ICANN77 | PF – At-Large Policy Session 3: Unfinished Business - The Challenges of Auctions
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YESIM NAZLAR: Hello and welcome to At-Large Policy Session 3, Unfinished Business, the Challenges of Auctions. My name is Yesim Saglam and I'm the remote participation manager for this session. Please note that this session is being recorded and is governed by the ICANN expected standards of behavior. During this session, questions or comments submitted in chat will only be read aloud if put in the proper form as I've noted in the chat. I will read questions and comments aloud during the time set by the chair or moderator of this session.

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JONATHAN ZUCK: Thanks a lot, Yesim, and thanks everyone for coming. I don't envy staff having to read that long script about standards of behavior at the beginning of every session, but one of the things I would like to add to it, just to make it longer, is that we're really on a mission to decrease the friction of non-English participation in these meetings. So what I want to ask everyone to do is take a minute right now to unfurl their headphones, turn on their translation devices, get them to the appropriate language channel, so that if someone wants to make an intervention in another language, there's not a big delay in allowing that to happen. So if you just take a second now to be ready, I'd really appreciate it.

One is English, that's right. All right, thanks, I appreciate it. So this is a session, we always try to come up with catchy titles, and there's never a universal agreement on titles, but this is broadly about how to deal with contentions between applications for a new top-level domain by two people or groups who want the same name. So what do we do to resolve that conflict? And there were some efforts that were put in place in the last round, in 2012, to address this that involved negotiation, and then there was something called an auction of last resort, which was ICANN holding an auction, and those auctions led to a pot of money that's now in the process of transforming into a grant, a grant fund for the community.

In addition to that, there was also some sort of private auctions that took place, and were highly publicized, that one applicant was essentially written a big check in order to give up their interest in a particular string, and so the optics of that, in many respects, is a bunch of rich people in the North writing checks to each other to resolve these conflicts. And as the At-Large community, and together with the GAC, we're very interested in this round and really delivering on the promise of bringing more people into this application process and into the world of top-level domains, and that's why we focus so much on applicant support and whether there's enough support, et cetera, and this is another area where it's not immediately clear how anyone but the wealthiest can play in the way that the system is sort of currently wired.

And I know that the Subsequent Procedures working group that had to deal with so many issues related to a new round sort of reached a standstill on this issue, and that work group had a kind of a mantra that if there's not a consensus to change things from the last round, then we leave them alone. But I think we're interested in trying to push that a little bit further and have this conversation be ongoing. I think in some respects those concerns are shared by the board as they've expressed. They're certainly shared by the GAC, who recently said in their own session that they would like to see private auctions banned. I don't know whether that's even possible, but at the very least to sort of de-incentivize.

And another question is how do applicants from underserved regions or communities or others that are less funded even participate in such a process? Is there a way to create a virtual bid for them or something of that sort? So that's kind of what we're trying to discuss in this session. So without further ado, I'll introduce the panel. We have Justine Chew, who's the ALAC liaison to the GNSO and has been very involved in the Subsequent Procedures discussions for many years now. And next we have Becky Burr, who is an ICANN board member, and she's my favorite ICANN board member, just to be clear. For the next hour.

And then Lars Hoffman, who is the senior director of policy, research, and stakeholder programs at ICANN. But of great importance to us is he's also the guy that's trying to wrangle everybody into the implementation of the recommendations that came out of Subsequent Procedures. How do we turn these aspirational recommendations into actual manual for applicants and for the new round? And Lars has the unenviable position of trying to herd all those cats, so that's why he's part of this as well. And we also have Monty Khan, who is the founder of Right of the Dot. He's participating remotely because he's stuck in a conference in New York.

I can't imagine what could have been more important than being here, but we're very excited to have him on board. He's been involved in many, many different types of auctions in the domain name space and has some very specific proposals for how we might move forward. And finally, Paul McGrady, who is a GNSO counselor. Is he here? He's finishing up the GNSO meeting. Paul McGrady was also very, very active in the discussions about auctions and did some work on trying to find a way to ensure that people that were applying for strings intended to run them. Because I think part of the concern, and I'm probably stepping on Justine's presentation and I apologize, is that now that we've seen what happens organically, what sort of happened by accident in the last round, might become an intention in this round of people applying without even ever having intention of running the string.

So that's been his angle on this has been to try and get people to commit to the idea they're going to run a string if they apply for one. So without further ado, to sort of give the At-Large specific perspective on this and why we think it matters to us and our community is Justine Chew. So go ahead, Justine, with whatever I've left to you, I apologize.

JUSTINE CHEW: Thank you, Jonathan. This is Justine for the record. So I think you touched on, as you said, you touched on quite a few points that I was going to raise, so I might just wrap up in five minutes or so, and hopefully Paul will be making his way over soon. So on the outset, I think I'll set the ground for the ALAC and the At-Large position on auctions in particular. Now we want to see the next round encourage more competition into the market of TLDs. So we want to see new players come into the space. We don't want to see the existing players just growing their holdings of TLDs.

So we want to encourage competition, and one of the ways is to make sure that we also include smaller players, players who are not necessarily in the field already or in the market already but might be interested in getting into the space. And this is how the applicant support program and also the communications program for the next round plays an important role. So that's meant to create awareness as well as bring in potential new interest into the space to apply for a gTLD. In particular, we are hoping to get more community-based applications as well as applicant support applicants.

Now, they are not necessarily mutually exclusive, so you probably would see that a lot of community applicants are also going to be applicants for applicant support. And we know that applicant support program is a program meant to help less well-endowed applicants or newer applicants, in fact, to come into the space. And things like helping to support the writing, navigating the complexities of the application program, application process, all those things. And just skipping over to the actual process of application and so forth. So I've set the tone about what we would like to see in terms of the range of applicants in the next round.

So if we just focus on applicant support applicants, for example, and if they were to apply for a particularly popular gTLD or a string, we should call it a string, and they find themselves in a contention set. So a contention set is basically established when we see one or more parties applying for the same string. And we do know, we are very well aware of the fact that auctions is one of the mechanisms of last resort to resolve contention sets. So I want to make the point that we know that that is only one mechanism. And before we even get to an auction -- Welcome, Paul. Before we even get to an auction, there's always opportunity for the parties that are identified in the contention set to somehow resolve amongst themselves a way out of the contention set.

So they could be, say, negotiating to start up a joint venture to maybe run the TLD together. That's one example of what we call a private resolution mechanism. So there are all sorts of options that parties might get into in order to resolve who, at the end of the day, should get the string that all of them want. But the point being that these parties, especially the less well-endowed ones, and I go back to people like parties who are like applicant support, applicants. So we know that they already require resource assistance, whether it's in the form of financial resources or extra support.

And the thing is, if they go into a contention set and they know that at the end of the day, if they aren't able to resolve things privately, they can fall back on this mechanism of an auction as the last resort to resolve contention set. But if you say that going into an auction would require more resources, so we're talking about money at the end of the day, right, so if you think about a typical auction, you have to have the funds in order to participate in the auction. And therefore, is that really a fair choice or a fair way to resolve things if you're talking about a normal sort of auction, which is typically what the ICANN auctions of last resort is. It's basically an increasing bid auction.

So if you put a qualified applicant support applicant, in that situation, are they really able to compete fairly in order to support their seeking the string? And my answer would be not really, because if they were forced to at the end of the day get into an auction, then it's just a question of who has the deepest pockets to win, to outbid each other to win the string. So from that respect, the At-Large community and ALAC would like to see some changes being made to address this kind of imbalance or unfairness, really. And the other aspect of it, obviously, is gaming, and I think this is Paul's favorite subject, gaming, so we're going to hear from him later on.

The other thing about it is that, and Jonathan has mentioned this, in the last round, there were certain parties, whether it was intentional or unintentional, never mind, that's beside the point, but there were incidences where parties were basically resolving contention sets privately, and they in fact entered into some form of private auctions, by which, the highest bidder won, and so forth, and the proceeds of those private auctions was never out in the open, and they don't actually fall into ICANN's pockets or anything, because it's not an ICANN auction of last resort. So anything that's resolved privately doesn't come into the radar of ICANN and doesn't come into the pockets of ICANN. So when I say pockets, I have to be very careful and qualified.

If the auctions was an ICANN auction of last resort, then the proceeds end up being managed by ICANN, so it goes into the coffers of ICANN, and it's not spent by ICANN, but it's managed and held in trust by ICANN, and as we see, there is now, there was a PDP across community working group on auctions proceeds, so that's where the money went. And now we have an ICANN grant program that taps into that proceeds to fund projects for the benefit of the community. The other thing about, and going back to applicant support, applicants, so the question is, is ICANN auctions of last resort the best and the fairest way to conduct an auction, insofar as applicant support applicants are concerned? That's one thing.

The second thing is the Subsequent Procedures PDP has also recommended, and I believe this has been approved by the board, a mechanism called a multiplier bid. I think it's called a multiplier bid. But ostensibly that means that if a qualified applicant support applicant, were to be forced to participate or chose to participate in an auction, an ICANN auction, they would have the benefit of a multiplier bid in a sense, and I'll give you an example. So if they were to bid $1, the multiplier could be a times four multiplier, so there the equivalent of $1 would be $4 in actual fact in the bid.

Now the multiplier itself, the factor hasn't been decided, but there is this mechanism of a bid. We're not quite sure how that's going to work either, and so that's why we're having this session to come up with ideas, and we're going to hear from several parties on the mechanics of this auction. So I leave that thought with you. Thank you.

JONATHAN ZUCK: Thanks a lot Justine, and welcome Paul McGrady, who we heard about earlier and will be speaking shortly. I'd like to go to Becky next. In a way, maybe two tasks. One is to talk us through the position the board is in, in terms of mechanically what happens next and how they address these particular recommendations from the GNSO and what processes you have to go through to deal with this issue, and then maybe outline some of the concerns that the board itself has voiced in this area.

BECKY BURR: Thank you, Jonathan, and thank you, Justine, and greetings to everyone. I think Sarah was asked to be here, but Sarah is about to become a grandmother, so she wanted to preserve her ability to get on a plane and go home and see her first grandchild be born. So Sarah, your second choice, but I'm happy to be here. As Jonathan mentioned, the SubPro PDP did not develop policy recommendations on private auctions. This was an issue that they debated in great detail, but were not able to come to any final agreement on that, and so there are no recommendations.

There are, in some of the recommendations, there's actually a reference to private auction, and the board was concerned about that reference. I don't even know which section. It's a reference to private auctions that comes in there, and the board was just concerned that there was somehow the possibility that this could be mistaken to set policy, but we have asked for and expect to receive a clarification from the GNSO Council that the SubPro recommendations contain no policy recommendations one way or another with respect to private auctions.

Of course, that means as a practical matter that right now, unless some other steps are taken, there can be private auctions, and the board is concerned about private auctions for many of the reasons that Justine identified. We can assume that every single person who participated in the last round came in with a good faith intention to operate the strings that they applied for, but we now have real live demonstrations of how you can use that process to actually finance your applications, and the board is quite concerned about that and is very unsettled about the prospect of private auctions.

At the same time, the board has no strong notion of how you could actually prevent it. You could go ahead and the board could say no private auctions. That would be perhaps a nice sentiment. Some people would be happy with it, but there really is no way of enforcing it, and as a fundamental principle for this and all things ICANN, the board is not willing to accept commitments and to enter into contracts where it gets commitments from applicants, for example, that it can't enforce. So that carries over all the way across the board. If we can't enforce it, we don't want it in the contract. We do not want to hold out a promise to the community that something is not going to happen when we can't prevent it from happening.

So what the board will do is engage, or actually, org is engaging an economist with deep expertise in auctions to help us understand whether there are any tools that we could use to disincentivize auctions, whether there are any tools that we could use to prohibit them if we were inclined to do that, although that would probably take some policy there. But what we are doing is reaching out for expertise in order to bring on board the best thinkers with the best expertise on auctions to tell us how to deal with this going forward. We don't have that advice yet, but it is something that is coming along, and as I said, the board has clarified and confirmed with the JNSO council that nothing in the recommendations is intended to be a policy that establishes that there can be private auctions.

I want to talk a little bit about what brings us to this, and that is, as Justine said, the contention set. And the board is of the strong opinion and has articulated this to the GNSO that one of the ways to resolve this is to not have contention sets, and one of the ways to not have contention sets is to move out of a round situation and get to a steady state as soon as possible. So we have been very clear with the GNSO council that it is our goal to get to a steady state as quickly as possible and eliminate the contention set problem.

There are lots of complexities with that. I think they principally come from when the recommendation is you must have rounds for receiving applications as opposed to, for example, and this is just Becky thinking off the top of her head, we're going to accept recommendations all along in a steady state, you're going to get in a queue, and you're going to be in order, and every February 2nd, we're going to open up a period of review.

So there are rounds of reviews so that you guys don't have to spend your entire, every waking moment looking to see whether a new application has been submitted that you want to object to or something like that. So we do understand that getting to a steady state can't mean that everybody in the community who has an interest in, who is a stakeholder here and wants to express an opinion on that has to be on guard 24 hours a day, 365 days a year. But if you said as I said, you establish periods of review batching, that might be a way to address that.

Now that's all great, but the first thing that happens is we're going to open up a round because there is pent up demand and so there are going to be contention sets. And we've gotten, we have said, and I will say again that the board is deeply committed to having an effective applicant support program. The board recognizes that the applicants who have support program in 2012 was not effective. We can commit that our goal is to have a better program and we were asked in the GAC today if we had metrics for that and we don't, but we will because that was a really good idea. We should be going in there and saying up front what we think a successful applicant support program would look like and what it would produce on the other end.

There are lots of ideas like the bid credit idea. There are, we want to encourage as much creative thinking about applicant support as any of you can come up with. That issue is still open. There is a recommendation in the GNSO recommendations regarding support in the form of paying lawyers and paying consultants. And I have to say we're really uncomfortable with direct payments in support of applications because essentially ICANN paying for people to write applications that it is then going to judge.

Having said that, there's nothing other than that off the table. So please put on your thinking cap and come up with ways to do it. One of the things that we talked about, and I know this isn't exactly about private auctions, but I think it goes to the concerns here, is we had this pro bono support available and it was a bunch of American lawyers, which doesn't help you if you're not sitting in America writing if you're sitting someplace else far away writing an application for an IDN, an American lawyer is probably not the best, not what you need, or an American grant writer. So we want to reach out to organizations, to governments, to bar associations around the world and get that program really beefed up.

But as I said, financial support in the form of bid credits and the like is also something that we can entertain, just not direct payments. So bottom line, we share your discomfort with private auctions. We would like to get to a situation where it's not an issue because we're in steady state as quickly as possible, and we would like to bring on board the best expertise that we can to help us understand auctions and to identify ways to disincentivize the private auctions and the like. So the issue is very much an open issue for the ICANN board. But as I said, we're not going to accept any policies that we can't enforce, and we haven't figured out a way yet to prohibit private auctions. If you guys have an idea, you can bring it to us, but we haven't gotten there yet.

JONATHAN ZUCK: Thanks a lot, Becky. Lars, this may be very early to be asking you questions about this, but given the timeframe for implementation and things, does that suggest a time range in which we need to be trying to resolve this issue? How do you grapple with issues in the implementation process that have this kind of fuzzy resolution at the current time?

LARS HOFFMANN: Thank you, Jonathan, and thank you for having me. That's an excellent question. So we have a timeframe of finalizing the applicant guidebook. As you said, it's between 15 and 24 months. So by that time, the resolution of contention sets needs to be resolved, obviously. As Becky said, there's no recommendations on this matter on private resolution of contention sets in the current recommendations. And in the 2007 round, there was also no recommendation on that. There was implementation guidance that suggested there should be ways for applicants, Becky referred to this, and I think Justine as well, to resolve among themselves. It doesn't mention auctions or any specific mechanism.

I think at the time, the PDP, in fact, was talking about joint ventures, was I think the idea they had in mind when they wrote that guidance. We know that some private auctions did take place in the last round. I think from a policy implementation perspective, therefore, as pointed out, we have no policy on this. ICANN org most certainly cannot make policy. We are waiting for, as Becky said, some experts that we have engaged to provide us with some ideas. Very much welcome also, as Becky said, from the community, any input on how this can be done. It's not easy. We've been trying to think about this as well. We have not come up with a panacea yet how we can resolve that issue to everybody's satisfaction.

Another idea was, for example, to allow changes to the string. So if you are in a contention set, you can change your string. The PDP working group, I think, did not see eye to eye with that suggestion. I think they had discussions about that and did not think that was a good idea. So we'll continue to explore options around that. But until we have concrete guidance from the board or through the community process, I think we are going to develop a process that is based essentially on the recommendations that we have, as far as ICANN go. We will develop that together with the IRT as part of the implementation process. I know that's not a particularly concrete answer at this moment, but there's no concrete policy yet.

So we are waiting for more input, and hopefully that will come sooner rather than later. What I can say to maybe preempt a question is that Becky talked about the engagement of experts that is underway, and we expect to hear back from them within the next couple of months. So it's certainly a topic that we intend to bring to the IRT sooner rather than later, because we expect then not to be a pre-baked final solution, but a starting point for discussion. I hope that's helpful. Thank you.

JONATHAN ZUCK: Thank you very much. Thank you, Lars. I'd like to turn to Paul now for kind of a different perspective. I think he's expressed some concerns with too many rules impacting innovation in this space and different business models that might flourish in the new round and things, and instead focused some of his efforts on kind of ensuring that people who apply for strings intend to run them, and that maybe that's getting at the root instead of the mechanism a little bit. So I want Paul to kind of share some of his perspective on this issue as well. Thanks.

PAUL MCGRADY: Thanks, Jonathan. Paul McGrady here. And so this auction issue consumed an enormous amount of time in the PDP working group. We came up with all kinds of ideas, and some of them made it into the recommendations and some did not. Some of them didn't make it past council, and some did. But the underlying operating assumption in the working group was that if the working group didn't propose a change, then the status quo of the prior applicant guidebook would govern. And so as the board takes up this issue, the board's very diligent, and I'm sure they will look at all the things that the PDP working group talked about and either adopted or discarded, and what the council talked about and either adopted or discarded, so that we don't end up in a situation where essentially the board makes policy even though the PDP working group talked about it.

So I'll just leave that there. It's not like this is out of thin air. There's a big history here, and a lot of this stuff really did get the full light of day. One of the, and I would like to claim that I came up with this idea, but it's really lost to history who came up with the idea. And to a certain extent, the United States Patent and Trademark Office came up with this idea. But one of the things that emerged was this idea of a bona fide intention to actually run the registry, and that was baked into, I think it was recommendation 35.3, if I'm remembering correctly. And the idea behind that is that there are certain indicia. If somebody applies for X number of strings and the overwhelming majority of those end up in private auctions and they leave the process with a big bag of money, it may have been their intention to make a big bag of money, and it may not have been their intention to to run a single registry.

And they may end up being awarded a registry or two that they really didn't want to run. They just wanted the money, and they don't know how to run a registry, and they don't really have a good plan. And then those registries are then sold downstream further on. It's sort of the difference between somebody that wants to go see Taylor Swift and somebody that just wants to make $50,000 out of pretending to want to go see Taylor Swift. And so the working group did talk about that idea as a way to sort of deal with this at the root of the problem so that applicants would at least be hesitant that they would that they would end up putting their application fees at risk if the indicia pointed towards filing these applications just to make money on them.

And so that's was the sort of the big idea on that. There are other smaller ideas, and Becky's pointed out that the council, and this, so I'm, by the way, I should back up and say, this is Paul only. This isn't the council. This is not the small team on SubPro, nothing like that, just Paul. But I, what's that?

JUSTINE CHEW: I can keep you.

PAUL MCGRADY: But I do think it's highly...

JONATHAN ZUCK: It's a matter. I just want to...

PAUL MCGRADY: Thank you so much. But I do think it's likely that the council will do what the board is signaling they would like for us to do, which is it's likely that we will say that when we use the words private auction and the recommendations, we didn't mean to either speak them into favor or to speak them into a ban. That wasn't the purpose of it. We weren't making policy that private auction should be allowed or should not be allowed. And hopefully that gives the board some comfort to keep moving this forward. That having been said, however this turns out in the community, I would like to advocate a little bit for a lightweight touch because there's two things. One to a certain extent, this is, there is a marketplace. And we've got some safeguards baked into these recommendations.

On the other hand, we do want to create enough space for innovation. I'm not an ICANN board member, but I would feel a little bit uncomfortable creating an environment where it appears that they're picking the winners and the losers. And there's some questions around mission, I think, involved in that. And the board's very careful and they'll do a great job. I have no doubt about that. But on this issue, it's a highly sensitive one in the community. And so I don't know, Jonathan, if I should be saying anything more than that other than that the PD -- just to remind everybody, the PDP working group really spent a lot of time on this. And I think where it ended up should be given some level of deference or else we wasted a lot of weeks of our lives that we could have been spending on other things. So how's that?

JONATHAN ZUCK: Well, that's great, Paul. Thank you so much for coming here. Obviously, the At-Large community is trying to find a lot of creative ways to expand the pool of applicants and increase the opportunities for success beyond the kind of usual suspects from the last round. And so I think that's going to require a lot of different threads, I think, on our part to try and advocate on their behalf. Our final speaker, who I think we have online, is Monte Cahn. And hopefully you're wearing a cape right now because I think you think you have the answer, the solution to this problem. So I wanted to give you an opportunity to air that solution out to the group. Monte, are you with us?

MONTE CAHN: I sure am. Thank you, Jonathan. And to your point, I wish I was there. I wish there was two of me. But I'm in New York City at the A2IM conference, helping to grow .hiphop, which is my other hat. As most of you may know, or maybe you don't know, I've been in the domain name industry since 1995. I've been a licensed auctioneer in the space since 1999. I've conducted probably more auctions and generated more seller revenue from auctions than all the companies in the space combined. I'm an expert in auction theory. And I think I do have some recommendations. But I'll go through the four most popular types of auctions, some of which were played out in the last round.

For transparency and clarity, I did participate as an auctioneer in the last round, helping to resolve contention sets. And I've helped many of the winning application strings sell many of their premium names in auctions and brokerage as well. So with that said, I will walk through the four most popular types of auctions. There are several other auctions, but these are probably the four most applicable auctions for what we're trying to accomplish here, I would think. As everybody knows, an auction is a system or process of buying and selling goods or services by offering them for bidding, allowing people to bid and selling to the highest bidder. There are many types of auctions, and so like I said, I'll describe four of them.

The first one to discuss is called a first-placed sealed bid auction. In this type of auction, bidders place their bid in a sealed envelope or submit them in private so that bids can be accepted via secured email or online messenger system, such as electric bids or sealed envelopes. Bids are simultaneously handed or sent to the auctioneer in a specified timeframe. The envelopes and or electronic bids are then opened up at an auctioneer's location or at a designated location, one at a time over a period of time, and the individuals with the highest bid wins and pays the highest bid amount. So that's called a first-price sealed bid auction.

This auction is considered efficient as it runs one bid. Everyone's required to just submit one bid. It does not require any additional time for continuing to bid. It requires very little auction strategy. It does not rely or require on internet connectivity, travel on behalf of participants. All sealed bids can be delivered in person or sent via secured mail, such as FedEx, certified mail, courier, et cetera, and bids can also be accepted through secured email or online messenger systems. Participants can only see who's participating at the end or at the time the bids are opened or announced and not during the bidding process. So you eliminate having to see who you're bidding against. The goal is to achieve the highest bid price to the seller in the most efficient manner in this type of bidding scenario.

The next auction type is called a second-price sealed bid auction, also known as a victory auction or sometimes referred to as a fair-priced auction. In this type of auction, bidders place their bids in a sealed envelope similar to the first price auction or submitted electronically in the same manner. Bids are simultaneously handed to the auctioneer or sent into the auctioneer over a specified period of time and then opened over a specific period of time. The individual with the highest bid in this scenario pays the second-highest bid price instead of the highest bid price. This auction is considered efficient as it requires one bid, does not require any additional time for continuing to bid, requires a a little auction strategy, it does not rely or require internet connectivity, travel time. On behalf of the participants, all bids can also be received by Federal Express, Certified Courier, et cetera. Or by messenger.

It is also called a fair-priced auction because the highest bidder pays the second-highest bid price instead of the first-high bid price. This avoids overbidding and overpaying for the auction. Participants and bidders cannot see the other participants that are bidding in the sealed bids until they are revealed. So they don't know who's participating in the bids until the bid prices are revealed. Participants can only see who's participating at the time of the opening. The goal is achieved in this auction to deliver the highest price to the seller but at the same time the fairest price to the buyer in the most efficient manner.

The third type of auction is called an ascending bid auction which some of you recognize because that was used in the bid of the ICANN last resort auctions of last round in addition to the private auctions that were placed outside the industry. In this type of auction, which is also called an English auction, bidders openly bid against each other with each subsequent bid being higher than the previous one. The auction ends when no bidder is willing to offer a higher price than the current one. The highest bid wins and pays that bid price. This type of auction requires additional time to achieve a sale as participants are bidding against each other until the winning bid is achieved.

This auction would require more auction strategy and possibly online participation or live participation on site at a designated auction location. If online participation is required, the participants would need to have knowledge and know-how on how the auction system works, operates, and also have a backup measure in case there is a loss of connectivity such as placing a proxy bid or a max bid if connectivity or internet is lost during the process. Participants and bidders can see what the others are bidding and they can see who the other participants are either by name of company or participant or by auction ID. The goal of this auction is to achieve the very highest price to the seller through competitive bidding.

The last and final auction I'll discuss is called a descending bid auction, also known as a Dutch auction. In this type of auction, the auctioneer starts with a high price and gradually lowers that price until a bidder accepts that current price. The first bidder to do so wins and pays that amount that is revealed and accepted. This type of auction requires additional time to achieve the sale as participants are waiting to place their bids and as the bid amounts descend until the process is finished with a winning bid. This auction would require more auction strategy and possible online participation just like the ascending auction as participants would have to be live in a room or live online while the bidding is continued through the auction process.

If an online participant is required, the participants may need to have knowledge and education on the auction system just like the other system and have a backup measure in case the internet is lost or connectivity is lost just like the ascending bid system that I just described. Participants and bidders can see the winning bid and they can see who's participating at all times. The goal is to achieve the highest bid price through the seller through competitive bidding in a descending order. So those are the four different auction types and I'll be happy to answer any questions regarding that and then I have some suggestions and recommendations based off of my experience of the last auction and the last round of competitive bidding and contention resolution if I may provide those.

JONATHAN ZUCK: This is Jonathan Zuck. I'd be interested in that because I wanted to have you jump to your proposal which I think is a hybrid.

MONTE CAHN: So I'm not necessarily proposing something but having so much experience in this realm both through the contention of last resort of last time and resolving private contention and also all the auctions I do in the industry. The second price sealed bid auction is used to drive the fairest bid price and the reason for that is because if you can't see who's submitting the bid and if you've submitted a bid that's over market value you are paying the second highest bid price as a last resort which protects over bidding and overpaying. And if the objective of this process is to achieve a fair price and not have people overpaying for their auction items then or their contention sets this is by theory the fairest and most common auction used in these type of scenarios.

There would be and my other suggestion is that in the case of contention sets if a bid is submitted at the time of application the bids can be opened up at the time of application at the time that they're submitted so that the winning bid only is the only application that needs to be reviewed. So there's no need to review any other application if they're not the highest bidder. So in other words you would submit you would reveal the bids first in each contention set and only the winning bid would be reviewed in application and if that person passes if that individual or that group passes the application process there's no reason to review any of the other bid any of the other applications which saves an extreme amount of time and money and cost because that was the longest process in the last contention round.

You also eliminate gaming for the most part because you cannot see who else is bidding there it avoids collusion because you don't know who's in the process since everything submitted in private and not revealed to anyone until the bid is revealed. And my suggestion is that ICANN is the only entity that accepts the proceeds from the auction as the seller and they can allocate those funds to their initiatives for global betterment for internet connectivity and so on and so forth or do that with in cooperation with donating to charity.

That also eliminates people participating to game the system to win and not have an intention to running the string or profiting from such scenario by being bought out or by winning by losing or by funding another application by losing one string to fund another. And I know that's a big concern as well. It also is the fairest auction to allow smaller parties to participate and it drives what is called the true bidding amount because there's no reason to overbid or underbid your bidding your true amount in a second price auction.

JONATHAN ZUCK: Thanks, Monte. I think one of the things that's interesting Becky in an earlier session, Aubrey mentioned the impossibility of kind of preventing a private auction. You can't disallow it but if there's no auctions in essence because these bids are part of the application process at the outset then that has the potential to even eliminate the question of auctions. We have a couple of...

MONTE CAHN: Well technically just so it is an option because...

JONATHAN ZUCK: I'm sorry yes, yes I understand that, sorry.

MONTE CAHN: There is an auction because bids are submitted but you eliminate having to go through an auction scenario where there's a long process involved where people can't come from all over the world and you also of course achieve the next goal which is application review of the winning applicant. Now of course if the winning applicant in the highest bid doesn't pass application then the fallback is then they go to the second highest bidder obviously but that you are not going to be reviewing 20 applications in a big contention set or even five in a smaller contention set. There's going to be probably one of the top two or three applications that win and get reviewed and there's no reason to review anybody else.

JONATHAN ZUCK: Thanks Monte. I think Lars wanted to say something but then I really want to go to the queue since we're running out of time quickly. We're in the queue of Sébastien, so please go ahead.

SÉBASTIEN BACHOLLET: Thank you very much. Sébastien speaking, Sébastien Bachollet. I'm going to speak in French. Thank you very much for this session. This is very interesting and I would say that for the first time we have some proposals that are being made and that can go in the right direction for the entire community. Mr. Hip Hop, I think your last proposal is very interesting and we should study what you had to offer and a question, a couple of questions and a comment. In the last round, we couldn't put applications together, joint applications. Is it something that can be envisioned, those joint applications during this new round? Because I think that's a good exit. It's a good way if two people work together, two candidates.

Secondly, the issue with the help of a lawyer and you can say that he needs to be close to you but he also needs to be close to ICANN. Maybe he has to be in the US because this is the US law that is going to be used. And my last comment, which may be more contentious, but I'm quite tired with competition. I do not care about competition. I want diversity. I'm tired of competition. I want real TLDs with IDNs. I want new communities coming on board. Competition, no diversity, yes. And my last word will be when we have a second chance, like Becky Burr, we're very happy about it. Thank you.

JONATHAN ZUCK: Thanks, Sébastien. Marita, I know you're next in the queue. I was going to give the microphone to Paul just for a second because he might address this issue of joint ventures or something like that. I don't know who best to answer that question, but there was embedded in your statement a question about whether people would work together. So maybe you can blend your things.

PAUL MCGRADY: Sure. Thank you. Paul McGrady again. So the issue of joint ventures and change requests I think was in recommendation 35.2, which again, that one did not make it past the council, if I remember. Or did it?

JUSTINE CHEW: There was no change request.

PAUL MCGRADY: All right. So I apologize. So anyways, there may be some ways to work on that issue. I primarily wanted to react to the second price auction issue, which was discussed by the working group. And it had, there were problems, and I just, sorry. Oh, sorry about that. And there were problems with it. And so before we get too enamored with it, a couple of things to think about. One, if you are a brand in a second price auction, the only rational bid is the value of your brand. Because if somebody else has the value of your brand in a TLD, that could be great mischief. And so Apple's value, for example, is $355.1 billion. That would be a great brand. That would be a great bid. And they're not going to pay that, but they would pay the second price, whatever that is. So it's rational to just let your brand be gone.

The second problem with the second price auction. price auction issue is that in order to be an applicant to even engage in a second price auction, you have to be an applicant. And we're currently discussing with the board the issues around the Do Not Sue ICANN clause, but you have to check a significant amount of rights at the door. And so as a result of that, in my opinion, if there is a second price auction, it's more likely that brands will simply choose not to file applications in the next round or in any steady state, sit back, see who applies for something. If somebody applies for something that corresponds to their brand or something confusingly similar to their brand, they'll simply send cease and desist letters to the applicant to ICANN shortly after reveal day. That's the rational approach to this.

And then we can spend our time in snarled litigation over whether or not the applicant is properly awarded that brand and whether or not ICANN should be in the business of selling top level domain name registries that correspond to brands. So these are some of the issues that we talked about in relationship to the second price auction. Again, the board is very diligent and will make good decisions in this space, but I didn't want everybody to walk away just thinking the second price auction process was super rosy, without any problems. I think it has some issues that we'd have to do some real thinking through on that. And so I will be quiet. Thanks.

JONATHAN ZUCK: Thank you. Marita, go ahead.

MARITA MOLL: Thanks. Marita Moll speaking. When there's a fancy piece of real estate up for sale, there's always going to be a bunch of people with deep pockets lined up to try to get it. My concern in this whole thing is community applications. And if a community housing project wanted to get into that particular line, they're not going to go very far. In our case, community applications, as far as I would understand it, have to go through quite a few hoops in order to be assessed as community applications. So they've already gone through a whole process to become community applications. Now they end up in a contention set. Do they become just like the other guy in the contention set? Is there some, sorry, probably there's some big gap of information I don't have. Thank you.

BECKY BURR: Just the community preference program gives preference to a community application, so you would not go into a contention set if you qualified as a community.

MARITA MOLL: That's what I wanted to hear. Thank you.

JONATHAN ZUCK: Jim Prendergast.

JIM PRENDERGAST: Thanks a lot, Jim Prendergast, for the record. So a couple of points, maybe a couple of questions. I'll keep it under a half hour. I, too, was heavily involved in the discussions in the SubPro PDP around auctions. Becky, I would kindly disagree with your assertion that some parties didn't come, parties didn't come to the first round with private auctions in mind.

BECKY BURR: I just said I was assuming that.

JIM PRENDERGAST: I we know portfolio applicants brought their own auction provider, so there may have been some intent there, but we can't read minds, but that's a good indicator. I would say we did talk a lot about VICRE a lot. We were under a deadline to get a report out. There were many of us who argued that some of the things that Paul raised could be dealt with through implementation as opposed to in the policy process. One thing I would say, though, is that if you look at the track record of advice from the ALAC, the GAC, the minority statements, there's strong support for eliminating private auctions. We just couldn't reach consensus on it. That's it.

JONATHAN ZUCK: This is Tony award-winning producer Jeff Newman.

JEFF NEUMAN: That was last year's Tony's, not this year, which was just this week, so we'll have to wait to next year, hopefully. So this is Jeff Neuman. I just wanted to say that in one sense Paul's right, that the SubPro working group had a lot of discussions on all of these, and I don't think there was a conclusion one way or another, because it's interesting, because PDP working groups have to operate on consensus, which means that either everyone agrees or almost everyone agrees, and if, like, some part doesn't agree, even if there's, like, a majority view, it doesn't get passed on. And so I would just say that I think the board should, it's unfortunate that the GNSO council only passed through recommendations that had consensus, as opposed to all of them.

Some of them had majority support, and I'm not saying that the board should necessarily take the ones that have majority support, but there's a lot of rationale in those that may be useful information to read in order to assess its decisions, because there's a lot, as Paul said, there was a lot of work on this, and what it looks like to the board, unfortunately, is, there's just no consensus and there's nothing, there's no. But Jim was on it. There were a lot of good ideas expressed.

Monte actually had presented to the group, and I strongly urge everyone to use Monte, because he's got an incredible experience on this, and just no one else has done what he's done. And so that's all I'll say. I think the board should do its own kind of diligence and look at its own studies, and not personal view, not as the chair or anything like that, this is completely personal, is that I think it should do its own diligence and make its own assessment and look at some of those proposals that had a substantial amount of support. Thanks.

JONATHAN ZUCK: Thanks, Jeff. Others that want to, that have comments or questions? Oh, that's right, you put one in the chat. Go ahead, Shiva.

SIVASUBRAMANIAN MUTHUSAMY: I'll finish within a minute, but please don't rush me and make me tense while I articulate this. My name is Sivasubramanian. If in the new gTLD process, if there is any distinction in the method of applying or in the time frame for application of, between a regular applicant and an applicant support applicant, either directly or indirectly, either in the process of requesting applicant support or in the process of requesting support from a pro bono lawyer, if it requires the applicant support applicant to reveal his string, to discuss his string, that this is what I'm trying to apply for, I'm applying for $.trillion, which is a secret, which is a secret string, which he would otherwise keep it a secret without disclosing to anyone until the string is revealed, if he happens to reveal that string in the application support seeking process, then he's at the risk of contention, it will inevitably attract contention for that string.

If an otherwise uncontended string is forced into contention, any amount of auction credit by a factor of four, by a factor of thousand, by a factor of million, would still not be fair because it would have gone through without contention. You are going to force it into contention by some carelessly thought of clauses in the support process, so please pay attention to that. There should be no distinction between a regular application process and an applicant support application process. In the last string, I was an applicant, no I'm not coming into my personal thing, I have to state this as a caution. I was an applicant, I applied for my string, I filled up my application, and the application window was to close at 12 midnight. I did not fill up the column of the string, the first column, until the last minute.

About three minutes before the application window closed, I filled up that string while the rest of the application form was fully in process. So that way my string was safeguarded, it was uncontended. So the same safeguards should be allowed for all applicant supports. Who wants to apply for a next round? I'm not in the next round, I'm in this round. Thank you.

LARS HOFFMANN: Sorry. Thank you, Shiva. Just two notes. So for the next round, I think the applicant support program is envisaged to launch I think 18 months before the round launches, for particularly I think one of the reasons that you just mentioned. So that an applicant knows before they actually apply with their string whether they have or have not qualified for applicant support. And the application for applicant support, the program is being developed, obviously details will be shared when they become available, there's a GGP process going on as well. But I think what I can say is that when you apply for the applicant support process, which will be separate from the actual application to the program, what string you have in mind is not even going to be a question that's going to be asked.

It's going to be irrelevant to the application for your application support program. So you will know whether you are a successful candidate or not. And if you are, you can then apply like anybody else at the same time with the string that you have in mind. You do not have to reveal that as you apply for applicant support. So I think that risk should not occur next time. Please. thanks.

JIM PRENDERGAST: Thanks. Jim Prendergast for the record. So I did forget to ask my question, but just it's a compliment to this community in the sense that it's extremely creative and coming up with novel approaches to things. So if we are truly concerned about gaming in private resolutions, you eliminate it. That's the only way to guarantee that private resolutions will not be gamed. Now that's a harsh approach to it, but it guarantees it. And that means something goes to either ICANN auction of last resort or a second sealed auction like Monte described. Becky, the consultations the board will be doing with an auctions expert, are you expecting like a report or some deliverable from them or is it more conversational and will the outcomes of that be made public to the community?

BECKY BURR: Both and yes.

JONATHAN ZUCK: So the other question I have, something else Justine raised and talked about briefly is this idea of a bid multiplier. And that's apparently going to get sort of resolved in implementation. Is that the idea to try and determine that? And what do we think the process of determining that multiplier might be or are those sort of parameters of that discussion? That's probably you, Lars.

LARS HOFFMANN: I believe that is part of the implementation process, but I also think that GGP is potentially looking at that as well. I'm looking at Jeff. It's not part of the remit?

JONATHAN ZUCK: No.

LARS HOFFMANN: If it's not, then it's definitely something that we are looking at in the implementation process with the IRT, absolutely.

JUSTINE CHEW: This is Justine, just a quick response to Shiva's points. Number one is we haven't decided on the bid credit yet. We don't know quite sure how it's going to work. It's an implementation issue. So in terms of the factor that I suggested, it was just an example. I think we're going to have to sort things out during implementation. Number two, I would strongly advise that you use a non-disclosure agreement if you wanted to rope in a pro bono service provider. And to that effect, I think, we can look at this in implementation as well to make sure that that facility is included in the process by which anyone, any particular applicant who wants to engage in the pro bono service provider, that that is in there as a matter of protection. Thank you.

JONATHAN ZUCK: Thanks, Justine. Greg, you're next.

GREG SHATAN: Thank you. Greg Shatan, for the record. I just wanted to bring up in this discussion a concept that came out in one of our earlier discussions regarding applicant support, which was to perhaps pursue a regional incubator model for applicant support. That could possibly also solve the direct payment issue as well, since the incubator could be generally funded in some fashion through ICANN or other resources, but it wouldn't be on a one-to-one basis with any one applicant.

It would also help to provide local resources, and the regional incubators could even perhaps help each other, particularly where there were issues of, say, US contract law relating to ultimately signing the agreements were to come to that. I think that also addresses kind of the non-monetary support to an extent. An incubator is a good way to get a startup that is not staffed with a bunch of veterans up and running. I think it could be a more successful model in the long run. Thanks.

JONATHAN ZUCK: Thanks, Greg. I'll say that we did have a kind of a RALO preparedness meeting on the new round and tried to discuss some of these creative ways that the At-Large community and that sort of deep bench that we have could be involved in facilitating an applicant support program that comes about. Go ahead.

BECKY BURR: I just want to say I agree, Greg. That's a very interesting approach, and that is something that some of us are starting to talk about. The board hasn't gotten deeply into the weeds on this, but it does make some sense to think about it in sort of regional support.

JEFF NEUMAN: Thanks. This is Jeff Newman, and I know it came out recently, and I haven't read it, so others may know more detail, but isn't there like an expression of interest or something right now soliciting some thoughts on providing pro bono services? Maybe someone from ICANN can help understand what that is. So there is something going on right now to seek providers of different kinds of services. I assume it's not just for the registry technical stuff. I haven't looked at it, so that's why I would love for someone to expand if.

JONATHAN ZUCK: One of the recommendations that came out of the CCT review was that the pro bono program be more actively managed by ICANN, because it was sort of like a list that went up of people that wanted help and of people willing to provide it, and somehow they never ended up talking to each other in the last round. And so I think that's the result of why this program is getting started now, is just to identify some actors potentially to be involved in a pro bono program. But again, it was in that RALO readiness session that Sébastien raised the issue of local help and local laws and some of the benefits of getting some of these providers around the world and not just be US-focused.

SIVASUBRAMANIAN MUTHUSAMY: Again, this is a quick response to Lars Hoffman. He says that the rules does not require strings to be disclosed. That may be true, but in the process of seeking support in normal day-to-day interactions, it is quite possible that the string would be unwittingly drawn out of the applicant, either unintentionally or, in the case of malicious players, by gaming. So that's too much of a risk. Rules would not provide that kind of complete protection. Thank you.

JEFF NEUMAN: I actually found what I was looking for. so on June 1st, there was an announcement by ICANN where it said it's seeking pro bono service providers for applicant support programs. And so there's a survey. So I think they're starting that process, which is good. But I haven't really read through it. My assumption is that it's any kind of services that people can provide. So yes, so cool.

JUSTINE CHEW: Yes, that's just it. I think, Jeff, that's to do with service providers, nothing to do with ideas, per se, that we were talking about. And I think I just want to -- and you can correct me if I'm wrong, Paul can correct me if I'm wrong, but in terms of where GNSO is headed on recommendation 17.2 is we have an opportunity to rework that recommendation. So that, I think, is a better avenue to seek ideas. And I would welcome Greg and all at largest to come and talk to me, because there's an avenue for us to input there. Thank you very much.

JONATHAN ZUCK: All right, any other questions or comments or final words from the panel? Oh, Marita has her hand up. Sorry, thank you. Go ahead, Marita.

MARITA MOLL: I'm just thinking of housing transactions where people buy and sell within a few weeks. And make a big bucket of money on it. Is it not possible for TLDs to be sold and the prohibition not to resell within a certain amount of time? Would that not sort of take the heat off? Are people not wanting to -- maybe people want to make a quick dollar, but they're not really wanting to wait three years? Or that they had to do something to improve it in order to sell it? That's another possibility?

BECKY BURR: So all of those things are possible, but they all come with the complication of a one-size-fits-all approach doesn't always work. There might be a good reason that somebody needs to sell something in a certain amount of time. We're talking about all of those things, and I know that the PDP talked about all of those things, but it's just -- at least I haven't identified a complete solution. There are lots of things that you could put in place to enhance that, but I think it would be very difficult to prohibit all sales within X amount of time.

JEFF NEUMAN: Because you have to think of just regular corporate transactions that happen all the time. Companies get bought and sold, and if that asset goes with the company, you can't really prohibit that kind of thing. There are probably ways, and we just have to get creative, to allow those everyday kinds of transactions, but not necessarily encourage getting a TLD and reselling it right away. Or in the private auctions, it's not even getting the TLD. It's the process to get the TLD. So the difference with the housing market -- what your example was is someone already has the house, and then they want to resell it. Here we're talking about five people bidding on the house privately, and the winner of that auction doesn't pay the owner of the house, it pays the four other losers. So that's the difference of a private auction in this kind of context.

JONATHAN ZUCK: This has been a great discussion, and we wanted to host a community-wide discussion, but one of the byproducts of it is us going back to our pens and paper and see if we can figure out what our ALAC position is going to be on this as well. So I really appreciate everyone's help and participation. I don't know if anybody else has any last words they want to add before we end. If not, then I just really want to thank Becky and Lars and Justine and Paul and Monte for being part of this discussion. And I know, and I'm very sympathetic with the folks that have been part of this discussion for the last five years as well, and I know it's not new.

PAUL MCGRADY: 500 years.

JONATHAN ZUCK: 500 years. Sorry, exactly right, 500 years. And so let's give a round of applause to all the people that are working so hard on this. Thanks, everyone. We're adjourned.

[END OF TRANSCRIPTION]