

January 31, 2018

Erika Mann, Co-Chair
Ching Chiao, Co-Chair
Cross Community Working Group on New gTLD Auction Proceeds (CCWG-AP)

RE: ICANN Board Response to Request for Input from Cross-Community Working Group on New gTLD Auction Proceeds (CCWG-AP)

Dear Erika and Ching:

Thank you for your letter of 13 December 2017 regarding the status of the work of the New gTLD Auction Proceeds Cross Community Working Group (CCWG-AP) and the proposed preamble, objectives, and examples of projects. As requested, we forwarded your letter to the ICANN Board. Below is the Board's feedback for the CCWG-AP's further consideration.

We are appreciative of the work and effort that the CCWG-AP has focused on this important project, and also to the group for reaching out at this point in the process. It is very clear that, under your leadership, this Cross Community Working Group has been steady in its efforts, open in its deliberations, substantive in its reflections, and effective in offering the thoughtful and valuable set of objectives and guidelines produced so far.

We hope to continue our dialogue in support of the CCWG-AP's substantive work. In a spirit of a constructive contribution to help the group's work be better understood and used in subsequent steps, we would like to offer our thoughts on the following points, which may have already been considered, but that we feel are important factors to the success of this project.

Regarding the Proposed Preamble as well as the Proposed Objectives, the Board has concerns about the potential focus on the concept of the "open and interoperable Internet," while not being clear on how the other guidelines laid out in the Preamble should be viewed and how the concept is to be applied. The Preamble also creates potential inconsistencies with the Objectives and ICANN's mission. Because of these potential inconsistencies, there is the possibility that the Preamble presents more questions than it answers, and could result in confusion during the application and selection phase, ultimately resulting in challenges against selection process. Anything that reduces potential vagueness and inconsistency should be done, and we are happy to help as desired.

Some examples of areas of vagueness or inconsistency between and among the Preamble and Objectives include:

- ⦿ Is "benefit[ing] the open an interoperable Internet" to be considered only through the lens of whether there is a "creat[ion of] social and economic values . . . that will create benefits for the Internet community."?
- ⦿ Is there a test that something serves the "open and interoperable Internet" only if it provides "opportunities [] to participate, innovate and compete without impediments"? How is "compet[ition] without impediments" to be considered when the Bylaws state that one of ICANN's core values is "[i]ntroducing and promoting competition in the registration of domain names where practicable and beneficial to the public interest as identified through the bottom-up, multistakeholder policy development process"? Is this inserting a new test for how ICANN would enhance and promote competition?

- ⦿ Must all of the qualifiers placed into the guideline that selected applications “support an Internet that is stable, scalable, agile, secure, sustainable and ultimately equitably supports open access, future oriented developments, innovation and open standards, for the benefit of the Internet community” be met for each application?
- ⦿ What is the intention of the guideline “Consistent with ICANN’s community activities and consensus-building processes”? Does the application need to support activities that are “consistent”? How is this determined?
- ⦿ Must an applicant meet each of the Proposed Objectives, or any one plus consistency with ICANN’s mission? Is there any prioritization of the objectives?
- ⦿ As “benefiting the open and interoperable Internet” is a broader scope than the ICANN Mission is, isn’t there a risk to confuse applicants on what the requests should contribute to?

Regarding the examples, we thank the CCWG-AP for coming up with a list of examples of projects that are tested against ICANN’s mission. We support the development of examples for the purpose of furthering deliberations or for the demonstration of principles. There is a risk, however, in creating a list of examples that will become the list of projects, or the samples within which applicants try to shoe-horn their projects. For instance, the publication of an example of whether a specific organization seeking funds for a specific purpose is within ICANN’s mission could lead that organization to a conclusion that it is entitled to funds if it applies. That is not the role of the CCWG-AP. We see a good value in using examples to help demonstrating a specific point relative to an objective, as an illustrative contribution to the description of an objective. But if examples are provided in a general fashion, they may be taken as directional guidance for applicants, which may create challenges in the evaluation of applications, should decisions appear contradictory with the examples provided. In an ideal world CCWG-AP would use this list of examples as input for the generation of some general guidelines that may be useful in the ultimate mechanism, but would not present the list as a “consensus list of examples” in order to:

1. Be able to fully benefit from the lessons learned from the example projects;
2. Not raise false expectations or pre-emption of funding for specific proposals that may be presented to reflect the example projects.

The Board also encourages the CCWG-AP, if examples are to be provided for illustrative purposes, to provide additional “negative” examples of projects that would likely not be proper for distribution. Some considerations could include the use of additional qualifiers and explanation, such as whether funds should be available for use to support work that is already being done by other entities.

The ultimate ability to provide funds to any applicant is subject to due diligence and adherence with the legal and fiduciary constraints previously provided to the CCWG-AP. This includes the avoidance of private benefit and confirmation that the recipients are appropriately organized so as to receive the funds. The Board is not endorsing or evaluating the legal propriety of any of the potential grantees identified in the list.

More specifically to the projects presented as examples, our overall observation is that while we agree that some of these are within ICANN’s mission, they are perhaps not a good use of funds. In noting whether any of these items are likely within mission, the Board is not endorsing any example as a good allocation of funds.

We provide some inputs below for the CCWG-AP on specific examples. There are many examples for which we do not have any notes to share with the CCWG-AP at this time.

In Example 4, the direct awarding of individual scholarship grants would impose additional regulatory requirements on ICANN to remain in compliance with applicable laws and regulations. If the recommendation is to develop a specific scholarship or fellowship program through which scholarships could be awarded to individuals, that too would impose additional program development costs. Further work and detail would have to be done to assure alignment of a scholarship program with ICANN's mission. Example 17 also poses some of the same concerns.

For Example 7, on supporting Internet infrastructure organizations through the provision of generators, chargers, and equipment to maintain local access to the Internet, while it is a very meaningful goal, is likely outside of ICANN's mission. There may be other forms of assistance or education that could be provided that are appropriately funded in alignment with ICANN's mission.

Examples 8 and 9 name specific entities as part of the examples. The entities may not be only actors or organizations in their field. To the extent that examples name specific entities, there must be mechanisms to allow for fair distribution among similarly situated entities.

For Example 10, on grants to support the development of NGOs and Internet Governance Forums, whereas ICANN participates in an supports wider Internet Governance (IG) development as it relates to our mission, it is well beyond ICANN's mission to heavily invest in IG activities.

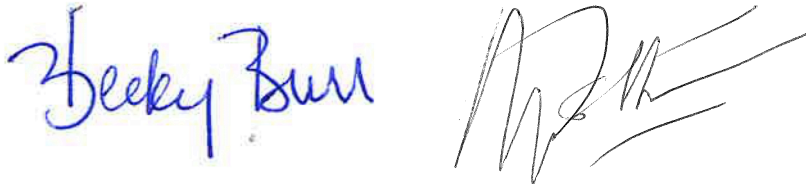
For Example 11, on projects to improve ease of registration of generic domain names in developing countries, ICANN's role is to ensure stability and security of the DNS by facilitating the allocation of names at the top level and to coordinating policy development and implementation. Registration systems development may well facilitate use of the DNS in developing countries, which is clearly worthwhile, but specific support for this may be beyond our mission. We have similar concerns with Example 12 on the development of IXPs.

For Example 13, specifically regarding supporting the work of the W3C on areas of common interest, there may be projects anticipated that are within ICANN's mission and others that are outside of the mission. The Board also reiterates its note that it is not in a position to consider at this time whether any individual organization may appropriately receive funds in alignment with the legal and fiduciary constraints provided to the CCWG-AP previously.

In Example 18, long term sustainability of the DNS could be within ICANN's mission, however projects would have to be carefully crafted.

Thank you for the opportunity to weigh in on these items at this point. We look forward to our continued interactions. Please let us know what other inputs from the Board may be helpful to the CCWG-AP as your deliberations continue.

Best Regards,



Becky Burr and Maarten Botterman
ICANN Board Liaisons to the CCWG-AP