

# **Final Report of the new gTLD Auction Proceeds Cross Community Working Group**

This is the Final Report by the new gTLD Auction Proceeds CCWG, prepared by ICANN Staff for submission to the CCWG's Chartering Organisations for their consideration.

29 May 2020

## TABLE OF CONTENTS

1. Executive summary	3
<b>1.1. Background</b>	3
<b>1.2. Objective</b>	3
<b>1.3. About the CCWG</b>	3
<b>1.4. Deliberations &amp; Recommendations</b>	4
<b>1.5. Next Steps</b>	8
2. Objective and next steps	9
3. Methodology	10
4. Summary of Deliberations	12
<b>4.1. Mechanisms Identified</b>	12
<b>4.2. Division of Responsibilities - Mechanisms A, B, and C</b>	14
<b>4.3. Common Characteristics - Mechanisms A, B, and C</b>	15
<b>4.4. Objectives of Fund Allocation</b>	16
<b>4.5. Criteria</b>	16
<b>4.6. Input Provided by the ICANN Board</b>	17
<b>4.7. Ranking Mechanisms</b>	18
<b>4.8. Conclusion</b>	19
5. Recommendations & Responses to the Charter Questions	21
<b>5.1. Selection of the Mechanism</b>	21
<b>5.2. Safeguards and Governance</b>	23
<b>5.3. Operations</b>	30
<b>5.4. Review</b>	34
6. Next Steps	36
Annex A - Background	37
Annex B – Membership and Attendance	41
Annex C – Guidance for Proposal Review and Selection	44
Annex D – Example Projects	46
Annex E – Glossary	53
Annex F – Minority Statement	54

# 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 (SOs) and Advisory Committees (ACs) 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 (or confusingly similar) 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 approved 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, and has also held active discussions on the CCWG mailing list. 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 a [proposed Final Report](#). As a number of substantial changes were made, the CCWG decided to publish the proposed Final Report for public comment in December 2019. The CCWG reviewed input received and subsequently finalized the recommendations in this Final Report.

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

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 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 poll that was conducted amongst the CCWG members and participants in relation to the main recommendation.

Poll results<sup>2</sup> indicate that members have a preference for mechanism A (An internal department dedicated to the allocation of auction proceeds is created within the ICANN organization), followed by mechanism B (An internal department dedicated to the allocation of auction proceeds is created within the ICANN organization which collaborates with an existing non-profit organization).

A formal consensus call<sup>3</sup> was conducted on this Final Report, informed by the results of the poll. The CCWG Chairs designated the level of support for the Final Report and recommendations as having Consensus, "a position where a small minority disagrees, but most agree."<sup>4</sup>

### Recommendations

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

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

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

**CCWG Recommendation #2:** The CCWG recommends that an Independent Project Applications Evaluation Panel will be established. The Panel's responsibility is to evaluate and

<sup>2</sup> See section 4 of this report for additional details about poll results.

<sup>3</sup> In the formal consensus call, the Co-Chairs made an assessment of the level of support achieved following the designations and methodology outlined in the CCWG Charter.

<sup>4</sup> The designation "Consensus" is defined in the CCWG's charter.

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

**CCWG Recommendation #3:** The CCWG agreed that specific objectives of new gTLD Auction Proceeds fund allocation are:

- Benefit the development, distribution, evolution and structures/projects that support the Internet's unique identifier systems;
- Benefit capacity building and underserved populations, or;
- Benefit the open and interoperable Internets<sup>5</sup>.

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

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

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

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

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

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

**CCWG Recommendation #9:** The selected mechanism must be implemented to enable the availability of funds for a specific round as well as the disbursement of the funds for selected

<sup>5</sup> See [Annex C](#) "Guidance for proposal review and Selection" for more details

projects in an effective and judicious manner without creating a perpetual mechanism (i.e. not being focused on preservation of capital).

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

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

**CCWG Recommendation #12:** The CCWG recommends that two types of review are implemented<sup>6</sup>. First, an internal review step will be part of the standard operation of the program. This review may take place at the end of each granting cycle or at another logical interval, such as on an annual basis. The purpose of this review is to have a lean "check-in" to ensure that the program is operating as expected in terms of processes, procedures, and usage of funds. The review may identify areas for improvement and allow for minor adjustments in program management and operations.

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

**Guidance for the Implementation Phase in relation to charter question #1:** The input provided in sections 4.1 and 4.3 are expected to help inform the implementation of the mechanism that is ultimately selected.

#### **Guidance for the Implementation Phase in relation to the Independent (Project)**

**Applications Evaluation Panel:** The selected mechanism will be responsible for the process of selecting and appointing independent experts to the Independent Project Applications Evaluation Panel, informed by the work done by the CCWG and the criteria / skills identified in the implementation phase. The Independent Project Applications Evaluation Panel should be independent of ICANN and its constituent parts, which include the Board, ICANN org, and the Supporting Organizations and Advisory Committees. No SO or AC should be represented - directly or indirectly - on the Project Applications Evaluation Panel itself. ICANN participants are not excluded from applying to serve on the Independent Project Applications 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 selected 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

<sup>6</sup> The CCWG recommends that as part of the implementation, it should be determined whether these reviews are to be carried out by one panel or two different panels recognizing the importance of the opportunity for the community to participate, factoring in required expertise skills and commitments required. These reviews should not be confused with ICANN periodic or specific reviews.

place to ensure the independence of the members of the Independent Project Applications Evaluation Panel.

Additional details about the operation of the Independent Applications Project Evaluation Panel, including the length of the term that its members will serve, will be established during the implementation phase. Industry best practices should be observed, while also taking into account goals and risks that may be specific to the allocation of new gTLD auction proceeds.

**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.

**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 Project Applications 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 #2). Similarly, to ensure continuity and expertise, a sufficient pool of independent evaluators needs to be identified.

**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 Project 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, 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.

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

**Guidance for the Implementation Phase in relation to charter question #6:** During the implementation phase, further consideration needs to be given to how to contribute to projects that support capacity building and underserved populations, 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 backgrounds. Further work will also need to be undertaken as part of the implementation phase on how to define 'underserved populations' as well as the guidance that is to be provided to the Independent Project Applications Evaluation Panel to help inform a determination of which regions qualify as underserved regions and in which areas capacity building may be specifically needed.

**Guidance for the Implementation Phase in relation to charter question #8:**  
The CCWG recommends ICANN org and any partnering organizations 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.

**Guidance for the Implementation Phase in relation to Reviews:** The CCWG recommends that as part of the implementation, it should be determined whether these reviews are to be carried out by one panel or two different panels recognizing the importance of the opportunity for the community to participate, factoring in required expertise skills and commitments required.

The CCWG understands that the ICANN Board expects eventual processes to support all Board principles, in particular those related to "Board Due Diligence," "Preservation of Resources and Use of Existing Expertise," "Evidence-Based Processes and Procedures for Evaluation," "ICANN Monitoring and Evaluation," "Accountability," and "Transparency."

## 1.5. Next Steps

This Final Report will be submitted to the CCWG's Chartering Organizations and to the Board of ICANN for their consideration.



## 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 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>7</sup>. Through publication of the Initial Report for Public Comment, 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 a proposed Final Report and recommendations. The proposed Final Report was published for public comment in December 2019. The CCWG reviewed input received and subsequently finalized the recommendations in this Final Report.

The CCWG is submitting this Final Report to the Chartering Organizations and to the Board of ICANN for their consideration.

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

<sup>7</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 CCWG also identified a series of questions for external experts (see [here](#)) to help inform the CCWG's deliberations. Furthermore, the CCWG deliberated on 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 Reports<sup>8</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 a proposed Final Report.

The Public Comment on the proposed Final Report provided an additional opportunity for the community to provide feedback.

<sup>8</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 finalized its set of recommendations and is submitting it in the form of a Final Report to the Chartering Organizations and to the Board of ICANN for their consideration.

## 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 the different mechanisms, the CCWG recognizes that there are a number of characteristics that apply, regardless of which mechanism is chosen:

- The ICANN Board has legal and fiduciary oversight responsibility.
- Safeguards are in place to ensure legal and fiduciary obligations are met.
- An independent panel of experts will evaluate the applications.
- Processes and procedures are in place to ensure that auction proceeds are used in a manner that contributes directly to ICANN's mission.
- The directors and officers have an obligation to protect the organization through the use of available resources. In such a case, while ICANN would not be required to apply for the proceeds, the directors and officers would have a fiduciary obligation to use the funds to meet the organization's obligations if it was necessary to do so.

The CCWG identified the following three mechanisms as a viable means to allocate auction proceeds. The following is a summary of main characteristics of the evaluated mechanisms, namely:

**Mechanism A:** An internal department dedicated to the allocation of auction proceeds is created within the ICANN organization<sup>9</sup> 10.

**Mechanism B:** An internal department dedicated to the allocation of auction proceeds is created within the ICANN organization which collaborates with an existing non-profit.<sup>11</sup>

**Mechanism C:** A new charitable structure (ICANN Foundation) is created which is functionally separate from ICANN org, which would be responsible for the allocation of auction proceeds.

In its deliberations, the CCWG also considered a fourth option, mechanism D, in which an established entity is used for the allocation of auction proceeds. Instead of shared responsibilities as outlined for mechanism B, ICANN would only organize the oversight of

<sup>9</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.

<sup>10</sup> In CCWG discussions regarding mechanism A, ICANN org noted that if mechanism A were to be implemented, all grants would be listed on ICANN's annual tax returns.

<sup>11</sup> If mechanism B is selected, further consideration will need to be given in the implementation phase to the attributes that are desirable in collaborating with a non-profit. For example, the Non-Commercial Stakeholder Group provided input through Public Comment on the proposed Final Report that the "selected organisation must be as neutral as possible with experience working with global projects and diverse communities." The CCWG is not providing guidance on this issue, but acknowledges that additional work may be needed in this regard during the implementation phase.

processes to ensure mission and fiduciary duties are met. The CCWG determined that mechanism D was not a viable option to pursue. Please see the Initial Report for additional information.

It is important to note that there are certain differences that apply as a result of the mechanism chosen which are further detailed in the responses to the charter questions in the sections below which have impacted the CCWG's decision on which mechanism(s) to recommend to the ICANN Board.

As stated in CCWG Recommendation #1, the CCWG strongly encourages the ICANN Board to conduct a feasibility assessment which provides further analysis of the recommended mechanisms, including costs associated with each mechanism, so that the Board can take an informed decision about supporting the most appropriate mechanism. 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.

At the request of the CCWG, ICANN org did already provide input on the relative costs of staffing associated with mechanisms A and C noting that:

*"In describing cost differences between the 2 mechanisms, a number of assumptions need to be formulated. Those assumptions are identified below, and can include different scenarios for the same assumptions. Costs that are assumed to be equivalent in either mechanism are not discussed below.*

*The question suggests to describe differences by assuming that 20 people would be needed in both mechanisms. This is a limiting assumption, as it is expected that the number of people needed is a difference between the 2 mechanisms. As a result, the discussion below will remove this assumption. For clarity, this discussion does not include the differences between the two mechanisms that are not specifically about costs.*

*Assumption:*

*In Mechanism C, the Foundation's administration is: shared with ICANN's (Scenario C1) or entirely independent (Scenario C2).<sup>12</sup> 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:*
  - *associated with the creation of a Foundation's legal entity, including registration of tax exemption.*
  - *associated with the creation of a board of directors.*
  - *Definition and documentation of the relationship between ICANN and Foundation.*
  - *Definition of accountability mechanisms for the foundation (if any).*
  - *Payroll registration and set up costs.*

<sup>12</sup> ICANN org presented two different scenarios, C1 and C2, in its analysis. While information about both scenarios is quoted here, the CCWG noted that if mechanism C were to be implemented, it would likely follow the model of scenario C1 and not C2.

- *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:*
  - *Board of directors activities and support. Dedicated resources in Scenario C2. Shared between ICANN and Foundation in scenario C1, under which costs are lower.*
  - *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).*
  - *Tax return and other registration filing costs*
  - *Management and support of accountability mechanisms for the foundation (if any).*
  - *Costs of the ICANN management and oversight of relationship with foundation.*
  - *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:*
  - *Management and support of ICANN's accountability mechanisms triggered by the grant distribution activity (if any)."*

The Board has also noted in relation to 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".*

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

<b>Responsibilities</b>	<b>Mechanism A</b>	<b>Mechanism B</b>	<b>Mechanism C</b>
<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	To Be Determined	ICANN Foundation
<b>Governance</b>			
Internal review at regular intervals to identify areas for improvement, minor adjustments in program management and operations.	ICANN Department	To Be Determined	ICANN Foundation

Broad strategic review of mechanism.	Community Advisory Panel	Community Advisory Panel	To Be Determined
<b>Evaluation and Decision</b>			
Establish strategic goals.	CCWG Recommendation	CCWG Recommendation	CCWG Recommendation
Establish eligibility for evaluation based on criteria.	ICANN Org	ICANN Org	ICANN Foundation
Score successful and unsuccessful applicants.	Independent Panel	Independent Panel	Independent Panel Convened by ICANN Foundation
Overall approval.	ICANN Board	ICANN Board	ICANN Foundation*
Reporting/auditing (project compliance).	To Be Determined	To Be Determined**	To Be Determined*

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

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

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

Characteristics	Mechanism A	Mechanism B	Mechanism C
ICANN maintains legal and fiduciary oversight responsibility.	✓	✓	✓
ICANN org conducts legal and fiduciary oversight activities.	✓	✓	✓
Safeguards are in place to ensure legal and fiduciary responsibilities are met.*	✓	✓	✓
ICANN org conducts due diligence to oversee the disbursement of assets.	✓	Oversees or performs	✓
ICANN's mission is observed at all points in the process.	✓	✓	✓
Mechanism operates apart from ICANN's budget and is funded from the auction proceeds.	✓	✓	✓
The directors and officers have an obligation to protect the organization through the use of available resources. In such a case, while ICANN would not be	✓	✓	✓ Prior to annual distribution to ICANN

required to apply for the proceeds, the directors and officers would have a fiduciary obligation to use the funds to meet the organization's obligations if it was necessary to do so.			Foundation
--	--	--	------------

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

#### 4.4. 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, in so far as these activities are different than those funded currently by ICANN's operational budget.

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

#### 4.5. 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

#### 4.6. 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. This input is also to be provided to the implementation team to ensure that they are familiar with this input and the Board's guidance on a number of aspects.

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

### **4.7. Ranking Mechanisms**

In preparation for drafting the CCWG's Initial Report, the co-chairs conducted a poll of CCWG members and participants in May 2018 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 proposed Final Report. Please see the proposed Final Report for additional details.

After considering comments received on the proposed Final Report and completing further deliberations, the CCWG conducted a final poll to assess which mechanisms CCWG members and participants believe meet the criteria listed in sub-section 4.2.<sup>13</sup> Fifteen members out of twenty-three<sup>14</sup> Chartering Organization appointed members participated in the final poll. In addition, five participants out of fifty participants provided their input.

<sup>13</sup> Poll results are available at

<https://community.icann.org/download/attachments/126432332/CCWG%20Auction%20Proceeds%20-%20Final%20Survey%20on%20Mechanisms%20-%20Summary.xlsx?version=1&modificationDate=1588328282731&api=v2>

<sup>14</sup> The Co-Chairs, who also serve as members of the CCWG, chose not participate in this poll in order to maintain neutrality. Therefore, there were 21 members eligible to participate in the poll.

In response to the question “Are you of the view that the CCWG should only recommend one mechanism for ICANN Board consideration, even if your preferred mechanism does not come out as the preferred mechanism of the CCWG overall?”, nine members indicated their preference to recommend the top two ranked mechanisms to the ICANN Board, four members indicated their preference to only recommend 1 mechanism, and one member indicated their preference to recommend all three mechanisms. One member indicated that the CCWG should not recommend a mechanism, stating that this is a detail about which the CCWG does not have expertise.

In response to the ranking, seven members recommended mechanism A (An internal department dedicated to the allocation of auction proceeds is created within the ICANN organization) as their preferred mechanism, four members ranked mechanism B (An internal department dedicated to the allocation of auction proceeds is created within the ICANN organization which collaborates with an existing non-profit) as their preferred mechanism and three members ranked mechanism C (A new charitable structure (ICANN Foundation) is created which is functionally separate from ICANN org, which would be responsible for the allocation of auction proceeds). One member did not state a preference, commenting that the CCWG should not recommend a mechanism.

Considering the responses from participants did not significantly change the direction provided by the CCWG members as one participant indicated their preference for mechanism A and three participants indicated their preference for mechanism B.

Based on the final poll results, the CCWG leadership sees strong support in favor of Mechanism A (An internal department dedicated to the allocation of auction proceeds is created within the ICANN organization), followed by mechanism B (An internal department dedicated to the allocation of auction proceeds is created within the ICANN organization which collaborates with an existing non-profit).

The CCWG leadership notes that a number of members did not participate in the final survey, but it is nonetheless confident in recommending that the Board consider the two top ranked mechanisms, mechanism A (An internal department dedicated to the allocation of auction proceeds is created within the ICANN organization), followed by mechanism B (An internal department dedicated to the allocation of auction proceeds is created within the ICANN organization which collaborates with an existing non-profit organization), given several considerations. Members from all but one of the Chartering Organizations participated in the poll, providing representation from nearly all of the groups.<sup>15</sup> In addition, the poll results are consistent with results of the poll held prior to publication of the Initial Report. Results are also consistent with input received through public comment on the proposed Final Report, as well as subsequent deliberations within the CCWG.

#### **4.8. 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/0RS8B>) as well as members and participants of the CCWG, the recommendations outlined in the next section are being put forward for the consideration of the CCWG’s Chartering Organizations. As per the charter, “Following the submission of the final output, each of the Chartering Organizations shall, in accordance with their own rules and procedures, review and discuss the output and decide whether to adopt the proposals and the

<sup>15</sup> There is currently one member of the CCWG representing the RSSAC, and this member did not participate in the poll. At least one member participated from each of the following groups: ALAC, ASO, ccNSO, GAC, GNSO, SSAC.

recommendations contained within. The chairs of the Chartering Organizations shall notify the chair(s) of the CCWG of the result of the deliberations as soon as feasible”.<sup>16</sup>

<sup>16</sup> The CCWG Charter outlines next steps to be taken in case not all Chartering Organizations adopt the Final Report.

## 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.

A formal consensus call was conducted on this Final Report following the designations and methodology outlined in the CCWG charter. The consensus call was informed by a poll of CCWG members. The CCWG Chairs designated the level of support for the Final Report and its recommendations as having Consensus, "a position where a small minority disagrees, but most agree."<sup>17</sup>

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 (See Annex C - 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>18</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 CCWG encourages the implementation team to draw on relevant experts, as appropriate, in completing its work.

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>19</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.**

Poll results<sup>20</sup> indicate that members have a preference for mechanism A (An internal department dedicated to the allocation of auction proceeds is created within the ICANN organization), followed by mechanism B (An internal department dedicated to the allocation of auction proceeds is created within the ICANN organization which collaborates with an existing non-profit organization). For further detail how the CCWG has arrived at this recommendation, please see Section 4.

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

As part of its selection process, the ICANN Board is expected to apply the criteria outlined by the CCWG in section 4.5 of this proposed Final Report for which additional internal and/or

<sup>17</sup> The designation "Consensus" is defined in the CCWG's charter.

<sup>18</sup> See wiki at <https://community.icann.org/display/WEIA/WS2+++Enhancing+ICANN+Accountability+Home>

<sup>19</sup> See also [Note to Auction Proceeds DT re. legal and fiduciary principles](#)

<sup>20</sup> See section 4 of this report for additional details about poll results.

external input may be required (such as providing a reliable cost estimate). The ICANN Board is expected to share the outcome of its consideration with the CCWG Chartering Organizations and, if deemed necessary, involve the Chartering Organizations and/or CCWG implementation team in any deliberations that would benefit from Chartering Organization and/or CCWG implementation team input.

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

**Guidance for the Implementation Phase in relation to charter question #1:** The input provided in sections 4.1 and 4.3 are 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?**

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 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.

Regardless of which mechanism is chosen, an Independent Project Applications Evaluation Panel will be established. This Panel's responsibility is to evaluate and select project applications. Neither the ICANN 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 not be selected based on their affiliation or representation, but will be selected based on their grant-making expertise, ability to demonstrate independence over time, and relevant knowledge. Diversity considerations should also be taken into account in the selection process. The mechanism will be responsible for the process of selecting and appointing independent experts to the Independent Project Applications Evaluation Panel, informed by the work done by the CCWG and the criteria / skills identified in the implementation phase. The Independent Project Applications Evaluation Panel should be independent of ICANN and its constituent parts, which include the Board, ICANN org, and the Supporting Organizations and Advisory Committees. No SO or AC, nor the ICANN Board should have representatives - directly or indirectly - on the Evaluation Panel itself. ICANN participants, in their individual capacity, are not excluded from applying to serve on the Independent Project Applications Evaluation Panel, but they can only be selected if they 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 Project Applications Evaluation Panel.

Additional details about the operation of the Independent Applications Project Evaluation Panel, including the length of the term that its members serve, will be established during the implementation phase. Industry best practices should be observed, while also taking into

account goals and risks that may be specific to the allocation of new gTLD auction proceeds.

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

**Guidance for the Implementation Phase in relation to the Independent (Project)**

**Applications Evaluation Panel:** The selected mechanism will be responsible for the process of selecting and appointing independent experts to the Independent Project Applications Evaluation Panel, informed by the work done by the CCWG and the criteria / skills identified in the implementation phase. The Independent Project Applications Evaluation Panel should be independent of ICANN and its constituent parts, which include the Board, ICANN org, and the Supporting Organizations and Advisory Committees. No SO or AC should be represented - directly or indirectly - on the Project Applications Evaluation Panel itself. ICANN participants are not excluded from applying to serve on the Independent Project Applications 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 selected 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 Project Applications Evaluation Panel.

Additional details about the operation of the Independent Applications Project Evaluation Panel, including the length of the term that its members will serve, will be established during the implementation phase. Industry best practices should be observed, while also taking into account goals and risks that may be specific to the allocation of new gTLD auction proceeds.

## 5.2. Safeguards and Governance

**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.**

As detailed in [Annex C](#) “Guidance for proposal review and Selection”, 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>21</sup>.

<sup>21</sup> See [Annex C](#) “Guidance for proposal review and Selection” for additional information.

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 with regard to 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:
  - 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 #3:** The CCWG agreed that specific objectives of new gTLD Auction Proceeds fund allocation are:

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



- Benefit the open and interoperable Internet<sup>22</sup>.

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

**CCWG Recommendation #4:** 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>23</sup>?**

Processes and procedures will need to be put into place to ensure that legal and fiduciary requirements are met. There will need to be clear and state of the art processes of controls on conflict of interest, on ensuring consistency with ICANN's mission, on evaluating projects/proposals and communicating evaluation results, on decision/approval, on disbursement procedures and requirements, and on monitoring after disbursement (including reporting from the recipients on the use of funds and mechanisms to guard against misuse).

The ICANN Board 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.

For the creation of the framework: For mechanisms A and B, 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.

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 and B, 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.

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

<sup>22</sup> See [Annex C](#) "Guidance for proposal review and Selection" for more details

<sup>23</sup> See also [Note to Auction Proceeds DT re. legal and fiduciary principles](#)

will be particularly important under mechanism A, where ICANN org is handling many aspects of the granting cycle.

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 Project Applications 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 #2). 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 and B, 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 financial accounting practices as contemplated, but would likely need to add new project-related accounting processes.
- 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.

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

**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 Project 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, 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>24</sup>.

<sup>24</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

- 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, audit, and reporting 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. The oversight structure will be designed in the implementation phase after a decision is taken about the nature of the mechanism.
- ICANN org must put in place reporting and publication processes to ensure transparency on application evaluation procedures, results, and usage of funds<sup>25</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.

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 a financial 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: The general financial audit of ICANN org is separate from the specific audit related to the fund.

The following are existing 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 (mechanism B), 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)

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."

<sup>25</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."

should be established between ICANN org and the non-profit, outlining the respective roles and responsibilities of each entity in operating the program.

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.

State of the art best practices should be followed:

- require measurable uses and outcomes of grants
- transparency on the use of grants
- progressive disbursements
- reporting, which could include different reporting requirements depending on the type of project and/or type of support provided, as well as the amount of the grant

The CCWG discussed whether existing ICANN accountability mechanisms such as IRP or other appeal mechanisms can be used to challenge a decision from the Independent Project Applications Evaluation Panel to approve or not approve an application. 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 agreed that currently existing ICANN accountability measures such as IRP may not be used to challenge decisions on individual applications. The reason for this recommendation is that the Board will not assess individual applications. The Board will only make decisions related to the overall disbursement of funds based on recommendations from the Independent Project Applications Evaluation Panel.

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

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

**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:

- Funds are used by ICANN org distinct from the granting process, for example to replenish the reserve fund<sup>26</sup>.
- Funds are allocated through the granting process. In order for a 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 org were eligible to apply through the granting process under mechanism A or B, 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.

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

### 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 auction proceeds. Once it is determined how “success” is defined for allocation of the auction proceeds, the timeframe should be set to support a successful outcome.

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

<sup>26</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>.

The CCWG agrees with the Board's assessment that proceeds should be allocated in tranches over a period of several years, regardless of the selected mechanism.<sup>27</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 transfer. The CCWG anticipates that further work will need to be done in the implementation phase to determine the appropriate size of individual grants provided from a particular tranche. For example, the CCWG acknowledges that there may be risks associated with providing a large proportion of the funds from a particular tranche to a single grant recipient. Industry best practices should guide any decisions in this regard.

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

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

**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.

Other than ensuring that all three goals must support ICANN's mission, 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 (sometimes called a "basket" approach), 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

<sup>27</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.

participate on equal footing in the application process. This issue will need to be considered further in the implementation phase.

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<sup>28</sup> 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<sup>29</sup>, it may be appropriate to consider such an approach, to the extent that it serves programmatic objectives.

The CCWG notes that mechanisms A and B allow for allocation of grants internationally, consistent with the following principle provided by the ICANN Board<sup>30</sup>: “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.” ICANN org agrees that implementation should not be designed in a way that favors US-based entities.

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

**Guidance for the Implementation Phase in relation to charter question #6:** During the implementation phase, further consideration needs to be given to how to contribute to projects that support capacity building and underserved populations, 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 backgrounds. Further work will also need to be undertaken as part of the implementation phase on how to define ‘underserved populations’ as well as the guidance that is to be provided to the Independent Project Applications Evaluation Panel to help inform a determination of which regions qualify as underserved regions and in which areas capacity building may be specifically needed.

<sup>28</sup> These reviews focus on the mechanism and its activities and are distinct from ICANN’s Specific and Organizational Reviews.

<sup>29</sup> The implementation team is expected to consider the input provided by the ICANN Board on this topic (“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).”

<sup>30</sup> See [Board letter](#)



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<sup>31</sup>, it may be appropriate to consider such an approach, to the extent that it serves programmatic objectives.

**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 taking a prudent approach and 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 costs that result from the development or administration of the mechanism will be disbursed from the auction proceeds, and not from ICANN org’s general operating budget. While understanding that overhead is an essential part of the running the mechanism, 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 as grants.

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

The CCWG recommends ICANN org and any partnering organizations 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.

<sup>31</sup> The implementation team is expected to consider the input provided by the ICANN Board on this topic (“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).”

## 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)?**

The Working Group notes that the term “review” is commonly used in the ICANN context to refer to ICANN’s Organizational and Specific Reviews. For the avoidance of doubt, the reviews discussed in response to Charter Question #11 are separate and distinct from ICANN’s Organizational and Specific Reviews and relate exclusively to the allocation of auction proceeds.

It is important to review the functioning of the mechanism in order to improve, to be transparent and to plan for future development. These reviews 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 have a lean “check-in” to ensure that the program is operating as expected in terms of processes, procedures, and usage of funds. The review may identify areas for improvement and allow for minor adjustments in program management and operations.

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

The CCWG originally considered recommending the establishment of two panels for the purposes of conducting reviews:

- An Auction Proceeds Program Review Panel (APPRP), which would include ICANN community volunteers and invited external experts with expertise in evaluating grant processes.
- An Auction Proceeds Program Assessment Panel (APPAP) that would be chartered by the ICANN Board to allow for an assessment of the entire Auction Proceeds program.

The CCWG reviewed input received from the ICANN Board on its proposal to establish these two panels, noted the importance of avoiding duplicative and excessively complex structures to conduct these reviews, and considered the key differences between reviews in this context compared to ICANN Reviews. The CCWG recommends that as part of the implementation, it should be determined whether these reviews are to be carried out by one panel or two different panels recognizing the importance of the opportunity for the community to participate, factoring in required expertise skills and commitments required.

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

review may identify areas for improvement and allow for minor adjustments in program management and operations.

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

**Guidance for the Implementation Phase in relation to Reviews:** The CCWG recommends that as part of the implementation, it should be determined whether these reviews are to be carried out by one panel or two different panels recognizing the importance of the opportunity for the community to participate, factoring in required expertise skills and commitments required. The CCWG understands that the ICANN Board expects eventual processes to support all Board principles, in particular those related to "Board Due Diligence," "Preservation of Resources and Use of Existing Expertise," "Evidence-Based Processes and Procedures for Evaluation," "ICANN Monitoring and Evaluation," "Accountability," and "Transparency."

## 6. Next Steps

This Final Report will be submitted to the CCWG's Chartering Organizations. As per the charter, "Following the submission of the final output, each of the Chartering Organizations shall, in accordance with their own rules and procedures, review and discuss the output and decide whether to adopt the proposals and the recommendations contained within. The chairs of the Chartering Organizations shall notify the chair(s) of the CCWG of the result of the deliberations as soon as feasible". Once all Chartering Organizations have approved this Final Report, the Chairs of the CCWG will submit it to the ICANN Board for its consideration.<sup>32</sup>

<sup>32</sup> The CCWG Charter outlines next steps to be taken in case not all Chartering Organizations adopt the Final Report.

## 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 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>33</sup> Details of the proceeds can be found [here](#). To date, 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>33</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 [2] or attempts to influence legislation [3]. 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 [4]? 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 [5]?
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): <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 <sup>34</sup>	Affiliation	Attendance (% of conference calls attended)
Anne Aikman-Scalese <sup>35</sup>	GNSO	100%
Jonathan Frost <sup>36</sup>	GNSO	19%
Elliot Noss	GNSO	36%
Johan (Julf) Helsingius	GNSO	93%
Erika Mann (GNSO Appointed Co-Chair) <sup>37</sup> *	GNSO	89%
Peter Vergote *	ccNSO	25%
Ching Chiao (ccNSO Appointed Co-Chair) *	ccNSO	83%
Stephen Deerhake	ccNSO	60%
Pablo Rodriguez <sup>38</sup>	ccNSO	5%
Brad Verd *	RSSAC	26%
Robert Guerra	SSAC	38%
Carolina Caeiro - temporary appointment *	ASO	67%
Douglas Onyango - temporary appointment	ASO	10%
Sylvia Cadena - temporary appointment *	ASO	37%
T. Santhosh	GAC	0%
Kavouss Arasteh *	GAC	54%
Olga Cavalli	GAC	23%
Sebastien Bachollet *	ALAC	68%

<sup>34</sup> At the time of publication of the Final Report. For historic record of members and participants, please see <https://community.icann.org/display/CWGONGAP/CCWG+Auction+Attendance+Records>.

<sup>35</sup> Replaced Marilyn Cade on 7 November 2019.

<sup>36</sup> Replaced Jon Nevett on 2 January 2019.

<sup>37</sup> Replaced Jonathan Robinson as GNSO member on 7 November 2019.

<sup>38</sup> Replaced Mathieu Weill on 3 July 2017.

Alan Greenberg	ALAC	79%
Maureen Hilyard *	ALAC	75%
Judith Hellerstein <sup>39</sup>	ALAC	81%
Vanda Scartezini *	ALAC	85%

<b>Participants</b>	<b>Affiliation</b>	<b>Attendance (% of meetings attended)</b>
Abdul Zain Khan *	Individual	6%
Adetola Sogbesan	GNSO (BC)	15%
Agnoun Basso	Individual	4%
Ahmed Bakhat Masood *	Individual	4%
Asha Hemrajani	Individual	26%
Ayden Férdeline *	GNSO (NCUC)	0%
Becky Burr * **	Board Liaison	80%
Beran Dondoh Gillen	At-Large	2%
Brian Scarpelli	GNSO (IPC)	0%
Carlos Dionisio Aguirre	At-Large	2%
Danko Jevtovic **	Board Liaison	100%
Denis Munene *	Individual	2%
Glenn McKnight	At-Large	11%
Hadia Elminiawi *	Individual	53%
Iliya Bazlyankov	Individual	4%
Jacob Odame-Baiden *	Individual	11%
James Gannon	GNSO (NCUC)	2%
Jennifer Chung *	GNSO (RySG)	6%
Jonathan Robinson	GNSO	55%
Marilyn Cade	Individual	86%
Mary Uduma	Individual	40%
Matthew Shears	GNSO (NCUC)	8%
Mei Lin Fung	Individual	13%
Michael Flemming *	GNSO (IPC)	8%

<sup>39</sup> Replaced Seun Ojedeji on 27 March 2019.

Michael Karanicolas	GNSO (NCUC)	2%
Nadira AL-Araj	Individual	85%
Natalia Filina	At-Large	10%
Nathalie Coupet	Individual	17%
Narendra Kumar *	Individual	0%
Nasrat Khalid	Individual	6%
Norbert Komlan GLKAPE *	Individual	0%
Pua Hunter *	GAC	0%
Rajaram Gnanajeyaraman *	Individual	6%
Raymond Selorm Mamattah	Individual	18%
Rebecca Ryakitimbo *	Individual	0%
Remmy Nweke *	GNSO (NPOC)	24%
Rudolph Daniel	GNSO (ISPCP)	80%
Sam Lanfranco	GNSO (NPOC)	71%
Sarah Deutch **	Board Liaison	100%
Sarah Kiden	At-Large	5%
Seun Ojedeji	ALAC	33%
Stephanie Perrin	GNSO (NCSG)	34%
Thato Mfikwe*	NCUC	25%
Tony Harris	GNSO	23%
Tripti Sinha **	Board Liaison	26%
Victor Zhang *	Individual	11%
Wale Bakare*	At-Large	24%
Waudu Siganga	GNSO (BC)	6%
Yao Amevi Amessinou Sossou *	Individual	35%
Yeseul Kim	GNSO (NPOC)	2%
Zakir Syed	GNSO (NCUC)	2%

\*\*Note that in addition to Board members currently serving as Board liaisons to the CCWG, Maarten Botterman and Asha Hemrajani previously served as Board liaisons.

## 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>40</sup> may be allocated.

Funded projects are required to be in service of ICANN's mission statement<sup>41</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.

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>42</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.

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

<sup>40</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>41</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>42</sup> The use of this terminology does not imply any support to any other standing use of this terminology.

1. The purpose of a grant/application must be in service of ICANN's mission and core principles.<sup>43</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<sup>44</sup> by ICANN's operational budget.

<sup>43</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.

<sup>44</sup> Note that the ICANN Board provided the following input in relation to this guideline: "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".

## 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>45</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>45</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>
----------------	--	--

	<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>
--	---	---

## Annex E – Glossary

**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 Project 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.

**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 the allocation of auction proceeds is created within the ICANN organization<sup>46</sup>.

**Mechanism B:** An internal department dedicated to the allocation of auction proceeds is created within the ICANN organization which collaborates with an existing non-profit.

**Mechanism C:** A new charitable structure (ICANN Foundation) is created which is functionally separate from ICANN org, which would be responsible for the allocation of auction proceeds.

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

**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.

<sup>46</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.

## Annex F – Minority Statement

### CCWG Auction Proceeds – CSG Minority Statement – May 28, 2020

The Commercial Stakeholders Group (CSG), consisting of the Business Constituency, the Internet Service Providers (ISP and ISPCP), and the Intellectual Property Constituency (IPC) hereby submit a Minority View with regard to the CCWG Auction Proceeds Final Report. The need for a Minority Statement arises for two reasons: (1) In light of the final polling results, the CSG questions the stated preferential status afforded to mechanism A (An internal department dedicated to the allocation of auction proceeds is created within the ICANN organization) and (2) One CSG Constituency, namely the IPC, specifically strongly opposes mechanism A as posing unreasonable risk to ICANN. Accordingly, as a pre-condition to forming an internal ICANN grant allocation department of any kind, the Board should refer the matter to the Board Risk Committee (BRC) for further assessment.

The Final Report states on page 4 as follows: Poll results indicate that members have a preference for mechanism A (An internal department dedicated to the allocation of auction proceeds is created within the ICANN organization), followed by mechanism B (An internal department dedicated to the allocation of auction proceeds is created within the ICANN organization which collaborates with an existing non-profit organization).

Although the CSG did not challenge the Consensus designation, this stems from the fact that both Mechanisms A and B are being recommended to the ICANN Board for further evaluation. Because two mechanisms are recommended for further evaluation by the Board and only 3 participants in the final poll listed mechanism C as first choice, the designation of “Consensus” may be applicable, but without actually providing a complete picture. In fact, Working Group appointed members and (non-appointed) participants taken together polled at ten (10) persons in favor of mechanisms other than A, while eight (8) persons polled in favor of A. In this regard, the votes of those who did not select A as first choice were “split” between two mechanisms more independent from ICANN than A, i.e. mechanism B (An internal department dedicated to allocation of auction proceeds is created within the ICANN organization which collaborates with an existing non-profit organization) and mechanism C (creation of an independent ICANN foundation.)

The CSG urges the Board to examine the final polling results closely since the Working Group Consensus is based on this poll. The results reveal that the stated “preference” for mechanism A “among Working Group members”, resolves to a virtual tie when participant results are considered. Including the participants who polled, three (3) polled in favor of mechanism B as the first choice, while only one (1) polled in favor of mechanism A. Accordingly, the actual count in the final poll was eight (8) votes for mechanism A and seven (7) votes for mechanism

B. Further, as stated above, when the votes for mechanism C, formation of an independent foundation, are properly viewed as being opposed to mechanism A, the number of persons preferring a mechanism other than A is ten (10) in comparison to just eight (8) votes preferring A.

Separately, for its part, the IPC strongly objects to the adoption of mechanism A by the ICANN Board. The IPC’s strong opposition is based on the following considerations:  
(1) Administration of Auction Proceeds funds, even taking into account the Independent Evaluation Panel process recommended in the Final Report, should be as distant (arm’s length) as possible from everyday administrative tasks of a body whose Mission is limited.

Establishment of such a grant-making department unnecessarily expands ICANN's current narrow remit.

(2) Establishment of the fund and making of grants is already encumbered by a need to amend Fundamental ByLaws so that grants may not be challenged via the Request for Reconsideration and Independent Review Panel processes,

(3) To the extent that ICANN would inevitably need to "staff up" to administer grant-making functions internally, such an operation should be kept at a minimum to avoid the downside risk of having to shut it down when funds are depleted, and

(4) Retaining control of the administration of grant funds within an internal department of ICANN creates, at the very least, the appearance of self-dealing in relation to funds intended for public use, thus exposing the corporation to unreasonable risk.

The CSG thanks all members and participants for their hard work in producing the CCWG Auction Proceeds Final Report and is especially appreciative of the efforts of Co-Chairs Erika Mann and Ching Chiao, as well as those of ICANN staff.

Respectfully submitted, Anne Aikman-Scalese, CCWG Auction Proceeds Member