



**Comment on Initial Report of
the new gTLD Auction
Proceeds Cross Community
Working Group (CCWG-AP)**

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Business Constituency Submission

GNSO//CSG//BC

Background

This document is the response of the ICANN Business Constituency (BC), from the perspective of business users and registrants. As defined in our Charter, the mission of the Business Constituency is to ensure that ICANN policy positions are consistent with the development of an Internet that:

1. promotes end-user confidence because it is a safe place to conduct business
2. is competitive in the supply of registry and registrar and related services
3. is technically stable, secure and reliable.

BC Comment on the Initial Report of the new gTLD Auction Proceeds Cross Community Working Group (CCWG-AP)¹

On 8-Oct-2018, ICANN's New gTLD Auction Proceeds Initial Report was posted for public comment, with one extension to 11-Dec-2018.

The BC welcomes the progress being made by the CCWG-AP in the examination of mechanisms for disbursement of the existing auction funds, and the suggested examples for the use of the proceeds of the auction funds.

BC Comment regarding one-time contribution toward ICANN's Reserve Fund:

In general we do not support use of Auction Proceeds for ICANN's *day to day* operational budget. However, the BC believes that the community and ICANN will be best served by using a portion of the auction proceeds to replenish ICANN's reserves for depletion related to the IANA transition.

The BC previously submitted comments of general support to such use of some of the existing Auction Funds, in Apr-2018² and Nov-2017³.

The amount of available auction funds is quite considerable and may yet be augmented by additional auctions still pending from this gTLD round. We support that the majority of the auction funds should be directed toward activities that are not replacing ICANN's day to day operational expenses, but we do

¹ See ICANN public comments page at <https://www.icann.org/public-comments/new-gtld-auction-proceeds-initial-2018-10-08-en>

² See p.3 of Apr-2018 BC comment on ICANN Reserve Replenishment Plan, at https://www.bizconst.org/assets/docs/positions-statements/2018/2018_04April_25%20BC%20comment%20on%20ICANN%20Reserve%20Replenishment%20Plan.pdf

³ See Nov-2017 BC comment on ICANN Reserve Fund Rationale and Target Level, at https://www.bizconst.org/assets/docs/positions-statements/2017/2017_11November_30%20BC%20comment%20on%20ICANN%20Reserve%20Fund.pdf

support that projects submitted for Auction Funds can be similar as long as they are in tandem and congruent with ICANN's vision, mission and core values.

The CCWG-AP report set important guidelines for the review and selection of applications seeking funding from Auction Proceeds. The BC would like to add the following comments to the record.

The purpose of a grant/application must be in service of ICANN's mission and core principles

The BC believes that the guiding principles related to the Auction Proceeds should be consistent with ICANN's Mission Statement and its remit and core values. **The objectives and outcomes of the projects funded under any mechanism should be consistent with ICANN's pursuit of an Internet that is stable, secure, resilient, scalable, and standards-based. The BC supports this and also notes that ICANN's existence within a larger Internet Ecosystem must be taken into account.**

The BC believes that in achieving this guideline, adequate transparency and accountability regarding the investment and disbursement of funds should be accomplished through regular public reporting, regardless of what mechanism is finally selected for the distribution of the Auction Funds for projects considered within scope.

Comment regarding Selection of Mechanism(s)

The BC strongly prefers a mechanism that is external to ICANN for allocation/distribution/oversight of the projects funded by auction proceeds. We recognize that Options 2 or 3 would involve oversight by ICANN's Board and an adequate opportunity for an advisory capacity drawn from the ICANN community and independent experts.

We do not support Mechanism 1, which calls for establishing a new department within ICANN. This mechanism raises numerous concerns, including:

- the lack of expertise in existing staff;

- proposed use of existing ICANN resources to take on tasks in addition to their day to day accountability to ICANN org;

- potential perceptions that ICANN org, ICANN Board, or ICANN community members could influence the selection and oversight of projects that need to be fully independent from such influence; and

- under Option 1 all grants will appear on ICANN's tax returns, adding to the complexity and potentially contributing to questions about ICANN's not for profit status.

We do not believe that full exploration of risks, including reputational risks, have been explored.

Sunsetting of a mechanism is inherent in all options, raising questions about ICANN adding staff with the considerable benefits of salary/benefits, and then having to either repurpose them into ICANN, or provide exit benefits. Projects are often multi-year in nature, so do not fit into ICANN's fairly structured financial reporting as a not for profit public benefit corporation.

The BC is concerned that an internal mechanism within ICANN is both a diversion from the Board and key staff core activities and responsibilities and also adds additional requirements of expertise that are not central to ICANN's core mission.

We therefore support extensive exploration of Options 2 and 3. Both should be equally explored in sufficient detail to understand and clarify risks and opportunities to ICANN. To date, sufficient examination of these two options has not been undertaken. Focusing on only these two options will enable a more informed examination of issues, risks, and implications.

We do not support further exploration of Mechanism 4.

Examples of the kind of projects for which Auction funds might be used:

The BC appreciates ANNEX D and the examples it offers. We add further examples of projects that we consider within the scope of ICANN's core mission:

1. A new project to improve universal acceptance of addresses using new gTLDs, particularly in new scripts and languages. A non-profit group outside of ICANN could manage this project to improve universal acceptance and could accept funds from the Auction proceeds.
2. A new project to support DNSSEC deployment globally, and to promote deployment of DNSSEC to combat DNS hacks. This could also be tied to improving readiness for KSK Rollover in the future. A non-profit group outside of ICANN could manage this project and accept funds from the Auction proceeds.
3. A new project to contribute to improving the resilience of the root server system so that it will be more resistant to denial of service attacks. A non-profit group outside of ICANN could manage this project and accept funds from the Auction proceeds.
4. Support of technical training for ISPs, IXPs, communication providers and companies and NGOs that are building or operating community networks and thus are relevant providers of DNS services, but may be very new to this role – projects could be provided by existing entities in the ICANN community, such as RIRs, or NICs, or other qualified entities, but also NGOs. Academic institutions.
5. Projects advancing work related to future-oriented developments, innovation and open standards for the benefit of the Internet community that are relevant to ICANN's core mission.
6. Projects addressing diversity, participation and inclusion should strive to deepen informed awareness, engagement and participation from developing countries, under-represented communities and all stakeholders.
7. Initiatives (e.g. IGFSAs or other initiatives) committed to expanding global opportunities for multi-stakeholder forums for the enrichment of engagement on broader Internet Governance Issues that complement ICANN mission for the promotion of a stable, secure and resilient Internet.

Projects supportive of ICANN’s communities’ activities are encouraged.

The BC notes that the Board recently questioned such projects. The BC strongly supports such uses, recognizing that thousands of hours of committed work and engagement from ICANN stakeholders are essential to support ICANN’s mission and to also address threats and risks to ICANN’s legitimacy in the external Internet ecosystem.

We agree that funding of such projects should not replace ICANN’s own responsibilities to fund ICANN general operations. However, we think that the Board’s statements regarding Annex C, #4 and 5 are overly cautious and ignore the benefits of community engagement support.

The BC believes that participation of ICANN’s communities in ICANN itself, and in the broader global Internet ecosystem will continue to broaden and deepen the informed contribution and engagement of ICANN’s communities in support of ICANN’s mission and core values. We also strongly support projects that address awareness; capacity building and participation opportunities that exceed the ICANN “operational” budget.

Thus, we suggest that projects funded via the Auction proceeds can be augmentative and parallel to similar ICANN funded initiatives. They may even be collaborative. It is important that Auction Fund projects not be disallowed just because ICANN funds a limited version of a similar project.

Recommendations:

Projects should not be disallowed or not accepted because they are “collaborative” with ICANN, ISOC, RIRs, IEEE, NRIs or any other entity that meets the criteria.

We also support the importance of a well-defined and implementable “conflict of interest” tests for decisions influenced by ICANN org, or ICANN community, including the Board.

We support that projects may be developed and submitted by ICANN constituencies and AC/SOs, but not from AC/SOs who are directly affiliated with ICANN. We also understand that funding requests cannot be submitted by individuals, but must come from a legal entity who can accept the required accountability for performance of the proposal. We agree that safeguards will be required to ensure neutrality of all proposals submitted.

Additionally, the BC supports requirements in allocation of the Auction Proceeds that include:

1. A mechanism that provides a fully independent process, which might include a panel of evaluators, or advisors to the independent panel of evaluators
2. operates independent of ICANN, with such independence maintained through rigorous controls or structural means
3. understand that its staff must have required expertise in grants award/management, be knowledgeable, and of well-regarded reputation, and be able to work well with an advisory committee drawn from the ICANN community

4. understand that ICANN's continuing status as a nonprofit public benefit corporation may be reliant on its independence
5. If an advisory entity is established, it should be primarily composed of members with circumscribed interest in, or affiliation with ICANN outside of this role. Much stronger safeguards would be needed than what is reflected in ICANN's present Statement of Interest (SOI) approach. In addition, an advisory entity should include external experts from the grants/management community.
6. Provide reasonable compensation for members of the entity for time and/or expenses associated with services provided for management of the Fund. Other examples exist where an honorarium plus reasonable expenses are provided, helping to ensure stronger independence of the Advisory entity members.
7. focus on the requirement that it be a single-purpose entity that strives to eliminate any actual or perceived conflicts of interest
8. deliberate as to whether the ICANN Board or ICANN org should have any role in determining or guiding or influencing the allocation of the proceeds and management of the funds
9. be composed of at least seven, but no more than fifteen members, seeking to ensure required expertise and sufficient understanding of the varied kinds of proposals and their applicability but also to enable the inclusion of external expertise as well as community members.
10. Allow, as needed, use of expert advisors in relevant areas, which may be in the evaluation of certain kinds of projects.
11. Include funding needed to ensure a highly respected external audit provider which is separate from ICANN's required audit
12. Maintain a regularized feedback mechanism to the ICANN community, the ICANN Board and ensure effective communications reports with essential and regularized reporting

Conclusion

The report by the CCWG-AP is comprehensive and the result of extensive discussions within the CCWG-AP. We endorse many of the recommendations.

As the public comment process closes, we also will review all comments submitted and consider the views of the BC in the CCWG-AP going forward.

For continuous stability of the Internet as relate to business, we encourage particularly 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."***

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This comment was co-drafted by Adetola Sogbesan, David Snead, Marilyn Cade, Jimson Olufuye, and Steve DelBianco.

It was approved in accord with our Charter.