

I C A N N
POLICY FORUM

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PANAMA CITY

25-28 June 2018



New gTLD Auction Proceeds Cross Community Working Group

Status Update

What are New gTLD Auctions?



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

- 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 from the ICANN overall budget until the multistakeholder community develops a plan for their use. This plan must be approved 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 September 2017, has:



26 members



49 participants



30 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
- 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 Constraints

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



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

Due to ICANN's 501(c)(3) tax exempt, public charity status, it must adhere to its Mission and act exclusively in service to its charitable purpose.



Private benefit concern:

As an 501(c)(3) organization, 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 that intervenes in a political campaign for a candidate for public office.



Should not be used for lobbying activities:

ICANN engages in a small amount of activity that is classified as lobbying, which in the U.S. focuses on attempts to influence legislation.

Legal and Fiscal Constraints (cont.)



Conflict of interest considerations:

Taking decisions without conflict of interest is paramount. ICANN is prohibited from benefitting insiders to ICANN.



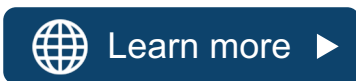
Procedural concerns:

ICANN will always be responsible for making sure that funds are provided to the appropriate organization both in confirmation of mission and in making sure that funds are provided in a manner consistent with ICANN's 501(c)(3) status.



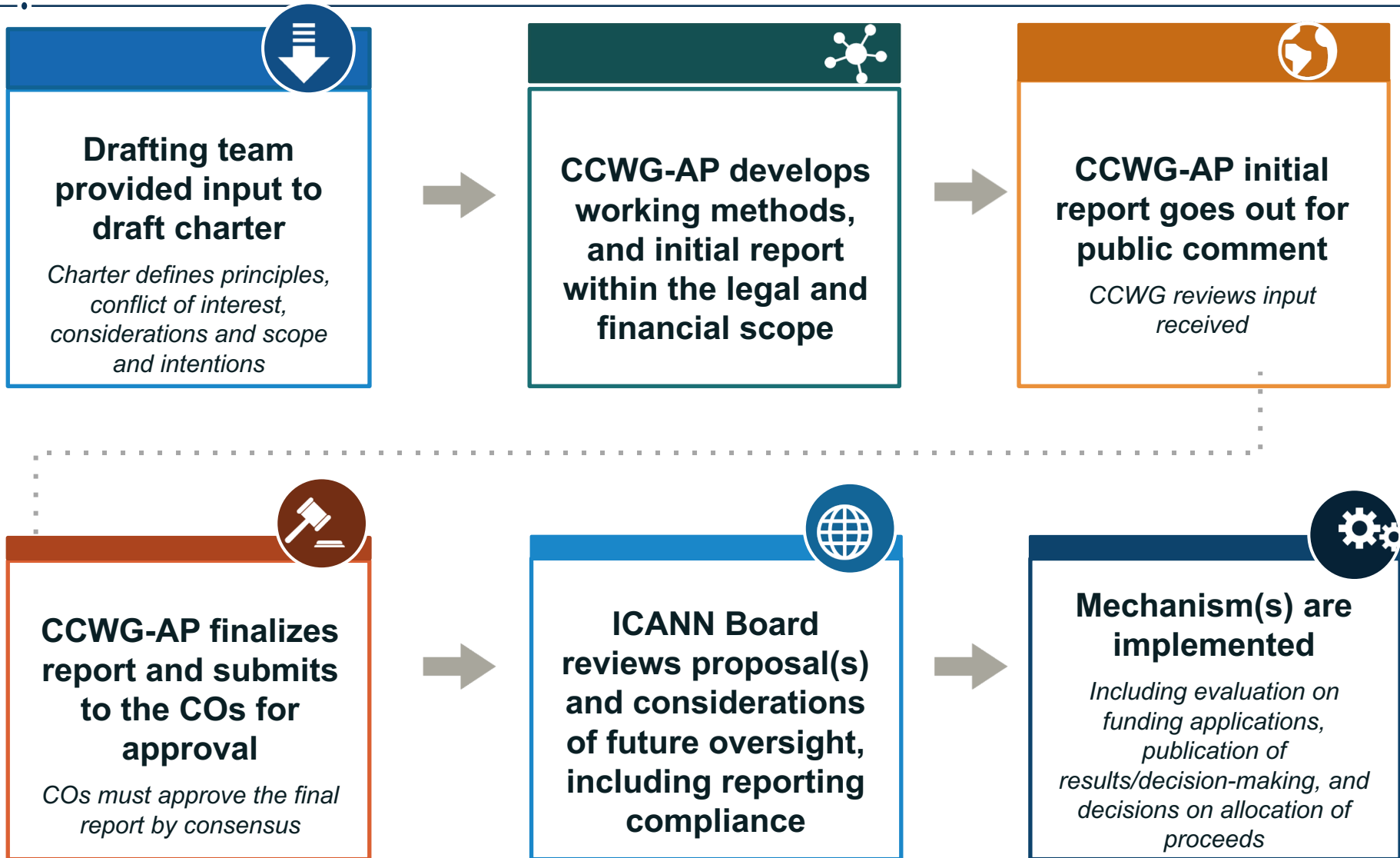
Financial and fiduciary concerns

The Board and Officers of ICANN hold fiduciary duties to the organization to make sure that self-dealing does not occur and their private interests are not benefited through ICANN's decision making and actions.



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

Process Development for Auction Proceeds Allocation



CCWG-AP Work Plan

- Phase 1: Initial Run Through of Charter Questions
- Phase 2: Address Charter Questions that Require Immediate Work and Response before Moving Forward
- Phase 3: Compile List of Possible Mechanisms that could be Considered by CCWG and Consultation with Identified Experts to Obtain Input and Briefing on List
- Phase 4: Determine Which Mechanism(s) Demonstrate Most Potential to Meet CCWG Expectations and Conform with Legal and Fiduciary Constraints
- **Phase 5: Answer Charter Questions as Organized by Phase 1 for Mechanism(s) Determined in Phase 4**

4 possible mechanisms for further consideration

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

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

A new structure would be created e.g. ICANN foundation

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 for the CCWG-AP to Consider

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 for the CCWG-AP to Consider (cont.)

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)?

Can I participate?

- ⦿ You can learn more about CCWG-AP and its work on its community wikispace: <https://community.icann.org/x/yJXDAw>
- ⦿ If you would like to observe or participate in the CCWG Auction Proceeds, there are various ways to do so: as an individual participant; a mailing list observer; or as a public consultation respondent. Please contact gnso-secs@icann.org for further information.
- ⦿ For more on how to get involved and levels of involvement, visit: <https://www.icann.org/news/announcement-2-2016-12-13-en>