

## ICANN Org Input in Response to CCWG Questions 24 March 2020

Public Comment from the BC on the Proposed Final Report [Question 2, Comment 5]: "The BC notes that the CCWG has already recognized that Bylaws must be amended to eliminate Request for Reconsideration and Independent Review Panel from the available remedies to challenge grants. These are amendments to Fundamental By-Laws and which should require Empowered Community approval."

- Question for ICANN Legal: It is the leadership team's understanding that a carve out would be needed from existing Accountability Mechanisms as any Board decision could be challenged under the existing Accountability Mechanisms (including the approval of allocation of auction proceeds). Therefore, an exemption is needed if Board decisions on auction proceeds are not challengeable under existing Accountability Mechanisms. Can you confirm that this is correct?
- Legal Response: Yes, this is correct. This will require an amendment to the Fundamental Bylaws, as the BC note suggests, in order to effectuate this carve out. The Fundamental Bylaws process requires Empowered Community approval. This does not mean that the Empowered Community must approve the CCWG Final Report, though we should be clear (as there is cross-over between the Decisional Participants in the Empowered Community and the Chartering Organizations for the CCWG) that a Bylaws change is necessary and will be forthcoming. Of course, the Bylaws change will have to be appropriately drafted and will be subject to all appropriate processes.

Public Comment from the BC on the Proposed Final Report [Question 1, Comment 5]: ". . .The BC is also concerned that the final recommendation does not contain sufficient detail to ensure that the empowered community retains the ability to oversee ICANNs proposed budget and the disbursement of the auction proceeds. In particular, **the Empowered Community should retain its ability to enforce accountability mechanisms related to items in the ICANN budget that are proposed to be allocated to grant making activity.** The Final Report should also clarify that any changes to the bylaws needed to implement the report are not intended to strip the Empowered Community of its budgetary authority."

- Question for ICANN Legal: Regarding the text in bold, it is not clear to the leadership team that the Empowered Community is relevant to the allocation of auction proceeds. As auction proceeds funds are kept and accounted for separately, does it even fall within the EC's purview?
- Legal Response: The place where the Empowered Community's powers come in is only in relationship its specified powers in the Bylaws. The Empowered Community powers includes rejection powers on the Five-year strategic plan, on the Five-year operating plan, on the annual operating plan and on the annual budget, which would include grant making activities as relevant. There are no plans to change any of those Empowered Community powers other than in the broader scope of carving out individual application decisions from ICANN's Reconsideration or Independent Review processes. To the extent that there are items represented in ICANN's budget or operating plans that relate to grant making activities, the Empowered Community powers would be applicable. If there are separate budgets or plans that are appropriate to maintain for ICANN's separate grant-making mechanism work, the details of how that interacts with the Bylaws-mandated budgets and plans will need to be addressed during implementation.