

ICANN
COMMUNITY FORUM

64

KOBE

9–14 March 2019



New gTLD Auction Proceeds Cross Community Working Group

Ching Chiao (ccNSO appointed co-chair)

ICANN64 | ccNSO Members Meeting
12 March 2019



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>

Issues for consideration

- ⦿ How to encourage attendance and participation in this phase of the work?
- ⦿ Is it acceptable for the CCWG to recommend more than 1 mechanism to the ICANN Board for its consideration, if more than 1 mechanism meets the criteria and objectives agreed to by the CCWG?
- ⦿ What (additional) information / updates does the ccNSO Council need in order to consider the Final Report in due time?

ccNSO participation in the CCWG

ccNSO appointed members

- Stephen Deerhake
- Peter Vergote
- Pablo Rodriguez
- Ching Chiao (co-chair)

Others (participants & observers):

<https://community.icann.org/pages/viewpage.action?pageId=63150102>

Thank you!

BACKGROUND

What is the new gTLD program?

- ⦿ **The goal of the New gTLD Program is to foster competition, innovation and choice in the domain name industry.**



- This is an Internet community-driven initiative that is enabling the largest expansion of the domain name system, ever.
- The New gTLD Program is managed by ICANN, which means it has taken shape through the multistakeholder model.
- ICANN expects over **1,200** new generic top-level domains to be introduced into the Internet over the next few years.

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.

What are proceeds

ICANN Operating and Reserve Funds

Contain day-to-day cash and reserves for ICANN operations.

Tied to ICANN budget and planning processes.

New gTLD Applicant Evaluation Fees

Pay for application evaluation costs, historical development costs repayment and "hard to predict" costs, including risks.

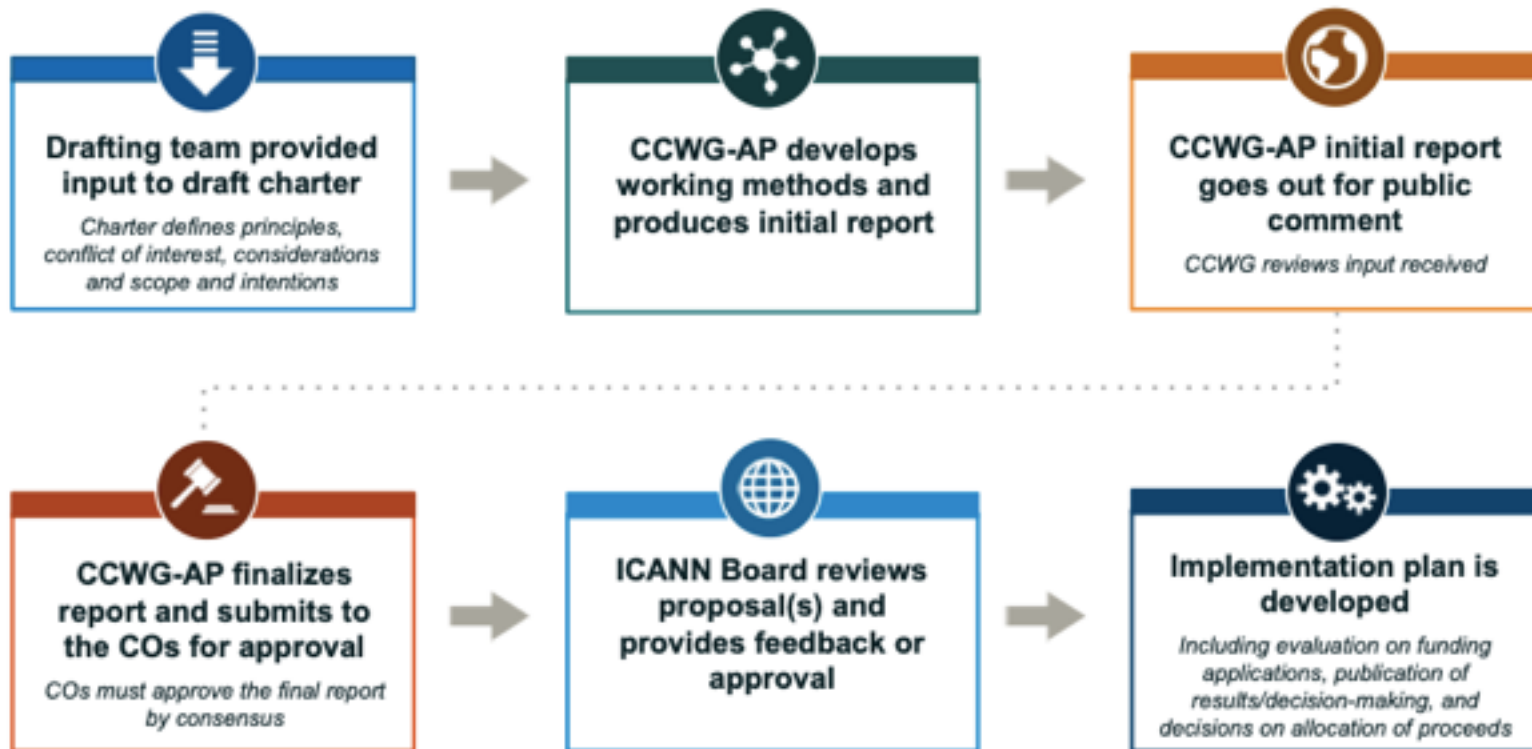
Unspent application fees fully segregated in dedicated bank and investment accounts.

New gTLD Program Auction Proceeds

"Ring-fenced" proceeds from last resort auctions to resolve string contention conducted via ICANN-authorized auction provider.

Proceeds (net of direct auctions costs) fully segregated in separate bank and investment accounts.

Process development for Auction Proceeds Allocation



INITIAL REPORT

Initial Report Overview

Contents of the Initial Report:

- ⦿ Records the CCWG's discussions regarding options for a mechanism 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 and guidance for the implementation phase
- ⦿ Raises additional questions for community input to support 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)

Questions answered in the initial report (1/2)

1. What framework 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?
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 recognizing the diversity of communities that ICANN serves?
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?
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?
5. What conflict of interest provisions and procedures need to be put in place as part of this framework for fund allocations?
6. Should any priority or preference be given to organizations from developing economies, projects implemented in such regions and/or under represented groups?
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?

Questions Answered in the Initial Report (2/2)

8. What aspects should be considered to determine an appropriate level of overhead that supports the principles outlined in this charter?
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):
 - a) What are the specific measures of success that should be reported upon?
 - b) What are the criteria and mechanisms for measuring success and performance?
 - c) What level of evaluation and reporting should be implemented to keep the community informed about how the funds are ultimately used?
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?
11. Should a review mechanism be put in place to address possible adjustments to the framework following the completion of the CCWG-AP's 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)?

Initial Report: preliminary recommendations

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.

Initial Report: guidance for implementation phase

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: community input

Input received on:

- ⦿ Fund allocation mechanisms
- ⦿ Objectives of fund allocation
- ⦿ Safeguards, Conflict of Interest Provisions, and Governance Framework
- ⦿ Grant Allocation to ICANN or its Constituent Parts
- ⦿ Developing Economies and Under Represented Groups

Current state of affairs & next steps

- ⦿ CCWG is reviewing and discussing the public comments received.
- ⦿ The report will be updated as needed and finalized for submission to its Chartering Organizations