

Questions / Approach for addressing input received on Charter Question #10 / Guidance for the Implementation Phase in relation to charter question #10

Charter Question #10: To what extent (and, if so, how) could ICANN, the Organization or a constituent part thereof, be the beneficiary of some of the auction funds?

OVERARCHING QUESTION:

As a result of the input provided during the public comment period, should the CCWG reconsider its recommendation / implementation guidance that:

Preliminary CCWG Recommendation #5: The CCWG has not yet come to agreement on whether ICANN Org or a constituent part thereof should be a beneficiary of some of the auction proceeds and as such would welcome input on this question during the public comment period so that an informed decision can be made.

If yes, why?

If no, why not?

If it is not possible to make this determination at this stage, what input, or information would be necessary to make this determination?

| Comment #1 (José Alberto Barrueto Rodríguez) | |
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| Suggestion from Commenter | CCWG to consider whether a percentage or proportional allocation system could be established for each ICANN SO/AC. |
| Leadership recommendation | Check: whether a basked model for assigning a certain percentage to SO/AC shall get established? Check: with ICANN ORG legal and Board whether this would be possible? |
| CCWG Team discussion / agreement | |

| Comment #2 (BC) | |
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| Suggestion from Commenter | CCWG to consider support for projects to be developed and submitted by ICANN constituencies and AC/SOs, but not from AC/SOs who are directly affiliated with ICANN. [CCWG to consider asking for a clarification as it is not clear which AC/SOs are not directly affiliated with ICANN?] |
| Leadership recommendation | |
| CCWG Team discussion / agreement | |

| Comment #3 (NCSG) | |
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| Suggestion from Commenter | CCWG to consider position that ICANN Org should not receive any of the auction proceeds. |
| Leadership recommendation | |
| CCWG Team discussion / agreement | |

| Comment #4 (ALAC) | |
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| Suggestion from Commenter | CCWG to consider whether At-Large Structures (ALSes) and Individual members should be able to apply for funds. |
| Leadership recommendation | -Check: whether this is legally even possible |
| CCWG Team discussion / agreement | |

| Comment #5 (RrSG) | |
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| Suggestion from Commenter | CCWG to consider not allowing use of any auction proceeds for ICANN Org or a constituent part thereof. |
| Leadership recommendation | Check: in conflict with ALAC (point 4)= point needs to be clarified |
| CCWG Team discussion / agreement | |

| Comment #7 (Anne Aikman-Scalese) | |
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| Suggestion from Commenter | CCWG to consider whether failure to place the grantmaking function outside of ICANN org will automatically restrict the ability of such applicants to receive grants due to apparent conflicts of interest and should be strictly avoided. |
| Leadership recommendation | -Check: whether this is legally even possible |
| CCWG Team discussion / agreement | |

| Comment #8 (ICANN Board) | |
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| Suggestion from Commenter | CCWG to further consider ICANN Board's letter of 5 October 2018 (see here) as well as additional clarifications provided during ICANN63. |
| Leadership recommendation | -Evaluate and discuss letter asap |
| CCWG Team discussion / agreement | |

| Comment #9 (RySG) & #10 (BC) | |
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| Suggestion from Commenter | CCWG to consider whether any further consideration needs to be given to replenishment of reserve fund by auction proceeds (or whether that question has become obsolete as a result of recent board action). |
| Leadership recommendation | |
| CCWG Team discussion / agreement | |



Response to Response to Charter Question #10/Preliminary Recommendation #5

| # | Comment | Contributor | Type of change suggested by commenter / Possible action and/or question for CCWG | CCWG Response / Action Taken |
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| <p>Section Summary:</p> <p><u>Charter Question #10</u>: To what extent (and, if so, how) could ICANN, the Organization or a constituent part thereof, be the beneficiary of some of the auction funds?</p> <p><u>Preliminary CCWG Recommendation #5</u>: The CCWG has not yet come to agreement on whether ICANN Org or a constituent part thereof should be a beneficiary of some of the auction proceeds and as such would welcome input on this question during the public comment period so that an informed decision can be made.</p> <p>Overview of Comments: Some comments oppose ICANN, the Organization or a constituent part thereof being the beneficiary of auction funds. Other comments point to specific groups that should be eligible to receive funds and the conditions under which this should be possible. ICANN Board comments clarify points raised in the Board letter previously sent to the CCWG on this topic. While Charter Question #10 does not explicitly address the issue of Board allocation of auction proceeds to replenish the ICANN reserve fund, two comments provide input on this issue.</p> | | | | |
| 1. | <p>A percentage or proportional allocation system could be established for each of the ICANN constituent part SO/AC beneficiary of some of the auction proceeds.</p> <p>See full comment: https://mm.icann.org/pipermail/comments-new-gtld-auction-proceeds-initial-08oct18/2018q4/000023.html</p> | José Alberto Barrueto Rodríguez | <p>CCWG to consider whether a percentage or proportional allocation system could be established for each ICANN SO/AC.</p> <p>Leadership recommendation</p> <p>-Check: whether a basked model for assigning a certain percentage to SO/AC shall get established?</p> <p>-Check: with ICANN ORG legal and Board whether this would be possible?</p> | <p>New Idea</p> <p>CCWG Response:</p> <p>Action Taken:</p> <p>[COMPLETED / NOT COMPLETED] – [Instruction of what was done.]</p> |

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| <p>2.</p> | <p>We support that projects may be developed and submitted by ICANN constituencies and AC/SOs, but not from AC/SOs who are directly affiliated with ICANN.</p> <p>See full comment: https://mm.icann.org/pipermail/comments-new-gtld-auction-proceeds-initial-08oct18/2018q4/000031.html</p> | <p>BC</p> | <p>CCWG to consider support for projects to be developed and submitted by ICANN constituencies and AC/SOs, but not from AC/SOs who are directly affiliated with ICANN.</p> <p>[CCWG to consider asking for a clarification as it is not clear which AC/SOs are not directly affiliated with ICANN?]</p> | <p>Concerns</p> <p>CCWG Response:</p> <p>Action Taken:</p> <p>[COMPLETED / NOT COMPLETED] – [Instruction of what was done.]</p> |
| <p>3.</p> | <p>Preliminary CCWG Recommendation #5</p> <p>The NCSG notes that no decision has been reached by the Cross-Community Working Group on whether any funds should go to ICANN org or a constituent part. On this matter, the NCSG feels strongly that ICANN org should not receive any of the auction proceeds, as these funds were supposed to be sequestered for charitable purposes.</p> <p>See full comment: https://mm.icann.org/pipermail/comments-new-gtld-auction-proceeds-initial-08oct18/2018q4/000034.html</p> | <p>NCSG</p> | <p>CCWG to consider position that ICANN Org should not receive any of the auction proceeds.</p> | <p>Concerns</p> <p>WG Response:</p> <p>Action Taken:</p> <p>[COMPLETED / NOT COMPLETED] – [Instruction of what was done.]</p> |
| <p>4.</p> | <p>Recommendation 5: Because these funds were originally set up for philanthropic purposes, the ALAC believes strongly that At-Large Structures (ALSes) and Individual members should be able to apply for funds provided they follow the established process for all applicants. Projects that facilitate capacity building in the regions and that assist the work of At-Large members should be encouraged and supported. ICANN Org, Registries and Registrars, and Advisory Committees/Supporting Organizations (ACs/SOs) should not be able to apply. The proceeds from past auctions were meant to be used for capacity building activities that enhance ICANN’s mission and core principles</p> | <p>ALAC</p> | <p>CCWG to consider whether At-Large Structures (ALSes) and Individual members should be able to apply for funds.</p> <p>Leadership recommendation</p> <p>-Check: whether this is legally even possible</p> | <p>Concerns</p> <p>CCWG Response:</p> <p>Action Taken:</p> <p>[COMPLETED / NOT COMPLETED] – [Instruction of what was done.]</p> |

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| | <p>and are consistent with an “open and interoperable Internet”. The concept of “open and interoperable Internet” can be described from many angles: technological, business, political, social and cultural, and may have different meanings in different communities. Projects are expected to advance work related to open access, future-oriented developments, innovation and open standards, for the benefit of the Internet community. The ALAC does not think that additional funds besides those that the ICANN Board has mentioned should be taken out of the Auction Proceeds fund, as this goes against the ideas that led to the creation of the fund and this Cross Community Working Group.</p> <p>See full comment: https://mm.icann.org/pipermail/comments-new-gtld-auction-proceeds-initial-08oct18/2018q4/000041.html</p> | | | |
| 5. | <p>Preliminary CCWG Recommendation #5</p> <p>While the CCWG has not yet come to agreement on whether ICANN Org or a constituent part thereof should be a beneficiary of some of the auction proceeds, the RrSG strongly discourages the CCWG from allowing use of any auction proceeds for ICANN Org or a constituent part thereof.</p> <p>See full comment: https://mm.icann.org/pipermail/comments-new-gtld-auction-proceeds-initial-08oct18/2018q4/000030.html</p> | RrSG | <p>CCWG to consider not allowing use of any auction proceeds for ICANN Org or a constituent part thereof.</p> <p>Leadership recommendation</p> <p>Check:in conflict with ALAC (point 4)= point needs to be clarified</p> | <p>Concerns</p> <p>CCWG Response:</p> <p>Action Taken:</p> <p>[COMPLETED / NOT COMPLETED] – [Instruction of what was done.]</p> |
| 6. | <p>Preliminary CCWG Recommendation #5</p> <p>The NCSG notes that no decision has been reached by the Cross-Community Working Group on whether any funds should go to ICANN org or a constituent part. On this matter, the NCSG feels strongly that ICANN org should not</p> | NCSG | <p>CCWG to consider that ICANN Org should not receive any of the auction proceeds.</p> | <p>Concerns</p> <p>CCWG Response:</p> <p>Action Taken:</p> <p>[COMPLETED / NOT COMPLETED] – [Instruction of what was done.]</p> |

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| | <p>receive any of the auction proceeds, as these funds were supposed to be sequestered for charitable purposes.</p> <p>See full comment: https://mm.icann.org/pipermail/comments-new-gtld-auction-proceeds-initial-08oct18/2018q4/000034.html</p> | | | |
| 7. | <p>Recommendation #5: If Mechanism B is selected, Recommendation 3 and 4 are much easier to accomplish and it would be much easier for a member of an ICANN stakeholder or constituency group to apply for and qualify for an allocation of funds. Failure to place the grantmaking function outside of ICANN org will automatically restrict the ability of such applicants to receive grants due to apparent conflicts of interest and should be strictly avoided.</p> <p>See full comment: https://mm.icann.org/pipermail/comments-new-gtld-auction-proceeds-initial-08oct18/2018q4/000035.html</p> | Anne Aikman-Scalese | CCWG to consider whether failure to place the grantmaking function outside of ICANN org will automatically restrict the ability of such applicants to receive grants due to apparent conflicts of interest and should be strictly avoided. | <p>Concerns</p> <p>WG Response:</p> <p>Action Taken:</p> <p>[COMPLETED / NOT COMPLETED] – [Instruction of what was done.]</p> |
| 8. | <p><u>Charter Question #10</u></p> <p>The Board recognizes that the CCWG did not have time to review the Board’s 5 October 2018 letter ahead of its report in response to the CCWG’s request for input and hopes it is useful for editing the next iteration of the report. In CCWG mailing list discussions and at ICANN63, Members asked for clarification on the Board’s October 2018 letter referenced in the CCWG’s Initial Report. Becky Burr provided additional information at ICANN63, noting that:</p> <ul style="list-style-type: none"> • The Board and org do not currently foresee a situation where it would need to apply for the proceeds. That being said, it is important to note that ICANN maintains legal and fiduciary responsibility over the funds. ICANN’s directors and officers have a duty to protect the organization ensure that it meets its legal obligations, including through the use of available resources. • In the event of an unavoidable need, the Board and the org would have a fiduciary obligation to use | ICANN Board | <p>CCWG to further consider ICANN Board’s letter of 5 October 2018 as well as additional clarifications provided during ICANN63.</p> <p><u>Leadership recommendation</u></p> <p><u>-Evaluate and discuss letter asap</u></p> | <p>Concerns</p> <p>CCWG Response:</p> <p>Action Taken:</p> <p>[COMPLETED / NOT COMPLETED] – [Instruction of what was done.]</p> |

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| | <p>available resources to meet the org’s obligations and this could include – depending on the situation – the auction proceeds.</p> <ul style="list-style-type: none"> ● Regarding SO/AC’s applying for proceeds: SO/AC structures that are not legal entities in their own right, independent of the multistakeholder ICANN structure, would be unable to apply for proceeds as they likely do not meet due diligence requirements. This was identified early on in the Drafting Team’s work by the Legal and Financial Considerations Memo (June 2016). ● This would not preclude consideration of applications from SO/AC structures that are also established legal entities outside the multistakeholder model provided that: the request does not include an activity or project that is or should be covered by ICANN’s operational budget; conflict of interest considerations are met, including but not limited to ensuring that those applying are not part of the evaluation process; and all other application criteria are met. <p>We hope that this information in relation to the Board letter is useful but are happy to provide more information through the Board Liaisons during the CCWG’s future work, if needed.</p> <p>See full comment: https://mm.icann.org/pipermail/comments-new-gtld-auction-proceeds-initial-08oct18/2018q4/000024.html</p> | | | |
| 9. | <p>Preliminary CCWG Recommendation #5</p> <p>According to the CCWG, “[t]he CCWG has not yet come to agreement on whether ICANN Org or a constituent part thereof should be a beneficiary of some of the auction proceeds and as such would welcome input on this question during the public comment period so that an informed decision can be made.”</p> | RySG | CCWG to consider whether any further consideration needs to be given to replenishment of reserve fund by auction proceeds (or whether that question has become obsolete as a result of recent board action). | <p>Concerns</p> <p>CCWG Response:</p> <p>Action Taken:</p> <p>[COMPLETED / NOT COMPLETED] – [Instruction of what was done.]</p> |

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| | <p>As we have previously stated, use of the Auction Funds to replenish the Reserve Fund or for general ICANN purposes should be done as a result of community consensus:</p> <p><i>[S]hould it be determined by the CWG Auction Proceeds process that such a use of Auction Funds is permissible AND there be a community consensus determination through this comment process on replenishment that there is a requirement for Reserve Fund top-up beyond that provided for by regular, annual contributions from ICANN Org, then the use of 3/3 Auction Funds in this context may be appropriate as a supplement to the regular, annual contributions from ICANN Org.</i></p> <p>If the CCWG determines that there is community consensus for using a portion of the Auction Proceeds to replenish the Reserve Fund, we strongly urge the CCWG to tie strong and definite conditions of fiscal responsibility and frugality to the disbursement. These limitations should be that: 1. ICANN must rescope projects and develop a budget within its current means (this may mean cutting programs, heads, and bloat that has crept in - the reserve fund should be to support a lean, frugal organization through an emergency, not to fund special projects). 2. ICANN must live within that budget, because the disbursement is not recurring. See full comment: https://mm.icann.org/pipermail/comments-new-gtld-auction-proceeds-initial-08oct18/2018q4/000036.html</p> | | | |
| 10. | <p>BC Comment regarding one-time contribution toward ICANN’s Reserve Fund:</p> <p>In general we do not support use of Auction Proceeds for ICANN’s day to day operational budget. However, the BC believes that the community and ICANN will be best served by using a portion of the auction proceeds to replenish</p> | BC | CCWG to consider whether any further consideration needs to be given to replenishment of reserve fund by auction proceeds (or whether that question has become obsolete as a result of recent board action). | <p>Concerns</p> <p>CCWG Response:</p> <p>Action Taken:</p> <p>[COMPLETED / NOT COMPLETED] – [Instruction of what was done.]</p> |

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| | <p>ICANN's reserves for depletion related to the IANA transition.</p> <p>The BC previously submitted comments of general support to such use of some of the existing Auction Funds, in Apr-2018 and Nov-2017.</p> <p>The amount of available auction funds is quite considerable and may yet be augmented by additional auctions still pending from this gTLD round. We support that the majority of the auction funds should be directed toward activities that are not replacing ICANN's day to day operational expenses, but we do support that projects submitted for Auction Funds can be similar as long as they are in tandem and congruent with ICANN's vision, mission and core values.</p> <p>See full comment: https://mm.icann.org/pipermail/comments-new-gtld-auction-proceeds-initial-08oct18/2018q4/000031.html</p> | | | |
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