

ICANN
Transcription ICANN Copenhagen
CCWG New gTLD Auction Proceeds Cross Community Working Group Meeting
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Jonathan Robinson: Okay, good afternoon everyone. Welcome to - or at least good afternoon in Copenhagen. Welcome to this meeting of this Cross Community Working Group on Auction Proceeds.

My name is Jonathan Robinson. I'll be working with my co-chair on the far left, Ching Chiao from the ccNSO appointed co-chair and also with Erika Mann, the newly appointed GNSO co-chair who will be taking over from me. So this is a congratulations to Erika. And this will be in effect a form of hand-over meeting.

But we have some substance to deal with, and hopefully all of you will have seen the agenda on the e-mail list. We've got a number of items to go through. And so we'll take you through that.

The plan is to first of all look at the proposed agenda, deal with a few basic welcome and introductions, talk about the roll call and the statements of interest. I'm going through this agenda because I'm aware not all of you will have seen it, and it's not up on the screen in front of you. Of course you can all log into the Adobe Connect room if you have a computer with you and you can easily link to that.

So we'll do a little bit of a recap for a couple of reasons. One, because it never does any harm anyway. I apologize to those of you who are very familiar with the subject, but I think it's also a courtesy to those of you who may not have been tracking the work of this group that closely and/or who have not - who are seeing some of this for the first time.

So that recap will be on the slide which you see in front of you, and I'll take you through that. I'll then be handing over to Samantha Eisner on my right, Sam from ICANN Legal, who has previously begun to present to us on the legal and fiduciary constraints associated with the work of this group.

So really what that's about is making sure that anything that the group works on - and ultimately recommends - is consistent with the relevant bylaws and other constraints that might be placed on us from a legal perspective. And so Sam will be doing in effect a part two of that and we've asked her to recap what she had done previously so that no one is left behind there.

Item 4 is we received a letter from the board, the ICANN board, to the CCWG outlining the board's views on certain key aspects. And we'll start to talk through that. I expect we won't deal with that in full today but we can start to talk through that.

And I think Erika you can lead us through that. Is that correct? And so Erika will lead us through Item 4 and then under Item 5 we can have a look at the initial output from the survey that we've undertaken, that many of you will be familiar with, which dealt with the charter questions, the key issues arising in

the charter questions, and in particular whether any of those are gating issues for the group and/or whether there are subquestions underneath all of those.

So that's the shape of the meeting. It's a lot to get through in an hour and 15. We'll do what we can to deal with that. So welcome everyone. Welcome to the meeting and to those of you who are regular members and participants as well as those of you who are becoming familiar with this for the first or a relatively early time.

We would typically take a roll call, and we will take a roll call from anyone who is logged into the Adobe Connect room. And I see many of you are. I wonder if we should try and - I don't think we can do it, but comprehensive roll call of everyone in the room.

If you'd like to be recorded as present, there's two things you can do. Either log into the Adobe Connect room and/or if you make a contribution, please make yourself known. Marika go ahead.

Marika Konings: Yes this is Marika. Just a suggestion as it may be the first time for many people that they are actually in the same room with each other. Maybe we can just ask members and participants to identify themselves, presuming that those are the ones around the table. I know that takes a little bit of time, but it may be worth so people can connect names to faces.

Jonathan Robinson: Thanks Marika. That's a practical and good suggestion. So certainly it would be great to have anyone who is a member or participant to the extent that we can sit you at the table, please do be seated. And why don't we start with a very, very brief name and affiliation just so we can know who's present. Perhaps we could start over on the right there.

Dietmar Stefitz: Thank you. Dietmar Stefitz. I am just a member.

Hadia Elminiawi: Hadia Elminiawi from Egypt. I'm a member. I'm director of the Domain Name System Entrepreneurship Center.

Owen DeLong: Owen DeLong, Akamai Technologies and the ARIN Advisory Council.

(Shu Ajadiji): (Shu Ajadiji), member from (Iraq).

Tony Harris: Tony Harris, member of the ISPCP and a registry.

Elliot Noss: Elliot Noss with Tucows, a member and registrar.

Asha Hemrajani: Asha Hemrajani, ICANN board and board liaison to the CCWG. Thank you.

Becky Burr: Becky Burr, board liaison to the CCWG.

Daniel Dardailler: Daniel Dardailler. I'm a member in the working group, and I am from W3C.

Mathieu Weill: Mathieu Weill, I'm from the French ccGLD, and I'm appointed member by the ccNSO.

(Kalik Alivez): (Kalik Alivez), ICANN organization.

Brad Verd: Brad Verd representing RSSAC.

Samantha Eisner: Samantha Eisner. I'm participating on the CCWG regularly, and I'm here from the ICANN legal department.

Marc Gauw: Marc Gauw, participant, and I'm from the NLnet Foundation from Holland.

Jonathan Robinson: Hi, Jonathan Robinson, GNSO-appointed co-chair up until today when I'll be replaced by...

Erika Mann: Erika Mann.

Ching Chiao: My name is Ching Chiao, the ccNSO-appointed interim co-chair of this working group. Thank you.

Sebastien Bachollet: Sebastien Bachollet from ALAC Europe.

Monika Konings: Monika Konings, ICANN staff.

(Serena Delan): (Serena Delan), (Unintelligible) Foundation.

(Yoko Volakin): (Yoko Volakin), ICANN staff.

Julf Helsingius: Julf Helsingius, member of GNSO Council, NomCom appointee.

Cherine Chalaby: Cherine Chalaby, ICANN board, observing.

Ashwin Rangan: Ashwin Rangan, ICANN staff.

Jon Nevett: Jon Nevett from Donuts representing the Registries Stakeholder Group.

(Ben Wallace): (Ben Wallace) from Microsoft.

Alan Greenberg: Alan Greenberg, member appointed by the ALAC.

Stephanie Perrin: Stephanie Perrin, member appointed by NCSG.

Woman: (Unintelligible), participant from ccTLD.

Jonathan Robinson: Great, thanks everyone. So now - I'm sorry, is there a hand up? Okay so just a quick practical point. If at all possible, could you put your hands up in the Adobe Connect room so we can get you in the queue? And by all means, please come to the mic.

Woman: Just a correction. (Unintelligible), a participant.

Jonathan Robinson: Thank you very much. So recognizing here that we have in a sense three categories of participants, we have members who have been sent to and put on the group by virtue - by their stakeholder groups or the groups from which they derive.

We have participants who have chosen to participate in the group and have to all intents and purposes the same function and role as members except that should there be any requirement to put a particular decision to a vote that that is to the members of the group only.

And then finally we have observers who are able to track the work of the group but not actively participate.

As a result of the charter for this group we put particularly stringent requirements on in terms of interests for the group. We require of everyone that not only do they fill in a standard statement of interest declaring their affiliation and alignments within the ICANN community, we also expected a further step from everyone to make a declaration of interest.

And that declaration of interest specifically sought to understand from members and participants -- and in fact is a requirement for their membership or participation -- that they declare whether or not they or the organization they are associated with - they have any knowledge of their likely potential application or involvement in the application for funds from the eventual entity that this group produces.

So as a result we should have from every member and participant an up-to-date statement of interest and declaration of interest. To date we have simply checked whether we have those. We haven't gone through the content of those in any way, and we have asked staff to review the content of those and then to indicate in a transparent way who has filled in.

It'll simply be an asterisk next to the name of each member or participant or something similar so it becomes clear who has declared that they may have an interest in future application of funding.

That process of checking the content has not yet been done but I will remind you all that you all should have filled in those declarations of interest and statements of interest. And I guess it would be normal at this point to make a call if anyone has an updated statement of interest or declaration of interest. Okay, go ahead Asha.

Asha Hemrajani: So Becky and I, we have updated our declaration of interests.

Becky Burr: To be clear, I'm in the process. I've been doing it right now. It has occurred to us that we should indicate that the ICANN board may seek or may explore topping up the reserve fund with it. So just in the interest of total clarity.

Jonathan Robinson: Okay so that's very helpful and I'll just kind of give you some of the background there. One of the charter questions for this group is - and I'll paraphrase. I don't have it in front of me, but essentially do we think that the - does the group believe that the ICANN organization should itself be able to apply for auction funds in future? So that's a point of deliberation for the group.

In addition there is a requirement that the declaration of interest – as we talked about a moment ago – that in the declaration of interest you indicate if an organization you are associated with or if you in your personal capacity are likely to apply. So I guess that's the background to those changes.

But in principle, should the group decide to commit applications or suggest that the future mechanism accept applications from ICANN org, then anyone associated with ICANN org, such as a director or staff member who might be

active in that application should declare that prospective interest. Thank you very much for doing that. That's helpful. Marika?

Marika Konings: Yes this is Marika. Just to notice – as Jonathan pointed out – staff hasn't gone yet through the declarations of intent so this is also a good opportunity to remind everyone to review those and make any updates as needed.

And then just to point out as well, as we understand it, it's not the intention that we keep on reviewing those to see if there are updates. So it will be up to the working group members and participants to flag to staff should there be --over the course of the working group – changes to your declarations of interest that would warrant or justify a change in the asterisk that's going to be put next to the name.

Jonathan Robinson: Thanks Marika. Yes it's up to you as individual members and participants to keep those current. I would expect that the co-chairs will ask on a regular basis for updates, but in general it's up to you. Alan Greenberg, go ahead Alan.

Alan Greenberg: Thank you. I'll note our charter does raise the question that you just mentioned, should ICANN or its constituent parts be allowed to apply for money.

However topping up the reserve fund is not your typical project. And therefore I appreciate that if you put on the table right now and so that we can make sure as we're going forward although we're not supposed to be deciding on use of money, that one is so special that it's appreciated by me in any case that it be put on the table right now. Thank you.

Jonathan Robinson: Yes thanks Alan. Go ahead Asha.

Asha Hemrajani: Thank you Alan and thank you Jonathan. That's exactly the intention and even though it may seem a bit strange to say something like that, it would be better just stated very clearly so that's what we have done. Thank you.

Jonathan Robinson: Good. That's rather a large preamble but we've dealt with a few important things. So let's go on to the substance of the work of the group and just to try and recap this in as pragmatic and efficient a way as possible we'll go through a few slides. So if I could have the next slide please.

So very briefly – and I'm not going to walk through in a lot of detail – is a timeline from where we began to really start out on this path of work through to now. Goes back to almost two years ago – some initial preparatory work, some sessions at one or more ICANN meetings, a discussion paper.

The reason it's important to highlight this is I think sometimes we come into these things and think that we're starting with a clean slate. I mean, clearly the genesis of all of this goes back to the applicant guidebook for the new gTLDs. And then - and that sets the scene for this work and then the preparatory work for the specific group goes over this last almost two years now.

We've got the discussion paper, the formation of a drafting team, a cross-community working group drafting team, the publication of a charter for this group.

So the work of this group is defined and scoped out by that charter quite carefully and deliberately, the adoption of the charter by the chartering organizations and then the following meeting of this group and the work commencing on actively trying to work its way through the charter. Next slide please.

So clearly there are some overarching goals and objectives and again to make sure we're very clear, this is about proposals for consideration by the

chartering organizations on the mechanism to be developed in order to allocate the new gTLD proceeds.

This group is not concerned with the allocation of the proceeds. It's to set up a structural mechanism in order to deal with that. And to particularly consider that fund allocation under the necessary conditions to preserve ICANN's tax status, ICANN is a California not-for-profit corporation and there are particular issues that go with that. And that's really part of the key substance of today's meeting.

And then this point we've discussed on the statements of interest and declarations of interest, dealing effectively with any potential or actual conflicts of interest.

And then re-emphasizing that the CCWG will not make recommendations about actual funding decisions and any specific organizations or projects or funds. Next slide.

So as a result of that, we've produced a work plan. And that's what we've begun to do – architect, build the work plan and start to deal with some of the substance in that. And we've even gone so far as to draft that initial timetable of activity or project plan if you like.

All of that will lead in step 2 to an initial report which will be published and subject to substantial community comment and input. And that will be ultimately followed by a final report, which will then be submitted to chartering organizations in the usual way.

Chartering organizations will deal with that and then with that final report, once approved, assuming it is by the chartering organizations, will be submitted to the ICANN board for final consideration.

The board has committed to certain approaches to the consideration of that, and so that's - we look forward to ultimately getting to that step.

Notwithstanding that, the board will have a role and you'll pick out - you'll hear that in terms of the legal and fiduciary obligations to deal with any disbursement of funds. The board will retain an oversight of that throughout.

And there's an obligation on us, the co-chairs and my colleagues the future co-chairs to ensure that there's regular updating of the chartering organizations, of which arguably this meeting is a part of that in a public and transparent way. Next slide please.

We've talked, we've touched on particular expertise and knowledge, and we've made a formal or semi-formal assessment of the skills and expertise within the CCWG. We did that for a couple of reasons.

We wanted to flush out amongst ourselves what key relevant skills and expertise there exists in the group and make one another think about what expertise we have and whether that's relevant and sufficient to publish that amongst ourselves and also to make the group self-aware of where there might be shortcomings in skills and expertise that might require external input.

And to be clear, that external input is not necessarily the external input that we might buy in the form of professional input. It could come in numerous ways. It could be indeed paid for but equally it could come from within the community or within our own networks and be brought in to assist the group in that way.

And therefore the need will be to identify any topics that require further briefings and information to ensure that we start off with a common understanding, a well-informed background, and this legal and fiduciary constraints is the first of such topics.

And then on to the development of the work plan and many of you have participated in the survey dealing with that where we went systematically through the charter questions and on item 6 of the agenda, Marika will talk about that in a little more detail. Are any of these charter questions gating questions?

In other words, should we deal with them ahead of any of the others? Because it may bifurcate. There may be specific fork in the road of the group's work that needs to be dealt with up front prior to going to the other ones.

Due to any reason – for any reason – are there any subquestions? Are there any details of those questions that need to be fleshed out and built up further? And then to the external expertise point, is there a requirement for additional expertise?

And on the back of that we then map out the possible timeline and we have had a first draft of that shared with the group for the deliberation and delivery of the initial report. Next slide please.

And of course this is all available online on the - and here a set of URLs that can take you right back to the discussion paper and I expect prior to even that because within the discussion paper there will be links. Of course the charter and the work space are the key to the links you need to know and the various other links that are put in place there.

So I've tried to go through that rather speedily. It took about seven minutes to go through those slides so, you know, I hope I didn't rush too much. I wanted to make sure that everyone had a common background, and those of you who haven't had the opportunity to track the work of the group can start at a reasonable level. And so hopefully it has had that effect and you feel adequately and properly informed.

So with that we'll move on to item 3 on the agenda which is where Sam Eisner from ICANN Legal will continue with what she was working on before and taking us through the legal and fiduciary constraints associated with this work. And so with that let me hand over to you Sam.

Samantha Eisner: Thank you Jonathan. Again this is Samantha Eisner. I am deputy general counsel in ICANN's legal department. And throughout this process I worked with the drafting team to draft a charter and we had a document on legal and fiduciary constraints that I produced here with Xavier Calvez, ICANN's CFO.

And some of that information was used to inform the charter. And so the initial start for this group's work, I was asked to come in and present information about the restrictions that are in place here because of ICANN's not-for-profit status.

And there are special considerations that have to be observed as this group is making recommendations for the use of the auction proceeds.

And so as I noted on the call a couple weeks ago where I started presenting, we don't see this as the only time that we'll be coming to talk to you about this, either me or Xavier. We see this as the beginning of a conversation. These are really high level concepts that we'll be discussing today or the continuation of them.

And I mentioned at many points during your deliberations you'll be requesting more specific information about certain items or seeking reminders about what certain of these limitations are.

Approximately two weeks ago now I presented about half of a slide deck to this group and walked through the things that are the really high level things that we need to consider as we're using the - as we're looking at how to

disperse the auction proceeds in a manner that maintains ICANN's 501(c)(3) status.

When you go back to the application guidebook from the new gTLD program, you'll see even in there that the anticipation of if there were any proceeds from the auctions of last resort that they would be reserved for a community group which is here to make recommendations on how to use those proceeds within ICANN's mission because that is one of the key protectors of ICANN's not-for-profit status is that any funds that ICANN expends has to be within ICANN's mission.

And there are some other legal and fiduciary constraints that come along with ICANN's 501(c)(3) status. So just in general - and if we can turn to - oh, I can present, sorry.

So just to recap for those who weren't on the call when we started this, we actually got through items 1 and 2. Consistency with ICANN's mission is set out in the bylaws and private benefit concerns. So again that overarching concern is that any funds that ICANN spends - and because these auction proceeds are held within ICANN -- ICANN is subject to testing based on its mission. So that is an overarching limitation that's here.

And then we go into private benefit concerns. And that has to do with the fact that ICANN as a not-for-profit public benefit organization may only spend these funds for public benefit type situations. It cannot be to the inurement of any private individual.

And so for example ICANN's not a shareholder organization. We don't return money in dividends to people within the ICANN - anyone within ICANN -- board members, executives, officers. No one gets that.

And so just the same, we have to make sure and we have to build in protections. The protections come in the mechanisms that you might

determine to use for the disbursement of the auction proceeds that it's being used for public benefit purpose and not just to get into the pocket of a private person. So we talked through some of those considerations.

And so I will now pick back up because we took a long time on the previous conversation getting through those first two sections. Turning to some of the other things that we need to look at from a legal and fiduciary standpoint as it relates to maintaining ICANN's 501(c)(3) status.

So one of the things that's really important from the ICANN standpoint is because of its US tax exemption, it is barred from engaging in any activity that intervenes in a political campaign for a public office. And so that's kind of a general description of what the political activity bar is.

And so that also includes particularly for this group's work that we're not providing funds to a separate organization that intervenes in a campaign because one of the things and one of the concepts we discussed earlier is that the auction proceeds disbursements when they're made, ICANN has an overall diligence requirement to trail where these proceeds go.

And so it's not enough that they go first level to an organization that doesn't engage in prohibited activities or isn't to a private individual but there's actually a trailing requirement. So you have to make sure that you understand what the ultimate uses of the money were and who the ultimate recipients were.

And so we have to make sure through this auction proceeds work that ICANN is not in a position of being deemed that its funds are being trailed down a path that are ultimately used to intervene into a campaign for a public office.

And so this has been incorporated into the charter to include a requirement that the proceeds can't be used or can't be provided to organizations that

intervene in campaigns for candidates. And that's for candidates in the US or outside of the US.

We did some work to try to make sure that we weren't using US-centric language in this and that it wasn't only limited or applicable to the US because ICANN's obligations – while this comes out of US tax code – we also need to make sure that these are things that can be applied evenly across any recipient wherever they may happen to be in the world.

And stepping back from that for a second, one of the things that we also discussed – and you'll see reflected in the charter – is we also tried to use language in the charter just in general that when you're looking at the private benefit assessment of an ultimate recipient that we didn't use language that limited only to US 501(c)(3) organizations because we didn't want to take actions from the outset that limited this group from having international reach and impact with the auction proceeds.

So related to the issue of political activity comes a limitation on lobbying activity. So lobbying is defined as attempts to influence legislation. That's kind of a very general definition of it. And if you - if any of you were in attendance at the session we had in Helsinki during the drafting team phase, we had a lot of conversation around that and we're looking forward to having many of the people who are experts in this come and help us work through how to make this operational within the auction proceeds work.

But within the US 501(c)(3) statute, ICANN as a not-for-profit organization has a limitation on the percentage of its funds that can be used in any attempt to influence legislation.

For those of you who have been following other parts of ICANN's work such as the accountability, you'll see that ICANN regularly makes accessible to the ICANN community disclosures about anything that it does that's considered

lobbying activity. And those are within the prescribed limits of the 501(c)(3) status.

But if ICANN were to allow the auction proceeds to then trail to other organizations that conduct lobbying activities, that money would actually be included in the percentage calculation for ICANN and could itself put ICANN's tax exempt status at risk. And so we have a charter requirement that's included. The proceeds cannot be provided in support of attempts to influence legislation.

And so one of the things that was suggested in the memo that we drafted at the charter drafting stage was that the CCWG could impose requirements for example that all recipients agree to this commitment as part of the grant-making process or whatever is the ultimate process for making disbursements.

And then a really important item is that decisions have to be taken without conflict of interest. And part of that looks at within the not-for-profit statutes is that ICANN is prohibited from benefitting insiders to ICANN. So on a really practical term, we would recommend and we think that there are limitations that are appropriate such as prohibitions on the auction proceeds being awarded to businesses that are owned in whole or in part by ICANN board members, executives or staff or their family members.

In case you're not aware, we have a regular practice of maintaining the ICANN board and executive statements of interest on the ICANN Web site so those are available for all of you to review. We have the statement of interest process as well through the CCWG.

However within the auction proceeds work we think that this obligation goes a little bit deeper. The community conflict of interest concerns should also be taken into account.

And as Jonathan was mentioning today in our earlier conversation about the import of maintaining statements of interest that are up to date and those declarations of interest forms include questions such as are you part of an organization that has an intention to apply for auction proceeds? And they go into some other details.

Those are all really important considerations that we have to take into account for the transparency and integrity of the process. It's not that we've preconceived any lines of who should and should not participate in the different phases and that is part of a conversation that can be had. But the transparency around all those interests are really important to bring to the table.

And that's one of the reasons, you know, as you heard - so Becky and Asha as support liaisons have updated their declarations of interest to note that there may be a possibility that ICANN itself could be a recipient or a beneficiary of some of these funds in the end.

Xavier and I will also make sure that we have declarations of interest in place to reflect that. And from our standpoint that's also our obligation to remind the group of as we're talking about specific recommendations or the development or deliberation of recommendations that go forward.

And so as the group keeps working through this issue, you know, as we have listed on the slide, we have some questions that we've raised about what will the separation be between those making recommendations and those eligible for award. Should there be a segregation of duties or commitments from participants in the CCWG about future intentions or the potential for being involved in the design of a process that you yourself may wish to take advantage of in the future.

These conflict of interest considerations, we're not talking about them just because there are limitations on the community but the amounts that could

likely be dispersed through the auction proceeds fund are over the amount of ICANN's single year operating fund.

This is a huge expenditure on ICANN and we expect that the ICANN board when taking the ultimate decision on these recommendations will be highly scrutinized in how they do that. And so every piece of transparency that this group can help provide to the board about the underlying decision-making that happened here helps the board demonstrate how conflicts were dealt with at every level before it got to the board.

And I think that's going to be a really important thing for the protection of ICANN as the organization that we all are working within to sustain it from challenges based on that decision.

Jonathan Robinson: Sam we have a question here.

Marc Gauw: Samantha are you more or less saying – my name is Marc Gauw by the way – are you more or less saying that as long as things are transparent, a certain conflict of interest is allowed?

Samantha Eisner: I think that how conflicts of interest should be treated should be a running conversation. That would be my recommendation, that it's not - we might not be in a place today to make any sort of hard lines about who can participate in what. But so long as we remain transparent about where different participants' interests lie, we'll have the information available to assess whether or not our conflict practices remain appropriate for the scope of the deliberations.

So I think transparency is the starting point and then where things go from that we'll have to consider as a group. So I'll proceed. And Marc if you can - thank you.

And this is where we go into that same notion. So ICANN will always be the entity responsible for making sure that funds are provided to the appropriate organization and the confirmation of mission and provided in a manner consistent with ICANN's 501(c)(3) status. This goes to the heart of the board's fiduciary concerns.

And so we've come up with some ideas, and that's part of the reason why we're here today with you and we're engaged so early in the process.

We think it's really important to work together to facilitate this group in making recommendations that we believe the ICANN organization could actually take on because it would be a shame if we were to be sitting outside of the room and this wound up at a point of recommendations that cause such big issues as it relates to some of the things that we've discussed that the ICANN board would not be in a position on a fiduciary basis of being able to take these on.

So we're here in the spirit of helping you when you need it to get to recommendations that the ICANN board is actually able to – on a legal basis – consider.

And so a couple of things that the CCWG could do to help in this process is make transparent assessments of how the recommendations service ICANN's mission. We had a long discussion on the previous call about this mission limitation.

The board is ultimately responsible for the assessment of whether something serves ICANN's mission or not. However, getting information from the community about why they think particular recommendations do serve ICANN's mission gives the board something - gives the board pieces of information to help make that assessment off of.

We talked a bit in the previous discussion -- and this will take up some time from the group as well -- about the use of established mechanisms for

disbursement of funds as opposed to calling for the development of untested mechanisms because there is an ongoing diligence requirement from ICANN's standpoint.

So the - you can do cost benefit analyses of innovating on processes used to disburse the funds and developing audit mechanisms and due diligence mechanisms over who might be awarded funds tested against some more established items.

And I know we have people in the room such as Marc who work with NLnet who might have the ability to tell you how they do some of their diligence work. There is a lot of expertise in this room about how this can get done, so I hope that you're able to take advantage of some of that.

And then recommendations that enhance transparency including reliance on documentation of processes to make sure that there are good trails and there are good ways that people can follow how this happens and help ICANN hold the people and the entities that will ultimately receive disbursements accountable to the granting of the funds.

And then we also have just some of the general financial and fiduciary concerns. And Xavier, let me know if you want to comment on any of these. So the board and officers of ICANN hold fiduciary duties to ICANN itself to make sure the self-dealing does not occur and their private interests aren't benefitted through ICANN's decision making and actions.

And so this again just goes to the governance model that might need to be inserted over the proceeds once we're in a disbursement process. And, you know, we do take this very seriously from that standpoint.

Xavier Calvez: Thank you Sam. Just to establish further the principle, ICANN as a legal entity owns currently the funds that are being held from the auction proceeds and in the disbursement process needs to ensure that throughout all the

steps until the end user of those funds there is very clear accountability of those funds in a consistent fashion with the mission of ICANN and consistently with the purpose that has been determined for the use of those funds.

And therefore the evaluation process of the request, the disbursement process of the funds, and the monitoring of the funds that have been disbursed have effectively been used for the purpose that was intended by the recipient are very important.

I'm insisting on that last phase because many people think that once ICANN has disbursed the funds everything stops. It's the end of the process. It's actually the beginning of a process, the process of monitoring that the funds have had the intended effect from the application of their recipient.

So generally speaking we will need to put in place processes that allow to ensure that accountability of ICANN to the use of the funds from when they leave ICANN all the way to the end user irrespective of the mechanisms that will be used to operate the disbursements. Thank you.

Jonathan Robinson: Thank you Xavier. Elliot a question from you?

Elliot Noss: Yes, Elliot Noss, Tucows. And I'm sorry, I'm kicked out of the Adobe room. Xavier does that - how should we take that in relation to sort of the entity that we create or the process that - the community process in terms of their responsibility?

I mean, I think from my perspective we would be thrilled to delegate, you know, sort of subsequent audit accountability to you. And I think that would be great but, you know, are there parallel responsibilities that you see or are they - you know, it's kind of it's yours; you'll deal with it.

And now I'm not talking here to be clear about the efficacy of the award or anything in the substance but just at a form level.

Xavier Calvez: And Sam will add I'm sure or correct me, but there is the fiduciary responsibility for the organization that requires what I described. But that fiduciary responsibility is not the only driver for it. It's also the accountability of ICANN to the public in the usage of the funds that require us to at every step in the process be very confident that we are doing the right thing.

Therefore I'm also expecting that from a transparency standpoint in order to demonstrate that accountability in addition to the fiduciary requirement we will want to be very transparent with this group of course but also with the rest of the community as to the process, the effective use of the funds and that monitoring of how the funds are dispersed throughout the process.

So I don't believe – and Sam will correct me – but the working group here will be of course very interested at the minimum and very looked up by the community as to the effectiveness of the disbursement process and the adequacy and accountability of the funds.

So I would expect that these mechanisms are very important also for the working group because every one of the working group members will be looked at by members of the community to say you have somehow a responsibility in this process and we need to enable the responsibility is well assumed as a result.

Elliot Noss: Let me try and take it down a level. Will you be – will you – will ICANN the organization through staff and your office be performing some audit function in relation to these proceeds such that that's not a piece of work that we have to worry about?

Xavier Calvez: So yes, ICANN as an organization will put in place the monitoring processes whether it's audits, specific procedures of controls, presence at boards of

organizations and so on and so on that we deem necessary for on a case-by-case basis for each of the types of disbursements.

Elliot Noss: Super, thanks.

Jonathan Robinson: Thanks for the question. So that was Elliot. I've got a queue already. I had Elliot. I've got I think it's Daniel. Please make sure you do announce your names and I've got yourself as well. So Elliot then Daniel and then Erika I'll come to you. So Daniel you're next.

Daniel Dardailler: I'd like to go back to the lobbying and no lobbying issue. As you probably know, the world of technical standard is sort of divided into the (four iron) consortia like (AETF), W3C or (Azes). And the official de jure standard organization like (ITU), (ISO) and it's a legislation issue whether or not the open standard of the Internet are recognized by government.

So whether it's (AETF) or W3C we've been partaking in discussion with European Commission to get the Internet and the Web standard recognized so that people can use them, you know, officially in public procurement for instance.

So is that lobbying? Is that an activity that would be prohibited in the funding or is it something that really relates to the Internet activity in itself? I mean, ICANN is doing lobbying in a sense as well. And when it tries to keep its share of autonomy and sort of power over identifier, if there was legislation going against the ICANN mission and wanting to seize the root or something like that it would be lobbying to sort of stop this legislation or not.

Samantha Eisner: Thanks Daniel. I think that that's really one of the hearts of the questions about defining the lobbying activities, particularly in this cross-jurisdictional international realm that ICANN's in that people are seeing the auction proceeds having impact within that sphere of what activities, where the line is on that.

So I don't have an exact answer for you today. I mean there might be particular objective things we could look at to see if that's lobbying activity or not. For example in the US we have to register as a lobbyist. Sometimes if you're in practice before the European Commission you have to make certain registration there.

You know, are there certain things that you can look at how else would we define it? But again - and I again go back to our conversation in Helsinki where we already had some fabulous ideas from people who were participating in the session about types of ways to make that cut. So that's where I see this group having some discussions on that.

Jonathan Robinson: Thank you. I'm going to keep us moving on then. So the next person in the queue is Erika.

Erika Mann: I think coming back to the point Elliot raised, I think what we want to be careful is depending on the last process, the disbursement process, and depending how this will be set up, there might be different ordered procedures and different monitoring and tracking procedures accordingly to what Xavier said.

So I would recommend that we pick up this discussion a bit later again. It will come up again and again. And depending on how we define this process, there will be - and it will definitely have to be a monitoring process inside of the funding environment or the granting environment, however it will be called.

But then of course there will be a process which ICANN will have to fulfill as well. So I think we will have a kind of double pass. But my recommendation is to pick this up when we get closer to the process and when be clearer how we define this particular process we are in.

Jonathan Robinson: Thanks Erika. I sense that you're right. It's like it will come up further and there will be an opportunity to pick it up more. So I'm going to take the input from Dietmar and then I think we'll call it a day there because we are relatively tight for time today. So let's hear from you Dietmar and then let's move on to the next agenda item.

Dietmar Stefitz: Dietmar Stefitz for the record, okay. I lost my voice. ICANN changed so much in the last five to ten years. And my question is the mission, is it completely fixed or is that a possibility that the mission can be extended also?

Man: I think we've talked about this I think in the previous meeting. I think I can probably dig out the records. I think for the - I fully agree with you there could be some of the ongoing or actually in the past number of years we've seen. And even though we stick to the mission but things could be done a little bit differently.

But we probably talked about this but addressed that issue because this goes back to kind of change of the bylaws and we probably - it's out of the scope of this group. So we probably will not wish to touch upon that at this stage.

Jonathan Robinson: Okay thanks. So thank you very much Sam. I mean, we had quite a comprehensive discussion so if anyone's particularly interested in this I would recommend that you go back to the prior meeting as well and listen to the audio or read the transcript of the meeting previously because we did go through some of - not all of this but the first few points and the legal and fiduciary obligations or issues, presentations.

So there's some additional detail to be had and I have no doubt we'll - or this group will touch on many of those aspects as Erika said as we move on.

So the next item on our agenda - we've got 15 minutes of the allocated time. We can probably run over a little -- I am not sure but I'd like to keep us reasonably to schedule -- is to deal with at least in a preliminary way the letter

from the ICANN board to this group detailing some specific considerations for this group and to talk you through some of the points there and some of the things you may want to touch on initially as well as the mechanism for dealing with that. I'll hand over to Erika.

Erika Mann: Thank you. So we received on the 3rd of March a letter from Steve Crocker in the name of the board. And the letter talks about certain mechanism and principles which the board would love to see established. I don't think that we need to spend a huge amount of time on this topic today because we will certainly have to come back to it.

So the first item is that the board has chosen their liaison which are going to be Asha and Becky. The second item on the agenda is what we just discussed about. It's the legal and fiduciary constraints in relation to ICANN's 501(c)(3) status and the responsibility of the board of directors and ICANN's officers.

So this is what we just discussed. And the letter we can indicate you like to receive the letter. If you don't know how to find it, there are links embedded in the letter as well which might guide you in understanding the background better.

Then thirdly the - with regard - that's an interesting item which we will have to talk about in the future and in particular with Xavier and with Asha. So with respect to the cost of operation of the CCWG working group we emphasize the importance of the following items.

And now they come actually three items. If I remembered this right, there might be even more. So there's a link?

Jonathan Robinson: A link in the Adobe. There is a link in the Adobe Connect room to the letter if anyone needs to refer directly to the letter. But it is pretty much covered in this table, in this structure table.

Erika Mann: Thank you. So the first item is that there has to be - that the whole operation has to be run as a project with proper budget and scheduling which is logical. But we will have to look into this in more detail in the future because in particular the proper budget will depend on many factors. So we will probably need to have a meeting, a smaller meeting with Xavier and the team responsible on this item.

Then the auction proceeds remain curtailed off until the next phase which is logical as well. So it's in a separate budget and it's not accessible neither by the operation or by the reserve fund. It's totally separated in the budget plan and it can't be used until the final phase will open.

And then the last point is once a system is set up for distribution the cost of administering the distribution of the fund will naturally come out of the auction proceeds and there's a number mentioned here 5%. I think that's a number which is typically used in such an environment.

But I would recommend we will have to talk this through and just not take it as a fixed number. Nothing I think we should take as a fixed number because we have to talk through all of these items.

And then there are different topics mentioned below but please look at it at the letter. I don't want to go through all of them.

Fourth item which is interesting because it's somewhat contradict. I don't think it actually contradicts but it gives them some kind of flavor to the mission statement. So first is that it must be - the scope must be a wide net, not limited to just the existing SO and AC structures, which is an interesting addition.

Fifth the focus should be on general principles and objectives. This is related to this phase we are entering now, not to the final phase.

And then sixth the topic we discussed as well just today, the conflict of interest declaration and announcements. So these are the topics. I wonder if somebody from the board would love to maybe say a few words.

Jonathan Robinson: Erika it's Jonathan. Before we go to hear from the board, just to talk to the group about the process here. So the idea is here that the letter has been broken up in a structured way. And the idea will be that we will – we the group – will review that in order to provide an equally well structured...

Erika Mann: ...letter.

Jonathan Robinson: ...response to the board. So that's the purpose of this table. The group will be able to work on this and I guess Erika will call for some volunteers to work as a group. But just so you understand that's the purpose of this table. It's broken up into constituent parts of the letter so that the group can consider each of those - each point of substance in order to respond. But thank you Erika.

Erika Mann: Yes that's correct. That's fine. And we haven't decided about a timetable, how much time they will give for this. So anybody from the board, would you love to make an additional remark?

Asha Hemrajani: Steve you want to go first and then...?

Erika Mann: Steve?

Steve Crocker: Thank you. Thank you Jonathan and thank you Erika. Thank you Asha. The last portion of those points, the (unintelligible) down a little bit. Back up. Yes, fourth. So casting a wide net and fifth, the focus should be on general principles and objectives.

So now let me ask you if it's possible to do easily to go back to slide 3 of Jonathan's opening set.

Jonathan Robinson: Slide 3.

Steve Crocker: Yes. So what's there says propose a mechanism and worry about the tax status and - what's the other one - worry about... Well it's not there is what I'm trying to get at.

What I had hoped to see and didn't see there is anything that says the work of this group is to set a direction or objective for what the use of the funds are and what the criteria for success would be. So there's a bunch of things that are a fence around what we can't do. So we can't violate the rules that would put our tax status in jeopardy. And we got to worry about conflict of interest and so forth.

And we do have to do some sort of mechanism. You got to decide whether you're going to give the funds to another group that's going to administer them or set up your own thing or join forces with somebody else, a whole bunch of those things.

But what's not said at all is the output of this group we're expecting will say something about the direction and purpose and what's to be accomplished with these funds.

Absent that, one could go through this whole process and wind up with an undefined, undirected mechanism that has no guidance as to how it should make decisions except that it shouldn't give it away to bad guys or it shouldn't give it away to ones that are going to put our tax status in jeopardy. But I think we want to have something much more pointed.

And we also want to know whether or not we succeeded. Success is not simply that we got rid of all the funds. Thank you.

Erika Mann: Steve I think that's very good advice. I mean there will be different opinion and different recommendations we will have to talk through, but that's a very good advice. Asha - sorry, I don't know who was first. I can't see the Adobe...

Man: I'm not in Adobe anyway.

Erika Mann: Ah okay. (Unintelligible) please.

Man: I just wanted to reply to Steve that we separated the question that were, you know, posed at the charter, at the beginning of the charter, into the content question, the criteria, what is the scope and more the legal and administrative question that we're talking about since now.

So I think it's clearly in the group's mind to solve both type of questions. So it's not - it's just that we started with the legal thing first, you know.

Erika Mann: Yes, let's do this. Jonathan made a recommendation which I think is a good one. We don't have to talk about the letter the whole time but we can spend a little bit more time about the process which is probably good because I think there's still a little bit of misunderstanding what kind of process we are opening and we are right in now and then what the next phase will be. So let's spend a little bit of time but I still like to hear from Asha for a second.

Asha Hemrajani: Yes thank you Erika. I actually agree with that. I just wanted to understand if - that's exactly what I was going to ask, if you want to go through the letter point by point now or would you like us to give you a written response?

Erika Mann: No I don't think a quick response is needed. I just wanted to highlight the key points you mentioned in the letter so that...

Asha Hemrajani: Okay.

Erika Mann: ...everybody's informed. Not everybody always has access to all of the documents. Sometimes one forgets. It's always a complicated process what we do. So it was just a reminder. It was a reminder as well what Jonathan mentioned, that this starts a process. We want to reply to you so this group will work together. We will identify a small group who is going to work on responding to this letter.

We haven't defined the time yet. We haven't made a commitment until we want to reply but we will not wait too long. But I think it's good to say that we want to spend few minutes on the process just to remind everybody how this process is going to work. Why don't you do this?

Asha Hemrajani: Can I just add one quick point?

Erika Mann: Of course Asha. Of course.

Asha Hemrajani: In relation to the process, it would be worthwhile I think now to have - perhaps have Xavier explain a little bit about the budget because I think that will help with the process as well.

Erika Mann: Why don't we do then the following. We let Jonathan explain the process quickly and then Xavier gets to (unintelligible) point with regard to the budget and we have all the same information. Perfect, thank you.

Jonathan Robinson: So I think the idea here was...

Man: (Unintelligible)

Jonathan Robinson: Oh.

Erika Mann: I can't see it unfortunately. I'm sorry.

Jonathan Robinson: Okay Sebastien let's come to you next. And Alan just let me make it clear. So the intention here was with here's a letter. This letter stated out a set of points. The idea is that I think ideally we'd find a volunteer to lead the drafting of the response. So I don't know if there was anyone who would like to pick up and draft the response from the group. And we can start to build.

But in fact I think this will be a Google Doc that other (unintelligible) be able to comment on. So the idea will be that collectively the group will draft a response to the board and that'll be managed through the next meeting or so. So let's do that.

Erika Mann: So I have the names open now.

Jonathan Robinson: Yes so there are people in the queue.

Erika Mann: Marika, Sebastien, if I see it right, and Alan. Is this correct? Perfect. Marika, you want to go first?

Marika Konings: Yes thank you. So this is Marika. So I just wanted to clarify what is on the screen that was also has been circulated to the CCWG, so basically what we've already tried to do because a number of you already made comments or questions in relation to the board letter. So we've tried to map those to the different sections.

So probably a first question to the CCWG would be to, you know, look at that document and add any further comments or questions you may have so that when that group of volunteers is formed, they have all the relevant information to start building their response to the board.

Erika Mann: Thank you Marika. Sebastien.

Sebastien Bachollet: Thank you Erika. I just wanted to comment on Sylvia who show us how to do that. She already make a lot of comments very useful and sensible.
Thank you.

Erika Mann: Thank you for reminding us Sebastien. Alan.

Alan Greenberg: Thank you. Two quick points. I guess I wish we could have had this letter when we were still drafting the charter. I can see a number of places where conceivably we have a conflict.

And I'd prefer not to have to go back to the chartering organizations to change the charter but we may well end up in the process of answering the letter that the board was wiser than the drafting team and we may want to do that. So it's something to consider.

I would request that before you ask for volunteers to work on the drafting response we decide what the timeline is because certainly in my case the timeline will dictate whether I will volunteer or not.

Erika Mann: Okay let's do this. I will recommend we come back with a proposal. We have our next meeting scheduled for two weeks on Tuesday, isn't it? So we come back with a complete proposal. Can we manage this? Yes.

Man: Tuesday is for the co-chairs.

Erika Mann: Yes.

Man: Thursday for...

Erika Mann: And Thursday for the group. Can we manage this Marika? Yes, perfect.

Jonathan Robinson: So we can let the group where the letter - where this table is. Do we have it Marika already as a Google Doc or can we just take...? We have it already.

So we can put this up as a Google Doc and/or as a Word document to the group and you can start to produce content, thoughts and streams on any one of those different blocks.

Bring those to the list. Edit them. Put them on the Google Doc. And then what we will have at the next meeting is a coherent or at least a set of initial responses. And then we can task a small group with pulling those together into a draft response which the group can then review and work on.

So we're at 30 minutes past the hour and it would be useful to have Marika make a few comments on the initial survey. So Alan you got to speak. Has everyone got to speak on this particular topic before we close item 4, this board letter? I think everyone's got to speak.

Man: I just want a little formal question. Since we don't know how this process will end, this letter process, some of us might come in situation that we have a conflict of interest already. So are we being excused on beforehand for that? And how will that work?

Erika Mann: I mean, my advice would be you declare this was the debate which we had until now but we haven't taken the decision that somebody who might have a conflict of interest or has a conflict of interest a potential but want to participate in the fund. We haven't taken a decision. Correct me if I'm wrong, but this person will have to excuse him or herself from the definition period.

Jonathan Robinson: Okay thanks for that. Just remember if you do have a question or comment please make sure you announce yourself fresh every time so it's on the transcript. And so with that I hand over to Marika to make a brief set of comments around the initial work we've done from the survey and we'll obviously pick this up at our next meeting as well. So go ahead Marika.

Marika Konings: Thank you very much Jonathan. This is Marika. So for those of you that may not have been following the work of the CCWG very closely, just very briefly

the group conducts a survey mainly as an initial assessment of the charter questions with the objective to determine whether any of the charter questions are considered gating or fundamental questions, basically meaning does the answer to that question determine answers to other questions.

And are there any subquestions or general questions that are missing from the charter questions that will need to be addressed? And does the CCWG believe that external expertise may be needed, you know, whether up front or at a later stage, in the deliberations to answer the specific questions.

So you see on the screen here is a document that I've circulated to all of you I believe yesterday. And I realize it's very short notice and probably most of you haven't had a chance to review that in detail so hopefully you will all have a chance to do that ahead of the next meeting.

This is basically a summary or a snapshot of the result of the survey. You do find the link on the top of the document as well that takes you to the aggregated results but also the individual responses to the survey.

So what I've tried to do is basically highlight in this document what the responses were to the different questions basically going for a 50% pass rate to get an idea of whether a strong percentage of the group believed indeed whether something was a gating question or not and whether subquestions were identified and similar for whether external expertise was needed or not.

I also tried to capture from the comments that were made some of the subquestions that were identified as well as expertise that was identified that might be needed. I do want to point out that I think some of the - there were some really good comments in there but some of them didn't specifically talk to the question that was being asked. I think some spoke more about potential outcome or recommendations.

So those are not captured here. I really tried to focus on what was the specific question asked. So the idea might be that this is easier then for you to review and make a determination of how to deal with the different charter questions and which order they should be taken, should indeed additional subquestions be added to the charter questions and as well already start thinking about whether external expertise is needed or not.

Although I want to recognize there as well that in a number of cases expertise was identified which actually also aligns with expertise that has been found inside of the working group. As you may recall, we did do an assessment of the expertise present in the CCWG, so at some point the working group will need to determine whether indeed is it really external expertise that is required or specific expertise that may also be found within the CCWG.

Another document that I circulated – and I'll quickly pull up now – and I do have to note most of the questions there, there wasn't kind of an overwhelming 90% to 100% position on certain things, so I think there's definitely where - there are certain areas where the group may want to discuss or further think about whether indeed, you know, does the 60% represent the right answer or the approach you want to follow.

Just give me one second. I'm trying to pull that up. And so what also circulated to you is an update of the mind map. As you may recall - let me see if I can get it properly up on the screen. Let me zoom that a bit. It will become a little bit small here but it's just to give you an idea. You also have this in your - in the documents that were circulated prior to this call.

So as you may recall we kind of mapped all the questions in this mind map. And what you actually see here represented is the breakdown into the two categories as were previously suggested. So where one bucket is more scope related questions and the other one is more the legal aspect and structure related questions.

And then in orange you see identified those questions that per the survey results were identified as gating or overarching questions. So I think as well ahead of the next meeting it would be helpful for the CCWG to have a closer look at those gating questions to see whether you indeed believe that those do need to be answered before you can, you know, continue into deliberations of some of the other questions and also potentially if in those gating foundational questions whether there is a specific order in there that would need to be respected.

And then of course also if you indeed agree to, you know, take the approach of following the questions in the two buckets, whether there's one bucket that should go first or whether you want to start with one question and then jump to the other category.

So I think those are some of the things you may want to give some further thought to based on the result of the survey. I would like to encourage you all to review that document that has the summary because again I've taken a snapshot. I may have missed something.

I may have missed comments that you made that were relevant to some of the questions. Also of course especially I think on the subquestions if in reviewing that document there are any questions that you identify that you believe are missing I don't think we want to close the door on that.

I did just see an e-mail from Sylvia with the question of we could potentially reopen the survey. I want to know that 33 of you responded, which I think is a great number, recognizing that many of you were traveling.

But maybe one suggestion could be instead of reopening the survey as such, for those that didn't have a chance to participate to look at the results and see whether there is something they fundamentally disagree with and maybe then take that into the conversation.

That may be an easier approach, especially as we're looking here at, you know, some more question of process than actual substance that we're discussing at this stage.

Jonathan Robinson: Thanks Marika. Sorry you're under a little bit of pressure - and to others as well for the time pressure. We came into the meeting and were only given the meeting room a little later. And I think meetings have been running up against each other.

So I think with that, that pretty much covers what we hoped to do today. So just to recap, we've obviously got the situation from the legal and fiduciary constraints covered over two meetings. We've got the board letter which we are going to deal with in a systematic and collaborative way such that we send a coherent response back to the board.

And hopefully it doesn't give us some kind of more serious challenge as Alan suggested in terms of coming up against the charter. Hopefully we can navigate a sensible response where the group is able to deal with that. And so that work will be done.

The next work that'll need to be done is to obviously take the survey as Marika's just described and work with that such that we are able to then start to systematically work through the charter questions including putting the gating questions up front.

And for those of you who aren't aware, the next meeting is planned for the 30th of March. Here's a key change. The change is moved from 1500 UTC to 1400 UTC. And that is expected to be the regular time. There has been some input and the chairs will talk with - in particular there's a couple of people in the group at this stage for whom that fits rather outside of the zone.

By moving it one hour, it becomes slightly better. It's still far from perfect for a couple of people, but on balance it meets many people's requirements. So

I expect that may be a subject of further discussion. But for the moment the meetings are planned for 30th of March 1400 UTC and possibly at that time going on.

So I guess that's my opportunity to sign off as a co-chair, hand over to Erika and Ching and obviously their competent staff that are working with this. And I expect to continue as a participant in the group.

So thanks very much for today's meeting. And we'll look forward to working with you more.

Erika Mann: Jonathan thank you so much. We'd like to thank you for all the great work you have done. You guided this group extremely well and I love to include Alan as well. He was your co-chair. And we are really hoping that you will continue to work both of you, continue to work in this group. Would be extremely helpful to have all your knowledge and understanding and a history and a background. Thank you so much.

Jonathan Robinson: Thank you.

((Applause))

Erika Mann: And with this, enjoy the rest of the day.

END