Questions for CCWG Input – Draft Final Report

Updated 28 June 2019 – Items Ordered to Support Discussion at ICANN65

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10	Annex C, also 4.2 which includes a summary of guidance in Annex C	40, also 11	Excerpt: 1. The purpose of a grant/application must be in service of ICANN's mission and core principles. 2. The objectives and outcomes of the projects funded under this mechanism should be in agreement with ICANN's efforts for an Internet that is stable, secure, resilient, scalable, and standards-based. 3. Projects advancing work related to any of the following topics open access, future oriented developments, innovation and open standards, for the benefit of the Internet community are encouraged. 4. Projects addressing diversity, participation and inclusion should strive to deepen informed engagement and participation from developing countries, under-represented communities and all stakeholders. Projects supportive of ICANN's communities' activities are encouraged.	**Are any additional updates needed to Annex C in response to Board feedback?** Feedback: There are two mandatory gating considerations in the selection of projects: 1. Is project in ICANN's mission? It does not need to fully cover all aspects of the mission but must contribute to the mission. 2. Is it a part of ongoing operations? Other criteria for evaluating applications can be considered after those two gating questions are answered. The Board would like additional clarification about Annex C objectives and recommendations – which should be considered mandatory vs. aspirational? For context, see Agreement #36 (Leadership to put question forward to Board liaisons based on this comment asking for clarification on the input, factoring in the CCWG's discussion. (This comment: ""The Board is concerned that the content in Annex C creates potential inconsistencies with the Objectives and ICANN's Mission and therefore could result in confusion during application and selection and may result in challenges against the selection process.")) **CCWG response (26/6 meeting)**: No additional updates are needed.
5	5.2, also corresponding text in 4.2	20, also 11	CCWG Recommendation #2: The CCWG agreed that specific objectives of new gTLD Auction Proceeds fund allocation are: ● Benefit the development, distribution, evolution and structures/projects that support the Internet's unique identifier systems; ● Benefit capacity building and underserved populations, or;	**Is this language overly broad? Should it be revised in light of recent CCWG discussions? Are there any additional questions the CCWG needs to ask Org/Board to resolve this issue?** (Agreement #6: CCWG to review the language of this recommendation (#2) to see whether it is overly broad, although the CCWG noted that the restraining factor of the ICANN's mission is already referenced.)

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			● Benefit the open and interoperable Internet New gTLD Auction Proceeds are expected to be allocated in a manner consistent with ICANN's mission.	**CCWG response (26/6 meeting)**: No additional updates are needed.
11	Annex D	42	See Initial Report for full text of Annex D	**Do you have any initial thoughts about whether adjustments need to be made to the CCWG's approach to Annex D (Example Projects)?** Note that outcome of Agreement #38 will assist in this discussion (Agreement #38: Leadership team to send a request to ICANN Legal clarifying the risks of providing a list of example projects and how to mitigate any potential risks.) **CCWG response (26/6 meeting)**: ICANN legal requested to provide suggested edits to further emphasize that the example list is not limiting in any way and further clarify that the ICANN Board will be responsible for making a determination on whether something is within ICANN's mission or not.
6	5.2	21	Text will be added to the Report describing role and responsibilities of Community Advisory Panel but is not yet included	**Do you have any input on the potential role advisory role for the community** (Agreement 21: Leadership team with Alan G. to engage in a conversation on how such a community advisory committee could look like, what role it could have, in line with the broader conversation of the role of the community in this process.)? First draft of text for discussion provided by leadership team with Alan Greenberg: Creation of an **Advisory Board**. Such an AB shall be available to the organization of the selected mechanism and the evaluators of projects in case a conflict arises or specific advice is needed (bouncing board) that can't be solved without such kind of support;

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				- AB members are nominated by SO/ACs through their own respective processes, factoring in the required expertise, skills and commitments required. Based on a transparent evaluation by the mechanism in cooperation with an authorized entity will select up to two members from each SO/AC. - The creation, determination of required skills and legal requirements of the AB will be left for the Implementation Team; - Action item = add a concrete reference to the creation of an AB to our Implementation Guidance. - But, we recommend to describe the 'Starting Process' and the 'Methodology' for the AB already now. Creation of an **Program Evaluation Panel.** Such a panel kicks in after few years to allow an assessment of the whole funding process to understand whether adjustments are needed in relation to the defined goals. Such an evaluation can be done by experienced ICANN community members or by an expert group that is hired to do the work. Any recommendations developed by the Program Evaluation Panel would be provided to the mechanism, with copy to the ICANN Board and ICANN org, for further consideration. - First evaluation after 3 years of operation and thereafter every third year (?)

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				• Goals of PEP shall get defined by the Implementation Team. **CCWG response (26/6 meeting)**: This will need further discussion and consideration. Alan and Erika to factor in feedback provided during the meeting and propose updated language for inclusion.
3	4.5 and 5.1	13 and 16	Ranking mechanisms and selection of the mechanism (Charter Question #1)	**Are there any new factors or considerations that the CCWG should take into account from public comments or subsequent CCWG discussion as the CCWG re-evaluates whether any of the mechanisms should be eliminated from consideration** (Agreement #3: For now, CCWG will keep all three options open (A, B and C) and will re-evaluate at the end of the review all public comments and further input requested whether any of the mechanisms should be eliminated from consideration.)? **CCWG response (26/6 meeting)**: Jonathan, Marilyn and Erika to come together and put forward an approach for how the CCWG may consider whether to further reduce the number of options.
13	1.5, 2, and 6	4,5, and 30	See Initial Report for applicable text	Based on proposed changes to the Report, is an additional public comment period needed? See Agreement #34 (CCWG to check with respective groups whether a second comment period is desirable, and if so, what the minimum duration should be.) **CCWG response (26/6 meeting)**: CCWG to further consider whether or not an additional public comment period is needed once full scope of changes to the report is clear. CCWG also to consider alternative paths for

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				seeking input, for example, by directly reaching out to Chartering Organizations, or conduct a very targeted public comment forum. Staff to follow up with legal to confirm whether a public comment forum prior to ICANN Board consideration will be opened regardless of whether the CCWG conducts another public comment period or not.
1	4.1	7	"Before making a final determination on a mechanism, the ICANN Board should conduct a feasibility assessment which provides further details on these aspects so that an informed decision can be made. Such an assessment should also factor in that it concerns a limited time mechanism with the ability to sunset as the CCWG is recommending against creating a perpetual mechanism."	**Is this text similar to CCWG Agreement #1** (Leadership team to prepare a first draft in a google doc of the request that would go to ICANN org regarding what the expectations are of a cost-benefit analysis. CCWG members to participate in the drafting)? **If so, does such a feasibility assessment need to be conducted prior to finalization of the report or is this expected to happen prior to Board consideration or as part of the implementation process?**
2	4.1 and 5.1	8 and 16	Description of mechanism B, which includes the use of a Donor Advised Fund (DAF) as a possible model.	**Should DAF still be referenced as a possible model in the Report? Does the CCWG want to provide any additional detail about the anticipated division of labor between ICANN and the external entity?** Note that the CCWG previously discussed that: 1. When working with a DAF, ICANN would completely hand over the proceeds as a "gift," which would limit ICANN's ability to conduct its fiduciary duties. 2. It may be difficult to find a DAF as these organizations are subject to their own rules and requirements that may not fit with the legal and fiduciary duties and requirements of ICANN or the requirements set out by the CCWG's recommendations.
4	5.1	17	Short description of Mechanism B: "A new ICANN Proceeds Allocation Department is created as part of ICANN Org which would work in collaboration with an existing charitable organization(s)."	**Does the CCWG need to clarify references to charitable organizations(s) after reviewing memo on legal and fiduciary constraints? Does it need to request any additional information from ICANN Org to answer this**

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				question? See Agreement #5: CCWG to review memo on the legal and fiduciary constraints and determine whether language that refers to 'charitable organizations' should be further clarified or specified based on the guidance provided. Also identify whether there are any further questions or clarifications from Org needed.
7	5.2	23	**Guidance for the Implementation Phase in relation to charter question #5**: The provisions outlined in response to this charter question should at a minimum be considered for inclusion in the conflict of interest requirements that are expected to be developed during the implementation phase. In the case of mechanism B, there will need to be clearly defined roles and responsibilities incumbent upon both ICANN and the other organization, and an agreement in place about how these roles are carried out operationally. The external organization would need to have appropriate conflict of interest policies and practices in place for the elements of the program it manages. In addition, ICANN will maintain oversight to ensure that legal and fiduciary obligations are met.	**Is further implementation guidance for the implementation team needed to ensure that appropriate Conflict of Interest mechanisms are put in place? Does this need to be different at the different levels? If so, how?** (Agreement #14: CCWG to consider adding further implementation guidance for the implementation team to ensure appropriate COI mechanisms are put in place.)
8	5.2	25	The CCWG also considered per the Board's recommendation "the consideration of the risks associated with the mechanism(s) selected for evaluating grant applications and/or administering the program itself, such as the risk that decisions to allocate or not grants to applicants are challenged, or the risk that funds allocated to applicants are misused". The CCWG discussed whether an appeals mechanism should be available for applicant not selected and/but agreed that [update following CCWG's agreement].	**Do you have any insight into whether/how other organizations handle this? Is additional internal or external input needed? If so, do you have suggestions for gathering this information?** **CCWG response (26/6 meeting):** staff to draft language to reflect CCWG agreement (no formal appeals process is needed but applicants should have the ability to go back to the independent evaluators to provide clarifications or flag if it is believed that something was misunderstood or missed.

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	5.2	27-28	**Guidance for the Implementation Phase in relation to charter question #6**: . . . In addition to enabling projects that support capacity building and underserved populations, attention should also be given to facilitating receipt of applications from diverse geographic regions and communities as well as how to support applications from diverse background. Further work will also need to be undertaken as part of the implementation phase on who and how to define 'underserved populations' as well as the guidance that is to be provided to the independent evaluation panel to help inform a determination of which regions qualify as underserved regions and in which areas capacity building may be specifically needed.	**Is this language sufficiently responsive to Agreement #42** (Agreement #42: Review text of report and recommendations to verify that language is sufficiently fair, neutral, and objective, e.g. recognizing gender equality, fair treatment of different regions.)?
9	Annex C	40	New text proposed by small team: "Consistency with the ICANN mission is a necessary but not sufficient condition for funding. Evaluators may consider the scope, openness to innovation and impact of the proposed project in light of the overall purpose of the auction proceeds. Evaluators will be informed by ICANN Org's budget and associated documents concerning categories of projects already covered by ongoing operations, as well as any legal and fiduciary constraints. Examples provided are specifically intended to be illustrative, not definitive."	**Do you have any input on this proposed text developed by the small team to add to Annex C (Marilyn, Elliot, Jonathan, Alan and Maureen)?** See Agreement #7: Review example list as well as guidelines and consider whether additional language should be added to reflects the above discussion. **CCWG response (26/6 meeting):** Support for proposed text.
Additional Items to Update/Consider Once Other Action Items from the Agreements List are Resolved				
12	Annex D	42	See Initial Report for full text of Annex D	If the CCWG determines that Annex D is appropriate in its current form (item 11 on the list above, see also Agreement #38), do any additional example projects need to be added based on input received through public comment? See Agreement #41 (Consider whether any changes to the report are necessary in light of specific proposals for funding.)

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14	5.2	23-25 21	ICANN must put in place reporting and publication processes to ensure transparency on evaluation procedures, results, and usage of funds[1]. o Explain/report on/publish evaluation methodology, o Explain/report on/publish results of evaluations, o Explain/report on/publish analyses of the effective use of the funds. See also (page 21) Processes and procedures will need to be put into place to ensure that legal and fiduciary requirements are met. There will need to be processes of controls on conflict of interest, on consistency with mission, on clarity of evaluation results, on decision/approval, on disbursement, and on monitoring after disbursement, including reporting from the recipients on the use of funds and mechanisms to guard against misuse.	**CCWG response (26/6 meeting):** CCWG to consider whether further guidance needs to be provided on if/how reporting needs to differ depending on the type of funding and/or project that is supported. Proposed addition to the following language that is included in response to charter question #9: Industry best practices should be observed wherever possible and appropriate: • require measurable uses and outcomes of grants • transparency on the use of grants • progressive disbursements • **reporting, which could include different reporting requirements depending on the type of project and/or type of support provided**

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[1] These processes will ensure that the program implementation meets the following principle identified by the ICANN Board: "Transparency: Ensuring adequate/appropriate transparency to the ICANN community and the public on the process, decisions, and status of usage of the proceeds."

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