Responses from Xavier Calvez and Samantha Eisner to the CCWG-Auction Proceeds
10 March 2018

General questions:

- In addition to the possible mechanisms outlined by the CCWG, namely (1) New ICANN Proceeds Allocation Department Created as part of ICANN Org, 2) New ICANN Proceeds Allocation Department Created as part of ICANN Org which would work in collaboration with an existing charitable organization(s), 3) A new structure would be created (e.g. ICANN foundation), 4) An established entity/entities (e.g. foundation or fund) are used (ICANN would organize the oversight of processes to ensure mission and fiduciary duties are met), are there any other mechanisms that you would recommend for consideration? Note that the CCWG already excluded to invest all the proceeds into a fund and only disburse the interests resulting from this investment. Please note that all proposed mechanisms need to meet the legal and fiduciary requirements (for further details, see here).
- As the mechanism to be recommended is expected to be of a temporary nature, as the available funds are a one-off allocation, what aspects should be factored in and considered when deciding on a mechanism (e.g. what characteristics would facilitate sun-setting of the mechanism)?
- Are you aware of any models or mechanisms in which a third party provides an oversight role? If so, please share those examples.
- Can you share best practices with regards to the evaluation of project applications?
- What are the main costs to be incurred for grant distribution program? What are the various methods to measure these costs (fixed cost for the entire program, percentage of the total funds allocated for distribution,…)? Can you share what are the existing practices in your organization, for example if a percentage is commonly used in practice, what is the level of percentage most frequently observed?
- What mechanisms need to be in place for any mechanism to ensure external oversight / governance? E.g. Require external governance / non-exec directors / trustees in majority / advisory board?

For these general questions, ICANN organization notes that it does not have internal expertise on the design of grant-making and philanthrophic programs. However, there are key questions and considerations that can impact the answers to these questions. For example, though the CCWG-AP is looking at a temporary mechanism (meaning that ICANN will not be soliciting further funds to sustain the mechanism), if the CCWG considers that all available funds should be disbursed within a year, as opposed to considering that over a period of years, equal portions of the auction proceeds will be made available so long as the mechanism continues to perform to expected standards, those are each "temporary", but are very different. To that end, having staged, programmatic and planned disbursements seems a far more prudent approach than trying to disburse a large amount quickly. The ICANN Board and officers are not able to cede their fiduciary obligations to a third party, even if a third party oversight role is developed.

Possible mechanism #1	*New ICANN Proceeds Allocation Department Created as part of ICANN Org*
General description	This department would be part of ICANN Org and take full responsibility for solicitation and evaluation of proposals, and disbursement process, in accordance with the

	recommendations of the CCWG
Clarifying questions and/or questions for experts	**Budget / Costs** 1. How do you develop and ensure that accountable practices are in place to manage both from a budget and accounting practice the auction proceeds funds in a sustainable and responsible manner? What kind of practices need to be established that are currently not in place? 2. How will these funds be managed to ensure separation from the operational budget of ICANN? *For 1 / 2: ICANN has experience in segregating funds; for example, the New gTLD Program has, since inception, been budgeted and tracked separately from the rest of ICANN's operating budget. ICANN also maintains a separate Reserve Fund and has segregating the auction proceeds. After the IANA Stewardship Transition, ICANN has also developed and maintained a separate IANA Budget for the performance of the IANA functions. ICANN has the experience and internal controls to maintain appropriate accounting practices as contemplated. ICANN also has related practices, such as its procurement policy and disbursement policy, which introduce controls over proper procurement and budgetary commitments. In addition, ICANN Org is able to capture financial information by project, which is expected to also contribute to transparency and accountability on the program.* *For 2 / 2: How separation is ensured will depend on the model/mechanism chosen. In the model where ICANN manages the process solely, the examples mentioned earlier would be the basis for setting up separation: new gTLD program, PTI, IANA Stewardship Transition.* 3. What fiduciary and auditing requirements, whether financial or non-financial, would need to be established for this program? *This is dependent upon the purpose and complexity of the recommended mechanism. In general, most phases of the process of disbursement will include mechanisms supporting fiduciary and auditing requirements: solicitation (openness), application evaluation (fairness, completeness, quality…), decision/approval (defined delegation of authority), disbursement (documentation, identification), publication (review/approval/accuracy), monitoring (effectiveness evaluation, documentation, reporting).* 4. What audit requirements need to be in place that would apply to the projects that are funded? Would these be different, dependent on the size of the project and the country of origin? *The due diligence and audit requirements could vary depending on the nature, size and length of projects funded using the auction proceeds. If ICANN is funding, ICANN will always need*

the ability to establish that the funds are used in accordance with the purpose declared by the applicant, which was the basis for ICANN's approval to grant funds, including that the project is consistent with ICANN's mission. This is also an matter of accountability to the ICANN community.

5. What kind of model(s) would be used to establish the department that will manage / disburse the auction proceeds? For example, if a separate department is created, how would this be financed? How would the resources allocated be funded, from ICANN's on-going funding, or from the auction proceeds?

As disbursement of funds is not currently a part of ICANN's operations, any use of ICANN's operating funds to support this disbursement work would have to be part of a community budgeting and prioritization conversation. The ICANN representatives participating in the CCWG-AP have assumed to date that any mechanism would be funded out of the auction proceeds. ICANN has experience in designing budgets and staffing models for self-funded programs, such as the New gTLD Program.
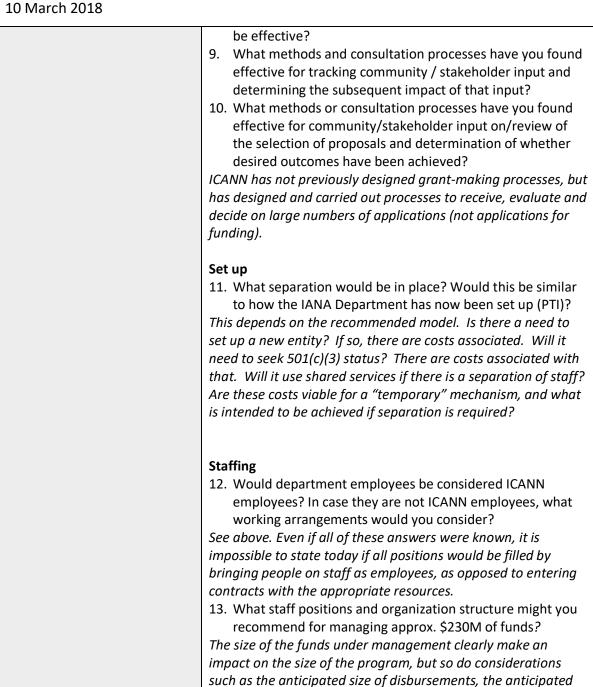
6. Could you provide an estimation of the costs of setting up this model(s) (per your response to the previous question)? (operational costs)

The operational costs will be the result of the activities supporting the process. These activities are themselves the result of what requirements will be defined, either for fiduciary, operational or transparency purposes. These activities and requirements will also depend on the mechanism chosen. Until these questions are answered, it is hard to estimate the number of FTEs required, the level of skill (and resultant personnel costs) needed, etc.

However, it is important that decisions on choosing models and mechanisms are made on the basis of adequate information, including financial assessments of potential costs.

Role of the Community

7. Do you have experience in any grantmaking programs where you received guidance or input from stakeholders interested in the outcomes of the process? What did that look like? What engagement level and consultation processes did you have in place, and what types of issues were stakeholder providing input on? (If you answered 'no', please ignore questions 10 – 12)

8. What have been effective engagement and feedback mechanisms for community members and other stakeholders to assist in achieving desired outcomes? What kind of models do you have in place to engage with stakeholders and what mechanisms have been proven to

be effective?

9. What methods and consultation processes have you found effective for tracking community / stakeholder input and determining the subsequent impact of that input?

10. What methods or consultation processes have you found effective for community/stakeholder input on/review of the selection of proposals and determination of whether desired outcomes have been achieved?

ICANN has not previously designed grant-making processes, but has designed and carried out processes to receive, evaluate and decide on large numbers of applications (not applications for funding).

Set up

11. What separation would be in place? Would this be similar to how the IANA Department has now been set up (PTI)?

This depends on the recommended model. Is there a need to set up a new entity? If so, there are costs associated. Will it need to seek 501(c)(3) status? There are costs associated with that. Will it use shared services if there is a separation of staff? Are these costs viable for a "temporary" mechanism, and what is intended to be achieved if separation is required?

Staffing

12. Would department employees be considered ICANN employees? In case they are not ICANN employees, what working arrangements would you consider?

See above. Even if all of these answers were known, it is impossible to state today if all positions would be filled by bringing people on staff as employees, as opposed to entering contracts with the appropriate resources.

13. What staff positions and organization structure might you recommend for managing approx. $230M of funds?

The size of the funds under management clearly make an impact on the size of the program, but so do considerations such as the anticipated size of disbursements, the anticipated length of the program, the complexity of application evaluation, and the complexity of the funded initiatives.

Possible mechanism #2	*New ICANN Proceeds Allocation Department Created as part of ICANN Org which would work in collaboration with an existing charitable organization(s).*
General description	Responsibilities for solicitation and evaluation of proposals, and disbursement process would be split between the newly created department and the existing charitable organization(s).

Clarifying questions and/or questions for experts	1. Do you think ICANN would benefit from working in a collaboration with an existing philanthropic organization? If so, what benefits do you think there would be?
	2. How would it make sense for the roles to be split? What mechanisms would need to be in place to ensure coordination between ICANN Org Department and the selected organization(s)?
	3. What guidance might you share on how ICANN might collaborate with other organizations in order to achieve our desired outcomes for the use of the auction proceeds?
	4. Are there any similar models (responsibilities divided between two different organizations) that you are familiar with that could serve as a model for this mechanism (for example, the Stanford Engineering School Venture Fund)?
	5. What are the standard practices around reviewing agreements for this type of mechanism to be implemented, to ensure all aspects are covered?
	6. What kind of procedures need to be in place to manage fund allocation to successful applicants, if there are two entities providing the funding?
	7. What costs would be involved in creating such a collaboration between two entities as well as overhead expected to run this collaborative model?
	8. In case you or your organization has knowledge and expertise in working in a hybrid model, how does your organization manage the staffing and set up when collaborating in a hybrid mechanism like this (intermediary role)?
	9. Do you have experience in any grantmaking programs where you received guidance or input from stakeholders interested in the outcomes of the process? What did that look like? What engagement level and consultation processes did you have in place, and what types of issues were stakeholder providing input on? (If you answered 'no', please ignore questions 10)
	10. In a hybrid model, what methods and consultation processes have you found effective for tracking community / stakeholder input and determining the subsequent impact of that input?
	11. What kind of processes and procedures would you like to see established to ensure that collaboration with a third party would meet all legal and fiduciary requirements?
	12. Do you have recommendations or suggestions for the selection criteria ICANN should use for choosing the right charitable organization to partner with?
	13. Based on your response to the previous question, are you in a position to make a recommendation for which existing charitable organizations ICANN could consider partnering

	with, should a hybrid model be recommended? 14. what are the different ways that responsibilities could be allocated between ICANN and a partnering external organization? Are there certain responsibilities that are better taken on by the entity that is ultimately accountable to its mission in the distribution of funds? What is the industry standard (%) to be allocated to administrative costs for the organization partnering with ICANN? Please provide input taking into account different ways in which responsibilities could be divided between ICANN and the charitable organization. *In general, ICANN has not designed programs such as this in the past. To the extent that another entity is sharing in the work, ICANN will remain responsible for making sure that ICANN's mission is served through the disbursed funds, and that is a responsibility that ICANN cannot contract away or be absolved of. There will also be obligations for ICANN, no matter how little direct involvement ICANN has in the disbursement process. When collaborating with another organization, a key condition for success of the process will be to have clearly defined roles and responsibilities incumbent upon both ICANN and the other organization, and how these roles are carried out operationally. As it relates to costs and procedures involved with such a collaboration model, it will be dependent on what roles each party has in the collaboration.* *In general, processes and procedures necessary to ensure that legal and fiduciary requirements are met would be about processes of controls on conflict of interest, on consistency with mission, on clarity of evaluation results, on approval/decision, on disbursement, on monitoring after disbursement.* *In reference to the Stanford Engineering School Venture Fund, while that is a partnership between an educational institution and private parties, that example does not seem on point to what we understand the CCWG-AP is seeking. The SEVF was a way to encourage private funds then invested based on the venture funds' due diligence process, in order to make investments that would produce returns that resulted in University endowments and fellowships.*

Possible mechanism #3	*A new structure would be created (e.g. ICANN foundation)*
General description	A new structure would be created separate from ICANN Org which would be responsible for solicitation and evaluation of proposals, and disbursement process, in accordance with the recommendations of the CCWG.

Clarifying questions and/or questions for experts	**Set up**
	1. How would independence from ICANN be guaranteed, while at the same time ensuring that legal and fiduciary requirements are met and oversight is ensured?
	2. Are you aware of any examples of new structures that were created, e.g. foundation, with a limitation in funds available.
	3. What criteria would need to be established to guide the selection of location/jurisdiction to headquarter this new entity? What factors would need to be considered to avoid restrictions to delivery of funds to developing countries? Are there any locations/jurisdictions that meet the criteria you outlined as part of this question that would also allow for a rapid establishment of a new entity?
	4. In your experience, how long will it take to get a new entity set up? What would be a realistic expectation with regards to $$ to be disbursed per year, factoring in the creation of a new entity?
	Considerations need to be made regarding the how much expense should be incurred to study the development of a foundation in other jurisdictions, as opposed to focusing efforts on the actual development of a foundation. As ICANN has explained, there are already due diligence programs that can be designed to support disbursements to developing countries or those that do not have equivalents of 501(c)(3) status.
	Cost
	5. What costs would be involved in creating such a structure as well as overhead expected to run such a structure? Staffing, financial systems, legal support, communications, reporting and monitoring (to name a few).
	As discussed under Section 1, the complexity of development of a structure is linked to issues such as the anticipated size of disbursements, the anticipated length of the program, the complexity of application evaluation, and the complexity of the funded initiatives. The less that a structure can rely upon shared resources, the more costly it will be to develop a standalone entity with its own systems and staffing.
	Running of structure
	6. What processes and procedures would need to be in place to ensure appropriate oversight by ICANN of this new entity?
	As discussed under Section 2, ICANN will remain responsible for making sure that ICANN's mission is served through the disbursed funds, and that is a responsibility that ICANN cannot

	contract away or be absolved of. There will also be costs from the ICANN side, no matter how little direct involvement ICANN has in the disbursement process.

Possible mechanism #4	*An established entity/entities (e.g. foundation or fund) are used (ICANN would organize the oversight of processes to ensure mission and fiduciary duties are met)*
General description	An established entity / entities (e.g. foundation or fund) would be responsible for solicitation and evaluation of proposals, and disbursement process, in accordance with the recommendations of the CCWG.
Clarifying questions and/or questions for experts	**Selection** 1. Which process(es) could be used to determine which entity/entities are suitable? 2. How to ensure that entity/entities goals align with that of ICANN and usage of funds? 3. What criteria should be part of a selection process? E.g. location, access, restriction to deliver funds to developing regions/countries 4. What would you anticipate that will be the benefits for the selected organization(s), if any? 5. Based on your experience and responses to the previous questions, do you have any recommendations for which entity/entities could be considered for this scenario? **Oversight / enforcement / legal requirements** 6. What contracts are typically in place between an entity such as ICANN seeking to disburse funds and the organization that will handle the application and disbursement process? 7. How to avoid duplication of oversight as presumably entity/entities will have their own oversight mechanisms in place while ICANN does so as well? 8. What particular oversight mechanism(s) would you recommend is established for this particular set up for the entity seeking to disburse funds? 9. Based on your experience, what tools/mechanisms should be in place for financial management, validate technical outcomes, communications, monitoring and reporting? Other

	10. If you are familiar with a similar set up, how are these types of external organisations typically funded? Do they do this work solely based on cost recovery, or are there additional fees that are charged to operate grant making programs for other entities? If there are additional fees, how are those typically calculated?