

# (Draft) Final Report of the new gTLD Auction Proceeds Cross Community Working Group

This is the (draft) Final Report by the new gTLD Auction Proceeds CCWG, prepared by ICANN Staff for [submission to the CCWG Chartering Organizations] [publication in conjunction with the opening of a second public comment forum]. [Following review of the input received on this proposed Final Report, the CCWG will finalize its report and recommendations for submission to the CCWG's Chartering Organisations for their consideration].

[Date]

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## 1. Executive summary

### 1.1. Background

The new gTLD Auction Proceeds Cross-Community Working Group (CCWG) was formed in January 2017. It is chartered by all of ICANN's Supporting Organizations and Advisory Committees and tasked to develop a proposal(s) on the mechanism(s) to allocate the new gTLD auction proceeds.

An auction is the mechanism of last resort in ICANN.org's new gTLD Program for resolving contention when two or more applicants apply for the same string. In the 2012 application round, most string contentions (approximately 90% of sets scheduled for auction) were resolved through other means before reaching an auction conducted using ICANN.org's authorized auction service provider. To date, 17 of the 234 contention sets used a last resort auction conducted by ICANN.org's authorized auction service provider. Proceeds generated from auctions of last resort were separated and reserved until the multistakeholder community develops a plan for their use. This plan must be authorized by the ICANN Board.

This Report sets out the core issues that the new gTLD Auction Proceeds Cross-Community Working Group (CCWG) addressed in carrying out its Charter<sup>1</sup> since its inception in January 2017. It records the CCWG's discussions regarding options around a mechanism to allocate the new gTLD Auction Proceeds in accordance with ICANN's Mission and Bylaws.

For further background information, please see [Annex A](#).

### 1.2. Objective

According to the new gTLD Auction Proceeds CCWG charter, the objective of the CCWG is to develop a proposal(s) for consideration by the Chartering Organizations. The CCWG charter includes a series of guiding principles that the CCWG is expected to take into account and lists 11 charter questions for the CCWG to answer in the course of its work. Responses to these charter questions are included in section 5 of this report.

The charter specifies that as part of this proposal, the CCWG is also expected to consider the scope (see for further details below) of fund allocation, due diligence requirements that preserve ICANN.org's tax status as well as how to deal with directly related matters such as potential or actual conflicts of interest. This means that the CCWG will not decide, nor provide recommendations on which specific organizations or projects are to be funded or not.

### 1.3. About the CCWG

Since the adoption of its Charter, the CCWG has met regularly through telephone conferences and at ICANN public meetings. It has provided regular updates to the chartering organizations, and the broader community, including by publishing newsletters at regular intervals. It published its [Initial Report for public comment](#) in October 2018 and following its review of the input received, updated its findings and recommendations accordingly in the form of this (draft) Final Report.

As specified in the CCWG's charter, the CCWG consists of members and participants. Please see [Annex B](#) for detailed information about membership and attendance. Each Chartering

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<sup>1</sup> <https://community.icann.org/display/CWGONGAP/CCWG+Charter>

Organization appointed between no fewer than 2 and no more than 5 members to the CCWG. Members actively participate in calls, meetings and discussions. They also take part in consensus calls and are expected to serve as a liaison between their respective Chartering Organization and the CCWG. In addition, any interested individual was permitted to join the CCWG as a participant. These individuals actively participate in and attend all CCWG meetings but do not participate in consensus calls. The CCWG is led by two Co-Chairs, Erika Mann (appointed by the GNSO) and Ching Chiao (appointed by the ccNSO).

#### 1.4. Deliberations & Recommendations

Section 3 and 4 outline the CCWG's methodology for dealing with the charter questions as well as an overview of the CCWG's deliberations which resulted in the responses to the charter questions and recommendations that can be found in section 5. Section 5 also reflects the results of the consensus call<sup>2</sup> that was conducted amongst the CCWG members in relation to the recommendations.

#### Recommendations

[To be updated]

#### 1.5. Next Steps

This draft Final Report will be posted for public comment for a minimum duration of 40 days. This second opportunity to comment on the draft outputs of the CCWG follows a public comment period held on the Initial Report<sup>3</sup>, which was open from 8 October to 11 December 2018. Following the closing of the public comment forum, the CCWG will review the public comments received and update this report as needed and finalize it for submission to its Chartering Organizations.

Or

This Final Report will be submitted to the Chartering Organizations for their consideration and approval according to each Chartering Organization's own processes and procedures.

Commented [I1]: This section is to be updated once all recommendations have been finalized.

Commented [EB2]: Board feedback on additional public comment period: "the Board reiterates previous feedback on a second Public Comment Period. In the Board's input to the Initial Report, the Board noted: "If the report changes significantly as a result of Public Comment, the Board would encourage a second period of Public Comment to make sure that the community and beyond have opportunities to comment on any material changes to the approach and options set forth in this draft before submission to the Chartering Organizations for adoption." Given the changes under consideration by the group, particularly on the community involvement component and given the amount of proceeds at issue, it is important to take the additional time for further Public Comment."

<sup>2</sup> In a formal consensus call, the members of the CCWG will be asked to confirm their support, or lack thereof, for the different recommendations. Based on that input, the chairs will make an assessment of the level of support achieved following the designations and methodology outlined in the CCWG Charter.

<sup>3</sup>

## 2. Objective and next steps

The new gTLD Auction Proceeds Cross-Community Working Group (CCWG) was chartered at the end of January 2017 by the 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) to propose the mechanism that should be developed in order to allocate the new gTLD Auction Proceeds. The term 'mechanism' in this context refers to a funding structure that will be created to allocate the Auction Proceeds. Following approval of the proposal(s) by the Chartering Organizations, it is to be submitted to the ICANN Board for its consideration.

Per the CCWG's charter, the CCWG was expected, at a minimum, to publish an Initial Report for public comment followed by a Final Report, which will be submitted to the Chartering Organizations for their consideration. The publication of this (draft) Final Report has to meet the expected obligations set out in the CCWG's charter and further described by materials produced by the ICANN organization<sup>4</sup>. Through publication of the Initial Report for public comment (first public comment period), the CCWG gathered the input from Chartering Organizations as well as others interested in this work on the CCWG's deliberations. The CCWG analyzed and incorporated input on the Initial Report to produce the (draft) Final Report and recommendations. The public comment on the draft Final Report (second public comment period) provides an additional opportunity for the community to provide feedback. The public comment period on this draft Final Report will remain open for a minimum of 40 days to ensure that all interested individuals and groups have an opportunity to respond.

After review of comments received on this draft Final Report, the CCWG will finalize its set of recommendations and submit it in the form of a Final Report to the Chartering Organizations and to the Board of ICANN for their consideration.

**Or**

This Final Report will now be submitted to the Chartering Organizations for their consideration and approval according to each Chartering Organization's own processes and procedures.

For further information and background, please see [Annex A](#).

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<sup>4</sup> See for example the memo to the Drafting Team for Auction Funds Proceeds CCWG Charter on Legal and Financial Considerations for Inclusion in Charter, available at <https://community.icann.org/display/CWGONGAP/Legal+and+Fiduciary+Constraints+Related+Materials>

### 3. Methodology

As one of the CCWG's initial tasks, the group developed an approach to completing the work set out in the CCWG's charter. The CCWG decided to take a phased approach with the ultimate objective of responding to a series of 11 questions posed in the CCWG's charter. The methodology also provided an opportunity for the CCWG to consider a series of possible "mechanisms" or funding structures that could be used to allocate funds.

The CCWG initially focused on assessing the [expertise](#) available within the CCWG as well as identifying external experts to assist the CCWG in its deliberations. The working group also identified a series of questions for external experts (see [here](#)) to help inform the CCWG's deliberations. Furthermore, the CCWG deliberated its approach for dealing with the charter questions - as well as the proposed timeline and agreed to the following phases of work leading up to publication of the Initial Report:

- **Phase 1**  
Initial run-through of all charter questions to assess initial responses, identify possible gating questions, and determine potential order in which questions need to be dealt with. The use of surveys facilitate deliberation on key concepts (see <https://community.icann.org/x/PNrRAw>).
- **Phase 2**  
Address any charter questions that have been identified requiring a further detailed response before commencing the next phase.
- **Phase 3**  
Compile a list of possible mechanisms for setting up a future organizational structure that could be considered by CCWG.
- **Phase 4**  
Determine which mechanism(s) will demonstrate the highest potential to meet CCWG expectations as well as conform with legal and fiduciary constraints as defined in ICANN's Bylaws and legal/fiduciary obligations.
- **Phase 5**  
Develop responses to the different charter questions (as organized per phase 1) from the perspective of the mechanism(s) that has been selected in phase 4 as demonstrating the most potential.
- **Phase 6**  
Publish Initial Report for public comment following consensus on mechanism and responses to charter questions that meet legal, fiduciary, and audit constraints.

A public comment period on the Initial Report<sup>5</sup> was open from 8 October to 11 December 2018. Following the close of the public comment forum, the CCWG spent a considerable amount of time reviewing and addressing the input received (see <https://community.icann.org/x/zYMWBg>) and accordingly revised its responses to the charter questions and recommendations to produce this Final Report.

The public comment on the proposed Final Report (second public comment period) provides an additional opportunity for the community to provide feedback.

<sup>5</sup> See <https://www.icann.org/public-comments/new-gtld-auction-proceeds-initial-2018-10-08-en>

After review of comments received on this proposed Final Report, the CCWG will finalize its set of recommendations and submit it in the form of a Final Report to the Chartering Organizations and to the Board of ICANN for their consideration.

**Or**

This Final Report will be submitted to the Chartering Organizations for their consideration and approval according to each Chartering Organization's own processes and procedures.

## 4. Summary of Deliberations

### 4.1. Mechanisms Identified

After the CCWG progressed through the first two phases of work as outlined in the previous section and further detailed in the CCWG newsletters (see <https://community.icann.org/x/qyQhB>), the CCWG initially identified four possible mechanisms that could be explored in further detail but discarded one of these after further consideration and review of public comment, namely mechanism D, a mechanism in which the work associated with fund allocation would be delegated to an external entity, as described in the Initial Report. The CCWG examined key characteristics of each mechanism to support an analysis of the different options. In particular, the CCWG considered the following areas: Mechanism Oversight and Safeguards, Governance, Evaluation and Decision making.

In considering these recommendations, the CCWG anticipates that the ICANN Board may conduct a feasibility assessment which provides further details on these aspects so that the Board can take an informed decision about supporting the most appropriate mechanism. Such an assessment will have to factor in that it concerns a limited time mechanism with the ability to sunset as the CCWG is recommending against creating a perpetual mechanism.

The following is a summary of key characteristics of the evaluated mechanisms, namely:

**Mechanism A:** An internal department dedicated to allocation of auction proceeds is created within but independent from the ICANN organization<sup>6</sup>.

**Mechanism B:** Internal department collaborates with an existing non-profit.

**Mechanism C:** A new charitable structure (ICANN Foundation), is created separate from ICANN org, which would be responsible for solicitation and evaluation of proposals, and disbursement process.

Deleted: grant solicitation, implementation and evaluation...

Commented [EB3]: Staff note: It has previously been discussed that this description may be confusing because it contains the word "evaluation." Would it be better to simplify the description to: "An internal department dedicated to allocation of auction proceeds is created within the ICANN organization." ?

Commented [EB4]: See text added on page 14 describing work that must be done in the implementation phase regarding division of responsibilities.

Deleted: The CCWG may make recommendations about the roles and responsibilities of ICANN and the external entity, in case such a mechanism is recommended. ...

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<sup>6</sup> In line with existing business practices as well as current ICANN practices, certain aspects could be outsourced, such as, for example, audit functions. Exact details of ICANN org's internal project implementation will be designed during implementation.

## Division of Responsibilities - Mechanisms A, B, and C

**\*Mechanism A:** An internal department dedicated to grant solicitation, implementation and evaluation is created within the ICANN Org.

**Mechanism B:** ICANN Internal Granting Department collaborates with an existing non-profit. They CCWG may want to further consider the prec of labor between ICANN and the external entity.

**Mechanism C:** A new charitable structure is created separate from ICANN which would be responsible for solicitation and evaluation of proposa disbursement process.

**\*\*The ICANN Board** would carry out a governance review of the foundation prior to next tranche.

**\*\*\*ICANN Org** remains with the responsibility to maintain compliance.

Responsibilities	Mechanism A*	Mechanism B*	Mechanism C
<b>Mechanism Oversight and Safeguards</b>			
Legal and fiduciary oversight responsibility.	ICANN Board	ICANN Board	ICANN Board
Establishment and operation of legal and fiduciary safeguards.	ICANN Org	For CCWG Discussion	Foundation
<b>Governance</b>			
Internal review at regular intervals to identify areas for improvement, minor adjustments in program management and operations.	ICANN Department	For CCWG Discussion	Foundation
Broad strategic review of mechanism.	Community Advisory Panel	Community Advisory Panel	For CCWG Disc
<b>Evaluation and Decision</b>			
Establish strategic goals.	CCWG Recommendation	CCWG Recommendation	CCWG Recomm
Establish eligibility for evaluation based on criteria.	ICANN Org	ICANN Org	Foundation
Score successful and unsuccessful applicants.	Independent Panel	Depends on Division of Responsibility	Independent Pa Convened by F
Overall approval.	ICANN Board	ICANN Board	Foundation**
Reporting/auditing (project compliance).	ICANN Org	Depends on Division of Responsibility***	Foundation***

## Common Characteristics - Mechanisms A, B, and C

**\*Mechanism A:** An internal department dedicated to grant solicitation, implementation and evaluation is created within the ICANN O

**Mechanism B:** ICANN Internal Granting Department collaborates with an existing non-profit. They CCWG may want to further consi precise division of labor between ICANN and the External Entity.

**Mechanism C:** A new charitable structure is created separate from ICANN which would be responsible for solicitation and evaluation proposals, and disbursement process.

**\*\*No grants** to individuals, no grants to activities in the ICANN Org budget, no grants for political or lobbying activities; conflict of inte safeguards established; protections against self-dealing and measures to ensure that decisions are taken without conflict of interest; must be made for lawful purposes.

Characteristics	Mechanism A*	Mechanism B*	Mecha
ICANN maintains legal and fiduciary oversight responsibility.	TRUE ✓	TRUE ✓	TR
ICANN Org conducts legal and fiduciary oversight activities.	TRUE ✓	TRUE ✓	TR
Safeguards are in place to ensure legal and fiduciary responsibilities are met.**	TRUE ✓	TRUE ✓	TR
ICANN Org conducts due diligence to oversee the disbursement of assets.	TRUE ✓	TRUE ✓ Oversees or performs	TR
ICANN's mission is observed at all points in the process.	TRUE ✓	TRUE ✓	TR
Mechanism operates apart from ICANN's budget and is funded from the auction proceeds.	TRUE ✓	TRUE ✓	TR
The Board may distribute funds to ICANN Org distinct from the granting process should legal and fiduciary responsibilities dictate such a distribution.	TRUE ✓	TRUE ✓	TR Prior I distrib Four

### 4.2. Objectives of Fund Allocation

The CCWG agreed early on in its deliberations that the 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 and core principles.

In relation to the latter point, benefit the open and interoperable Internet, the CCWG also developed overarching guidance for proposal review and selection of projects to which auction proceeds may be allocated. This guidance includes the following guidelines for the review and selection of applications seeking auction proceeds funding:

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 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 are encouraged: open access, future oriented developments, innovation and open standards, for the benefit of the Internet community.
4. Projects addressing diversity, participation and inclusion should strive to deepen informed engagement and participation from developing countries, under-represented communities and all stakeholders.
5. Projects supportive of ICANN's communities' activities are encouraged.

For further details, please see [Annex C](#).

### 4.3. Criteria

The CCWG identified a number of criteria that it deemed important in evaluating the different mechanisms, namely:

- Efficiency and effectiveness
- Cost-effectiveness of setting up the mechanism (most value for money)
- Cost-effectiveness of running the mechanism (e.g. overhead, operating costs)
- Ability to sunset (i.e. terminate / close down)
- Ease of setting up in terms of time and effort
- Ability to meet legal and fiduciary requirements
- Enabling ICANN stakeholder engagement
- Efficient means for fund allocation from selection to fund distribution for projects
- Administrative complexity to run
- Means for oversight
- Providing transparency and accountability
- Equipped to operate and execute globally distributed projects
- Balance of control between ICANN [org](#) and independence of fund allocation
- Risk

### 4.4. Input Provided by the ICANN Board

Through the Board appointed liaisons - two Board members were appointed to participate formally in the work of the CCWG - as well as formal correspondence (see <https://community.icann.org/x/V7XRaW>) input was provided by the Board to help inform the CCWG's deliberations with regards to the Board perspectives on some of the questions under discussion.

For example, the Board shared the following principles that it expects to evaluate the CCWG's proposal and recommendations against:

#### Overarching Fiduciary Obligations and Responsibility for Funds

- The ICANN Board remains responsible for all auction proceeds being appropriately disbursed, even if a third party runs part or all of the process of receiving, evaluating, or disbursing the auction proceeds.

#### Board Due Diligence

- The Board is responsible for acting as trustees of the organization's assets and exercising due diligence to oversee that whatever organization(s) is disbursing assets is well-managed and that its financial situation remains sound. Accordingly:

- Proceeds should be allocated in tranches over a period of years to ensure the Board is meeting its obligations
- The Board has not yet come to a position on whether larger amounts would require Board sign off

#### ICANN's Mission

- The Board is responsible for making sure that ICANN's mission is observed at all points throughout the process, and any disbursement mechanism must have processes and procedures to ensure that auction proceeds are used in a manner that contributes directly to ICANN's mission.

#### Effective and Efficient Process of Selection and Proposed Mechanism

- The CCWG-AP should strive to keep costs associated with establishing or selecting a disbursement mechanism as low as possible. The disbursement mechanism selected should be simple, effective and efficient, with appropriate skills, expertise, and scale to minimize overhead, minimize risks, and maximize the impact of auction proceeds

#### Preservation of Resources and Use of Existing Expertise

- The CCWG-AP should work to identify models and processes that uphold the preservation of existing resources, either external or internal, and should draw on existing expertise to the extent available

#### Global and Diversity Values

- The mechanism selected should be able to evaluate proposals and make, administer, and monitor awards on a global basis in light of ICANN's global role and diversity values
- As part of ICANN org's implementation, we expect the mechanism should be supported by a communications plan geared to broad dissemination of information on the existence of and parameters of the program

#### Evidenced-Based Processes and Procedures for Evaluation

- The disbursement mechanism should have processes and procedures in place to evaluate and quantify the impact of awards using fit-to-purpose or evidence-based evaluation methodology

#### Accountability

- The actors that run the mechanism, whether internal or external, should be accountable, and the proceeds should be disbursed to awardees consistent with a written timeline that establishes clear milestones/deliverables for release of project funding and establishes accountability for use/misuse of resources by grant recipients. This includes the ability to course correct or stop funding where issues arise

#### ICANN Monitoring and Evaluation

- If part or all of the mechanism is external, ICANN should have an established process for monitoring and evaluating the functioning of the funding mechanism and measuring the effectiveness of funded projects

#### Transparency

- Ensuring adequate/appropriate transparency to the ICANN community and the public on the process, decisions, and status of usage of the proceeds

### **4.5. Ranking Mechanisms**

In preparation for drafting the CCWG's Initial Report, the co-chairs conducted a poll of CCWG members and participants in order to assess which mechanisms CCWG members and participants felt were most promising with respect to criteria listed in sub-section 4.2, taking into account expert and Board input received and CCWG deliberations. See the Initial Report for additional information about this poll.

As the polling methodology proved useful in earlier deliberations, the CCWG again used polling to refine recommendations for the draft Final Report. After the CCWG reviewed public comments and further considered the issues raised through this input, it conducted two additional polls to assist with finalizing its advice on the mechanisms.

[Add results of polls to be conducted prior to publication of the draft Initial Report]

#### **4.6. Conclusion**

As a result of the deliberations that commenced at the end of January 2017 as well as the extensive input that has been provided by various external experts (see <https://community.icann.org/x/ORS8B>) as well as members and participants of the CCWG, the preliminary recommendations outlined in the next section are being put forward for the community's consideration and input.

## 5. Recommendations & Responses to the Charter Questions

The CCWG's charter contains a series of 11 questions addressing different areas for which the CCWG is expected to provide guidance. In conducting its work, the CCWG took an iterative approach to developing responses to these questions. The responses draw on input from external experts consulted by the CCWG and the ICANN organization, as well as deliberations of the CCWG.

The results of the formal consensus call<sup>7</sup> have been reflected below.

In addition to the recommendations presented in this report, the CCWG is also providing a set of proposals that may help to guide the implementation phase of work (Guidance for the Implementation Phase). The implementation phase is the next phase that will translate the current work into a concrete operation. It is the expectation that, similar to how this is done for CCWG-Accountability WS2<sup>8</sup>, a small implementation team will be formed to assist ICANN [org](#) and the community to ensure the implementation plan preserves the intent of the recommendations and provide any interpretation advice as required.

The responses from the CCWG AP members and participants to the charter questions have been grouped by topic below.

### 5.1. Selection of the Mechanism

**Charter Question #1: What framework (structure, process and/or partnership) 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<sup>9</sup>? As many details as possible should be provided, including any implementation guidance the CCWG may have in relation to the establishment of this framework as well as criteria for the selection / ranking of potential funding requests.**

[Placeholder – to be updated following the results of the survey]

**Guidance for the Implementation Phase in relation to charter question #1:** The input provided in response to this charter question is expected to help inform the implementation of the mechanism that is ultimately selected.

**Charter Question #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?**

[Placeholder – to be updated following the results of the survey with discussion of the recommended mechanism(s)]

Regardless of the mechanism ultimately selected, additional consideration will need to be given during the implementation phase to the division and recognition of responsibilities between ICANN org and any other entities involved in the selected mechanism. In the case of mechanism A, if ICANN partners or contracts with any entities to complete work in relation to

<sup>7</sup> In a formal consensus call, the members of the CCWG will be asked to confirm their support, or lack thereof, for the different recommendations. Based on that input, the chairs will make an assessment of the level of support achieved following the designations and methodology outlined in the CCWG Charter.

<sup>8</sup> See wiki at <https://community.icann.org/display/WEIA/WS2+-+Enhancing+ICANN+Accountability+Home>

<sup>9</sup> See also [Note to Auction Proceeds DT re. legal and fiduciary principles](#)

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**Commented [EB5]:** Feedback from ICANN Board on mechanism C: "As previously indicated, ICANN's Board and its Officers have specific fiduciary obligations with respect to the distribution of auction proceeds, no matter which mechanism is selected. Creation of a separate foundation would not modify or eliminate those obligations, nor would it eliminate potential challenges with respect to those obligations. To the extent the CCWG contemplates creation of a foundation in which ICANN is not involved - particularly, but not exclusively including decisions as to whether an application furthers ICANN's mission - that raises concerns similar to concerns raised with the prior Mechanism D, which envisioned the handing of proceeds over to a separate entity to be solely responsible for all parts of the evaluation and distribution. We have heard suggestion during the CCWG's deliberations that the renewed interest in a foundation is for the purposes of independence from ICANN Board and Org. However, the use of a foundation in this instance would be a mechanism that would require a separate entity, but would necessarily still be related to ICANN for the purposes of governance.

The creation of a foundation to administer the grant program should be evaluated against the efficiency and effectiveness principle cited above and, if a foundation is the recommended mechanism, it should be developed in accordance with best practices from related foundations designed to further a parent or supported entity's charitable mission. Any recommendation for a foundation should also provide details on what the foundation and its board are anticipated to do other than to administer the grant program in accordance with the principles and ... [1]

**Commented [EB6R5]:** ICANN Org feedback regarding mechanism C: "From the ICANN org standpoint, we concur with the Board's inputs. From the org standpoint, it is important to understand the specifics of the foundation set-up that the CCWG is envisaging. If the renewed interest in a foundation is based in a goal of achieving independence between a foundation and ICANN, then any resulting foundation is likely to resemble Mechanism D, and will raise legal and fiduciary concerns. The Board's focus on best practices for relationships between a parent organization and a foundation established to further a charitable mission would allow ICANN org to address legal and fiduciary concerns arising out of the development of such a foundation."

**Commented [EB7]:** Feedback from ICANN Finance regarding relative costs of mechanisms A and C: "In Mechanism C, the Foundation's administration is: shared with ICANN's (Scenario C1) or entirely independent (Scenario C2). Within scenario C1, there could be costs differences between the Foundation's workforce being directly employed by the Foundation or seconded by ICANN. For simplification, such differences are ignored at this stage. The workforce costs, except where identified below, are presumed to be the same across all mechanisms. Differences driven by the legal structure: Mechanism A does not require a separate legal entity / Mechanism C requires a foundation. ... [2]

the mechanism, the details of such arrangements will need to be established. In the case of mechanism B, additional work will need to be completed to establish the division and recognition of responsibilities between ICANN org and the partnering non-profit. In the case of mechanism C, the ICANN Foundation should be developed in accordance with best practices from related foundations designed to further a parent or supported entity's charitable mission.

Regardless of which mechanism is chosen, an Independent<sup>1</sup> Project Applications Evaluation panel will be established. This Panel's responsibility is to review, select and evaluate 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 Applications Project Evaluation Panel. Members of the Independent Project Applications Evaluation Panel will be selected based on their grant-making expertise and ability to demonstrate independence over time, not affiliation nor representation. The mechanism will be responsible for the process of selecting and appointing independent experts to the Independent Project Evaluation Panel, informed by the work done by the CCWG and the criteria / skills identified in the implementation phase. The Independent Project Evaluation Panel should be independent of ICANN and its constituent parts, including the Board, ICANN org, and the Supporting Organizations and Advisory Committees that make up the ICANN community. No SO or AC be represented - directly or indirectly - on the Evaluation Panel itself. ICANN participants are not excluded from applying to serve on the independent evaluation panel, but they can only be selected if they would have the required expertise and have demonstrated that they have no conflict of interest that could influence or be perceived to influence their independence. The mechanism, and the panelists serving under the mechanism, must be free from not only actual conflicts of interest but also potential or even perceived conflicts of interest. Due care will need to be given during the implementation phase that safeguards are in place to ensure the independence of the members of the independent evaluation panel.

**CCWG Recommendation #NEW:** The CCWG recommends that an Independent<sup>1</sup> Applications Evaluation panel will be established. The Panel's responsibility is to review and evaluate 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 Applications Evaluation Panel. Members of the Independent Applications Evaluation Panel will be selected based on their grant-making expertise and ability to demonstrate independence over time, not affiliation nor representation.

**Guidance for the Implementation Phase in relation to the Independent (Project) Applications Evaluation Panel:** The mechanism will be responsible for the process of selecting and appointing independent experts to the Independent Evaluation Panel, informed by the work done by the CCWG and the criteria / skills identified in the implementation phase. The Independent Project Evaluation Panel should be independent of ICANN and its constituent parts, including the Board, ICANN org, and the Supporting Organizations and Advisory Committees that make up the ICANN community. No SO or AC be represented - directly or indirectly - on the Evaluation Panel itself. ICANN participants are not excluded from applying to serve on the independent evaluation panel, but they would only be selected if they would have the required expertise AND have demonstrated that they have no conflict of interest that could influence or be perceived to influence their independence. The mechanism, and therefore the panelists, must be free from not only actual conflicts of interest but also potential or even perceived conflicts of interest. Due care will need to be given during the implementation phase that safeguards are in place to ensure the independence of the members of the independent evaluation panel.

## 5.2. Safeguards and Governance

**Commented [EB8]:** Suggested text based on Board feedback regarding mechanism C referenced in the comments above.

**Commented [EB9]:** Proposed edits in response to feedback from the Board. "First, we encourage the CCWG to begin by identifying areas where it sees a role for the community other than in reviews. For example, we believe that the community could contribute to the development of application materials and training materials for the independent panel that will review and act on specific applications.

Second, the Board wants to emphasize the importance of ensuring that the Evaluation Panel tasked with the review of applications must be completely independent. The Board has stressed since the outset of this work that the eventual mechanism must be free from not only actual conflicts of interest but also potential or even perceived conflicts of interests.

In line with the Board principles outlined above and with previous Board correspondence including the Board's 5 October 2018 letter and input to the draft report, this means two things:

- First, no member of the Evaluation Panel may have even the appearance of a conflict of interest with respect to any and all applications. It is imperative the Independent Evaluation Panel consists of individuals with grant-making expertise able to demonstrate independence over time. The Board does not believe that reliance on a recusal system is workable or appropriate, as this would undermine the panel's ability to provide a consistent view across all applications. Rather, each panelist should, to the maximum extent possible, be free of any potential conflict, however remote. In line with best practices for grant-making, recusal can be available, but the program should be designed, and panelists chosen, to eliminate the need to use this tool except in extraordinary and unforeseen situations.
- Second, the Evaluation Panel should also be independent of ICANN itself and its constituent parts, including the Board, ICANN org, and the Supporting Organizations and Advisory Committees that make up the ICANN community. As we have emphasized during CCWG meetings, in Board correspondence, and in subsequent CCWG documentation, neither the Board nor ICANN org will participate in the evaluation of individual applications, nor should any SO or AC be represented - directly or indirectly - on the Evaluation Panel itself. As indicated above; however, we do see an important role for the community outside of the actual evaluation and selection process.

**Charter Question #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 recognising the diversity of communities that ICANN serves? This should include recommendations on how to assess whether the proposed use is aligned with ICANN's Mission. Furthermore consideration is expected to be given to what safeguards, if any, need to be in place.**

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<sup>10</sup>.

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

Limitations of funding allocation stem from legal and fiduciary requirements and concerns for the ICANN Organization:

- Disbursement of funds must be for projects that are in accordance with ICANN's mission as set out in the bylaws.
  - A key element of the implementation of the selected mechanism will be to develop guidance on the limitation inherent in the ICANN mission, which will support development of criteria to evaluate proposals. The CCWG has produced Guidance for proposal review and Selection (see [Annex C](#)) and list of example projects (see [Annex D](#)) which are expected to be used as guidance during the implementation process.
- Disbursements must be made for lawful purposes.
- There must be protections against self-dealing and measures to ensure that decisions are taken without conflict of interest. The following measures are recommended to be considered as part of the implementation process:
  - Prohibition on auction proceeds being awarded to businesses that are owned in whole or in part by ICANN board members, executives or staff or their family members and awards that may be used to pay compensation to ICANN board members, executives or staff or their family members.
  - Segregation of duties amongst those who develop the requirements and those who assist in the identification of potential recipients.
  - Prohibition on awards of assistance to businesses owned in whole or in part by the CCWG members (participating in any phase of the CCWG process), their family members, and awards that would be used to pay compensation to CCWG members or their family members.
- Funds may not be provided for the private benefit of individuals. The following measures are recommended:
  - Prohibition on grants to individuals.
  - Processes to evaluate applying organizations for any private benefit concerns.
- Funds may not be used for political activities. The following measure is recommended:
  - Proceeds cannot be provided to organizations that intervene in campaigns for candidates.
- Funds should not be used for lobbying activities. The following measure is recommended:

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<sup>10</sup> See [Annex C](#) "Guidance for proposal review and Selection" for more details

- Proceeds cannot be provided in support of lobbying activities, and that requirement be an express commitment as part of a grant process.
- There must be measures in place for proper oversight and management of the funds (Investment policy, compliance, and performance management).

Please see response to charter question 3 for additional responses regarding safeguards. In addition, the CCWG would encourage review of similar organizations which could serve as a starting point in the implementation phase.

**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;
- Benefit the open and interoperable Internet<sup>11</sup>.

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

**CCWG Recommendation #3:** The implementation of the selected fund allocation mechanism should include safeguards described in the response to charter question 2.

**Guidance for the Implementation Phase in relation to charter question #2:** The CCWG recommends that the Guidance for proposal review and Selection (see [Annex C](#)) and list of example projects (see [Annex D](#)) are considered during the implementation process.

**Charter Question #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<sup>12</sup>?**

ICANN [org](#) will always have the responsibility to make sure that the funds are used in alignment with ICANN's mission. The direct level of safeguards and oversight at the project level will typically always be the same, regardless of who is running the disbursement mechanism. For example, there will have to be reporting from the recipients on the use of funds and general oversight to guard against misuse.

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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 project/proposal 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.

For the creation of the framework: For mechanisms [A, B, and C](#), the CCWG discussed whether legal and fiduciary safeguards can largely be met through existing safeguards that ICANN [org](#) has already in place, such as internal controls, contracting and disbursement guidelines, corporate compliance effort, and review by the Board.

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<sup>11</sup> See [Annex C](#) "Guidance for proposal review and Selection" for more details

<sup>12</sup> See also [Note to Auction Proceeds DT re. legal and fiduciary principles](#)

For mechanism B, it is the assumption that the existing non-profit organization would already have applicable safeguards in place, but these would need to be confirmed as part of the selection process to identify a suitable non-profit organization(s).

In relation to the execution and operation: For mechanisms A, B, and C, most phases of the process of disbursement will include mechanisms supporting fiduciary and auditing requirements: solicitation (openness), application evaluation (fairness, completeness, and quality), decision/approval (defined delegation of authority), disbursement (documentation, identification), publication (review/approval/accuracy), monitoring (effectiveness evaluation, documentation, reporting). For mechanism B, these safeguards must be in place at ICANN org and the chosen non-profit organization.

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If an internal department is created as part of ICANN org under mechanism A or B, measures will be needed to ensure division and recognition of responsibilities between the department handling funds and the rest of the organization. This division and recognition of responsibilities will be particularly important under mechanism A, where ICANN org is handling many aspects of the granting cycle.

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For mechanism C, audit requirements will largely correspond to already established ICANN org procedures. Certain aspects of oversight will have to be established, for example the financial audit. An ICANN Foundation Internal Audit process should be established to ensure that all processes are monitored professionally.

If mechanism C is selected, the following additional issues should be addressed in the implementation phase:

- a) ensure that coordination between ICANN org and the ICANN Foundation is smooth and professional.
- b) ensure that there is coordination between the ICANN Org Financial Audit and Foundation Financial Audit. This will be particularly important during the first few years of operation. The two entities may want to consider working with two different teams within the same auditing firm to allow for coordination while ensuring professional independence.
- c) establish from the beginning an Internal Audit mechanism for the ICANN Foundation.
- d) provide the ICANN Foundation with a healthy degree of independence to ensure that it can be successful.

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Please see responses to charter questions 2 and 9 for additional details and recommendations about specific measures to address ICANN's legal and fiduciary constraints, as well as operational objectives.

**Guidance for the Implementation Phase in relation to charter question #3:** Due concern needs to be given to ensuring that the required safeguards are in place as outlined in response to this question. Should mechanism B be selected, the additional safeguards outlined in the response to this charter question need to be factored in.

In relation to the Independent Evaluation Panel that is to be established, due care will need to be given to ensure that safeguards are in place to ensure the independence of the members of the panel (see also recommendation #confirm). Similarly, to ensure continuity and expertise, a sufficient pool of independent evaluators needs to be identified.

**Charter Question #5: What conflict of interest provisions and procedures need to be put in place as part of this framework for fund allocations?**

The following conflict of interest provisions should be put into place as part of the framework for fund allocations.

- There must be processes of controls on conflict of interest, which should be viewed in the broader context of safeguards designed to address ICANN's legal and fiduciary obligations and considerations. Each phase of the process of disbursement should include mechanisms supporting fiduciary and auditing requirements.
- A conflicts of interest policy should require those with a conflict to disclose the conflict or potential conflict. The policy should provide clear guidance on what the organization does when a member is in conflict and how conflicts are managed.
- The mechanism must protect against self-dealing and to ensure that decisions are taken without conflict of interest. See the response to charter question 2 for specific restrictions on the use of funds in this regard.
- Individuals and groups supporting fund allocation should commit to transparency and high standards of ethics.
  - Transparency could be supported by making publicly available conflict of interest statements and by making application selection criteria objective and publicly available.

In relation to mechanisms A, B, and C, the ICANN organization already has a number of measures in place to support controls on conflict of interest:

- ICANN org has experience in segregating funds.
- ICANN org has the experience and internal controls to maintain appropriate accounting practices as contemplated.
- ICANN org also has related practices, such as its procurement policy and disbursement policy, which introduce controls over proper procurement and budgetary commitments.
- ICANN org is able to capture financial information by project, which is expected to also contribute to transparency and accountability on the program.

In the case of mechanism B, there will need to be clearly defined roles and responsibilities incumbent upon both ICANN org and the other organization, and an agreement in place about how these roles are carried out operationally. The non-profit would need to have appropriate conflict of interest policies and practices in place for the elements of the program it manages. In addition, ICANN org will maintain oversight to ensure that legal and fiduciary obligations are met.

In the case of mechanism C, the ICANN Foundation, new procedures will have to be established. They can draw on ICANN Org procedures and industry best practices. ICANN org will maintain oversight to ensure that legal and fiduciary obligations are met. At the same time, the ICANN Foundation must maintain a healthy independence.

**CCWG Recommendation #4:** 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.

**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 will apply to all the parties involved (e.g. the Independent Applications Evaluation Panel, the Auction Proceeds Program Review Panel as well as staff supporting the mechanism). These requirements 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 org and the other organization,

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and an agreement in place about how these roles are carried out operationally. The non-profit 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 [org](#) will maintain oversight to ensure that legal and fiduciary obligations are met.

**Charter Question #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?

Measures of success should be developed for each of the program's operational requirements:

- Evaluate and quantify the result of each grant allocated using state of the art processes and evidence-based evaluation methodology.
- ICANN [org](#) must ensure policies and procedures exist and are effective to manage the applications for funding.
  - Receive applications for funding,
  - Evaluate applications for funding,
  - Organize quality control and/or audit of applications evaluations,
- ICANN [org](#) must be able to manage and address risks (including possible legal defense).
  - Risk assessment of projects receiving grants must be conducted as part of the due diligence carried out when assessing applicants.
- ICANN [org](#) must be able to design and implement verification procedures to ensure compliance of the funds disbursements with the approved objective, irrespective of the mechanism retained to organize the evaluation and disbursement<sup>13</sup>.
  - Organize disbursement process and monitor disbursements,
  - Monitor the compliance of the recipient's use of the funds with the intended purpose of the grant (which justified approving the application) and establish accountability for use/misuse of resources by grant recipients,
  - Internal audits of projects receiving grants may be conducted. The due diligence and audit requirements could vary depending on the nature, size and length of projects funded as well as country of origin. This particular point of internal auditing should be done by the mechanism with oversight provided by ICANN [org](#).

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<sup>13</sup> These processes will ensure that the program implementation meets the following principles [identified by the ICANN Board](#):

- "Evidenced-Based Processes and Procedures for Evaluation: The disbursement mechanism should have processes and procedures in place to evaluate and quantify the impact of awards using fit-to-purpose or evidence-based evaluation methodology."
- "Accountability: The actors that run the mechanism, whether internal or external, should be accountable, and the proceeds should be disbursed to awardees consistent with a written timeline that establishes clear milestones/deliverables for release of project funding and establishes accountability for use/misuse of resources by grant recipients. This includes the ability to course correct or stop funding where issues arise."

- ICANN [org](#) must put in place reporting and publication processes to ensure transparency on application evaluation procedures, results, and usage of funds<sup>14</sup>, but execution of such processes is done by the selected mechanism.
  - Explain/report on/publish application evaluation methodology,
  - Explain/report on/publish results of application evaluations,
  - Explain/report on/publish analyses of the effective use of the funds, also including technical reporting.

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Under any mechanism selected, design of the governance framework will be driven by ICANN [org](#)'s obligations to uphold its fiduciary duties and strategic goals for the program. Please see response to charter question 2 for guidance on limitations on the use of funds in relation to fiduciary obligations. In addition, the following elements must be included in the governance framework.

Annual independent audit:

- ICANN [org](#) is subject to such audit because it is a non-profit organization organized under California law (other countries may have different requirements);
- The objective of the audit is "to obtain reasonable assurance about whether the financial statements are free from material misstatement";
- The auditor's opinion, if clean, is: "The financial statements [...] present fairly, in all material respects, the financial position of ICANN [...] in accordance with US accounting principles."
- The audit does not have the objective to verify every transaction, or entry, or detect fraud.
- Note: Audit of ICANN org is separate from audit related to the fund.

Requirements resulting from ICANN's obligations regarding accountability and transparency to the public, as defined in the bylaws:

- Engage with the Community on planning, performance and reporting of activities carried out.
- Be available and ready to respond to inquiries, publish documents and information.

Clear roles and responsibilities should be established for different parties involved in the process. If ICANN [org](#) is going to work in partnership with a separate non-profit, that non-profit will also need to meet its own fiduciary responsibilities and will have to respect the requirements identified by ICANN [org](#). An appropriate legal agreement (e.g. contract, MoU) should be established between ICANN [org](#) and the non-profit, outlining the respective roles and responsibilities of each entity in operating the program.

The principle of simplicity should be observed the implementation of any oversight structures for the selected mechanism. Decisions should be driven by fiduciary duties of the entities involved and strategic goals of the program. By observing the principle of simplicity, the program reduces potential for conflict of interest, streamlines the path to making distributions, and reduces overhead costs associated with running the program.

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

<sup>14</sup> 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."

- reporting, which could include different reporting requirements depending on the type of project and/or type of support provided

The CCWG discussed whether an appeals mechanism should be available for applicants whose projects were not approved. The CCWG agreed that this would create a level of complexity that was deemed not desirable or necessary, after having reviewed how other organizations deal with appeals. Instead, it is the expectation that 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. Also, in the context of the foreseen regular reviews, selected applicants and non-selected applicants may be invited to provide feedback they may help to improve the program further. The CCWG did agree that appropriate measures must be taken that would exclude applicants from using ICANN accountability measures such as IRP in relation to challenges for individual applications. The reason for this recommendation is that the Board decision in any review context would be in relation to the overall program's disbursement of funds based on the recommendations of the independent evaluation panel and not as a result of the ICANN's Board assessment of an individual application.

**CCWG Recommendation #NEW:** 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 Recommendation #NEW:** Applicants should not have access to ICANN accountability mechanisms such as IRP to challenge a decision from the independent evaluation panel to not approve their application, but 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.

**Guidance for the Implementation Phase in relation to charter question #10:** The response provided to this charter question should guide the development of the governance framework during the implementation phase.

**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?**

ICANN, the organization or a constituent part thereof could potentially be a beneficiary in either of two scenarios:

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- Funds are used by the ICANN organization distinct from the granting process, for example to replenish the reserve fund<sup>15</sup>.
- Funds are allocated through the granting process. In order for an SO/AC (or subpart thereof) to be able to apply for auction proceeds, it would have to meet all of the application criteria and basic due diligence requirements used in the evaluation of any other applicant. Considerations of self-dealing/private benefit as well as conflict of interest would need to be taken into account in evaluating the application. The applicant would need to demonstrate that the proposed use for funds is separate from work that is already funded as part of ICANN's daily operations. The CCWG anticipates that allocation of funds in this manner would be the exception rather than the rule.

If ICANN were eligible to apply through the granting process under mechanism A, B, or C,

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<sup>15</sup> Note that discussions as well as decisions in relation to a possible replenishment of the reserve fund are being dealt with separately and outside of this CCWG. See <https://www.icann.org/public-comments/reserve-fund-replenishment-2018-03-06-en>.

particular attention would need to be paid to maintaining division and recognition of responsibilities of staffing, budget, confidential information and operations between the department responsible for proceeds allocation and other parts of the organization that may apply for funds.

From the perspective of mechanism C, ICANN would likely not be able to apply for funds granted through a charitable foundation developed to support ICANN's mission, due to self-dealing concerns in the administration and oversight of foundations. To the extent that ICANN is not an applicant for funds through the ICANN Foundation, but is instead among the intended beneficiaries of an applicant's use of the applied-for grant, each such situation would need to be investigated on the particular set of facts and circumstances to see if self-dealing or indirect self-dealing concerns arise.

Conflict of interest provisions would also become particularly important. See response to charter question 5 for additional information about conflict of interest provisions.

The CCWG considered [input](#) from the ICANN Board in relation to this charter question.

**CCWG Recommendation #5:** The CCWG has decided to not 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.

### 5.3. Operations

**Charter Question #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? E.g. The timeframe for the operation of this new mechanism may provide the opportunity for long term support, or for funding to be released in tranches linked to milestone achievements, single or multiple disbursements.**

The timeframe should be established in line with and guided by strategic objectives for allocation of the funds. Once it is determined how "success" is defined for this fund, the timeframe should be set to support a successful outcome.

The CCWG's focus is on the Auction Proceed funds that are currently available without any assumption that additional funds will become available in the future. The role of this CCWG is to identify and to evaluate possible mechanisms to disburse funds received through auctions from the 2012 gTLD application round. Therefore, the CCWG has focused on developing recommendations that will enable the disbursement of the funds in an effective and judicious manner without creating a perpetual mechanism (i.e. not being focused on preservation of capital).

The CCWG agrees with the Board's assessment that proceeds should be allocated in tranches over a period of years, regardless of the mechanism implemented.<sup>16</sup> This would help ensure that the Board is meeting its obligations and allow for adjustments to the framework as needed, noting that changes may have legal, operational, and cost impacts. Tranches may be used to fund large grants over a period of years or to support projects that could be funded in a shorter period. Similarly, smaller grants could be distributed in a single fund transfer.

<sup>16</sup> The CCWG notes that the ICANN Board has advised that in the case of an ICANN Foundation, the proceeds would also be distributed to the ICANN Foundation in tranches.

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**Commented [EB16]:** Marilyn Cade: I don't believe this is what we discussed. I believe we discussed - if with Mechanism C was fully independent, then ICANN Org applying could receive consideration. It is challenging to understand how ICANN Org could apply with either Mechanism A or B, and yet that is not even referenced. I propose that this paragraph be stricken, or the same analysis be provided for Mechanism A and B. Also, I think we need to refer to ICANN Org, not ICANN, as we have all accepted that ICANN Org is the organization but ICANN includes the community.

**Commented [EB17R16]:** Additional clarification from ICANN Org: "Mechanism C is based upon the development of a separate entity, a foundation. The relationship between a foundation and its establishing entity is subject to heightened scrutiny, particularly around issues of self-dealing between the foundation and the establishing entity/directors and officers of the establishing entity. Once funds are placed with the foundation, having ICANN be a form of beneficiary to the those same funds – even when ICANN is not the applicant for those funds - requires detailed analysis of the facts and circumstances surrounding ICANN's access to and use of the funds. This is much different from a situation where ICANN retains some/all of the auction proceeds (as contemplated under Mechanisms A or B), where the possibility of ICANN – with the community's support – using some of those funds to participate in a large scale project as suggested in the question is much clearer and does not raise the self-dealing concerns. The establishment of a foundation fundamentally changes ICANN's ability to access or use funds once those funds are transferred to foundation, and is very different than Mechanism A or B."

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**Commented [EB19]:** Added to reflect feedback from the ICANN Board regarding mechanism C.

**CCWG Recommendation #6:** 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 #7:** Funding availability for a funding round 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.

**Charter Question #6: Should any priority or preference be given to organizations from developing economies, projects implemented in such regions and/or under represented groups?**

The CCWG has identified three objectives for new gTLD Auction Proceeds fund allocation, one of which focuses on underserved populations:

- Benefit the development, distribution, evolution and structures/projects that support the Internet's unique identifier systems;
- **Benefit capacity building and underserved populations**, and;
- Benefit the open and interoperable Internet.

At this time, the CCWG does not have specific guidance on how these three objectives should be prioritized or translated into specific program elements, such as selection criteria for funding applicants, although further consideration could be given to weighing certain criteria to indicate priority. Depending on the design of the funding allocation mechanism, the objective of benefitting capacity building and underserved populations could be met in different ways. For example, priority could be given to applicants from underserved regions or organizations proposing projects to support underserved populations, as long as such prioritization is consistent with limitations set by ICANN's mission and bylaws. Alternately, a segment of the fund could be devoted to projects that build capacity in underserved regions, for example to explain the proceeds grant application process or the new gTLD application process. Applicants seeking funds in this category would be assessed against evaluation criteria related to this focus. Another possibility is that no preference is given to applicants from specific populations or locations, but measures could be taken to ensure that applicants from developing countries or underserved regions are aware of the opportunity to apply for grants and can participate on equal footing in the application process.

The CCWG acknowledges that successfully reaching target populations and projects will be an ongoing process that may require programmatic adjustments over time. In particular, the reviews described in response to Charter Question #11 will allow those implementing the mechanism to see the initial range of applications and interest that comes in and identify and refine communications and outreach needs for future tranches. The CCWG discussed that one common method for reaching target populations and projects is to divide funds into segments and distribute funds to grant recipients in a series of "baskets," each with a different programmatic focus. The CCWG suggests that in the implementation phase, it may be appropriate to consider such an approach, to the extent that it serves programmatic objectives.

The CCWG notes that mechanisms A, B, and C allow for allocation of grants internationally, consistent with the following principle provided by the ICANN Board<sup>17</sup>: "Global and Diversity

<sup>17</sup> See [Board letter](#)

**Commented [EB20]:** Updated to reflect the clarification added to text in response to charter question.

**Commented [EB21]:** **Suggested text in response to ICANN Board feedback on "basketing":** The CCWG requested the Board's input on "whether it would be beneficial to recommend that auction proceeds are divided into segments and distributed to grant recipients in a series of "baskets," each "with a different programmatic focus" and if the Board sees any risks or has suggestions related to this approach. The Board believes that the concept of "basketing" should be deferred. While "basketing" could be worthwhile as a tool to achieve specific goals and objectives that appear to be underrepresented within the program, this should be considered in a review of the program, rather than as a limiting factor upon the first launch of applications. Seeing the initial range of applications and interest that comes in without the limitations of basketing will help identify and refine communications and outreach needs for future tranches. The Board also reiterates its recommendation, contained in its [submission](#) to the Draft Report Public Comment Period, that the CCWG continue to refine the Goal and Objectives in relation to ICANN's Mission."

**Commented [EB22R21]:** Additional input from ICANN Org on "basketing": As the ICANN Board indicated in its response, there are concerns with moving to a "basketing" approach at this stage. The risks identified by the Board in its response, such as creating artificial limitations upon the first applications, are similar to those that we'd highlight from an org perspective. The Board's suggestion of deferral of this concept for consideration as an outcome of a review seems appropriate.

Values: The mechanism selected should be able to evaluate proposals and make, administer, and monitor awards on a global basis in light of ICANN's global role and diversity values." ICANN org agrees that implementation should not be designed in a way that favors US-based entities.

**CCWG Recommendation #8:** 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 that objective is achieved should be given 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).

**Guidance for the Implementation Phase in relation to charter question #6:** During the implementation phase further consideration needs to be given to how this objective can be achieved, also in conjunction with the other objectives that have been recommended by the CCWG. 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 application evaluation panel to help inform a determination of which regions qualify as underserved regions and in which areas capacity building may be specifically needed.

The CCWG discussed that one common method for reaching target populations and projects is to divide funds into segments and distribute funds to grant recipients in a series of "baskets," each with a different programmatic focus. The CCWG suggests that in the implementation phase, it may be appropriate to consider such an approach, to the extent that it serves programmatic objectives.

Commented [EB23]: Added based on text above in response to charter question.

**Charter Question #8: What aspects should be considered to determine an appropriate level of overhead that supports the principles outlined in this charter?**

The appropriate level of overhead will depend on the mechanism chosen, as well as specific strategic goals and programmatic elements that have not yet been established. For example, the following factors may impact the level of expenses incurred:

- Type of structure used to manage the process
- Number and size of grants
- Specific pattern of fund disbursement
- Diversity of applicants and incumbents
- Complexity of projects funded
- Frequency and complexity of communication and reporting requirements
- Communication costs associated with promoting projects selected, results and outcomes achieved

The CCWG is not making any specific recommendations about the appropriate level of overhead for the distribution of funds at this time, but stresses the importance of minimizing the overhead costs to the extent possible. The CCWG will instead focus its recommendations on high-level principles.

The CCWG notes that any overhead or administrative fees that result from the development or administration of a program through which the auction proceeds are awarded will be disbursed from the auction proceeds, and not from ICANN [org](#)'s general operating fund. While understanding that overhead is an essential part of the running the program, the CCWG

encourages ICANN [org](#) and any partnering organizations to design a cost-effective model that ensures an appropriate proportion of the funds are available for distribution to fund recipients.

**Guidance for the Implementation Phase in relation to charter question #8:**

The CCWG recommends ICANN [org](#) and any partnering organizations to follow industry best practices, where appropriate and applicable. To the extent possible in light of program objectives and requirements, the principle of simplicity should apply. By avoiding unnecessary complexity in program design and implementation, associated costs can be kept manageable throughout the life of the project.

ICANN [org](#) and any partnering organizations are to design a cost-effective model that ensures an appropriate proportion of the funds are available for distribution to fund recipients.

**5.4. Review**

**Charter Question #11: Should a review mechanism be put in place to address possible adjustments to the framework following the completion of the CCWG'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)?**

Reviews are important as mechanisms to improve, be transparent and plan for future development. They offer opportunities to innovate, steer direction, and fine-tune strategy. A combination of internal and external reviews is desirable to capture a multi-faceted process. Review processes should not, however, be used to change purpose without the support of the same community that provided the original mandate.

The CCWG envisions that two types of review may be appropriate. 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 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 allocation of funds is having the intended impact. This strategic review is expected to occur less frequently and may involve an external evaluator.

Taking this into account, the CCWG-AP proposes that an Auction Proceeds Program Review Panel (APPRP) be established, which will include ICANN community volunteers, as well as invited external experts with expertise in evaluating grant processes.<sup>18</sup>

The APPRP will be a community-based group to review the Auction Proceeds program process.

Commented [EB24]: Board feedback: "In relation to the two newly proposed panels - the Auction Proceeds Program Review Panel (APPRP) and Auction Proceeds Program Assessment Panel (APPAP), while the Board does not have the final details on either of these, the Board supports the need for reviews consistent with best practices in grant making, and reiterates the feedback included in our input to the Draft Initial Report: "if a review indicates a need for fundamental changes to the mechanism or the purposes of the use of funds, those would be significant changes for which additional community input would be required." That said; however, it is not clear to the Board that two separate panels are needed for this function. We encourage the CCWG to first focus on providing greater specificity about the scope and goals of the review(s) it feels are necessary, and from there it may be possible to better identify the expertise needed and the frequency upon which those reviews should be conducted. Identifying the goals of a review(s) will also provide additional clarity on the role of the community in those review(s). The Board encourages that the CCWG consider whether more standardized review mechanisms used to assess other grant-making programs would be appropriate here. Whatever final recommendations the CCWG makes in this regard will be evaluated by the Board in line with the principles reiterated above, and current plans could be seen at odds with these given the perceived complexities, additional resources, and burden on the community."

<sup>18</sup> Notes on nomenclature:

- a) "Mechanism" is whatever overall structure is selected to disburse the auction proceeds
- b) "Independent Applications Evaluation Panel" is the group within the Mechanism or contracted by the Mechanism, that performs the evaluation of applications and selection of projects to be funded. It is independent of ICANN Org and does not include ICANN Org employees.
- c) "Review" is the process of determining how well the auction proceeds disbursement is proceeding.

- The APPRP will consist of up to two members from each ICANN SO/AC<sup>19</sup> plus up to four external members chosen based on their expertise in granting processes. APPRP members are nominated by SO/ACs through their own respective processes, factoring in the required expertise, skills and commitments required. Should an SO/AC identify more than two prospective members, the SO/AC Chairs will make the final selection. The Board of ICANN will accept self-nominations and will appointment of up to four expert members. APPRP members will serve for two-year terms. In total, the APPRP should include some members with expertise in evaluating granting processes.
- Participants could be compensated. Such compensation would be in the form of an honorarium and not a payment for time. Whether this is practical should be further discussed by the Implementation Team.
- The prime function of the APPRP will be to perform an annual review (starting at the end of year 2) of the ongoing operational process including an assessment of approved projects vs auction proceeds goals and an overall assessment of approved projects (based on interim and final assessments provided to the APPRP).
- This function is over and above any internal reviews of its processes performed by the selected Mechanism, or financial audits that may be performed, but such reviews/audits may be used by the APPRP.
- The APPRP will provide reports to the ICANN Board, the Mechanism, the ICANN community and the Auction Proceeds Program Evaluation Panel (see below).
- For avoidance of doubt, the APPRP will focus on the overall operation of the Mechanism and will not evaluate the success of individual funded projects, although the APPRP may take into consideration such evaluations performed by the Mechanism.

#### Creation of an Auction Proceeds Program Assessment Panel

An Auction Proceeds Program Assessment Panel (APPAP) will be chartered by the ICANN Board, through a committee if appropriate, to allow for an assessment of the entire Auction Proceeds program. Such review may include all aspects of the program's operation as well as the program goals and project criteria. Such an assessment can be done by experienced ICANN community members, by an expert group that is hired to do the work, or preferably a combination of the two working as a team. Any recommendations developed by the APPAP will be provided to the full ICANN community via a publicly available report, to the ICANN Board and ICANN org, for further consideration, including community consultation.

- The first evaluation will be initiated after 3 years of operation and thereafter in every third year. Outside of this cycle, the APPRAP may recommend that a APPAP be initiated, or a APPAP may be initiated at the discretion of the ICANN Board.
- As part of its overall review, the APPAP will also review whether and how the APPRP should be continued.
- Detailed goals of APPAP shall get be defined by the Implementation Team.

The recommendation to institute review mechanisms is consistent with the following principle identified by the ICANN Board<sup>20</sup>: "ICANN Monitoring and Evaluation: If part or all of the mechanism is external, ICANN should have an established process for monitoring and evaluating the functioning of the funding mechanism and measuring the effectiveness of funded projects."

<sup>19</sup> An SO/AC may choose to contribute only one member, or to not participate at all. An SO/AC that so chooses may reconsider that decision at any later date.

<sup>20</sup> See [ICANN Board letter](#)

Commented [EB25]: Board feedback: "The CCWG specifically calls for the designation of the Organizational Effectiveness Committee (OEC) to charter a program assessment panel. The Board recommends that this be changed to through "the ICANN Board, through a committee if appropriate.""

Deleted: Organizational Effectiveness Committee (OEC) ...

Deleted: OEC

**CCWG Recommendation #NEW:** The CCWG recommends that an Auction Proceeds Program Review Panel (APPRP) be established, which will include ICANN community volunteers, as well as invited external experts with expertise in evaluating grant processes.<sup>21</sup> The APPRP will be a community-based group to review the Auction Proceeds program process.

**CCWG Recommendation #NEW:** The CCWG recommends that an Auction Proceeds Program Assessment Panel (APPAP) will be chartered by the ICANN Board, through a committee if appropriate, to allow for an assessment of the entire Auction Proceeds program. Such review may include all aspects of the program's operation as well as the program goals and project criteria. Such an assessment can be done by experienced ICANN community members, by an expert group that is hired to do the work, or preferably a combination of the two working as a team. Any recommendations developed by the APPAP will be provided to the full ICANN community via a publicly available report, to the ICANN Board and ICANN org, for further consideration, including community consultation.

Deleted: Organizational Effectiveness Committee (OEC)

- The first evaluation will be initiated after after 3 years of operation and thereafter in every third year. Outside of this cycle, the APPRP may recommend that a APPAP be initiated, or a APPAP may be initiated at the discretion of the ICANN Board.
- As part of its overall review, the APPAP will also review whether and how the APPRP should be continued.
- Detailed goals of APPAP shall get be defined by the Implementation Team.

Deleted: OEC

**Guidance for the Implementation Phase in relation to the Auction Proceeds Review Panel:**

- The APPRP will consist of up to two members from each ICANN SO/AC<sup>22</sup> plus up to four external members chosen based on their expertise in granting processes. APPRP members are nominated by SO/ACs through their own respective processes, factoring in the required expertise, skills and commitments required. Should an SO/AC identify more than two prospective members, the SO/AC Chairs will make the final selection. The Board of ICANN will accept self-nominations and will appointment of up to four expert members. APPRP members will serve for two-year terms. In total, the APPRP should include some members with expertise in evaluating granting processes.
- Participants could be compensated. Such compensation would be in the form of an honorarium and not a payment for time. Whether this is practical should be further discussed by the Implementation Team.
- The prime function of the APPRP will be to perform an annual review (starting at the end of year 2) of the ongoing operational process including an assessment of approved projects vs auction proceeds goals and an overall assessment of approved projects (based on interim and final assessments provided to the APPRP).
- This function is over and above any internal reviews of its processes performed by the selected Mechanism, or financial audits that may be performed, but such reviews/audits may be used by the APPRP.
- The APPRP will provide reports to the ICANN Board, the Mechanism, the ICANN community and the Auction Proceeds Program Evaluation Panel (see below).

Commented [EB26]: Board feedback: "On the topic of compensation, the Board anticipates that the Independent Panel will be operated as a professional engagement and compensation for service on the Panel is assumed. Within ICANN to date, community-comprised advisory panel/committees have not been compensated (apart from travel). While experts needed to support a community panel (e.g., lawyers, accountants, and other consultants) are generally compensated, the Board needs additional information from the CCWG on the intended scope, role, and time commitment in order to understand why compensation or honoraria is being considered for this function."

<sup>21</sup> Notes on nomenclature:

a) "Mechanism" is whatever overall structure is selected to disburse the auction proceeds  
b) "Independent Application Evaluation Panel" is the group within the Mechanism or contracted by the Mechanism, that performs the evaluation of applications and selection of projects to be funded. It is independent of ICANN Org and does not include ICANN Org employees.  
c) "Review" is the process of determining how well the auction proceeds disbursement is proceeding.

<sup>22</sup> An SO/AC may choose to contribute only one member, or to not participate at all. An SO/AC that so chooses may reconsider that decision at any later date.

- For avoidance of doubt, the APPRP will focus on the overall operation of the Mechanism and will not evaluate the success of individual funded projects, although the APPRP may take into consideration such evaluations performed by the Mechanism.

## 6. Next Steps

This Initial Report will be posted for public comment for a minimum duration of 40 days. Following the closing of the public comment forum, the CCWG will review the public comments received and update this report as needed and finalize it for submission to its Chartering Organizations.

**Commented [27]:** To be updated depending on whether this is the proposed Final Report that will be published for public comment or the Final Report that is to be submitted to the Chartering Organizations.

## Annex A - Background

### Formation

The CCWG commenced its deliberations at the end of January 2017 with 26 members appointed by Chartering Organizations, 49 participants and 28 observers. The CCWG is tasked with developing a proposal(s) for consideration by the Chartering Organizations on the mechanism that should be developed in order to allocate the new gTLD Auction Proceeds. To facilitate its deliberations, the CCWG agreed to divide its work in five different phases (see details below).

The New Generic Top-Level Domain (gTLD) Program established auctions as a mechanism of last resort to resolve the competition sets between identical or similar terms (strings) for new gTLDs – known as string contention. Most string contentions (approximately 90% of sets scheduled for auction) have been resolved through other means before reaching an auction conducted using ICANN [org](#)'s authorized auction service provider, Power Auctions LLC. However, it was recognized from the outset that significant funds could accrue as a result of several successful auctions conducted by ICANN [org](#). Following the ICANN Board's commitment to do so, the auction proceeds derived from such auctions have been reserved and earmarked within ICANN [org](#) until such time as the ICANN Board authorizes a plan for the appropriate use of the funds. These proceeds are to be considered as an exceptional, one-time source of revenue.

Following a number of sessions on this topic during the ICANN53 in Buenos Aires (see <https://buenosaires53.icann.org/en/schedule/mon-soac-high-interest> and <https://buenosaires53.icann.org/en/schedule/wed-cwg-new-gtld-auction>), a discussion paper was published in September 2015 to solicit further community input on this topic as well as the proposal to proceed with a CCWG on this topic. As the feedback received on the discussion paper confirmed the support for moving forward with a CCWG, James Bladel, GNSO Chair, reached out to all the ICANN Supporting Organizations (SOs) and Advisory Committees (ACs) to ask for volunteers to participate in a Drafting Team (DT) to develop a charter for a CCWG on this topic. All ICANN SOs/ACs, apart from the ccNSO, responded to this request and have put forward volunteers to participate in the drafting team. The DT commenced its deliberations on Tuesday, 23 February 2016. A draft charter for community discussion was published in advance of ICANN56 and discussed during the [cross-community session](#) held at ICANN56. Following ICANN56, the DT [reviewed all the input received](#) and updated the proposed charter accordingly. On 13 September 2016, [this proposed charter](#) was shared with all ICANN SOs/ACs with the request to review it and identify any pertinent issues that would prevent adoption of the charter, if any. Subsequently, a webinar was held on 13 October 2016 to allow for some additional time and information to undertake this review. The final proposed charter was submitted to all ICANN SOs/ACs on 17 October 2016 following which each ICANN SO/AC confirmed the adoption of the charter. Subsequently, a [call for volunteers](#) was launched and the CCWG was chartered by the 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) to propose the mechanism that should be developed in order to allocate the new gTLD Auction Proceeds. Following approval of the proposal(s) by the Chartering Organizations, it will be submitted to the ICANN Board for its consideration.

## About the new gTLD Auction Proceeds

The new gTLD Auction Proceeds, derived from these last resort auctions, are distinct and ring-fenced funds. As such the Auction Proceeds are a single revenue source (derived from all new gTLD Auction Proceeds round 1). The proceeds, net of direct auction costs, are fully segregated in separate bank and investment accounts. The proceeds are invested conservatively and any interest accrues to the proceeds. 17 contention sets have been resolved via ICANN [org](#) auction since June 2014. The total net proceeds to date are \$208 million USD.<sup>23</sup> Details of the proceeds can be found [here](#). As of 29 July 2019, 3 contention sets remain to be resolved, but it is important to keep in mind that approximately 90% of contention sets scheduled for auction are resolved prior to the auction. The total amount of funding resulting from auctions, will not be known until all relevant applications have resolved contention.

## Scope of the CCWG new gTLD Auction Proceeds

The CCWG has adhered to the following Guiding Principles, both in the context of its deliberations as well as the final recommendations:

- Ensure transparency & openness;
- Provide sufficient accountability;
- Ensure that processes and procedures are lean & effective;
- Take all appropriate measures to deal with conflicts of interest, which includes disclosure as part of CCWG process as well as avoiding conflicts at subsequent stages; and
- Deal with diversity issues by:
  - Striving for a fair, just and unbiased distribution of the auction proceeds not inconsistent with ICANN's mission.
  - Further, seek to ensure diversity of members/participants/observers of the CCWG itself, thus ensuring different perspectives and providing for broader discussion and debate and so leading to more informed and inclusive processes to govern the allocation and disbursement of the proceeds.

As part of its deliberations, the CCWG was required to factor in the following legal and fiduciary constraints:

- It is the CCWG's purpose to make recommendations for a mechanism and/or process for allocation of auction funds that takes into account the need for auction funds to be utilised in a manner that is not inconsistent with ICANN's Mission. In addition, the CCWG is expected to make recommendations about how to assess the extent to which the proposed use of auction proceeds by applicants is aligned with ICANN's Mission.
- ICANN [org](#) will maintain ultimate responsibility for the confirmation of all disbursements, whether upon initial disbursement or subsequent disbursement in which case such subsequent disbursement may be handled by putting in place the appropriate contractual and/or compliance requirements.
- The CCWG must ensure that its proposal(s) for a process and disbursement limitations will not endanger ICANN [org](#)'s tax exempt status and may obtain input from ICANN [org](#)'s legal / finance teams or Expert Advisors as described in Section IV of this charter, should any questions arise in this regard. The preceding should not prejudice the primary principle of

<sup>23</sup> Of the [total \\$233.5 million in proceeds collected](#), \$133 million are proceeds from the [.WEB and .HOTEL auctions \(net of auction costs\)](#). The resolution of the [.WEB](#) contention set is being challenged through ICANN's accountability mechanisms. [From the total](#), \$36 million was allocated to the ICANN [Reserve Fund](#). As of 30 June 2019, the net return on investment was \$10.5m. Therefore, the total auction proceeds as of 30 June 2019 are \$208 million, of which \$133 million are proceeds from the [.WEB](#) auction.

equal access to auction funds regardless of the geographic location of the prospective recipient organization. See also [Note to Auction Proceeds DT re. legal and fiduciary principles](#).

- To align with requirements imposed to maintain ICANN [org](#)'s U.S. tax exempt status, the CCWG must include a limitation that funds must not be used to support political activity/intervening in a political campaign public office <sup>[2]</sup> or attempts to influence legislation <sup>[3]</sup>. The definitions of the limitations that are imposed to meet U.S. tax requirements must be applied across all applicants, and not only those from or intending to use the funds within the U.S. These requirements will apply to comparable activities across any location where applicants are located or intend to use the funds.
- The CCWG must maintain high standards when dealing with issues of conflict of interest. All members and participants must adhere to conflict of interest requirements, including the preparation and ongoing maintenance of an up to date statement of interest, which itself will include certain mandatory disclosures as specified in this charter. The work output CCWG must also include clear and comprehensive conflict of interest requirements to guide the disbursement process in full.
- The CCWG must require that the administration of the disbursement process as well as the necessary oversight will be funded from the auction proceeds. Due consideration should be given to industry best practice (as well as potential requirements that may need to be put into place concerning due diligence review, monitoring, audits, post-project evaluation etc.) as to what an appropriate level of overhead will be.

The CCWG was required to, at minimum, to give appropriate consideration to and provide recommendations on the following questions, taking into account the Guiding Principles as well as the legal and fiduciary constraints outlined above:

1. What framework (structure, process and/or partnership) 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 <sup>[4]</sup>? As many details as possible should be provided, including any implementation guidance the CCWG may have in relation to the establishment of this framework as well as criteria for the selection / ranking of potential funding requests.
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 recognising the diversity of communities that ICANN serves? This should include recommendations on how to assess whether the proposed use is aligned with ICANN's Mission. Furthermore consideration is expected to be given to what safeguards, if any, need to be in place.
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 <sup>[5]</sup>?
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? E.g. The timeframe for the operation of this new mechanism may provide the opportunity for long term support, or for funding to be released in tranches linked to milestone achievements, single or multiple disbursements.
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?
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 CCWGs 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 B – Membership and Attendance

Member and participant names marked with an ( \* ) refer to those who replied "yes" or "maybe" to question #6 ("Do you and/or through the entity you are representing and/or employed by, intent to apply for funding through the mechanism that is to be determined through the work of this CCWG?") on the Declaration of Interest (DOI). DOIs can be found here: <https://community.icann.org/x/FpjDAw>. For further attendance information, please see <https://community.icann.org/x/GJjDAw>.

In addition to meetings, the CCWG also exchanged views and progressed its deliberations through mailing list conversations. See <http://mm.icann.org/pipermail/ccwg-auctionproceeds/>.

Members	Affiliation	Attendance (% of meetings attended)
Jonathan Robinson	GNSO	
Marilyn S Cade *	GNSO (CSG)	
Jon Nevett	GNSO	
Elliot Noss	GNSO	
Stephanie Perrin *	GNSO	
Erika Mann (GNSO Appointed Co-Chair) *	Individual	
Peter Vergote *	ccNSO	
Ching Chiao (ccNSO Appointed Co-Chair) *	ccNSO	
Stephen Deerhake	ccNSO	
Pablo Rodriguez	ccNSO	
Tripti Sinha *	RSSAC	

Commented [28]: To be updated

Brad Verd *	RSSAC	
John Levine	SSAC	
KC Claffy *	SSAC	
Carolina Caeiro - temporary appointment *	ASO	
Douglas Onyango - temporary appointment	ASO	
Sylvia Cadena - temporary appointment *	ASO	
Alice Munyua *	GAC	
T. Santhosh	GAC	
Kavouss Arasteh *	GAC	
Olga Cavalli	GAC	
Sebastien Bachollet *	ALAC	
Alan Greenberg	ALAC	
Maureen Hilyard *	ALAC	
Seun Ojedeji	ALAC	
Vanda Scartezini *	ALAC	

<b>Participants</b>	<b>Affiliation</b>	<b>Attendance (% of meetings attended)</b>
Abdul Zain Khan *	Individual	
Adetola Sogbesan	GNSO (BC)	
Agnoun Basso	Individual	
Ahmed Bakhat Masood *	Individual	
Alberto Soto	Individual	
Arsène Tungali	GNSO (NCUC)	
Ayden Férdeline *	GNSO (NCUC)	
Becky Burr *	Board Liaison	
Beran Dondé Gillen	At-Large	
Brian Scarpelli	GNSO (IPC)	

Carlos Dionisio Aguirre	At-Large	
Daniel Dardailler *	Individual	
Denis Munene *	Individual	
Glenn McKnight	At-Large	
Hadia Elminiawi *	Individual	
Iliya Bazlyankov	Individual	
Jacob Odame-Baiden *	Individual	
James Gannon	GNSO (NCUC)	
Jennifer Chung *	GNSO (RySG)	
Johan (Julf) Helsingius	Individual	
Judith Hellerstein	At-Large	
Maarten Botterman	Board Liaison	
Marie-Noemie Marques *	Individual	
Mary Uduma	Individual	
Matthew Shears	GNSO (NCUC)	
Mei Lin Fung	Individual	
Michael Flemming *	GNSO (IPC)	
Michael Karanicolas	GNSO (NCUC)	
Michelle Scott Tucker	ACIG GAC	
Nadira AL-Araj	Individual	
Narendra Kumar *	Individual	
Nasrat Khalid	Individual	
Norbert Komlan GLKAPE *	Individual	
Pua Hunter *	GAC	
Rafik Dammak	GNSO (NCSG)	
Rajaram Gnanajeyaraman *	Individual	

Rebecca Ryakitimbo *	Individual	
Remmy Nweke *	GNSO (NPOC)	
Sarah Kiden	At-Large	
Sorina Teleanu *	Individual	
Tom Dale	GAC ACIG	
Tony Harris	GNSO	
Victor Zhang *	Individual	
Wale Bakare*	At-Large	
Waudu Siganga	GNSO (BC)	
Yao Amevi Amessinou Sossou *	Individual	
Yeseul Kim	GNSO (NPOC)	
Zakir Syed	GNSO (NCUC)	

## Annex C – Guidance for Proposal Review and Selection

The purpose of this document is to offer overarching guidance for the review and selection of projects to which auction proceeds from the ICANN new gTLD program<sup>24</sup> may be allocated.

Funded projects are required to be in service of ICANN's mission statement<sup>25</sup> and core principles, which are the basis for ICANN [org's](#) U.S. tax-exempt status, and therefore must be in areas that are relevant to and support ICANN's mission statement and core principles. ICANN's mission statement will, therefore, set the key parameters for the auction proceeds application and selection process. Members and participants of the Cross Community Working Group Auction Proceeds (CCWG AP) believe nevertheless that it is important to put the broader Internet context into consideration.

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.

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In addition to being in service of ICANN's mission, the auction proceeds from the new gTLD program shall be used to support projects that are consistent with an "open and interoperable Internet"<sup>26</sup>. 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. This Guidance for proposal review and Selection does not provide a definitive description, as the Internet continues to evolve at every level.

However, the CCWG believes that, at a technical level, the IP routing and numbering systems, the Domain Name System, the root server system, as well as the development of open standards, have historically served an open and interoperable Internet because they have allowed, supported and maintained the universality and global reach of the Internet.

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. Projects are expected to advance work related to open access, future oriented developments, innovation and open standards, for the benefit of the Internet community. Projects addressing diversity, participation and inclusion should strive to deepen informed engagement and participation from developing countries, under-represented communities and all stakeholders.

<sup>24</sup> The new generic top level domain (gTLD) Program established auctions as a mechanism of last resort to resolve the competition sets between identical or similar terms (strings) for new gTLDs – known as string contention. Most string contentions (approximately 90% of sets scheduled for auction) have been resolved through other means before reaching an auction conducted using ICANN's authorized auction service provider. Any reference in this document to auction proceeds refers to the proceeds derived from auctions conducted using ICANN's authorized auction service provider.

<sup>25</sup> "The mission of the Internet Corporation for Assigned Names and Numbers ("ICANN") is to ensure the stable and secure operation of the Internet's unique identifier systems as described in this [Section 1.1\(a\)](#) (the "Mission")." <https://www.icann.org/resources/pages/governance/bylaws-en/#article1>

<sup>26</sup> The use of this terminology does not imply any support to any other standing use of this terminology.

Therefore, the CCWG considers the following to be important guidelines for the review and selection of applications seeking auction proceeds funding:

1. The purpose of a grant/application must be in service of ICANN's mission and core principles.<sup>27</sup>
2. The objectives and outcomes of the projects funded 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 are encouraged: open access, future oriented developments, innovation and open standards, for the benefit of the Internet community.
4. Projects addressing diversity, participation and inclusion should strive to deepen informed engagement and participation from developing countries, under-represented communities and all stakeholders.
5. Projects supportive of ICANN's communities' activities are encouraged, in so far as these activities are different than those funded currently or in the past by ICANN's operational budget.

**Commented [EB29]:** Text suggested by Becky and Maarten in 29 September letter to the CCWG. Additional clarification from the Board: "The Board previously expressed its view that auction proceeds should not be used to fund and supplement ICANN's operations, including existing or terminated programs. Closely related, the Board feels that auction proceeds should not be used for any applicant's ordinary operations and that a project, that is within ICANN's mission, funded by auction proceeds that is intended to continue to operate into the future should be able to demonstrate that the program will be self-sustaining in the out years. So, for example, if an organization applies for funding to create a new program, the applicant should demonstrate that it will not be dependent future receipt of additional auction proceeds in order to maintain continued operations of the program."

<sup>27</sup>The global public interest (GPI) is one of the key concepts in ICANN's primary governance documents. In the implementation phase, ongoing work by the ICANN Board on this topic should be considered to the extent that it is applicable. In particular, tools are being developed to reinforce the commitment to the public interest and to demonstrate how specific recommendations, advice, and public comments are in the global public interest.



## Annex D – Example Projects

The following list of examples is intended to be illustrative of the types of projects that **MAY** be considered eligible to be funded by new gTLD Auction Proceeds. This list is expected to help inform the subsequent implementation process that will follow the selection of the mechanism for fund allocation. The CCWG is not endorsing any of these examples specifically – these are merely provided for illustrative purposes. Any project funded with new gTLD Auction Proceeds are expected to be in service of ICANN’s mission as well as meeting legal and fiduciary requirements that have been established.

Inclusion on this list as an example is not a guarantee of funding for projects that are designed to be identical or similar to such examples. Every application must be subject to review on its own merits and in conjunction with the funding available in any tranche. Similarity to any example is not a sufficient basis challenge action on an application.

Example Project	Draft CCWG Conclusion <sup>28</sup>
1 A coalition of organizations working on remote participation tools and content receive a long-term grant to support localization efforts for local languages not covered under the existing ICANN’s framework.	The CCWG considers this type of project consistent with ICANN’s mission as it enables participation in ICANN’s MSM of communities that are not served by existing participation tools.

<sup>28</sup> Any decision on ICANN’s mission is reserved to the ICANN Board and must take into account all of the facts and circumstances present within an application. Whether a project might be consistent with ICANN’s mission is also a separate issue from the other legal and fiduciary requirements that must be met.

	This encourages local and national conversations that feed into the regional and global processes. (As an example of potential impact/benefit of this project: 45 leaders from more diverse backgrounds and expertise feel empowered to participate.)	
2	A reputable organization receives a grant to design, implement and cover the cost of business development targeted to ccTLDs and gTLDs administrators in developing countries to improve their management and operations. (As an example of potential impact/benefit of this project: The entity produces a report and analysis useful for others not directly benefiting from the mentoring / courses).	The CCWG considers this type of project consistent with ICANN's mission as it can be considered in service of the mission, promoting stability and resiliency, but does not consider it a priority for fund allocation. There should not be discrimination of gTLDs over ccTLDs Both should qualify. No single organization should be identified or given preference.
3	The development of capacity building, education and qualification-related programmes specifically targeting underserved populations in developing countries, that: <ul style="list-style-type: none"> <li>* include primary, secondary and higher education school programmes about the internet and internet security issues, as well as about the DNS system and its related functions, that will develop an early understanding of the need for such knowledge</li> <li>* incorporate specific internet and DNS training and development subjects into secondary school qualification programmes to encourage students to enter this area as a career</li> <li>* build business and technical capacity for locally trained and qualified registrars and other appropriate personnel</li> <li>* build general community understanding about the development of the internet and its required security, and the DNS and its related functions, and therefore are in local languages wherever possible</li> <li>* and that these programmes, while requiring the consultation of technical experts, are developed by</li> </ul>	The CCWG considers this type of project consistent with ICANN's mission as it can be considered in service of the ICANN mission, as long as the focus is on topics that are considered consistent with ICANN's mission.

	educational and training specialists from developing countries; and are coordinated within ICANN Learn or within an external organisation set up for this purpose	
4	A reputable organization received a large grant to implement a “Leadership and Career Development program” in service of ICANN’s mission. Women and men from around the world receive full scholarships at different universities to conduct PhD studies on key technical and related policy issues around Internet infrastructure development. They participate at ICANN meetings during the course of their studies and are required to share volunteer to spread their knowledge across the community. Their research is shared with the community. As a result of their successful involvement on this program, the recipients fully support ICANN’s growth and development and continue to actively contribute to the community.	The CCWG considers this type of project consistent with ICANN’s mission as it can be considered in service of the ICANN mission, as long as the focus is on topics that are considered consistent with ICANN’s mission.
5	Small and medium enterprises owned or led by women and youth, indigenous and other excluded communities can be effectively enabled to participate in the global economic community by "demand aggregators" and "supply aggregators" and other "economic-connectors". Examples are Siam Organic <a href="https://www.asiaforgood.com/siam-organic">https://www.asiaforgood.com/siam-organic</a> and Cambodian - Color Silk <a href="http://colorsilkcommunity.wixsite.com/colorsilk-cambodia/color-silk-enterprise">http://colorsilkcommunity.wixsite.com/colorsilk-cambodia/color-silk-enterprise</a>	Although a noble cause, the CCWG does not consider this type of project consistent with ICANN’s mission.
7	A global program to support disaster preparedness/management for Internet infrastructure organizations is structured with support from international organizations, following best practices and encouraging collaboration among the community.	The CCWG considers this type of project consistent with ICANN’s mission as long as support is focused on services directly related to IP/DNS operations.

	As an example of potential impact/benefit of this project: A disaster hits 3 African nations. The ccTLD, ISPs, and other technical community organizations in the country have mechanisms in place to manage the disaster. They are well coordinated and able to have the Internet up and running very quickly to support first responders to do their work. The participants of the program are able to coordinate that assistance is provided to technical community organizations (not eligible under humanitarian provisions) to access the support they need to keep the Internet in that affected area running on a temporary basis.	
8	A donation is given to a standards development organization to strengthen their work in relation to the Internet's unique identifier systems.	The CCWG considers this type of project consistent with ICANN's mission as it is in direct support of the Internet's unique identifier systems.
9	A donation is given to an organization to support Domain Name System software development and maintenance.	The CCWG considers this type of project consistent with ICANN's mission.
10	Reputable organizations receives 3- 5 year grants that support the development and strengthening of community events/forums that may be national, regional, or global that from a multistakeholder approach, facilitate understanding of issues around the Internet's unique identifier systems and how those are influenced by discussions around Internet governance issues.	The CCWG considers this type of project consistent with ICANN's mission.
11	Projects that can improve ease of registration of generic and country code domain names in developing countries, (registration in their own language, payment in local currency, for example) in view of the scarcity of local ICANN accredited registrars in many of these nations.	The CCWG considers this type of project consistent with ICANN's mission.

12	<p>Internet Exchange Points (IXPs) can make a crucial difference in strengthening a city or country's Internet along with the potential to improve performance and decrease costs while increasing the potential community benefit. In developing countries, IXPs are a critical part of building the region's capacity. Projects that support capacity development and engagement with the IXP community are a key element to advance stability and scalability of the Internet as well as its sustainability.</p>	<p>The CCWG considers this type of project consistent with ICANN's mission.</p>
13	<p>Support work done by Internet and Web Open Standards Developing organizations that are of common interest such as:</p> <ul style="list-style-type: none"> <li>• enhanced online Internet and Web security and privacy,</li> <li>• work on handling IDN and Universal acceptance issues in Web browsers and tools,</li> <li>• more guidelines and tools for Internet and Web users,</li> <li>• better education programs on Internet and Web Open Standards,</li> <li>• open APIs for Web mobile apps and social network platform to ensure a strong hyperlink paradigm,</li> <li>• more involvement in Internet and Web Open standard advocacy, and in solving IPR issues,</li> <li>• more resources for testing Internet and Web standards - critical to providing an open environment.</li> </ul> <p>(Note, any such work should be in service of ICANN's mission).</p>	<p>The CCWG considers this type of project consistent with ICANN's mission.</p>
14	<p>Global DNS Root Service: Operations</p> <ul style="list-style-type: none"> <li>• The operation of global DNS root service needs sustainable funding. Access to funding should</li> </ul>	<p>The CCWG considers this type of project consistent with ICANN's mission.</p>

	be developed such that it preserves the autonomy and independence of the root server operator organizations in architecting and delivering the service with adherence to standards and service expectations.	
15	Global DNS Root Service: Emergency Fund <ul style="list-style-type: none"> <li>The exponential growth of the Internet and proliferation of complex attack vectors call for access to emergency funding should the need arise.</li> </ul>	The CCWG considers this type of project consistent with ICANN's mission.
16	Global DNS Root Service: Research and Development <ul style="list-style-type: none"> <li>As with all technologies, DNS technology will experience an evolution over time. Technology advancement should be funded for research, development, and testing.</li> </ul>	The CCWG considers this type of project consistent with ICANN's mission.
18	Investment in long term sustainability of the DNS <ul style="list-style-type: none"> <li>Ensure long-term usability and sustainability of DNS across the globe and various existing and future networks (i.e. IoT, blockchain, inter-planetary network, etc.)</li> </ul>	The CCWG considers this type of project consistent with ICANN's mission.
#19	Support to preserve the source code of the historical software infrastructure that made the Internet and the Web what they are today.	The CCWG considers this type of project consistent with ICANN's mission.

**Additional example considered by CCWG – certain parts may be consistent while others may not.**

(Previous #12)	Projects that educate users about what a website is and how they can obtain a unique identifier -- without prejudice to gTLD or country code. This may be of particular interest to small and medium businesses or farms, and entrepreneurs. Projects should avoid	Although a noble cause, the CCWG does not consider this type of project consistent with ICANN's mission.  Notes from 16 November 2017 meeting: <ul style="list-style-type: none"> <li>unclear whether this is within the mission or not</li> </ul>
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	<p>"marketing" any particular option, but help to highlight how the DNS works, and how to use a domain name, generally.</p>	<ul style="list-style-type: none"> <li>▪ we should not be too narrow in our understanding of the mission statement</li> <li>▪ inappropriate use of the funds, smells too much like marketing</li> <li>▪ Marketing new gTLDs is up to the new gTLDs, this would be outside of our scope.</li> <li>▪ ICANN engaging in marketing, would be negatively viewed. A legal investigation is needed, whether this is within scope. Are we violating ICANN's integrity?</li> <li>▪ No support to promote branding, but awareness raising regarding names is important. Information sharing as such would be fine.</li> <li>▪ The AGB used it as an example for the use of those funds, so why would it not be within ICANN's mission? "grants to support new gTLD applications" is contained in the Applicant Guidebook as a potential use of auction proceeds -- again let's not look at the specific merits of an example, but whether the category might be ok</li> </ul>
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## Annex E – Glossary

**Auction Proceeds Program Assessment Panel (APPAP):** A group chartered by the ICANN Board, through a committee if appropriate, to allow for an assessment of the entire Auction Proceeds program, including all aspects of the programs operation as well as the program goals and project criteria.

Commented [EB30]: Updated to reflect Board input.

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**Auction Proceeds Program Review Panel (APRP):** A community-based group to review the Auction Proceeds program process, which will include ICANN community volunteers, as well as invited external experts with expertise in evaluating grant processes.

**Charter Questions:** A series of 11 questions posed in the CCWG's charter which the CCWG has set out to answer in the course of its work.

**Chartering Organizations:** The following Supporting Organizations and Advisory Committees adopted the CCWG's charter: 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).

**Conflict of Interest:** In general, a situation in which a person has the ability to derive benefit (such as personal, financial, reputational, etc.) from actions or decisions taken in an official capacity. See the ICANN Conflict of Interest Policy at <https://www.icann.org/resources/pages/coi-policy-2009-07-30-en>

**Due Diligence:** As referred to in this Final Report, a review needed to determine eligibility for funding.

**Guidance for the Implementation Phase:** A set of proposals that may help to guide the next phase that will translate the current work into a concrete operation.

**Independent Applications Evaluation Panel:** The group within the mechanism or contracted by the mechanism that performs the evaluation of applications and selection of projects to be funded. This panel is independent of ICANN org and does not include ICANN org employees.

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**Mechanism:** The overall structure that will be created to allocate the Auction Proceeds. Options discussed in this report:

- **Mechanism A:** An internal department dedicated to allocation of auction proceeds is created within the ICANN organization<sup>29</sup>.
- **Mechanism B:** Internal department collaborates with an existing non-profit.
- **Mechanism C:** A new charitable structure (ICANN Foundation) is created separate from ICANN org which would be responsible for solicitation and evaluation of proposals, and disbursement process.

Deleted: grant solicitation, implementation and evaluation...

Commented [EB31]: Staff note: It has previously been discussed that this description may be confusing because it contains the word "evaluation." Would it be better to simplify the description to: "An internal department dedicated to allocation of auction proceeds is created within the ICANN organization." ?

**Program Review:** The process of determining how well the auction proceeds disbursement is proceeding.

<sup>29</sup> In line with existing business practices as well as current ICANN practices, certain aspects could be outsourced, such as, for example, audit functions. Exact details of ICANN org's internal project implementation will be designed during implementation.

**Project/Proposal/Application Review and Evaluation**: The consideration of requests for funding and the assessment of these applications to determine which projects should be funded.

Feedback from ICANN Board on mechanism C: "As previously indicated, ICANN's Board and its Officers have specific fiduciary obligations with respect to the distribution of auction proceeds, no matter which mechanism is selected. Creation of a separate foundation would not modify or eliminate those obligations, nor would it eliminate potential challenges with respect to those obligations. To the extent the CCWG contemplates creation of a foundation in which ICANN is not involved - particularly, but not exclusively including decisions as to whether an application furthers ICANN's mission - that raises concerns similar to concerns raised with the prior Mechanism D, which envisioned the handing of proceeds over to a separate entity to be solely responsible for all parts of the evaluation and distribution. We have heard suggestion during the CCWG's deliberations that the renewed interest in a foundation is for the purposes of independence from ICANN Board and Org. However, the use of a foundation in this instance would be a mechanism that would require a separate entity, but would necessarily still be related to ICANN for the purposes of governance.

The creation of a foundation to administer the grant program should be evaluated against the efficiency and effectiveness principle cited above and, if a foundation is the recommended mechanism, it should be developed in accordance with best practices from related foundations designed to further a parent or supported entity's charitable mission. Any recommendation for a foundation should also provide details on what the foundation and its board are anticipated to do other than to administer the grant program in accordance with the principles and guidelines that the CCWG-AP is recommending. Is the foundation expected to have a differing strategic initiative other than to deliver the program as recommended by the CCWG-AP and approved by the ICANN Board?

In addition to the above considerations, the Board reiterates previous statements that proceeds will be distributed in tranches, regardless of which mechanism is implemented. If a foundation is the recommended approach, the proceeds would not be sent in their entirety to the foundation, and will be distributed in tranches."

Feedback from ICANN Finance regarding relative costs of mechanisms A and C: "In Mechanism C, the Foundation's administration is: shared with ICANN's (Scenario C1) or entirely independent (Scenario C2). Within scenario C1, there could be costs differences between the Foundation's workforce being directly employed by the Foundation or seconded by ICANN. For simplification, such differences are ignored at this stage. The workforce costs, except where identified below, are presumed to be the same across all mechanisms.

Differences driven by the legal structure: Mechanism A does not require a separate legal entity / Mechanism C requires a foundation.

- One-time costs only in Mechanism C:

- o associated with the creation of a Foundation's legal entity, including registration of tax

- o exemption.

- o associated with the creation of a board of directors.

- o Definition and documentation of the relationship between ICANN and Foundation. o Definition

of accountability mechanisms for the foundation (if any).

o Payroll registration and set up costs.

o Additional costs in Scenario C2:

▪ Start up costs: hire initial employees, identify offices, establish administrative and infrastructure services (Legal, Accounting, HR, IT, office management, Communications,...)

On-going costs only in Mechanism C:

o Board of directors activities and support. Dedicated resources in Scenario C2. Shared

between ICANN and Foundation in scenario C1, under which costs are lower.

o Independent financial audit's costs (higher than incremental audit costs, if any, driven

by the existence of a grant distribution activity within ICANN under Mechanism A). o Tax return and other registration filing costs

o Management and support of accountability mechanisms for the foundation (if any). o Costs of the ICANN management and oversight of relationship with foundation.

o Additional costs in Scenario C2:

▪ Costs of dedicated administrative services (Legal, Accounting, Payroll, HR, IT, office management, Communications,...)

▪ Costs of dedicated offices - On-going costs only in Mechanism A:

o Management and support of ICANN's accountability mechanisms triggered by the grant distribution activity (if any)."