At-Large Workspace: Proposed Final Report of the New gTLD Auction Proceeds Cross Community Working Group

Public Comment Close	Statement Name	Status	Assignee(s)	Call for Comments Open	Call for Comments Close	Vote Open	Vote Close	Date of Submission	Staff Contact and Email	Statement Number
14 February 2020	Proposed Final Report of the New gTLD Auction Proceeds Cross Community Working Group	**ADOPTED** 15Y, 0N, 0A	Maureen Hilyard Alan Greenberg Judith Hellerstein	20 January 2020	12 February 2020	13 February 2020	18 February 2020	13 February 2020	Emily Barabas emily.barabas@icann.org	**AL-ALAC-ST-0220-02-01-EN**

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Brief Overview

Purpose: This Public Comment proceeding seeks to obtain input on the proposed Final Report of the new gTLD Auction Proceeds Cross Community Working Group (CCWG). The CCWG is tasked with providing guidance on a framework to disburse the funds generated from auctions of last resort in 2012 application round of the new gTLD Program.

Current Status: The CCWG published its Initial Report in October 2018 for Public Comment and has made updates to the report in response to the input received and subsequent deliberations that it deems warrant another Public Comment period before the report is finalized for submission to its chartering organizations. The CCWG is requesting commenters to focus on the changes that have been made compared to the Initial Report before the CCWG finalizes its report.

Next Steps: Following review of Public Comments submitted, the CCWG will finalize its report for submission to its Chartering Organizations.

Section I: Description and Explanation

The proposed Final Report sets out the core issues that the new gTLD Auction Proceeds Cross-Community Working Group (CCWG) addressed in carrying out its charter since its inception in January 2017. It records the CCWG's discussions regarding options around a mechanism(s) to allocate the new gTLD Auction Proceeds in accordance with ICANN's mission and bylaws.

According to the new gTLD Auction Proceeds CCWG charter, the objective of the CCWG is to develop a proposal(s) for consideration by the chartering organizations. The CCWG charter includes a series of guiding principles that the CCWG is expected to take into account and lists 11 charter questions for the CCWG to answer in the course of its work. Responses to these charter questions are included in section 5 of this report.

The charter specifies that as part of this proposal, the CCWG is also expected to consider the scope of fund allocation, due diligence requirements that preserve ICANN's tax status as well as how to deal with directly related matters such as potential or actual conflicts of interest. This means that the CCWG will not decide, nor provide recommendations on which specific organizations or projects are to be funded or not. Please see the CCWG's charter for additional information about obligations and constraints that must be taken into account in the CCWG's work.

The CCWG considered all the input received on its Initial Report (see https://community.icann.org/x/zYMWBg) and requests commenters to focus on the main changes that were made in response to the input received and subsequent CCWG deliberations. These main changes are:

- Section 4.1: The descriptions of the mechanisms have been updated to focus on the elements that matter most to the CCWG's decision-making and to reflect additional input received from the ICANN Board and ICANN org. The proposed Final Report also reflects the CCWG's expected recommendation in relation to the mechanism, based on an indicative poll conducted amongst the CCWG members and participants.
- Section 5.1: Response to charter question 1 and corresponding recommendations regarding selection of the mechanism(s) have been updated to reflect further deliberations in the CCWG since publication of the Initial Report.
- Section 5.1: Response to charter question 7 and corresponding recommendations and guidance for the implementation phase have been added regarding the establishment of an Independent Project Applications Evaluation Panel, regardless of the mechanism implemented.
- Section 5.2: Responses to charter questions 3, 5, and 10 now include discussion of considerations specific to mechanism C, in addition to mechanisms A and B. to In the Initial Report, only considerations related to mechanisms A and B were provided in these responses, as these were the two most favored mechanisms at the time that the Initial Report was published.
- Section 5.2: Response to charter question 9 and corresponding recommendations have been updated to state that applicants and other parties should not have access to ICANN accountability mechanisms to challenge a decision from the Independent Project Applications Evaluation Panel to not approve an application.
- Section 5.3: Response to charter question 6 and corresponding guidance for the implementation phase has been updated to reflect that the CCWG discussed the possibility of using a "basket" approach to distributing funds and recommended further consideration of this approach during the implementation phase following input from the Board.
- Section 5.4: Response to charter question 11 and corresponding guidance for the implementation phase has been updated to reflect that the CCWG considered recommending the creation of two panels for the purposes of conducting reviews of the mechanism, but based on Board feedback, decided that the details about the review panel(s) should be established in the implementation phase.
- Annex C: Guideline #5 in Annex C has been updated to include input from the Board that auction proceeds should not be used to fund and supplement ICANN's operations, including existing or terminated programs, and should not be used for any applicant's ordinary operations.
- Annex D: Clarification has been provided that inclusion in this list not a guarantee of funding for projects that are designed to be identical or similar to examples included in Annex D.
- Annex E: New Annex: Glossary added.

Taking into account these changes, the CCWG is putting forward the following questions to the broader community:

- Do you support the CCWG's recommendation in relation to the preferred mechanism(s)? If no, please provide your rationale for why not.
- Do you have any concerns about the updates the CCWG has made, as listed above, in response to the Public Comment forum? If yes, please specify what changes concern you and why?
- Is there any further information you think the CCWG should consider, that it hasn't considered previously, in order to finalize its report for submission to the Chartering Organizations?

To facilitate your input and subsequent review of this input by the CCWG, you are requested to respond to these questions by filling out the following google form: https://forms.gle/CDNUjgkYUdCfZPAx6. In case you do not have access to google forms, you can also use the template included in Section III to provide your input.

Section II: Background

The CCWG commenced its deliberations at the end of January 2017 with 26 members appointed by Chartering Organizations, 49 participants and 28 observers. The CCWG is tasked with developing a proposal(s) for consideration by the Chartering Organizations on the mechanism that should be developed in order to allocate the new gTLD Auction Proceeds.

The New Generic Top-Level Domain (gTLD) Program established auctions as a mechanism of last resort to resolve the competition sets between identical or similar terms (strings) for new gTLDs – known as string contention. Most string contentions (approximately 90% of sets scheduled for auction) have been resolved through other means before reaching an auction conducted using ICANN org's authorized auction service provider, Power Auctions LLC. However, it was recognized from the outset that significant funds could accrue as a result of several successful auctions conducted by ICANN org. Following the ICANN Board's commitment to do so, the auction proceeds derived from such auctions have been reserved and earmarked within ICANN org until such time as the ICANN Board authorizes a plan for the appropriate use of the funds. These proceeds are to be considered as an exceptional, one-time source of revenue.

The new gTLD Auction Proceeds, derived from these last resort auctions, are distinct and ring-fenced funds. As such the Auction Proceeds are a single revenue source (derived from all new gTLD Auction Proceeds round 1). The proceeds, net of direct auction costs, are fully segregated in separate bank and investment accounts. The proceeds are invested conservatively and any interest accrues to the proceeds. 17 contention sets have been resolved via ICANN org auction since June 2014. The total net proceeds to date are $208 million USD.[1] Details of the proceeds can be found here. As of 29 July 2019, 3 contention sets remain to be resolved, but it is important to keep in mind that approximately 90% of contention sets scheduled for auction are resolved prior to the auction. The total amount of funding resulting from auctions, will not be known until all relevant applications have resolved contention.

Since the adoption of its charter, the CCWG has met regularly through telephone conferences and at ICANN public meetings. It has provided regular updates to the chartering organizations, and the broader community.

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[1] Of the total $233.5 million in proceeds collected, $133 million are proceeds from the .WEB and .HOTEL auctions (net of auction costs). The resolution of the .WEB contention set is being challenged through ICANN's accountability mechanisms. From the total, $36 million was allocated to the ICANN Reserve Fund. As of 30 June 2019, the net return on investment was $10.5m. Therefore, the total auction proceeds as of 30 June 2019 are $208 million, of which $133 million are proceeds from the .WEB auction.

Section III: Relevant Resources

- Proposed Final Report
- Google form
    - Word Version

Section IV: Additional Information

- CCWG charter
- CCWG wiki

Section V: Reports

FINAL VERSION SUBMITTED (IF RATIFIED)

The final version to be submitted, if the draft is ratified, will be placed here by upon completion of the vote.

AL-ALAC-ST-0220-02-01-EN.pdf

FINAL DRAFT VERSION TO BE VOTED UPON BY THE ALAC

The final draft version to be voted upon by the ALAC will be placed here before the vote is to begin.

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ALAC STATEMENT

Proposed Final Report of the New gTLD Auction Proceeds Cross-Community Working Group

The ALAC appreciates the opportunity to comment on the second report on the gTLD Auction Proceeds. ALAC participants have been following this issue closely and have discussed these issues internally prior to the issuance of this report. We discussed each of these mechanisms among the participants and member of this working group resulting in the following positions.

- **Do you support the CCWG's recommendation in relation to the preferred mechanism(s)? If no, please provide your rationale for why not.**

Discussion

During much of the CCWG Auction Proceeds duration, the ALAC Members and Participants have taken widely disparate positions on which mechanism to select, with support for Mechanisms A, B and C. Ultimately, those in favor of Mechanism C shifted to Mechanism B.

There was significant debate on which to finally select. Among the issues noted were:

- Mechanism B required outsourcing but did not specify exactly what functions would be outsourced (over and above the requirement for all Mechanisms to utilize an independent Evaluation Panel). Moreover over the course of the CCWG discussions, different Members had expressed varying beliefs as to what functions would be outsourced.
- Mechanism A allows outsourcing if viewed as advantageous, and in fact ICANN often outsources parts of its responsibilities which are not core to overseeing its Bylaw-mandated responsibilities. Thus Mechanism A could end up being comparable to Mechanism B, but provided more management flexibility in deciding how the varying aspects of the project would be carried out.

ALAC Decision

While several Members of the ALAC Auction Proceeds team originally preferred Mechanism B where ICANN worked with a non-profit organisation already adept in the evaluation, selection and the allocation and distribution of grant funds, **CONSENSUS WAS ARRIVED AT FOR Mechanism A.** The ALAC notes that presumption of the independent panel, with no connection to or control by either ICANN Org or the ICANN Board (preferably contracted to a suitable non-profit or a set of experts in the field of grant selection and allocation) is a CRITICAL part of this decision and the ALAC would strongly object and withdraw support if that condition changes.

- **Do you have any concerns about the updates the CCWG has made, as listed above, in response to the Public Comment forum? If yes, please specify what changes concern you and why?**

At Large agrees with the CCWG-Auction Proceeds decision on Recommendation #2. As we strongly believe that there needs to be an Independent Project Applications Evaluation Panel to review and evaluate all proposals. The Panel's responsibility will be to evaluate and select project applications. We are in strong agreement that neither the Board nor Staff will be making decisions on individual applications. Members of the Independent Project Applications Evaluation Panel will not be selected based on their affiliation or representation but will be selected based on their grant-making expertise, ability to demonstrate independence over time, and relevant knowledge.

We are also in support of Recommendation #3 and agree with how the CCWG-Auction Proceeds has defined the objectives of new gTLD Auction Proceeds fund allocation.

- **Benefit the development, distribution, evolution and structures/projects that support the Internet's unique identifier systems;**
- **Benefit capacity building and underserved populations, or;**
- **Benefit the open and interoperable Internet (see Annex C of the report for the complete definition of this statement**

At Large also supports recommendations 4 through 6 and recommendations 9-12.

On recommendation 7, we believe it should read "Must not have access" instead of "should not have access" we are requesting this change because, in practice, ICANN ORG generally adheres to IETF RFC 2119 which states that the word "Must" or the terms "Required" or "Shall", mean that the definition is an absolute requirement of the specification. However, "Should" or the adjective "Recommended", mean that there may exist valid reasons to ignore a particular item, but the full implications must be understood and carefully weighed before choosing a different course.

On Recommendation 8, we do not believe that ICANN ORG should be able to participate in Auction Proceeds but we are not as clear on whether one of the representative bodies within one of the ICANN Constituencies, if they are legal entities in their own right, or whether an ALS which exists in its own right as a legal entity can submit a request provided that all applications meet the stipulated conditions and requirements, including legal and fiduciary requirements.

- **Is there any further information you think the CCWG should consider, that it hasn't considered previously, in order to finalize its report for submission to the Chartering Organizations?**

None.

DRAFT SUBMITTED FOR DISCUSSION

The first draft submitted will be placed here before the call for comments begins. The Draft should be preceded by the name of the person submitting the draft and the date/time. If, during the discussion, the draft is revised, the older version(S) should be left in place and the new version along with a header line identifying the drafter and date/time should be placed above the older version(s), separated by a Horizontal Rule (available + Insert More Content control).

(20 January 2020)