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New gTLD Auction Proceeds Cross Community Working Group

Community Update

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Agenda

1. Welcome & Introduction

2. Overview of Initial Report and Public Comment Opportunity

3. Initial Report: Preliminary Recommendations and Guidance for the Implementation Phase

4. Initial Report: Issues for Community Input

5. Expected Next Steps

6. Questions & Comments

Welcome & Introduction

What are New gTLD Auctions?



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

- 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 until the multistakeholder community develops a plan for their use. This plan must be authorized 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 October 2018, has:



26 members



49 participants



39 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
- As part of this proposal, the CCWG-AP is expected to review:
 - The scope of fund allocation
 - Due diligence requirements to uphold accountability and proper use of funds
 - How to deal with directly related matters such as potential or actual conflicts of interest
- 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 Requirements

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



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

The recommendations must support ICANN in adhering to its Mission and act exclusively in service to its charitable purpose. The Board remains responsible for determining consistency with ICANN's mission.



Private benefit concern:

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 (or funding any activity) that intervenes in a political campaign for a candidate for public office.



Should not be used for lobbying activities:

ICANN has limits on the amount of its budget that can be used for lobbying purposes (attempts to influence legislation). The auction proceeds should not be used for these lobbying purposes.

Legal and Fiscal Requirements (cont.)



Conflict of interest considerations:

The CCWG-AP has been advised to document how it takes conflicts of interest into consideration in its deliberations. The Board's fiduciary duty requires it to make decisions without conflicts of interest.



Accountability:

Throughout all phases of the disbursement process, ICANN must ensure it remains fully accountable for the proceeds, and to the purpose that has been assigned to them. ICANN's accountability to the public will therefore require implementing thorough mechanisms of evaluation, monitoring, and oversight before, during, and after disbursement.



Financial and fiduciary concerns

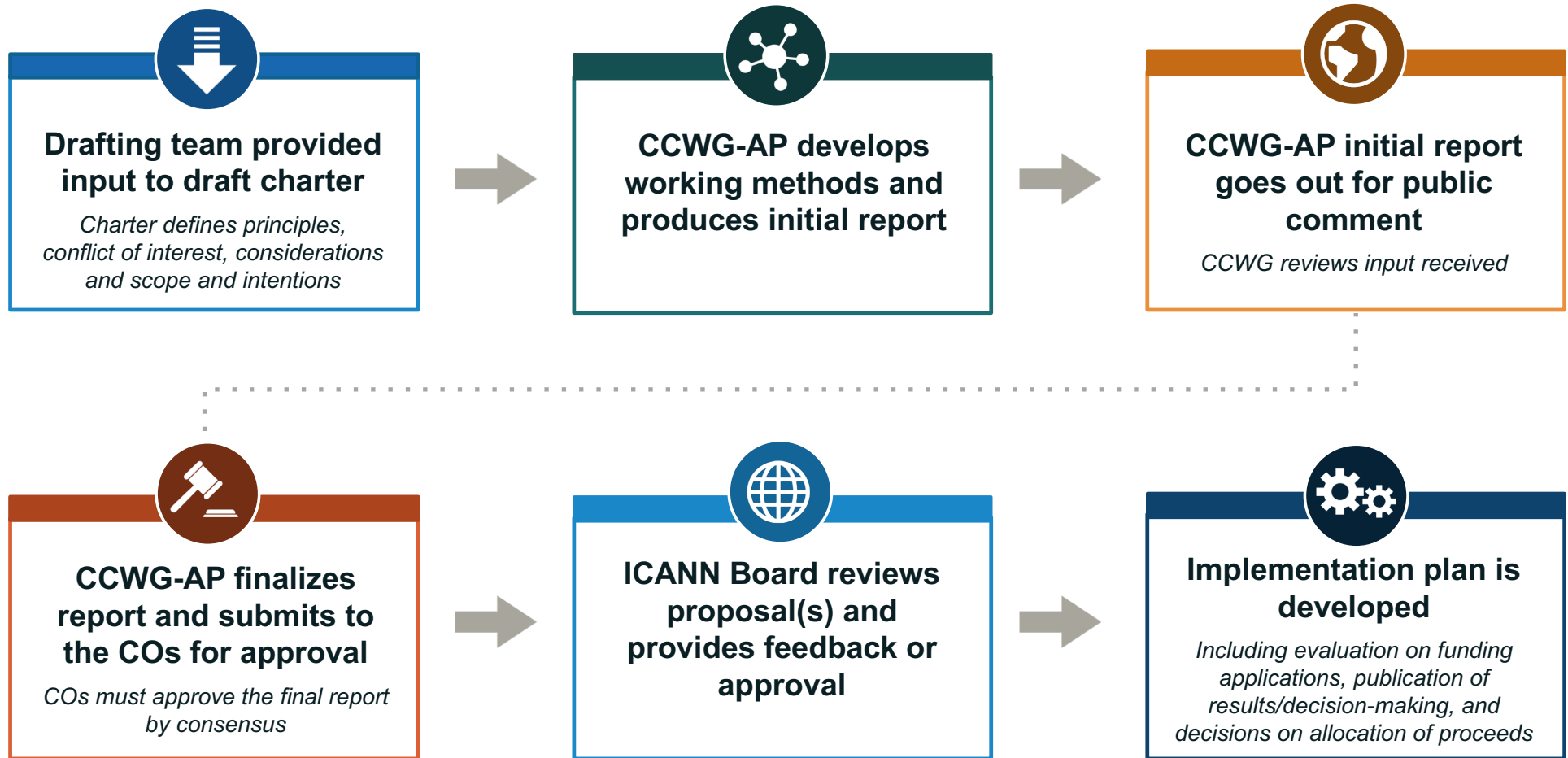
The Board and Officers of ICANN hold fiduciary duties to the organization that cross many concerns.



Learn more ▶

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

Process Development for Auction Proceeds Allocation



Phases of Work



Stage 1

Initial Run Through of all Charter Questions to assess initial responses, possible gating questions and common understanding of questions



Stage 4

Determine which mechanism(s) demonstrates most potential to meet CCWG expectations as well as conform with legal & fiduciary constraints



Stage 2

Address any charter questions that have been identified requiring a response before commencing the next phase (for example, charter question 2).



Stage 5

Answer charter questions (as organized per 1) for mechanism(s) that demonstrated the most potential



Stage 3

Compile list of possible mechanisms that could be considered by CCWG



Stage 6

Following consensus on mechanism and responses to charter questions, meeting legal, fiduciary and audit constraints, publish Initial Report for public comment

Public Comment Period on the Initial Report

- ⦿ On 8 October 2018, the CCWG-AP on New gTLD Auction Proceeds released its Initial Report for Public Comment.
- ⦿ The report sets out the core issues that the CCWG addressed in carrying out its charter. It provides preliminary recommendations and draft implementation guidance for possible mechanism(s) to distribute the auction proceeds. The report does NOT, nor is it intended to, make recommendations on specific projects or particular uses of proceeds.
- ⦿ The Public Comment period will close on 27 November 2018.
- ⦿ To comment, visit: <https://www.icann.org/public-comments/new-gtld-auction-proceeds-initial-2018-10-08-en>
- ⦿ Following the closing of the public comment forum, the CCWG will review the public comments received and update the report as needed and finalize it for submission to its Chartering Organizations.

Overview of Initial Report and Public Comment Opportunity

Initial Report Overview

Contents of the Initial Report:

- ⦿ Records the CCWG's discussions regarding options for a mechanism(s) to allocate the new gTLD Auction Proceeds in accordance with ICANN's Mission and Bylaws, prioritizing these options for further consideration
- ⦿ Offers guidance on objectives of fund allocation
- ⦿ Provides responses to questions included in the CCWG's charter
- ⦿ Puts forward a series of preliminary recommendations as well as guidance for the implementation phase
- ⦿ Reflects input provided by the ICANN Board
- ⦿ Raises additional questions for community input to help inform further deliberations by the CCWG

Mechanisms Considered in the Initial Report

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

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

Mechanism C: A new structure would be created e.g. ICANN foundation

Mechanism D: 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)

Charter Questions Answered in the Initial Report

The CCWG's [charter](#) contains a series of questions for the CCWG to answer in the course of its work. The CCWG provides responses to these questions in the Initial Report. Charter questions cover the following topics (see [charter](#) for details):

- Recommended framework(s) for disbursement of funds, including the extent to which ICANN may delegate aspects of the work
- Limitations of fund allocations, factoring in ICANN's mission
- Safeguards, conflict of interest provisions, and governance framework
- Timeframe for the operation of the fund allocation mechanism
- Considerations related to overhead
- The extent to which priority or preference should be given to organizations from developing economies, projects implemented in such regions and/or under represented groups
- The extent to which ICANN, the Organization or a constituent part thereof, may be the beneficiary of some of the auction funds
- Processes to review the framework for disbursement of funds

Initial Report: Preliminary Recommendations and Guidance for the Implementation Phase

Preliminary Recommendations (1/3)

Preliminary CCWG Recommendation #1: The CCWG recommends that either mechanism A (A new ICANN Proceeds Allocation Department is created as part of ICANN Org dedicated to grant solicitation, implementation and evaluation) or mechanism B (A new ICANN Proceeds Allocation Department is created as part of ICANN Org which would work in collaboration with an existing charitable organization(s)) is designed and implemented to allow for the disbursement of new gTLD Auction Proceeds. In addition to options A and B above, the CCWG welcomes community input on mechanism C, under which an ICANN Foundation is established. Mechanism C involves creation of a new charitable structure separate from ICANN which would be responsible for solicitation and evaluation of proposals, and the disbursement of the funds but which will be required to adhere to the principles/ICANN core mission in its purpose and allocation of auction proceeds as grants and to maintain a close oversight relationship by ICANN.

Based on the input received in response to the public comment period on this report and further deliberations by the CCWG taking into account these public comments, the CCWG may make changes to this recommendation in the Final Report. For example, the CCWG may be in a position to further narrow down its recommendation and identify a single preferred mechanism. Alternately, if after reviewing and deliberating on input received through public comment, the CCWG does not reach agreement on a single preferred mechanism it could recommend multiple options to the ICANN Board for further consideration. The ICANN Board will make a final decision on the path forward leveraging the CCWG's recommendations and work.

Preliminary Recommendations (2/3)

Preliminary CCWG Recommendation #2: The CCWG agreed that specific objectives of new gTLD Auction Proceeds fund allocation are:

- Benefit the development, distribution, evolution and structures/projects that support the Internet's unique identifier systems;
 - Benefit capacity building and underserved populations, and;
 - Benefit the open and interoperable Internet3
- New gTLD Auction Proceeds are expected to be allocated in a manner consistent with ICANN's mission.

Preliminary CCWG Recommendation #3: The implementation of the selected fund allocation mechanism should include safeguards described in the response to charter question 2.

Preliminary CCWG Recommendation #4: Robust conflict of interest provisions must be developed and put in place, regardless of which mechanism is ultimately selected.

Preliminary CCWG Recommendation #5: The CCWG has not yet come to agreement on whether ICANN Org or a constituent part thereof should be a beneficiary of some of the auction proceeds and as such would welcome input on this question during the public comment period so that an informed decision can be made.

Preliminary Recommendations (3/3)

Preliminary CCWG Recommendation #6: The mechanism must be implemented to enable the disbursement of the funds in an effective and judicious manner without creating a perpetual mechanism (i.e. not being focused on preservation of capital).

Preliminary CCWG Recommendation #7: Funding should be allocated in tranches over period of years. Tranches may be used to fund large grants over a period of years or to support projects that could be funded in a shorter period.

Preliminary CCWG Recommendation #8: One of the objectives for new gTLD Auction Proceeds fund allocation is that it allows the support of projects that support capacity building and underserved populations.

Preliminary CCWG Recommendation #9: As a standard element of program operations, an internal review of the mechanism should take place at regular intervals to identify areas for improvement and allow for minor adjustments in program management and operations.

Preliminary CCWG Recommendation #10: There should be a process to evaluate whether the program is effectively serving the identified goals and whether allocation of funds is having the intended impact.

Guidance for the Implementation Phase (1/2)

In relation to charter question #1 (what framework should be designed): The input provided in response to this charter question (see section 5) is expected to help inform the implementation of the mechanism that is ultimately selected.

In relation to charter question #2 (limitations of fund allocation): The CCWG recommends that the Guidance for proposal review and Selection (see Annex C) and list of example projects (see Annex D) are considered during the implementation process.

In relation to charter question #3 (safeguards to be put in place): Due concern needs to be given to ensuring that the required safeguards are in place as outlined in response to this question. Should mechanism B be selected, the additional safeguards outlined in the response to this charter question need to be factored in.

In relation to charter question #5 (conflict of interest procedures): The provisions outlined in response to this charter question should at a minimum be considered for inclusion in the conflict of interest requirements that are expected to be developed during the implementation phase. In the case of mechanism B, there will need to be clearly defined roles and responsibilities incumbent upon both ICANN and the other organization, and an agreement in place about how these roles are carried out operationally. The external organization would need to have appropriate conflict of interest policies and practices in place for the elements of the program it manages. In addition, ICANN will maintain oversight to ensure that legal and fiduciary obligations are met.

Guidance for the Implementation Phase (2/2)

In relation to charter question #6 (priority or preference be given to organizations from developing economies): During the implementation phase further consideration needs to be given to how this objective (priority or preference be given to organizations from developing economies) can be achieved, also in conjunction with the other objectives that have been recommended by the CCWG.

In relation to charter question #8 (appropriate level of overhead): ICANN and any partnering organizations are to design a cost-effective model that ensures an appropriate proportion of the funds are available for distribution to fund recipients. ICANN and any partnering organizations are to follow industry best practices, where appropriate and applicable. To the extent possible in light of program objectives and requirements, the principle of simplicity should apply.

In relation to charter question #11 (review mechanism): The response provided to this charter question (see section 5) should guide the development of the review framework during the implementation phase.

Initial Report: Issues for Community Input

Public Comment: Your Input Is Important (1/2)

While input is welcome on any aspect of the Initial Report, the CCWG is particularly interested in feedback through public comment on several issues.

Fund Allocation Mechanisms

- ⦿ Do you agree with the CCWG's analysis of the four possible mechanisms for allocation of auction funds?
- ⦿ Are there additional considerations that the CCWG should take into account as it works to narrow down the list of preferred mechanisms?
- ⦿ From your perspective, which mechanism is most appropriate to select and why?

Objectives of Fund Allocation

- ⦿ Do you agree with the objectives and limitations of of fund allocation recommended in the Initial Report? Are there additional issues of considerations that should be taken into account?

Public Comment: Your Input Is Important (2/2)

Safeguards, Conflict of Interest Provisions, and Governance Framework

- ⦿ Are there any additional issues or considerations the CCWG should take into account in refining recommendations on safeguards, conflict of interest provisions, and governance framework?

Grant Allocation to ICANN or its Constituent Parts

- ⦿ Do you believe that ICANN, the Organization or a constituent part thereof, should be eligible to be the beneficiary of some of the auction funds as a grant recipient? Why or why not?

Developing Economies and Under Represented Groups

- ⦿ In the allocation of funds, should priority or preference be given to organizations from developing economies, projects implemented in such regions and/or under represented groups? If yes, what sort of priority or preference should be given?

Expected Next Steps

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- ⦿ The public comment period for the Initial Report will remain open until **27 November 2018**.
- ⦿ The CCWG will consider input contained in the recent [Board letter](#), which the CCWG did not have time to discuss prior to publication of the Initial Report. The letter provides Board input on the [charter question](#): “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?”
- ⦿ Following the closing of the public comment forum, the CCWG will review and discuss the public comments received.
- ⦿ The report will be updated as needed and finalized for submission to its Chartering Organizations.

Board Letter – could ICANN be beneficiary of funds?

“1. Regarding the ICANN organization:

- a. The org currently does not foresee a situation where it would need to apply for the proceeds; and*
- b. ICANN maintains legal and fiduciary responsibility over the funds, and the directors and officers have an obligation to protect the organization through the use of available resources. In such a case, while ICANN would not be required to apply for the proceeds, the directors and officers would have a fiduciary obligation to use the funds to meet the organization’s obligations.*

2. Regarding ICANN SO/ACs:

- a. SO/AC structures that are not legal entities in their own right, independent of the multistakeholder ICANN structure, would be unable to apply for proceeds as they likely do not meet due diligence requirements as identified in the initial legal and fiduciary concerns memo.*
- b. This would not preclude consideration of applications from participants in an SO/AC structure that are also established legal entities outside the multistakeholder model provided:
 - I. The request does not include an activity or project that is or should be covered by ICANN’s operational budget;*
 - II. Conflict of interest considerations are met, including but not limited to ensuring that those applying are not part of the evaluation process; and*
 - III. All other application criteria are met.”**

<https://community.icann.org/download/attachments/64075095/2018-10-05%20Becky%20Burr%20and%20Maarten%20Botterman%20to%20Erika%20Mann%20and%20Ching%20Chiao%20CCWG-AP.pdf?version=1&modificationDate=1538862194000&api=v2>

Questions and Comments