
HELSINKI – Cross-Community Session: Charter for the CCWG on Auction Proceeds

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MARIKA KONINGS:

Hello, everyone. We're getting started over here. So thank you all for joining the session on new gTLD auction proceeds and the draft charter.

Can I please ask everyone to stop their conversations or take them outside? People there in the corner. Thank you.

So this is the cross-community session on new gTLD auction proceeds. My name is Marika Konings. I'm a member of ICANN staff.

Just some housekeeping items before we kick off the conversations. As you'll note, there are three people in the room here with microphones. They have numbers. So for -- so later on when the floor is open for comments and questions, please wave to one of these members of ICANN staff, and they will come over to you and hand you the microphone when it's your time. Please speak slowly and clearly and state your name for transcription purposes. I think that's all I had to share.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

We're looking for a lot of participation and engagement. So please prepare your comments and contributions. But, first of all --- the drafting team that has put together this draft charter.

JONATHAN ROBINSON: Thanks, Marika.

So as you said, the purpose of the session will be to review the draft charter and get some feedback from the community here in the cross-community session. Introducing you to who we have got up on the podium up here, Marika is leading the staff support of this effort together with David Tait on her right. Sam Eisner from ICANN legal who is assisting us with the legal and fiduciary constraints on how we might deal with this as we work through and develop the working group. Alan Greenberg who's the vice chair of the drafting team working with me and our other colleagues on the drafting team. Myself who is chairing the drafting team.

And I think we've got quite a few members of the drafting team here. So it would be great if you could just raise your hands and let people know, anyone who is actually -- Thank you. So in this front row along here, Tony Holmes, Russ, Asha, and Erika.

TONY HARRIS: Tony Harris.

JONATHAN ROBINSON: Sorry. I have done it again. Apologies. It's not the first time I have done it. I don't think it's the first time anyone else has. Apologies, Tony.

We have two Tony Hs in the ISPCP.

UNKNOWN SPEAKER: (off microphone)

JONATHAN ROBINSON: Hemaraja. Not a bad start.

[Laughter]

All right. Who has control of the slides? Is it you, David? Yes. Let's start with the first slide, and we can make our way through it.

So we're here to talk about the charter which will lead, we hope to the development of a cross-community working group which will itself lead on to a process or mechanic for the ultimate disbursement of the auction funds. So it's -- in essence, there's -- at a high level, there's -- or prior to -- or post-raising of the funds, there's three stages, three overarching stages to the process. The next slide talks about that in a little more detail, so let's go into that.

Clearly as many of you will be aware and know, the ICANN-administered auctions are the mechanism of last resort to resolve string contention within the new gTLD program. We readily use these terms, but essentially string contention is where one or more applicants has applied for exactly the same string and have passed all other hurdles and end up being in an equivalent position to run and operate that string and, therefore, need to resolve that because there's only space for one unique string in the root.

Auctions have been run, and not all of them have been concluded. And notwithstanding that, significant funds have been raised to date. Currently in excess of 100 million U.S. dollars. So there's a sizable sum of money to be ultimately dealt with. And from ICANN's point of view, this is set aside in a unique bucket, if you want, for an informal term, set aside as a unique category of funding. And the work of this is really the community discussion and effort that started back at ICANN52 and then led to a workshop and, in fact, another event at ICANN53 which ultimately led to the production of a discussion paper that was authored by staff which distilled the work of the workshop and the forum we held at ICANN53. And that was -- that then went out for public comment. We took significant feedback on that. And we emphasized that the focus of this

effort would be on the development of a framework or a mechanism for ultimate disbursement of the funds.

So it's really, really important to recognize -- I know we all obsess about processes to a lesser or greater extent within this, but there's a very systematic way in which we need to work through this. We are in no way talking here about -- and probably not for some time -- about the eventual allocation of the funds. This is about getting set up in the right way to deal with it.

So following -- step four on the slide in front of you, following the review of the comments on the discussion paper, the GNSO reached out to the different ICANN supporting organizations and advisory committees to identify volunteers to participate in the drafting team, which is this effort now. And all of the SOs and ACs put forward someone to participate except for the ccNSO who offered to cooperate but not formally participate in the drafting team.

I should say that one -- the one forum we held at the ICANN53 meeting, we had participation from three ccTLDs who themselves had some form of excess funds not entirely similar to the auction funds but had experience with disbursement of funds. So we got early input from those three ccTLDs as

examples of ways of working. So we've had already some initial cooperation.

I think quite significantly, we've also got active cooperation and collaboration with the ICANN board on this CCWG. And there's probably at least a couple of reasons for why we're doing that.

I think in the recent CCWGs, it wasn't necessarily the case that the board was actively involved from the outset and there was some confusion as to whether or not it was appropriate for the board to participate. And so we took the step of actively reaching out to and working with the board to potentially participate from the outset.

I think there's something unique and specific about this particular effort in that -- well, A, there's a significant amount of money by most, if not anyone's, measure. And, B, the board has a particular responsibility because this is money raised under ICANN's sort of overall responsibility. And, therefore, it's an area that the board needs to keep close engagement with.

So we have two board liaisons, Asha and Erika, who I introduced at the beginning who are respectively chair of the Audit Committee and co-chair of the Board Finance Committee. So appropriately qualified and situated individuals to work with us on that.

So that's where we are. And, of course, Sam's input for similar reasons. And we'll come to a little bit more of that in a moment.

Next slide, please.

So this slide is a bit full and a little -- a lot to absorb at once, but what it seeks to do is take you through a process, starting in the top left, with the drafting team and the charter that's -- the input that was taken originally and the charter drafting process, which has got some key headlines in it: principles, issues around conflict of interest considerations, and the scope and limitations of the work of the CCWG that will be -- that will derive from this -- you know, be scoped out by this charter.

Our output is intended to be that charter, which will then define the work of the CCWG and, we hope, be adopted by the chartering organizations which will then lead to the formation of the CCWG.

All of the work that that requires to set up the framework for dealing with the auction funds ultimately, of course, having to be sent via the ICANN board, who will give it their due consideration prior to an implementation of an eventual mechanism.

What we really want now is your input into those key sections of the charter, the draft charter as it stands at this stage, the sort of

initial work of the drafting team, such that it's had some external input other than that of the drafting team.

Notwithstanding the fact that the drafting team is made up of members or participants coming out of the various SOs and ACs and the board, it's still useful to get it out and talk about some of the key issues.

So that's really our objective: To obtain input before finalizing the charter and submitting it to the supporting organizations and advisory committees.

Next slide, please.

In order to develop this charter, we engaged with ICANN legal in order to make sure that we understood what the legal and fiduciary constraints would be, and in fact, it's not only legal, it's ICANN finance as well.

So let me hand over to Sam to talk through some of the key issues that arise when -- with that aspect of things.

SAMANTHA EISNER:

Thank you, Jonathan.

I'm Samantha Eisner. I'm associate general counsel with ICANN, and I was -- I've been active with the drafting team in producing memoranda and helping to work with the team to identify some

of those legal and fiduciary constraints that we believe are important to have within the charter itself, so that we can help frame the charter from the outset to be driven towards producing recommendations that the board is ultimately able to accept, so that we can hopefully frame them from the outset, not on content but considering the specific limitations that need to be there, so that the board doesn't wind up with a legal or fiduciary issue at the end in considering the proposals.

So my work with the drafting team included, working with Xavier Calvez, our CFO here at ICANN, we produced a note to the auction proceeds drafting team on these concerns. There's a link to that memo here for your view, if you'd like to see the full thing. And then working with the group to then identify those core considerations within that that we believed were appropriate to be included within the charter.

So I'm not going to go into a great deal of detail about what each one of those things are, but first of all, because these were funds taken in under ICANN's work and they're funds that sit within ICANN, the funds must be used in a way that is consistent with ICANN's mission as set out in the bylaws.

So that's a really fundamental primary concern.

It goes not only to ICANN's need to main- -- to act in accordance with its bylaws and its articles of incorporation but it's also a key

consideration in ICANN's maintenance of its 501(c)(3) tax-exempt status that it has under U.S. law.

And so many of these other constraints that we've identified also come with a purpose of maintaining ICANN's 501(c)(3) tax status, if you take as a fundamental premise that we don't want to use this auction proceeds scenario as a way to put that tax status at risk.

And so because of that, there are issues around private benefit.

One of the primary things that a 501(c)(3) corporation must do is make sure that its funds and resources are not used to benefit private individuals. So it can't go -- that's why we don't issue stocks or stock options or anything, because that would line the pocketbooks of individual people. You're allowed to pay salaries, and of course we can support stipends for travelers, et cetera, but we can't just hand money to people without receiving consideration for that.

And so these private benefit concerns draft, they lead to some of the guidance that you'll see in the charter and in the reference memo that there should be some consideration on limiting grants, potentially, to organizations and not allowing grants to individual -- or to individuals because that's what really raises concerns around private benefit concerns.

Of course we have been very careful in the language that we've presented and discussed with the drafting team that we want to make sure that we're not drafting in any exclusions that would present any sort of concern with ICANN being able to use these funds in a way that supports people wherever they happen to be.

So we can't draft these requirements so that they would only go to other organizations that are U.S. 501(c)(3). That would not be a satisfactory outcome. And so we know and we've provided some guidance on ways that the grants can be used across the world.

There are other limitations that come along with ICANN's 501(c)(3) tax status, such as ICANN can't use its fund for political -- its funds directly for political activity. That is, supporting of individual candidates. And there's a very small amount of funds that can be used for lobbying activities. And so we have a recommendation that within -- the charter that as the group is considering the principles to move forward, that you wouldn't allow funds to be used to organizations that would then be participating in lobbying activities.

Another really important concern is the conflict of interest considerations. When the board acts in alignment with its fiduciary duties, one of the key components of that is the board

acting without conflict of interest. And the board will have a heightened responsibility with overseeing recommendations that go to what is now equivalent to a full year's operating budget for ICANN, in reality, to make sure that those decisions are taken without conflict of interest as well. And that trickles down through others who might be involved in the process.

Procedural concerns and financial fiduciary concerns, those go to thinking of what might need to happen on the back side, what types of requirements might need to be developed so that there's auditability of where the funds go, assurance that the funds have been used in consistent manners with ICANN's mission, et cetera.

So we haven't prescribed what those need to be, but we have guidance in the charter that those are things that the cross-community working group, once it's formed, would need to consider.

And then, again, there's a 7- or 8-page memo, I believe, that you can look at that has a lot more detail in there and if you have any questions, please let me know.

JONATHAN ROBINSON: Thank you, Sam.

So before we go on to start to look at the specifics of the charter and talk about some of the detail, are there any questions or comments that anyone would like to make in respect of this preamble?

So we're going to work our way across the room, I think, like this (indicating).

So we'll start off with a question from Section 1 here. I saw Kristina's hand go up first. Or where -- has the mic been allocated?

All right. So I've got -- that's Number 4, but it looks like --

[Laughter]

How do we -- let me just get the procedure sorted out here. How do we work this? I thought we were going to have -- we've got microphones in each section so we've got, at the moment -- well, I --

UNKNOWN SPEAKER: (Off microphone.)

JONATHAN ROBINSON: Okay. Well, we'll start with -- we'll start -- I would expect to start with Number 1. We'll start with Kristina and then if we can just

hand out the cards. Are we going to hand out the cards to people or how are we going to do it?

UNKNOWN SPEAKER: (Off microphone.)

JONATHAN ROBINSON: Okay. Cue the mic. All right. So --

KRISTINA ROSETTE: Kristina Rosette, Amazon Registry Services.

One principle that seems to be, to me at least, a fairly significant omission is a prohibition on using the auction proceeds for governments, and I'm curious as to why that is. Because it still would be possible to make an allocation to a government that would meet the other criteria up here.

But to me, it raises the broader question as to why there isn't any kind of prohibition on the recipient being a government, whether it's a national, local, state, regional, et cetera. And I'm just curious as to the rationale for that omission.

SAMANTHA EISNER: Thanks, Kristina. This is a very high-level summary of -- of just the top-level points.

When you see "Consideration for Grants to Organizations," if you take a look in the memo, there's a further discussion of other types of organizations.

There is not a preclusion that -- that necessarily has to come just at the base level on the grants to organizations, from what I understand, but there are -- there is some guidance in there, and so I -- I think that your concerns, you'll find that they're somewhat addressed within the memo.

And then of course as the CCWG continues, we can get far more guidance on that. And the CCWG also would have the decision -- or the opportunity to make some decisions like that in their deliberations.

JONATHAN ROBINSON: So if you could just make sure that -- those with the microphones, if you can make sure you distribute the microphones in succession, and I'm just going to call out the number. So I'm going to go from 4 to 3 next and wherever -- whoever has got the mic -- if you're in the different sections, make sure you know that the microphone distributors can get you the microphone. So I've got 3 coming up next. Please remember to introduce yourself before you make your statement or question.

JOHN CARR:

John Carr, from the European NGO Alliance for Child Safety Online. Despite my accent, I'm technically based in Italy, so still part of the international community today.

My question is about the definition of "lobbying" and how broadly defined that is.

For example, one of the reasons children's organizations have an interest in ICANN is to argue for particular policies or changes or developments.

Would that be classified as lobbying or would it not be?

SAMANTHA EISNER:

This is Sam Eisner.

Thank you. There are some sample definitions that we've included in the memo to -- to cover that, so I'd encourage you to go and look in there.

I think that we wouldn't want to get into that level of granularity here, but there are some sample definitions, both for the political activity restriction and the lobbying guidelines that you might want to take a look at in the memo.

JONATHAN ROBINSON: Just to make sure, if you -- if -- so for example, in that area, Edmun, I saw you had your hand up. If you can attract the attention of the person with the microphone in Area 3, and then I'll come back to you in a moment. So I'm going to Number 2 next, please.

JEAN-JACQUES SUBRENAT: Working. Thank you. Jean-Jacques Subrenat speaking in a private capacity as an Internet user.

Sam, the paper you prepared with Xavier is very useful. I have a question, perhaps more specifically to you, Sam.

Under "Considerations for Grants to Organizations," I think that's a very good point you make, if ICANN were directed to make grants, et cetera. However, reliance on 501(c)(3) status alone as a demonstration of eligibility would serve to exclude almost any foreign entity from being eligible, and that's a very important remark.

So my question to you, Sam, is: In reverse, how can you ensure by using some contraption in U.S. law that the fiscal authorities in the United States will not be able to block the thing on the grounds that it doesn't enter into any definition of 501(c)(3)?

SAMANTHA EISNER: Thank you, Jean-Jacques.

The note that you read out from the memo is -- we were acting very carefully to not exclude foreign entities. 501(c)(3) would -- basis would be the easiest thing we could do but that is not what we would recommend doing.

There -- and this is something that would need some further review, but there is the possibility to develop some sets of objective standards and due diligence tests that would allow us to move forward. I -- I don't know that this is the -- the place to go into all of that work, but that will be considered within the CCWG.

But we have recommended, within the memo, that there can be some due diligence standards that are put in place that could help make some of those objective determinations.

JONATHAN ROBINSON: Thanks. Number 1?

STEVE CROCKER: Hi. This is Steve Crocker from the ICANN board.

First of all, I want to applaud all of you for putting this together and for the enormous amount of work that's gone into the drafting process so far. Really quite excellent work.

A lot of the discussion, particularly that we've just had here focused around this, has been on the negatives, in a sense, of where are the limits of what to do and how to stay within those limits, and I think all of that is necessary and there will be much more of that and I don't want to dwell on that.

I want to -- I want to ask a question about a question. So I'll tell you what the question is and then I'll tell you what the question of the question is.

The question is: Okay. We have a lot of guidelines about what not to do. What do we want to do with this? Are there any big goals, objectives, that we seek to do with this?

Now, let me ask you to flip back to Slide 4.

And I'll frame the question about that question this way. It is a busy slide. I have cheated by having seen this before. So I'll go slowly. But, basically, there is a sequence, as I understand it, that seems to be the following. We're currently here in the drafting process. The output of that will be a charter for the CCWG. Then the CCWG will go into operation. And in reading through the sequence of this, the output of the CCWG is going to be a proposal sent to the board, up in the upper right. And that will lead to, assuming it's accepted, some mechanism, creation of a foundation or just some other distribution mechanism or

whatever, that is all focused on the process for distributing the funds, which is fine.

And then there will be the actual distribution of funds, petitioners, people putting in proposals and grants and so forth.

Where -- so here's the question about the question I asked. Where in this sequence is there any establishment of guidelines or objectives or strong assertions that say, This is what we want to accomplish and, by implication, it, therefore, limits and says we're not going to do other things?

It would be easy to make up examples of goals or things do we want to -- I'll choose things that are completely off subject but just to make the point. Do we want to cure cancer? Or do we want to go to the moon? Or do we want to develop cheap energy? Totally different kinds of goals, and they shape very much how you structure a program prior to choosing specific projects, prior to choosing specific recipients. Do we want to do any of that?

Or do we want to have some different kind of goal? We don't really care so much what's accomplished as long as the money is spread uniformly across the world or across various constituencies? And I know that sounds tongue in cheek, but it's -- you can come at any of these in a very positive and

constructive fashion. But if we don't choose what to do, it will -- by implication, we have chosen something else and so forth.

So my question about the question is: Where in this process -- is it within the drafting process? Probably not. Is it in the CCWG? Or is it downstream somewhere where the focus of attention about what we do want to accomplish, what are our objectives, how will we know at the end of the day after we spent \$100 million whether it has been satisfactory for what we had in mind? Thank you.

JONATHAN ROBINSON: Thanks, Steve. I'll make an attempt to answer the question within the question and then see if others come in.

I mean, first thing I would say is clearly as you have pointed out, we are at a stage in the process; and it's a question of where do we come in the process. We are also an early stage in the process of this discussion.

I mean, if I could have slide 6, please, David.

So here we're going to look in some detail at the charter, which is where we start to look forward and break down into the goals and objectives some guiding principles for the CCWG and so on.

But, in general, I would expect the heavy lifting, the principle work to be done in the CCWG. This -- arguably the purpose of the drafting team is to set out the constraints within which that CCWG should work.

So my initial thought would be that the answer to your question within a question will be in the CCWG.

That said, before we got into even talking about the drafting team and their work, we need to know what the boundaries -- the legal and fiduciary boundaries are, which is why we set about with the negative, if you'd like, because that is the hard boxing of the problem which we've now done. And we can go on to say, right, let's look at the charter.

So I would give that as my initial answer. But if that isn't satisfactorily answered once we've stepped through the charter and you don't feel that the charter is sufficiently -- it's not sufficiently clear that that work will be done adequately in the draft -- in the work in the CCW -- in the subsequent cross-community working group or working group, let's come back to it.

Alan?

ALAN GREENBERG: Thank you.

There were some words in a footnote in the applicant guidebook that described the use of auction funds. And it talked about -- it used a phrase that was something akin to "do good things for the Internet."

Since then, apparently, you know, we are aware of the fact that because of the mission of ICANN, we may well have to limit it to something as a subset of that, that is closer to our mission as opposed to just "do good things."

I think the drafting team at this point is of a -- the general feeling is that we don't want to restrict it. There are some people on the drafting team who would like to see it very, very tightly restricted to ICANN's mission and essentially say we can only do things that are pretty close to what ICANN could choose to do if it had the funds to do it.

Others -- and I'm one of them -- would like to see it as widely defined as possible to be closer to the "do good things."

I think it's going to be up to partly our legal advice and how the board sort of responds to these various variations and the CCWG itself to see whether -- you know, does it identify three different topics and put 300 million into each of them? Or does it give far more general instructions to whoever will be dispensing the money? That's not clear now. And I don't think we're likely to

make it completely clear. We may provide a little bit more guidance as we go closer to the charter.

JONATHAN ROBINSON: Thanks, Alan.

Just on a process of order, so I've got another response from one of the drafting team members, from Erika. And if I could encourage the cardholders to just take your microphone to the next person within your area each time they raise their hand so I can just call out the numbers in sequence.

I'm going to go Erika because she's responding as a member of the drafting team, and then I'll go to the next question.

ERIKA MANN: Thank you so much, Jonathan.

I think there's something interesting to consider because when you look at this sequence, we are very early phase drafting team. We practically framed the work for the charter, and we sent the charter to the CCWG which then will be built.

And then we will have the phase much later at the end, the phase where the allocation of the funds will come into it, which is not a defined process yet at all.

So the interesting is what Jonathan, I think, is saying, and Alan, that we had a discussion about the topic Steven raised. And probably I would agree, it is good to do it in the CCWG, to do the scoping and to do the -- the more work on the objectives because we had a much clearer and we had probably a bigger team as well working in this group. And we have more transparent about what is going on.

Plus, Alan, then, we had this discussion as well and I think we need to have the dialogue in CCWG about the interpretation of the mission statement because we don't have a coherent view. We know the mission statement will frame it, but there's still, you know, an understanding and a dialogue which we need what that means actually for the scoping then.

So I would -- my tendency, Steve, would be as well to -- like both Jonathan and Alan as well, to put this closer to the CCWG phase.

JONATHAN ROBINSON: Thanks, Erika.

I think Steve was Number 1 in the microphone sequence. I think so. And so I'm going to go to Number 4. I just would like to highlight that -- did we not have two? We were going down. We went four, three, two, one. Okay. I'll take you. Apologies. Let's

go ahead. We'll go back up then. We'll go back up, one, two, three, four. Let's go two.

DANIEL DARDAILLER:

It's on? Okay. Daniel Dardailler from W3C. So I had a little bit of the same note that Steve said, that when I read the charter yesterday, I think, I found that it was sort of moving away from giving more detail -- or not detail but direction to what is considered good for the Internet. So I would expect the Internet being sort of the focus already.

But when I see things changing from consistent with from not inconsistent with, it sounds like we are moving away from talking about not only the Internet.

And, also, I would expect things like talking about the global effect of the funding or the scaling effect of the funding. So not just the Internet but also the result expected from the funding.

So without going into the detail of whether or not we can fund Wikipedia or, you know, WiFi operation, not sort of going into the detail of which layer of the Internet is the focus of this funding. Just giving some criteria about the expected results, the globalness, the scaling effect would be good.

JONATHAN ROBINSON: Okay. So thank you. That's good and that's helpful input, and it's appreciated that you have actually read the charter and giving some substance there.

I'm very keen to move on to the sections the charter. So if you have questions or comments that really go into the detail on the charter that would be great. We have had legal and fiduciary constraints.

And so I'm going to go now, as I said, I'm going to go two, three, four and then I'll come back down through the microphones. Let's try and stop it at that point. Go two, three, four, three, two, one. And then we'll try and cut it at that unless you feel there's an urgent point on these constraints here now.

So let's go to three.

EDMON CHUNG: Edmon Chung here. So just responding back to what Steve was saying and the discussion, I think I actually agree with the concern but I also agree very much with the drafting team, what you have right now in keeping it open and using ICANN's mission.

I think the CCWG will need to work a lot on narrowing the scope a little bit. But shouldn't be too narrow because the focus might change over time. This year it may be solving cancer. Next year

it could be going to the moon. But that process may be discussed in the CCWG. I think that's -- and I think what you have here so far is fine.

My question, though, goes back to, I think, John just mentioned earlier. Two things I'm pretty concerned about, the political activities and lobbying activities. I did take a quick look at the note. Is that only restricted to U.S.? Or is it any country political activity and lobbying? Because the U.S. definition of "lobbying," which you quoted, is very narrow defined and that's probably okay. But political activity or lobbying activities in other countries, even net neutrality or getting WiFi, even access to rural villages, that could be political and, you know, lobbying in many -- effect.

And, of course, John mentioned about child protection. That's definitely, you know, political in nature.

If those are not, you know, completely taken out, then there should be reasons for concern.

SAMANTHA EISNER:

Thanks, Edmon. I agree. I think that we're going to have to do more work. This was a preliminary memo for the drafting team phase to set out some rules. And I think we've always anticipated that within the CCWG itself, there would be a

requirement to go a little bit deeper and to get some more specific advice, particularly around these issues. The drafting team itself has discussed the need for the political activity limitation as well as the lobbying limitation to not just be U.S -- centric and to have a broader applicability. So that's something that we will be -- I think the CCWG will have to look at fairly quickly.

JONATHAN ROBINSON: Thanks. I will go to Number 4 next.

JODEE RICH: Hi. I'm Number 4. I'm the CEO of dotCEO, Jodee Rich. And maybe just to summarize Steve's comment, top of my mind is: What is the criteria that you're going to use to rank the grant requests?

And as a gTLD owner, I'd like to congratulate the board of ICANN for an amazing job raising the 250 million U.S. dollars and the 100 plus million dollars for the auction. That's over \$350 million. That's a great success.

On the other hand, I see an extraordinary failure which is the consumer awareness either measured by awareness or their velocity of resolving new TLD domain names, which we heard this morning was something less than 10% of the 23 million

domain names that had been sold. Over 90% of the 23 million new gTLD domain names have been sold for less than a dollar. And in my view, the program itself has been an extraordinary train crash.

So what I would like to understand is: What criteria are you using to spend the money that you have raised from these stakeholders so that we can ensure that the gTLD program becomes a success?

JONATHAN ROBINSON: Okay. So, Jodee, I will try to address that in some ways. I mean, first of all, this is a community initiative, right? This is coming -- this is a bottom-up community initiative to deal -- to make a proposal to the ICANN board. That's really the overarching mechanism that's going on here.

In terms of -- in terms of the -- Yeah. In terms of the partitioning of the -- in terms of the allocation of the funds in future, that will be -- the work that's got to be done, the heavy lifting on that work is down to the working group.

This is not the working group. This is just setting out some parameters within which the working group should work.

So we've got to be quite careful not to load too much into the drafting team. This is meant to be a lightweight structure that

commissions the work. The heavy work gets done in the working group, and there will be ample opportunity for your input in that.

For example, if you believe that this -- that the right -- that the mechanism that gets set up should be sufficiently broad that someone who wanted to market new gTLDs should be able to apply for it, that's the place to make that case be known. But it's -- there's -- one of the other themes that will come through this work is that there's a very strong -- "feeling" is probably not even the right word -- view that conflict of interest principles must prevail throughout all of this, and it's very important that those involved in designing the process, at least -- and this is a subject we'd like to discuss with you now, is the extent to which those designing the processes are, in effect, conflicted out from being in any way applicants for those funds in future.

But let's -- I mean, this -- this is -- we're at an early stage in the process and that's -- that's -- so that's probably enough said at the moment.

UNKNOWN SPEAKER: (Off microphone.)

JODEE RICH: The terrible risk with all of this is that by the time all of the different committees have finished their consideration, it will be years, years, since the new gTLD program was launched, and therefore, the benefit that these funds which were raised by the new gTLD owners will have passed.

JONATHAN ROBINSON: I think I understand your point but it's not -- it's not something debated here. It's a fair point, but right now this is about the constrained amount of money, which is the auction funds, and it's about dealing with how those might eventually be partitioned.

I understand your concern and I appreciate it, about (a) the time that this process takes which frustrates many of us, but it's a thorough process, and (b) perhaps the -- the amount of effort into marketing gTLDs, but that's not for here right now.

So let me -- let me give others some microphone time.

That was a Number 4, was it? So I -- so where are we starting now? I've lost my way. We'll start back at 1. All right.

ELLIOT NOSS: Yeah. Hi. Elliot Noss from Tucows.

I think my question is similar as a -- as a -- similar to Steve's as a "where does it fit" question.

You know, my biggest issue here is that this is not an evergreen process, that this is a one-off process.

Would -- and that feels to me like a charter issue. I don't see it covered. I'm happy to talk about it. You know, you can push this comment down into a specific section of the charter. But I've read through it a couple times now and can't really see where it would fit.

So it's kind of a, you know, "where can I put that" comment or "where" -- you know, "where's the right place to discuss it," and is it -- you know, is this a charter or CCWG question.

JONATHAN ROBINSON: So just -- if you could just -- I don't think you stated your name for the record. Just --

ELLIOT NOSS: I did. It's Elliot Noss from Tucows.

JONATHAN ROBINSON: Sorry. Apologies.

ELLIOT NOSS: That's okay.

JONATHAN ROBINSON: Okay. So I think we would like your help. If you think there's something fundamentally missing from the charter that needs to go in to constrain or appropriately constrain the working of the working group, tell us now because this is what we'd like to hear and understand. So that's what we'd like to get on record. Your feedback with respect to that.

If -- but it may be that it's better to walk through now these sections. I mean, we -- 45 minutes, we're halfway through the session and we've sort of been -- we've got very involved in -- you know, on the back of the legal and fiduciary constraints, so let's try and get into the substance of the charter in a couple of these sections, and if those points remain, please do help us know. And I have a feeling -- I wasn't sure at the beginning -- that we're going to have more to say than can be said in this session, so I think we'll give you an email address at the end of the session to help us to give some -- some more -- some input that you don't feel was adequately provided in here, if indeed that is the case.

So let me make -- again, make sure that the -- those holding the microphones get your attention, and if you -- and we'll -- and

then if we -- once we've dealt with each person, we'll come -- but I want to try and at least start to move through this.

As I say, we're fully halfway through this session so I want to go into goals and objectives in a little more detail and so we start to deal with the substance, so let's look at the goals and objectives, which is the next slide.

So clearly the purpose of this -- this charter is to -- of the working group -- what this charter sets out to do is set out the purpose of the working group, the goals and objectives of the working group.

So to develop a proposal for a mechanism to allocate the funds, to consider the key scope and due diligence requirements, and in particular, to be aware of directly related matters like the conflict of interest constraints.

And let me just say a word about this -- this -- the way in which these slides are constructed.

Some of you have done the due diligence in looking through the charter in some detail, which is great. Thank you. And that's available to you.

What we've tried to do is just bullet out the high-level points in each section here, but in each subsequent slide, the actual

relevant text from the -- the charter is covered, should you need to access it or should we need to go into it.

And in particular, the cross-community working group -- "the working group," in short -- is not intended to make recommendations with regard to specific funding decisions. It's about setting up a mechanism or process to deal with the funds consistent with the other parameters, the legal and fiduciary constraints, the constraints from the applicant guidebook under which these funds were derived and so on.

So that's really where we are.

And so in each of these sections, we now ask: Are these goals -- we want to keep this lightweight. We're a relatively small team. And we want to hand it back to the working group to do the real heavy lifting and hard work.

So given that background, are the goals and objectives sufficiently clear and comprehensive?

And just bear in mind again these bullets are not them. There is more substantial text in the charter, but that's the essence of them.

So let's pause for a moment and see if those that either have the microphone would like to respond to that, and I was at -- was at 4 previous- -- was at -- were we at 1 previously? Why don't you

keep track for me, Marika, because it's very difficult, if you can just -- to keep the content. If you can -- so 2 next.

CARLOS AFONSO:

Carlos Afonso here. I am from CGI.br speaking in my personal capacity. I find that the -- some of the recommendations are very crucial, like Steve Crocker's.

The person from Amazon as well did a good recommendation not to channel money to governments, et cetera. But we have to understand that this is not the real nor the universe of funders. We have another expertise in the universe of ICANN. And there are other universes of funders with a lot of experience -- decades, decades of experience -- on defining goals, on defining criteria for getting results, on multiplier effect of donations and so on and so forth. So many things. And I think that -- of course within ICANN, some of our organizations have some expertise in donations. We don't have to forget that. CGI.br is one of them. Nominet. auDA. CIRA have experiences as donors to a certain level, no?

But out there, there are organizations with a lot of expertise dealing with that amount of money, that scale of resources.

I think that one good idea would be to for CCWG go to them to discuss them, criteria, ways in which they have operated, dos

and don'ts, the bad and good experiences they have had, to bring that expertise to the work of CCWG. No? That is my observation. Thank you.

ALAN GREENBERG:

Yeah. Thank you.

As Jonathan mentioned at the earlier meeting of the working group in Marrakech, we did have input from some of these same people you identified just as -- you know, essentially giving us a little bit of guidance. But the real decisions are going to be made by the working group and we would expect the working group to be consulting with experts at various levels.

Maybe paid, maybe volunteer. Remains to be seen.

But certainly we're not going to try to invent the concept of funding organizations. There's lots and lots of experience out there. Thank you.

JONATHAN ROBINSON:

Thanks, Alan.

So we took preliminary input back then. We are simply working as a drafting team now. We'll have the working group, and into that working group -- and the Section 4 of this -- of the charter deals with membership, participation of observers, and there's

another section Alan refers to which talks about the prospect of bringing in external expertise. So there's lots of ways in which that both community and external expertise will be able to feed into the working group, and it's our job to essentially commission that working group and get it going on a -- on a good stable footing.

Number 3.

PHILIP SHEPHERD:

Thank you very much. It's Philip Shepherd.

Jonathan, because you asked the question, I'd like to give my quick response to the slide in front of us, and it actually looks quite good, so congratulations.

But the substantive part I wanted to make now was to circle back a little bit to one of the exclusions about lobbying. I wanted to make two observations there.

I've been a lobbyist for the last -- last 25 years or so, but also more importantly, I've participated in national organizations and national conferences about -- of lobbyists who talk simply about the process of lobbying, and the one thing that we have learned from that is the huge difference -- and this is from the European perspective -- the huge difference in the definitions

and understanding of the term "lobbying" across different countries, even across neighboring countries.

So there's a great need for precision in the definition of that. And certainly great differences between the U.S. and the Washington lobbying-type laws and the registrations you have to do there compulsorily compared to the systems that exist elsewhere in the world. And secondly, though, is the need for precision in the sort of organizations we may be giving it to in terms of what level of lobbying are they going to be allowed to do. Because if we're talking about charities and NGOs as likely recipients, those organizations are likely to be fund-raising organizations in their own right. They, therefore, spend a good deal of their time lobbying somebody for someone all the time.

So if you have a wide exclusion to anybody lobbying anything, you're narrowing it down to an absurdity. So I think there is great need for precision in your definitions there in order to comply just enough with the Californian law, but not shooting ourselves in the foot in terms of unnecessary exclusions. Thank you.

SAMANTHA EISNER: Thank you. This is Sam Eisner.

First of all, I think that the working group would benefit greatly from your participation, given your history, and, you know, you raise really good points and it's things that we really need to be careful of because there -- this is not actually California law. This is U.S. federal law. This comes out of the U.S. 501(c)(3) obligations, and so we need to be very careful because they're -- when any organization that ICANN would provide funds to goes and performs lobbying activities -- and I get the -- the crux of your question is we need to make sure we understand precisely what we mean by that. But when organizations go and performing lobbying activities, that full lobbying activity then gets imputed to ICANN and could put the 501(c)(3) status at risk.

So I think you're really on the right track and we would look forward to your participation in the working group from that perspective.

JONATHAN ROBINSON: That's a subtle warning from Sam to anyone else who wants to comment. Be careful how informed or --

[Laughter]

-- wise your comments are. You may be recruited into the group.

So we're on to Number 4 now. Thanks, Marika.

MARILIA MACIEL: My question is actually on the scope, Jonathan. Do you prefer that I hold it for the next section? Or...

As you wish.

JONATHAN ROBINSON: Let's go to the scope. Let's flip over to the scope slide. I think it's -- that's probably useful to do that.

MARILIA MACIEL: Okay.

JONATHAN ROBINSON: So here we have -- just to introduce this, to make sure, this is the scope or guiding principles for the -- for the -- for the CWG as defined by the drafting team, the charter drafting team.

MARILIA MACIEL: Okay. This is Marilia Maciel speaking. I'm from NCSG or representing NCSG in the GNSO.

My first point is about how do we keep conflict of interest away. It seems that the provisions on the charter, they are based very much on statements of interest and being in working groups, we have seen how statements of interest can be inaccurate

information that is presented there without us having the possibility to countercheck this information and not going beyond that. For instance, we know what the person declares but we don't know where the money that these -- the organization that this person belongs to, where this money comes from, so it's very limited in terms of asserting conflict of interest. If we could maybe expand just a little bit more to make sure that we have clear standards for assessing conflict of interest, I think that this would be very important.

The second thing on the scope is about the -- the recipients.

I didn't see any standards to assess how these recipients are dealing with the money. Not only on financial terms, how are they going to report back, but also on narrative terms. The things that they perform, did they really attend what they -- what they promised. Did they really deliver. I didn't see anything about that, and maybe it's something that we could include.

In terms of who these recipients can be, someone mentioned the need to make sure that governments do not receive this money, but I just wanted to flag that in Brazil there is not a clear separation between private and -- it's not only private and public. We have a lot of different entities that sort of fall in between the two.

So it's -- we need to be careful in how we define that. If governments are part of the composition of the board, for instance, or if it's a public/private entity, I mean, we need to be -- to be just clear about that.

And in terms of recipients as well, I think that one important point is that this money does -- is not given to -- to a project or something that will distort competition inside ICANN itself. I don't know how to -- how this could be represented in the charter but I think that a guiding line for us should be that this should not distort competition inside the organization.

So I take the point on -- on the market, the DNS market, but I think that we need to be very careful about that.

And I think that my last comment is about the very good point in my opinion, which is related to something that we are looking for in the person that we would choose to be part of the working group, which is to understand the broader ecosystem or the Internet community that goes beyond ICANN.

And I believe that the version of the charter that I have, it's check changed so I don't think I have the last version of it. But I think that it says that we should not give the money to issues that are not inconsistent with ICANN mission. And although there are several comments on this expression, I think that "not inconsistent" is the best expression to take here. It should not

contradict the bylaws but not necessarily follow exactly the mission that is in the four points of the bylaws.

So we should expand a little bit, as Alan said before. And I think that there needs to be someone who understands the ecosystem, reinforces that. And it is really good to see this reflected in the charter. Thank you.

JONATHAN ROBINSON:

Okay, thanks. That was a lot of information and a lot of points. I think in terms of -- my thoughts on that were in terms of the recipients and the scope between -- the spectrum between public and private entities and so on, I think those kind of details are definitely the work of the working group. But you highlight another interesting point in the same way as Philip did that the scope of inputs into the working group is going to have to be significant because it may be that in certain areas, the bright line that we might have come into it thinking between government and non-government entities or public and private entities is not as clear as it might seem to be.

I think you also highlighted two key things that we'd like to discuss now. And one of them is how -- we've clearly got a legal constraint with respect to ICANN's mission. The question is: How close? Does that mean it must be made not be inconsistent with, or it must be consistent with, or it must be in line with, or it

must be identical to? There's that whole thing of how closely the allocation of the funds and how tightly does this charter seek to restrict the work of the working group. That's a key point.

And the other is on conflict of interest, and that's our kind of mini elephant in the room because as many of you will know -- and as you pointed out, Marilia -- the way in which we tend to work in ICANN, we have open working groups in which anyone may participate and in which generally they should have a statement of interest. But those statement of interest declarations are not uniform across the different SOs and ACs. There's not necessarily checks on how validly they are filled in. And the content of those is not necessarily -- it's not standard what that content would be.

So one of the discussions we've had in the drafting team is: Should there be certain mandatory disclosures? And I think the very recent board work that was done in the weekend, maybe you can talk -- I've had some discussions, but it would be good to hear from board members about their thinking on this as well because there's an issue here as to whether we have an open working group in which conflicts are simply declared. And the real tough lines on conflict of interest are in and around the allocation of funding, which I think were almost universal.

We believe at this stage in the drafting team, there's no doubt when it comes to the disbursement of funds, you can't be controlling the disbursement of funds and have it -- the conflict of interest principles will be very clear and very firm there.

Where it's less obvious what should be done is at the working group stage is how tightly constrained any participation in the working group should be to stop eventual application of funds. So that's the key thing. So I'd love to hear -- and I think we would love to hear those inputs on any of those two areas.

Erika or Asha, would either of you like to come in? And then please make sure you get the microphones.

ERIKA MANN:

We had in the board a longer discussion about this topic. And it is an issue where we really think it is important that we have clarity and that we understand that we are constrained in this. And we should be constrained by this by legal and judiciary responsibility. So this is the way we looked at it.

And we came up with the thinking that it would be actually good to think about it. It's a recommendation. What we did is a recommendation to the drafting team to think about it if it wouldn't be good that the members already in the CCWG, so up front before the money is allocated, up front in the CCWG shall

not be related in any way to prospective applicants for proceeds.

So this goes beyond just declaring a conflict of interest. It's a broader concept. And the idea is that it would help to avoid any kind of conflict of interest. We are aware it might look very radical, and we are aware that it might go quite far. But it's a recommendation.

And we would appreciate if the drafting team would consider -- would look into it and then later the CCWG would look into this as well.

JONATHAN ROBINSON: Thanks, Erika. So that further poses the question. My microphone order, I think I have got number one next. I am going to go one, two, three, four. So Number 1 next.

STEVE CROCKER: Thank you. This is a very helpful and useful discussion, and I completely support it.

But I want to just take an opportunity to push back on -- or push forward on the point that I was making before.

Both this slide that's up here -- and if we can go back to the previous one that shows the -- so the one before that. There we go.

So there are three bullet points there, all of which I agree with strongly but I think there's a missing point.

So the first one says develop a mechanism. The second one says consider the scope, due diligence requirement, how to deal directly with matters such as conflict of interest. And then it says the CCWG will not make specific allocations, choose winners and losers so to speak out of this.

In my mind, what's missing is a bullet that ought to come just before that, that is positively stated, that is -- that says the CCWG will choose specific objectives, will choose, will choose, put shape on this. That to me is the missing piece that is not explicit enough in the charter.

And I liked very much that you're shaking your head yes.

Flip forward two slides, and I will just make one comment about the -- so the last bullet point in the scope says "Ensure diversity," which is a very nice and positive statement. I'm not sure exactly what that applies to. But it may say that the working group has to be diverse. It may say that the set of goals has to be diverse or whatever.

But if it says -- if it's intended to mean that the recipient base has to be diverse, then that has a strong impact that may be -- counteract or interact with setting specific objectives. And I'll subside at this point on that.

JONATHAN ROBINSON: Thank you, Steve.

Somewhat perversely, that's the shortest bullet that probably represents the longest underlying point. But so I think I have got a member of the drafting team and a board liaison, Asha, who would like to speak next. And then I will go -- is that microphone 2 in any event? Okay, then we will go to microphone 3.

ASHA HEMRAJANI: This is two? Okay. All right. My name is Asha Hemrajani, member of the board and also a member of this esteemed drafting team.

So I wanted to echo a little bit about the diversity because, Steve, we haven't come to the slide yet. We're kind of stuck still early on in the slide deck. But we do have another slide later on coming which talks about diversity, explaining it.

And I think here I would just like to very quickly summarize that we would like -- from the board's perspective, we do believe in

diversity in terms of the membership or the composition of the CCWG.

But when it comes to diversity in terms of the ultimate recipients of the proceeds, I think perhaps from our perspective, it's a bit early days now to speak about this in the charter drafting stage. We think this is something that the CCWG would be better equipped to handle.

And I just wanted to quickly answer the gentleman from Tucows. You asked a question earlier about whether this is a one-off thing or not.

UNKNOWN SPEAKER: (off microphone).

ASHA HEMRAJANI: I can just quickly answer you now. This is definitely talking about a one-time thing. We're not -- this is -- and that's mentioned in the charter. We are all aware that this is not a never-ending source of funds. Okay. Thanks.

JONATHAN ROBINSON: Okay. So let's make sure that we give air time to others who are patiently waiting.

Was there someone from the drafting team who wanted to speak?

ALAN GREENBERG: I'd like to push back on what Steve said.

JONATHAN ROBINSON: All right. I know I have got Microphone 3, four and then one -- I have got three, four, one. And I got a response from a member of the drafting team who hasn't spoken before. So let's go to Russ Mundy.

RUSS MUNDY: Thank you. I will try to keep it very quick. First, the -- a number of the constraints and descriptions in words in the current charter reflect the inputs that the process received even prior to the drafting team itself being created. So a subset of us did go through all of those applicable comments and summarized and cranked them into the drafting team -- to the draft charter, as you see it now.

And that's something that I think is important for everyone to keep in mind, that we've not in any way ignored previous input that's come in to talk about this issue.

The second point that I would like to raise is -- it is a follow-on to what Asha just said in terms of the focus of this effort -- is that it is, in fact, focused on the money that's in place.

However, I think in our last drafting team meeting, we agreed that it would be structured so that if the process or the mechanism or the resulting output could be used for subsequent things or if others wanted to contribute money to that activity, that would not be, if you will, de facto ruled out to begin with. It could occur if it made sense at the time. But we don't know if it will at this point.

JONATHAN ROBINSON: Thank you for both -- I'll attest to the fact that you and Erika did a substantial piece of work looking at prior comments. And, indeed, we did say that whilst we recognize that this is a finite pot of money, it would be a shame if we put together a mechanism that was satisfactory for future purposes. So we don't rule that out. But at the moment our, scope clearly looks at it as a finite pot.

So I think we go to Number 3 now.

MARILYN CADE: Thank you. My name is Marilyn Cade. I real quickly want to mention that a few years ago I spent quite an extensive amount

of time along with a few other people looking at the possible mechanisms for the possible distribution of funds that would be generated by auctions of single letters in the gTLDs.

And a fair amount of thinking went into some of it consistent with what you've done here. And I'll say good things about what you've done. But I have a number of serious concerns about some of the directions.

I'm not going to go into them all here. I think having an email will be important. But I have three points that I do think are important to make.

I think that because this cross-community working group is about distribution of fiscal, that we should not use an SOI approach. We should develop a new and improved requirement for a declaration of conflict of interest and expertise specifically for this working group.

And the second point I'm going to make is the number of seats allocated, five per chartering organization, is a stupid and narrow problem here. That is not even one representative per constituency in the GNSO.

And I think we have somehow gotten stuck in thinking that we have to be very small in the number of members in order to be effective.

So would also ask you to really think about the fact that opinions are not going to be as important on this working group as expertise and knowledge is going to be. So really do think a little more flexibly about what the number of members is going to be. I think that's also important.

Then finally I'm just going to say I need to better understand this. Are we clear about the self-dealing aspects? Does everybody really understand what that means and what the risk is?

Because you've used -- Sam, you've used the term "501(c)(3)" and I believe you're referencing ICANN's 501(c)(3) status. There are multiple 501(c) laws in the United States. Not all -- not all not-for-profit organizations are (c)(3)s. Some are (c)(6)s. Lobbying is defined differently. I don't want to go -- spend a lot more time on that. But I think this issue of self-dealing is really important for people in the ICANN community to understand, because of the credibility of the organization globally.

And so now I'll go to the -- when we talk about a mechanism to allocate the funds, are we suggesting that the cross-community working group would look also at the establishment of a separate arm's length NGO at which there could be no assertions of self-dealing? In which case what we would do is give principles.

Now, my final point is about outcome measurement. Every organization that qualifies for funding, from, for instance, the Norwegian Aid Organization or USAID or the World Bank or Corporate Social Responsibility organization submits a proposal, there's criteria for measurement, and they have to submit progress reports and they have to deliver on the outcome.

Is that all assumed? Because that takes expertise and would mean that this CCWG would need to bring in additional experts to help to advise on what that criteria is.

I'm not suggesting that expertise would have to be the appointees, but it would have to be available, just as legal support and advice may need to be available.

JONATHAN ROBINSON: So some very good points and quite substantial. I don't think it's appropriate for me to attempt to respond to those in detail, Marilyn, because I think it's better to give air time to others on the mic.

I will say that your first point, though, on the conflict of interest and the unique nature of this group is something which is -- which is -- which is very much on the radar screen, it's very much

something we want to hear about here. I know it's something that the board has given thought to.

Because clearly the -- the challenge from a sort of chairing-the-group point of view and thinking about it is that we have certain standards within the ICANN community and the within broader community in which we've worked in the past, but typically it's not dealing with this kind of financial issue and so therefore that's exactly why we want that input.

Next microphone, please. Number 4.

ELLIOT NOSS:

Yeah. Hi, Jonathan. I want to go back to the point that Asha was -- sorry. Elliot Noss, Tucows.

I want to go back to the point that Asha was responding to in assuring me that, you know, this was seen as a one-off process, not an evergreen process, feels like, you know, much in the same way that Steve wanted to put a positive comment in there, that a comment in the scope that explicitly calls out that this is a one-off process is very important.

I think to not do so will inevitably lead to the CCWG ending up spinning on this point.

And I want to distinguish very clearly. There were a couple examples given in the document around -- around you didn't want to preclude specific awards. And examples were given like support for applicants from underserved regions.

Those specific awards could certainly, in and of itself, be evergreen processes, but that is very substantively different from this work and the big body of work being seen as a one-off, and I think it's so central to not leave that as something that can be spun around later on.

So I'd really urge you to put that into the scope very explicitly.

JONATHAN ROBINSON: Elliot, I think we've got it --

ELLIOT NOSS: Great.

JONATHAN ROBINSON: -- in the sense that as you see, Item 4 on Slide 13 there is, "As the auction proceeds are a one-off source, one-time source of revenue," boom. So we clarify that it is a one-time source of revenue, but as Russ pointed out we'd like to develop an evergreen mechanism such that should it be required for something else in future, that's the case.

But from the point of view of this group -- and if we haven't been explicit or covered that, then help us with appropriate wording and --

ELLIOT NOSS: If you want specifics, I'll do that off line. That's great.

JONATHAN ROBINSON: Yeah. That would be -- yeah.

ELLIOT NOSS: That's great. Thanks.

JONATHAN ROBINSON: Next, please.

JON NEVETT: Thanks, Jonathan. Jon Nevett from Donuts.

If you could go back to the slide you had prior to this, Jonathan, with the conflict of interest issue, I wanted to talk about that.

I think "avoid any conflict of interest" is too broad.

I think -- I appreciate what Erika said, but I think we -- maybe the board recommendation goes a little too far, when you go back to "any conflict of interest."

Maybe there's a difference between direct and indirect conflicts of interest. For example, if this group gets together and says universal acceptance is something important that we might want to fund or universal awareness, as Jodee mentioned before, or something, and registries and registrars may have an indirect benefit of a successful product, successful and aware public, so then are we excluded from participating in this? I don't think that would be fair.

Many of us are members of the Internet Society. Many of us are members of the IETF. There are other organizations where we may have some indirect benefit and that organization may have some indirect benefit.

So I think I actually agree with Marilyn Cade --

[Laughter]

JON NEVETT:

-- when she says that, you know, we should have a special notice and special process for disclosure, but we shouldn't exclude people from participating because there may be some indirect benefit at some point down the road to a participant. Thank you.

JONATHAN ROBINSON: Thanks for that input. So there's -- there's really three things that potentially come out of that: special disclosures, mandatory disclosures, and whether or not those are such that they then go on to exclude participation. Those are the challenges, because it's all very well fleshing out the disclosures but what's the meaning of those disclosures?

And so it is -- it's a challenge and it -- it -- it's something which we've started to grapple with.

So I think you were Number 1, which means we'll go to Number 2 next.

UNKNOWN SPEAKER: Gee, I raised my hand 30 minutes ago, I think, so let's see.

My first question is related to the -- the -- sort of the separation between having an external funding agency and an internal framework. Let's say the board managed the funding allocation. It will be done by the working group, I understand, but I'm worried that it shapes so much the -- sort of the result mechanism that it's a question that should have been not resolved but at least, you know, discussed a bit more than just pushing it to the CCWG and saying, "You guys will have to decide

if it's an internal or external thing." I think it's a very important thing. So that's the first comment.

Second comment was on the conflict of interest, I want to approve what the gentleman just said. I mean, if we apply a very strict conflict of interest position, then, you know, no one from the Internet will participate in the CCWG.

So you will have to fund, you know, chicken or (indiscernible) and things like that, people that have no, you know, knowledge of this working group going on.

So I think we have to go through a -- I think specific criteria, we have to find consensus on those criteria, and then the CCWG and the framework will be based on the criteria transparently.

So I mean, it -- there's a lot of grant-funding organizations that work through strategic plan. They decide on a consensus what is going to be the strategic objective for a year or two, and then there are calls for proposal within the strategic objectives. Everybody knows about the strategic objectives. They have been decided. So...

JONATHAN ROBINSON: Thanks. Some good points and, I should note that the diversity criteria don't exclude chickens from participating, so...

[Laughter]

JONATHAN ROBINSON: No. There are some serious points and thank you. Those are good points.

So just mindful we're coming into the last five minutes so we go to Number 3 next.

PATRIK FALTSTROM: Yes. It's down to your further left, Jonathan.

Patrik Faltstrom, chair of SSAC.

One thing that is not really clear in your charter and I would like that to be clear before the actual sort of -- before you start working is whether these funds can be used in any shape or form by activities within ICANN itself.

For example, if you have a CCWG or something that is created that needs funding, today we have two sources: the -- the general sort of income or the reserve fund.

And the question is then: Is it possible for, for example, the chartering organizations that want to charter a CCWG, to request funding from the auction proceeds or not? And likewise for other kind of activities.

Which means, the question is: Can the auction proceeds, any shape or form, be used by activities within the ICANN community, and if so, what is the process to do such -- to write such an application?

JONATHAN ROBINSON: That's an interesting -- interesting point, and I just should say, probably for transparency, the one thing we did discuss in the drafting team -- and if you went back on the records, you'd see that -- we talked about the possibility of whether or not we should consider segmentation of the funds into different categories, and we felt that actually that wasn't a drafting team responsibility but that was potentially something that the working group could do.

So in the event that that was in some way acceptable or part of it, you know, that could -- that could link into that segmentation point.

So that was Microphone 3. We'll go to 4 next.

MARK McFADDEN: Thanks, Jonathan. Mark McFadden from the ISPs. Three really quick points.

First of all, it's clear that there's a serious definitional problem here, that the definition of lobbying, the definition of conflict of interest are clearly things that are important to get right. I don't think the drafting team should do that. That should be something that the working group does.

Second of all, if you believe that Steve is right that there should be a positive state- -- or the working group should emerge with a positive statement about its goals, then I hope that the drafting team will include in the scope the notion of recursion, because what's got to happen here is that the -- the working group itself has got to be able to be in a position to adjust its scope based on new information.

We clearly know from the -- the legal information and the fiduciary information that you've got that we have a basic set of information and not -- not a definitive set of information, and I think what the drafting team should do is consider very carefully that if we want to achieve Steve's goal of having a positive statement about what the funds are used for in some positive way, that the WG is allowed to change that as time moves on.

Finally, I want to talk about the evergreen question because I am sure I'm misunderstanding Elliot's point here, and he's making it so strongly that that means I'm sure I'm misunderstanding it.

The situation here is that we have a one-time source of revenue here, but what I'm hoping -- and I'm hoping Elliot will look at me and nod his head -- is that if one of the options that comes along is to simply take this money and put it into trust and only use the interest from that money, that that's consistent with his -- his idea that it's a one-time source of revenue and yet we as a community could marshal that money in a way that we could use it over a longer period of time so it's not simply a one-time disbursement. It's a one-time revenue but perhaps not a one-time disbursement.

And he did not -- for the record, he did not nod his head.

JONATHAN ROBINSON: Okay. So my next microphone will be 1. We've got three more minutes so I think we'll do -- we can do a maximum of one cycle through the microphones, so I'm afraid if you've got a microphone now, you're in. If not, we're going to ask you to make your submissions to us on line.

So I'm on to Number 1 next and so Microphone 1 --

MARILIA MACIEL: Hi. I'm Marilia Maciel --

JONATHAN ROBINSON: -- and then we'll go back and then we'll come to 2 here.

MARILIA MACIEL: -- NCSG speaking. Just one quick comment.

It occurred to me that when people are talking about conflict of interest, some of us are talking about conflict of the people that are going and to be part of the working group, some of us are talking about the people that are going to select the projects, and some talk about conflict of people that are going to receive the money.

So maybe moving forward in this discussion, it would be nice to separate this because we're getting confused, in my view.

A quick reaction on a point raised by Patrik.

I think that this money has been completely separated from ICANN operational money so far, and there's a good reason for it.

I think that the CWGs and things that we do on a day-to-day basis is operational. Of course it will be for the working group to decide, but I think there's a good reason that ICANN should continue to function with its own money and not this external and one-time money that is coming to us.

JONATHAN ROBINSON: Thanks. Microphone 2.

SIVASUBRAMANIAN: My name is Sivasubramanian. I'm from India.

Apart from the auction proceeds, there is also a new gTLD application surplus that could be combined in the purview of the working group. If not, at least for the sake of this comment, I would make a comment considering it as a sum together.

Even viewed together, the quantum of money might appear huge, but it's not, because ICANN as an organization, with a budget of over \$60 million, might need a long-term reserve.

I mean, I'm making a distinction between an operational reserve from a long-term reserve.

So that kind of a reserve could be equal to two years of its total budget.

I mean, if we separate that temporarily, this money in that reserve could eventually be released to the foundation or to this purpose as the reserves build up more and more.

So I'm suggesting that let's not be in a hurry to spend this money. Let's not be in a hurry to allocate this money.

And, secondly, the purpose of allocations, or the scope of allocations, could be broadened. It may not be within ICANN. It

may not be within DNS. It could even be broader than Internet because what affects the Internet, the challenges to the Internet, would eventually effect DNS and also ICANN participants. So these are the two comments.

JONATHAN ROBINSON: And I would encourage you to bring some of those points up within the working group itself. Certainly, as far as the scope of the funding, currently, as we stand, it's tied to the auction funds only. But those are some interesting points, and they may be able to be fed into budgeting processes and so on.

We will go to three and four, if you can keep it brief, and then the cue is closed at that point.

Microphone 3, please.

ROBERT GUERRA: It's Robert Guerra with the SSAC, speaking in a personal capacity. Just a couple of quick comments.

I want to mention what Carlos Alfonso mentioned in regards to not reinventing the wheel and kind of seeing kind of the scope and focus. So let me make a specific suggestion.

I think earlier we were talking about focus, and there was a line there that said ensure processes and procedures are lean and

effective. To that I would add "and build on best practices." And that could go to the group that's bringing it up.

But I think if you are doing the scope now, building on best practices and also exploring opportunities to partner with other institutions that are doing the same, would be particularly important. Following this space very closely, if I have, in having been an intermediary donor in this space, there are multidonor pools, multiple foundations, government entities. And it would be far more efficient and far more value if ICANN were to explore and the group to explore how the value and the funding that they're putting in could be added to existing pools. So that's something that perhaps could be added.

And on the aspect of conflict of interest, I would be a strong proponent of those who are participating in the group that's being set up that they as individuals could not apply for funding because they would be in after privileged position of having set it up. If they are part of larger institutions, perhaps other people could. But they should -- that would be a direct conflict which I would like to echo, and others.

So those are my two suggestions, adding "building on best practices" and the issue of participants that are involved in this not being able to apply. Thank you.

JONATHAN ROBINSON: Thanks, Robert. We are very tight for time, so we will go straight to Microphone 4 and then try and wrap things up.

ANDREW DWYER: Hi. I'm Andrew Dwyer. And I would just like to echo that precise point, especially with what Marilyn said of the reputational damage that could come from -- for ICANN especially where it's got from self-interest conflicts. So exactly what was said previously with potentially looking at exploring other donors, who may be able to follow a scope with the CCWG, could outline and that process could then be followed.

JONATHAN ROBINSON: Thank you very much. That was actually -- we didn't go through things in quite the sort of sequential way that we might have imagined. But we've certainly received some high-quality input. And, significantly, I know some of you will inevitably have been left out. But we've got quite diverse input. We've had a lot of unique speakers on the microphone. So that's very much appreciated for those of you that have either attended and caught up now and/or done your diligence before.

So we are -- as we bring this session to a close, we can talk to you about the expected next steps. We clearly had that blue box

in the top left-hand corner, the cross-community discussion, here.

We will take all of that input. Most of us in the drafting team have been in this meeting. We'll have access to the audio and the transcript, and we will probably lean on staff to help us by trying to distill out some of the key points out of this. But one way or another, we will try and pull out the key suggestions and make them into some sort of themes and then sort them out and then update the charter on the back of that. So this has been very valuable.

Now, some of you may feel that you haven't had the opportunity to either have your say or have enough of a say. And to that extent, we'll provide you with an email address to provide us with further input if you haven't had the opportunity to do so, so that we can weave that into the charter as well.

And our intention, then, is to submit the charter based on all of that to the SOs and ACs for their consideration in due course, which will then allow them to potentially adopt the charter and commission really the meaty work, which is the work of the CCWG itself, the working group itself in which there will be ample opportunity to participate.

So, Marika, are we going to use your address? If you could let people know what that address is to send any email input to.

MARIKA KONINGS: Yes, this is Marika. I will also post that my address into the chat. But it's, basically, my name, marika.konings@icann.org. If you didn't catch that, feel free to come up to me after the session and I will give you my card or write it down.

JONATHAN ROBINSON: And it's on the transcript. Thanks, Marika, and everyone who has been up on the podium here, everyone on the drafting team, and everyone who has attended and put the high-quality input into this session. Much appreciated. And with that, we will bring the session to a close.

[END OF TRANSCRIPTION]