Draft Responses to Charter Questions

Updated 11 July 2018

Overview of Mechanisms Provided by Sarah Berg:

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.

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.

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.

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.

Outstanding Questions Regarding Responses to Charter Questions for Each Mechanism

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?

- Do additional or different safeguards need to be put in place at the project oversight level for each Mechanism?
- Under Mechanism 2, does the CCWG need to discuss further the division of labor between ICANN and the external department and how will this impact the model of oversight?
- For Xavier/Sam: For the creation of the framework using Mechanism 1, it is the expectation that legal and fiduciary requirements will be met through existing safeguards that ICANN org has already in place, such as internal controls, contracting and disbursement guidelines, corporate compliance effort, and review by the Board. What are some examples of these safeguards?
- For Xavier: For Mechanism 1 and 2, with respect to fiduciary requirements for directors and officers of ICANN, what elements need to be added to this list, if any?

Charter Question #5: What conflict of interest provisions and procedures need to be put in place as part of this framework for fund allocations?

- How will conflict of interest requirements differ for different elements on the process and program: setting up of mechanism, running of mechanism, project evaluation, project application & implementation?
- At this point, is any additional work needed on the CCWG in defining goals and objectives the fund should support?
- Under Mechanisms 1 and 2, does the CCWG need to further discuss to what extent there needs to be separation of staff? If no funds are allocated to ICANN org, does this impact considerations related to separation of staff? If separation is required, what is intended to be achieved?
- Under Mechanisms 1 and 2, does the CCWG need to further discuss how the department can 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? Can we draw on ICANN's experience with IANA as a model?

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)?

- The CCWG has noted that very small grants may get disbursed in a single payment, rather than in a series of payments over time. Should the CCWG define what small grant means? Should it define the total amount that is available for very small grants (amount X in total)? Should it set a rational limit on grants to make sure that there is a reasonable relationship between the costs to perform diligence over and analyze the application and the ultimate value of the grant?
- Should the CCWG further discuss what review mechanism should be put in place to carry out such a review for each mechanism? Is this part of the oversight provided by ICANN Org / Board / Board committee or is a separate process / mechanism needed, noting the ICANN org or Board would need the ability to conduct sufficient level of review in order to meet fiduciary responsibilities? Is the process / mechanism needed different depending on the mechanism chosen? For example, should the review be undertaken by community, board, ICANN ORG members, overseen by an independent small technical team of evaluators?

Charter question #8: What aspects should be considered to determine an appropriate level of overhead that supports the principles outlined in this charter?

- Does the CCWG need to come to an agreement about what is considered "overhead" to respond to this charter question? Overhead for running the mechanism/program, or overhead for the administration of projects, or both?
    - One perspective provided in recent comments: high-level overhead includes grant management and decision-making. To estimate the cost, it is necessary to estimate the number of projects per year to be funded and number of project officers. Additional 7% overhead is added for services including administration, finance, legal, and communications. This may be addressed by the Auction Board sub-committee.
- A range of perspectives has been provided on this Charter question: See https://community.icann.org/display/CWGONGAP/Charter+Question+Templates?preview=/64084540/66072541/CCWG%20Charter%20Question%208%20-%20Template%20-%20upd%2029%20May%202017.docx. What are the key points of agreement from the group that can be used to respond to this charter question?

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 could include (but does not have to be limited to):

- **What are the specific measures of success that should be reported upon?**

- **What are the criteria and mechanisms for measuring success and performance?**

- **What level of evaluation and reporting should be implemented to keep the community informed about how the funds are ultimately used?**

    - Question for Sam/Xavier or Sarah Berg: How may the implementation of the requirements differ between the different mechanisms?
        - Sarah Berg advised, in general, "When considering your resources, goals and objectives, it is critical to define ICANN's level of control over the distribution of funds. You may want to view this with a two-pronged approach: 1. Who has the fiduciary responsibility to govern and oversee the distribution? 2. How is the multi-stakeholder culture of ICANN represented in the disbursement? What are the checks and balances between these two components of control? Are there other elements of control that need to be considered?" It may be helpful for the WG to consider these questions with respect to each model.
        - Additional comment from CCWG member: Requirements will be similar across models, although overhead will be higher if work is completed externally.
    - Does the CCWG need come to an agreement on possible roles of governance committees, steering committees, oversight councils, or advisory boards in each model?
        - One perspective shared in comments: This should be designed by the Board Auction Committee.
        - Sarah Berg noted that under Mechanism 3, ICANN could create an Advisory Committee for the foundation, comprised of ICANN stakeholders.
    - Does the CCWG need to come to an agreement on the allocation of responsibility in Mechanism 2 between ICANN and collaborating organizations?
        - From one perspective, ICANN handles grantmaking in-house in this model (i.e. money to fund applicant wiring from ICANN-managed bank account) in this model.
        - From another perspective (Sarah Berg), in this model, 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.

- Question for Sam/Xavier: For Mechanisms 3 and 4, how closely would ICANN need to be involved in elements of the governance framework listed below? Which elements CAN be delegated?

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?

- o Could ICANN, the Organization or a constituent part thereof, such an SO or AC, be an applicant under any circumstances? Does the CCWG need to confirm with the ICANN Board if this is possible?
  - o If ICANN could be a fund recipient, one possible option is that ICANN receives access to the fund for major projects that are not covered by the ICANN Org budget, projects can be defined by ICANN alone or in combination with other entities.
    - ▪ Per Sarah Berg, it would be technically feasible for ICANN to receive access to funds under Mechanism 1 and 2, but not 3. Additional clarification may be needed.

	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?

Mechanism #1: A new ICANN Proceeds Allocation Department is created as part of ICANN Org	For the creation of the framework: It is the expectation that legal and fiduciary requirements will be met through existing safeguards that ICANN Org has already in place, such as internal controls, contracting and disbursement guidelines, corporate compliance effort, and review by the Board.
	
	In relation to the execution and operation: The following safeguards are expected to be in place [from Xavier's presentation on audit - June 2017]:
	● Annual independent audit;
	   ○ ICANN is subject to such audit because it is a non-profit organization based in the US (other countries may have different requirements);
	   ○ The objective of the audit is "to obtain reasonable assurance about whether the financial statements are free from material misstatement";
	   ○ The auditor's opinion, if clean, is: "The financial statements [...] present fairly, in all material respects, the financial position of ICANN [...] in accordance with US accounting principles."

- The audit does not have the objective to verify every transaction, or entry, or detect fraud.
- Note: Audit of ICANN org is separate from audit related to the fund.

- Fiduciary requirements for directors and officers of ICANN:
  - Disbursement of funds must be for projects that are in accordance with ICANN's mission.
  - Disbursements must be made for lawful purposes.
  - Oversight and management of the funds (Investment policy, compliance, performance management). ICANN has experience in segregating funds into different accounts and maintaining separate reporting, as demonstrated through ICANN organization's maintenance and reporting of the financials on the New gTLD Program as separate from ICANN's operational fund. If the fund is part of ICANN's core structure, it will be important to clearly define who will be responsible for oversight. Measures will be need to ensure separation between the department handling funds and the rest of the organization.
  - Xavier has noted that additional elements contribute to defining fiduciary requirements

- Requirements resulting from ICANN's accountability and transparency to the public:
  - Engage with the Community on planning, performance and reporting of activities carried out.
  - Be available and ready to respond to inquiries, publish documents and information.

- ICANN's operational objectives:
  - ICANN must ensure policies and procedures exist and are effective to manage the applications for funding:
    - Receive applications for funding,
    - Evaluate applications for funding, including whether the application is aligned with ICANN's mission and meets additional requirements for funding,
    - Organize quality control and audit of applications evaluations,
    - Organize and support reconsideration procedures for evaluation decisions,
    - Organize a complete evaluation after 3 years and adjustment, if needed
  - ICANN must be able to manage and address risks (including possible legal defense).
  - ICANN Finance must design and implement verification procedures to ensure compliance of the funds disbursements with the approved objective, IRRESPECTIVE of the mechanism retained to organize the evaluation and disbursement.
    - Organize disbursement process and monitor disbursements,
    - Monitor the compliance of the recipient's use of the funds with the intended purpose of the grant (which justified approving the application),
    - Safeguards for financial operations must be carefully considered in this model and implemented with appropriate oversight,
  - ICANN must put in place reporting and publication processes to ensure transparency on evaluation procedures, results, and usage of funds once a year.

	■ Explain/report on/publish results of evaluations, ■ Explain/report on/publish analyses of the effective use of the funds. Possible summary response [provided by Sam/Xavier as part of external expert input]: 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).

Mechanism #2: A new ICANN Proceeds Allocation Department is created as part of ICANN Org which would work in collaboration with an existing charitable organization(s)	<u>For the creation of the framework</u>: It is the expectation that legal and fiduciary requirements will be met through existing safeguards that ICANN Org has already in place, such as internal controls, contracting and disbursement guidelines, corporate compliance effort, and review by the Board. In addition, it is the assumption that the existing charitable organization would already have applicable safeguards in place (but these would need to be confirmed as part of the selection process to identify a suitable charitable organization(s).
	
	<u>In relation to the execution and operation</u>: The following safeguards are expected to be in place at ICANN **and** the existing charitable organization:
	● Annual independent audit;
	  ○ ICANN is subject to such audit because it is a non-profit organization based in the US (other countries may have different requirements);
	  ○ The objective of the audit is "to obtain reasonable assurance about whether the financial statements are free from material misstatement";
	  ○ The auditor's opinion, if clean, is: "The financial statements [...] present fairly, in all material respects, the financial position of ICANN [...] in accordance with US accounting principles."
	  ○ ICANN's independent financial audit does not have the objective to verify every transaction, or entry, or detect fraud. If audit requirements are different for existing charitable organization(s), those requirements would govern for each respective organization
	  ○ Note: Audit of ICANN org is separate from audit related to the fund.
	
	● Fiduciary requirements for directors and officers of ICANN:
	  ○ Disbursements must be in accordance with ICANN's mission.
	  ○ Disbursements must be made for lawful purposes.
	  ○ Oversight and management of the funds (Investment policy, compliance, performance management).
	  ○ ICANN would have to consider what other controls might be necessary to have in place to monitor external providers for potential of fraud or mismanagement in the discharge of their roles in the mechanism.
	  ○ Xavier has noted that additional elements contribute to defining fiduciary requirements

	● Requirements resulting from ICANN's accountability and transparency to the public:
	  ○ Engage with the Community on planning, performance and reporting of activities carried out.
	  ○ Be available and ready to respond to inquiries, publish documents and information.
	
	● ICANN's operational objectives:
	  ○ ICANN must ensure policies and procedures exist and are effective to manage the applications for funding:
	      ■ Receive applications for funding,
	      ■ Evaluate applications for funding, including whether the application is aligned with ICANN's mission and meets additional requirements for funding,
	      ■ Organize quality control and/or audit of applications evaluations,
	      ■ Organize and support reconsideration procedures for evaluation decisions,
	      ■ Complete evaluation after 3 years and adjustment, if needed
	  ○ ICANN must be able to manage and address risks (including possible legal defense).
	  ○ ICANN must design and implement verification procedures to ensure compliance of the funds disbursements with the approved objective, IRRESPECTIVE of the mechanism retained to organize the evaluation and disbursement.
	      ■ Organize disbursement process and monitor disbursements,
	      ■ Monitor the compliance of the recipient's use of the funds with the intended purpose of the grant (which justified approving the application),
	  ○ ICANN must put in place reporting and publication processes to ensure transparency on evaluation procedures, results, and usage of funds.
	      ■ Explain/report on/publish results of evaluations,
	      ■ Explain/report on/publish analyses of the effective use of the funds.
	
	Possible summary responses [provided by Sam/Xavier as part of external expert input]:
	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).
	
	Note, no input was received by external experts to the following question: 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?

Mechanism #3: A new structure would be created e.g. ICANN	The new structure would need to have governance and management frameworks put into place to address all of the issues previously raised for mechanisms 1 & 2. This would include development of appropriate policies, processes

foundation	and internal controls. Additional safeguards would also include considerations of how ICANN participates in the governance of the new structure (appoint entire Board? part of Board? etc.) [Input provided by Sam/Xavier] 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. [Input provided by Laurent Elder] A board of governors could be established that would meet on regular basis. One possibility is that ICANN could chair this board.
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)	The entity/entities would need to have governance and management frameworks in place to address all of the issues previously raised for mechanisms 1 & 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.

	Charter Question #5: What conflict of interest provisions and procedures need to be put in place as part of this framework for fund allocations?

Mechanism #1: A new ICANN Proceeds Allocation Department is created as part of ICANN Org	Conflict of interest provisions are required:
	
	a. input by Sam/Xavier:
	  i. processes of controls on conflict of interest
	  ii. phases of the process of disbursement should 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).
	  iii. 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.
	  iv. ICANN is prohibited from benefitting insiders to ICANN. In terms of guidance to the drafting team, the CCWG should be encouraged to consider a limitation that any design of a proceed allocation program include a prohibition on auction proceeds being awarded to businesses that are owned in

whole or in part by ICANN board members, executives or staff or their family members and awards that may be used to pay compensation to ICANN board members, executives or staff or their family members. This is an appropriate limitation when ICANN itself is responsible for decision making over the expenditure of funds. Because of the special community nature of this work, we recommend that the charter include safeguards and requirements for segregation of duties amongst those who develop the requirements and those who assist in the identification of potential recipients. Moreover, an important safeguard against the possibility of self-dealing or private benefit could be prohibit the CCWG from recommending awards of assistance to businesses owned in whole or in part by the CCWG members (participating in any phase of the CCWG process), their family members, and awards that would be used to pay compensation to CCWG members or their family members. Similarly, a commitment from those who participated in the designing of the process to refrain from applying for an award could be a limitation that the CCWG imposes on its membership. If any CCWG members are participating on behalf of an organization, it might be appropriate to include a prohibition on awards further, to include considerations of board members, executives, staff or family members for those participating organizations. In any event, the CCWG charter should include a conflict of interest requirement for the completion and maintenance of up-to-date statements of interests, as well as adherence to a conflict of interest policy similar to those used at the Board level.

   b. input by the CCWG:
- i. people/organisation(s) in charge of the funds allocation should be strictly independent from applicants
- ii. those that decide on the allocation of the funds should commit to high standards of ethics
- iii. only legal entities can apply for funding
- iv. COI statements should be publicly available
- v. COI statements should be submitted together with the request for funds
- vi. selection criteria should be public
- vii. selection criteria should be objective
- viii. Independent selection committees that represent different stakeholders/regions are an important step to be neutral

   c. input by external experts:
- i. specify that all funded projects could be audited
- ii. make sure to do intensive institutional risk assessments of every organization funded

Already in place (input by Sam/Xavier):

1. ICANN has experience in segregating funds
2. ICANN has the experience and internal controls to maintain appropriate accounting practices as

	contemplated. 3. ICANN also has related practices, such as its procurement policy and disbursement policy, which introduce controls over proper procurement and budgetary commitments. 4. ICANN Org is able to capture financial information by project, which is expected to also contribute to transparency and accountability on the program. Additional questions/potential gaps: 1. Do we need additional description of goals and objectives the fund should support? Or is the mission driven environment, in combination with bylaws, public interest ... etc ... sufficient? Does the preamble sufficient capture goals and objectives at this point? 2. if we agree to define goals and objectives, how do we want to do this? 3. Separation of staff? If no funds are allocated to ICANN org, does this impact considerations related to separation of staff? 4. If separation is required, what is intended to be achieved?

Mechanism #2: A new ICANN Proceeds Allocation Department is created as part of ICANN Org which would work in collaboration with an existing charitable organization(s)	Conflict of interest provisions are required:
	
	1. input by Sam/Xavier:
	   a. have a processes of controls on conflict of interest in place
	   b. phases of the process of disbursement should 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).
	   c. 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.
	   d. ICANN will remain responsible for making sure that ICANN's mission is served through the project to which funds are disbursed
	   e. have clearly defined roles and responsibilities incumbent upon both ICANN and the other organization, and how these roles are carried out operationally.
	   f. ICANN is prohibited from benefitting insiders to ICANN. In terms of guidance to the drafting team, the CCWG should be encouraged to consider a limitation that any design of a proceed allocation program include a prohibition on auction proceeds being awarded to businesses that are owned in whole or in part by ICANN board members, executives or staff or their family members and awards that may be used to pay compensation to ICANN board members, executives or staff or their family

members. This is an appropriate limitation when ICANN itself is responsible for decision making over the expenditure of funds. Because of the special community nature of this work, we recommend that the charter include safeguards and requirements for segregation of duties amongst those who develop the requirements and those who assist in the identification of potential recipients. Moreover, an important safeguard against the possibility of self-dealing or private benefit could be prohibit the CCWG from recommending awards of assistance to businesses owned in whole or in part by the CCWG members (participating in any phase of the CCWG process), their family members, and awards that would be used to pay compensation to CCWG members or their family members. Similarly, a commitment from those who participated in the designing of the process to refrain from applying for an award could be a limitation that the CCWG imposes on its membership. If any CCWG members are participating on behalf of an organization, it might be appropriate to include a prohibition on awards further, to include considerations of board members, executives, staff or family members for those participating organizations. In any event, the CCWG charter should include a conflict of interest requirement for the completion and maintenance of up-to-date statements of interests, as well as adherence to a conflict of interest policy similar to those used at the Board level.

2. input by the CCWG:
   a. people/organisation(s) in charge of the funds allocation should be strictly independent from applicants
   b. those that decide on the allocation of the funds should commit to high standards of ethics
   c. only legal entities can apply for funding
   d. COI statements should be publicly available
   e. COI statements should be submitted together with the request for funds
   f. selection criteria should be public
   g. selection criteria should be objective
   h. Independent selection committees that represent different stakeholders/regions are an important step to be neutral

3. input by external experts:
   a. specify that all funded projects could be audited
   b. make sure to do intensive institutional risk assessments of every organization funded

Already in place (input by Sam/Xavier):

1. ICANN has experience in segregating funds
2. ICANN has the experience and internal controls to maintain appropriate accounting practices as contemplated.
3. ICANN also has related practices, such as its procurement policy and disbursement policy, which introduce

	controls over proper procurement and budgetary commitments. 4. ICANN Org is able to capture financial information by project, which is expected to also contribute to transparency and accountability on the program. Additional questions/potential gaps: 1. Do we need additional description of goals and objectives the fund should support? Or is the mission driven environment, in combination with bylaws, public interest ... etc ... sufficient? Does the preamble sufficient capture goals and objectives at this point? 2. if we agree to define goals and objectives, how do we want to do this? 3. Separation of staff? If no funds are allocated to ICANN org, does this impact considerations related to separation of staff? 4. 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? Can we draw on ICANN's experience with IANA as a model?

Mechanism #3: A new structure would be created e.g. ICANN foundation	Conflict of interest provisions are required:
	
	1. input by Sam/Xavier:
	    a. ICANN will remain responsible for making sure that ICANN's mission is served through the project to which the funds are disbursed.
	    b. ICANN is prohibited from benefitting insiders to ICANN. In terms of guidance to the drafting team, the CCWG should be encouraged to consider a limitation that any design of a proceed allocation program include a prohibition on auction proceeds being awarded to businesses that are owned in whole or in part by ICANN board members, executives or staff or their family members and awards that may be used to pay compensation to ICANN board members, executives or staff or their family members. This is an appropriate limitation when ICANN itself is responsible for decision making over the expenditure of funds. Because of the special community nature of this work, we recommend that the charter include safeguards and requirements for segregation of duties amongst those who develop the requirements and those who assist in the identification of potential recipients. Moreover, an important safeguard against the possibility of self-dealing or private benefit could be prohibit the CCWG from recommending awards of assistance to businesses owned in whole or in part by the CCWG members (participating in any phase of the CCWG process), their family members, and awards that would be used to pay compensation to CCWG members or their family members. Similarly, a commitment from those who participated in the designing of the process to refrain from applying for an award could be a limitation that the CCWG imposes on its

	membership. If any CCWG members are participating on behalf of an organization, it might be appropriate to include a prohibition on awards further, to include considerations of board members, executives, staff or family members for those participating organizations. In any event, the CCWG charter should include a conflict of interest requirement for the completion and maintenance of up-to-date statements of interests, as well as adherence to a conflict of interest policy similar to those used at the Board level.
	2. input by the CCWG
	    a. people/organisation(s) in charge of the funds allocation should be strictly independent from applicants
	    b. those that decide on the allocation of the funds should commit to high standards of ethics
	    c. only legal entities can apply for funding
	    d. COI statements should be publicly available
	    e. COI statements should be submitted together with the request for funds
	    f. selection criteria should be public
	    g. selection criteria should be objective
	    h. Independent selection committees that represent different stakeholders/regions are an important step to be neutral
	3. input by external experts
	    a. ICANN to chair a Board of governors
	    b. a new organization or entity will need both an advisory and accountability governance structure (one body could provide both, but it's difficult to find expertise in fiduciary/financial and organizational accountability issues, as well as subject matter expertise).
	
	Additional questions/potential gaps:
	
	5. Do we need additional description of goals and objectives the fund should support? Or is the mission driven environment, in combination with bylaws, public interest ... etc ... sufficient? Does the preamble sufficient capture goals and objectives at this point?
	1. if we agree to define goals and objectives, how do we want to do this?

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)	1. input by Sam/Xavier:
	    a. ICANN will remain responsible for making sure that ICANN's mission is served through the project to which the funds are disbursed.
	    b. 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.
	    c. ICANN is prohibited from benefitting insiders to ICANN. In terms of guidance to the drafting team, the CCWG should be encouraged to consider a limitation that any design of a proceed allocation

program include a prohibition on auction proceeds being awarded to businesses that are owned in whole or in part by ICANN board members, executives or staff or their family members and awards that may be used to pay compensation to ICANN board members, executives or staff or their family members. This is an appropriate limitation when ICANN itself is responsible for decision making over the expenditure of funds. Because of the special community nature of this work, we recommend that the charter include safeguards and requirements for segregation of duties amongst those who develop the requirements and those who assist in the identification of potential recipients. Moreover, an important safeguard against the possibility of self-dealing or private benefit could be prohibit the CCWG from recommending awards of assistance to businesses owned in whole or in part by the CCWG members (participating in any phase of the CCWG process), their family members, and awards that would be used to pay compensation to CCWG members or their family members. Similarly, a commitment from those who participated in the designing of the process to refrain from applying for an award could be a limitation that the CCWG imposes on its membership. If any CCWG members are participating on behalf of an organization, it might be appropriate to include a prohibition on awards further, to include considerations of board members, executives, staff or family members for those participating organizations. In any event, the CCWG charter should include a conflict of interest requirement for the completion and maintenance of up-to-date statements of interests, as well as adherence to a conflict of interest policy similar to those used at the Board level.

2. input by the CCWG
    a. people/organisation(s) in charge of the funds allocation should be strictly independent from applicants
    b. those that decide on the allocation of the funds should commit to high standards of ethics
    c. only legal entities can apply for funding
    d. COI statements should be publicly available
    e. COI statements should be submitted together with the request for funds
    f. selection criteria should be public
    g. selection criteria should be objective
    h. Independent selection committees that represent different stakeholders/regions are an important step to be neutral

3. input by external experts
    a. contract between an entity such as ICANN seeking to disburse funds and the organization that will handle the application and disbursement process: typically a grant contribution agreement or an MoU
    b. oversight mechanisms could be differentiated: for the established entity, governance could focus on broad programmatic, administrative and financial issues related to the whole org, whereas a specific governance body would oversee programmatic efficiency and effectiveness for the specific fund.

	Additional questions/potential gaps: 6. 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? Does the preamble sufficient capture goals and objectives at this point? 1. if we agree to define goals and objectives, how do we want to do this?

	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)?
Mechanism #1: A new ICANN Proceeds Allocation Department is created as part of ICANN Org	[As suggested by the ICANN Board] "Proceeds should be allocated in tranches over a period of years to ensure the Board is meeting its obligations". This would allow for adjustments to the framework if/when needed, noting that changes may have legal, operational, and cost impacts. Tranches may be used to fund large grants over a period of years or to support projects that could be funded in a single year. Very small grants may get disbursed in a single payment. [From the CCWG Template for charter question #11]: Reviews are important, as mechanisms to improve, be transparent and plan for future development. They offer opportunities for innovation, steer direction, fine-tuning strategy. A combination of internal and external reviews is desirable to capture a multi-faceted process. Review processes should not be used to change purpose without the support of the same community that provided the original mandate – if this is deemed necessary, a community process should be used.
Mechanism #2: A new ICANN Proceeds Allocation Department is created as part of ICANN Org which would work in collaboration with an existing charitable organization(s)	[As suggested by the ICANN Board] "Proceeds should be allocated in tranches over a period of years to ensure the Board is meeting its obligations". This would allow for adjustments to the framework if/when needed, noting that changes may have legal, operational, and cost impacts. Tranches may be used to fund large grants over a period of years or to support projects that could be funded in a single year. [From the CCWG Template for charter question #11]: Reviews are important, as mechanisms to improve, be transparent and plan for future development. They offer opportunities for innovation, steer direction, fine-tuning strategy. A combination of internal and external reviews is desirable to capture a multi-faceted process. Review

	processes should not be used to change purpose without the support of the same community that provided the original mandate – if this is deemed necessary, a community process should be used.
Mechanism #3: A new structure would be created e.g. ICANN foundation	[As suggested by the ICANN Board] "Proceeds should be allocated in tranches over a period of years to ensure the Board is meeting its obligations". This would allow for adjustments to the framework if/when needed, noting that changes may have legal, operational, and cost impacts. Tranches may be used to fund large grants over a period of years or to support projects that could be funded in a single year. [From the CCWG Template for charter question #11]: Reviews are important, as mechanisms to improve, be transparent and plan for future development. They offer opportunities for innovation, steer direction, fine-tuning strategy. A combination of internal and external reviews is desirable to capture a multi-faceted process. Review processes should not be used to change purpose without the support of the same community that provided the original mandate – if this is deemed necessary, a community process should be used.
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)	[As suggested by the ICANN Board] "Proceeds should be allocated in tranches over a period of years to ensure the Board is meeting its obligations". This would allow for adjustments to the framework if/when needed, noting that changes may have legal, operational, and cost impacts. Tranches may be used to fund large grants over a period of years or to support projects that could be funded in a single year.

	Charter question #8: What aspects should be considered to determine an appropriate level of overhead that supports the principles outlined in this charter?
Mechanism #1: A new ICANN Proceeds Allocation Department is created as part of ICANN Org	See https://community.icann.org/display/CWGONGAP/Charter+Question+Templates?preview=/64084540/66072541/CCWG%20Charter%20Question%208%20-%20Template%20-%20upd%2029%20May%202017.docx for different perspectives on this topic. To be further discussed.
Mechanism #2: A new ICANN Proceeds Allocation Department is created as part of ICANN Org which would work in collaboration with	See https://community.icann.org/display/CWGONGAP/Charter+Question+Templates?preview=/64084540/66072541/CCWG%20Charter%20Question%208%20-%20Template%20-%20upd%2029%20May%202017.docx for different perspectives on this topic. To be further discussed.

an existing charitable organization(s)	
Mechanism #3: A new structure would be created e.g. ICANN foundation	See https://community.icann.org/display/CWGONGAP/Charter+Question+Templates?preview=/64084540/66072541/CCWG%20Charter%20Question%208%20-%20Template%20-%20upd%2029%20May%202017.docx for different perspectives on this topic. To be further discussed.
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)	See https://community.icann.org/display/CWGONGAP/Charter+Question+Templates?preview=/64084540/66072541/CCWG%20Charter%20Question%208%20-%20Template%20-%20upd%2029%20May%202017.docx for different perspectives on this topic. To be further discussed.

	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 could include (but does not have to be limited to): ● What are the specific measures of success that should be reported upon? ● What are the criteria and mechanisms for measuring success and performance? ● What level of evaluation and reporting should be implemented to keep the community informed about how the funds are ultimately used?
Mechanism #1: A new ICANN Proceeds Allocation Department is created as part of ICANN Org	By handling grantmaking in-house, ICANN has fine tuned control over elements of the governance framework and day-to-day implementation of the framework. [Input from Sam and Xavier] The following elements must be included in the governance framework: ICANN must ensure policies and procedures exist and are effective to manage the applications for funding. ● Receive applications for funding, ● Evaluate applications for funding, ● Organize quality control and/or audit of applications evaluations, ● Organize and support reconsideration procedures for evaluation decisions,

	[Jose Manuel (Web Foundation) offered guidance on this element for in-house grantmaking - see response to General Question #5] ICANN must be able to manage and address risks (including possible legal defense). ● Risk assessment of projects receiving grants may be conducted ICANN must design and implement verification procedures to ensure compliance of the funds disbursements with the approved objective, IRRESPECTIVE of the mechanism retained to organize the evaluation and disbursement. ● Organize disbursement process and monitor disbursements, ● Monitor the compliance of the recipient's use of the funds with the intended purpose of the grant (which justified approving the application), ● Audits of projects receiving grants may be conducted. The due diligence and audit requirements could vary depending on the nature, size and length of projects funded as well as country of origin. [Ricardo Rivera (BNDES) discussed methodology used by BNDES for measuring success of projects. See response to Mechanism 1, question 5.] ICANN must put in place reporting and publication processes to ensure transparency on evaluation procedures, results, and usage of funds. ● Explain/report on/publish results of evaluations, ● Explain/report on/publish analyses of the effective use of the funds. Clear roles and responsibilities should be established for different parties involved in the process. From one perspective, it is important to have an appeals process in place.
Mechanism #2: A new ICANN Proceeds Allocation Department is created as part of ICANN Org which would work in collaboration with an existing charitable organization(s)	By handling grantmaking in-house, ICANN has fine tuned control over elements of the governance framework and day-to-day implementation of the framework. It may also draw from elements of the governance framework already established by collaborating organizations. From one perspective, if one (or multiple) existing charitable organization(s) is chosen and contracted to work with ICANN, there should be an ICANN-led joint advisory committee or task force to oversee the governance and accountability framework. [Input from Sam and Xavier] The following elements must be included in the governance framework: ICANN must ensure policies and procedures exist and are effective to manage the applications for funding.

	● Receive applications for funding, ● Evaluate applications for funding, ● Organize quality control and/or audit of applications evaluations, ● Organize and support reconsideration procedures for evaluation decisions, [Jose Manuel (Web Foundation) offered guidance on this element for in-house grantmaking - see response to General Question #5] [Input from Sam and Xavier] ICANN must be able to manage and address risks (including possible legal defense). ● Risk assessment of projects receiving grants may be conducted [Input from Sam and Xavier] ICANN must design and implement verification procedures to ensure compliance of the funds disbursements with the approved objective, IRRESPECTIVE of the mechanism retained to organize the evaluation and disbursement. ● Organize disbursement process and monitor disbursements, ● Monitor the compliance of the recipient's use of the funds with the intended purpose of the grant (which justified approving the application), ● Audits of projects receiving grants may be conducted. The due diligence and audit requirements could vary depending on the nature, size and length of projects funded as well as country of origin. [Ricardo Rivera (BNDES) discussed methodology used by BNDES for measuring success of projects. See response to Mechanism 1, question 5.] [Input from Sam and Xavier] ICANN must put in place reporting and publication processes to ensure transparency on evaluation procedures, results, and usage of funds. ● Explain/report on/publish results of evaluations, ● Explain/report on/publish analyses of the effective use of the funds. Clear roles and responsibilities should be established for different parties involved in the process. From one perspective, it is important to have an appeals process in place.
Mechanism #3: A new structure would be created e.g. ICANN foundation	Because this mechanism entails creation of a new entity, ICANN will likely have fine tuned control when setting up the governance framework. A new organization/entity will need both advisory and accountability governance. [Input from Sam and Xavier] The following elements must be included in the governance framework:

	ICANN must ensure policies and procedures exist and are effective to manage the applications for funding. ● Receive applications for funding, ● Evaluate applications for funding, ● Organize quality control and/or audit of applications evaluations, ● Organize and support reconsideration procedures for evaluation decisions, ICANN must be able to manage and address risks (including possible legal defense). ● Risk assessment of projects receiving grants may be conducted ICANN must design and implement verification procedures to ensure compliance of the funds disbursements with the approved objective, IRRESPECTIVE of the mechanism retained to organize the evaluation and disbursement. ● Organize disbursement process and monitor disbursements, ● Monitor the compliance of the recipient's use of the funds with the intended purpose of the grant (which justified approving the application), ● Audits of projects receiving grants may be conducted. The due diligence and audit requirements could vary depending on the nature, size and length of projects funded as well as country of origin. ICANN must put in place reporting and publication processes to ensure transparency on evaluation procedures, results, and usage of funds. ● Explain/report on/publish results of evaluations, ● Explain/report on/publish analyses of the effective use of the funds. Clear roles and responsibilities should be established for different parties involved in the process. From one perspective, it is important to have an appeals process in place.
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)	While an established entity will have its own processes, procedures, and policies in place to support its work, ICANN will still need to implement a governance framework to oversee the entity. [Input from Sam and Xavier] ICANN's fiduciary responsibility will require that in ensures that external resources used are free of conflict of interest, are competent, and are available to deliver the required services according to defined requirements. Outsourcing any part of the process does not take away from ICANN the responsibility over the work outsourced. Mechanisms of selection and monitoring need to be put in place to manage the outsourced work as if it is performed internally. According to Laurent Elder (IDRC), oversight mechanisms could be differentiated between the two entities: for the established entity, governance could focus on broad programmatic, administrative and financial issues related to the

whole organization, whereas a specific governance body would oversee programmatic efficiency and effectiveness for the specific fund.

[Input from Sam and Xavier] The following elements must be included in the governance framework:

ICANN must ensure policies and procedures exist and are effective to manage the applications for funding.
- Receive applications for funding,
- Evaluate applications for funding,
- Organize quality control and/or audit of applications evaluations,
- Organize and support reconsideration procedures for evaluation decisions,

ICANN must be able to manage and address risks (including possible legal defense).
- Risk assessment of projects receiving grants may be conducted

ICANN must design and implement verification procedures to ensure compliance of the funds disbursements with the approved objective, IRRESPECTIVE of the mechanism retained to organize the evaluation and disbursement.
- Organize disbursement process and monitor disbursements,
- Monitor the compliance of the recipient's use of the funds with the intended purpose of the grant (which justified approving the application),
- Audits of projects receiving grants may be conducted. The due diligence and audit requirements could vary depending on the nature, size and length of projects funded as well as country of origin.

ICANN must put in place reporting and publication processes to ensure transparency on evaluation procedures, results, and usage of funds.
- Explain/report on/publish results of evaluations,
- Explain/report on/publish analyses of the effective use of the funds.

Clear roles and responsibilities should be established for different parties involved in the process.

From one perspective, it is important to have an appeals process in place.

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?

Mechanism #1: A new ICANN Proceeds Allocation Department is created as part of ICANN Org	ICANN, the Organization or a constituent part thereof could potentially be a beneficiary where: ● Funds are allocated to replenish the reserve fund, distinct from the granting process. ● For discussion by the CCWG: Could ICANN, the Organization or a constituent part thereof, such an SO or AC, be an applicant under any circumstances? CCWG may need to confirm with ICANN Org/Board if this may be possible. ○ If ICANN could be a fund recipient, one possible option is that ICANN receives access to the fund for major projects that are not covered by the ICANN Org budget, projects can be defined by ICANN alone or in combination with other entities. Per Sarah Berg, it would be technically feasible for ICANN to receive access to funds under Mechanism 1. Additional clarification may be needed. There is not currently agreement about whether ICANN should be eligible to receive funds. For responses to this question from CCWG members and survey results on this question, see: https://community.icann.org/display/CWGONGAP/Charter+Question+Templates If ICANN were eligible to apply through the granting process under Mechanism 1, particular attention would need to be paid to maintaining separation of staffing, budget, and operations between the Proceeds Allocation Department and other parts of the organization that may apply for funds. ● Mechanism would likely be funded out of the auction proceeds, separate from ICANN's operating budget. ● Budget and staffing models could leverage ICANN's experience with other self-funded programs, such as the New gTLD Program. ● Model of separation could draw on ICANN's experience with the new gTLD program, PTI, and the IANA Stewardship Transition.
Mechanism #2: A new ICANN Proceeds Allocation Department is created as part of ICANN Org which would work in collaboration with an existing charitable organization(s)	ICANN, the Organization or a constituent part thereof could potentially be a beneficiary where: ● Funds are allocated to replenish the reserve fund, distinct from the granting process. ● For discussion by the CCWG: Could ICANN, the Organization or a constituent part thereof, such an SO or AC, be an applicant under any circumstances? CCWG may need to confirm with ICANN Org/Board if this may be possible. ○ If ICANN could be a fund recipient, one possible option is that ICANN receives access to the fund for major projects that are not covered by the ICANN Org budget, projects can be defined by ICANN alone or in combination with other entities. Per Sarah Berg, it would be technically feasible for ICANN to receive access to funds under Mechanism 2. Additional clarification may be needed. There is not currently agreement about whether ICANN should be eligible to receive funds. For responses to this question from CCWG members and survey results on this question, see: https://community.icann.org/display/CWGONGAP/Charter+Question+Templates

	If ICANN were eligible to apply through the granting process under Mechanism 2, particular attention would need to be paid to maintaining separation of staffing, budget, and operations between the Proceeds Allocation Department and other parts of the organization that may apply for funds. ● Mechanism would likely be funded out of the auction proceeds, separate from ICANN's operating budget. ● Budget and staffing models could leverage ICANN's experience with other self-funded programs, such as the New gTLD Program. ● Model of separation could draw on ICANN's experience with the new gTLD program, PTI, and the IANA Stewardship Transition.
Mechanism #3: A new structure would be created e.g. ICANN foundation	ICANN, the Organization or a constituent part thereof could potentially be a beneficiary where: ● Funds are allocated to replenish the reserve fund, distinct from the granting process. ● For discussion by the CCWG: Could ICANN, the Organization or a constituent part thereof, such an SO or AC, be an applicant under any circumstances? CCWG may need to confirm with ICANN Org/Board if this may be possible. ○ If ICANN could be a fund recipient, one possible option is that ICANN receives access to the fund for major projects that are not covered by the ICANN Org budget, projects can be defined by ICANN alone or in combination with other entities. Per Sarah Berg, it would not be possible for ICANN to receive access to funds under Mechanism 3. Additional clarification may be needed. There is not currently agreement about whether ICANN should be eligible to receive funds. For responses to this question from CCWG members and survey results on this question, see: https://community.icann.org/display/CWGONGAP/Charter+Question+Templates If ICANN were eligible to apply through the granting process under Mechanism 3, particular attention would need to be paid to ensuring that the ICANN foundation operates with measures in place to ensure that there are no real or perceived conflicts of interest in the distribution of grant funds.
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)	ICANN, the Organization or a constituent part thereof could potentially be a beneficiary where: ● Funds are allocated to replenish the reserve fund, distinct from the granting process. ● For discussion by the CCWG: Could ICANN, the Organization or a constituent part thereof, such an SO or AC, be an applicant under any circumstances? CCWG may need to confirm with ICANN Org/Board if this may be possible. ○ If ICANN could be a fund recipient, one possible option is that ICANN receives access to the fund for major projects that are not covered by the ICANN Org budget, projects can be defined by ICANN alone or in combination with other entities.

	There is not currently agreement about whether ICANN should be eligible to receive funds. For responses to this question from CCWG members and survey results on this question, see: https://community.icann.org/display/CWGONGAP/Charter+Question+Templates
	If ICANN were eligible to apply through the granting process under Mechanism 4, there would likely be fewer risks of real or perceived conflicts of interest in the distribution of grant funds compared to Mechanisms 1-3, since such an organization likely operates with some independence and already has mechanisms in place to address these concerns. At the same time, it would be important for to ensure that ICANN does not have inappropriate influence over individual grantmaking decisions.

As a reminder, the other charter questions to be expected to be addressed as part of the Initial Report are:

Charter Question 1 - What framework (structure, process and/or partnership) 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? As many details as possible should be provided, including any implementation guidance the CCWG may have in relation to the establishment of this framework as well as criteria for the selection / ranking of potential funding requests.
Charter Question 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 recognising the diversity of communities that ICANN serves? This should include recommendations on how to assess whether the proposed use is aligned with ICANN's Mission. Furthermore consideration is expected to be given to what safeguards, if any, need to be in place.
Charter Question 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? E.g. The timeframe for the operation of this new mechanism may provide the opportunity for long term support, or for funding to be released in tranches linked to milestone achievements, single or multiple disbursements.
Charter Question 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?

To review the templates that were developed for all charter questions, as well as a number of preliminary CCWG agreements, please see https://community.icann.org/x/PNrRAw.