirect contention. While the BC appreciates the time and effort taken by ICANN staff and Power Auctions LLC to formulate auction rules for indirect contention, we feel that fundamental modifications still need to be made to the process in the interest of fairness and parity towards all applicants.

The current 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<sup>1</sup>. This practice unfairly tilts the scale against successful string confusion complainants attempting to protect consumers from confusingly similar new gTLD strings. This is particularly inappropriate where the contentions involve singular and plural versions of the same TLD,

The BC has repeatedly urged ICANN to address the serious problems created by allowing both singular and plural forms of the same TLD string:

[Concerns with allowing both singular and plural forms of new gTLDs](#) (October 2013)

[Letter recommending Appeal Process for String Confusion Objections](#) (December 2013)

[Proposed Review Mechanism for Inconsistent Expert Determinations on String Confusion Objections](#) (March 2014)

As set forth in our previous comments, we continue to believe that allowing singular and plural versions of the same TLD string will confuse users and create vulnerability to spoofing and phishing fraud. It will confound efforts by registrants to build awareness of their new domains in new TLDs. And it would set a

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<sup>1</sup> See Guidebook Module 4 §4.1.1 and 4 §4.3, simply stating that an “[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.”

“Contention” is defined to include both direct and indirect contention sets: “[a] contention set consists of all applications that are linked by string contention to one another, directly or indirectly.”

troubling precedent for future gTLD rounds, where applicants could file for plural versions of existing TLDs or new TLDs approved during the present expansion.

***The proposed Concept for Indirect Contention Auction not only fails to address this problem, but will compound it by creating additional hurdles in the auction process for successful string confusion complainants.***

It does so through the application of “feasible sets,” which are designed to facilitate the allocation of as many strings as possible, rather than limit the allocation of strings through the logical extrapolation of string confusion determinations onto an entire contention set. Thus, as presently envisioned, ICANN’s Proposal will significantly increase the odds that certain singular/plural TLDs will be delegated.

Moreover, it will also create an undesirable standard for future gTLD rounds, requiring multiple redundant objections to be filed against a single applicant in order to ensure direct contention between all applications in a contention set. Both results would undermine the credibility of ICANN and the new gTLD program with global business and user communities.

Accordingly, the BC urges ICANN to simplify the process by entirely striking the concept of “feasible sets” and moving all applications in an indirect contention set into a single grouping to bid directly against each other.

This would ensure that all applicants are placed on an equal footing during the auction, and that only one successful applicant emerges from each contention set. We strongly believe that a single contention set, where all applicants bid directly against each other, is the fairest and most predictable manner in which to handle indirect contention between applications. Such a procedure would also be consistent with the plain language of the Guidebook, which sets forth a single auction procedure for both direct and indirect contention sets. See footnote 1.

Thank you for your consideration of these comments, and please do not hesitate to contact us if you have further questions about this submission.

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This comment was drafted by Andy Abrams with help from Ron Andruff. It was approved in accordance with the BC charter.