



# Draft Applicant Guidebook, v3

## Module 4

Please note that this is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

2 October 2009

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# Module 4

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## String Contention Procedures

This module describes situations in which contention over applied-for gTLD strings occurs, and the ~~two~~ methods available to applicants for resolving such contention cases.

### 4.1 String Contention

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String contention occurs when either:

1. Two or more applicants for an identical gTLD string successfully complete all previous stages of the evaluation and dispute resolution processes; or
2. Two or more applicants for similar gTLD strings successfully complete all previous stages of the evaluation and dispute resolution processes, and the similarity of the strings is identified as creating a probability of user confusion if more than one of the strings is delegated.

ICANN will not approve applications for proposed gTLD strings that are identical or that would result in string confusion, called contending strings. If either situation 1 or 2 above occurs, such applications will proceed to contention resolution through either [community priority \(comparative\) evaluation, in certain cases](#), or [through an auction. Both, both of which processes](#) are described in this module. A group of applications for contending strings is referred to as a contention set.

~~For a full description of considerations relating to string contention procedures, see the explanatory memorandum at <http://www.icann.org/en/topics/new-gtlds/string-contention-18feb09-en.pdf>.~~

#### 4.1.1 Identification of Contention Sets

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Contention sets are groups of applications containing identical or similar applied-for gTLD strings. (In this Applicant Guidebook, “similar” means strings so similar that ~~they create a probability of user confusion it is probable that detrimental user confusion would result~~ if ~~more than one of the strings is~~ [the two similar gTLDs are](#) delegated into the root zone.) Contention sets are identified during Initial Evaluation ~~following~~ review of all applied-for gTLD

strings. ICANN will publish [preliminary](#) contention sets by the close of the Initial Evaluation period, [and will update the contention sets as necessary during the evaluation and dispute resolution stages.](#)

Applications for identical gTLD strings will be automatically assigned to a contention set. For example, if Applicant A and Applicant B both apply for .TLDSTRING, they will be identified as being in a contention set. Such testing for identical strings also takes into consideration the code point variants listed in any relevant [IDN language reference](#) table.

The String Similarity [Panel Examiners](#) will also review the entire pool of applied-for strings to determine whether the strings proposed in any two or more applications are so similar that they would create a probability of user confusion if allowed to coexist in the DNS. The panel will make such a determination for each pair of applied-for gTLD strings. The outcome of the String [Similarity Confusion](#) Review described in subsection 2.1.1.1 of Module 2 is the identification of contention sets among applications that have direct or indirect contention relationships with one another.

[Additionally, an applicant may file a String Confusion objection \(described in Module 3\) against another application alleging that the applied-for string is so similar to its own that the delegation of both would create a probability of user confusion. If the objection is upheld, the contention set will be augmented \(see subsection 4.1.2 below\).](#)

Two strings are in **direct contention** if they are identical or so similar that there is a probability of user confusion if both were to be delegated as TLDs in the root zone. More than two applicants might be represented in a direct contention situation: if four different applicants applied for the same gTLD string, they would all be in direct contention with one another.

Two strings are in **indirect contention** if they are both in direct contention with a third string, but not with one another. [The example that follows explains direct and indirect contention is explained in greater detail in the example that follows.](#)

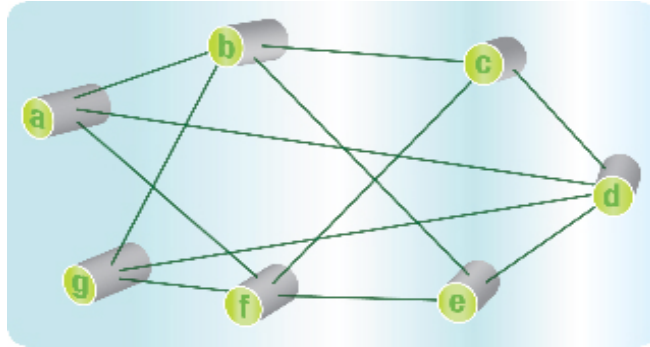


Figure 4-1 – This diagram represents one contention set, featuring both directly and indirectly contending strings.

While [preliminary](#) contention sets are determined during Initial Evaluation, the final configuration of the contention sets can only be established once the evaluation and dispute resolution process [stages/steps](#) have concluded. This is because any application excluded through those [processes/steps](#) might modify a contention set identified earlier. A contention set may be split ~~it~~ into two sets or it may be eliminated altogether as a result of an Extended Evaluation or dispute resolution proceeding.

Refer to Figure 4-2: In contention set 1, applications D and G are eliminated. Application A is the only remaining application, so there is no contention left to resolve.

In contention set 2, all applications successfully complete Extended Evaluation and Dispute Resolution, so the original contention set remains to be resolved.

In contention set 3, application F is eliminated. Since application F was in direct contention with E and J, but E and J are not in contention with one other, the original contention set splits into two sets: one containing E and K in direct contention, and one containing I and J.

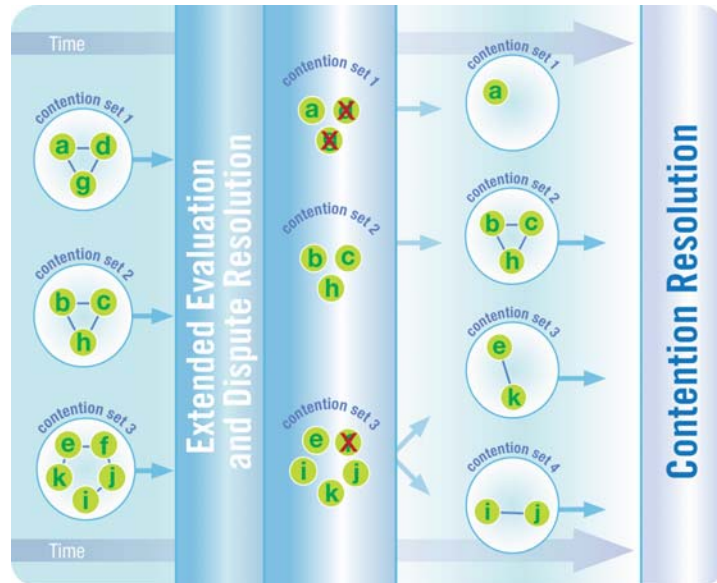


Figure 4-2 – Resolution of string contention cannot begin until all applicants within a contention set have completed all applicable previous stages.

The remaining contention cases must then be resolved through [community priority \(comparative\)](#) evaluation or [by](#) other means, depending on the circumstances. In [the string contention resolution stage](#)~~this process~~, ICANN addresses each contention set to achieve an unambiguous resolution.

As described elsewhere in this document, cases of contention might be resolved by [community priority \(comparative\)](#) evaluation or some agreement [among](#)~~of~~ the parties. ~~-~~Absent that, the last-resort contention resolution mechanism will be an auction.

#### 4.1.2 *Impact of Dispute Resolution Proceedings on Contention Sets*

If an applicant files a string confusion objection against another [applicant application](#) (refer to Module 3), and the panel [does](#) find~~s~~ that [string user](#) confusion [is probable](#)~~exists~~ (that is, finds in favor of the objector), the two [applications](#)~~applicants~~ will be placed in direct contention with each other. Thus, the outcome of a dispute resolution proceeding based on a string confusion objection would [be result in](#) a new contention set structure for the relevant applications.

[If an applicant files a string confusion objection against another application, and the panel finds that string confusion does not exist \(that is, finds in favor of the responding applicant\), the two applications may both move forward and will not be considered in direct contention with one another.](#)

[A dispute resolution outcome will not result in removal of an application from an earlier identified contention set.](#)

### ***4.1.3 Self-Resolution of String Contention***

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Applicants that are identified as being in contention [are encouraged](#)~~may elect~~ to reach a settlement or agreement among themselves that resolves the contention. This may occur at any stage of the process, once ICANN publicly posts the applications received on its website.

Applicants may resolve string contention in a manner whereby one or more applicants withdraw their applications. -An applicant may not resolve string contention by selecting a new string or by replacing itself with a joint venture. -It is understood that joint ventures may result from self-resolution of string contention by applicants. However, material changes in applications (for example, combinations of applicants to resolve contention) will require re-evaluation. This might require additional fees or evaluation in a subsequent application round. Applicants are encouraged to resolve contention by combining in a way that does not materially affect the [remaining](#)~~surviving~~ application.

### ***4.1.4 Possible Contention Resolution Outcomes***

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An application that has successfully completed all previous stages and is no longer part of a contention set due to changes [in the composition of](#)~~within~~ the contention set (as described in subsection 4.1.1) or self-resolution by applicants in the contention set (as described in subsection 4.1.3) may proceed to the next stage.

An application that prevails in a contention resolution procedure, either [community priority](#) (comparative) evaluation or auction, may proceed to the next stage.

In some cases, an applicant who is not the outright winner of a string contention resolution process can still proceed. This situation is explained in the following paragraphs.

If the strings within a given contention set are all identical, the applications are in direct contention with each other and there can only be one winner that proceeds to the next step.

However, where there are both direct and indirect contention situations within a set, more than one string may survive the resolution.

For example, consider a case where string A is in contention with B, and B is in contention with C, but C is not in contention with A. If A wins the contention [resolution procedure](#), B is eliminated but C can go on since C is not in direct contention with the winner and both strings can coexist in the DNS without risk for confusion.

## 4.2 [Community Priority \(Comparative\) Evaluation](#)

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[Community priority \(Comparative\)](#) evaluation will only occur if a community-based applicant ~~has~~ [selected](#) this option ~~in its application~~. [Community priority \(Comparative\)](#) evaluation can begin once all ~~applications~~ [applicants](#) in the contention set have completed all previous stages of the process.

The [community priority \(comparative\)](#) evaluation is an independent analysis. Scores received in the applicant reviews are not carried forward to the [community priority \(comparative\)](#) evaluation. Each ~~application~~ [applicant](#) participating in the [community priority \(comparative\)](#) evaluation begins with a score of zero.

### 4.2.1 [Eligibility for Community Priority \(Comparative\) Evaluation](#)

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As described in subsection 1.2.2 of Module 1, all applicants are required to identify whether their application type is:

- Community-based; or
- [Standard Open](#).

[Applicants designating their applications as community-based are also asked to respond to a set of questions in the application form to provide relevant information if a community priority \(comparative\) evaluation occurs.](#)

Only community-based applicants are eligible to participate in ~~may elect~~ a community priority (comparative) evaluation. ~~If there is contention for strings, a claim to support a community by one party will be a reason to award priority to that application. If one community based applicant within a contention set makes this election, all other community based applicants in the same contention set will be part of the comparative evaluation. Applicants designating their applications as community based will also be asked to respond to a set of questions in the application form that would provide relevant information if a comparative evaluation occurs.~~

At the start of the contention resolution stage, all community-based applicants within remaining contention sets will be notified of the opportunity to opt for a community priority (comparative) evaluation via submission of a deposit by a specified date. Only those applications for which a deposit has been received by the deadline will be scored in the community priority (comparative) evaluation.

Before the community priority (comparative) evaluation begins, ~~all community based the~~ applicants who have elected to participate in the contention set may be asked to provide additional information relevant to the community priority (comparative) evaluation. ~~Additionally, the community based applicants will be required to submit a deposit to cover the cost of the comparative evaluation. The deposit will be refunded to applicants that score 14 or higher. Following the evaluation, the deposit will be refunded to applicants that score 14 or higher.~~

#### 4.2.2 Community Priority (Comparative) *Evaluation Procedure*

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Community priority (Comparative) evaluations for each eligible contention set will be performed by a community priority panel/comparative evaluation provider appointed by ICANN to review contending applications ~~for contending gTLD strings~~. The provider's panel's role charter is to determine whether anyone of the community-based applications fulfills the community priority criteria clearly and demonstrably have the support of the specified community. ~~Standard Open~~ applicants within the contention set, if any, will not participate in the community priority (comparative evaluation).



If a single community-based ~~application~~applicant is found to meet the community priority criteria (see subsection 4.2.3 below), ~~for succeeding in the comparative evaluation,~~ that applicant will be declared to prevail in the community priority (comparative) evaluation and may proceed ~~with its application.~~ If more than one community-based ~~application~~applicant is found to meet the criteria, ~~the remaining contention between them~~is will be resolved as follows:

- ~~In the case where the applications~~applicants are in indirect contention with one another (see subsection 4.1.1), they will both be allowed to proceed to the next stage. In this case, applications that are in direct contention with any of these community-based applications will be eliminated.
- ~~In the case where the applications~~applicants are in direct contention with one another, these applicants will proceed to an auction. If all parties agree and present a joint request, ICANN may postpone the auction for a three-month period while the parties attempt to reach a settlement before proceeding to auction. This is a one-time option; ICANN will grant no more than one such request for each set of contending applications, and have named the same community in their applications, one applicant will be granted priority if it has clearly demonstrated that it represents a majority and significantly larger share of the community. If no applicant has made such a demonstration, the applicants will proceed to an auction.
- ~~In the case where the applicants are in direct contention with one another and have named different communities in their applications, the contention will be resolved through an auction among these applicants.~~

If none of the community-based ~~applications~~applicants are found to meet the criteria, then all of the parties in the contention set (both standard~~open~~ and community-based applicants) will proceed to an auction.

### 4.2.3 Community Priority (Comparative) Evaluation Criteria

The Community Priority Panel ~~A panel appointed by the comparative evaluation provider~~ will review and score the one or more community-based ~~applications~~ applicants ~~who elected comparative evaluation~~ having elected the community priority (comparative) evaluation against four criteria as listed below. ~~follows:~~

The scoring process is intended to identify qualified community-based applications, preventing both “false positives” (awarding undue priority to an application that refers to a “community” construed merely to get a sought-after generic word as a gTLD string); and “false negatives” (not awarding priority to a qualified community application). This calls for a holistic approach, taking multiple criteria into account, as reflected in the process.

It should be noted that a qualified community application eliminates all directly contending standard applications, regardless of how well qualified the latter may be. This is a fundamental reason for very stringent requirements for qualification of a community-based application, as embodied in the criteria below.

An application must score at least 14 points to prevail in a community priority (comparative) evaluation. The outcome will be determined according to the procedure described in subsection 4.2.2.

#### **Criteria #1: Nexus between Proposed String and Community**

Score				
4	3	2	1	0
String is strongly associated with the community or community institution and has no other significant associations.	String is clearly associated with the community but also has other associations.	String is relevant to the community but also has other well-known associations.	The string, although relevant to the community, primarily has wider associations.	The nexus between string and community does not fulfill the requirement for scoring 1.

~~In detail, the nexus between string and community will be given:~~

- a score from 3, for strong association with the community, to 0, for insufficient association with the community.
- a score of 1 for absence of other associations to the string, i.e., the string is unique to this community, and a score of 0 if the string is known to also be a label for other communities.

### Criteria #2: Dedicated Registration Policies

Score				
4	3	2	1	0
Registration eligibility is strictly limited to members of the pre-established community identified in the application. Registration policies also include name selection and other requirements consistent with the articulated scope and community-based nature of the TLD. Proposed policies include specific enforcement measures including investigation practices, penalties, takedown procedures and appeal mechanisms.	Registration eligibility is predominantly available to members of the pre-established community identified in the application, and also permits people or groups formally associated with the community to register. Policies include most elements for a high score but one element is missing.	Registration eligibility is predominantly available to members of the pre-established community identified in the application, and also permits people or groups informally associated with the community to register. Policies include some elements for the high score but more than one element is missing.	Registration eligibility is encouraged or facilitated for members of the pre-established community identified in the application, and also permits others to register. Policies include only one of the elements for high score.	The registration policies do not fulfill the requirement for scoring 1

In detail, the registration policies will be given:

- A score from 2 for eligibility restricted to community members, to 0 for a largely unrestricted approach to eligibility.
- A score of 1 for clear rules concerning name selection and other requirements for registered names of relevance to the community addressed, and a score of 0 for absence of rules concerning name selection and other requirements for registered names, or rules that are insufficient or lack relevance.
- A score of 1 for satisfactory enforcement measures and a score of 0 for absence of enforcement measures or measures that are insufficient.

### Criteria #3: Community Establishment

Score				
4	3	2	1	0
Clearly identified, organized, and pre-established community of considerable size and longevity.	The community addressed fulfills all but one of the requirements for a high score.	The community addressed fulfills more than one of the requirements for a high score, but fails on two or more requirements.	The community addressed fulfills only one of the requirements for a high score.	The community addressed does not fulfill any of the requirements for a high score.

In detail, the community establishment will be given:

- a score from 2, for a clearly identified, organized, and pre-established community, to 0 for a community lacking clear identification, organization, and establishment history.
- a score from 2 for a community of considerable size and longevity, to 0 for a community of very limited size and longevity.

### Criteria #4: Community Endorsement

Score				
4	3	2	1	0
Application from, or endorsement by, a recognized	Endorsement by most groups with apparent	Endorsement by groups with apparent	Assorted endorsements from groups of	Limited endorsement by groups of

Score				
4	3	2	1	0
community institution, or application endorsed by member organizations.	relevance, but unclear if the whole community is supportive.	relevance, but also some opposition from groups with apparent relevance.	unknown relevance, but also clear opposition from groups with apparent relevance.	unknown relevance. Strong opposition from groups with apparent relevance.

In detail, the community endorsement will be given:

- a score from 2 for clear and documented support, to 0 for no or limited endorsement of uncertain relevance.
- a score of 2 for no opposition of relevance, to 0 for strong and relevant opposition.

**Scoring**—An applicant must score at least 14 points to be declared a winner in a comparative evaluation. If no applicant scores 14 or more, there is no clear winner. If only one applicant scores 14 or more, that applicant will be declared the winner.

If more than one applicant scores 14 or more, all will be declared winners and the contention will be resolved according to the procedure described in subsection 4.2.2.

Following the comparative evaluation, ICANN will review the results and reconfigure the contention set as needed. The same procedure will occur for remaining contention sets involving any community-based application that has elected comparative evaluation. If no community-based applicant that has elected comparative evaluation is left in the contention set, any applications remaining in contention will proceed to an auction. Applications with no remaining contention will proceed toward delegation.

**Criterion #1: Community Establishment (0-4 points)**

A maximum of 4 points is possible on the Community Establishment criterion:

<u>4</u>	<u>3</u>	<u>2</u>	<u>1</u>	<u>0</u>
<u>Community Establishment</u>				

High ←————→ Low

As measured by:

A. Delineation (2)

<u>2</u>	<u>1</u>	<u>0</u>
<u>Clearly delineated, organized, and pre-existing community.</u>	<u>Clearly delineated and pre-existing community, but not fulfilling the requirements for a score of 2.</u>	<u>Insufficient delineation and pre-existence for a score of 1.</u>

B. Extension (2)

<u>2</u>	<u>1</u>	<u>0</u>
<u>Community of considerable size and longevity.</u>	<u>Community of either considerable size or longevity, but not fulfilling the requirements for a score of 2.</u>	<u>Community of neither considerable size nor longevity.</u>

Explanatory notes: Usage of the expression “community” has evolved considerably from its Latin origin – “communitas” meaning “fellowship” – while still implying more of cohesion than a mere commonality of interest. Notably, there should be an awareness and recognition of a community among its members.

The scoring for this criterion relates to the community as explicitly addressed according to the application. It should be noted that a community can consist of legal entities (for example, an association of suppliers of a particular service), of individuals (for example, a language community) or of a logical alliance of communities (for example, an international federation of national communities of a similar nature). All are viable as such, provided the requisite awareness and recognition of the community is at hand among the members. Otherwise the application would be seen as not relating to a real community and score 0 on both delineation and extension

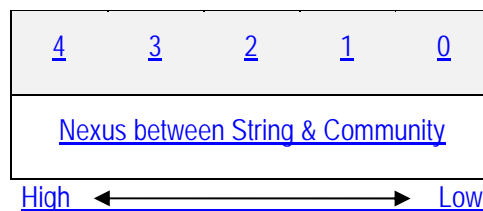
above. The panel may use information sources outside the application itself to verify the circumstances.

"Delineation" relates to the membership of a community, where a clear and straight-forward membership definition scores high, while an unclear, dispersed or unbound definition scores low. "Pre-existing" means that a community has been active as such since before the new gTLD policy recommendations were completed in September 2007. "Organized" implies that there is at least one entity dedicated to the community, with documented evidence of community activities.

"Size" relates both to the number of members and the geographical reach of the community and will be scored depending on the context rather than on absolute numbers - a geographic location community may count millions of members in a limited location, a language community may have a million members with some spread over the globe, a community of service providers may have "only" some hundred members although well spread over the globe, just to mention some examples - all these can be regarded as of "considerable size". "Longevity" means that the pursuits of a community are of a lasting, non-transient nature.

**Criterion #2: Nexus between Proposed String and Community (0-4 points)**

A maximum of 4 points is possible on the Nexus criterion:



As measured by:

A. Nexus (3)

<u>3</u>	<u>2</u>	<u>0</u>
<u>The string matches the name of the community or is a well known short-form or abbreviation of</u>	<u>String identifies the community, but does not qualify for a score of 3.</u>	<u>String nexus does not fulfill the requirements for a score of 2.</u>

3	2	0
<u>the community name.</u>		

B. Uniqueness (1)

1	0
<u>String has no other significant meaning beyond identifying the community.</u>	<u>String does not fulfill the requirement for a score of 1.</u>

Explanatory notes:

For a score of 3 on A: "Name" of the community means the established name by which the community is commonly known by others. It may be, but does not need to be, the name of an organization dedicated to the community. The essential aspect is that the name is commonly known by others as the identification of the community.

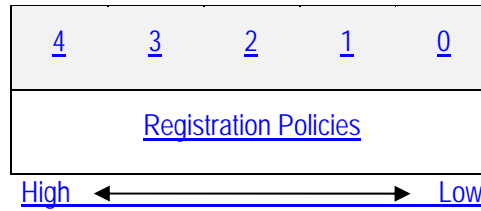
For a score of 2 on A: A string "identifies" the community if it closely describes the community or the community members, without over-reaching beyond the community. As an example, a string could qualify for a score of 2 if it is a noun that the typical community member would naturally be called in the context.

Regarding B: "Significant meaning" relates to the public in general, with consideration of the community language context added. "Uniqueness" will be scored both with regard to the community context and from a general point of view. For example, a string for a particular geographic location community may seem unique from a general perspective, but would not score a 1 for uniqueness if it carries another significant meaning in the common language used in the relevant community location. The phrasing "...beyond identifying the community" in the score of 1 for "uniqueness" implies a requirement that the string does identify the community, i.e. scores 2 or 3 for "Nexus", in order to be eligible for a score of 1 for "Uniqueness".

**Criterion #3: Registration Policies (0-4 points)**



A maximum of 4 points is possible on the Registration Policies criterion:



As measured by:

A. Eligibility (1)

<u>1</u>	<u>0</u>
<u>Eligibility restricted to community members.</u>	<u>Largely unrestricted approach to eligibility.</u>

B. Name selection (1)

<u>1</u>	<u>0</u>
<u>Policies include name selection rules consistent with the articulated community-based purpose of the applied- for gTLD.</u>	<u>Policies do not fulfill the requirements for a score of 1.</u>

C. Content and use (1)

<u>1</u>	<u>0</u>
<u>Policies include rules for content and use consistent with the articulated community-based purpose of the applied- for gTLD.</u>	<u>Policies do not fulfill the requirements for a score of 1.</u>

D. Enforcement (1)

<u>1</u>	<u>0</u>
<u>Policies include specific enforcement measures (e.g. investigation practices, penalties, takedown procedures) constituting a coherent set with appropriate appeal mechanisms.</u>	<u>Policies do not fulfill the requirements for a score of 1.</u>

Explanatory notes:

Regarding A: The limitation to community "members" can invoke a formal membership but can also be satisfied in other ways, depending on the structure and orientation of the community at hand. For example, for a geographic location community TLD a limitation to members of the community can be achieved by requiring that the registrant's physical address is within the boundaries of the location.

Regarding B, C and D: Scoring of applications against these sub-criteria will be done from a holistic perspective, with due regard for the particularities of the community explicitly addressed. For example, an application proposing a TLD for a language community may feature strict rules imposing this language for name selection as well as for content and use, scoring 1 on both B and C above. It could nevertheless include forbearance in the enforcement measures for tutorial sites assisting those wishing to learn the language and still score 1 on D.

**Criterion #4: Community Endorsement (0-4 points)**

A maximum of 4 points is possible on the Community Endorsement criterion:

<u>4</u>	<u>3</u>	<u>2</u>	<u>1</u>	<u>0</u>
<u>Community Endorsement</u>				

High ←————→ Low

As measured by:

A. Support (2)

<u>2</u>	<u>1</u>	<u>0</u>
<u>Applicant is, or has documented support from, the recognized community institution(s)/ member organization(s) or has otherwise documented authority to represent the community.</u>	<u>Documented support from at least one group with relevance, but insufficient support for a score of 2.</u>	<u>Insufficient proof of support for a score of 1.</u>

B. Opposition (2)

<u>2</u>	<u>1</u>	<u>0</u>
<u>No opposition of relevance.</u>	<u>Relevant opposition from at least one group of non-negligible size.</u>	<u>Strong and relevant opposition.</u>

Explanatory notes: Support and opposition will be scored in relation to the communities explicitly addressed as stated in the application with due regard taken to the communities implicitly addressed by the string. It follows that support from, for example, the only national association relevant to a particular community on a national level would score a 2 if the string is clearly orientated to that national level, but only a 1 if the string implicitly addresses similar communities in other nations. However, it should be noted that documented support from groups or communities that may be seen as implicitly addressed but have completely different orientations compared to the applicant community will not be required for a score of 2 regarding support.

"Recognized" means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community. The plurals in brackets relate to cases of alliances of multiple communities. In such cases, a score of "2" calls for documented support from institutions/organizations representing a majority of the overall community addressed.

"Relevance" and "relevant" refer to the communities explicitly and implicitly addressed. This means that opposition from communities implicitly addressed by the string would be considered relevant.

Previous objections to the application during the same application round will be taken into account when scoring "Opposition" and be assessed in this context without any presumption that such objections would lead to a particular score.

### ***4.3 Auction: Mechanism of Last Resort<sup>1</sup>***

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It is expected that most cases of contention will be resolved by the two-phased community priority (comparative) evaluation, or through voluntary agreement among the involved applicants of the parties. -Auction is a tie-breaker method for resolving string contention among the applications applicants within a contention set, if the contention has not been resolved by other means.

In practice, ICANN expects that most contention cases will be resolved through other means before reaching the auction stage. -There is a possibility that significant funding will accrue to ICANN as a result of one or more auctions. <sup>2</sup>

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<sup>1</sup>~~This information is included to provide implementation details for public comment.~~

<sup>2</sup> The purpose of an auction is to resolve contention in a clear, objective manner. Proceeds from auctions will be reserved and earmarked until the uses of the proceeds are determined. It is planned that costs of the new gTLD program will offset by fees, so any funds coming from a last resort contention resolution mechanism such as auctions would result (after paying for the auction process) in additional funding. Therefore, consideration of a last resort contention mechanism should include the uses of funds. Funds must be earmarked separately and used in a manner that supports directly ICANN's Mission and Core Values and also maintains its not for profit status.

Possible uses include formation of a foundation with a clear mission and a transparent way to allocate funds to projects that are of interest to the greater Internet community, such as grants to support new gTLD applications or registry operators from communities in subsequent gTLD rounds, the creation of an ICANN-administered/community-based fund for specific projects for the benefit of the Internet community, the creation of a registry continuity fund for the

### 4.3.1 Auction Procedures

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An auction of two or more applications within a contention set is conducted as follows. The auctioneer successively increases the prices associated with applications within the contention set, and the respective applicants indicate their willingness to pay these prices. As the prices rise, applicants will successively choose to exit from the auction. 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 can all be delegated), the auction will be deemed to conclude. At the auction's conclusion, the remaining applications will pay the resulting prices and proceed toward delegation. This procedure is referred to as an "ascending-clock auction."

This section provides applicants an informal introduction to the practicalities of participation in an ascending-clock auction. It is intended only as a general introduction and is only preliminary. If conflict arises between this section and the auction rules issued prior to commencement of any auction proceedings, the auction rules will prevail. For simplicity, this section will describe the situation where a contention set consists of two or more applications for identical strings.

All auctions will be conducted over the Internet, with participants placing their bids remotely using a web-based software system designed especially for auction. The auction software system will be compatible with current versions of most prevalent browsers, and will not require the local installation of any additional software.

Auction participants ("bidders") will receive instructions for access to the online auction site. Access to the site will be password-protected and bids will be encrypted through SSL. If a bidder temporarily loses connection to the Internet, that bidder may be permitted to submit its bids in a given auction round by fax, according to procedures described

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protection of registrants (ensuring that funds would be in place to support the operation of a gTLD registry until a successor could be found), or establishment of a security fund to expand use of secure protocols, conduct research, and support standards development organizations in accordance with ICANN's security and stability mission.

Further detail on the potential uses of funds will be provided with the proposed budget for the new gTLD process and updated Applicant Guidebook materials.

in the auction rules. The auctions will generally be conducted to conclude quickly, ideally in a single day.

The auction will be carried out in a series of auction rounds, as illustrated in Figure 4-3. The sequence of events is as follows:

1. For each auction round, the auctioneer will announce in advance: (1) the start-of-round price, (2) the end-of-round price, and (3) the starting and ending times of the auction round. In the first auction round, the start-of-round price for all bidders in the auction will be USD 0. In later auction rounds, the start-of-round price will be its end-of-round price from the previous auction round.

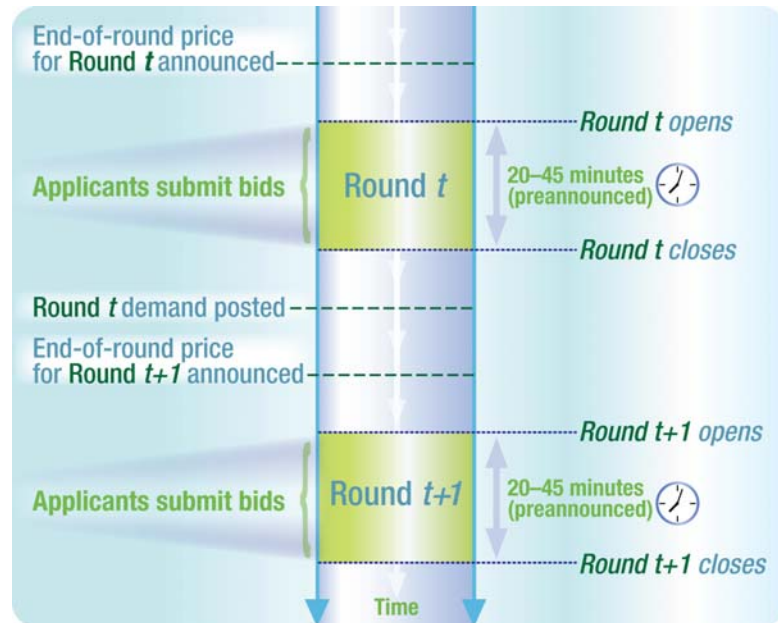


Figure 4-3 – Sequence of events during an ascending-clock auction.

2. During each auction round, bidders will be required to submit a bid or bids representing their willingness to pay within the range of intermediate prices between the start-of-round and end-of-round prices. In this way a bidder indicates its willingness to stay in the auction at all prices through and including the end-of-auction round price, or its wish to exit the auction at a price less than the end-of-auction round price, called the exit bid.

3. Exit is irrevocable. If a bidder exited the auction in a previous auction round, the bidder is not permitted to re-enter in the current auction round.
4. Bidders may submit their bid or bids at any time during the auction round.
5. Only bids that comply with all aspects of the auction rules will be considered valid. If more than one valid bid is submitted by a given bidder within the time limit of the auction round, the auctioneer will treat the last valid submitted bid as the actual bid.
6. At the end of each auction round, bids become the bidders' legally-binding offers to secure the [relevant gTLD strings](#) winning slot at prices up to the respective bid amounts, subject to closure of the auction in accordance with the auction rules. In later auction rounds, bids may be used to exit from the auction at subsequent higher prices.
7. After each auction round, the auctioneer will disclose the aggregate number of bidders remaining in the auction at the end-of-round prices for the auction round, and will announce the prices and times for the next auction round.
  - Each bid should consist of a single price associated with the application, and such price must be greater than or equal to the start-of-round price.
  - If the bid amount is strictly less than the end-of-round price, then the bid is treated as an exit bid at the specified amount, and it signifies the bidder's binding commitment to pay up to the bid amount if its application is approved.
  - If the bid amount is greater than or equal to the end-of-round price, then the bid signifies that the bidder wishes to remain in the auction at all prices in the current auction round, and it signifies the bidder's binding commitment to pay up to the end-of-round price if its application is approved. Following such bid, the application cannot be eliminated within the current auction round.
  - To the extent that the bid amount exceeds the end-of-round price, then the bid is also treated as a proxy bid to be carried forward to the next auction

round. The bidder will be permitted to change the proxy bid amount in the next auction round, and the amount of the proxy bid will not constrain the bidder's ability to submit any valid bid amount in the next auction round.

- No bidder is permitted to submit a bid for any application for which an exit bid was received in a prior auction round. [That is, once an application has exited the auction, it may not return.](#)
  - If no valid bid is submitted within a given auction round for an application that remains in the auction, then the bid amount is taken to be the amount of the proxy bid, if any, carried forward from the previous auction round or, if none, the bid is taken to be an exit bid at the start-of-round price for the current auction round.
8. This process continues, with the auctioneer increasing the price range for each given TLD string in each auction round, until there is one remaining bidder at the end-of-round price. After an auction round in which this condition is satisfied, the auction concludes and the auctioneer determines the clearing price. The last remaining application is deemed the successful application, and the associated bidder is obligated to pay the clearing price.

Figure 4-4 illustrates how an auction for five contending applications might progress.



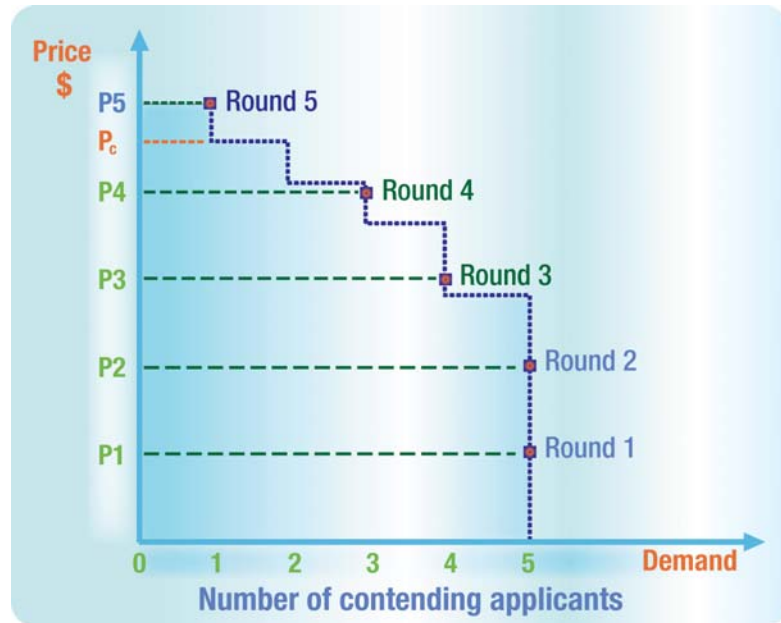


Figure 4-4 – Example of an auction for five mutually-contending applications.

- Before the first auction round, the auctioneer announces the end-of-round price  $P_1$ .
- During Auction round 1, a bid is submitted for each application. In Figure 4-4, all five bidders submit bids of at least  $P_1$ . Since the aggregate demand exceeds one, the auction proceeds to Auction round 2. The auctioneer discloses that five contending applications remained at  $P_1$  and announces the end-of-round price  $P_2$ .
- During Auction round 2, a bid is submitted for each application. In Figure 4-4, all five bidders submit bids of at least  $P_2$ . The auctioneer discloses that five contending applications remained at  $P_2$  and announces the end-of-round price  $P_3$ .
- During Auction round 3, one of the bidders submits an exit bid at slightly below  $P_3$ , while the other four bidders submit bids of at least  $P_3$ . The auctioneer discloses that four contending applications remained at  $P_3$  and announces the end-of-round price  $P_4$ .

- During Auction round 4, one of the bidders submits an exit bid midway between  $P_3$  and  $P_4$ , while the other three remaining bidders submit bids of at least  $P_4$ . The auctioneer discloses that three contending applications remained at  $P_4$  and announces the end-of-auction round price  $P_5$ .
- During Auction round 5, one of the bidders submits an exit bid at slightly above  $P_4$ , and one of the bidders submits an exit bid at  $P_c$  midway between  $P_4$  and  $P_5$ . The final bidder submits a bid greater than  $P_c$ . Since the aggregate demand at  $P_5$  does not exceed one, the auction concludes in Auction round 5. The application associated with the highest bid in Auction round 5 is deemed the successful application. The clearing price is  $P_c$ , as this is the lowest price at which aggregate demand can be met.

To the extent possible, auctions to resolve multiple string contention situations may be conducted simultaneously.

#### 4.3.1.1 Currency

For bids to be comparable, all bids in the auction will be submitted in any integer (whole) number of US dollars.

#### 4.3.1.2 Fees

A bidding deposit will be required of applicants participating in the auction, in an amount to be determined. [The bidding deposit must be transmitted by wire transfer to a specified bank account specified by ICANN or its auction provider at a major international bank, to be received in advance of the auction date. The amount of the deposit will determine a bidding limit for each bidder: the bidding deposit will equal 10% of the bidding limit; and the bidder will not be permitted to submit any bid in excess of its bidding limit.](#)

[In order to avoid the need for bidders to pre-commit to a particular bidding limit, bidders may be given the option of making a specified deposit that will provide them with unlimited bidding authority for a given application. The amount of the deposit required for unlimited bidding authority will depend on the particular contention set and will be based on an assessment of the possible final prices within the auction.](#)

All deposits from nondefaulting losing bidders will be returned following the close of the auction.

### 4.3.2 *Winning Bid Payments*

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Any applicant that participates in an auction will be required to sign a bidder agreement that acknowledges its rights and responsibilities in the auction, including that its bids are legally binding commitments to pay the amount bid if it wins; ~~that is (i.e., if its application is approved),~~ and to enter into the prescribed registry agreement with ICANN—together with a specified penalty for defaulting on [payment of its winning bid or failing to enter into the required registry agreement.](#)

The winning bidder in any auction will be required to pay the full amount of the final price within ~~2040~~ 20 business days of the end of the auction. Payment is to be made by wire transfer to the same international bank account as the bidding deposit, and the applicant's bidding deposit will be credited toward the final price.

[In the event that a bidder anticipates that it would require a longer payment period than 20 business days due to verifiable government-imposed currency restrictions, the bidder may advise ICANN well in advance of the auction and ICANN will consider applying a longer payment period to all bidders within the same contention set.](#)

Any winning bidder for whom the full amount of the final price is not received within ~~2040~~ 20 business days of the end of an auction is subject to being declared in default. At their sole discretion, ICANN and its auction provider may delay the declaration of default for a brief period, but only if they are convinced that receipt of full payment is imminent.

[Any winning bidder for whom the full amount of the final price is received within 20 business days of the end of an auction retains the obligation to execute the required registry agreement within 90 days of the end of auction. Such winning bidder who does not execute the agreement within 90 days of the end of the auction is subject to being declared in default. At their sole discretion, ICANN and its auction provider may delay the declaration of default for a brief period, but only if they are convinced that execution of the registry agreement is imminent.](#)

### 4.3.3 Post-Default Procedures

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Once declared in default, ~~any~~the winning bidder is subject to immediate forfeiture of its position in the auction and assessment of default penalties. After a winning bidder is declared in default, the remaining bidders will receive an offer to have their applications accepted, one at a time, in descending order of their exit bids. In this way, the next bidder would be declared the winner subject to payment of its last bid price.

Each bidder that is offered the relevant gTLD will be given a specified period—typically, four business days—to respond as to whether it wants the gTLD. A bidder who responds in the affirmative will have ~~20~~10 business days to submit its full payment.

~~The penalty for defaulting on a winning bid will equal 10% of the defaulting bid.~~<sup>3</sup>

~~The penalty for defaulting on a winning bid will be the greater of the following: (1) 10% of the defaulting bid, or (2) the amount by which the defaulting bid exceeds the bid amount that ICANN is ultimately paid by an applicant for the identical or similar contending gTLD string.~~

Default penalties will be charged against any defaulting applicant's bidding deposit before the associated bidding deposit is returned, ~~and, to the extent that the default penalty exceeds the associated bidding deposit, the defaulting applicant will also be liable for the additional amount.~~

## 4.4 Contention Resolution and Contract Execution

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An applicant that has been declared the winner of a contention resolution process will proceed by entering into ~~the~~ contract execution step. (Refer to section 5.1 of Module 5.)

If ~~a~~the winner of the contention resolution ~~procedure~~ has not executed a contract within 90 days of the decision,

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<sup>3</sup> ~~If bidders were given the option of making a specified deposit that provided them with unlimited bidding authority for a given application and if the winning bidder utilized this option, then the penalty for defaulting on a winning bid will be the lesser of the following: (1) 10% of the defaulting bid, or (2) the specified deposit amount that provided the bidder with unlimited bidding authority.~~

ICANN has the right to extend an offer to the runner-up applicant, if any, to proceed with its application. For example, ~~in a comparative evaluation, the applicant with the second highest score (if equal to or greater than fourteen, might be selected to proceed toward delegation. (Refer to Module 5.) Similarly,~~ in an auction, another applicant who would be considered the runner-up applicant might proceed toward delegation. This offer is at ICANN's option only. The runner-up applicant in a contention resolution process has no automatic right to an applied-for gTLD string if the first place winner does not execute a contract within a specified time.