

A wide-angle photograph of the Panama City skyline, featuring numerous skyscrapers of varying heights and architectural styles. In the foreground, a concrete bridge with a metal railing spans across a body of water. A yellow bus is visible on the bridge. The sky is a clear, bright blue with a few wispy clouds.

ICANN
POLICY FORUM

62

PANAMA CITY

25-28 June 2018

New gTLD Auction Proceeds Cross Community Working Group

F2F Meeting

ICANN62

27 June 2018



Agenda

1. Roll Call
2. Welcome –
SOI/DOI
Updates

3. Status Update

4. Review of
mechanism
descriptions

5. Review of proposed
responses to
remaining charter
questions

6. Review of work
plan and next
steps

7. Confirm next
meeting

Status Update

Agenda item #3

What are New gTLD Auctions?



An auction is the mechanism of last resort for resolving contention between two or more applicants for a string through the New gTLD program. Only one registry can operate a top-level domain.

- Most contention sets are resolved amongst the applicants prior to an ICANN auction of last resort (and ICANN expects this trend to continue)
 - To date, only 16 of the 218 contentions sets utilized a last resort auction conducted by ICANN's authorized auction service provider.
- Proceeds generated from auctions of last resort are being separated and reserved from the ICANN overall budget until the multistakeholder community develops a plan for their use. This plan must be approved by the ICANN Board.

Goals and Objectives of the CCWG

The CCWG-AP was formed in **January 2017**. It is chartered by all of ICANN's Supporting Organizations and Advisory Committees and, as of September 2017, has:



26 members



49 participants



30 observers

The CCWG-AP Charter defines its goals & objectives as:

- Developing a proposal(s) on the mechanism(s) to allocate the new gTLD auction proceeds. This will be provided to the ICANN Board for consideration
- This group will **NOT** be making determinations on particular uses of the proceeds (i.e. which specific projects or organizations are to receive funding)

Legal and Fiscal Constraints

As part of its deliberations, the CCWG-AP is required to factor in the following legal and fiduciary constraints:



Consistency with ICANN's Mission as set out in Bylaws:

Due to ICANN's 501(c)(3) tax exempt, public charity status, it must adhere to its Mission and act exclusively in service to its charitable purpose.



Private benefit concern:

As an 501(c)(3) organization, ICANN cannot provide its funds towards the private benefit of individuals.



Must not be used for political activity:

ICANN is barred from engaging in any activity that intervenes in a political campaign for a candidate for public office.



Should not be used for lobbying activities:

ICANN engages in a small amount of activity that is classified as lobbying, which in the U.S. focuses on attempts to influence legislation.

Legal and Fiscal Constraints (cont.)



Conflict of interest considerations:

Taking decisions without conflict of interest is paramount. ICANN is prohibited from benefitting insiders to ICANN.



Procedural concerns:

ICANN will always be responsible for making sure that funds are provided to the appropriate organization both in confirmation of mission and in making sure that funds are provided in a manner consistent with ICANN's 501(c)(3) status.



Financial and fiduciary concerns

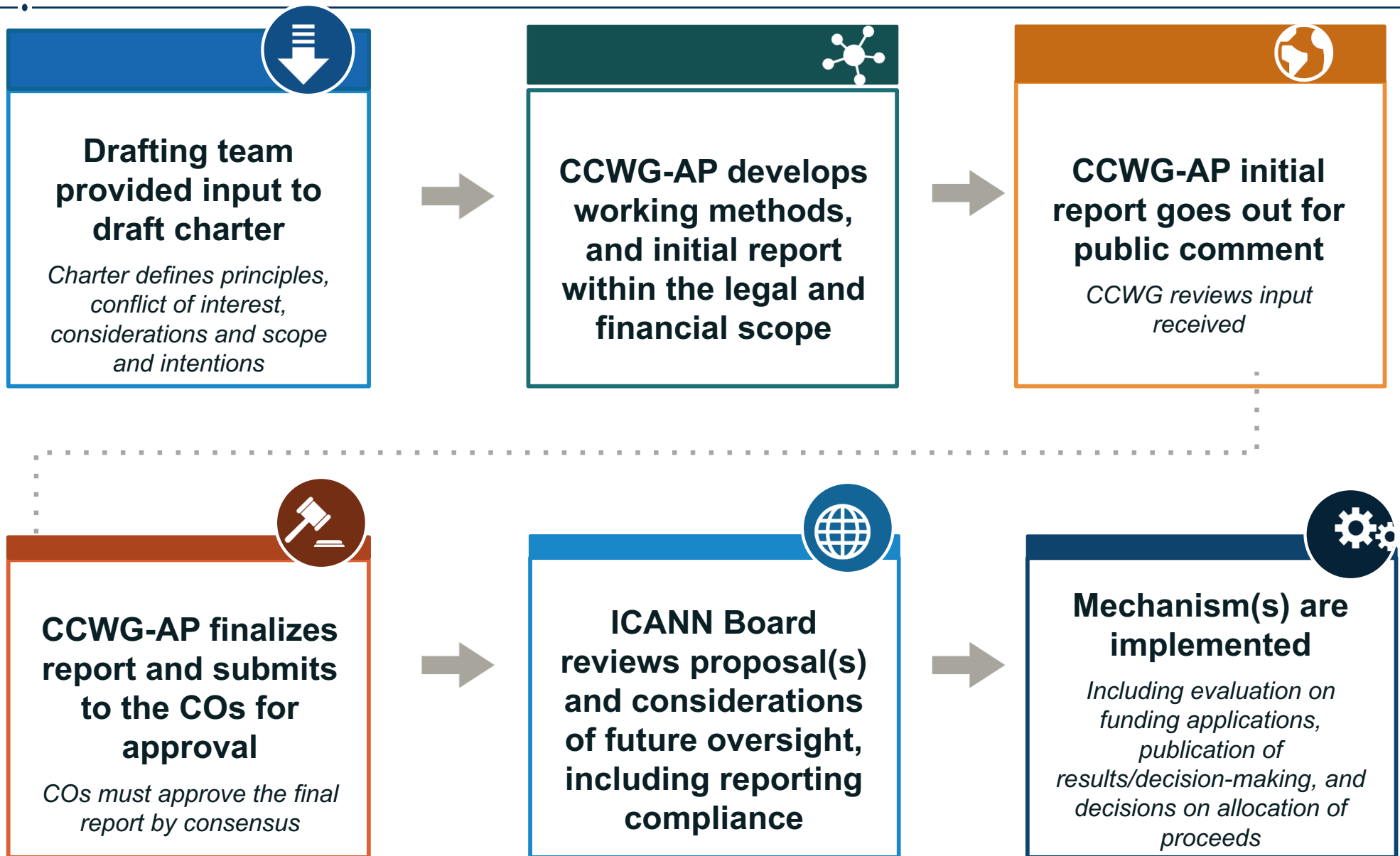
The Board and Officers of ICANN hold fiduciary duties to the organization to make sure that self-dealing does not occur and their private interests are not benefited through ICANN's decision making and actions.



Learn more ▶

<https://community.icann.org/x/CbDRAw>

Process Development for Auction Proceeds Allocation



CCWG-AP Work Plan

- Phase 1: Initial Run Through of Charter Questions
- Phase 2: Address Charter Questions that Require Immediate Work and Response before Moving Forward
- Phase 3: Compile List of Possible Mechanisms that could be Considered by CCWG and Consultation with Identified Experts to Obtain Input and Briefing on List
- Phase 4: Determine Which Mechanism(s) Demonstrate Most Potential to Meet CCWG Expectations and Conform with Legal and Fiduciary Constraints
- **Phase 5: Answer Charter Questions as Organized by Phase 1 for Mechanism(s) Determined in Phase 4**

4 possible mechanisms for further consideration

A new ICANN Proceeds Allocation Department is created as part of ICANN Org

A new ICANN Proceeds Allocation Department is created as part of ICANN Org which would work in collaboration with an existing charitable organization(s)

A new structure would be created e.g. ICANN foundation

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)

Questions for the CCWG-AP to Consider

1. What framework should be designed and implemented to allow for the disbursement of new gTLD Auction Proceeds, taking into account the legal and fiduciary constraints outlined above as well as the existing memo on legal and fiduciary principles?
2. As part of this framework, what will be the limitations of fund allocation, factoring in that the funds need to be used in line with ICANN's mission while at the same time recognizing the diversity of communities that ICANN serves?
3. What safeguards are to be put in place to ensure that the creation of the framework, as well as its execution and operation, respect the legal and fiduciary constraints that have been outlined in this memo?
4. What aspects should be considered to define a timeframe, if any, for the funds allocation mechanism to operate as well as the disbursements of funds?
5. What conflict of interest provisions and procedures need to be put in place as part of this framework for fund allocations?
6. Should any priority or preference be given to organizations from developing economies, projects implemented in such regions and/or under represented groups?
7. Should ICANN oversee the solicitation and evaluation of proposals, or delegate to or coordinate with another entity, including, for example, a foundation created for this purpose?

Questions for the CCWG-AP to Consider (cont.)

8. What aspects should be considered to determine an appropriate level of overhead that supports the principles outlined in this charter?
9. What is the governance framework that should be followed to guide distribution of the proceeds? The issues addressed by a governance framework could include (but does not have to be limited to):
 - a) What are the specific measures of success that should be reported upon?
 - b) What are the criteria and mechanisms for measuring success and performance?
 - c) What level of evaluation and reporting should be implemented to keep the community informed about how the funds are ultimately used?
10. To what extent (and, if so, how) could ICANN, the Organization or a constituent part thereof, be the beneficiary of some of the auction funds?
11. Should a review mechanism be put in place to address possible adjustments to the framework following the completion of the CCWG-AP's work and implementation of the framework should changes occur that affect the original recommendations (for example, changes to legal and fiduciary requirements and/or changes to ICANN's mission)?

Can I participate?

- ⦿ You can learn more about CCWG-AP and its work on its community wikispace: <https://community.icann.org/x/yJXDAw>
- ⦿ If you would like to observe or participate in the CCWG Auction Proceeds, there are various ways to do so: as an individual participant; a mailing list observer; or as a public consultation respondent. Please contact gnso-secs@icann.org for further information.
- ⦿ For more on how to get involved and levels of involvement, visit: <https://www.icann.org/news/announcement-2-2016-12-13-en>

Review of mechanism descriptions

Agenda item #4

Overview

- ⦿ Summary overview by Sarah Berg, Ponsonby Partners, ICANN Contracted Advisor on Strategic Development and Philanthropic Programs
- ⦿ See summary descriptions proposed:
<https://community.icann.org/x/lxkFBQ>

Review of proposed responses to remaining charter questions

Agenda item #5

Background

- ⦿ CCWG identified that a number of charter questions would need to be answered from the perspective of the mechanism(s) identified as the answer might differ depending on the mechanism at hand
- ⦿ Leadership team and staff reviewed charter question templates that were developed by CCWG during initial stages of work, external expert input provided, and developed proposed responses to the charter questions
- ⦿ CCWG requested to review and provide input – a number of comments / suggestions were received.

Questions/Outstanding Items (1/4)

- ⊙ **Charter Question 3** - What safeguards are to be put in place to ensure that the creation of the framework, as well as its execution and operation, respect the legal and fiduciary constraints that have been outlined in this memo?
 - Need to determine whether additional/different safeguards need to be put in place at the project oversight level. See also charter question #9.
 - Mechanism 1: Who would be responsible for the oversight? And how could a separation from ICANN be arranged to avoid capture of funds for ICANN ORG related purposes? What safeguards will the department have when policies and procedures to manage it are being designed by ICANN?

- ⊙ **Charter Question 5** - What conflict of interest provisions and procedures need to be put in place as part of this framework for fund allocations?
 - For Mechanisms 1-3, what is the model for separation of staff?
 - For Mechanisms 2-3, how can the department benefit from services / expertise inside of ICANN Org and how are those services / expertise then paid for, is this also expected to be funded from auction proceeds?
 - Do we need a description of goals and objectives the fund should support? Or is the mission driven environment, in combination with bylaws, public interest, etc, sufficient?
 - if we agree to define goals and objectives, how do we want to do this?

Questions/Outstanding Items (2/4)

- ⦿ **Charter Question 11** - Should a review mechanism be put in place to address possible adjustments to the framework following the completion of the CCWGs work and implementation of the framework should changes occur that affect the original recommendations (for example, changes to legal and fiduciary requirements and/or changes to ICANN's mission)?
 - What type of review mechanism should be put in place to carry out such a review – is this part of the oversight provided by ICANN Org / Board or is a separate process / mechanism needed? Is the process / mechanism needed different depending on the mechanism chosen?
 - Comment: ICANN org or Board would need the ability to conduct sufficient level of review in order to meet fiduciary responsibilities.

- ⦿ **Charter Question 8** - What aspects should be considered to determine an appropriate level of overhead that supports the principles outlined in this charter?
 - Need to be specific here about what is meant with overhead – overhead for running the mechanism/program, or overhead for the administration of projects, or both?

Questions/Outstanding Items (3/4)

- **Charter Question 9** - What is the governance framework that should be followed to guide distribution of the proceeds? The issues addressed by a governance framework
 - How may the implementation of the requirements differ between the different mechanisms?
 - How might governance committees, steering committees, oversight councils, or advisory boards mentioned by experts play into each model?
 - For Mechanism 2, what is the allocation of responsibility in this model between ICANN and collaborating organizations?
 - Comment: Under 2, ICANN handles grantmaking in-house (i.e. money to fund applicant wiring from ICANN-managed bank account) while Under 4, existing charitable org handles fund distribution (with ICANN's supervision; money to fund applicant wiring from external-org bank account).
 - For Mechanism 3-4, what would this look like in practice when working with an established entity? How closely would ICANN need to be involved in elements of the governance framework listed above. Which elements CAN be delegated?

Questions/Outstanding Items (4/4)

- ⦿ **Charter Question 10** - To what extent (and, if so, how) could ICANN, the Organization or a constituent part thereof, be the beneficiary of some of the auction funds?
 - Could ICANN, the Organization or a constituent part thereof, such as an SO or AC, be an applicant under any circumstances? CCWG may need to confirm with ICANN Org/Board if this may be possible.
 - Comment: I have the impression that the Board (perhaps Asha or Becky) mentioned that ICANN would never be in the position as a fund applicant.

Review of work plan and next steps

Agenda item #6

Remaining Steps & Proposed Timeline

Date	Work items
12 July 2018 (CCWG meeting)	Finalize mechanism descriptions & responses to remaining charter questions for inclusion into the Initial Report
26 July 2018 (CCWG meeting)	Review other charter questions and confirm whether preliminary agreements still stand (incl. review of previous survey results)
9 August 2018 (CCWG meeting)	Integrate mechanism descriptions & charter questions into one document Review criteria and make determination of whether certain criteria are more important than others Launch poll to determine ranking of mechanisms based on criteria previously identified.
23 August 2018 (CCWG meeting)	Review results of poll results and discuss how to present these in the Initial Report
6 September 2018 (CCWG meeting)	Gap analysis – deal with any issues that have not been addressed / covered
13 September (staff)	Staff to share first draft of Initial Report for CCWG Review
20 September (CCWG meeting)	Review of Initial Report
20 – 30 September 2018	Continue review on mailing and/or additional meetings
1 October 2018	Publication of Initial Report for public comment
ICANN63	Present Initial Report to Community and solicit input

Confirm Next Meeting - Thursday 12 July at 14.00 UTC

Agenda item #7