

**ICANN Transcription  
Cross Community Working Group on New gTLD Auction Proceeds  
Thursday, 02 March 2017 at 15:00 UTC**

Note: The following is the output of transcribing from an audio recording of the Cross Community Working Group on New gTLD Auction Proceeds call on the Thursday, 02 March 2017 at 15:00 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. Attendance may be found at:

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

The audio is also available at:

<http://audio.icann.org/gnso/gnso-new-gtld-auction-proceeds-02mar17-en.mp3>

Coordinator: The recordings have started.

Michelle DeSmyter: Great. Thank you, Well good morning, good afternoon and good evening to all. Welcome to the Cross Community Working Group on New gTLD Auction Proceeds call on 2 March 2017 at 15:00 UTC.

In the interest of time today there will be no roll call as we have quite a few participants online. Attendance will be taken via the Adobe Connect room so if you are only on the audio bridge please let yourself be known now. Great thank you.

Well as a reminder to all participants, please state your name before speaking for transcription purposes and please keep your phones and microphones on mute when not speaking to avoid any background noise. With this you may begin.

Jonathan Robinson: Thank you, Michelle. It's Jonathan Robinson. I will be leading this call today together with my cochair, Ching Chiao, as well as with the support of ICANN staff.

The primary purpose of the call is to deal with an update and opportunity for questions and answers on the legal and fiduciary issues or constraints around the work of this CCWG relating to the new gTLD auction proceeds, and the mechanisms - mechanism to ultimately disburse those proceeds, and also to some extent ensuring consistency with ICANN's mission.

So that part of the call, that primary part of the called, will be led by Samantha Eisenhower from ICANN – sorry, Eisner – I don't know where it got Eisenhower from – Eisner – Sam Eisner from ICANN's Legal Department. And we'll be asking Sam to take us through that in Section 2.

But before I do that, can I just remind you all that you should all have put in place the statement of interest defining your particular interest within the ICANN, and how they impact on your work in the ICANN community as well as a particular and specific declaration of interest relating to the work on this group and your prospective involvement in any body that may apply for funding or be a beneficiary of funding in the medium and longer term from this work.

So if you have done that great, and if you have any updates please make those updates and let them be known - let it be known to the group if your circumstances change from your original update, SOI or DOI.

I think those are the main points. Let me just pause for a moment to see if Ching or anyone from ICANN staff has anything to add before we move on to the substantial item in our agenda, which hopefully you will have all seen circulated to you prior to the meeting.

Okay, seeing no other indications of input or requirements to give input, I'm going to turn you over to Sam who will duly give you the briefing. And I'm sure Sam will remind you that we have previously seen a briefing note on this and I expect she will refer to that in addition to bringing other points. Go ahead, Sam.

Samantha Eisner: Thank you, Jonathan. Again, my name is Samantha Eisner. You can call me Sam. I am a Deputy General Counsel in ICANN's Legal department. And as Jonathan mentioned during the drafting team stays, I worked closely with ICANN CFO, Xavier Calvez, who's also on the phone, to develop an initial guidance memo to the drafting team on legal and fiduciary concerns.

And through my presentation you will see that some of these items are actually reflected within the charter and so now we are moving to the place where we wanted to have a conversation with the CCWG, and I think that this is an initial conversation. We're going to touch on a lot of parts that will probably impact your deliberations at different stages of your deliberation. And so we think this is kind of the opening conversation that we will have.

Basically I will be taking you back through the memo that was produced for the drafting team. It is up as background material on the CCWG community wiki page, and someone - we can make sure you have the link to that. But we wanted to make sure that everyone has at least an understanding of the top-level items that were listed in there, why they're listed in there and with a big focus on the point that Xavier and I are participating in this group in the manner that we are.

You should expect to see both of us as regular attendees to this group. We hope to be considered as available to you as you might need as you are working through some of these items because as a matter of background, the CCWG on Auction Proceeds, your goal is to take a pool of money, and it's not really about the size of the pool of money, by various this pool of money that we have to make decisions about how that money will be the first.

You're not making the ultimate grant decisions through this group but you're making recommendations of the framework of how that will happen and that money has been entrusted to ICANN. For the moment we are holding it in a ring fenced place, we're not using it for normal operations, where not able to dip into it until there is a time when there have been recommendations and through this group and the Board has considered them, and only at that time do we access those auction funds.

But the fact that they are part of ICANN's operating fund, and comes out of the new gTLD Applicant Guidebook, because they're part of the ICANN funds, ICANN has restrictions on how those funds can be disbursed. And if those restrictions are not followed, ICANN's 501(c)(3) tax exempt status becomes in jeopardy.

So I'm moving the slides, let me know, I believe I have present or capability. Has everyone seen that I've moved the slide deck?

Jonathan Robinson: Yes, we can see it's moved, Sam.

((Crosstalk))

Jonathan Robinson: We don't have individual scroll so you are in control of the slides.

Samantha Eisner: Yes, great. Thank you. So again this is just kind of the level setting, the New GTLD Auction Proceeds CCWG was established to develop principles. You know your task, you know where you're sitting here, it's set out in the charter. And we wanted to talk to you today about some of the issues, some of the legal and fiduciary constraints that will be an overriding consideration as you continue through your work.

So ICANN is a 501(c)(3) status organization. What does that mean? Many of you might not be familiar with the United States tax code and what that

means. But I can have applied for and received a tax exempt certification from the United States government. And so that means that we don't pay certain types of taxes on our -- on money that we take in because ICANN operates for specific educational and charitable purposes in its mission. And that's because we fulfilled a certain level of requirements with the United States government and its tax code that ICANN exists to perform work in the public benefit and not for any individual private interest.

And so the key - some of the key restrictions around what that means is that ICANN, once it gets that determination from the US government that it has achieved tax exempt status, it doesn't exist in perpetuity. I can have to continue to operate in line with that determination. We make filings every year with the US government, it's our Form 990, where we provide listings of our activities and documentation of how we -- what we've done during that year. All those 990s are available online under the financial statement. It is - some consider it the equivalent of our tax filing, but we don't, again we don't pay taxes so we filed the Form 990.

And so through this the government has the opportunity to take a look at how ICANN is running its activities. And there is always the possibility that ICANN could lose its tax exempt status as a whole or in part based on how some of its activities might change. And so because of the tie-in with the funds that come in from the auction proceeds and how they're expected to go out, it's really important that you don't need to understand every detail about 501(c)(3) status, however you do need to have a general understanding of the types of restrictions that ICANN follows.

One of the most important restrictions goes to this issue around private interest. So we have a lot of conversation in ICANN, and many of you who have been in the ICANN community have heard over and over, what does public interest mean? Why does the public benefit mean? And the initial distinction of public versus private when an organization is tax exempt is really looking at the fact of it not run for private interest. So we don't have

shareholders. No one is individually enriched by purpose of working with ICANN.

It doesn't account for reasonable salaries and we have a whole process that we go through and any 501(c)(3) goes through to set salaries of their staff. And, you know, so salaries aren't what they go at, but you don't expect to see people getting paid dividends or stock options or bonuses or benefits like that. And so that's a really big limitation.

And so what ICANN does and is expected to do it as it takes in money, ICANN is expected to use that money towards fulfilling its mission. So we don't put it into individual shareholder pockets; we put it back towards our mission and we have a whole - we do that in many ways and we need the CCWG's assistance in making sure that the pool of funds that is the auction proceeds is also used toward that mission.

So we have, in the memo, you'll see that it's laid out -- and again we encourage all of you to read the memo. We've identified a few different guidelines and proposed principles that should guide the work that's going on and it also helped guide the drafting team in making recommendations for things that are in the charter.

Each one of the items on this list I'll cover throughout the presentation. If you have questions in the middle of it please feel free to raise your hands, I know this can be pretty dense and I don't think it makes sense to wait until the end to take all questions.

So consistency with ICANN's mission is set out in the bylaws. This is really one of the biggest things that we need to focus on the community aspect. So ICANN cannot spend money and cannot use its resources in a way that is not consistent with the ICANN mission. You will see this peppered throughout the charter for the CCWG. And the reason that it's there is because of -- in part

because of the work that we did with the drafting team to focus on ICANN's mission.

Now the understanding of the need to tether the use of the auction funds to ICANN's mission has been in place since the Applicant Guidebook was created. So if you look in the charter there is even a reference to this section from the Applicant Guidebook that states that the auction proceeds must be used in support of ICANN's mission. So this isn't a new thing that was sprung, this has been part of the concept of if we ever did have these last resort auctions that were used how could those funds then be expended?

So what does it mean to it here to ICANN's mission and to act exclusively in service to its charitable purpose? So one of the things that we need to be careful of is this is from source to destination evaluation. So the IRS, and we will talk a little bit later about the need to have an audit process, would expect ICANN to have a mechanism that they can say okay, if you say you're going to use your money for this, if you give it to Organization Y, Organization Y can't then turn around and just hand the money out to individual people for their private benefit. Organization Y still has to use the money for the purposes that ICANN said Organization Y must do it. And so it trails all the way to the end recipient.

And then into more insular view of ICANN, we have an obligation to adhere to our mission, and we see within the bylaws including the enhancements that were put into the bylaws through the recent accountability process, ICANN can be held accountable not just by the IRS, not just by the California Attorney General in ICANN is seen to be acting outside of its mission, because ICANN is a call corporation, but it can also be challenged internally as well. Anytime that ICANN acts outside of its mission and violates its bylaws, ICANN can be subject to an independent review process, there can be reconsideration processes had.

And so we all have an obligation really to make sure that we are using the ICANN resources in a way that not only preserves its tax exempt status but also preserves the ICANN resources from not being used to defend against challenges that wouldn't otherwise need to happen.

So what is the mission? The mission, as it's been refined through the accountability process, takes up about four pages so I didn't actually include the whole thing here for you. But we have a link, we will drop the link into the chat. I can mission is set out in Article 1 of the bylaws.

Add at the top level it says, "The mission of the Internet Corporation for Assigned Names and Numbers is to ensure the stable and secure operation of the Internet's unique identifier systems as described in the section." And then when you go through the full section 1.1a, there's a lot of detail about how that's fulfilled. And the mission also states that ICANN cannot act outside of this mission, right, so this is an enumerated list of activities that ICANN can do basically. And so the CCWG should consider this as the guide point.

Now, during this conversation and it really isn't my place to say what is within or outside of the mission, that's part of a community conversation, if the Board determination when the Board considers the recommendation but it's something to keep in mind. And so I encourage you all to look at the mission, to consider what it means. And we have some other recommendations set out here.

I see that Vanda had the question in the chat so I'll just see if I can address that now. So any not-for-profit organization, even not from the US, shall fill the 501 as its support to ICANN 501. I think we will get to this later when we get to organizations, Vanda, and if I don't answer this question then please raise it again.

So turning back to the mission question, the CCWG charter states that the CCWG is expected to make recommendations about how to assess the

extent to which the proposed use of auction proceeds by applicants is aligned with ICANN's mission. As I noted earlier, the Board will consider the consistency with the mission when making the ultimate decision as to whether to accept the recommendations of the CCWG or not.

But this is one of those times when that community providing inputs as to why something is within or without mission and creating a record about that can help give the ICANN organization, the ICANN Board, some tools to actually assess that instead of just saying here are recommendations comment now assess them against the mission in a vacuum of other information.

So it's one of those -- I think that this is a really key part of the ICANN of the CCWG's work that can happen and help make sure that we are in a place that the recommendations that came out of the CCWG are able to be accepted by the Board because that is really one of the goals of why we are participating so early. We want to make sure that you're spending your time making recommendations that ICANN can take on right?

And so if you consider my whole conversation today and any participation from the ICANN organization and from the Board liaison in that vein, I hope that we'll create a very good working relationship together.

So Mathieu has raised a question in the chat. He says, "Does the charter rule out the option where the CCWG would recommend a purpose for the proceeds and an amendment to the mission?" So Mathieu, my view of the charter is it doesn't rule out that the CCWG could actually recommend that the mission be changed. If that happened that would be part of a tiered implementation and process because we would first have to go through the process of accepting a modification to the mission which includes community input, community approval through the new empowered community processes.

And so you're probably looking at at least a 5 to 6 month process to get to a mission modification to then understand whether or not the recommendations that are tethered to that mission modification are acceptable. But I don't see that it rules out.

I see that Sylvia lost audio. Everyone will still hear me?

Alan Greenberg: We can still hear you, Sam.

((Crosstalk))

Jonathan Robinson: ...fine, just confirming I hear you fine.

Samantha Eisner: Great. So, Mathieu, did I respond to your question? Great.

((Crosstalk))

Kavouss Arasteh: Do you hear me?

Samantha Eisner: Yes?

Kavouss Arasteh: My name is Kavouss Arasteh. I'm on audio only so I'm sorry I cannot raise the hand. Thank you.

Samantha Eisner: And did you have a question?

Kavouss Arasteh: No, I don't have a question, but I want to warn you that if I come in don't take it as a interruption, I have no possibility to raise hand. Thank you.

Samantha Eisner: Thank you. So the next area that is really key to the preservation of 501(c)(3) status is that funds not be used in a way that inures to someone's private benefit. So ICANN can provide its funds towards the private benefit of individuals. I mentioned earlier it's one of the primary reasons we don't have

shareholders. And so what does this mean to the CCWG in its work? It means that there are many issues that you will have to consider when making recommendations. It creates an obligation that the CCWG will have to consider what types of structures need to be in place to make sure that the granting of auction proceeds are used for private benefit.

So there are some kind of top level things that you can do which is requiring that the funds go to organizations and not to individuals, that the really key recommendation. However, just being an organization is not enough. So how do you know if an organization is okay? And there are a wide range of considerations that go into that. And some of this can be answered through the mechanisms that you choose to disperse the funds.

So some can be more costly, some can be less costly, some can be more burdensome and time-consuming and have more risk to them, others not. So for example, an established foundation that's experienced in international grant-making might already have the due diligence processes in place and know how to handle grant making on an international basis, because one of the other things that the drafting team was really key on was that we shouldn't do anything within the chartering process, and leave it up to the CCWG if you have other decisions to make about that, but we weren't doing anything within the chartering process to limit the scope of the CCWG's outcomes to only have impact in the US.

Because one of the easy things that can happen is you could say that the auction funds will only go to other 501(c)(3) organizations, because those organizations typically have already met this test that they're not set up for private benefit. But that would create a base exclusion for entities outside of the US, so that probably wouldn't be an acceptable line.

And so there are many things that can be done to help overcome that 501(c)(3) status line, right, so there's eligibility can be established through other means. You can use your due diligence to look at how organizations

are set up. There are organizations such as foreign nonprofits or nongovernmental organizations that have the opportunity to obtain affidavits or opinions of counsel that they operate as equivalent to 501(c)(3) public charity status.

There are many ways that this can be done and processes can be developed. And so we are here to work alongside you to make sure that you're not writing and we are not imposing rules that allow you or that require you to only look within the US.

I see a question from...

((Crosstalk))

Kavouss Arasteh: I have one question – one basic question.

Samantha Eisner: Yes, go ahead.

Kavouss Arasteh: Can you hear me?

Samantha Eisner: Yes.

Kavouss Arasteh: My question is that ICANN is a (unintelligible) organization. Is the concept of auction is (unintelligible) for this purpose because auction brings some revenue. (Unintelligible) as profit. (Unintelligible) have there been any study about (unintelligible) of auction that covers...

((Crosstalk))

Kavouss Arasteh: ...a group of people – yes.

Samantha Eisner: We're having a bit of trouble with your audio. It's a bit fuzzy. I'm not...

Kavouss Arasteh: Do you hear me now...

((Crosstalk))

Samantha Eisner: ...the question.

Kavouss Arasteh: Is it okay now?

Samantha Eisner: Yes, it's a bit clear. Yes and can you state your name for the record?

Kavouss Arasteh: Yes, my question is that ICANN is a non for profit organization, is auction (unintelligible) with that purpose? Because auction could be seen as a revenue as a profit.

Samantha Eisner: And is this Kavouss?

Kavouss Arasteh: Yes, that is me, yes, sorry.

Samantha Eisner: Hi, Kavouss. We hadn't gotten your name for the record on this. So auctions are not in contradiction to ICANN's 501(c)(3) purpose. We've – the process through with the auctions were put into the new gTLD application process and run is not counter to ICANN's purpose or to the 501(c)(3) status. The big question is, and that's what I'm discussing here today, is what do you now do with this pool of money? How do you make sure that you spend in it a way that remains consistent with ICANN.

Kavouss Arasteh: Yes, that is issue – that is issue how the money coming from auction is administered. This is another issue. But I'm certain of the concept of auction may be against the interests of the people that don't have to pay that money to get the auctions. You know, auction is that the one who pays more they get the things. And sometimes the people they don't have such possibility may lose the case, that is my question.

Samantha Eisner: Right, so for the record, Kavouss, and I'll respond again and then we will move to Daniel, who had his hand up in the queue, is whether or not the base concept of auction is against ICANN's 501(c)(3) status because there could be people who would like to participate but don't have the means to do so and so it's...

((Crosstalk))

Samantha Eisner: ...exclusionary for that purpose. And so that was the question that was addressed in the design of the new gTLD program. And that is not something that's counter to the 501(c)(3) purpose. I understand it's something that impacted some because they weren't able to participate, but it's not something that actually, that factor doesn't actually impact 501(c)(3) status.

I'm going to move to Daniel now.

Daniel Dardailler: Can you hear me well?

Samantha Eisner: Yes, thank you.

Daniel Dardailler: So yes so (unintelligible) because you started by saying that the sort of the scope that this group is going to put in the design of the (unintelligible) has to match the mission of ICANN as explained in the bylaws. And it cannot be outside this mission, but at the same time in the drafting team, the wording used was that the funding should be used in a way that is not inconsistent with the ICANN mission.

So the clause in the mission itself says that it cannot be out of what have been presented seems to contradict the spirit of not being inconsistent or before that it was in support of was sort of okay. But now I think that you're saying that the scope has to match the mission or we risk losing the (unintelligible) or we need to change the mission. So I'm a bit – but at the same time when you talked about the other 501 in the US, that could get

benefits, I don't understand how there is any single other 501 in the US that has the same mission of ICANN.

Samantha Eisner: Thanks, Daniel. So I think it's important to realize that – and to understand that acting in service of ICANN's mission, which because of the way that the mission is worded is basically the same concept as acting not inconsistently with it because the mission is listed as an enumerated list. We don't have to find another 501(c)(3) or another organization, if we were talking more in global terms, that does exactly what ICANN does. But it needs to be doing some part of - some work that supports that mission, right, that is in furtherance of it, that you can tie to part of that mission statement and say this organization does this work.

And so they don't do everything that ICANN does because no other organization, that we know of, does everything ICANN does, but they do something that may be you can tether to, you know, helping with policy development in the DNS for something. And so we are not limited to finding and funding another organization that does what ICANN does. We do have a limit to finding organizations or having organizations find us, it could be that we have people applying for things, and I do think that supports what ICANN does.

And so it is a broader view, but because of the way the mission is worded, you know, is - very sunny numeration there, there are some hardline tasks that will have to be reached. I know that there is a question in the chat that's been sitting there a bit from Julf so I'll turn to that first and then I will go back to the queue and Waudon will be next.

So Julf asked the question, "Does private benefit concerns cover sub-organizations or constituencies?" So private benefit concerns covers any potential and to tea or individual that would come to ICANN for the auction proceeds money. So you want to look at how they use it. So if it's a sub-organization or constituency you'd want to look to make sure that they were

still using the funds in a way that wasn't about putting the money in their own pocket or paying their individual members about it but were doing things to support the mission.

And some however small or however subgrouping you might come up with you still would look at how they are using the money. Does it go into someone's pocket at the end or does it go into work that supports the mission?

So the next -- I see that we have Nadira, your hand is up. I'll turn to you next.

Nadira Alaraj: Hello? This is Nadira. I'm just want to refer back and see -- kind of scenario about asking if it's for example, is it legal to reroute this auction proceed to certain (unintelligible) which is they are not able to pay such money for future proceeds like rerouting them for the same purpose? Does it fall with ICANN mission? Is it clear my question or not?

Samantha Eisner: So I want to be careful -- I'm not sure I understood the full scope of the question, but I want to be careful that we don't use this conversation to declare things in or out of mission. It's not -- I am not able individually to make that determination for ICANN or for the community. And so if it's, you know, they're like they could be programs that are developed that money could be used to support many of the things that ICANN does. And I think that that is something that the group has to discuss. I'm not here to rule out any possibility but I also really can't say at this point because it's really not appropriate for me to weigh-in on today whether or not something is in mission or outside.

Nadira Alaraj: Okay because I just want to think if this puts this in the future in our recommendation, whether this it falls into this so that's why I'm asking it for now. Because as Xavier mentioned that there is a certain -- Kavouss mentioned that a certain organization they can't really afford this amount and

they are interested to take some to go – to be in the auction – future auctions.  
That's why. Okay. Thank you.

Samantha Eisner: Okay, thank you. And that is something that I'd encourage you to discuss among the CCWG itself as you're looking at the recommendation. I'm going to take a question from the chat and then, Elliot, you'll be after that question.

I have a chat question from the chat from Dietmar. "Can ICANN give the funds to a new established foundation/trust, which works specifically on the mission of ICANN?" And I think that's a really important foundational question. And the answer is yes, if that's something that the CCWG recommend you can do that.

There are many different possible mechanisms that can be used for the disbursement of the auction proceeds. There are different costs and benefits to each one there are different risks inherent to each one. But there are many different things that can be used. And so we want to just give you some tools to analyze, and this is really where our future conversations come, and we have people have filled out the expertise surveys, we have people who are experienced in grant making and foundations work that can come and talk to the CCWG about how you might want to consider that.

And so nothing that I'm saying today rules out the possibility of creating something new, of housing a function in ICANN or housing a function in an existing foundation or in multiple existing foundations. Nothing that I'm saying today precludes any of those possibilities. We just need to weigh, as a community, the costs of doing those different things and of certain ones might make it easier than others. And I'm also not trying to predetermine for this group what might make that easier.

I'm going to go to Elliot now in the Adobe room. Elliot, can you hear us?  
Hello? Are you on mute? No, we can't hear you. While Elliot's connecting I'm

going to turn to Waudo's question which was put in through the chat and then I'll turn to you, Elliot.

So Waudo put a question in the chat, "Does the due diligence continue after the grant? Is continuous monitoring/audit a requirement for 501(c)(3)?" So that's a really important question as well. ICANN does have to continue its due diligence over, and this something that I have listed on one of the slides at the end.

We will have a continued governance need about this. As I mentioned, the use of the funds trails from the source to the end. And so ICANN has an operation to make sure that as the funds are being used that there is some sort of audit process over that. And this, again, is where you might make your decisions about do we go to an established foundation, do we go to an established process, do we try to build something new to give this because any one of those would have to have an audit process built-in, a way to report back to ICANN how the funds were used and the types of work that they were used for.

It can be anywhere from a fairly lightweight process to very intense with a lot of administrative costs. But that is something that is an important part of ICANN fulfilling its fiduciary duties, throughout the lifetime of this process.

So I see that Elliot is dialing in. So when you come back in let us know and we'll turn to you. I'll go back to the presentation now. So...

Kavouss Arasteh: Can I make a comment now or still waiting?

Samantha Eisner: Oh, go ahead, Kavouss.

Kavouss Arasteh: Yes, my question is, yes, you said that in order to support mission they have to mention before that (unintelligible) how the money is administered, put it into the long term investment, putting into the actions and so on so forth,

shareholder (unintelligible). And second, ways and means that should be (unintelligible) you said that there are a lot of possibilities, so we need to list all these possibilities to go through that, to modify that, to add to that and so on so forth, perhaps someone should try to make a shopping list of all these ways and means that this money could be spent. That would help.

And also, ways and means the money could be administered for the no one mentioned, I don't think that that money is required because the mission is done in accordance with the budgetary of every fiscal year, so that is some additional money so should be put for additional mission. Thank you.

Samantha Eisner: Thanks, Kavouss. And I think that that ties directly into work of the CCWG. I'm just trying to give some frameworks within which to do that. So private benefit concerns, returning to the presentation here, the one place where we've made a recommendation to the drafting team, and we would make the same recommendation to you is that grants are payment of funds directly to individuals raised private benefit concerns that are very hard to overcome and create a very big risk to ICANN maintaining its 501(c)(3) status.

This does not mean that funds can be given to organizations that provide direct services to individuals, but handing funds directly to individuals places ICANN the organization's tax status at risk. So we urge the CCWG to not make recommendations of direct grants to individuals.

So, Elliot, I see you're on the call now. I will look to you and then I'll go back to the presentation.

Elliot Noss: Yes, can you hear me now?

Samantha Eisner: Yes.

Elliot Ness: Yes, hi, Samantha. Sorry about that. My Adobe settings all look right, they don't show muted, etcetera. Anyway, I want to try and understand your

statements around consistent with mission. You know, we all go have been around for many years in ICANN know that the mission has appropriately been drafted very narrowly so that ICANN could resist being drawn, you know, into things more broadly. I think that that's been a central part of what's allowed ICANN to stay narrow in its focus and be effective.

When you talk about consistent with mission for auction proceeds, is a reasonable task that the money can't be used for things that ICANN itself could not do? And, you know, I have a bit of a follow-on, I'll listen to your answer there.

Samantha Eisner: I think that that's a really good starting point for us. I would say that that makes a lot of sense as an initial test. And I think, you know, I don't know if anyone else has input from that part but I would think that's a great place to start.

Elliot Noss: So that really would limit us to dealing with the kind of relevant unique identifiers and protocols in some way. You know, that's certainly a little bit narrower. You know, I had thought about the concept for this group as consistent with mission, you know, as kind of tying ICANN's mission back to, you know, some higher purposes. But it sounds like you are thinking of it a little bit narrower.

Samantha Eisner: Well, so I think that with the outcomes from the CCWG Accountability and the modifications to the bylaws, the mission is -- while the mission hasn't changed, the mission is now as opposed to aspirational, it enumerated. And so there are new limitations in how we look at the mission. And I don't know of anything that says that we should treat the mission for purposes of the auction proceeds differently. But this is the place where - I imagine this is where there's going to be a lot of community conversation or where you're going to have conversations with the Board.

But that is one of the outcomes of the CCWG accountability enhancements is might have created some limitations to going to higher purposes, as you said, that might have been viewed as possible before.

Elliot Noss: Thanks, that's great.

((Crosstalk))

Jonathan Robinson: Sam, can I just check in with you about practicalities here? You've got Daniel in the queue still. And I understand you may have to leave at the top of the hour and, you know, (unintelligible) so we need to think about how to manage this whether you (unintelligible) in Copenhagen or how would you – how do you feel about doing this? I suspect you got a little bit more to try and get through?

Samantha Eisner: I do have some more slides, I have I think a more slides to get through. If you'd like to have me run through the slides now and then we can take some time during our session in Copenhagen I'd be happy to do that, to take questions or we can pick up where we left off in Copenhagen if you want to do that.

I can stay for a few extra minutes but I also note that you have other items that you want to get through for today too, so I don't want to suggest that I expand to take up more of your call.

Jonathan Robinson: The reality is I'm not sure were going to get through eight more slides in the next 10 minutes so perhaps it's better you just go one at the pace you have been, take the questions and then we are left to sort of summarize where we got to in Copenhagen and do sort of Part 2 that way, that may be the most practical way of dealing with it.

Samantha Eisner: Sounds great.

Jonathan Robinson: Okay thanks, Sam. So you're going to take Daniel's question then.

Samantha Eisner: So, Daniel and then Alan.

Daniel Dardailler: So thank you. So I want to plus one to support what the previous speaker said, the ICANN mission as presented as a starting point is very narrow. And (unintelligible) very focus and (unintelligible) the gTLD that a protocol (unintelligible). So and at the same time, ICANN is not what I would call (unintelligible) organization, so I would think that it doesn't (unintelligible) support to make those parts (unintelligible) has all the money in its own budget to do the support.

So we're sort of getting away from the spirit of the (unintelligible) which was to make good for the ecosystem in which ICANN will operate and of the Internet itself, it was to be good for the Internet because ICANN sort of like running part of the Internet, but it's not alone. So I'm a bit concerned that because of the narrowness of the mission and the fact that ICANN has already the mean to achieve its mission, the auction money is going to be hard to use in that context if we – if it's not open to the larger ecosystem in which ICANN is growing.

Samantha Eisner: So thanks, Daniel. I think, you know, I'm not, and I don't think that anyone from the ICANN side, is trying to place any value judgments or those types of limitations. We're really - we are just looking our legal obligations and words of the mission as the community helped to refine them. And so I think that really is the starting point that we need to come from. And then if there are other realities that come during the CCWG deliberation that might need to result in other changes to allow other flexibility, you know, let's have those conversations.

But I'm presenting the legal reality of we have things that we have to do to preserve ICANN 501(c)(3) status and we have the word of the mission. Alan.

Alan Greenberg: Thank you very much. I guess my comments -- and they're not really questions -- follow on the last couple. Clearly if we had thought about this when crafting the revised mission we might have done something a little bit different but that was not the focus in the CCWG. And as someone, I think Mathieu, asked before, can we change the mission? Yes, but it's probably going to be a really difficult thing to do at this point.

If we end up using what, at this point, maybe \$200-something million and use it just for things that we could have done in ICANN itself if we had enough money, and that essentially is taking the money and putting it into operational funds. I mean you know, the work may not be done by staff, it may be contracted out to someone.

And I think if we do that we are not fulfilling the mission, not the mission sorry, we are not fulfilling the target of doing good things for the Internet ecosystem. So I think our challenge is really going to be what can we do to be more flexible?

In the charter we carefully used the term - a somewhat undefined term of not inconsistent with the mission on the hope that that might give us just a little bit more wiggle room and flexibility. But I think part of our challenge in this group is going to be to figure out how we can do good things for the Internet ecosystem even if it's not enumerated in our mission because otherwise I think we will have lost a great opportunity. Thank you. And I'm not asking for an answer.

Samantha Eisner: Understood. Thanks. I see Sylvia has her hand up and then we have a question -- we have a couple questions in the chat I believe. Sylvia.

Sylvia Cadena: Thank you, Sam. Following on -- it's Sylvia Cadena here. Just following on Alan's comment as well and the ones before, I think that one of the things we discussed at the drafting team was that there are a lot of (unintelligible)

organizations that are part of the ecosystem support, you know, the good of the Internet and ICANN mission as a whole.

In one of the examples that I provided from my experience in allocating grants and managing - applying for funds and managing for organizations over the past two years, is that it's actually part of the responsibility of the applicant or the organization that is requesting the funding to align themselves or explain how their work is or not – or not aligned with, in this case, ICANN's mission; in other cases it's with the eligibility criteria or (unintelligible) or the purpose of a specific (unintelligible) application.

So I don't think that we need to dwell that much on, you know, deciding what topics or what issues are at hand but as Sam has been trying to so generously explain, the implications that we need preserve the 501 status for ICANN. I think it's important that we try to understand this separate from specific purpose or, you know, an idea of a project that people has in mind because it is a responsibility of an applicant to be creative and explain how their work is aligned with that. Thank you.

Samantha Eisner: Thanks, Sylvia. And I've moved back a few slides just to put – flash back up the language from the charter where I think that that intention from the drafting team is partially reflected. Again, it says, "The CCWG it expected recommendation about how to assess the extent to which the proposed use of auction proceeds by applicant is aligned with ICANN's mission."

And so as Sylvia mentioned there was some creative thinking in the drafting team level and I think that they will be part of their conversations now at the CCWG as to how to look at the mission and how you can ask for information about how the mission is achieved that can help support getting recommendations to the Board better able to be approved.

I'm going to turn to a question from the chat from Marc Gauw and then I will go to Douglas's question with his hand up. So Marc Gauw has a question, "Article 1 refers to both mission and core values, do we have to meet mission and core values or mission or core values?"

So if you look at Article 1, and we should make sure that you are looking at the most recent version of the bylaws, which the link is there, it now has mission, commitment and core values. And so I can have the responsibility to analyze its mission, and then there are items that are set out in the commitments. And so all of those commitments have to be met in doing it as part of how ICANN fulfills its mission is by meeting that commitments.

And then you have to balance core values, so you should have - some of the core values met, you don't have to meet all of them but it's a balancing process amongst them. So it is something that you would have to take into consideration or those who are helping to say this is how it's within mission or not citing to the commitments and core values is an important part of that work.

Douglas.

Douglas Onyango: Thank you very much. I hope you can hear me. My question is around 501c again, and I'm trying to understand for the sake of the entire group how literally we should interpret what is written in 501c. And the background is I think there will be circumstances where maybe ICANN's mission maybe consistent with what we are trying to do or within the activities, but they may be incompatible if interpreted literally with 501c regulations.

My question is, should we take this 501c as a bible or are there certain limitations that an exceptional circumstances under which certain things can be granted? So this will provide guidance to us. The reason I ask is it should provide guidance to us in terms of when they – we say we are okaying activities from certain geographies and certain activities in particular it would

be important for us to know if no, if say for instance you may write it in a book and say if you're in Iran you (unintelligible) why, 501c, end of story or if there is certain exceptions or circumstances that should be considered and I believe this will help us to accommodate a lot more than we can accommodate right now if 501(c)(3) is read literally. Thank you.

Samantha Eisner: So me, as a legal – having legal responsibility with the ICANN organization, I have no ability to say that we can ignore any part of the law. So really the restriction is that organizations that achieve 501(c)(3) status can only maintain their 501(c)(3) status if they use the money and the resources to support that - the basis for that 501(c)(3) status, that is the baseline.

So the challenge for the CCWG is, you know, if we look at it in terms of the mission is how are you going to explain that something is within mission or outside of it? Or do you need to find a different way to achieve that which might be do you need to seek a modification of the mission as Mathieu suggested.

There are other parts of the 501(c)(3) code that are also part of the presentation and we will get to in Copenhagen about things such as an organization that has 501(c)(3) status can use no more than 5% of its revenue to support lobbying activities or attempts to influence legislation.

So we can't allow derivations from that and allow anyone who receive grants to attempt to influence legislation because it's just a hard and fast rule. We have no ability to say to the IRS, oh, you shouldn't take away our status because we thought that this was something that we had some flexibility on.

501(c)(3) also precludes people from supporting campaigns for political offices. And so that is another hard and fast rule that we don't have the ability to say that we can't. So what we are really trying to do is give you kind of the framework to think in and then that hopefully will allow the CCWG to have

some tools to say okay, so we understand this framework, how can we best design a program that meets the goals that we are trying to achieve?

So I see that it's eight o'clock here so we're at the top of the hour. Jonathan, would you like me to turn this back to you and we will do information in Copenhagen and continue this there?

Jonathan Robinson: Sam, thanks. It does feel like a natural break. As it turns out, and as I said in the chat, I also need to leave now at the top of the hour. I'm going to – and Ching is going to run the remainder of the meeting. Yeah, I think it would be good to capture where we've got to put a moment and then we will do the same form of summary to kick the part two of this part of the meeting off and Copenhagen. It does seem like it's not only a strong interest but it's also generating some key points of discussion both in the chat and audio.

So yes, please go ahead and provide a form of summary wrapup for your part and then we will look forward to picking up again. It's obviously highly relevant subject matter. Thanks, Sam.

Samantha Eisner: Great. Well so we have a few other areas to get through, but I think this has been a really good initial conversation. If you have other questions or other things you'd like me to help incorporate into our Copenhagen discussion let me know. I think it would also be helpful, Jonathan and Ching, and the staff if we could make sure that the transcript and recording for this, or recording as it might be, is circulated to the team. And you can also circulate the slides to request that people look at them in advance, and maybe if there are questions in advance you can circulate them to me so we can continue this both kind of online and in the presentation format.

Again this is really our way of starting to open the conversation with you. We see this as an ongoing dialogue between you and ICANN, and all parts of the ICANN, the organization on the Board. And so we look forward to it. And thank you for inviting me here.

Jonathan Robinson: Thanks, Sam. And with that I'll then hand over to – we'll obviously look forward to working with you further in future meetings, both the forthcoming one in two week's time as well as others to follow. Ching, can you confirm you're on audio so I can hand over to you?

Ching Chiao: Yes, I'm back. Thanks, Jonathan.

Jonathan Robinson: Great. So I'll leave you to pick up with the next items on the agenda and look forward to working with you all again in just under two week's time.

Ching Chiao: Sure, thank you, Jonathan, and thank you, Sam, for the presentation and summary. Yes, I think the next item - and actually before we move into the next item, I think the great discussion we just had in the past hour or so I'd like to see anyone who would like to have, you know, a quick reflection on what's been discussed. I understand in the chat room there's a lot to read through and digest and actually personally I would hope that that particular chat box can be enlarged in some way then we can run through all the questions and thoughts.

But just before we talk about the survey, which has been discussed last time, anyone would like to, you know, just to reflect on what's, you know, what you are thinking and what's, you know, current thoughts for the time being?

Okay I have Elliot. Elliot, go ahead. Oh, Elliot, is it a old hand or a new hand...

((Crosstalk))

Elliot Noss: ...not being lowered from the previous...

Ching Chiao: Okay.

Elliot Noss: Sorry.

Ching Chiao: Okay, that's all right. And then I have Erika. Please go ahead.

Erika Mann: Thank you, Ching. I have a more operational recommendation to make because so many topics were discussed in the chat room, I think it would be nice to screen through these questions and the topics the way they debated because I think it would be good to have them on a simple document so we then we can review them. Some were answered by Sam, but some might need further consideration so it would be good to have them in a simple document, maybe we can review them all together. Thank you.

Ching Chiao: That's very good suggestion, thank you, Erika. I think for, you know, so from now and for the next meeting I think we'll probably work with Erika, you know, Jonathan, myself and – with – sorry, with Marika, about putting a digest of the questions, thoughts and comments on the chat and obviously we have very active and live conversation just then. And so that's a great suggestion, we put together, you know, those questions from the transcript of the chat and then have everyone to go over and potentially have follow up conversation in our next meeting in Copenhagen.

So okay, so didn't see anyone have hands, right now. So let's move onto the next question, sorry, next item on the agenda, which deals with the charter question survey. So last time we did talk about the – how we like to assess these so 11 charter questions.

So thanks, again, to Marika who has done a – quite a heavy lifting on making the survey for the question. And I – and we did – so Jonathan, myself and also we look at the previous conversation so we did – in trying to put together the, you know, the survey in the most structured way, so at this moment, perhaps for Marika would you like to share, you know, what would it be look like? Would you be able to have the survey to be shared on the Adobe room? Could you please put it up?

Marika Konings: To put it up you need to give me a little more time. I didn't prepare for that but let me see if I can quickly pull it up.

Ching Chiao: Okay.

Marika Konings: And while I try to do that I can basically talk you through what we've tried to do. And I think I already have it here actually.

Ching Chiao: Okay.

Marika Konings: So, basically indeed, as we discussed during the last meeting the objective of the survey would be to allow for a quick run through of the different charter questions using the same sort of template questions for each of those. So basically the main objective being to facilitate the further deliberations on the development of the work plan and identifying, you know, what additional expertise, if any, might be needed.

So and that's coming up now. So you see here, we will circulate that shortly to the working group for your feedback. So what we've done is basically we've grouped the questions together as suggested by Daniel in his email to the list by instead of just running through the order as they come up in the charter, which at least from my recollection is a random order and wasn't intended by the drafting team have set in stone in which order these questions would need to be taken.

By Daniel suggested grouping them together in a legal group and a more scope focused group. So that's also the order you see in this survey. And then for each of the questions we basically asked three questions. The first one is, "Do you consider the charter question an over arching or gating question?" Basically is the question that needs to be answered first before you can start looking into some of the other questions, or basically determines the answer to other questions?

The second question is, "Are there any additional associated or sub questions to the charter questions that the CCWG would also need to consider?" And the last question relates to whether external input beyond what is available within the CCWG that we've, you know, discovered through the survey is required to answer or address this question? And also if this expertise, if you've identified that this expertise is needed, is that (unintelligible) to initially address the question or is that something that would come in later on?

So I said, we've done, the same questions are asked for each of the charter questions. The hope is that it will allow you to relatively quickly run through the survey. I said, you know, they're more yes/no questions. Of course there is the ability as well for you to write in any comments. There is also the ability at the end to identify whether there are, you know, broader questions that are missing, not necessarily sub questions or related questions but, you know, completely separate questions that the CCWG should also be addressing.

And then I think we also left a general box if there's anything else that you want to share in relation to this work. So the hope or the idea is to launch the survey shortly after this call which will hopefully then give you an opportunity to fill this out before you all start getting onto planes to Copenhagen for those of you that are traveling in the direction or at least be able to complete the survey before we have our next meeting as it will, you know, allow for some further conversation how to start our conversations on the different charter questions, and which order they should be taken in.

Indeed, do we need to flush some of the questions further out? Also the question of indeed do we already need to plan or anticipate additional expertise beyond what is available within the CCWG. And that will hopefully then give us sufficient information to finalize or at least further elaborate on the draft work plan.

You may recall as well that on our last conversation we also spoke about may be using the survey to get initial input on the charter questions or potential ideas of what people think the answers could be. But we've left that out for now as that probably will take a little bit more time for people to think about and provide input on.

Of course there is still the Google Doc available in which we are also already collecting some of that input. But we thought that at least for the initial run through we would focus on that specific aspect of the questions which are really geared to making sure the CCWG is able to map out its work plan and determine, you know, where to start next.

Ching Chiao: Okay so thank you, Marika. So as you can see from the survey, so we just pointed out that it's been kind of putting two baskets, one for legal and one is for the scope and category or basket. And then, I mean, you probably recall we did – we did ask about the members expertise, so in terms of which, I mean, areas you feel more comfortable of contributing to the work of this group.

So actually, I mean, just to recommend that start with, you know, one particular category you feel like, I mean, offering the answer. And also between now and to Copenhagen, so especially the meeting for – and which we'll be talking about shortly about the next meeting is that would be kind of in the midweek of the ICANN meeting. So I will actually encourage the members and the participants, especially the members are encouraged to talk with your stakeholder groups or your SO or AC, then to make sure that those survey – the chartering question surveys are actually channels through.

So let me stop now so maybe give all of you some chance to maybe glance over what it look like and thinks (unintelligible) to scroll down. But anyone have any particular question in terms of the format or in terms of the – how this will work? Please, comment. I can see Marc and Asha typing in some comments here, so we'll give them a minute.

Okay, thank you, Marc. And so I – so we have a question from Asha about the – there has been a summary of all the DOIs. I guess we – in the beginning of the meeting it was mentioned and also reminded everyone to submit the DOI. But I'm not sure about the summary of that. So, yes, Marika.

Marika Konings: Yes, this is Marika. Just to note that all the declarations of intent are publicly available and posted on the wiki. You know, from a staff side we haven't prepared any summary of that. And, you know, if the CCWG thinks that is something that is needed or desirable we could of course do that. It would require just going through all them. The question is indeed what would you be looking for or what would you expect us to summarize?

So, yes, and as Sylvia said, you know, they're all publicly available so for everyone to review there on the wiki page under Members and Participants where you can also find everyone's statement of interest.

Ching Chiao: Sure, thank you, Marika. And I think putting up the DOI, which is required and then you just made the list of experts also being available to being seen by the public. So I guess, yes, we are talking about two different sets here, yes.

Okay, so going back to the survey part is that I think we have a – so a good structure here. Oh, so I saw your hand is up, so Alan, please go ahead.

Alan Greenberg: Yes, thank you. I put my hand up when we were talking about, quote, summarizing the DOIs. One thing that might be useful if we can flag the DOIs where the person answered yes, I do plan to – or I do have plans to apply for money, because that allows people instead of having to read all 150 of them or so, may allow people to look at the ones where there may well be a conflict and we want to understand, you know, and we – someone may want to understand the personal potential conflicts that we have. So that might be an interesting thing to flag for each of them. Thank you.

Ching Chiao: That's actually a very good suggestion and a good idea. But on the other hand is that I think one challenge could be that how to actually to not just to flag it but just to present it at, you know, in a timely basis some may show interest, some may show the interest later, some may have the interest or the intention to apply but later they decide they do not. So it could be a kind of, you know, as time goes by could be a kind of a, you know, we need some way of more dynamic to make these kind of information being viewable by the group as well as the general public. Yes, Marika.

Marika Konings: Yes, this is Marika. As I asked in the chat as well, it would be helpful to get some guidance from the CCWG if indeed you want to go down that path how that is expected to be done. And do you want like a summary list where we put on the names of the people that have said that, you know, just they're planning to apply either individually or through an organization, or do you prefer that we add a column to the membership page next to DOI indicating, you know, who said yes to that specific question? What is the preferred format?

Ching Chiao: Yes I think that would be a question to discuss. So Alan, you have thoughts? Please go ahead.

Alan Greenberg: Yes, I think trying to extract it and summarize what people said is going to end up being problematic. I'd be happy with an asterisk in the DOI column for those who have answered yes or something like that.

Ching Chiao: Right, and maybe something simply yes in one color, no in another color or no but - or maybe three options or three colors, I mean, with the mark on yes, no or maybe. But I think that's a good suggestion to clearly indicate for the members interests in the future application of the funds.

So and also this would help us not only for the cochairs to remind the members every time in the beginning of the meeting about the update on the DOI but that would be - we will have a clear indicator on the webpage to

show the more up to date accurate information. So noted and we will take action, and that will be an item to further discuss and confirm, maybe we can have something to be shown to the group when we meet in Copenhagen.

Okay so Marika, is that a new hand or old hand? Okay. And oh so going back to the survey part, so I guess we are good. So right after the call so I can see people agree on Alan's and also Asha's comment, so whether to flag or mark or summary. But the survey itself that we will start to distribute the link and the file after the call. So please take some time before when you jump on the plane to spend some time, work on it either or both categories or baskets.

And please help talk to your constituency or SO or AC and get them to make inputs on, you know, in terms of offering the answers for the chartering questions. So yes, I guess we are good on the survey. And in the interest of time I think the last one is to confirm the meeting for - so the next meeting will be on March 15. For those who can meet, I mean, Copenhagen, so you did, you probably already see it's been on the ICANN formal schedule. And there will be, I mean, remote participation means offered to those who didn't make it in person.

But that doesn't mean that you would participate last. We will still use the same approach and to facilitate the discussions and to interact. So any further comments or questions before we leave? I can see from the chat that there are – yes, I can see from the view chat still about the DOIs and the summaries, which I think that would start a good question – I mean, good discussion and I believe that we agreed on trying to mark the, I mean, for the members their intent.

So Marika, yes.

Marika Konings: Yes, this is Marika. Noting the back and forth in the chat, I'm just wondering whether this is may be an item to further discussed at the next meeting so at least everyone is in agreement on what is expected to be done and what

information is to be provided. So I'm just wondering whether we're at the stage where everyone agrees that staff goes ahead and does that. Because as Mathieu I think noted yes, that will require going through all the SOIs, and so it is a task that will take some time. And it seems that there's still some back and forth on whether it's worth doing that.

And as well, you know, which questions should be flagged. So I'm just wondering should we go ahead or people would like to discuss it a bit further potentially on the next meeting or on the mailing list?

Ching Chiao: Yes, I mean, so actually so I think, you know, just a few minutes ago I think we were good in terms of putting a single mark on, you know, potentially what elements suggested. So I see Alan comment your head is up again so go ahead.

Alan Greenberg: Yes, thank you. I don't see any desperate rush for this. It's going to become really important when we start talking about, you know, types of uses and things like that that, you know, from my perspective anyway someone who has declared the intent to apply for money for X should not be the person leading the charge on allowing X. And that's the kind of thing I think we need to worry about. But I don't think that's, you know, we're not anywhere near that stage right now.

So I have no problem, you know, discussing it further and making sure that everyone is happy with what we're doing and not asking staff to have to go through the whole thing twice. Again that's my take anyway.

Ching Chiao: Okay. Okay, so yes, so why don't we take this - I think we can, I mean, because what has been discussed we are not really putting something that, I mean, comprehensive or even putting for example, I mean, even there is no kind of, you know, different areas of the funds to be used. We are not asking people to indicate or the members are not really asking about a detailed disclosure of the interest in some sort of a presentation of marks because if

you're interested still the DOI is there, so, you know, anyone, you know, has access to the page, you can always get in to understand the interest.

I think this is just for - this is good for transparency purposes and it's for the, you know, at least the minimum the ICANN community understand that where the members, you know, our standing in terms of whether they have the intention of the application of funds. So my feeling is that so why don't you - so Marika, you, me and Jonathan to maybe to figure a way maybe one very simple way just a yes or no kind of thing then we probably do a simple sample to show this during our next meeting in Copenhagen. And then if everyone is happy with the format then we can go ahead.

Okay. Okay so I think we are reaching the 90 minutes limit and I don't see any hands up but very good discussion. A lot of take away from the first one hour, the presentation from Sam. Definitely we are looking forward to the slides and then obviously I will encourage also to look at the memo from the drafting team. And the second task for us is to process and to help fill out the survey which will be circulated to you shortly. So thanks everybody. And for those who are coming to Copenhagen, safe travel. And we will see you there and also online very soon. Thanks very much. And bye.

Michelle DeSmyter: Thank you. The meeting has been adjourned. Operator, please stop the recording for us and disconnect all remaining lines. Have a great day, everyone.

END