

Webinar: CCWG on New gTLD Auction Proceeds (CCWG-AP) Final Report

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Key highlights

The CCWG was tasked with developing a proposal(s) for consideration by its Chartering Organizations on the mechanism that should be developed in order to allocate the new gTLD Auction Proceeds.

- The Chartering Organizations are all of the SO/ACs: Address Supporting Organization (ASO), the At-Large Advisory Committee (ALAC), the Country Code Names Supporting Organization (ccNSO), the Generic Names Supporting Organization (GNSO), the Governmental Advisory Committee (GAC), the Security and Stability Advisory Committee (SSAC), and the Root Server System Advisory Committee (RSSAC).
- The CCWG submitted its Final Report to Chartering Organizations for their approval at the end of May 2020.

What are New gTLD auctions?



Only one registry can operate a top-level domain. An auction is the mechanism of last resort for resolving contention between two or more applicants for a string through the New gTLD program.

- Most contention sets are resolved amongst the applicants prior to an ICANN auction of last resort (and ICANN expects this trend to continue).
 - To date, only 17 of the 218 contention sets utilized a last resort auction conducted by ICANN's authorized auction service provider.
- Proceeds generated from auctions of last resort are being separated and reserved until the multistakeholder community develops a plan for their use. This plan must be authorized by the ICANN Board.

What are proceeds?

ICANN Operating and Reserve Funds

Contain day-to-day cash and reserves for ICANN operations.

Tied to ICANN budget and planning processes.

New gTLD Applicant Evaluation Fees

Pay for application evaluation costs, historical development costs repayment and “hard to predict” costs, including risks.

Unspent application fees fully segregated in dedicated bank and investment accounts.

New gTLD Program Auction Proceeds

“Ring-fenced” proceeds from last resort auctions to resolve string contention conducted via ICANN-authorized auction provider.

Proceeds (net of direct auctions costs) fully segregated in separate bank and investment accounts.

Goals and Objectives of the CCWG

The CCWG-AP was formed in **January 2017**. And completed its work in **May 2020**. At the conclusion of its work the CCWG had:



22 members



50 participants

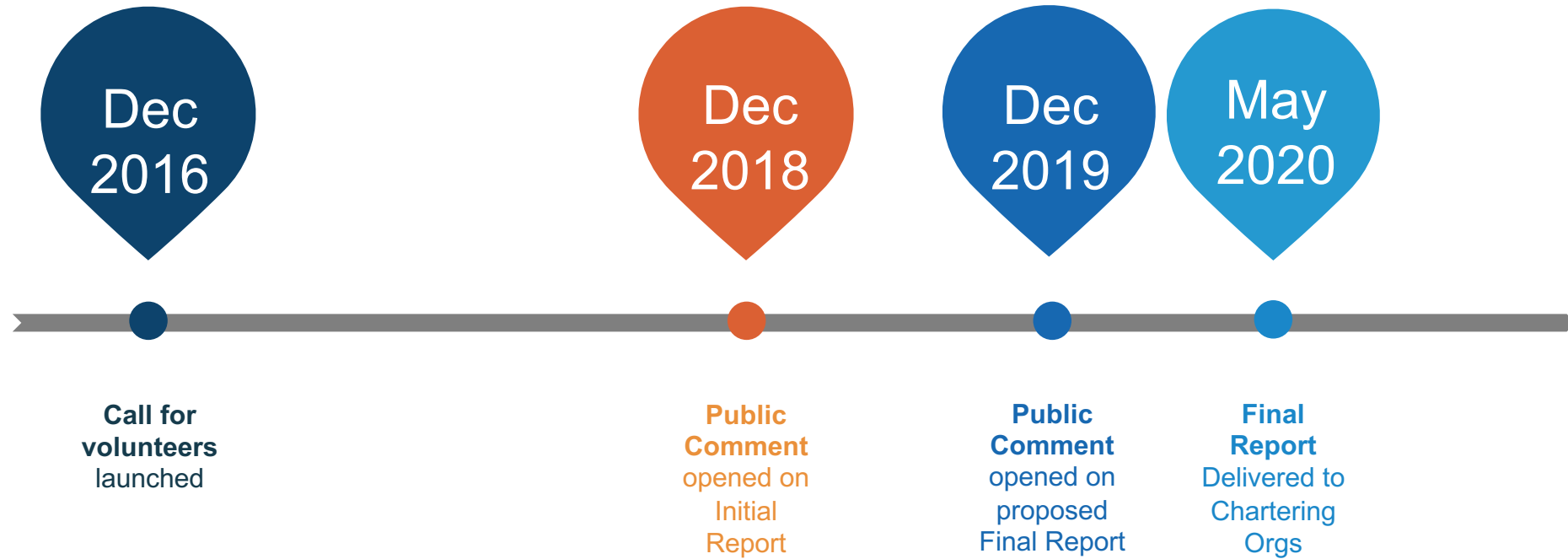


40 observers

The CCWG-AP Charter defines its goals & objectives as:

- Developing a proposal(s) on the mechanism(s) to allocate the new gTLD auction proceeds. This will be provided to the ICANN Board for consideration
- As part of this proposal, the CCWG-AP was expected to review:
 - The scope of fund allocation
 - Due diligence requirements to uphold accountability and proper use of funds
 - How to deal with directly related matters such as potential or actual conflicts of interest
- Out of scope for the CCWG: determinations on particular uses of the proceeds (i.e. which specific projects or organizations are to receive funding)

CCWG Milestones



Throughout the process of deliberations and drafting outputs, the CCWG worked in close **collaboration with the ICANN Board and ICANN organization** to ensure that recommendations take into account **legal and fiscal requirements** and are **feasible to implement**.

Legal and Fiscal Requirements

As part of its deliberations, the CCWG-AP is required to factor in the following legal and fiduciary requirements:



Consistency with ICANN's Mission as set out in Bylaws:

The recommendations must support ICANN in adhering to its Mission and act exclusively in service to its charitable purpose. The Board remains responsible for determining consistency with ICANN's mission.



Private benefit concern:

ICANN cannot provide its funds towards the private benefit of individuals.



Must not be used for political activity:

ICANN is barred from engaging in any activity (or funding any activity) that intervenes in a political campaign for a candidate for public office.



Should not be used for lobbying activities:

ICANN has limits on the amount of its budget that can be used for lobbying purposes (attempts to influence legislation). The auction proceeds should not be used for these lobbying purposes.

Legal and Fiscal Requirements (cont.)



Conflict of interest considerations:

The CCWG-AP has been advised to document how it takes conflicts of interest into consideration in its deliberations. The Board's fiduciary duty requires it to make decisions without conflicts of interest.



Accountability:

Throughout all phases of the disbursement process, ICANN must ensure it remains fully accountable for the proceeds, and to the purpose that has been assigned to them. ICANN's accountability to the public will therefore require implementing thorough mechanisms of evaluation, monitoring, and oversight before, during, and after disbursement.



Financial and fiduciary concerns

The Board and Officers of ICANN hold fiduciary duties to the organization that cross many concerns.



Learn more ▶

<https://community.icann.org/x/CbDRAw>

Recommendations: Mechanisms for Allocation of Auction Proceeds

The Final Report discusses three possible mechanisms that the CCWG considered for allocation of auction proceeds:

- **Mechanism A:** An internal department dedicated to the allocation of auction proceeds is created within the ICANN organization.
- **Mechanism B:** An internal department dedicated to the allocation of auction proceeds is created within the ICANN organization which collaborates with an existing nonprofit.
- **Mechanism C:** A new charitable structure (ICANN Foundation) is created which is functionally separate from ICANN org, which would be responsible for the allocation of auction proceeds.

Initially, the CCWG also considered a fourth option, mechanism D, in which an established entity is used for the allocation of auction proceeds. The CCWG determined that mechanism D was not a viable option.

The Final Report includes the following recommendation with respect to the mechanisms:

“The CCWG recommends that the Board select either mechanism A or mechanism B for the allocation of auction proceeds, taking into account the preference expressed by CCWG members for mechanism A. . . As part of its selection process, the ICANN Board is expected to apply the criteria outlined by the CCWG. . . The CCWG strongly encourages the ICANN Board to conduct a feasibility assessment which provides further analysis of the recommended mechanisms, including costs associated with each mechanism. . .”

Recommendations Summary (cont.)

In addition to making a recommendation about the mechanism(s) for allocation of auction proceeds, the Final Report includes recommendations on the following topics, among others:

- **Independent Projects Evaluation Panel** will be established to **consider and select projects** to receive funding, regardless of the mechanism chosen.
- **Objectives** of fund allocation:
 - Benefit the development, distribution, evolution and structures/projects that support the Internet's **unique identifier systems**;
 - Benefit **capacity building and underserved populations**, or;
 - Benefit the **open and interoperable Internet**
- **Safeguards** to ensure that legal and fiduciary constraints are respected, **conflict of interest provisions**, and **auditing requirements** will be established.
- **Existing ICANN Accountability Mechanisms cannot be used** to challenge decisions on individual applications.

Recommendations Summary (cont.)

- **The selected mechanism** must be implemented in an **effective and judicious manner** without creating a perpetual mechanism (i.e. not being focused on preservation of capital). Disbursement should be staged in **tranches** over a period of years.
- **Two types of reviews** are recommended:
 - **Internal review** step as part of the standard operation of the program, occurring at the end of each granting cycle or at another logical interval. Purpose: to ensure that the program is operating as expected in terms of processes, procedures, and usage of funds.
 - **Broader, strategic review** may be an appropriate element of program implementation, occurring less frequently. Purpose: examine whether the mechanism is effectively serving overall goals of the program and whether the allocation of funds is having the intended impact.

*The Report also includes **guidance for the review and selection of funding proposals**, to serve as a resource in the implementation phase for the Independent Project Evaluation Panel (see Annex C of the Final Report).*

Out of scope for the CCWG: Any recommendations or determinations with regards to specific funding decisions, including specific organizations or projects to fund or not.

Consensus Designation and Minority Statement

- The CCWG Chairs designated the level of support for the Final Report and recommendations as having **Consensus**, “a position where a small minority disagrees, but most agree.”
- One **Minority Statement** was submitted, by the Commercial Stakeholder Group. The CSG highlighted two issues in its Minority Statement:
 - “In light of the final polling results, the CSG **questions the stated preferential status afforded to mechanism A** (An internal department dedicated to the allocation of auction proceeds is created within the ICANN organization).”
 - “One CSG Constituency, namely the IPC, specifically **strongly opposes mechanism A** as posing unreasonable risk to ICANN. Accordingly, as a pre-condition to forming an internal ICANN grant allocation department of any kind, the Board should refer the matter to the Board Risk Committee (BRC) for further assessment.”
- In the final poll, seven members recommended mechanism A as their preferred mechanism, four members ranked mechanism B as their preferred mechanism, and three members ranked mechanism C as their preferred mechanism. One member did not state a preference, commenting that the CCWG should not recommend a mechanism.

What's next?



CCWG Co-Chairs asked the Chartering Organizations to **respond with the results of deliberations by 30 July 2020**. If this is not feasible, COs are requested to let the Co-Chairs **know** when they expect to be able to provide a response.

Additional Resource for Chartering Organizations as they consider the Final Report:

- Q & A sessions with the CCWG Co-Chairs, upon request

Questions?

Annex: CCWG-AP Charter Questions



Questions that the CCWG-AP Considered

1. What framework should be designed and implemented to allow for the disbursement of new gTLD Auction Proceeds, taking into account the legal and fiduciary constraints outlined above as well as the existing memo on legal and fiduciary principles?
2. As part of this framework, what will be the limitations of fund allocation, factoring in that the funds need to be used in line with ICANN's mission while at the same time recognizing the diversity of communities that ICANN serves?
3. What safeguards are to be put in place to ensure that the creation of the framework, as well as its execution and operation, respect the legal and fiduciary constraints that have been outlined in this memo?
4. What aspects should be considered to define a timeframe, if any, for the funds allocation mechanism to operate as well as the disbursements of funds?
5. What conflict of interest provisions and procedures need to be put in place as part of this framework for fund allocations?
6. Should any priority or preference be given to organizations from developing economies, projects implemented in such regions and/or under represented groups?
7. Should ICANN oversee the solicitation and evaluation of proposals, or delegate to or coordinate with another entity, including, for example, a foundation created for this purpose?

Questions that the CCWG-AP Considered

8. What aspects should be considered to determine an appropriate level of overhead that supports the principles outlined in this charter?
9. What is the governance framework that should be followed to guide distribution of the proceeds? The issues addressed by a governance framework could include (but does not have to be limited to):
 - a) What are the specific measures of success that should be reported upon?
 - b) What are the criteria and mechanisms for measuring success and performance?
 - c) What level of evaluation and reporting should be implemented to keep the community informed about how the funds are ultimately used?
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?
11. Should a review mechanism be put in place to address possible adjustments to the framework following the completion of the CCWG-AP's work and implementation of the framework should changes occur that affect the original recommendations (for example, changes to legal and fiduciary requirements and/or changes to ICANN's mission)?

Annex: CCWG-AP Recommendations



CCWG Recommendations

CCWG Recommendation #1: The CCWG recommends that the Board select either mechanism A or mechanism B for the allocation of auction proceeds, taking into account the preference expressed by CCWG members for mechanism A.

As part of its selection process, the ICANN Board is expected to apply the criteria outlined by the CCWG in section 4.5 of this proposed Final Report for which additional internal and/or external input may be required (such as providing a reliable cost estimate). The ICANN Board is expected to share the outcome of its consideration with the CCWG Chartering Organizations and, if deemed necessary, involve the Chartering Organizations and/or CCWG implementation team in any deliberations that would benefit from Chartering Organization and/or CCWG implementation team input.

The CCWG strongly encourages the ICANN Board to conduct a feasibility assessment which provides further analysis of the recommended mechanisms, including costs associated with each mechanism, so that the Board can take an informed decision about supporting the most appropriate mechanism.

CCWG Recommendations

CCWG Recommendation #2: The CCWG recommends that an Independent Project Applications Evaluation Panel will be established. The Panel's responsibility is to evaluate and select project applications. Neither the Board nor staff will be taking decisions on individual applications but the Board will instead focus its oversight on whether the rules of the process were followed by the Independent Project Applications Evaluation Panel. Members of the Independent Project Applications Evaluation Panel will not be selected based on their affiliation or representation, but will be selected based on their grant-making expertise, ability to demonstrate independence over time, and relevant knowledge. Diversity considerations should also be taken into account in the selection process.

CCWG Recommendation #3: 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;
- Benefit the open and interoperable Internet.

New gTLD Auction Proceeds are expected to be allocated in a manner consistent with ICANN's mission.

CCWG Recommendations

CCWG Recommendation #4: The implementation of the selected fund allocation mechanism should include safeguards described in the response to charter question 2.

CCWG Recommendation #5: Robust conflict of interest provisions must be developed and put in place at every phase of the process, regardless of which mechanism is ultimately selected.

CCWG Recommendation #6: Audit requirements as described above do not only apply to the disbursement of auction proceeds on a standalone basis but must be applied to all of ICANN's activities in relation to auction proceeds, including the disbursement of auction proceeds if and when this occurs.

CCWG Recommendations

CCWG Recommendation #7: Existing ICANN accountability mechanisms such as IRP or other appeal mechanisms cannot be used to challenge a decision from the Independent Project Applications Evaluation Panel to approve or not approve an application. Applicants not selected should receive further details about where information can be found about the next round of applications as well as any educational materials that may be available to assist applicants. The CCWG recognizes that there will need to be an amendment to the Fundamental Bylaws to eliminate the opportunity to use the Request for Reconsideration and Independent Review Panel to challenge grant decisions. For the sake of clarity, the recommended Bylaws amendment is not intended to affect the existing powers of the Empowered Community specified under the ICANN Bylaws, including rejection powers on the five-year strategic plan, the five-year operating plan, the annual operating plan, and the annual budget.

CCWG Recommendation #8: The CCWG did not reach consensus to provide any specific recommendation on whether or not ICANN org or its constituent parts could be a beneficiary of auction proceeds, but it does recommend that for all applications the stipulated conditions and requirements, including legal and fiduciary requirements, need to be met.

CCWG Recommendations

CCWG Recommendation #9: The selected mechanism must be implemented to enable the availability of funds for a specific round as well as the disbursement of the funds for selected projects in an effective and judicious manner without creating a perpetual mechanism (i.e. not being focused on preservation of capital).

CCWG Recommendation #10: Funds availability for disbursement should be staged in tranches over a period of years, regardless of the mechanism implemented. Progressive disbursements may be used to fund projects receiving large grants to be implemented over a period of years. Similarly, progressive disbursements can support projects that could be implemented in shorter periods.

CCWG Recommendation #11: As one of the objectives for new gTLD Auction Proceeds fund allocation is to contribute to projects that support capacity building and underserved populations, consideration about how this objective can be achieved should be given further consideration during the implementation phase. The CCWG does not have a particular preference about how to achieve the objective but provided guidance for the implementation phase (see hereunder). The CCWG notes that auction proceeds must be used in a manner that supports ICANN's mission.

CCWG Recommendations

CCWG Recommendation #12: The CCWG recommends that two types of review are implemented⁶. First, an internal review step will be part of the standard operation of the program. This review may take place at the end of each granting cycle or at another logical interval, such as on an annual basis. The purpose of this review is to have a lean “check-in” to ensure that the program is operating as expected in terms of processes, procedures, and usage of funds. The review may identify areas for improvement and allow for minor adjustments in program management and operations.

Second, a broader, strategic review may be an appropriate element of program implementation. This broader review could be used to examine whether the mechanism is effectively serving overall goals of the program and whether the allocation of funds is having the intended impact. This strategic review is expected to occur less frequently and may involve an external evaluator.