ICANN
Transcription
New gTLD Auction Proceeds CCWG Charter Drafting Team
Thursday, 05 May 2016 at 13:00 UTC
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Attendees:

ALAC
Alan Greenberg

ASO
Sylvia Cadena

ccNSO
Will not be participating in the drafting team

GAC
Olga Cavalli

GNSO
Jonathan Robinson

RSSAC

SSAC
Russ Mundy
Lyman Chapin

Board

Board Liaisons
Erika Mann
Asha Hemrajani

Board appointed staff advisors
Samantha Eisner

Apologies:
none

ICANN staff:
Marika Konings
Lauren Allison
Vinciane Koenigsfeld
Julie Hedlund
Glen de Saint Gery
David Tait
Terri Agnew

Coordinator: The recordings have started.

Terri Agnew: Thank you. Good morning, good afternoon and good evening. Welcome to the New gTLD Auction Proceeds CCWG Charter Drafting Team call held on Thursday the 5th of May, 2016.

On the call today we have Olga Cavalli, Sylvia Cadena, Russ Mundy, Jonathan Robinson, Alan Greenberg and Lyman Chapin. Our Board Liaisons are Erika Mann and Asha Hemrajani. Our Board-appointed staff is Vinciane Koenigsfeld and Samantha Eisner.

From ICANN staff we have Marika Konings, Julie Hedlund, David Tait and myself, Terri Agnew. I would like to remind all participants to please state your name before speaking for transcription purposes. Thank you very much and back over to you, Jonathan.

Jonathan Robinson: Thank you very much, Terri. Welcome, everyone. Welcome back. Good to be back with you all and trying to make a little progress on this today. As you will have seen we have an agenda in front of us that was previously circulated and some various documents to go through. Those really boil down

to three specific documents. One is the one from Sam Eisner from ICANN Legal who is on the call with us today, which is great, to talk through that and highlight any points.

The second is to the review of public comments the prospective integration of those with any issues in the charter. And the third is the draft charter that was circulated previously for which we are seeking to move forward. So we'll go through those in sequence.

I've put on the list this morning into two of those documents, I've put some comments and questions into Sam's document, which we can deal with when we go through that under Item 2. And I've also done an edit and a work and a comment input onto the draft charter itself, so Item 4.

So let's see if there are any comments or questions about the structure and organization of the meeting. And if not we'll go straight ahead to Item 2. Any comments or points at the outset that anyone would like to make?

Yes, I heard echo, that's a good point, Sylvia. I heard echo when Terri was speaking that suggests that someone has got an open mic. Normally that's the case. And so that doesn't sound like it's wide open, it may be an adjacent – maybe two devices open on a computer. Could you come back in, Terri, and see if there's echo with you talking?

Terri Agnew: Hi, this is Terri. I actually found the line and it's been muted.

Jonathan Robinson: Okay great. Thank you, that's much better now, yes. Okay that's wonderful. So we're nice and clear now. All right so let's move on then right away to item 2. Thanks, Sam, for producing that paper. I'm not sure if everyone has had a chance to read it so my suggestion is you go through it possibly if you've got in front of you the comments that I've provided.

It may be helpful if you address those in sequence as we go through it rather than having to sort of – you go through it once and present it again. But, you know, I'll leave that to your discretion. And then I suggest we simply respond to it as we go through.

I mean, to be clear, some of that was – I mean, to the extent that there are highlights it's either myself just simply highlighting it because I thought it was important but in a couple of them I highlighted them specifically because it referenced the charter. So to that extent it was particularly important to all of us.

Okay, Sam, over to you.

Samantha Eisner: Hi. Thanks, everyone. Jonathan, it's early here in the morning in Los Angeles so I'm just looking through your email now so if you want to interject and raise some of your points as well please go ahead and do so because I haven't had a chance to look through the full note that you've sent. Also apologize in advance, normally 6:00 am meetings work very well in my household but my two-year old is not quite letting that happen today so I'm sorry for having a child in the background and we're trying to minimize that as much as possible.

Jonathan Robinson: Okay Sam, that's fine with me. It's Jonathan speaking. And if you prefer – thanks for joining us at 6:00 am and finding someone to look after your child as well. But if it helps I can just come in at the point if that's – that may be more helpful to you if hadn't had any chance to prepare for this, which I quite understand. So by all means just call on me say look, what was the point you were making there, what's the point you're making there. And I'm happy to do that.

Samantha Eisner: I appreciate that. Thanks, Jonathan. So I'll walk through the document itself. I'm not going to read it to you but just lay out what we present it to you in just a very high level idea of what's here. So I coordinated with Xavier Calvez, our

CFO, on this because there's a very clear linkage between the legal and fiduciary constraints and the financial constraints because in some – at some places they actually go hand in hand. And so we tried to present a unified document to you so that we didn't have different inputs coming in at different times.

We do recognize that there will be questions or what we need to further modify, we think that we could do some streamlining to the memo once we hear more from the group in order to make it a more useful tool and a tool that can be passed down to the group that's actually going to be doing the work and not just the charter drafting group.

So we have – we've provided the background which is the quote from the Applicant Guidebook that was posted in that first meeting that we had when we were in Marrakesh. And this is the framing language from the Applicant Guidebook on the concept of what happens if there are these auction proceeds. And that first indication there could be some limitations on things that ICANN could do with the money and that it has to tie into ICANN's mission. So that was really the first broad statement.

And so then we went through and including guidance that we've received from (unintelligible) counsel and people who are studied in the whole issue of 501(c)(3) tax certification because just for those who don't know on the call, ICANN is a 501(c)(3) organization. That's actually specific tax status granted by the United States Internal Revenue Service. And so ICANN had to apply for that status and meet certain criteria that are laid out in the regulations about the types of activities that ICANN can conduct and that ICANN can use its activities in furthering.

And so once it receives the tax certification what happens is ICANN has to continually provide and is continually under scrutiny from the United States Treasury Department and the IRS to confirm that that ICANN continues to meet these obligations.

The benefit that happens to ICANN and the ICANN community is that ICANN does not have to pay taxes, it becomes tax exempt for these purposes so that it can maintain more of its money to further its purposes and not go to private benefit. And so there's a whole list of rules of what happens around how 501(c)(3) organizations may disburse of their money.

And so in some ways ICANN is a bit anomalous in the world because – or in the world of 501(c)(3) organizations because ICANN is not really – we don't go out and solicit a lot of funds and we actually don't provide a lot of direct support in the ways that people understand not for profits as smaller charitable entities in the US.

And so these are – these restrictions are well understood by many organizations but they don't really – they haven't really touched on ICANN's roadblock because we've never really been in the position of providing direct monetary service beyond our, you know, fellowship programs and certain sponsorships that we do of events and so on.

So the main limitation is due to its 501(c)(3) tax exempt public charity status ICANN must act exclusively in service to its charitable progress and is limited by its mission. And, Jonathan, I see that there's a comment here so if you wanted to raise your point please go ahead.

Jonathan Robinson: Thanks, Sam. It's very simple, this one. I think (unintelligible) locating the comment exactly so in my views is (unintelligible) here. Oh "further," it's just the use of "further" and maybe there's a legal context to this, "further ICANN's mission and bylaws." And I said I prefer the use consistent with (unintelligible) so it's not (unintelligible) to further it. But it may be an English American or legalese issue here. Thanks.

Samantha Eisner: Yes, and the use of the words "consistent with" actually is consistent with its interpretation too so if that's language that you think would be easier to understand that's a very – that means what we need it to mean as well.

Jonathan Robinson: Thanks, Sam. I think it's internationally more consistent, thanks. More…

Samantha Eisner: Right, thank you.

Jonathan Robinson: …I think clear.

Samantha Eisner: And then there was a second comment on the "due to its 501(c)(3) tax exempt status" at the top of the next page, Jonathan. Was that the same…

Jonathan Robinson: …still struggling…

((Crosstalk))

Jonathan Robinson: Yes, just bear with me a moment (unintelligible) document then I can see exactly so (unintelligible).

Alan Greenberg: Jonathan, it's Alan. I can't hear you.

Jonathan Robinson: Yes, no problem, Alan. I'm sorry, I'm trying to do two things at once here. Yes, so that question relates to…

Samantha Eisner: I'm in the document as well. So a critical constraint is a (unintelligible) that a donation disbursement to a foundation could be consistent with ICANN's mission and the foundation could then allocate funds…

((Crosstalk))

Jonathan Robinson: Yes, just making sure that that chain, how do you make sure that chain – how do you carry that chain through really. That's the – is it necessary or

could – is it possible that we could make a donation to an organization that was consistent with the mission but then that organization independently made a, you know, funded something that was not consistent. How much do we need to follow through that chain was the question?

Samantha Eisner: Yes, so – and this is related to the question that Alan raised yesterday as well. So I think that you've understood very well that definitely that initial grant has to meet with all the constraints. And then the question is how much of a governance role and how much of an ongoing review role will ICANN need to maintain over the activities of where that money goes.

Right, if we give the money to a foundation that is then supposed to continue using the funds in a manner that supports ICANN's mission, what happens if they don't. And this is where there are – from what we understand, we didn't – we haven't looked specifically down the foundation line and done a lot of work on this but we know at a top level that you can't use donations to one party and then allow that party to vary from the purpose that you gave the donation. And because that trails back up to the organization.

So, for example, it's very clear on the lobby activities and the political activity limitation that we have described within the document that specifically gets imputed – it specifically rolls back up to the organization and becomes part of their – it becomes part of the amounts of money that are calculated for the percentages of their work that go towards political activity or lobbying activity.

There is an ongoing need – and some of this goes to the actual recordkeeping of the other organizations that you give the money to. So there'd be an expectation that each one of those organizations has the same obligation to keep the money in the same way – and to use the money for the purposes that they were given – that it was given to them for.

And so if there are problems in that chain ICANN would need to still receive reporting back and review and depending on the formality of the organization

that it goes to sometime that's an easier requirement to meet and it could be just based on review of financial statements or review of their tax filings or an annual report and other times it might actually require ICANN to have a more direct role such as, you know, would it be on a board on – or have other roles within the governance of it. Because it's not something that ICANN can just hand the money off, wash its hands of and never get reporting back.

So that's a long winded answer of saying it still matters what that foundation does but that's one of the reasons why you'll see so much in the memo a focus on organizations that to operate like 501(c)(3)s because there come with those obligations – so if ICANN were to ever receive money from an organization that said, I want this money to only be used for, example, when we were considering the joint applicant support program for the new gTLD program, if we had received a donation from an organization to get that money, we would have to maintain that money and demonstrate how we only used it for the purpose that we were given the money for.

And so we would expect that any organization that we give that any money to would have that same sort of obligation. I'll move on. I'm going between two…

Alan Greenberg: Yes, it's Alan. I've got my hand up.

Samantha Eisner: Okay.

Alan Greenberg: Sam, the way I understand it, and you're using a slightly different not tone but the mechanism different. As I understand it if ICANN sets up a foundation I'm not familiar with the rules about to what extent this must be independent or can it be essentially wholly controlled by ICANN. I suspect there has to be some level of independence even if ICANN would sit on its board or something like that.

And at that point I think the – I would have assumed the onus is on the foundation. Now we may have put strings on the money we gave them, and they have a legal obligation to respect that and we could sue them if they didn't, but I don't – since I'm presuming we would not – ICANN itself would not be the fully controlling body in the foundation all we could do is try to take action to fix the problem since we don't actually control what they do.

And, you know, I'm assuming if they violate the conditions of the donation then they have a problem both with us and potentially with – from a tax point of view. But I don't think we have direct control over it at that point. And again, I'm wandering in areas I'm not really an expert on.

Samantha Eisner: Right. And, Alan, that depends on the level of governance control that ICANN would have. But it doesn't – it doesn't take away – and I think that's right what you've said on a very basic level that if there's a separate organization that is supposed to follow the requirements it becomes their obligation to follow the requirement. But it doesn't take away ICANN's obligations in still making sure that particularly for a type of foundation aspect is continually run in a way consistent with how the money was provided to it.

And how heavy-handed or how lightweight that might be depends on the structure, depends on the rules, all of those things. But we wouldn't – we can't say today okay let's just do all this once at the foundation level and move forward and then we don't have to worry about it.

I don't have enough knowledge off the top of my head about the foundation that – the connection between a foundation of whether it's, you know, started by ICANN or ICANN just identifies a foundation to give the money to then move forward and the types of programming and the types of internal auditing and reporting requirements that foundations would have just to say that ICANN wouldn't have a large role in the ongoing work of it. It does create a level of insulation. I'm not clear how much insulation there is.

Jonathan Robinson: So, Sam, it's Jonathan speaking. There's a couple of people in the queue. I'd like to go to them in a moment. But certainly I think what – in a sense that you're flagging, and it's covered by your covering note as well is that these are some principles we need to be aware of. We can't get into all of the detail but to the extent that – and much of this would be covered by the working group rather than the drafting team. And to the extent that the working group itself considers the formation of a foundation, it will need to be mindful of and take expert input on the implications for the 501(c)(3) status.

So it's kind of – I think you've given us the direction and the principle. And there's a limit to how much we can expect you and how much we should expect ourselves to go into detail on.

((Crosstalk))

Jonathan Robinson: Yes, go ahead.

Samantha Eisner: If I can respond to that? I think you've – that's exactly right. So whether or not the ultimate vehicle for providing money out of the new G proceeds are direct donations, a foundation by ICANN, a foundation by someone else, these are the principles that need to be taken into account for that initial formation.

And so as I said in my response back to Alan, these are the types of principles that if they're reflected within a charter or provided as guidance to the drafting team won't impair choices down the line because they're the same choices that would have to be made.

And so I think that, you know, from my understanding the role of the drafting team is that's what we should be doing, we shouldn't be putting in any requirements that would ultimately lead it to have to be a foundation or to have to be directed donations. So these are really kind of the high level principles that can get us to guidance of the working group and then we can

identify what further expertise is necessary to help them form more precise recommendations.

Jonathan Robinson: Okay thanks, Sam. Let's go – let's hear from Erika (unintelligible) and then come back to the (unintelligible). Go ahead, Erika.

Erika Mann: Thank you so much, Jonathan. Jonathan, maybe some background. So the discussion Russ and I had when we reviewed the comments they clearly showed that some of the comments touched on legal and fiduciary duties we will have to comply with. So we had – then on the follow discussions we had we said it would be good. And there was one call I think where you were present as well where if I remember this right where we said it would be good to get some legal – from Sam in particular an overview about, you know, from the current status looked see things would be relevant to keep in mind.

So this is the paper is, you know, it's a kind of reminder giving us an indication about the scope, you know, we should not fall out between – might have to respect. We will have a discussion, and I mentioned this before as well, next week when at the board retreat in Amsterdam. And I'm the chair of the Audit Committee so I asked Xavier in particular to review all these points which Sam just mentioned and to give us an indication about what we must comply with independent about the structure of we will choose or the chartering organization will choose in the future.

So what I would love us to understand in the Audit Committee, are there obligations we will have to follow independently from whatever kind of structure the chartering organization will chose in the future. So this is just a bit for the background. Otherwise I think you're right, many of the discussions which we are having we might need to have again once we have a clearer understanding of what the charter will actually want to pursue in the future.

Jonathan Robinson: Thanks, Erika. Understood. And to that extent we need (unintelligible) between this group and (unintelligible) as we write our charter and go (unintelligible)…

Erika Mann: Exactly.

((Crosstalk))

Erika Mann: Exactly. That was the purpose.

((Crosstalk))

Jonathan Robinson: Okay good.

((Crosstalk))

Sylvia Cadena: Hello. Hope you can hear me now?

Jonathan Robinson: Yes, Sylvia, we hear you.

Sylvia Cadena: I just wanted to comment and first of all thank you very much for the analysis that has already been done and my apologies for not being able to join the previous call. I just wanted to make sure about the drafting team takes – or the 501(c)(3) status is of course very important and we need to make sure that (unintelligible) will have all the background information that they need to be able to offer what are the risks of selecting or not an X or Y mechanism to allocating the funds.

I think it's also very important that the drafting team highlight the need for this to just be in agreement with ICANN mission and without (unintelligible) any issues regarding that status. But also to the fact that is the overall approach to this, the allocation of funding, that it not be only to American based organizations or similar and that needs to be – it's strongly expressed as

possible because otherwise what can happen is that because it is too hard to do the due diligence review (unintelligible) requirements will mean that (unintelligible) approach to how these funds can be used (unintelligible) the achievement of the ICANN's mission.

So I just wanted to make sure that – I understand that that's also comment – Jonathan also added that comment in the document, but I just wanted to express it more especially from the constituency that I represent.

And also I think that a fairly (unintelligible) help is to have some sort of comparative matrix that allows to kind of understand what mechanism is closer to protect that 501(c)(3) status and what are the risks involved. So (unintelligible) for the draft meeting, sorry, the working group to make recommendations for. Thank you.

Jonathan Robinson: Yes, thanks Sylvia. And as you highlighted that – that's the one point about – is consistent with the point I made on this. And I'm wondering whether we can actually get this into the charter. It feels to me like this is a point that could go into the charter. And in chartering the working group we could require – and if anyone wants to come back on this by all means do, but that we require that any solutions that the working group comes up with with respect to disbursements, be they foundations or anything else, should, to the best extent possible, be globally neutral.

They shouldn't favor in any sense any region or country from which the applicant might come. Now that may be covered within ICANN's overarching mission and so on but I don't think it would do any harm to make sure that in chartering the working group we constrain the group in that way. I welcome feedback on that later but that strikes me in a way in which we could do that and the feedback would be – is it the right thing to do and is it reasonable for that to go into a charter.

Why don't you pick up, Sam, where you left off and then we can come back to that point later.

Samantha Eisner: Great. Thank you. So now I'll just walk through at a very high level the principles that are laid out in there. So we have the – that we – it must be consistent with ICANN's mission. And then – and I think we've discussed that and we've had some conversation already on the list between Alan's comment and Jonathan, your response to that, that consistent with ICANN's mission is – and as noted in here, we're going to have to also consider the revised mission that's coming out as a result of the accountability work. But in the end it's the same limitation that we have on all activities within ICANN that it's within mission.

And then must not serve to benefit private parties or individuals, this really goes to the heart of what the tax exempt status means. So the reason that a – a not for profit is different from a for profit private entity or a private or public entity is that a not for profit organization has an obligation to not use its resources for the benefit of shareholders or the benefit of private people within the organization.

And so that's why we don't pay dividends, we don't have stocks, we return any money that we take on in our general operations, right, into serving our mission. And we don't do payouts other than staff. And anyplace can pay their staff as long as they're reasonable staff salaries. But that's much different from private organizations that have shareholders and are allowed to actually make dividends and disbursements to people who are just, you know, participating within it separate from reasonable staff salaries.

And so this not making private benefit is really at the heart of all the limitations that we're going to find here within the – within what ICANN needs to make sure happens for its – for the maintenance of its 501(c)(3) tax status.

So as noted in here, and this is where there's some discretion within this group I think about what would go into a charter versus just providing the drafting team some – or providing the working group with some of the work that we've already done here, and clearly they might have further work that they want to do about would we include in the charter a requirement that nothing would go to individuals and only to organizations or would you put in the principle of not having private parties benefit from this.

So this is – it's really key that we have things run in an appropriate way. And we – you know, as I was going through this and writing this and some of you might have the same question pop up in your mind, like what does this mean? Like we have the fellowship program for example, or the next gen program where we do provide direct support to people for participating. Well those are programs that in and of themselves have their own – their own requirements for how people would fall in.

So it doesn't mean that in no – in the end no money can trickle down to individuals but it's all about the processes and programs around how that happens just to make sure that everyone on this call has the same comfort level with that that I did when looking at some of the activities we do within ICANN.

But then this really goes into some of the other considerations such as what Sylvia was just touching on that, you know, there are types of organizations in and of themselves that are more appropriate to receive funding than not. So if it was an organization that had a single person in it who takes all of the profits out of the company and puts it right into their pocket, that's typically not an appropriate place for ICANN or a 501(c)(3) company money to go to because then it – even though it goes to an organization that money still in the end looks like it's going to a single private person or a group of private people.

And so the form of the organization that ICANN would be providing money to becomes important. However, we all know, and is noted in the document, the

501(c)(3) tax exempt organization is not a universal construct. And so there are places where they have things that are very similar. There are ways that you can help demonstrate very easily that – or at least easily in terms of the tax regulations, that they're operated like a 501(c)(3) to the point that you don't have to do further accounting efforts or further due diligence over a candidate.

But then there's also the possibility that we might just have to do higher levels of due diligence over certain applicants in order to demonstrate that they're a proper place for the money to go. This is where choices have to start being made and probably choices that we don't want to make at the drafting team level about the amount of resources that have to go into vetting the candidate who would ultimately receive the money and that the resourcing and vetting goes to the due diligence. So if it's another 501(c)(3) organization there's very little due diligence that you have to do.

If it's a small collective that's fairly new that's not run out of the US but doesn't have a lot of formality around it you probably have to do a lot more due diligence around that. But those are – those are the types of key discussions that probably have to happen at the working group level taking these considerations in mind. Are there any questions on that? I see Alan and Russ have their hands up.

Alan Greenberg: Yes, thank you. I certainly have no problem saying people and specifically principles within the ICANN ecosystem should not be personally – personally profiting from this. I guess I would have problems if at this level we are saying you must be a 501(c)(3) or some equivalent organization.

I can certainly envision applicants who might be individuals or small groups of individuals and certainly not something that has formal tax exempt status proposing some use that is very aligned with ICANN – now we would want to make sure that a significant portion of the grant that is given is used for the end purpose and not siphoned off.

But I would not want to see something more – a lot more rigid than that unless we really have to. And I'm – guess I'm questioning whether we have to. I can imagine giving money to a 501(c)(3) and they have overall reporting and requirements but if this grant is a tiny part of what they do they could probably follow their own rules and still misuse our money. So I'm not sure that that alone is the guarantee. I would, you know, want to see something couched in more generic words than their formal tax status or something equivalent to that. Thank you.

Jonathan Robinson: So, Alan, others, the question I keep asking myself – and I'd encourage you to ask yourself and help me – is does any concern like that belong, you know, how do we – at what point do we deal with that? Is that something for the charter? Or what should be going in the charter?

What should be something – and you'll see later when we come to the draft charter, I've essentially accepted and will be looking to you as a group to think about whether we accept that we would want the CWG to have a statement of principles and then of course in the CWG's work itself. So it's really a question of when and if those considerations need to be dealt with, i.e. in the charter or some other future point. Thanks.

Alan Greenberg: Jonathan, may I answer that? In my mind we have…

((Crosstalk))

Alan Greenberg: …a requirement to say that the CCWG puts in place a process that addresses the issues that Sam is raising about making sure that our money is not misused according to our charitable status. But we don't – we're not writing those particular rules but they must be cognizant of them and address it.

Jonathan Robinson: Yes, that sound sensible. Thanks, Alan. Erika, did you want to – or Russ, sorry, Russ is in the queue next.

Russ Mundy: Thank you, Jonathan. I appreciate that. My – the question that comes to my mind – I also want to say that I think I'm in full agreement with the interchange that you and Alan just had in terms of pointing out that it needs to be considered, not the how or the what's of it.

But the question that comes to my mind, and I'm not sure if it's a charter drafting team question or again, a CCWG question, but with the tight – I'll say tight constraint of the tie to the ICANN mission, whatever it may happen to be now or later as its realized, I'm wondering how one would differentiate what you would do with the funds from this activity, from the dispersal of these funds, from the normal contracting process that ICANN would do and, you know, award various contracts to various entities to do various pieces of work for them as part of the normal ICANN mission?

And I don't know if that's something that we need to think about in terms of the drafting team. But that struck me as a rather difficult question as I was listening to Sam's description here and the interchanges. Thank you.

Jonathan Robinson: Thanks, Russ. Let me move straight on to Sylvia then while we digest those comments.

Sylvia Cadena: Apologies for the noise in the background but I'm (unintelligible) cafeteria of the ITU building so it is noisy. I just wanted to say that I think, although a lot of the things we are discussing should be resolved or addressed at the working group level, I think that it is important that we provide some principles for them to take those discussions further.

From my work experience I know that there are – that's why organizations that allocate grants, either governments as agencies, foundations, or whatever mechanisms stands, like the one that I manage (unintelligible) there

are limits to what the due diligence process can achieve and also those due diligence limitations are normally put in the contracts when you sign a contract during the donation or the grant or the support in whatever form that comes to the finance (unintelligible). So I think that that's something that should be defined way down the line.

But in the drafting team it's important that we highlight that is – it is – it's something that that is part of the principles that we would like the working group to take into consideration moving forward.

Also on the – there were some comments in the document around the private profiting out of the work to be conducted or it is a contract that is unilateral (unintelligible) that ICANN might do to support operational aspects, I think that's also something that the drafting team can address in those principles by saying that the work that the perceived funding will cover is (unintelligible) from the actual operation funding of ICANN which is the idea, is to go further or expand or encourage (unintelligible) of ICANN's mission but that's not (unintelligible) – yes you're right Alan, thank you.

So is not about using the monies – this money to also support operational expense. And that is something that is – was set up also on the principles. In terms of the private profiting, I think that – I think for example during the due diligence process that can be – the working team can work through like saying that consultancy fees are not included or (unintelligible) are not included, that is some (unintelligible) costs are not correct.

So those kinds of things are – or overhead are up to a certain percent and that is (unintelligible) that all organizations, all organizations that allocate funding do. So I think that is also something to do a ways down the line for the working group to decide. But I'd ask that in terms of principle that's what we, in my opinion, we should focus and the part what I like to encourage the group to think is that the principles are not necessarily to say how easy we want the work to be done but (unintelligible). Thank you.

Jonathan Robinson: Thanks, Sylvia. And so just to, you know, I think your point is – at least at a high level consistent with points made by Russ, Alan and others. Just to make clear what I said earlier about principles, right now we're working on a charter. Within that charter there's a suggestion – within that draft charter as it stands at the moment, there's a proposal to potentially (unintelligible) a set of principles defined at the outset of the working group's work and then of course there's the work and the ultimate document that the working group produces.

So in my sort of frame of reference I'm seeing those three documents as existing. There's our charter, there's a set of principles and there's the proposal from the working group. What it feels to me like where we'll go from here from this conversation, which of course is not yet done, but is – perhaps ask one or more of us to go through this document that Sam has put before us now and strip out or extract what is directly relevant and necessary for the charter because clearly as an overall document it'll frame our thinking and it's already been very useful in doing that.

But it will be necessary to extract some key points from that by necessity must go in the charter. So that's where I'm feeling this will go. But let's work our way through the queue. And, Sam, if you want to come in specifically, because this is your show as it were, by all means don't necessarily wait at the back of the queue. If you feel an intervention would be helpful please come in over in between different speakers.

((Crosstalk))

Jonathan Robinson: …or would you like to do that now, Sam? Let me give you the opportunity if there is something you'd like to add now before we move through the queue?

Samantha Eisner: Sure, thanks. So Russ's question about how does this differ from ICANN's contracting and general operations that's been picked up by Alan and Sylvia as well, the limitation to the mission is the limitation to the mission. However, the – this would – this can be very different from our normal contracting process and from the normal operations. I don't – so I guess from where I sit I don't see that it has to be the same thing.

When we contract we contract for work to be done, for consideration to get things in return. And so this type of funding and giving grants are to those things that are very consistent with ICANN's mission. There could be groups that are working to support DNS, you know, security and stability in different countries or whatever. You could think about many different places that ICANN would – could, you know, provide these funds in support of their work and not ask for anything in return. And that's the difference between contracting and a grant.

And ICANN's work as it is right now, you know, we take in the funds that we use for our operations and we're not really in the position to provide grants to people to go and do things that further our mission. So the auction proceeds provide us that avenue that we don't have. And so I think that there is a lot of opportunity for things – and we don't have to just consider it limited to the things we do today for our operations.

I don't have the same concern around that issue that I'm hearing other people have on the call. But maybe it's something worth considering how we provide some sort of principle about that or consider whether or not we need to reflect an idea about that in the charter to make sure that we're not saying because this is about ICANN's mission and that mission is limited that you're limited to spending the funds on ICANN's operation. Is that – I don't think anyone would support that result.

Jonathan Robinson: Okay thanks, Sam, for that intervention. It may be according to Russ's comment in the chat and sort of maybe at least some help in resolving that apparent limitation or tension. Erika, come in now.

Erika Mann: Yes, thank you so much. Thank you so much, Jonathan. I agree with Russ and Alan and Sylvia and everybody else and the judgment – the last one to comment from Sam as well and your points, Jonathan, you raised. The only concern I would have is if we are not constrained by the mission and by the core values as set out in the CCWG document in the future, I'm not certain if we would face a conflict about the allocation of the fund.

And we would have the conflict if this might not then cause us difficulties on the tax status or on the audit status in the future. So what I would love to do, if you agree, that I take these questions which we raised today and would give them back and, Sam, I might need your help here as well, just give them back to Xavier that he evaluates them ahead of the meeting which we have in Amsterdam.

So just want to understand if there are legal constraints which we have, if this future organization which will be allocating the funds, if the current structure would be somehow – give some constraints which would require us to stick to the mission statement and the core values. I doubt this, I just would love us to check this like the document you have sent out, Sam.

((Crosstalk))

Erika Mann: Jonathan, would this be possible? Would this be in agreement?

((Crosstalk))

Jonathan Robinson: It sounds – if I could rephrase or phrase back to what I understand (unintelligible) then if that's acceptable we can take that as an action that you are essentially proposing to further interrogate the constraints that the working group's work might be under based on ICANN's tax status essentially and to just to further interrogate these points in order to satisfy yourself from – in your capacity as chair of the audit committee.

Erika Mann: Correct. Because I think we agree we would have want to have more freedom and I would just love to understand if there are limitation to what we would love to do.

Jonathan Robinson: Okay so let's give that – let's give that to you, Erika, providing there are no objections from the group, to further interrogate and investigate the constraints that might exist from a legal and/or tax point of view especially with reference to ICANN's 501(c)(3) status.

Erika Mann: Thank you, Jonathan.

Jonathan Robinson: All right let's go next to Sylvia.

Sylvia Cadena: Thanks, again, Jonathan. I'm reading the – hearing – listening to Erika and reading the comments in the chat and I –on Alan's comment about the (unintelligible) exchange points, I was just typing in the chat line that it is actually the responsibility of any grant recipient that is actually applying or any grant applicant that is actually submitting a request for funding to explain how the idea, even if it is an Internet exchange for something (unintelligible) into the mission or the objectives of the grant-making mechanism or the donor agency or the grant provider.

                   So I think that's not – I mean, I don't think that a leader of the working group or the drafting team can actually limit that. The mission – the – ICANN's mission is wide and big enough for people to actually dissect it and say how their ideas are going to fit into that. But if we say oh but we cannot only apply if we have a 501 status then that's a limitation, that doesn't fit purpose. That is something that is different to the purpose of what they're asking the money for.

                   So I think that we need to try to make that, you know, to just work on the principles first because a lot of the questions that have been raised are

(unintelligible) to the applications and the selection process and the due diligence process. And we just need to say how this process work or what principles the working group should take into account when designing those processes. It's not the drafting team role at the moment to concentrate on those.

So I encourage you to just try to kind of divide these elements into some chunks that we can process because definitely the response (unintelligible) anyone that is submitting a grant request or funding request to explain why they are asking it from you and not from another donor or agency. Thank you.

Jonathan Robinson: Thanks, Sylvia. Let's (unintelligible) at all let's go straight to Asha.

Asha Hemrajani: Yes, thank you Jonathan. Can you hear me?

Jonathan Robinson: Yes, Asha, we hear you clearly.

Asha Hemrajani: Okay great, thanks. I wanted to actually come back to an earlier point you made, Jonathan, you said there were three areas so we have the charter, we have the principles and then we have the – what the CCWG would be working on. Can you repeat that bit that you had mentioned before the three buckets? I just wanted to make sure I understood that correctly.

Jonathan Robinson: Yes, confirming that those would be three buckets providing that this group accepts as part of our charter that we specify that the working group should develop a set of principles at the outset. So it's not a given that a principles document would be developed but it is within our gift as the drafting team of the charter to specify that.

In my edit, absent any other edits of the draft charter to date, I suggest that we do stick with the principles therefore as we stand at the moment we have the drafting team output, the principles and the ultimate output of the working group. So that's…

Asha Hemrajani: Right. Okay. Okay great. So that's good, thanks for clarifying that. So, I mean, then coming back to the question that you'd posed to the group and what's in the realm of the DT and what's in the realm of the CCWG. I mean, certainly from my perspective I think that the DT has to address guiding principles, not all the principles but guiding principles.

And one of the guiding principles would be that the accountability has to be ongoing and has to go down the chain. I think we discussed that earlier when we were – when Sam was going through your comment.

So, you know, so I just wanted to give my perspective on that, my opinion, that at least where individuals are concerned, for example, or where accountability is concerned, I think one of the guiding principles that the charter – that the DT rather could work on is that there has to include accountability standards, has to include some kind of overarching financial oversight principles. Not in the – not too much to a very detailed level but at least some overarching principles I think the DT needs to address.

Jonathan Robinson: Thanks, Asha. So that's a good point. And that sort of loops back to my previous point which may or may not be fully covered by that. But (unintelligible) our next step should certainly be to extract from this memo those…

Asha Hemrajani: Yes.

Jonathan Robinson: …particular points that need to be contained in the work – in the output of the drafting team, in other words, our charter. So we have a – we have the reasonable bones of a charter at this stage and it's a question of then imposing onto that now the output of this memo because the work to date on the charter hasn't had the benefit of this memo.

Asha Hemrajani: Yes, I agree with that. I think – I've actually read all your comments and I've agreed – I agree with pretty much most of them except Number 8. But I also agreed with your idea that we could strip out the relevant bits from Sam's document and see whether we can put them into the three buckets. And I think that's a good starting point. Thanks.

Jonathan Robinson: Okay thanks, Asha. That's helpful.

Asha Hemrajani: I'm going to put my hand down now. Okay.

Jonathan Robinson: All right, let's ask Erika to do the same providing that that is a old hand and turn it back to Sam.

Samantha Eisner: Thanks, Jonathan. So the next two points in the memo are related and they're both things that as I mentioned earlier, trickled directly through to a calculation of whether or not ICANN can maintain its 501(c)(3) status based on funds and funds expended. And so these are requirements that ICANN must not use funds for political activity, that means engaging in political campaigns for candidates for public office.

And there is a direct prohibition about just using – paying the money to another company who would then use it. And it's the same thing for lobbying activities. ICANN has the ability to do a certain percentage – to use a certain percentage of its funds for lobbying activity but it's a very small percentage.

And if it were to provide funds to a different organization to use – to do lobbying activities that amount of funds would be actually calculated towards ICANN's percentage. So these are two places where we need a – we think that any recommendation that comes out of the working group would need an express prohibition on political activity and lobbying activity funds.

And so these are really important – I apologize, I'm sorry. Sorry about that, we're dealing with sleep issues here. So these are two areas where it's very

important that we don't wind up with donations that could actually have a direct impairment on ICANN's 501(c)(3) status. So I'm not sure how the drafting team would want to put that into the charter. But that has to – we think that these are really important principles to be trickled into the working group's work.

And I see Asha's – or I see Sylvia's point and that she would expand that to involving political activities and lobbying activities globally. And so that, you know, I think we'd be supportive of that too. It's not just for those who are in the US that they have prohibitions but that if they're in another country that money could be used.

So not seeing any questions on that point I will move towards the conflict of interest consideration. And I know that this is a section within the charter itself, you know, there have been some questions about how to handle this. We think that this is one of the places, and because of the amount of money that are being expended and the requirements of not benefitting private individuals, that conflict of interest considerations are – they're important across the ICANN space but within this process conflict of interest considerations are very primary.

And so we have a few recommendations in here about using, first of all, we think that there should be some prohibitions on awards of assistances to businesses owned by ICANN Board members, executive staff or family members, that kind of stands on its face I think. But then the further consideration that needs to be made are what are the appropriate limitations on grants down the chain, right, and to the other people who will be involved in the decision making about this.

Because we already know that the ICANN board has its own conflict of interest process. Many of these decisions while ultimately being made by the board through its approval of the recommendations, you know, get them imputed to the board, but what are the conflict of interest considerations that

should be present in those who are making the recommendations to the board, and what types of limitations should be in place?

And so I think that this a is a place where both the drafting team and the working group will have to have a lot of conversations around it. I know, Jonathan, you had a put a note in here on a suggested limitation of, you know, there was a concern that this might be onerous, but you have a recommendation. There's a maintenance of a complete and up to date statement of interest, that we have a conflict of interest policy put in place for those who are participating on the working group.

I think this is one of those areas where just the amount of money that's at stake and the levels of consideration that go here do warrant some special treatment of this group at a conflict of interest level such as having its own conflict of interest policy. We have other groups that we have special conflicts of interest policy for such as review teams, the ATRT for example and the CCT Review Team, and I know we've had them for - I believe we have them for the SRR team.

So we do have some precedent that specific groups have their own specific conflict of interest policy built in. We think that would probably be a good practice here. But I see Asha has a hand up, and I don't know if anyone else has questions. Jonathan, I'll turn it back to you.

Jonathan Robinson: Thanks, Sam. Let's go straight to Asha and then I may make a further comment about that question and just see how we deal with that. Go ahead, Asha.

Asha Hemrajani: Thanks, Jonathan. So I just wanted to chime in here with and agree with what Sam had just mentioned. So this is the one comment that I didn't agree with from your comments, Jonathan. So I'm not so sure this is really unduly onerous because as Sam mentioned this is what all board members have to

do anyway. We all have to do - all have to fill out a statement of interest or conflict of interest form. It's quite detailed, but it's not very onerous.

And I just feel with the amount of money, as Sam mentioned, is being so high, it's such a huge amount of money and all eyes are on us and we have to uphold very high standards of governance, that I think it would be only fair for individuals to state very clearly their interests and make sure that there is no conflict, there's no even hint of a conflict or even a sense of a conflict. So in this one, this is one area I feel quite strongly about, but that's my opinion. Thanks.

Jonathan Robinson: Thanks, Asha. And just so I make sure the record is straight here because, you know, I certainly didn't advocate for a particular conflict of interest policy, I just questioned whether, you know, the level of that and whether we were with a memo that was advocating that we are unduly onerous.

I think the issue there that we need to face then as a drafting team is what do we put into our charter. And for example a form of wording that springs to mind to me is we might say that the CWG should put in place a conflict of interest policy that is on a par with the most stringent within the ICANN framework, which would then naturally put it on a par with board and ATRT or something like that. So we need to think how we translate into the charter if indeed we are - the report should be at that kind of level of stringency.

So go ahead, Alan.

Asha Hemrajani: After Alan could I come back to address that? Sorry.

Alan Greenberg: Go ahead, Asha. You can go first.

Asha Hemrajani: Thank you, Alan. I think I just wanted to add one more point to what I was saying and maybe that will address something - address what you, to some

degree, what you just mentioned, Jonathan, is that we have to - I think this comes back to the underlying principle that we don't want the people or other - we should think - we don't want the people who are deciding where the funds go to be the beneficiary of the funds.

So I'm now, to address what Sylvia just mentioned in the chat, I think if there's a member of the CCWG who would ultimately be a beneficiary of the funds, then that member of the CCWG should not have the opportunity to decide where those funds go because there is a very clear conflict of interest. So in order to understand if there is a conflict of interest, you have to declare your interest to begin with.

I'm not sure if I'm clear on - if I'm making myself clear on this, but I just wanted to articulate that we have to make sure that there's no sense of the decision maker benefiting himself or herself, or his or her own organization ultimately. Thanks.

Jonathan Robinson: Asha, I think you did -- it's Jonathan-- I do think you made that sufficiently clear and so that's something we need to be mindful and to what extent we encapsulate that in the charter. Go ahead, Alan.

Alan Greenberg: Thank you very much. We're wandering into an area that I was going to raise once we started talking about the charter, and we haven't quite got there yet. But - and that is whether we want to specify in the drafting team whether the CCWG is going to be in the business of deciding on a process or whether they will actually be making decisions on how to fund, on what to fund, or even very narrow - or very much narrowing the scope of what will be allowed to fund, more so than is required by law and such like that.

I will strongly advocate that they should not be in the business of either funding or narrowing the scope more than necessary but should build a process. I think we if we end up with the CCWG with the CCWG makeup that we use typically in ICANN these days actually making decisions or come

close to decisions on where to use the money, we will have a free for all that we just do not want to be the host of.

So I'm going to strongly advocate that the group set up a process by which the funding - the funds can be dispersed later. If that is the way we end up, then I think we're talking about two completely different conflict policies for the CCWG and for those who would ultimately be making funding decisions. For the latter, I think they have to be so squeaky clean it's unbelievable. There can be no potential conflict.

For the CCWG I think normal ICANN rules apply. That is you declare your interests and then you can go ahead and be part of the conversation. You know, clearly we do not say no one can participate in the GNSO if you have any conflict or if you have - or if you might gain from the results. The largest part of the group is indeed in that position, but our rule is you must declare. And I think there are two different rules for the two different groups. Thank you.

Jonathan Robinson: Thanks, Alan. And it's very interesting what you said there. And I see others have agreed with you, notably Sylvia, Erika and Russ. But in many ways the question that started us off that I posed was really in and around this because it happens to be my view that the CWG will be designing a process. That's the likely outcome. And therefore is not likely to be deciding on the funding, which is why I questioned the level of stringency of the conflict of interest in the first place as it pertains to CWG.

So there is a really interesting axis there to decide. And I don't think any of that contradicts, in my mind anyway, the strength of the point made by Asha and others about the, you know, the need for a complete and very clear separation between a beneficiary and a allocator of funding. But let's see what others have to say as they come in then. (Eric) - Erika?

Erika Mann: Okay. Sorry it takes obviously awhile because somebody's muting me because we have a difficulty with the line. I agree with Alan and Asha as well and your comments. I think we have to distinguish between what the CCWG shall recommend, so shall set up a process for the future structure and how then the funds will be granted or be allocated, whatever the procedure then will be in financial terms.

And I would agree with Alan as well that for the people working on the CCWG, we wouldn't need the fully embedded complex stringent rule Asha recommended to use, but we would need that definitely at the later stage. The question is what do we need to do for the drafting team. So what shall the drafting team them recommend. So the drafting team recommends and shall - what do they mean to include in the charter that the CCWG shall set up the process? Jonathan, back to you.

Jonathan Robinson: Thanks, Erika. I'll turn first to Asha and Alan. (Unintelligible). Go Asha.

Asha Hemrajani: Thanks, Jonathan. Suddenly there's a huge amount of echo on the line. Okay now it's gone. I wanted to actually carry on from what Erika just said, which is what does the drafting team - what does the DT do? So, if coming back to what you said earlier about, Jonathan, about the line of - the demarcation between what the DT does and the CCWG does and what the - so if you're saying - sorry, not the DT and the CCWG but rather that the demarcation between the CCWG and the organization that disperses the funds.

That has to be very clear, that split, because it wasn't clear to me. And if that is the way that we're going to split it, if that's the way we're thinking about splitting or drawing the line of demarcation then that is something that the DT has to specify in its guiding principle that the CCWG does not disperse the funds but it's some other - but that dispersement of funds is done further down the line.

If that is the case, then I agree with you on the onerous view I - the conflict of interest requirements that it could be too onerous for CCWG members to have to comply with. But that is based on the principle that that line of demarcation between what the CCWG does and what the dispersement organization does is made very clear. So that's what needs to go into what the DT has to come up with.

Jonathan Robinson: Thanks, Asha. And I think that's absolutely right. And so what it's kind of teasing out is if that is to be the case, then the DT needs to do that. And it seems that we may well converge around that but I don't want to presume that yet. But that seems to be a direction of travel that has quite some support amongst us. So that'll be something we'll have to make sure we do make very clear in the charter that if that is where this chartering group draws - seeks to draw the line. In other words (unintelligible).

Asha Hemrajani: Can I come back to you?

Jonathan Robinson: Yes go ahead.

Asha Hemrajani: I'm sorry. Can I address what you just said? So that I think we need to discuss in - at the outset. Because to me, all along I was thinking - maybe I was making the assumption, that it was - that the CCWG does decide to some level or some degree, maybe to a high level, at a very high level, some level of dispersement. That was the assumption I made.

It wasn't something I thought that we had agreed on, but that was the assumption at the back of my head that the CCWG does do some level of dispersement, perhaps at a very high level, and then another organization or another group does more detailed dispersements. So I think that's something - it's a fundamental decision that we have to discuss and to come to terms with or come to a common agreement with, come to a common agreement at before we can proceed. That's my suggestion.

Jonathan Robinson: Understood, Asha. And it seems like there were some potential assumptions in there. So that's a key axis or point that we need to nail and this is to flesh that out quite neatly. So that's good. Thanks. Alan?

Asha Hemrajani: Okay thanks.

Alan Greenberg: Thank you, Jonathan. And by the way, you're fading again. I didn't find what Sam put there onerous at all because I was looking at this as a document to guide the whole process all the way through to whoever disperses funds. And since we have not as yet made a decision that the CCWG would not disperse funds, that she was saying that if the CCWG disperses funds then we need a stringent of conflict rules for CCWG members. But I took that as an if then, not necessarily a direct consequence.

I think the whole thing becomes a lot clearer at many levels if and when we make the decision as to whether the CCWG definitively does not do any dispersal of funds. And then there's a much a clearer line between the various stages in the process. But since that hasn't been made yet, I think Sam reasonably covered all the possible eventualities. Thank you.

Jonathan Robinson: Understood, Alan. Except you did appear to make a point that you expected - that it was your view, that's what I understood you to be saying, that the CWG would consign itself to process and structure not dispersement.

Alan Greenberg: That's my opinion. Whether that's what comes out this group or not remains to be seen.

Jonathan Robinson: Understood.

Alan Greenberg: I don't win every argument unfortunately.

Jonathan Robinson: Understood. I think we have - we seem to be fairly clear amongst ourselves on the issue and axis around with which this sits. Oh go ahead, Sylvia.

Sylvia Cadena: Thank you, Jonathan. I also wanted to add that I agree with what Alan just said and I think that we should make sure that the CCWG focuses mostly on the process. And - but I also understand like the tension Asha was just mentioning about making the dispersement let's say at a high level point to start.

So the way that I understand it is that if we provide those guiding principles to the CCWG so that they can - the outcome of part of their work is to for example decide which is the best mechanism to actually allocate the funds, and let's say just out of - just for the interest of providing an example, let's say it's a foundation or an endowment or - those mechanisms for dispersement have (unintelligible).

So I believe that if we - if the charter does not restrict the role of the CCWG to only decide or make strong recommendations to the board on what mechanisms should be selected to make them do dispersements they will not know from the get go to what rules are they playing with, they need to, you know, play with. Because they don't know, they will be acting - if they act as the ones that make the first dispersement let's say an endowment or if they - if they will be playing the role like - you can compare it to the role of the board that makes those decisions. And I would be very skeptical.

So if ICANN decides to go to a structure or (unintelligible) foundation, let's say, a foundation would require (unintelligible) board and that we have some procedure. So I think it would all be very messy. So I think that the CCWG in the interest of -- sorry -- in the interest of keeping it manageable also for the CWG in terms of whether ICANN should be - can you hear me? I'm sorry. I think there's something wrong with my sound?

Jonathan Robinson: Sylvia, we do hear you but it's not 100% clear for (unintelligible).

Sylvia Cadena: Okay sorry.

Jonathan Robinson: But no we'll listen as carefully as we can. Now we do not hear you, Sylvia.

Woman: Now we lost Sylvia. Hello?

Jonathan Robinson: Okay so I think I understood that again the point is to make a clear distinction between - we need to understand clearly what the perimeters of any particular group are and to the extent that the group is deciding on funding, clearly that's when the most onerous conflict of interest provisions need to be in place.
Russ?

Russ Mundy: Thank you, Jonathan. One thing that has struck me in listening to this particular conversation is that if the CCWG were to be the body that did do the dispersal and has the extremely strong conflict of interest requirements that it would be perhaps difficult for that CCWG to meet the openness and transparency requirements that are generally viewed as important in the ICANN realm because of the restrictions that would have to be put in place.

So that might be another reason to - for the drafting team that was our basis - our conclusion that the CCWG should not be a dispersal activity, is that it could not be as open and inclusive and as transparent as other ICANN activities have been recently. Thank you.

Jonathan Robinson: Thanks, Russ. And again you helped me there. That's really the kind of fundamental behind why I asked this question in the first place because it wasn't so much that I wasn't respectful of the need for a very stringent conflict of interest policies, but it was really how they might play out in this context. And I think this conversation has really helped tease that out very well, which is useful.

And so that's something we will need to pick up on as others have recognized probably in relatively short order, because this is quite an overarching point for this drafting team in our view of the work of the CWG. So let's try and get through this memo. I'm not sure how long Sam promised her two year old she'd be on this call for but it's now coming up for an hour and a half. It's been an extremely useful conversation which is why I haven't sought to cut it short, but I'm mindful that we are spending the entire time on this particular agenda item, although it's teasing out some other much more significant points. So it's useful.

Sam, let me hand the microphone back to you to try and make your way through this and wrap it up as soon as you reasonably can.

Samantha Eisner: Sure. And there's not too much more left. I did want to make one point on the previous conversation. I think that was a really, really great conversation to listen to. I think those are the types of concerns and the types of principles. The one other guidance that was coming to mind for me as I was listening to it was if the principle coming out of the drafting team is that the CCWG is the place to develop the process and not to do the dispersement, it will be necessary that the process itself not be drafted in ways that it favors only a particular type of organization, right?

So to the extent that the rules are drafted to the extent that they can only be - the funds can only result in going to one place, that looks more like they're making a dispersement decision that's couched in a process. So I think that it could be a level of guidance that the process itself should be developed in as neutral a manner as a possible. Because that also helps us stay away from having those more stringent conflict of interest processes at the CCWG level as opposed to at the dispersement level.

So then this goes really nicely into the next part of the memo which is about the procedural concerns. So in the end, the money is currently sitting with

ICANN. It's in a segregated fund, it's being held out on its own and whether it's a dispersement that's to be made in one lump sum to a foundation or a series of direct grants or whatever, ultimately those items are imputed to the ICANN board. They become ICANN's - acts of ICANN when that happens.

And so the ICANN board is not able to feed its decision-making to any other body. And I'm not suggesting the ICANN board would have to approve every single dispersement if we were at a direct donation situation and their, you know, the board would approve of the program and the process that's around it and then expect that to just be operationalized if that's how it came out. But it does mean that ICANN cannot just hand it over its responsibility in this area to another group.

And - so I provided just some thoughts in here. And some of this might be far more appropriate for the working group and for the charter, but there, you know, there are ways to help mitigate this. And I think that we're - we've already started talking about the CCWG developing a process, the CCWG and for their implementation efforts, you know, working with staff to help that publicly posted processes to make sure that they meet with the intent of the CCWG recommendations and how those things will be operationalized.

I think there are many steps that we can do to make sure that it's not just responsibilities that wind up getting housed fully in ICANN at ICANN's own discretion once the recommendations come out. I saw this is as a question that was raised through some of the public comments as well, which was a question that came up in a few points in there. So I think there are a lot of ways that we can help work this through.

I don't know that there's a lot that we need to do in the charter about this, because the more we focus on the procedural role of the CCWG the more it kind of answers itself. Asha, I see you have your hand up. Jonathan, shall we go to Asha on this point?

Jonathan Robinson: Yes that's fine. Go ahead, Asha.

Asha Hemrajani: Sorry, Sam. Sorry my point was not on what you just mentioned but was on what Sylvia had typed and what Jonathan had typed up. Maybe we can come - it's again - I was again - my point on the for the line of demarcation. So if you want, Jonathan, we can come back to this later so that we can finish - we can get through Sam's document, or whatever you choose.

Jonathan Robinson: Thanks, Asha. I didn't mean to by my question to provoke the responses now but it is a good point. And I think it's very clear it's something we need to pick up on. So let's try and wrap up Sam's document and bear in mind that we do need to come back on this point. Thank you.

Asha Hemrajani: Exactly yes. Thank you.

Samantha Eisner: So the last point in the memo, there are some other financial and fiduciary concerns. We talked about this a little bit when we were having our first conversation about the foundation and all, but there - no matter what comes out, and we talked about this also a little bit in an exchange with Sylvia, no matter what comes out there will be some obligation of ICANN to have some operational work around this, right?

So there's the financial concern that there are actually cost in the management and the dispersement activities. Whether that's the cost of developing a foundation or a cost of developing an internal program or maintaining the proper accounts and having the staff to support it and all, and so there's that need. And we think internally it's probably important to make sure or to consider the principle that the dispersement of the auction proceeds, however that happens, should be a self-funding thing.

So the cost of that activity shouldn't come out of ICANN's operations, they should be funded out of the pool of the auction funds. So the auction funds if it's for example at 100 million right, not all 100 million is available for grants

because there would be a certain operational percentage that would be needed to be held back to support those.

There are also things that we can't predict right now but need to be kept into consideration. And this is really one of those conversations that we have with a working group itself about the types of forms that their recommendations could take could result in a need for ICANN to have stronger or lesser involvement in the governance of how those activities move forward.

We talked about earlier the example of maybe a foundation where is it ICANN that had a role sitting on the board, which is a really typical thing when there's a large endowments to a foundation to make sure that the activities are maintained in the way that they were expected, or is it just a role of, you know, reviewing and receiving reports.

Those are all things on a continuum that likely go into the working group work as they're developing the process and just assessing what are the types of things that would be considered as prudent in the future. So I think that that's - that pretty much wraps up the memo. Again, you know, if there are further questions or there are things that the drafting team thinks the drafting team would be helped by getting more information on, we're happy to take that back and bring you more information.

We're done with a lot of the work on the bylaws. Thankfully, we have another tranche on that but I apologize for the delay in getting this to u. we've had a very busy couple months since Marrakech in our side, but we'll be able to respond far more quickly at this point with the - that bulk of the work done.

So, we're here for you, at this point, to answer any questions.

Jonathan Robinson: Sam, thank you very much. I think that it's evident from the quality of the discussion we've had and the issues it's raised that it certainly is (unintelligible) a very strong contribution and along the lines of what we

needed. I mean, my sort of takeaway for what it's worth is this clearly is an overarching document that might need further refinement, but in essence, it's something that will help form a basis for the work of the drafting team and some of it will carry through to the principles should we decide to recommend those, or require those as part of the drafting team's recommendations for the CWG and, indeed, the bulk of the CWG's work.

There's certainly a need and I'd like to capture this to extract the key issues, which I think we've already - yes, we've already captured that earlier as an action item. And then, some major points here, really, are our requirement as a drafting team to discuss and agree or - as to how specific the draft - the charter is going to be on the role of the CWG and disbursement of funds or not. And that will certainly be need to work - be worked on by this drafting team.

And thereafter, once we're clear on that, the appropriate level of conflict of interest needs to be - policies need to be required of the CWG and/or successor organizations dealing with these funds at the relevant points. So it's really helped flesh out - thereby set a very good background and flush out some key areas of work for the CWG. Sam, would it be preferable for you to leave the call now?

I mean, we'd welcome having you on every call as possible, I think, but - and I think that's part of your remit, as I understand it. But if you do need to go now, given the early stage of your day and other commitments, please feel free to do so.

Samantha Eisner: I'm going to stay on on the phone. I might not be too active ON Adobe, but I will be listening to the rest of it. I - again, I apologize to the group. This typically is a very good (unintelligible) for me to take calls from home, but things go wrong someday, so thank you.

Jonathan Robinson: We've all been there - all either been children, had children, or haven't quite grown up yet. So I think we have this - end that problem. Thanks, Sam. So…

Asha Hemrajani: Sorry, Jonathan.

Jonathan Robinson: Asha, I was about to come to you.

Asha Hemrajani: (Unintelligible) before Sam leaves.

Jonathan Robinson: Yes.

Asha Hemrajani: Yes, if I may, before Sam leaves, I just wanted to go back to one of the points that (Ellen) had sent in his email. And I think you alluded to that already, Jonathan, when you summarized our discussion so far.

But as (Eric) and I have to take this homework back in terms of what projects can be funded and whether or not it has to be consistent with or directly in line with the core values and mission. So there was an email from (Ellen) about the first yellow highlighted section, which is in the background.

Funds must be used in a manner that's, I'm not sure whether you're - we can scroll up there. I think everybody has their own controls.

Jonathan Robinson: Everyone has scrolling rights, Asha.

Asha Hemrajani: Right. Okay, great. So if it says the funds must be used in a manner that supports, directly, ICANN's mission and core values. And then, where does it say - and I can't read this; it's too small for me here. And then, later on, it says it - bearer of fund - allocate funds to projects that are of interest to the greater internet community.

And there was a - (Ellen), you can - you explained it really well in your email. And you mentioned that that could be a possible conflict. So I was thinking whether it's possible to swap the order. If we can say that allocate funds to projects that are of interest to the greater internet community and that they are inconsistent with ICANN's mission and core values.

Do you follow what I'm trying to say, Sam?

Samantha Eisner: Yes, Asha, so the language that was cited was language that was put together probably in about 2009 or 2010 as the Applicant Guidebook was being developed and it was done with a very high level of guidance, much - at a much higher level than the depth of the memo that was presented today.

I think that it's - it was more exemplar language of the types of limitations that would be put around the auction fund. And, so, you know, clearly, we could consider it that way. We can't go in and change the Applicant Guidebook, but if the drafting team was to reflect that language within the drafting - within the charter, clearly, we could flip it around and that would help show the tie-in that - you know, the projects of general interest to the internet community and within ICANN's mission that helps explain that chain of limitation more, right.

They're concentric circles that come to a point and meet and so it's the point that they meet that we'd be looking at the most funding. Or we asked ourselves the question of whether or not we're limiting the drafting team or the working group through that and if they need to come to that conclusion on their own. Either way, it's not really of legal significance, but we can't go into - we can't go back into the guidebook and change that language, but we can change how it's reflected in the charter.

Asha Hemrajani: Yes, I agree with you. We can't - I'm not suggesting we change the AGB, but I'm sort of just - I mean, I'm now talking about language that the DT has to work on because we have to figure out a way that we can both be consistent with the mission and core values as well as not be too narrow and allow

some other projects to be funded. But of course, that is if we are - if - as - after (Eric) and I do the - our homework on whether it - whether we, as a board, can accept that, that's a separate issue.

But I was talking about whether we can change the language, like you said, for the DT team, not - for the DT, not going back to change the language in the AGB. That, I know, it's not possible.

Jonathan Robinson: Thanks, Asha, thanks, Sam. And just noting Sylvia's point in the chat, which is somewhat counter to yours, Asha, which, essentially, feels that the mission is the overarching point and the lead point and being consistent with the mission is…

Asha Hemrajani: Oh, and I don't agree - I don't disagree with that. I'm saying that the project can - there could be a project that can be proofed and (unintelligible) can check both boxes. So if there's a project that is of interest to the greater internet community and is consistent with the mission and core values, then that…

Jonathan Robinson: But I mean, then the point would be that the - that it seems to be a given that - as I understand it - that it must - that is must be both. And therefore, in a sense, from - at least from a - presentationally (sic), it might be subtly different, but legally, it's essentially the same thing, if it's - if there's an "and" joining the two.

Asha Hemrajani: Okay, then that's what we need to - we need to discuss the subtleties of that because that's not clear to me right now, but okay.

Jonathan Robinson: Okay, thanks, Asha. Well, let's pick that up and make sure that that is verified. I guess the issue there is how much of that is copied into, again, how much of this and it's really - it's the work on mapping this document into the charter, which will really tease this out because, as in when we do that, which

is the next piece of work, and actually, it could be useful, if anyone's prepared to volunteer to do that, to go through this document.

And we could ask the staff - have staff support help to do that, or we could ask for volunteers to do that. But essentially, it's about going through this document and extracting, if you like, the minimum or the suggestions that need to go into the drafting. So if anyone is particularly interested to do that, that'll be a welcome offer to receive.

Erika, you've been waiting patiently. Why don't you come back in on that?

Erika Mann: Jonathan, actually, I think your last point was similar to what I wanted to make. I think we should really try to understand what we have to recommend but shall be included in the charter and what the drafting team actually should recommend because, otherwise, the point raised - Asha raised and then their comment on - by Sylvia and by some - I think all three are right.

It depends how you look at the process and what kind of structure you wanted set up. And the structure, then, will limit the options because there - for example, we will have a strong - let's say the tax people, the auditors come back to us and the (unintelligible) will say whatever this new organization or the new fund allocator or whoever this structure will be called, whatever they will do will be limited automatically by the mission and by the core values and nothing can be covered outside.

I doubt this but I'm just saying take an extreme point of view. Then, of course, we will be limited in our recommendation in a different way. But if we are free, then, of course, we are limited by what we have so far decided -- what our limitations either in the guidebook or in the ccWG document or another document, but we are not limited to go beyond it.

So I would recommend let's - exactly what you recommended in your last recommendation -- let us start working on mapping the - what Sam has done,

the work, and how this will then relate to, or can relate to the charter. And then let Asha and myself continue to do the - understanding the legal limitations we might have and then let us come back to you and let us fill in the gaps that we, in a moment, probably can fill today in the - our today's (unintelligible). Does this make sense?

Jonathan Robinson: Yes, thank you. So before I go to Alan and Sylvia then, what we have already two action items, which is the extraction from this document about what necessary should be in the charter. I have a suggestion for you given that Sam's volunteered us.

I suggest we ask Sam to pull out what she thinks should be in the charter and we review that as a group because that way, it'll certainly get done and it gives the group and control and oversight of that. So it feels to me like that could be a very constructive way forward and we will review that at our next meeting. Second, we have - Erika, the point you've just made that you and Asha will go back and check and sort of re-check, if you like - double-check the constraints that we work under.

And then, third, I would encourage everyone to go through - I mean, I'm not clear. I think maybe only one other than myself has actually systematically commented on the draft charter as it stands at the moment. So it'll be very helpful if everyone could read that.

And even if they just got to the point of saying I'm supportive of where it's at or look for some modifications of that. So (David), if we could capture that as a third action just a reminder to the group - all in the group to review the charter as it currently stands with my most recent edit. And I'm checking the chat before - and question is whether we review on the Google doc or the Word doc.

I think, currently, the charter is sitting as a Word doc with my comments on it. So it's - it may be better to simply add comments to that. I didn't go into the Google doc. To be fair, I have modified the document.

I'm not sure; maybe Marika or staff, you can comment as to how we make sure these remain coherent in the meantime. Okay, let me go to you, Marika, then I'll come back to Alan and Sylvia because I'll come to you, Marika, on practicalities. Go ahead.

Marika Konings: Yes, this is Marika. I believe this document actually hasn't been put on Google Docs yet as it was recirculated yesterday. So I think it's probably easiest, indeed, if people could integrate their comments with the ones you've made so that they're all captured in one place.

That may be the easiest. Also noting that, of course, between this meeting and the next one is (unintelligible) each time.

Jonathan Robinson: Okay, thanks, Marika. So for this - so at least for the present, then, we will continue to edit that version of the document that I most recently circulated. And then let's go to Alan next. Alan, go ahead.

Alan Greenberg: Thank you very much. Three quick points. Number one, just to confirm again, the order of the statements in the Applicant Guidebook was something that was done.

I don't believe we are tied at all to using that or even to using the words there if we decide that they were not the appropriate ones. Number two, the concept of what goes in the charter - and you asked that, perhaps, Sam can identify it. That's really going to vary depending on whether we are allowing the charter - the ccWG to make disbursements or not.

So I really think we need to come to closure on that one before starting to draft the work, whether it's extraction from this document or the other work on

the charter. So just to reiterate, it's going to make a big difference in what we put in the charter.

And lastly, and a major point, and I think something that we do need the board to weigh in on, the wording in this particular (unintelligible) the Applicant Guidebook said support, directly, the mission of ICANN. We have been using in this discussion today the word consistent with the mission. Those are, in my mind, two very, very different things and I think we need to come to closure on which are - which is our target.

Is it directly support the mission, in which case, I have real concern about this program, or consistent with the mission and specifically not inconsistent with the mission, which I think is a much wider and more flexible set of words. So I think we do need to have closure on that, or at least input on that from the board. Thank you.

Jonathan Robinson: Yes, so thank you, Alan. Just, I'm conscious of you, Sylvia, and I will get to you in just a moment. But I think - if Erika and Asha, if you could take that at least as part of your takeaway and the third component of your takeaway to come back with any feedback you can from the board discussion about that - about the nuance of that consistent with support directly further, the mission, I think that could be very helpful input. Whilst it may not be definitive, it will be helpful for this group.

So that would be - that's the request of you. Sylvia. Sylvia, we do not hear you right now.

Sylvia Cadena: Can you hear me now?

Jonathan Robinson: Yes, we can hear you now.

Sylvia Cadena: Can you hear me now.

Jonathan Robinson: Yes, perhaps the mic…

Sylvia Cadena: What I was…

Jonathan Robinson: Sylvia, you sound a little close to the microphone. Other than that, we hear you clearly.

Sylvia Cadena: Okay, I was just going to support what Alan just mentioned that the word "directly" probably will narrow the scope too much and that we should probably use the words "in line" or "consistent with" and I agree with that statement. However, I think that we should not say first before mentioning the ICANN's mission say "that will benefit the internet as a whole" or something that is way too narrow because then that will open the door for projects that might be, like - or requests that might actually be a farfetched stretch from the actual ICANN mission.

And I think that there are a lot of initiatives that can actually be covered under the ICANN mission and core values and that there are other sources of funding that work for the, like, in a more generic way on - for the general benefit of the internet and that a way for programs and projects to collaborate is to - and to make things easier in terms of applications and due diligence and reviews and selection is when you have a very clear and - not narrow, but narrow enough - framework for organizations to tap into those sources of funding.

Then that will also probably protect us a little bit from the - any comments from the community about mission 3 or saying that ICANN is now an (unintelligible) agency or things that might actually get out of proportion if we don't take it into consideration from the beginning. Thank you.

Jonathan Robinson: Thanks, Sylvia. Both good points and understood the question in my mind, which is partly what I was hoping that Erika and Asha will be able to come back from - with is how much discretion we have in that because, to the

extent of - on the second point, you said, where we - we perhaps put the one before the other, that's - feels to me like it will be within our discretion.

To the extent we can interpret support directly or consistent with ICANN's mission, all that, that may be more difficult and we need - we may need some help there. So I think I understand your points. I'm just not clear right now how much scope we've got as a drafting team to correspond with your suggestions, but we can get there. Erika.

Erika Mann: Okay, sorry, takes always a while until I'm just unmuted. I have a totally different point. (Unintelligible) you make based on the comments we received, we made the selectors -- all the points which relate what we call guiding principles. The what - I think what we need as well, Jonathan, at least for the next call or in the meantime until the next call, confirmation that these guiding principles this group can agree on.

So (unintelligible) just sent around - you have all seen them and received them. If we shall resend them, let us know. Otherwise, I think we need agreement on them, Jonathan.

Jonathan Robinson: Thanks, Erika, and thanks for bringing me back to that because we do need to come back to them. Actually, that was our next item on the agenda. The practical challenge there is how best to deal with that.

And the challenge we've got is that, right now, the group is pretty silent on email. So you prepared that, you did that good work, it was circulated by email. It's quite a lot to go through on a call, and, certainly, it's not going to be possible now.

But, on the other hand, I guess what we have to do is just ask the group to review it as you have done one more time and check that they are happy with that. And I'm personally willing to do that as well. So I think what we need to

do say that we will - there's a number of tasks for the group to do concluding that one.

So let's add that -- a further review of those -- that work that yourself and Russ did and make sure that the group is happy with or comes back on those points, which is the inclusion and the work that was done on the previous public document.

Erika Mann: So, Jonathan, maybe what would help, if we were - if Russ and I and staff would sit together and would (unintelligible) relate these points into concrete language, we then can just ask - because in a moment, we have a summary of all the points which we selected, and then we make, based on this regard to the guiding principles and recommendations. But we could take this a step further and could say this is completely what we recommend to include in the document.

Jonathan Robinson: I think that would definitely be very helpful.

Erika Mann: (Unintelligible) helpful.

Jonathan Robinson: In a sense, it's what I was hoping we might be able to do with the document that Sam had prepared as well. And I understand the hesitation to do that, given that we haven't finalized the position on disbursement with respect to Sam's document. But in short, yes, Erika, I think that would be very helpful.

Erika Mann: Russ, are you fine with this? I would talk to Russ.

Jonathan Robinson: Okay, thank you, Erika. So now, my difficulty is we have five minutes left and we're kind of painted into a little bit of a corner here. Can I ask - maybe I need to ask the question in the negative.

Who in this group, or just ask the question directly - who in this group is expecting that the CWG will allocate funds to end causes or end users? Can I ask if anyone in this drafting team at this stage is expecting or was expecting that the drafting team will have, as its remit - sorry, that the CWG will have as remit, disbursements of new gTLD auction funds to end users?

And Sylvia, is that a new hand or an old hand? So my question is who in the drafting team, if anyone, thinks that the CWG will be responsible for recommending disbursement of funds to end users? And that's really as opposed to setting up processes, mechanics, procedures, structures for an organization or a process that will undertake those disbursements.

Those are really the two parts that - at least, as the way I see it. Alan, go ahead.

Alan Greenberg: Yes, Asha, in the chat, did mention that, conceivably, the CCWG could divide the possible projects into pots, or divide the money into pots, you know, and sub-allocate types of things. I do - I would not necessarily rule - I wasn't envisioning of doing that, but I would not necessarily rule that out and I don't class that as actually making allocations.

Jonathan Robinson: I'm with you, Alan. I didn't anticipate that, but I'm - I don't feel - and so it's a new suggestion to me, but it - in my mind - that doesn't qualify as disbursement. That's a way of managing or organizing or structuring the way in which the funds are managed. It's not a disbursement, per se.

So I'm going to make a provisional call on this and that - it feels to me like no one is arguing that the CWG should be involved in the disbursement of funds to end users or causes, and therefore, we seem to be of a mind which naturally, then - and stop me if you think I'm going too far here - does free us up to start to do the follow-on work which is possibly further processing of Russ and Erika's work and, indeed, further processing of Sam's document for refinement and potential input into the charter.

Alan Greenberg: Jonathan, it's Alan. I would add a third end to that and start working on some of the boiler plate of the charter which was contingent on that decision, also.

Jonathan Robinson: Correct, Alan. Although, we already have that, as you know, there is a boiler plate which is the latest version that I - but that's - these secondary pieces of work then map onto that boiler plate. The boiler plate exists and is there for you and others to look at as we stand and that's what I provided a review of and a revision of in today.

Alan Greenberg: Yes, Jonathan, as did I, at least for this first 60% of it.

Jonathan Robinson: Yes.

Alan Greenberg: But things like what we put in that the - you know, there's a section there on should the CCWG, as its first task, do a timeline? And I pointed out in my comments that if the CCWG had the discretion of also doing allocation, then it would have to first make a decision on whether it does or not before it gets timelined (sic), because those are two very different processes.

If we already made the decision for it, then we can fill in that part of the charter and not have to change it. That was the reason I made my call, thank you.

Jonathan Robinson: Okay, and finally, then, I think I was possibly a bit presumptive in the way I did it. I know that you have done those and I reviewed elements of your work, but I think that was on the other document. So perhaps, if I could ask you if you have the time to look at the changes I made which really tried to do some of the work rather than simply coordinate it and see if you'll - revise your input on the back of today's discussion and, indeed, to thread it onto a single document then.

ICANN
Moderator: Nathalie Peregrine
05-05-16/8:00 am CT
Confirmation #7563560
Page 55

If you're willing to do that, I think that would be very helpful. And if it happens to contradict with anything that I've done, by all means, reach out to me individually or via the group and we'll - I'm sure we can reconcile.

Alan Greenberg: Within the constraints of my time, yes.

Jonathan Robinson: Good. Thank you, Alan. And everyone, we've hit the top of the hour. I think that was a very productive conversation. I chose not to force us to go through the agenda as we can't set it out but, rather, to let the conversation flow in and around the document.

It feels like it was a very productive conversation to me. I hope it was to you and let - and I think we have our plan going forward and we have a meeting in a week's time. So hopefully, that will give us both a plan and some momentum to continue with that.

So thanks very much. If anyone need anything else that has been unsaid, it would - just before closing, does anyone have anything they urgently need to get out to the group? Okay, seeing no hands raised, I note a couple of positive comments in the chat.

So thanks again, everyone, and look forward to sharing further thoughts with you by email and meeting again in a week's time. Talk to you then.

Alan Greenberg: Thank you.

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