

**ICANN
Transcription ICANN63 Barcelona
GNSO – New gTLD Auction Proceeds – Presentation of Initial Report
Monday 22 October 2018 at 1330 CEST**

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Erika Mann: Okay welcome everybody. This session will be chaired by Ching and myself. And we want to guide you through the status of the auction proceeds and explain a little bit where we are. And then we are hopeful that we will have a lively discussion and can focus on some of the points which are a little bit more sensitive and more complicated. Marika, is there anything we have to do for the protocol or...

Marika Konings: This is Marika. I think we just need to confirm that recordings are on, I see confirmation and maybe those that are interested in asking questions or comments may already want to come up to the table as there's plenty of space here.

Erika Mann: Yes, plenty of space, so just come here. Is there anything on translation which we have to recognize or the others all translation here? (Unintelligible) please.

Joke Braeken: If there are questions or comments from remote participants I will read them out loud for you.

Erika Mann: So we have online participation as possible. That is what you're saying Joke?

Joke Braeken: Very limited but yes.

Erika Mann: Oh wonderful. I like this. And you will be signaling us when we get a request? Wonderful. Okay welcome again. We do have some apologies from some board members who can't be with us but I see oh, (Becky) wonderful. I see (Becky) joining us. So I received some apologies and some Sam Eisner she was always with us from ICANN legal. She can't be with us either. But she sent an email in advance so we know that she will not be able to be here.

But we do have (Xavier) with us. (Xavier) welcome so much as well. So again welcome to everybody and let us start. So the first item which we love to do just to give you a little bit background information and remind you of about the status and the discussion we have so far. Can we go to Page 5? We don't need all these nice colored introductory pages so Page 5.

This is just a reminder and it's really important to recognize why we do have these auction proceeds. It's because only one registry can operate a top-level domain and the auction was there to call and to take a decision will be finally able to run this particular domain. And that's been the main reason why we do have this amount of money currently available.

On the next page which is Page 6 just a quick reminder can we go to Page 6 please? Who is handling the slides? Oh here we are. So this group was formed in January 2017. It's chartered by all of ICANN supporting organization and advisory committee and at the and currently in October 2018 we had 26 members, 49 participant and 39 observers.

And it's important to recognize, the goals of the objectives of this particular group was to develop a proposal on the mechanism to allocate new truck auction proceeds. And this will then be provided by the ICANN board for consideration. The term mechanism is a little bit unusual for this so I just want

to remind you it's all about the future funding structure, the construction about it so that's what we call a mechanism.

And as part of this proposal this particular group the CCWG auction proceeds is expected to review the scope of fund allocation, due diligence requirement to uphold accountability and the proper use of funds and how to deal with directly related matters such as potential open conflict of interest. We are not tasked to look into the concrete implementation phase but the real nitty-gritty how a mechanism will be set up, et cetera, et cetera. This will be done by a separate phase so please keep this in mind.

The next slide it's a reminder which is Page yes 7 it's a reminder about the legal and fiscal requirement. So we have many discussions about this topic at the very beginning of our work and we have to come back many times because of course because of the way the discussion in our working group progressed, it was important to review these requirements again and again and again. And I'm certain it will have to be done again in the future.

So few points which are really key. So it has to be the structure, has to be consistent with ICANN mission as set out in the bylaws. The recommendation must support ICANN in adhering to its mission and act exclusively in service to its charter (unintelligible) purposes. The main reason we can't risk anything which would be a risk to the tax exemption status for ICANN but of course there are many other different reasons as well.

(Unintelligible) private benefit ICANN cannot provide its funds towards the private benefit for example of individual wouldn't be possible. It can't be used for political purposes and political activity. It can't be used for lobbying activities and lobbying purposes. And then the conflict of interest considerations. They have to be reviewed again and again and they have to correspond to the task ahead. So I would recommend to you to read this part in particular.

Accountability so throughout all of the phases of disbursement process ICANN must ensure it remains fully accountable for the proceeds and to the purpose that has been assigned to them. I think this is good practice in all fund allocation environments typically. But it's nothing special but of course because of the nature how ICANN is constructed and operates it needs even more accountability transparent and visible measures in place. And the - and officers of ICANN put fiduciary duties to the organization and therefore financial and fiduciary concern have to be taken into consideration.

So if you go to the next one which is Page 9 I believe this is just a quick overview. And I don't think that we have to spend a lot of time here. So it's from the very early phase of the drafting team provided input to the draft charter. And then we had the phase where the CCWG auction proceeds develops working matters and produces an initial report.

The next phase of the CCWG auction proceeds initial report goes out for public comment. That's where we practically are at this phase right now. And then we will have to next phase is the - we will have to finalize the report and submit it to the CEOs for approval. The ICANN board afterwards will have to review it and will have to give feedback and the final phase would then be the approval phase from the board.

And then the next phase would be the implementation phase. The implementation phase is not defined yet. You will see we have - it came up during our discussion with some guidelines which we recommend. But how this implementation phase will have to be designed will be - will have to be decided after this phase is concluded and then we'll have to talk about it.

So this is just another one as a reminder the Page 10 is just a reminder about the various stages and it's corresponding to some degree what I just explained. So I recommend we skip this one and we go to the next one which is Page 11. And this is the public comment period on the initial report the discussion we would love to have with you today.

So on October 8, 2018 the CCWG auction precedes a new gTLD auction proceeds released its initial report for public comment. So this was timely three weeks ahead of Barcelona. So we met the deadline. The report sets out the core issues that the CCWG addressed in carrying out its charter. It provides preliminary recommendation and draft implementation guidance for possible mechanism to distribute to auction proceeds. Again be reminded a mechanism is a structure how the organization shall be set up in the future for distributing the auction proceeds.

The report does not nor is it intended to make recommendations on specific projects or particular use of proceeds. Very, very important to keep this in mind, we are setting the structure how it shall be done are we delivering the ideas about a future structure and then the granting will be done even after the implementation phase. So we are doing the design of the structure and the mechanism and the surrounding environment then will be the implementation phase. And then after the implementation phase will be the concrete phase which will then discuss how granting will be done.

The public comment period will close on November 27, 2018. On the next point that's where you can find the document if you are looking for it. And then afterwards we will review the public comments received and we will update the report as needed and finalize it for submission to the chartering organization.

Just want to ask Marika quickly, Marika is there a defined timetable we have to take into consideration for the review and for the final submission? There is something which I can request to consider?

Marika Konings: This is Marika. Note not that I'm aware of. I think it's more a consideration for the group to make the timing you think you'll need for reviewing the comments in the timeline you want to put in place for delivery of the final report. I think the timeframe that's given for staff to produce a report of public

comments is typically I think two weeks if I'm not mistaken. Of course to a certain extent it depends on the volume that may happen quicker if few comments are submitted. If many comments are submitted it may take longer.

And that of course it's up to the group to review and decide how to tackle that. And as are still a couple of open items of course may require as well further deliberation in addition to just reviewing the public comment period. And based on that you're expected to finalize your report and that then would go to all the charting organizations for their consideration.

Erika Mann: Thank you so much Marika. Marilyn?

Marilyn Cade: Thank you. Marilyn Cade. I just wanted to Marika you gave a very clear answer and then I looked at the calendar. So just for our planning purposes since the public comment period closes on 27th of November I'd like to note that for the record this is three days after my birthday but that's not the purpose that - that's not the purpose of taking the floor. And given that we have a holiday season coming up so we realistically should be expecting the report well into January. Is that not - is that good planning on my part?

Marika Konings: This is Marika. Again as said, you know, it will slightly depend on, you know, the number of comments that come in. You know, as soon as comments start coming in, you know, staff can already start, you know, preparing the comment review tool that we usually provide two groups. So again to a certain extent it depends.

I think we're usually pretty quick about it but I don't want to make any commitments here because if we get, you know, 1000 comments obviously will take us a long time. But my hope is at least based on previous experience that we, you know, will be able to get something to you probably more in the, you know, early mid-December timeframe. And then of course it depends on the group if you want to immediately start reviewing, you know, noting that,

you know, for some there may be a holiday periods involved or starting in January.

You know, one question may also be and again, you know, for the different members hear from the different communities, you know, it's not unheard of either that groups ask for more time to submit comments. Now I haven't heard or seen anything yet, but it may also be worth it for you to check with your respective groups, you know, is this a realistic timeframe noting that, you know, people are away now. I know the US is having a big holiday as well somewhere in November so again I don't know if that may be a request that's forthcoming which of course would also impact the timeline in that case.

Erika Mann: Okay. So what you - what I'm now talking about is the initial overview about the report. So keep in mind again many of the topics I'm going to talk about to some degree I mentioned them before so please be not surprised. So the content of the initial report it's records the CCWG's discussion regarding Option 4 and mechanisms to allocate the new gTLD auction proceeds in accordance with ICANN's mission and bylaws prioritizing these options for further considerations.

It offers guidance on objectives of fund allocation. It provides responses to questions included in the CCWG's charter. It puts forward a series of preliminary recommendation as well as guidance for the future implementation phase and it reflects input we received so far by the ICANN board and to some degree by ICANN legal. And it raises additional questions from community input to help inform further deliberations by the CCWG.

The next slide is the one which I believe is probably the most important one for our discussion today and for what you want to consider. So these are the four mechanisms we evaluated and investigated. And not just between us, between the core group of members, many of them you see sitting here on this table but of course some can't be with us today, some might be on the call, some others are just because of difficulties not with us today.

So these four mechanisms we explored as well with external expert. So we discussed as we had and then we had discussions between us. And we invited different expert from different environments big organizations, small organizations, connected to ICANN not connected to ICANN I'm pretty sure Marika we do have this in the expert listed in the report. Yes we do. So you can have a look at this and so that you have an idea with whom we consulted.

And these are the four mechanisms. So the number one would be which we call a, new ICANN proceeds allocation department is created as part of ICANN board. The second one is what we call mechanism B, a new ICANN proceed allocation department is created as part of ICANN Org which would work in collaboration with an existing charitable organization. So that's a kind of merger.

The third one is C, a new structure would be created ideally in ICANN foundation if it would come to this. And the last one, mechanism D, an established entity, entities for example foundation of fund are used which so ICANN would still organize the oversight of processes to ensure the mission and fiduciary duties are met, but otherwise a third entity which already exists and works in funding environment would execute on behalf of ICANN the work.

Now the color coding that you see here, dark green and light green and gray these - the color coding is an indication of the preference of this group. So this group favored A and B. They were close together. B was I believe even ranking a little bit higher but not significant and so there's no conclusion one can draw because some member were not present when we took the survey.

C is the foundation. It's colored in lighter green because there was less support but still relevant support. And D is the mechanism which was the least favored and we haven't looked, therefore we would recommend or we

make a recommendation very likely to exclude this option. If we would receive strong preference for this option they may be probably would have to consider our color coding and our recommendation. So this is the most important slide for you to review. And then the further recommendations are based on these four options we evaluated.

So I would love to talk quickly about this charter question answered in this initial report. So the charter contains a series of questions for the CCWG to answer in the course of its work. And the CCWG provides responses to these questions in the initial report. So let me run through some of the key ones.

We recommend a framework for disbursement of funds including the extent to which ICANN may delegate aspects of the work. Limitation of fund allocation factoring in ICANN's mission which means something which can't be supported by ICANN mission maybe not able to find the support.

We have to be a little bit careful here because we had many discussions and many other saying ICANN mission is very rigid and very strict. There might be projects which will request funding and support but some believe it falls inside the mission, some others might think it's not kept - carried - can't be carried by ICANN's mission. So we had a long discussion about this and I'm pretty sure once the implementation phase will start one, we'll have to review this part in particular.

The safeguard and conflict of interest provision and the governance framework of ICANN need to be taken into consideration. The timeframe for the operation of the fund allocation mechanism needs to be taken into consideration. We had a long discussion about overhead. So this is the - these are all the expenses which are done by our organization independent of the allocation to a particular fund for the bureaucratic expenses. And we discussed this many times on our call. We haven't come to a recommendation in the sense it has to be 5% or it can't exceed 5% or it can't exceed 3% because the advice which we received internally from our group

and from outside experts varies too much and it will depend on, first of all it will depend on the mechanism and then it will depend on many other factors which will have to be debated later on.

The extent to which priority or preference should be given to organizations from developing economies we discussed project implemented in said regions and/or represented groups. There's a discussion related to this point which you, some of you may have to look into in particular and this relates to funding or requests from organizations which are on a list of countries which are sanctioned by the US.

So there are certain - there are rigid limitations actually to work with these organizations so I would urge you to look into this and to if you want to make a comment please comment on it. Yes go ahead.

Marilyn Cade: Thank you Erika. Marilyn Cade speaking. I just want to be sure everyone understands that the US is not the only country that will have sanction restrictions that will have to be understood. And what Erika is referring to is called the OPEC list. So it is situations where a country or an entity in a country has been identified as having associated with terrorist groups.

But it - they're not the only countries who has those sanction lists. Many of the WEAG countries do, the western Europe countries and a couple of the - and so just when we think about this for your purposes if you have comments about what kind of restrictions do keep in mind that there will be certain lists that will have to be examined to see if an entity has been - I don't want to use the word legally, efficiently determined to have had past association with a group that is identified as engaged in terrorism.

Erika Mann: Yes absolutely. I - it will be difficult to discuss this today because this is a very complicated environment. But for those who are based in developing countries I would recommend to you in particular to review this point carefully

so that you understand all the consequences in case you want to make a comment on it you are able to do so. And we would really invite you to do it.

What Marilyn is saying it's true there are many like the European Union and other countries they do have such kind of list. Often they correspond to each other, actually quite often infrequently they are similar or have concerns about the same countries. But I just want you to look into it so that we don't have any surprises in the future and we understand really the consequences.

And then yes let's skip the next one. It's really not super relevant. Let's go to Page 17. So here are the preliminary recommendations and I want to guide you through quickly. So the first one I mentioned before so we recommend that either mechanism A which is in sorting in the creation of a new ICANN department or Option B ICANN department in collaboration with an existing entity, charitable organization.

Either or A or B are the favored option, so we recommend to you that these are the preferential options from this group. But and this is the big but, because Option C which is a future fund received still quite some support from our group we would love to hear from you as well as what you think about this option. And if you in particular prefer the creation of a new organization it can be a foundation but it could be something different as well, it would be good if you would hear from you. So preference is A and B, in-house option or in-house in collaboration with an existing organization and still the support foreseen from this group but less so is the creation of a foundation.

D is excluded. So we are not recommending to give the funding the option proceeded to a separate entity funding entity which runs funds professionally. So we are not recommending this.

So what we then will do once we have your input received so based on the input received in response to the public comment period we will further

deliberate on how we shall, what kind of recommendations we then shall make based on the public comment. And for example the CCWG may in - be in a position to further narrow down recommendations. If let's for example consider the frame - most of the comments we will receive recommend to focus on A or on B or suddenly there's a big surprise and all the comments we receive from the public comment period focus and argue no please create a new foundation and the arguments are very strong. Then we will have to re-shift and refocus our recommendation here in the next phase.

So your input is extremely important and valuable for us to come up with final conclusions and recommendation which then can go further to the chartering organization and then to the board. Is there any comment maybe on this point? Yes please Kavouss.

Kavouss Arasteh: Thank you Erica. I think you have oversimplified and the distinguished lady. The issue of sanction is not as simple as she said. It's similar but not identical. Specific recommendations were made to ICANN to endeavor, to address those issues in order to facilitate the use of the justified and legitimated request for use of the fund. This matter may not involve many countries but there are several countries that are currently under this type of sanction and you could not just pass this report at some stage without addressing the sanctions. And without suggesting even once again in similar but not identical cases. Some stress test has been suggested and some additional course of action has been considered for further explore.

So we have difficulty if we do not address that. I know you have published your first preliminary report or initial report -- whatever you call them -- but this is something that unfortunately has not been addressed. And the charting organizations and one of the questions will be raised will be this one. Numbers may differ in future. You have observed the behavior of certain countries with respect to the other countries, radical positions, inflexible positions, unilateral positions and so on so forth disagreeing what they have agreed before and denying what they have accepted before. So I don't think

that you could quickly pass and ignore that issue. So we put on record a request for further discussion on this matter and appropriate time and address these issues.

You or we may not be able to totally address the matters but you have to first of all acknowledge existence of this because the sanction has various application and various parameters. Sometimes it's even the services what not, that you provided to the sanction countries, not only the fund but the services. So we need to address this issue.

Apart from that one simple question please accept my apologies if I've not properly (unintelligible). Is there any timeline showing that you started at this. You do this at this time. You do this at this time and in order that the people they organize that. The reason I'm asking that is for one charter organization is GAC they're only active when they are in session. Between the sessions they are not active. So...

Erika Mann: Kavouss I...

Kavouss Arasteh: The question you have to raise - we have to reply to this question, indeed, for days of the GAC meeting and say that you will receive something, be prepared to reply. So thank you.

Erika Mann: Thank you so much Kavouss. I think together we know how sensitive this topic is and but we know on the other side how challenging the legal requirement is concerning this topic. And for an ICANN organization which is based in California and the US the - I would say the limitations of what, you know, how they can overwrite any kind of US sanctions is pretty much I would - but that's my very personal opinion, pretty much close to zero.

But I would recommend to you and I'm - I think we are all looking forward and I hope the GAC is able to provide, you know, input to us. I saw you Kavouss,

input to us until yes Ching you as well until note the deadline was I think for November 8th if I believe.

Woman: (Unintelligible).

Man: Twenty-seven...

Erika Mann: Twenty-seven November. So it's this I would imagine even for the GAC this is gives you quite some time actually to find a common understanding how you want to provide input. I know how sensitive it is but I would assume there is sufficient time for the GAC. Kavouss please and then I take...

Kavouss Arasteh: Yes this issue in comparison with one of the other most critical and sensitive issues of their decision is zero. We have addressed the issue of (unintelligible) and why not you could just adjust it here? So I humbly and respectfully disagree with you that because ICANN is in California under the state law and federal law we cannot - no. In jurisdiction it's much more complex and (unintelligible) we have address that.

There are some elements, there are some previous work done. We don't need to start from zero. There are some things. We have done that and there are people spent about six or seven months on that and I was active on that. At least kindly do not expect anything from GAC in this regard. It is the duty of the group to address the issue that there are sanctions and the sanctions have different categories. And sometimes they also include some services that people they want to know whether they have to apply or not apply asking for services and then saying that no, we can't provide these services to you because you're under sanction countries.

I'm not just (unintelligible) specific countries. I'm not presenting (unintelligible) country. I'm discussing as a professional here. There are many countries here now so please don't look at my, I would say, national country. I am not belonging to that at this point of time. I just raised a professional point and I

would like that we have professional reply to this professional point. Thank you.

Erika Mann: Fully understood Kavouss. (Ching)?

Ching Chiao: Thank you Erika, (Ching Chou). I think following Kavouss' comments I definitely like to encourage not only him but everybody too, you know, the comments that we just heard, you know, this is a time of doing that. Actually go beyond what's been discussed is that when we look at mechanism A and B that actually from one standpoint is that that will restrict us to follow most of the protocols and the conscience that showed us onto the allocation of the fund.

So mechanism C and D that may leave some additional rooms for let's say there's a new fund foundation then though this could, you know, work somehow but maybe a little bit differently than what ICANN can do. I know and just so - I mean just amount of group ourselves before the initial report came out we did have some time, I mean although for my recollection is that although the time is not a lot but we did address a portion of that.

I know some also made a comment on that. But that's my comments following what I just heard. I have one just quick question maybe and just a (unintelligible) question. For those recommendations that we're making and this is a question probably you can help me with Marika is that are those being reviewed one by one by the SO and the AC or it will be a bundle a package kind of? Thanks.

Marika Konings: Yes this is Marika just to respond to the question in principle. The chartering organizations are expected to review the whole report and consider it. But they do have the ability if they're unhappy or a certain part that they cannot live with or cannot accept to kind of turn it back to the group and then as well also consult with the other charting organization on those. I believe that's a

specific provision in the charter that perceives that that it's not an all or nothing. There's an ability to come back.

But of course the hope is that if there are concerns that they are flagged at this stage of the process as, you know, all charter organizations have representatives in this group and that they do not wait until the final report is circulated to provide that. Oh and I see, can I maybe ask the tech people in the back of the room if they can maybe put the microphone back up front? People can also come to the table of course but it may be helpful as well to get the audience to participate.

Erika Mann: Yes. And you should yes, yes I've seen you. You should know that my yes, yes, yes I haven't - my Adobe is not functioning. I don't know why. I'm kicked out all the time so please raise your hand so I can see you. Something is not working here. I have you first and then I have the two of you here.

Jim Pendergast: Thank you Erika. Jim Pendergast for the record, heading in a slightly different direction the option B calls for the ICANN department to partner with an existing quote charitable organization. Is that - I haven't had a chance to read the report but is charitable organization specifically defined within the report because I think that means different things in different parts of the world so...

Erika Mann: Yes it's not defined.

Jim Pendergast: Just a quick, was that intentional?

Erika Mann: Yes and no. The time pressure and we believe once we come closer to this point it will be much quicker to fill the gaps...

Jim Pendergast: Okay.

Erika Mann: ...instead of debating and debating...

Jim Pendergast: In case it's not an option, yes.

Erika Mann: Exactly another option is selected and so instead of losing too much time about potential, you know, partners we rather prefer a different approach.

Jim Pendergast: Okay thank you.

Erika Mann: Now you have to help me here and decide that where you are probably first. Yes go (Xavier).

Xavier Calvez: Thank you Erika, (Xavier) (unintelligible) ICANN Org. In regards to the general topic of sanctions or restrictions without trying to discuss in the specific any types of restrictions or any types of scope ICANN simply will always abide by the law and the regulations that it's subject to and cannot do anything different. Thank you.

Erika Mann: So (unintelligible) go first.

Anne Aikman-Scalese: Constantly anxious now it looks like. Anne Aikman-Scalese with the IPC. And I just had two very quick questions. First question is whether an initial report - and I'm sorry I haven't had a time - had the time to read yet. But is there a question asking for response about whether any of the funds can be given directly to ICANN right now in order to build up the reserves that are missing to reach the 12 month reserves? And I ask that just very plainly with a public bias that I'm in favor of it. So I'd like to see a question like that. Is there that sort of question? And then I have a different question unrelated to that then.

Erika Mann: I will do a quick one. Marilyn wants to add something. I see (Xavier) and Elliot. So very quickly, had a discussion about it. This was a topic which is handled outside of our scope which is - it's not part of our scope and you remember the scoping which was done for our group. And ICANN of course has the legal rights of it based on fiduciary obligations to look into this but

(Xavier) maybe you want to comment on this yourself if you feel like it but let me have Marilyn first and then please.

Marilyn Cade: Marilyn Cade. And thank you for the question. I hope I'm not going to muddy the waters but there was a separate process for providing comments that are - has nothing to do with the CCWG which - where some comments were received that were about the reserve fund that did suggest that the community might consider making such a proposal. And certain groups just for full disclosure, the BC was one of them actually proposed a relatively small amount that would go to partially.

But the discussion has not taken - that discussion was not taken within the CCWG AP because it's really not our decision. But - so if you're thinking, has the community discussed it at all, there has been some comments. But that was in the, a different comment process related to the reserve fund. Does that make sense?

Marika Konings: Okay. I wonder if we could put the slide up that has the four - my second question is about the four models but I just want to ask a question about that.

Erika Mann: Can we see the slide again? Yes you go...

Man: (Unintelligible).

Marika Konings: Could I...

Erika Mann: Yes go ahead.

Marika Konings: Could I just make a note because there are still a couple more recommendations in here, in slides, that may address some of the questions or issues that people have. Yes I'm not saying, you know, maybe finish this conversation but then maybe...

Erika Mann: Don't worry about - Marika don't worry. I have the timeline and either one through the other is much more quickly because I think this is the key, people will want to focus on discussion. And then the others will go much faster and I will push it through anyhow so don't worry. So (Xavier) you wanted to make a comment and Elliot or Elliot wants to make the comment okay fine.

Elliot Noss: Yes thank you, Elliot Noss. You know, I'd nuance Marilyn's comments and Erika's comments a little bit. You know, we did talk lots about this and it was discussed. We decided this was not inside our remit and I think that's accurate. You know, but I do want to add as I do whenever we talk about CCWG auction funds and the reserve fund that for me I think it's very important as community that first recourse be made to the litigation set aside from the new gTLD program. There was I think it was at the end of the day about, you know, it was over \$100 million that was set aside for litigation as a reserve which, you know, we all are now well down the road in the new gTLD program. We know that that money has not been spent. It is still on the balance sheet, you know, (Xavier) can correct me if I'm wrong there as a reserve against that litigation.

And to me first recourse should be made against that very large contingency pod before we touch, you know, what is I think a unique and one-time opportunity, you know, for this community to do great things in the world. Thank you.

Erika Mann: So...

Xavier Calvez: Thank you Erika. I wanted to simply to confirm you were asking me to comment but to confirm what you said earlier in your response to the question as well as to clarify further what Marilyn was referring to it and the point that Elliot just made is also in the scope of that. There was a public comment period on a proposed or replenishment strategy for the reserve fund which is what Marilyn was referring to and comments relative to what fund should be used. And some were made during that public comment period. It

happened in April and May of this year. And there's extensive discussion and information about it there. I'm happy to share the link if it's useful to anyone. And I don't think that's a part of the discussion that you want to have here which source of funds should replenish the reserve fund. Thank you.

Erika Mann: You want to...

((Crosstalk))

Erika Mann: Thank you I didn't mean to take so much time on that but if it's short the next one.

Woman 1: Yes.

((Crosstalk))

Woman 1: I've never been short but anyway if we can see the slide on the four models but...

Erika Mann: Can you get them back, the slides with the four models the colored one, the green and the gray?

Woman 1: The green and the green and the gray.

Erika Mann: Yes.

Woman 1: It's just one question but I'm hoping that the group has was that which one of these models would keep the grant making process out of the realm of request for reconsideration when a grant is made, independent review panel when a grant is made based on - in other words when a grant is made just making sure that it sticks and is not disputed by every other party in ICANN who was looking for those same moneys. I'd like to know which one of these models avoids that problem.

Erika Mann: Okay. We have (Becky) and I believe (Xavier) wanted to come in at one point as well, no? Okay misunderstood, please (Becky).

Becky Burr: This isn't an issue. This question is a very good question and a question that's very important to the board because it would be a shame to have the proceeds of the auction proceeds consumed by litigation dispute resolution and the like. And we did ask the question would setting up a separate foundation for example resolve that question?

The conclusion that we have heard so far is that what we're actually going to need to think about is providing internally a very light, you know, process for somebody who's grant is denied, grant application is denied to have a review by the board making it so some kind of lightweight review process. But we actually think that in order to carve these funds, the application of these funds on a case by case basis out of the independent review reconsideration process we would need to modify, we probably need to modify the bylaws to do that. And the very preliminary discussion is ICANN's accountability mechanism should be available to challenge massive abuses of the bylaws in connection for example with setting up an independent panel or any of those overarching things but that it would be inadvisable to make those accountability mechanisms available on a case by case basis to a grant applicant who has not received a favorable review.

So we want to keep ICANN accountable for compliance with the - with its bylaws at the level of administering this but we have seen that, you know, that accountability mechanisms are used pretty aggressively. If you get an outcome that on an individual application that you don't like and it's the view of the board at this point that that would - could conceivably consume an enormous amount of the auction proceeds and it would be a shame to do that.

Erika Mann: Okay. I know you want to come back but I - we really have to push it through now because we have to present the recommendation. And I'm hopeful and looking forward I'm sure you will draft some comments which would be extremely welcome from this group. So please you can stay here. You don't have to run away. Would you still like to make a comment on this topic? Please.

John Berard: Thank you Erika. Thank you (Jane). John Berard for the record, a member of the BC speaking on my own behalf. I read the report, silly me. And I'm a little confused over a couple of things and perhaps this is a time to get some clarification. So we're talking about a substantial amount of money by anybody's measure but it is a fixed amount of money.

And if I hear the comments with regard to the rules surrounding the next round it sounds like there's going to be some - it sounds like they were displeased in that working group that the auctions generated as much money as they did. Jeff Neuman was talking to the GAC on Sunday I believe. Oh I'm sorry it was - but to my point everything does seem to come together.

In fact that the - when one the board and the GNSO had their session over the weekend the question was about what's the future look like and does the future look like a larger ICANN or does it look like a lighter-weight ICANN? I - personally I'm opposed to creating anything - a new structure. Have you thought about how much it will cost and will the cost of that come out of the proceeds? And then if the structure is created and there are no auction proceeds in the future, then who then funds to keep this go ship alive?

So I - mine I will be filing individual comments on the report. But my feeling is that it should be as Lady Macbeth said, if best we're done, best we're done quickly and all at once. That would be my preference.

Erika Mann: Yes, you know, you can discuss it from one angle or the other. I have different experience. I have supported and evaluated big funds I mean really

billion 10 billion, 15 billion funds so I can tell you even for 200 million to spend it well it can take a long time. We underestimate the time and you look into all of the evaluation cycles can take very long. So and we had one expert in our - from Nominet. They have a pretty small fund and not a big one. If I remember it was it 30 million or 20...

((Crosstalk))

Erika Mann: A very - quite small. I mean they live, you know, with this fund for a long time and yes. No, but, you know, what I mean and compared to what we are talking about. So but I agree, you know, you can make arguments, good arguments for one side and for the other side so I think your comments when will be extremely important, you know, and just be as clear as possible and just put this forward so then we can reflect upon this.

So what I'm going to do now I will be I will guide you through all of the other recommendations. Alan I saw you so I take you at the last but then I will push through because otherwise I will not be able to present to you all of the recommendation. I will only indicate each time where we have a long discussion as we had right now similar in nature. But otherwise I will then recommend you read the report and based on the report you read you then make your own comments. Alan please.

Alan Greenberg: Thank you. I just want to respond to John. We've had lots of discussions at this group. When we started there were people who said, "Well, you know, there may be some extra money coming in in the future and or maybe we can figure out ways of stretching this and never have the fund go." Other people said, "You know, let's presume it is a single fund, a single time thing and once it's gone it's gone." I remember I at one point said, "I don't know if there's going to be any more money. We should build a structure that might work if there were money but let's not presume it." So there's a lot of different things that have gone into this. And I think we tried to balance those.

At this point we know more than we did two years ago that maybe there will be more auction funds but maybe there won't. And, you know, you said you would not want to see a new structure built. Well as Erika reported the majority of people also did not want to see a new structure built but some have and it's still on our table. You know, that's the multi-stakeholder model.

Erika Mann: Yes thank you Alan. So the next preliminary recommendation is the following. The CCWG agreed and can we go to slide I believe it's 18? So they CCWG greeted specific objectives of the new gTLD auction proceeds fund allocations shall benefit the following. The development, distribution, evolution and structures that support the Internet's unique identifier system. So that's typically reference to ICANN's mission.

Benefit capacity building in underserved populations. Again it has to correspond to ICANN mission. Benefit the open and interoperable Internet. There's an annex attached to it. We had a long debate to it so please review the annex. It's not that this group is totally happy about the text but we are pretty much in support of it so your comment would be extremely valuable. And new gTLD auction proceeds are expected to be allocated in a manner consistent with ICANN's mission. So that's this cluster.

The next one is Recommendation 3, the implementation of the selected fund. Allocation mechanism should include safeguard described in the response to Charter Question 2.

Now it will just take too long to bring you back to Charter Question 2. I give Marika a second to find it and then to respond to it to Charter Question 2. This was to the one that we just asked before?

Marika Konings: This is Marika. We actually abbreviated the charter questions in an earlier slide. We don't have them...

Erika Mann: Yes.

Marika Konings: ...called out here but you want me...

Erika Mann: Yes pull it back so in case we want to come back you just have the reference here in case...

Marika Konings: Okay.

Erika Mann: ...somebody has a questions later to it. All right...

((Crosstalk))

Erika Mann: Yes exactly. And Recommendation 4 robust conflict of interest provision must be in place. And here we had many discussions so not just the people who are participating in this particular group but we made recommendation as well and we look to it how future evaluator and people who are working in a mechanism shall make these kind of conflict of interest declaration as well. And I'm pretty sure once a mechanism is set up this point will have to be reviewed again. Five, Recommendation 5 that CCWG has not yet come to an agreement on whether ICANN Org or a constituent part thereof should be a beneficiary of some of the auction proceeds and as such would welcome input on this question during the public comment period.

You have to know that's a point which was very sensitive in our discussion. We discussed it many times. So the question was shall ICANN Org or a constituency be allowed to participate in a project? The majority if I'm not completely mistaken was in favor but in the meantime we have received new input from the board in a letter and so I would assume we will have to continue this discussion. That's a discussion which is not over yet.

Let me have a look. I've lost my - six. The mechanism must be implemented to enable the disbursement of the fund in an effective and judicious manner

without creating a perpetual mechanism. That's the desire of - this was the goal described to this working group.

Recommendation 7, funding should be allocated in tranches over a period of years. Here we again had the discussion if a grant is very small shall there be still done in transit or can it be done in a one-off? If it's a very small grant it - that's something which will have to be restated again in the future and again your comment would be extremely important.

Recommendation 8 one of the objectives for new gTLD auction proceeds fund allocation is that it allows the support of projects that support capacity building in underserved populations. It's - the - we have to look at the Kavouss on the point you raised concerning countries which fall under sanctions but that's a very particular topic which will have to be looked at later on again.

Nine as a standard element of program operation and internal review of the mechanism should take place at regular intervals to identify areas for improvement and allow for minor adjustment. Again that's standard procedure. When funds are granted, nothing special which ICANN is here requesting. It's just good policy.

Recommendation 10 there should be a process to evaluate whether the program is effective and serving the identified goals and whether allocation of fund's having the intended impact. Importance of which means and review cycle will have to be implemented. It will depend to a large degree on the mechanism selected and will have to be debated again.

So and know this is the point which where these are the recommendations. And then we gave some guidance for the implementation phase. That's the phase which will follow our work. So once this - the work of this group finishes there will be an implementation phase. And during our discussion many

topics came up which not really related to the work which we - which was part of our obligation but related to the work of the implementation phase.

So I want to read this to you very quickly, not the whole text just give you an idea. And then please be so kind if you have comments regarding these kind of guidance please put them forward to the comment public period as well. So in relation to charter question one, what framework shall be designed the input provided in response to the charter question is expected to help inform the implementation of the mechanism that is ultimately selected which is logically to some degree.

The next one is the CCWG recommends that the guidance for proposal review and selection and list of example projects are considered during the implementation process. When you read the annex you will find that we have a list of project, ideal positive and negative projects identified. These are not projects we recommend and for the future for people who want to design projects. Until then they request grants so they shall not use it as a copy.

It was just an example for us what would be the future mechanism be able to finance and whatnot, just to guide our own thinking and to guide as well the public comment period. So please have a look at this and just it may guide you and help you to frame your comments as well.

Then the next one is new concern needs to be given to ensuring that the required safeguards are in place as outlined in response to this question, should mechanism B be selected? That's the mechanism where a combination between a new ICANN department in combination with the separate entity would be recommended.

The additional safeguard outlined in this response to the charter question need to be factored in. So for this case for these scenarios we have particular charter questions identified as important. You will find them in the draft report.

They don't apply for example to the mechanism foundation or for a new department but just be aware of this.

And the - on the conflict of interest procedure the - on page 20 you will see here that we recommend many provisions which need to be looked at during the implementation phase so please have a look at this and review this point very closely because it might have an impact on the work of your SO or AC or you personally in case you want to apply in the future for a project and for funding.

We then recommended during the implementation phase -- next page please -- next slide. We recommended during the implementation phase further consideration needs to be given to how the objective, the priority of preference be given to organization from developing countries can be achieved. That's a particular problematic item. We discussed this many, many times and we know all the difficulty entities do have in developing country to apply to request such kind of funds either because they don't have the personal resources, they're too small. There are many, many reasons. So that's a topic which we really urge the people who are working in the implementation phase to look at this very closely.

The next item which we identified as relevant for the implementation phase ICANN and any partnering organization are to design a cost effective model that ensures an appropriate proportion of the funds are available for distribution to fund recipients. This expresses our concern that too much money often goes into overhead and not actually is then delivered to interesting projects. So we have a particular concern here and we recommend the implementation phase to look at this closely and to find a workable and sustainable model.

And finally the response provided to this charter question that's the review mechanism should guide the development of the review framework during the implementation phase. Super important because again depending on a

mechanism and depending on the funds, depending on the granting it will be extremely important to find review mechanism that really and truly works.

Marilyn Cade: Thank you Marilyn Cade. I just want to make a distinction and you guys can tell us if you think we need to clarify this in a point in a footnote. This is the evaluation for the entire program.

Erika Mann: Yes.

Marilyn Cade: Individual grants will each be individually reviewed and evaluated. So this review is the overall program and review. And I think, you know, we might want to put in a footnote just to say that this review is not specific to the individual grant. It is about the review of the entire program.

Erika Mann: Yes. And that's even more important for the implementation phase to keep this in mind yes. So now the next one are just the questions, most of them we touched on it already. So I don't want to go and get and read them all to you, just maybe a few where we really need your input. So the first is have we gotten it right with the mechanism? So can we go please to Page 23?

I'm skipping all of the introductory pages. We don't need them. So have we gotten it right A, B, C and D excluding the focusing on A and B, the two front runners closely followed by three a foundation or something similar to foundation. Are there additional considerations we have to take into consideration which we haven't done yet which you believe we need to talk about it before we select a preferred mechanism?

And then on objectives of fund allocation do we agree with the objectives and limitations of fund allocation recommended in this report? Are there additional issues of consideration that we have to take into consideration which we haven't done yet? Safeguards, conflict of interest, have we touched on all of the conflict, potential conflict of interest issues or are there issues which we need to take into consideration once you're reviewed what we have written

and recommend and you believe there's still something missing? So please have a look at this point in particular.

On grant allocation to ICANN or its constituent's part do you believe the ICANN the organization or a constituent party should be able to benefit from auction funds? So in separate projects, not what we discussed in relation to the reserve fund but in relation to a particular project, do you believe this shall be - shall be not excluded as an option? Keep in mind and you find the letter, the most recent letter from the board and the annex. So we have annexed the letter. There was an exchange which touches to some degree on this point and I would assume we will have further, the board may have further discussion on this and once we review the comment we certainly will talk about this again.

And finally in the allocation of fund should priority of preference be given to organization from developing country economies, projects implemented in such regions and/or underrepresented group? If yes what sort of priority or preference should be given?

Expected steps, the only thing and this is Page 26 I believe the most important is the deadline November 27. And then we will review the comments we receive and this group will further then try to come up with the final set of recommendation which then will go to the chartering organization and finally to the board. We still have a few minutes, 20 minutes. I wasn't too bad. Further questions, comments?

Anne Aikman-Scalese: Yes I'm assuming -- it's Anne Aikman-Scalese again -- and I'm assuming that there was probably some discussion about any relationship between grant making and applicant support program or something in relation to developing countries. Let's say you have a community application from an underserved region coming in where - is anybody - is the idea that that's this is completely separate from applicant support or that there's any kind of relationship with new gTLD applications in the subsequent round?

Erika Mann: Somebody needs to get...

Woman: Yes.

Erika Mann: ...the angle right. It's very hard to hear...

((Crosstalk))

Erika Mann: ...somebody speaking there.

Woman: Come back up to this microphone because the echo's too bad there. I'm sorry.

Erika Mann: I can repeat your question. I understood it but please go on.

Anne Aikman-Scalese: Yes it's Anne Aikman-Scalese again. And the question relates to whether discussion occurred in the group about any potential relationship between applicant support and the funds in the grant making process. But so for example if you had from an underserved region developing countries a community application seeking applicant support by way of funds, by actual funds, you know, I guess you haven't determined all the eligibility yet and you may be looking - but (unintelligible) relationship that could exist or not exist between those two things.

Erika Mann: Alan you want to go?

Alan Greenberg: That's a really good question. And when the fund was originally contemplated and I suspect even the little footnote that's in the old applicant guidebook there was mention of using it for supporting applications in future rounds. But as we've evolved there's really no option for that. You know, there's no way to coordinate applying for a TLD and applying for a grant under our process

and timing them together so it would even work at all. It's pretty hard to imagine how we could coordinate that.

So I suspect, you know, the current wisdom is, you know, ICANN itself and GDD cannot make a request to use for applicant funding. So it's not clear how we would do that if we wanted to. It's an interesting discussion we haven't had much of because it has really been a focus of the gTLD subsequent procedure one. But coordinating those two is something that we haven't really discussed and some strong inputs in the public comment may well give us the ability to do that.

Erika Mann: You better go first.

John Berard: This is John Berard responding to or following on Alan, may I? Yes governments handle that all the time with set-asides. So a - I was looking at the what was invested in the earlier round and estimation for what might be useful in the next round and just set it aside and if it doesn't get used it gets thrown back into the fund.

Erika Mann: Marilyn?

Marilyn Cade: Thanks, Marilyn Cade. I'm going to - Alan I'm going to respond to your question with a kind of non-answer because certain certainly that question was asked. I'm not going to, too much on how much detail discussion went into it. But I am going to remind everybody that as you were noting, that discussion actually again there will be a parallel examination of whether applicants should receive - applicants with certain characteristics if and when there is a new round should receive different - does - should benefit from different criteria or other sources.

Some may remember that there was a really big long debate in the last round. I'm looking at Elliot who will remember this. And there were specific request for deductions in fees and subsidies for legal assistance and paying

for insurance, et cetera, et cetera. The community never came to an agreement for differential treatment. What did happen however was some understanding by the community that general kinds of support such as language translation or special Webinars or other things which demystified the process could be considered.

So I'm not talking about whether within this process we would be addressing it because I think that any discussion about special treatment would have to take place in a different track. And it would only be then up to the mechanism to comply with any external parallel determination approved by the board. Is that complicated enough?

Erika Mann: Elliot go.

Elliot Noss: Yes I want to try and build on, you know, I think Alan your most salient point was identifying the difficulty in coordinating it. And I think Marilyn, you know, went into great depth about the alternatives that will exist or could be discussed at a community level. If there is ever any subsequent round, you know, there's enough complexity I think in this award that boy I think that would be just introducing a hornet's nest into this pile.

I couldn't even imagine how tactically you could, you know, pull apart those threads. So, you know, I feel like our discussion in general through the course of many months, you know, would've put that away. And, you know, boy would I hate to see, you know, by all means introduce a comment. There's a lot of commenting through this. But I just think it's putting the, you know, a good thought in the wrong place. Sorry...

Erika Mann: Alan?

Elliot Noss: ...if I could Alan there was just one more point I wanted to make there. We also have to be very clear that this is for - this is a fund that I think, you know, everybody on the CCWG if we could agree on one thing it is that we wanted

this to go to public good and, you know, a not-for-profit ccTLD or sorry a not for profit new gTLD is complicated in terms of how you look at that as a public good. We have a not for profit gTLD today .org that is probably worth over \$1 billion. It was given, you know, to ISOC and I think that's fantastic, you know, and if they, you know, there's no limits on their ability to dispose of that probably worth north of \$ billion asset today. So I think, you know, there's such complexity around this at a sort of a connected level. Thanks.

Alan Greenberg: Yes I think we're all saying the same thing. I don't think there is really any disagreement. About the only way this could be done is a carve out up top by the ICANN board saying it's not going to go into the auctions. It will go into applicant support or whatever but the point Anne raised is when we started this whole discussion somewhere around 2011 when the words were put into the applicant guidebook was the classic example of how we would use the funds. And it's probably evolved to a different point right now where it's not at all a reasonable tactical way to do it. If it's still a good use of the money it probably won't be through the mechanism we're talking about.

Elliot Noss: Sorry I think that's slightly or maybe not inaccurate but needs - you know, it was talked about in the context of that round. And I think not in subsequent rounds or not with excess funds. It was talked about, you know, in terms of sort of being part and parcel of that round. It was decided by the community as Marilyn, you know, went through in great detail that we were not going to do it in that round. This is, you know, and we were going to create a fund like this. You know, we have all sat here trying to talk about the purposes of that fund. You know, that would be really, you know, that's a great discussion for the next round.

Alan Greenberg: Yes. It's - I may be misremembering but I believe it was one of the examples given in the footnote for the auction funds. And I'm saying it doesn't look like it's turned out that way at this point through our process. ICANN board can still take a pile of that money and just like they made the money available last time from we don't know where they took it from, they could take it from this

place this time if they chose and if the PDP recommends that which is we're still far from.

Erika Mann: But just keep in mind, this is Erika. So keep in mind when you review this question that there are of course topics which are relevant for your constituency or for the country which go beyond the dispute which we just have seen. So for example one, we had a very small discussion not very long about the question whether the fund shall be divided into different baskets. And then there could be a kind of basket, it will be short. I'm just giving an example Alan. Don't look frustrated.

So there was a discussion we had. Shall it be, you know, one more allocated to developing countries, not in the sense to that they then can request support for new gTLDs but for projects they want to design more in their region and in line with the mission statement. That's what is sometimes done in bigger funds so that you allocated different basket for different regions or for different purposes. We haven't taken a decision on this one. So in case you have a recommendation or in a comment you want to make I believe we would appreciate this.

Ching Chiao: Yes I mean quickly add to what Erika just said, this is (Ching) again. So maybe in the preamble the annex anybody would like to add that particular, you know, example (unintelligible) feel free to - you're welcome to do that at this time.

Erika Mann: And you will find many other points where you see they just see gaps in our report just because either we couldn't come to a conclusion between us because we believe we want to base our final conclusion based on the comments we received. They're not too many gaps but there are some gaps. So we really urge you when you experience these gaps have a discussion with your constituency or based on your individual opinion and send us your comment.

Don't shy away from it because you believe, you know, we may have discussed it. We just haven't put it in the report and know that's not true what is not in the report. We may have discussed it but we still need your input to be able to reframe and to fine-tune our final comments. So please - and our final recommendations. Therefore please send us whatever you think is relevant.

Anybody else? Are you all happy or not happy which is equally good? Yes okay Marika anything, forgotten, something we have to mention?

I mentioned the deadline 27th of November yes. And the next point I mentioned this as well so we have received new input from the board. And the board letter is attached so you can you have the link here you can see it. It's yes it is a super important letter because to some degree the board letter the parts to some degree from the discussion we had beforehand. So it's super - I don't know if (Becky) you want to comment on this board letter in a few minutes or if we should just make a recommendation. Please read it carefully and come back to us with comments you have during the public comment period. But yes...

Marilyn Cade: (Becky) before you comment, it's Marilyn. If you don't mind I'd like to share a question I received.

Erika Mann: Four minutes. Just keep (unintelligible).

((Crosstalk))

Marilyn Cade: So I was asked by someone who is following the process as an observer that did not understand if the board was saying that they could, that ICANN Org could take the fund. There was a misunderstanding of about what I thought I understood what the board letter said. But I just wanted to mention that I think it was difficult for people who weren't directly involved in the process to understand it.

Erika Mann: Let me give you quickly the background just so you have all of the information because some of you in the back might not be able to read it. So this is based on an exchange which we had during our work and then we requested from the board members (Becky) and from (Martin) to have a more in-depth discussion with the full board. And this is the letter where we then received the reply to our questions.

So there the one is the - A is ICANN Org currently is not foreseeing a situation where it would need to apply to the proceeds. This was the question related can there ever be a project were ICANN would participate and then request a financial support? ICANN maintains legal and fiduciary responsibility so in principle there is no need to apply for a special support because ICANN has the authority anyhow to use the fund in case such a situation would occur. I give it to in a second. That's the way we understood it. Then we had the question shall a SO and AC be able - you want to talk about this point maybe because I believe it was your point in particular. Go (Becky).

Becky Burr: Well just two things. The fact that the board maintains legal and fiduciary responsibility over the funds does not mean that the board is any intention of just grabbing funds out of there. You know, we do anticipate as we have said that there may be request for some amount of the funds for the reserve again. That's an issue that this group and the board are discussing.

But what we we're merely saying here is if there were some sort of existential crisis, the organization was in freefall, facing bankruptcy or some other thing like that the board would have a - would have the legal right to use those funds and it would have a fiduciary obligation to use those funds to protect the organization. But that is in - we're talking about in an extreme situation and that does not reflect any intention on the part of the board to do so.

Second of all I think there was some confusion on the SO, AC use of the funds. We don't anticipate that these funds would be used for sort of ordinary operating expenses. The SOs and ACs are part of ICANN and they're not legal entities in and of themselves. We think that probably to meet the requirements of California state law and the initial legal and fiduciary concerns outlawed that the applicants would have to be legal entities. That would not prevent legal entities that are participants in ICANN from applying for funds however subject to all of the considerations regarding conflict of interest and all of the criteria that you guys set out.

Erika Mann: Have a look at this because I believe it's important and it corresponds to some of the discussion we had and will have to be taken into consideration. There's another email which came yesterday to the working group, I believe it was yesterday or this morning from Sam Eisner. Again we haven't annexed it because it came yesterday or today. So after we publish the draft recommendation but please have a look at them as well and see how much you can align with the judgment from Sam Eisner. Okay I wish you a wonderful day yes we do. Ching you want to say the final word?

Ching Chiao: No.

Erika Mann: No okay no final word from (Ching). Then thank you so much and have a good day.

END