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## CCWG New gTLDs Auction Proceeds Discussion

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### Session 12 - Auction Proceeds

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#### Session Objectives

- Update from CCWG New gTLDs Auction Proceeds Co-Chairs on recent developments to GAC Membership
- GAC membership discussion of GAC input on the CCWG Auction Proceeds Final Report.

#### Background

Significant funds have accrued as a result of several last-resort auctions conducted to resolve new gTLD contention sets between identical or similar terms for new gTLDs. The proceeds derived from these auctions have been reserved and earmarked until the ICANN Board authorizes a plan or mechanism for allocating them. The CCWG was formed for the purpose of proposing a mechanism for the Board's consideration. The GAC is one of the chartering organizations of the CCWG.

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. To facilitate its deliberations, the CCWG agreed to divide its work in phases (see details below).

As part of its recommendations, the CCWG also expected to consider the scope of fund allocations, 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. The CCWG will not make any recommendations or determinations with regards to specific funding decisions. This means that the CCWG will not decide, nor provide recommendations on which specific organizations or projects are to be funded or not.

The CCWG's [Initial Report was published for public comment and the public comment report was posted](#) shortly before the ICANN63 meeting in Barcelona. The GAC did not submit a comment during the public comment process, and the GAC last held a discussion on the work of the CCWG at ICANN64 in Kobe.

In the [Initial Report](#), the CCWG identified four possible mechanisms for further consideration that could serve as a possible organizational structure for fund allocation, namely:

- **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)

After analyzing these potential frameworks, and in light of legal and fiduciary constraints and other criteria identified by the CCWG and outlined in the report, the CCWG agreed to focus its responses to the charter questions primarily on [mechanisms A and B](#), which it considered - at the time - most promising to meet the constraints as well as criteria identified. Mechanism C was also addressed. Mechanism D was kept as a viable option but was less favored by CCWG members/participants. The CCWG held a session at ICANN63 and ICANN65 to provide the community with an update of the CCWG's progress and an overview of the Initial Report. The public comment period closed on 11 December 2018, after which a [Report of Public Comments](#) was published.

Beginning in January 2019, the CCWG met regularly to review and analyze the public comments received and determine what changes, if any, should be made to the recommendations and responses to the charter questions in the report. This included a working session at ICANN64 in Kobe to make progress on the review of public comments and receive input through participation from the broader community. Materials related to CCWG's consideration of public comments are

available on the CCWG wiki. The CCWG recently completed the review of public comments and identified a few major issues that are still under consideration for further review.

## ICANN Board Input

In late 2018, the ICANN Board provided [input](#) to the CCWG stating that:

- 1) ICANN Org does not anticipate applying for funds itself.
- 2) *“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...”*
- 3) *“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:*
  - a) *The request does not include an activity or project that is or should be covered by ICANN’s operational budget.*
  - b) *Conflict of interest considerations are met, including but not limited to ensuring that those applying are not part of the evaluation process.*
  - c) *All other application criteria are met.”*

The CCWG Auction Proceeds sought Board input on multiple questions on [29 July 2019](#) and [5 August 2019](#), to which the ICANN Board responded on [29 September 2019 via a written response](#), reiterating principles it provided to the CCWG Auction Proceeds in [May 30 2019](#).

The CCWG requested the Board’s input on *“whether it would be beneficial to recommend that auction proceeds are divided into segments and distributed to grant recipients in a series of “baskets,” each “with a different programmatic focus” and if the Board sees any risks or has suggestions related to this approach.”* The Board believes that the concept of “basketing” should be deferred.

The CCWG noted changes to Annex C (Guidance for Proposal Review and Selection) and Annex D (Examples of Projects) that have been made with input from ICANN Org in response to the Board’s concerns outlined in its submission to the Draft Report Public Comment Period in October 2018 and asked if the Board is supportive of these specific changes and for any additional concerns. The Board is supportive of the specific changes to Annex C and Annex D that were made in collaboration with ICANN org; however, as the CCWG is still in the process of updating its final report and this is an evolving process, the Board will rereview the full updated text of Annex C and Annex D once finalized.

In terms of the role of the community, the ICANN Board stressed its view of the importance of the community since it has an important role to play within this program, but noted that the focus should not necessarily be on the community’s role in program review, as is the case in the current version of the draft Final Report. The Board noted that they “encourage the CCWG to begin by identifying areas where it sees a role for the community other than in reviews. For example, [the Board] believe[s] that the community could contribute to the development of application materials and training materials for the independent panel that will review and act on specific applications.

Additionally, the Board emphasized the importance of ensuring that the Evaluation Panel tasked with the review of applications must be completely independent. The Board has stressed since the outset of this work that the eventual mechanism must be free from not only actual conflicts of interest but also potential or even perceived conflicts of interests.

In addition to the above requested feedback, the Board reiterates previous feedback on a second Public Comment Period, noting that *“given the changes under consideration by the group, particularly on the community involvement component and given the amount of proceeds at issue, it is important to take the additional time for further Public Comment.”*

<sup>1</sup>

### **Additional Relevant ICANN Board Action**

At the ICANN63 meeting in Barcelona, the ICANN Board directed the President and CEO, or his designee(s), to *“take all actions necessary to allocate US\$36 million of auction proceeds to the Reserve Fund, as soon as technically feasible”* (see, Resolution 2018.10.25.23). In its rationale for the resolution, the Board stated, *“The remaining auction proceeds continue to be segregated and are not intended to be used for day-to-day operations. The Board will review the CCWG recommendations for a disbursement mechanism, as approved by the chartering organizations, and will then make a decision on the mechanism by which available proceeds should be disbursed, for implementation by ICANN org.”* (see

<https://www.icann.org/resources/board-material/resolutions-2018-10-25-en#2.f>)

### **Issues**

1. Update from CCWG new gTLD Auction Proceeds Co-Chair on recent developments;
2. Discussion of a way forward to develop a GAC position on the matter;
3. Identify channels to provide GAC input (GAC participation via GAC representatives within the CCWG, public comment; input as Chartering Organization).

### **Leadership Proposal for GAC Action**

1. Consideration of possible further engagement within the CCWG for the GAC to consider best mechanism/opportunities for input on the final recommendations.
2. Identify GAC position(s) to provide GAC Input within the CCWG Auction Proceeds prior to the Final Report being published via GAC members on the CCWG; and
3. As a Chartering Organization of the CCWG, the GAC may wish to consider the Final Report once it is published and provide GAC Input.

### **Relevant Developments**

At the time of this briefing, the CCWG Auction Proceeds is working on revising the draft final report and considering final outstanding issues that need to be resolved before the publishing of the final report. The CCWG plans to finalize the proposed Final Report and further discussions will be held at ICANN66. The possible upcoming public comment will be an additional opportunity for the GAC to

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<sup>1</sup> [ICANN Board Liaison Reply to CCWP-AO Request for Input \(July-Aug 2019\) - 29 September 2019](#)

weigh in. Any public comment period will likely to be narrow in scope and focused on specific questions for input.

Additionally, regardless of whether a new public comment proceeding is opened, once the Final Report is complete, it will be sent to all of the chartering organizations, including the GAC, for their consideration.

### Current Positions

The GAC is a Chartering Organization of this CCWG. Nominated members of the GAC participating in the effort include Argentina, India and Iran. Participants include Cook Islands. Observers include Egypt, CTU and the United States.

No substantial discussions have been held at the time of this briefing on this topic by the GAC and no official GAC member input was submitted in the last public comment forum.

### Key Reference Documents

- [CCWG new gTLD Auction Proceeds Draft Final Report](#) (as of 29 July 2019)
- [CCWG new gTLD Auction Proceeds Initial Report](#)

### Further Information

- [CCWG Wiki Space](#)
- [CCWG Charter](#)
- [CCWG new gTLD Auction Proceeds Public Forum](#)
- [Public Comment Report](#)
- [CCWG Auction Proceeds Questions for ICANN Board and ICANN Org submitted on 30 July 2019](#)
- [CCWG Auction Proceeds Additional Question for ICANN Board and ICANN Org submitted on 5 August 2019](#)
- [Response from ICANN Board to CCWG Auction Proceeds - 29 September 2019](#)
- [Response from ICANN Org to CCWG Auction Proceeds - 10 October 2019](#)

### Document Administration

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