

DATE: June 18, 2018

TO: CCWG-AP

FROM: Sarah Berg, Ponsonby Partners

ICANN Contracted Advisor on Strategic Development and Philanthropic Programs

RE: Mechanisms to Consider for Charitable Entities and Programs

Dear CCWG-Auction Proceeds,

Thank you for the opportunity to share more about the mechanisms you are currently considering. As you assess the needs and priorities of this group, I'd like to refer back to a few core elements you should define in this process: your resources and your objectives for impact.

Clearly defining the impact you want to achieve will focus the approach of your mechanism. Once you know this, it might be helpful to consider your mechanisms through three lenses: control (who has fiduciary duty and governance), competence (who is leading, managing, and implementing the process), and lastly, cost (elements of direct and indirect costs).

Mechanism 1: Internal ICANN Department

An internal department dedicated to grant solicitation, implementation and evaluation is created within the ICANN organization. All grants are listed in ICANN's annual tax recordings.

Control

ICANN Board Governance: Yes

ICANN Stakeholder Engagement: Yes

Sunset: Yes

International Capabilities: Yes, non-US grants will need to go through due diligence process (equivalency determination and expenditure responsibility) and the Office of Foreign Assets Control (OFAC).

Competence

Start Up process: Minimal.

Team responsible for grant requests, implementation, evaluation, oversight: Grants management professional required.

Communications: ICANN resources may be allocated for public relations and external content

Administrative: audit, legal, investment responsibilities, risk management: ICANN Staff manages the audit, legal and investments. Grant activity are listed on the annual tax filings with the US government.

Cost

Start-up cost: Minimal

General annual expenses: For illustrative purposes, if ICANN had a fund of USD \$X Million and wanted to sunset the granting period in 10 years (2028), ICANN would have an annual budget of roughly 1/10th of the total. Depending on costs related to the programs, a portion of the *annual* budget will cover all program functions, investment fees, administrative expenses including staff, legal/audit, property etc.

ICANN Transparency and Accountability: To be considered by the CCWG team.

Mechanism 2: ICANN+ External Organization

ICANN Internal Granting Department collaborates with an existing non-profit, such as a donor-advised-fund (DAF). Internal staff would manage ICANN messaging, communication and oversight and would be able to control grants. Each year the team could grant funds to a DAF to manage, administrate and implement. ICANN directs the distribution but the investment control is managed by the DAF. DAF grants are on the DAF Annual Tax Filing.

ICANN could also consider working with an outside organization or consultant to manage specific aspects of the granting process depending on the objectives of the funds.

Control

ICANN Board Governance: Yes, although the DAF is responsible for the grant management and due diligence. Once funds are transferred, it is a legal donation to the DAF.

ICANN Stakeholder Engagement: Yes, the stakeholders can assist in deciding how grants should be allocated.

Sunset: Yes

International Capabilities: Yes

Competence

Start Up process: Minimal, ICANN chooses a DAF partner.

Team responsible for grant requests, implementation, evaluation, oversight: Shared between ICANN and DAF, ICANN determines that partnership.

Communications: ICANN resources may be allocated for public relations and external content

Administrative: audit, legal, investment responsibilities, risk management: ICANN directed funds are managed by ICANN. The DAF directed funds are managed by the DAF.

Cost

Start-up cost: Minimal

General annual expenses: Smaller staff to manage ICANN internal responsibilities, note: DAFs often charge a 1-2% annual management fee in addition to investment fees.

ICANN Transparency and Accountability: To be considered by the CCWG Team.

Mechanism 3: ICANN Foundation

A new charitable structure is created separate from ICANN which would be responsible for solicitation and evaluation of proposals, and disbursement process.

Control

ICANN Board Governance: A separate, independent entity requires a separate board, but ICANN could suggest or trigger the appointment of board members.

ICANN Stakeholder Engagement: Yes, the foundation could host an advisory committee comprised of ICANN stake holders

Sunset: Yes

International Capabilities: Private foundations are required to demonstrate foreign compliance with expenditure responsibility including pre-inquiry, grant agreements, reporting, confirmation of separate accounts, and listing on the annual tax filings.

Competence

Start Up process: Requires a separate entity identification number, approval from the US Internal Revenue Service, (which may take months), legal drafting of bylaw and agreements

Team responsible for grant requests, implementation, evaluation, oversight: Grants management professional required.

Communications: Communications consultant or resources required.

Administrative: audit, legal, investment responsibilities, risk management: Must be managed separately, accountings and annual tax documents filed separately from ICANN. It is required that 5% of the principal (account value) is disbursed each year. Investments must be managed well: excise tax on capital gains of 1-2%.

Cost

Start-up cost: Time for IRS approval, legal fees to draft bylaws and agreements

General annual expenses: For illustrative purposes, if ICANN had a fund of USD \$XM and wanted to sunset the granting period in 10 years (2028), ICANN would have an annual budget of

roughly 1/10th of the total. Depending on costs related to the programs, a portion of the *annual* budget will cover all program functions, investment fees, administrative expenses including staff, legal/audit, property etc.

ICANN Transparency and Accountability: To be determined by the CCWG, but this is a separate entity from ICANN and therefore “arm’s length.”

Mechanism 4: External Entity

According to the CCWG: An established entity (e.g. foundation or fund) is used (ICANN would organize the oversight of processes to ensure mission and fiduciary duties are met.)

This type of mechanism doesn’t necessarily exist. As all entities have their own mission/vision statements, they will not usually give away control and/or oversight to another entity. There are a few examples where it *could* work, but it would be very similar to Mechanism 2:

- ICANN creates an internal committee to partner with grant making consultants to disburse funds.
- ICANN partners with an academic institution such as a university or research center and a partnership is formed based on core objectives.
- ICANN partners with a global banking institution that has a grant making arm.