

October 5, 2018

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

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

Dear Erika and Ching,

Emily Barabas of ICANN org provided us with a request for input from the Cross-Community Working Group on New gTLD Auction Proceeds (CCWG-AP) to assist the CCWG with refining responses to the group's Charter questions and its work to evaluate possible mechanisms. The group asked:

"What is the Board's perspective on whether ICANN, the organization or a constituent part thereof, such as an SO or AC, can be an applicant under any circumstances?"

At our Board Workshop in Genval, we provided an update to the Board on the work of the CCWG-AP and discussed this request. Please find below the Board's input in the hope it proves useful in supporting the group's progress.

The Board reached agreement on the following points in response to this question:

1. Regarding the ICANN organization:
 - a. The org currently does not foresee a situation where it would need to apply for the proceeds; and
 - b. ICANN maintains legal and fiduciary responsibility over the funds, and the directors and officers have an obligation to protect the organization through the use of available resources. In such a case, while ICANN would not be required to apply for the proceeds, the directors and officers would have a fiduciary obligation to use the funds to meet the organization's obligations.
2. Regarding ICANN SO/ACs:
 - a. SO/AC structures that are not legal entities in their own right, independent of the multistakeholder ICANN structure, would be unable to apply for proceeds as they likely do not meet due diligence requirements as identified in the initial legal and fiduciary concerns memo.
 - b. This would not preclude consideration of applications from participants in an SO/AC structure that are also established legal entities outside the multistakeholder model provided:
 - I. The request does not include an activity or project that is or should be covered by ICANN's operational budget;
 - II. Conflict of interest considerations are met, including but not limited to ensuring that those applying are not part of the evaluation process; and

III. All other application criteria are met.

The Board would also like to offer the following insights that arose during its discussion in the spirit of proactive cooperation. The Board welcomes the CCWG's mapping of the draft recommendations against the Board's principles and appreciates the CCWG's agreement regarding the yearly tranching of the proceeds to support the Board and org meeting their fiduciary obligations and due diligence requirements.

Regarding the evaluation of the applications, the Board notes that an independent panel is an important aspect that should be considered in the CCWG's recommendations. This panel should be independent and should have appropriate conflict of interest protections built in, in support of the fiduciary duties of ICANN's directors and officers. The independent panel would assess applications and decide which applications will be successful in securing funding for that year's tranche. The independent character of the panel would need to be defined and proper controls will need to be put in place to guide the work of the panel (see below for some considerations). The panel's recommendations would be provided to the ICANN Board for approval of the slate of successful applicants for that year, and the approved slate would then be provided to the persons/entity responsible for distribution. As previously communicated, the Board will not be taking decisions on individual applications but will instead focus its consideration of the slate on whether the rules of the process were followed by the independent panel. The principles supporting the independent panel should also include consistency over time (i.e., the composition of the panel should always include some panelists of the previous year to build on their experience); and cost-effectiveness (i.e., to focus on the use of auction proceeds to support desired activities and goals, as opposed to administrative costs).

We trust that this input is valuable and helps support the CCWG in its work towards the release of its initial report. Thank you for the opportunity to comment at this stage and we look forward to continued engagement on this effort.

Best wishes,



Becky Burr and Maarten Botterman
Board Liaisons to CCWG-AP