
ICANN Transcription
CCWG New gTLD Auction Proceeds
Wednesday, 23 October 2019 at 14:00 UTC

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. Attendance and recordings of the call are posted on the agenda wiki page: <https://community.icann.org/x/nYMzBw>

The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page <http://gnso.icann.org/en/group-activities/calendar>

JULIE BISLAND: Good morning, good afternoon, and good evening, everyone. Welcome to the CCWG New GTLD Auction Proceeds call on Wednesday, the 23rd of October, 2019. In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room, and if you're only on the audio bridge, at this time, could you please let yourself be known now? Hearing no names, I would like to remind all to please state your name before speaking for transcription purposes and please keep phones and microphones on mute when not speaking to avoid background noise. With this, I will turn it over Erika Mann. You can begin, Erika.

ERIKA MANN: Thank you so much, Julie. Hello, everyone. Thank you for joining the call today. I know it's difficult just week ahead of ICANN and after such a long period we had without having the chance to have a call arranged. Let me go first, before I start talking about this, let me go and check quickly if we have any updates concerning the conflict of interest declarations. That seems to be not the case.

Then, allow me quickly before we come to point three maybe to check with the board members because we do have new board

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

members being present. I believe Danko and Becky, you have to update me. There's a second member who is now replacing I believe Maarten. So maybe just make a short introduction, Becky, maybe and then maybe Danko can say a few words, just to say a few words of welcome. So, Becky, to you.

BECKY BURR: Thank you so much, Erika, and yes, I will be rotating auction proceeds as ... Well, Maarten and Sarah Deutsch and Danko who is on the call as well will be replacing us once they're fully up to speed. So we plan to have a little bit of an overlap to make sure that there is no break in total continuity with respect to the board input. I believe Danko is on the phone, on the call. I don't think Sarah has joined us yet.

SARAH DEUTSCH: I'm on, Becky.

BECKY BURR : Oh, there you are. Great.

ERIKA MANN: Wonderful. So, both are there. So, Danko and Sarah, please just maybe introduce the two of you briefly so that everybody is informed about it, please. I don't know who wants to start.

UNIDENTIFIED MALE: Ladies first.

SARAH DEUTSCH: I'll start. Thank you, all. I'm excited to be a new liaison to this group and I am very appreciative that Becky is going to stay on for the transition. We're already starting to get up to speed, reading many of the background documents, and I'm sure we're both going to have a lot of questions for you all. Danko and I, I think, are going to be a very good team to be part of this group. I chair the [audit] committee, [inaudible] Erika, so I think I can bring that background and perspective to the group and Danko has a finance background, so we're just very supportive of your work and want to be here to listen and provide any necessary liaison assistance that you guys require, so thank you.

ERIKA MANN: Thank you, Sarah. We're very happy to have you with us. Danko, please.

DANKO JEVTOVIC: Thank you. While Sarah has said most of the important stuff, so I'll just say a few words about myself. This is my first year on the board, it will be now in Montreal. I used to manage the Serbian country code a few years ago, so I'm coming from that side of our community but currently I'm not connected to any of the stakeholders, [inaudible] NomCom.

But having served there, I understand the needs of the community because we were also a not-for-profit foundation. It was important for us. I hope also to bring a bit of diversity coming from Europe but from a non-European Union developing country. I'm honored to be

part of this group. I'll do my best to contribute, and also, as Sarah has said, facilitate communication with the group. Thank you so much.

One more thing. Today, I'm on my [inaudible], so I'll be here 50 more minutes. I will have to go in the middle of the meeting, so I'm sorry to say that on the first meeting. But thank you for listening.

ERIKA MANN:

Thank you so much, Danko. We are very happy to have you and we appreciate the two of you joined practically at the end of the work we are doing, which makes it of course much harder for you. Therefore, I'm very grateful that Becky is staying and there is an overlap because it's quite complicated work, so to know that the three of you are with us for – and Becky for a certain period of time. And of course Maarten, he is not lost either because he is now going to become the chair, which means we have a good representation and understanding about our issues in the board. So, thank you, all, so much. We will come back to you a little bit later. I imagine that either, because you are leaving, Danko, Becky or Sarah then will comment on the points you raised as a reply to the letter we have sent to the board.

Okay, so if there's nothing further ... I'm just waiting a second if somebody wants to say something concerning the point I introduced. Otherwise, I move to item three, current status of work.

Okay, then, let's go to current status of work. Here, we have summarized four items. So, the first is the input which we received in the meantime from the ICANN board and from ICANN

organization in relation to [inaudible], particular questions [inaudible] had posed by the CCWG if you remember this. And you have a link here, so you can always check these questions which we have raised.

Somebody needs to go on mute, I believe, so if somebody please could check who is not on mute. Please be so kind to check this.

So, we are not going to explain this longer. It's just to point to the introductory topics.

B, we haven't launched the survey, although we had discussed it at our last call, because we were waiting to receive the input from the board and from ICANN as well, in particular in relation to mechanism C. We had questions where we needed clarification before we can take the decision about the survey and before we can have an informed survey. So, that's something I would recommend we discuss at the very end because maybe we don't even want to take the way we discussed it at our last call [inaudible] to have practically two surveys.

So, one [inaudible] to practically check quickly where we are with regard to these three mechanisms, and then we wanted to have time to give sufficient time so that you have a chance to discuss this with your constituencies, and then we would come back and have a second survey. So, we want to discuss this a little bit later. I'm just mentioning here. And we may decide to have a little bit different procedure.

So, staff and leadership, we have prepared – and this is point C, which is on your list. We have proposed a number of updates to our

original proposed what we call the final report. And these are ... The updates all reflect what we have received from the ICANN board and from ICANN org. There are a couple of items which fall outside of the update but we will touch on them as well and we will come to these items, too. Somebody needs to mute, please, again.

Then, point D. In light of the board suggestion and the previous CCWG consideration, proposal is to prepare the launch of a public comment with regard to our final report, either before ICANN 66 or immediately afterwards. The leadership tends to argue more immediately afterwards but that's an item we will have to look at, at the end as well.

So, coming to this now, I want to move right away to point four, and we will pick up the topics that you I just mentioned where we will have to take a decision at the end, the survey and the launch of the public comment period at the end again. But now we would love to first discuss with you the outstanding issues which are the updated proposals we are making with regard to the comments we received from the board and from ICANN Org and how we want to modify the language.

So, let me go to who is doing this now from staff side. Is it Emily or is it you, Marika?

MARIKA KONINGS:

Hi, Erika. It's probably easiest for Emily to cover this, if she's happy to do so. I can switch now to the actual report so people can see that. So, it may be helpful if everyone has the agenda separately so you can follow along and we'll share the actual text.

ERIKA MANN: Perfect. Thank you so much, both of you. Emily, please.

EMILY BARABAS: Thanks, Erika and Marika. This is Emily from staff. I'll just wait for a moment for the document to come up. So, looking at the agenda, it looks like the first item is on page eight.

So, on page eight, this is actually not in response to board or org feedback but an item that has previously been discussed in the group. Previously, we had been using an older description of mechanism A that included the word "evaluation" and that was a bit confusing because the term "evaluation" is used in different ways and could be misinterpreted to mean evaluation of applications which we've clearly determined is not the case.

So, the proposed text is just to simplify the description of mechanism A a bit, to simply say that mechanism A is an internal department dedicated to the allocation of auction proceeds created within, but independent from, the ICANN organization. So, that's the first proposed edit.

There was also a sentence in mechanism B, [inaudible] description, that said the CCWG may make recommendations about the roles and responsibilities of ICANN and the external entity in case such a mechanism is recommended. That's also been removed [inaudible] in a space that makes more sense in the recommendations.

ERIKA MANN: Thank you, Emily. [inaudible]. Just looking if somebody wants to make a comment here or if we are all happy. I see Marilyn. Marilyn, please.

MARILYN CADE: Thank you. My comment is about B. Right now, the way B is written, I'm not sure it actually says anything. It says internal department collaborates with existing non-profit. It doesn't say to do what. I think, previously, we included the recognition that the cooperation would be around the allocation of [access] of auction proceeds.

So, just noting that B now seems to be stripped down to almost no information, and so we might want to reconsider that.

ERIKA MANN: I do agree, Marilyn. I would recommend we copy the language from A and then we add in collaboration with an existing nonprofit organization with experience in the same field, experience in – sufficient experience or something like this. Yeah. Any other comments related to these two recommendations?

BECKY BURR: Erika, it's Becky.

ERIKA MANN: Oh, apologies, Becky.

ALAN GREENBERG: And Alan has his hand up.

BECKY BURR: I think Alan was before me, so go ahead, Alan.

ERIKA MANN: Alan, go.

ALAN GREENBERG: My comment is very simple. On mechanism A, I have no idea how you can have an internal department which is there for a part of ICANN organization, independent from ICANN organization. It seems to be a conflict in terms.

ERIKA MANN: Alan, are you worried about the terms? Because this is what we have said before. We're creating a new department inside of ICANN but shielded from the rest of ICANN. That's what we have said before. So, are you worried about the language?

ALAN GREENBERG: I am very worried about the language. I thought what we said is it would be an internal department but would use an independent group to do the actual project selection. This says the department itself is inside the organization but independent from the organization and I don't understand how you can have those two.

ERIKA MANN: That's similar to IANA, so that's what we had discussed. Okay. Becky, please go first and then I come back to you, Alan.

BECKY BURR: So, just to be clear, I think Alan is correct that the notion of something that is a department in ICANN being independent of the ICANN organization is difficult. IANA is a very different structure. What we understood this mechanism to be is that a department of ICANN would be administering the program but that an entirely independent panel would be used to evaluate the applications and determine who would get the proceeds. So, that would be done completely independently, but management of the program, receiving – sending out notices or whatever, I don't know what it would be, but for administration – would be a part of ICANN. That's how the board has an understanding of this mechanism.

ERIKA MANN: Correct, Becky. Sam, please.

SAM EISNER: Thanks. I think that Alan has also ... I'm fully on board with Alan's comments, as well as with Becky's. I think the concern is with stating that the department itself is independent. I saw some recommendations in the chat. Maybe we say functionally separated or something like that. As Alan noted in the chat, IANA is not independent of ICANN. IANA is an affiliate, right? ICANN has a lot of control over how IANA performs its work, etc.

So, if we can change that and remove the independent, and I think later in the report we have the issue about and we have the principles that evaluations are done by an independent panel, etc., that maybe we don't need to try to specify it so much in here because there would be principles that follow through each one of the mechanisms.

ERIKA MANN: Alan, please.

ALAN GREENBERG: Yeah, thank you. Just to be clear, we're using the term ICANN and ICANN org in various places. ICANN org is the current term used for essentially the CEO and all the staff underneath the CEO. ICANN org, although they do some contract work for IANA, IANA is independent of ICANN org but it's not independent of ICANN because the ICANN board selects the majority of the IANA board. We've got to be very precise with our wording here. Thank you.

ERIKA MANN: Okay, I agree with you all. We need to find a language here. The question is ... Let me read what I believe Emily or Marika were writing here. An internal department dedicated to the allocation of auction proceeds is created but it's functionally ... So, within ICANN org, but is functionally separated. That's maybe the language which then would be correct. Would this cover what we were just discussing or do we need more discussion about this item? Okay, I don't see anything in the chatroom coming up.

JUDITH HELLERSTEIN: Hand up from Judith.

ERIKA MANN: From Judith. So, let me go back to the participant list. Okay, Judith, go.

JUDITH HELLERSTEIN: Yes. It still doesn't answer Alan's question, which is that we had said that there will be a separate group that will be evaluating the applications. This still seems to say that ICANN, that an internal department within ICANN is going to do it, when that's not the case. So, I think we have to figure out how we're going to word this, so we don't give the impression that the internal department is actually valuing the applications.

ERIKA MANN: Thank you, Judith. I don't believe we have to say this here, because here we are looking for a very broad characterization of the different mechanisms and then the evaluation is done in – we are covering separate, in a different chapter. This is true for mechanism A, B, and C, so the [independents] of the evaluation. So, I don't think that we have to cover this here but please correct me if I am mistaken and you believe it has to be covered here.

JUDITH HELLERSTEIN: Yeah. I think we could say something, maybe direct people to a fuller description, but this still gives the impression when people are

first reading it that it will be done by ICANN. And I think we need to dispel that impression early on, because people will go in with a mindset and looking at this, and before they read that, they may have been turned off or something else. Their blood may be boiling or who knows. We need to I think really clear out saying that there will be a process. Maybe one or two lines saying it being done by an independent group that's not connected.

ERIKA MANN:

What I would recommend then to draw attention to processes and to the functioning of these mechanisms in the line before – I can't read in the moment the line quite well, but we will have to add something there, that following is a summary of the key characteristics of the evaluation evaluated mechanism. Please be aware that the precise processes and the functioning of these mechanisms is described, and then we are either – we mention the pages or we say described later on. So, to avoid all of the problems. I believe that's covering the problems.

Let me see. I have Marika and then I have Sam, Alan. I assume Sam and Alan are maybe the old ones. And I do have Sebastien.

ALAN GREENBERG:

No, new hand for me.

ERIKA MANN:

New hand for you. Good. Okay, then I go in order. Marika first.

-
- MARIKA KONINGS:** Yeah, thanks, Erika. I just wanted to flag, as you said, this is on page 8 of the document and it's important for people to review the whole report and everything that goes into it, because I think on numerous occasions we highlight and emphasize indeed this notion that the actual evaluation of applications will be done by an independent panel. I think it's also important to kind of review that in the context of the executive summary because that's probably what people are going to focus on. So, I think it is important that everyone reviews the whole report, and indeed if it's not clear enough and it can, of course, be emphasized again, but as you said, that is something that applies to all the different mechanisms, not only A. So, it's important that people see that this is just a snapshot that we're showing here for that specific reason of the changes that were made and it doesn't mean that other aspects are not covered in other parts of the report.
- ERIKA MANN:** Yeah. And nonetheless, I think it's good maybe in the introduction before we talk about A, B, and C just to point out and be aware. Please read everything else, so that you have the – you connect all the dots together. Alan, please.
- ALAN GREENBERG:** Thank you very much. I think one of the problems is the three different descriptions here, each are talking at a completely different level of precision and of detail. The first one says allocation of auction proceeds. A novice reader will not necessarily know whether that means evaluation of the projects or the full allocation process. B, as has been pointed out, is very sparse. Then, C talks
-

about responsible for solicitation, evaluation, and disbursement. It doesn't talk about the processes that follow disbursement, evaluation of the – again, we're using evaluation multiple ways. The analysis of whether the project was successful or not, and there's a whole bunch of phases after it.

So, C is attempting to break down the process into the various parts and omit some. B doesn't mention anything. And A uses an envelope term, allocation, which may or may not imply all of the various parts of it. So, I think we have to talk at the same level in all three. I strongly suggest that if this is the first time we're mentioning the mechanisms, that we don't rely on something later in the report to make it clear what we mean by them. Thank you.

ERIKA MANN:

Thank you, Alan. We could sort this quickly if we would combine the language of A and C, if we would want to, because it's that something is responsible. One mechanism is responsible for facilitation, evaluation, [inaudible], and disbursement. Yeah. Let's see.

Or, we just neutralize. Take the neutral language from A. We already said we would do this for mechanism B. So, we could do it for C as well. But we will of course mention that it's a separate, new structure, the ICANN foundation. Yeah, you're right. We have to have this same language for all three mechanisms. Totally agree. Sebastien, please.

SEBASTIEN BACHOLLET: Thank you very much. I agree totally with Alan. I wanted to add that we may wish to change the phrase before the following, a summary of key characteristics, to change “key” by some characteristics, because I don’t think that the other characteristic was not in this summary, [not also keys]. I really think that if we don’t want to repeat everything that we say later on in the document, that we need to say some characteristic or a title for mechanism A, B, and C. Thank you.

ERIKA MANN: Okay. Thank you so much, Sebastien. I think this makes sense, too. So, it’s maybe not some but maybe just main characteristics or something. I agree with you.

Then, in addition to what staff has written below, I believe we have more understanding here. So, I would recommend we continue now and move to the next item. In the meantime, Marika or Emily, I don’t know who can do it, maybe you clarify these two A, B, and C and you try to find an identical language for the main points, which is practically only the organizational approach, which mechanism A, B, or C is talking about and nothing else. So, maybe we can have an identical language here and we can come back to it a little bit later. So, if somebody can clear this up, and then we can come back to it more to the end. Is this possible, Marika, Emily?

MARIKA KONINGS: Yeah. Thanks, Erika. [inaudible] change some of the language here to align A with B. I think that the question is whether people want to change in C the reference to solicitation, evaluation of proposals

and disbursement process to allocation of auction proceeds or the other way around.

ERIKA MANN: No, take the same language from A, the same you copied. So, you leave a new [inaudible] structure. ICANN foundation is created separate from ICANN org. Then, you would take the functionally separated from ICANN org and then you keep the language which – I would then delete the last part of it because we come to the solicitation and the evaluation of proposal and [inaudible] processes become later. We want to keep it coherent.

MARIKA KONINGS: Okay, done.

ERIKA MANN: Yeah? Okay. And we have another chance. Before we publish it, we will have another chance to review it. So, if people are still not happy with it, we have another chance to take comments. Okay, let's move forward, please. Emily, back to you.

EMILY BARABAS: Thanks, Erika. We are just scrolling ahead to the next section. Okay. So, this is on the selection of the mechanism. From the staff side, we've inserted a number of comments on mechanism C that have been shared by our board liaisons and by ICANN Org. Hopefully, everyone has had a chance to review that feedback because it's fairly detailed and substantive and provides some

additional details about the board's expectations and assumptions about the CCWG's recommendations regarding its consideration of mechanism C as well as ICANN org's feedback about the relative costs of mechanisms A and C which was one of the questions that was submitted.

So, from the staff side, our question here is to what extent is there additional work needed to develop a description of mechanism C and a common understanding of what the foundation scenario will look like if it is one of the recommended mechanisms?

I don't know if this might be an opportunity, if either of the board liaisons or ICANN Org want to speak to the comments that they put forward regarding mechanism C but I also see that Alan has his hand up, so I'll ask him.

ERIKA MANN:

Maybe [inaudible] the changes we are recommending or the introduction of what we are recommending and then I take Alan and then I go to the board or I go first to the board and to ICANN org. I don't know if it is Sam or Xavier who then would love to talk about their reply.

EMILY BARABAS:

Sure. For charter question one at this point, which is where we are right now, at this stage, we don't have an answer to charter question one because it's essentially what is the CCWG recommending with respect to the mechanisms? At this point, the CCWG doesn't have a recommendation in terms of the mechanisms. That's still being determined.

The feedback is providing some additional context for the decision that the CCWG might make with respect to that and things that the CCWG might consider in making that recommendation. For example, the Board talks about concerns about the foundation's independence and what that means in terms of what the CCWG is recommending.

So, there isn't proposed text at this stage for the response to charter question one because, ultimately, charter question one will be the recommendation of the CCWG with respect to the mechanisms.

ERIKA MANN:

Okay. Then, just let's maybe repeat what the Board is saying and what ICANN Org is saying, so that we're all on the same page and understanding. So, the Board is saying, as previously indicated, ICANN's board and its officers have specific fiduciary obligation with respect to the distribution of auction proceeds no matter which mechanism is selected. Creation of a separate foundation would not modify or eliminate those obligations, nor would it eliminate potential challenges with respect to these obligations. To the extent the CCWG contemplates the creation – oops, now I'm losing the text. Okay. I can't read it anymore because the text is—

MARIKA KONINGS:

Sorry, Erika. I had to expand it because there was actually more there than—

ERIKA MANN: Yeah, I know. I was looking at the original but now I'm totally screwed. So, either you want to read it – and you would have to read it now because I don't [inaudible] any longer.

EMILY BARABAS: Hi, Erika. I can go ahead and read on.

ERIKA MANN: Thank you so much. Please do.

EMILY BARABAS: So, to the extent that the CCWG contemplates creation of a foundation in which ICANN is not involved, particularly but not exclusively including decisions as to whether an application furthers ICANN's mission, that raises concerns similar to concerns raised with the prior mechanism D, which envisions the handling of proceeds over to a separate entity. Does someone have an open line? To be solely responsible for all parts of the evaluation and distribution.

We have heard suggestions during the CCWG's deliberations that the renewed interest in a foundation is for the purposes of independence from ICANN Board and Org. However, the use of the foundation in this instance would be a mechanism that would require a separate entity, but would necessarily still be related to ICANN for the purposes of governance.

The creation of a foundation to administer the grant program should be evaluated against the efficiency and effectiveness principle cited

above, and if a foundation is the recommended mechanism, it should be developed in accordance with best practices from related foundations designed to further, [inaudible], or supported [inaudible] mission.

Any recommendations for a foundation should also provide details on what the foundation and its board are anticipated to do other than administer the grant program in accordance with the principles and guidelines the CCWG is recommending.

Is the foundation expected to have a differing strategic initiative other than to deliver the program as recommended by the CCWG and approved by the ICANN Board? In addition to the above considerations, the Board reiterate previous statements that proceeds will be distributed in trenches regardless of the mechanism that is implemented. If the foundation is the recommended approach, the proceeds would not be sent in their entirety to the foundation and would be distributed in trenches.

So, that's the Board's feedback regarding mechanism C. There is some more feedback from Org as well but maybe I'll pause there for the moment.

ERIKA MANN:

I would take the ICANN Org as well. I think it's very similar, if I remember, as well to what the Board has written. But I think it would be good to take this, too. Please, Joke.

EMILY BARABAS:

This is Emily from staff.

ERIKA MANN: Sorry, Emily.

EMILY BARABAS: No problem. The ICANN Org feedback regarding mechanism C says from the ICANN Org standpoint, we concur with the Board's inputs. From the Org standpoint, it is important to understand the specifics of the foundation set up that the CCWG is envisaging. If the renewed interest in the foundation is based on a goal of achieving independence between a foundation and ICANN, then any resulting foundation is likely to resemble mechanism D and will raise legal and fiduciary concerns. The Board is focused on best practices for relationships between a parent organization and a foundation established to further a charitable mission would allow ICANN Org to address legal and fiduciary concerns arising out of the development of such a foundation.

Then, there's an additional comment that's quite long that sketches out some potential costs, and specifically costs dedicated to mechanism C around different types of potential foundation structures, as well as specific costs that only apply to mechanism A. I'm not sure if you want me to read that but it's pretty extensive.

ERIKA MANN: No. Thank you so much, Emily. I don't think that we should read this here now. That's something we have to talk about in case we take a decision and we come to the conclusion C is going to be selected. There's just one tiny reminder I believe, what is sometimes missed here. We're talking about an ICANN foundation. So, the difference

between a new ICANN unit and an ICANN foundation is maybe less big than people assume sometimes.

So, let me go ... Alan, I'll come to you in a second. I just want to ask quickly, Becky or Sarah, if they would want to add something, or Sam, or if we can continue with the discussion. Becky, do you want to add something or is this is the ...?

BECKY BURR: No, I think Emily covered it.

ERIKA MANN: Perfect. Sam, something to add here from your end?

SAM EISNER: Nothing from my end, thanks.

ERIKA MANN: Thank you so much, Sam. Xavier, in case you are with us, with regard to the cost factors, I hope we can come to them a little bit later. Alan, please. And apologies again for the long wait.

ALAN GREENBERG: Thank you very much. The Board mentions the renewed interest in the foundation. My recollection is significant amount of that interest was because the proponents were looking for either a completely independent foundation that is independent of ICANN in all ways

and/or would get the money out of ICANN so it couldn't be repossessed by the Board at some future time.

The Board has made some very clear statements saying that is not possible. Not only is this dependent on the Board but they've also added the officers, which include ICANN Org employees, as part of this overall mechanism that will be mandatory based on the Board's statement.

Given these clear statements that a single tranche of all the money is not going to be disbursed and there will not be complete independence, I think we need to go back and make sure that we still have people supporting the foundation which will not be independent and not have all the money.

My recollection is the people who wanted the foundation wanted one or both of those things and the Board has made some very clear statements here. Thank you.

ERIKA MANN:

Thank you so much, Alan. Marilyn, would you want to comment on it? Because you were one of the key proponents [in the] BC in supporting an ICANN foundation. I'm not sure if you are with us. I can't see you here.

MARILYN CADE:

Oh yeah, I'm here.

ERIKA MANN:

Why can't I see you on the screen? Marilyn, please, [inaudible].

MARILYN CADE:

Thanks. I was one of the people who supported mechanism C representing the CSG which is three constituencies. But there was support for mechanism C in the first round of public comments. I don't think I would ever describe myself – and I hope no one else on this list would describe me as – unrealistic or unpractical or unable to understand the nuances.

So, the issues that Alan has referenced, I don't support at all. I don't think we should return. We have three mechanisms we're examining. Let's move forward. And I think those who supported the idea of an independent foundation read the Board recommendations all along. Certainly I did. I included those within the CSG that I consult with regularly and we understand the overall and overarching requirement from the Board to have some final authority over the direction. But it's pretty clear to me that a significant amount of independence from ICANN Org and ICANN is possible in a separate foundation, while not severing completely the accountability ties.

ERIKA MANN:

Thank you, Marilyn. I believe what we then have to do, we have to implement the points in particular the Board is raising. I would separate the financial cost from it when we talk about the topic 5.1, selection of the mechanism. So, the question about the cost we can mention here but then it has to be included elsewhere or it needs to be included in the guidelines. Then, I think we are much more clearer.

So, what we have to introduce here is practically the oversight mechanism. But this is true, again, for all three mechanisms. So, this is true for A, B, and C even if it's an in-the-house unit but is separate from the ICANN Org structure. And if we are talking about B and C, in both cases the oversight function of the current Board will continue to exist and all of the points referenced here from the Board will have to exist for all three mechanisms.

So, we have to practically paste and copy the key points from the Board here and have to include them in the section selection after mechanism. Then, we will attach as well the Board reply and we will mention this here, too, because currently in the [inaudible] part of charter question, we are talking about the reply we have received so far. So, the memo on legal and fiduciary principles, so we will have to include and reference and [inaudible] received here from the Board and from ICANN Org as well. Then, I believe we are fine and Marilyn is right. I believe we then can continue.

Let me look to the chatroom, if something else is said here, and then I want check quickly ... Let me check first if somebody else is raising their hand. No. So, let me go to the chatroom. Yeah. Okay, can we do this? Back to you, Emily.

EMILY BARABAS:

Hi, Erika. I mean, we can certainly, as we draft the response to charter question one, incorporate the Board's points. I think to the extent the CCWG is able to provide guidance about what its vision is for the implementation of mechanism C, if it ends up being one of the recommended mechanisms. But that's also helpful so that we

can formulate the language to match that. But we'll certainly do our best to draft what we can and then have everyone respond to it.

ERIKA MANN:

Yes. And I would recommend, Emily, that we take the key points – in particular, the oversight functions of the board – we attach this to all three of the mechanisms and then we are more specific when we come to point C, although I believe we have to be more specific with regards to mechanism B, too, because once you merge with another entity, you definitely will have to make clear that the oversight functions stay in place, too.

So, I would say we do a draft. After the leadership, we do another draft of this particular point and we send it out after the call as quickly as possible. Just checking the ...

I want to go through all of the items, so I don't want to hang up on one issue because, otherwise, we have no understanding about what colleagues would love to see changed, too. I think we know what shall be done here and we have just to do a draft and I think it's the leadership obligation to get this done as quickly as possible and then we send it out and we can continue to discuss it if needed by email. Does this make sense? Emily, back to you.

EMILY BARABAS:

Hi, Erika. I think that makes sense. Shall we move on to the next?

ERIKA MANN:

Yes, please.

EMILY BARABAS:

So, this is page 14. Just noting on the response to charter question one, going back – no need to scroll – that it sounds like what we really need is a more detailed description of each of the mechanisms, so we'll work on fleshing those out.

So, this is a paragraph added to the next response to charter question number seven. It's incorporating some of the text that we took from page eight that originally said for mechanism B the CCWG might make a recommendation about the division of responsibilities, and that sort of fit better in the recommendations – or sorry, the response to the charter question.

So, what we've done here is just said regardless of the mechanism selected, additional consideration will need to be given during the implementation phase to the division and recognition of responsibilities between ICANN Org and any other entities involved in the selected mechanism, and then specifies what that looks like for each of the mechanisms. So, that's the purpose edit. I don't know if there's any comments on that.

ERIKA MANN:

Thank you, Emily. I'm checking if somebody is raising their hand. I think this is pretty much clear here but I just want to be sure we have captured all comments. So, the comments I see coming in are related to the previous item. Emily and Marika, we need to ensure that before we do the draft which we just discussed, we read what is said in the chatroom because there are some good points raised

here, before we draft the text. I made a comment in the chatroom that we are going to do this.

So, concerning the point on page 14 and 15, the point Emily just raised, any comments here or can we proceed as recommended? Okay. Then, move forward, please, Emily.

EMILY BARABAS:

Thanks, Erika. We're going to scroll ahead, then, to I believe the next one is page 15. So, what we've tried to do here ... This is text regarding the independent panel which is making selections on the applications for funding. What we've tried to do here is clarify some of the text to incorporate the points that the board has raised regarding that evaluation panel.

ERIKA MANN:

Emily, would you mind just to read the parts which relate to what we have recommended to change or what we recommend to introduce in new language? And then I would love to, in particular, ask Alan to comment on it because he was the main drafter of these kind of sections. So, Emily first, then I'm looking forward to Alan.

EMILY BARABAS:

Sure, Erika. So, starting – it's the fourth sentence in that paragraph that starts with "regardless of which mechanism is chosen". Members of the independent project applications evaluation panel, will be selected based on ... So, it originally said members of the independent project evaluation, applications, evaluation panel – will be selected based on their expertise, not affiliation or

representation. And the suggested edit is to add based on their grant-making expertise and ability to demonstrate independence over time, not affiliation or representation.

ERIKA MANN: Yeah. I think it is fine. Alan, any comment?

ALAN GREENBERG: Thank you. I'd have to read the whole thing in its entirety, but at face value, it looks okay. But it's the context of how it all fits together that really counts and I haven't looked at it from that perspective.

ERIKA MANN: Sure. That's something we all will have to do to look for coherence because even if we agree on a particular language now, when we read the complete text, we might come to a different conclusion. Insofar, we still have [inaudible] time for reviewing the whole text before we will publish it, of course. Back to you, Emily.

EMILY BARABAS: Thanks, Erika. So, just skipping down a couple of sentences. Actually, Marika, if you don't mind scrolling up just a little bit on that page. Yeah, perfect. So, this is the next red text starting with the independent project evaluation panel, should be independent of ICANN and its constituent parts, including the Board, ICANN Org, and the supporting organizations and advisory committees that make up the ICANN community. No SO or AC should be – sorry, that should say should be represented directly or indirectly on the

evaluation panel itself. So, this is again based on feedback from the Board and its note.

ERIKA MANN:

I believe [inaudible] some changes to what we previously discussed, because if I remember [inaudible] comments well, he was arguing that they have to be independent in the sense they have to commit to the complete, all of the independence criteria. But they can come from the community as well.

So, here we have to be a little bit careful that we're not suddenly ending up in a situation that we are saying it can come from the community or it can't ... You remember we had the discussion ... Becky, I'm looking back to you here. We had a long discussion about this topic where we said ... We didn't use the term from the community but I believe we used the term it can come from ICANN. It can be ICANN participants. So, we want to be careful here that we're not suddenly becoming, again, too restrictive.

So, Becky and Alan, here, in particular, I'd love to hear about, but of course everybody else, too.

BECKY BURR:

So, I think our view was we were not ruling out anything but that they needed to be entirely independent of and have essentially no conflict of interest. So, to the extent some entity that they have an association with some entity that might be applying, that would not be acceptable. They would need to be completely independent.

And the one point that we made – I know people had suggested that we have some recusal system, where if people actually did have a conflict they could recuse themselves. I think you will see in the most recent Board input, we were quite concerned. We think that the independence should be such that you have a consistent panel evaluating and selecting the applications and looking out across the entire range of application rather than having a situation where some people have to recuse themselves, and so the same group of people is not making the selection. That seems to the Board to be quite problematic.

ERIKA MANN:

Thank you so much, Becky. I see that Emily rightly points out that the sentence which we discussed last time which reads ICANN's participants are not excluded from applying to serve on the independent evaluation panel but they can only be selected if they would have the required expertise, etc. So, it's true. They can still come from the participant requirement. But at the same time, we are saying it can come from the community, which is maybe contradictory, so we have to clear this up here, I believe, because, otherwise, I see some legal issues arising in the future once this entity is created because it sounds a little bit contradictory here. Alan?

ALAN GREENBERG:

Thank you very much. We had some people who said the panel must come from the community and other people who said it must not. So, let's be realistic. We're not going to satisfy everyone here.

But the real reason I put up my hand is to point out that we are using terms I think loosely and we need to be precise.

Let me give another example. The ICANN director selected by At-Large comes from the At-Large community, and in the current case, he still associates himself with the At-Large community and participates in things with the At-Large community. But he clearly, based on the ICANN bylaws, he does not represent us. He is not there as our spokesman or to relay messages for us or to be controlled by us. But he comes from the community.

So, the two are possible but we have to use the words very carefully. Thank you.

ERIKA MANN:

Thank you, Alan. So, what I hear, and just screening quickly, there's another comment from Maureen and then Emily points out to what is said. Marilyn, you have your hand up. I don't know why I can't see it. Marilyn, please.

MARILYN CADE:

Thanks. It's a very short comment. It relates to this particular discussion which I was also heavily involved in. I think sometimes we tend to go to only one person or another and I think it's really important to take in broader comments on an ongoing basis.

My view about not coming from the supporting organizations and advisory committee was that they would not be responsible for approving or sending a participant, that any participant who could fulfill a requirement of no conflict of interest or even perceived

conflict of interest, could self-nominate themselves to be considered.

I think that was based on the fact that, in many cases, when there are limited seats on things that ICANN engages in – probably development, etc. – then we have individuals who are chosen or endorsed by an SO or AC. I hope we’re trying to avoid that but maybe there’s a clearer way of saying will not be chosen or endorsed by ICANN or its constituent parts, including the Board, ICANN Org, the supporting organizations and advisory committees, and then keep no SO/AC should be directly represented or indirectly; however, ICANN participants, as individuals who meet the conflict of interest requirements are not excluded from applying. Something that is perhaps just a little bit clearer, I hope.

ERIKA MANN:

Thank you, Marilyn. You’re absolutely right. You participated in, you drafted part of it, as well. In particular, the participant related topics. You’re totally right. Thank you for reminding me and apologies that I didn’t mention this.

I think you’re right. I like this the way you framed it. So, Emily and Marika, Joke, we will have to do a redraft here, a tiny one. It’s just a little bit of language clarification, and maybe even already adding ICANN participant in their individual capacity, as Marilyn just said, might already help to clarify that we are talking about, we are excluding the organizational part of ICANN but we’re not excluding the individuals if they have the capacity and meet all of the criteria. So, here, we will have to add a little bit, and then I believe we have a language we can all live with, hopefully.

Going back to you, Emily and Marika, Joke, just to see that we can work on this and represent it to the team again. Emily?

EMILY BARABAS: Hi, Erika. Just noting a note from Marika in the chat if asks Marilyn if she might be able to put her suggested changes into the chat.

ERIKA MANN: Yes, [inaudible].

MARILYN CADE: I don't think that's really very reasonable. I was just drafting verbally on the fly. Isn't this being recorded?

ERIKA MANN: Yes, of course, it is, Marilyn. We have the language, don't you worry. We can put this together based on what you have said, and I took notes, too, so we can put this together and when we [resent] the whole draft, we will have it included.

Okay, let's move forward, Emily.

EMILY BARABAS: Okay. This is the next suggested added sentence again, coming from the Board input. The mechanism and the panelists serving under the mechanism must be free not only from actual conflicts of interests but also potential or even perceived conflicts of interest.

ERIKA MANN: Thank you so much, Emily. We have discussed this already and this was in the language from I believe already embedded in the language the original CCWG used, so I can't see that we will have a problem with this but [give us a second]. Marilyn, is this a new hand? I'm checking the chatroom, too. Yeah, we're fine here, Emily. Let's move forward.

EMILY BARABAS: Thanks, Erika. So, on the rest of this page, it's simply incorporating the exact same edits into the CCWG recommendation and guidance. So, we'll just skip ahead.

We are on page 19 now, I believe, and these are edits that we went over during the last call that Erika had proposed and they're just inserted now, regarding mechanism C.

ERIKA MANN: Can you just remind us briefly? You don't have to read the complete text but just remind us briefly [inaudible].

EMILY BARABAS: So, this discusses audit requirements for mechanism C and states that certain aspects of oversight will need to be established, and also talks about some of the other issues that might be addressed in implementation stage. For example, ensuring that the coordination between ICANN Org and the ICANN foundation is smooth and professional and so forth.

ERIKA MANN: Okay. What I would recommend to check here, Emily, is to whether the points we received from and we discussed at the beginning of our call today from the Board and from Xavier concerning the financial aspects, we may want to maybe make an attachment here and a footnote where this then can be read in more detail. Do we have another point where financial topics come up with regard to all of the mechanisms and audit items or is this the only time we are discussing this with regard to mechanism C. Emily?

EMILY BARABAS: Hi, Erika. So, I believe this is the only time that we talk about audit requirements specifically with respect to mechanism C. In response to one of the other charter questions, we talk about audit requirements more generally across mechanisms.

ERIKA MANN: Okay. I believe Xavier will have had a chance and Sarah to read this particular point, so in case there's something you don't feel comfortable with this language, this was something I had added because it was missing when we reviewed the text. So, I would love, in particular, you, Sarah, and Xavier to read this part. We can resend it to you so you can see it, and in the case you have comments here, please be so kind to send them to us as quickly as possible. I think they're pretty straightforward but there might be something you want to see reframed or presented in a different form.

Okay, Emily, back to you. Let me check if somebody wants to talk here. No. Chatroom silent to you.

XAVIER CALVEZ: Sorry. Erika?

ERIKA MANN: Yes, Xavier, of course.

XAVIER CALVEZ: Sorry, I had my hand up.

ERIKA MANN: Apologies, I didn't—

XAVIER CALVEZ: I wanted to – and you've just offered it but I wanted to be clear that I would like to have an opportunity to comment on the paragraph that we see in red here, to propose some thoughts or potential edits to whoever wrote it.

I just also wanted to flag a comment that I put in the chat a while ago on the mechanism C at the time the discussion was happening – sorry, on the mechanism A. It was a comment relative to the separation of a department. I just want to make sure it's visible and seen, otherwise I'm happy to make this statement verbally now because I think it needs to be looked at.

ERIKA MANN: Go ahead, Xavier. Do it now and then we have it on record, please.

XAVIER CALVEZ: Thank you. The [inaudible] was happening on mechanism A and was following Alan's point about how can a department within ICANN be also independent. I said in the chat that in mechanism A the notion that, one, an internal department is actually created; two, that it is functionally separated appears to be contradicting entirely the definition of this scenario. Under this scenario, what is the rationale to have a separation of a department within ICANN Org? What does it achieve is really the question.

In addition, it should be considered by the [inaudible] that it's actually not meaningful to define how activities need to be organized within ICANN Org, as this is a CEO prerogative and authority, and in removing that prerogative from the CEO is actually removing the authority of the CEO to manage the organization which can only be done by the Board in firing the CEO, effectively.

So, I think that there is a certain amount of conversations about how ICANN Org should organize this, which I think are presuming a number of elements of how the activities are organized and I actually fail to understand the rationale as to why that's the case.

On the comments that are currently on the mechanism C relative to audit, I would like to opportunity to comment and I will try to do that quickly with the help of the supporting staff.

ERIKA MANN: Give us a second for the first comment you made, if somebody wants to comment on it or if they have further questions. What are you precisely recommending that we shall change, Xavier?

XAVIER CALVEZ: I think that—

ERIKA MANN: And can we go back to the point so that we are – apologies, Emily. Can we go back to the point Xavier is commenting upon?

XAVIER CALVEZ: I'm not suggesting that I give you indications of anything you should change. The CCWG owns its own input. I am—

ERIKA MANN: Thanks, Xavier. [inaudible]. We understand this but we want to hear what you are truly concerned about the current language.

XAVIER CALVEZ: My point is that – and probably is an echo of what Alan said – there's no internal independent department of ICANN. If it's a part of ICANN, it's a part of ICANN. And when I say ICANN, I mean ICANN Org. Some of you were saying it could be like the IANA functions. The IANA functions are not independent of ICANN. They are completely integrated with ICANN. There is a PTI entity in which these operations are located but that PTI entity is not independent of ICANN. It is an affiliate of ICANN, controlled by ICANN.

So, I don't know if there is some confusion as to the level of independence of any activity carried out within ICANN but that's not the case and I don't think you should have the misconception about

it in the description of mechanism A. I'm hoping ... I'm happy to discuss it further with anyone who would like to discuss but I think it has to be very clear in your mind before you finalize this language.

ERIKA MANN:

Yeah. Thank you, Xavier. I don't believe we have to discuss this again because we debated it. Your clarification supports what was said before. So, we will look for, when we do the redraft, the leadership team, we will look for the correct language and then we have another goal and everybody can be review that everything is clear and well-understood.

So let's talk about this point because you want to comment on the audit requirements, too. So, let's talk about this particular point, Xavier. A, B, and C related to mechanism C audit requirements. Xavier, are you gone?

XAVIER CALVEZ:

No, no, I'm here. So, on these data requirements, I would like to be able to offer some comments or edits but I would need a little bit of time to spell them out, so I would rather do that in writing later.

ERIKA MANN:

That's fine, Xavier. Totally fine. So, let me check participants, that I haven't overlooked somebody now, and in the chatroom, have I overlook something here? There's still discussion about independence. Maureen is coming back to it here. We will look into this, how we can phrase this, Maureen. Thank you.

Okay, Xavier, we will wait to receive comments from you with regard to these three points related to the audit requirements. Thank you so much for this. Emily, can you ... I'm pretty sure you are able to resend this to Xavier, so that he reminds these three points.

EMILY BARABAS: Hi, Erika. Yes, we'll coordinate with Xavier to make sure he has the latest draft.

ERIKA MANN: Thank you so much. Okay, there is nothing else, so I believe we can move forward.

EMILY BARABAS: Okay. Let's scroll onward, then. I believe the next comment is on page 23. So, this is an edit that was discussed on the last call regarding the question of whether ICANN would be able to reply for funds granted through a charitable foundation developed to support ICANN's mission.

Marilyn had raised concerns about this language that was proposed and an additional clarification was provided from ICANN Org regarding concerns about self-dealing, specifically in the case of mechanism C.

So, we haven't propose further edits at this stage and are looking to CCWG for guidance or if there's any further edits that need to be made here. Would it be helpful for me to read the further clarification regarding mechanism c?

ERIKA MANN: Yes. I would [inaudible]. Yes, please.

EMILY BARABAS: Okay. Marika, would you mind scrolling down just a tiny bit more? Perfect. Mechanism C is based upon the development of a separate entity, a foundation. The relationship between a foundation and its establishing entity is subject to heightened scrutiny, particularly around issues of self-dealing between the foundation and the establishing entity/directors and officers of the establishing entity.

Once funds are placed with the foundation, having ICANN be a form of beneficiary to those same funds, even when ICANN is not the applicant for those funds, requires detailed analysis about the facts and circumstances surrounding ICANN's access to and use of the funds. This is much different from a situation where ICANN retains some or all of the auction proceeds as contemplated under mechanisms A and B, where the possibility of ICANN, with the community support, using some of those funds to participate in a large-scale project as suggested in the question is much clearer and does not raise the self-dealing concerns.

The establishment of a foundation fundamentally changes ICANN's ability to access or use funds once those funds are transferred to the foundation and is very different from mechanisms A and B.

So, that's the clarification of the suggested text regarding limitations on ICANN receiving funds under mechanism C. Thanks.

ERIKA MANN:

Thank you so much, Emily. I would have some concern, actually, with the clarification here which we received because I believe there are at least two [inaudible] included which I wonder if they don't need to get clarified.

First of all, in the reply from the Board, which we discussed at the beginning, the Board rightly is saying there will be no transfer of funds. So, the money will be not transferred but the oversight will remain, even in the case of mechanism C, will remain as fiduciary and legal obligations with ICANN Org and the Board. So, it would be a mechanism which would have to be created where the fund is not transferred to the ICANN foundation but it would remain with the mother entity, but once a project is accepted, then the tranches would practically be distributed through the foundation.

It's not unique. It exists in other environments, too. It's a little bit complicated and it's maybe not the traditional model. But anyhow, it's possible.

The second comment I would be a bit concerned about would be the argument about self-dealing, because I believe that self-dealing would be – at least the self-dealing concerns – might be even higher, at least from a public perspective, in the case the mechanism is in house because then the self-dealing, at least probabilities, are much higher.

So, I wonder if actually the reply we have received from ICANN Org is fully reflected on the way we believe the CCWG constructed these various mechanisms. So, I'm not sure how some are looking to you. Either I'm misunderstanding the reply here or maybe you want to elaborate on them. Yes, please, go ahead.

SAM EISNER:

Thanks, Erika. I think that you raised some interesting nuances around this. First, as I just put into chat, the issue of self-dealing, you raised a concern about there will be continued community scrutiny. Let's not look at any of the mechanisms. There will be continued community scrutiny for how ICANN holds the funds and relates itself to the auction proceeds funds as the tranches are still in process, right?

Anytime that ICANN holds the money, there will be scrutiny on ICANN for how it relates to that money and how it accesses that money, if it does. That's what I understand one of the self-dealing concerns that you just raised.

I agree we all need to be very clear about what controls and how we would expect ICANN to deal with any of the funds that it is holding before it goes into the tranche cycle. That's one aspect.

But self-dealing as it relates to the relationship between a foundation and its establishing entity, in that way it's used as a term of art and not just as a conflict of interest or access issue, but it has a very particular regulatory meaning, and the fact of the establishment of the two entities creates a much higher level of scrutiny for whether or not the establishing entity has use of the funds after the funds have been released to the foundation.

So, any return of the funds in some way, shape, or form to the establishing entity, which would be ICANN in this instance, creates a risk of a view of self-dealing where you need to look at each of

the facts and circumstances of the situation to see if that truly is a self-dealing concern or not.

So, for things that happen before the tranches are released and the money goes to the foundation, that is not a self-dealing concern as it exists in the eyes of the foundation regulation.

Once the money goes to the foundation, then it becomes a self-dealing concern if the establishing foundation then has use of those funds in some way or has access to it, and that's what we have to look at.

But, if you imagine, as we understand A or B at the moment, if ICANN releases money into a tranche that goes through an evaluation process and is released through that application process, if ICANN is somehow involved in the administration of a project and has use of those funds or access to those funds, that is not a regulatory self-dealing issue because you don't have two separate entities. The regulatory self-dealing issue comes in with the foundation.

So, you could make use cases where similar things would happen but it's the fact of the establishment of a foundation that creates additional legal risk around whether or not ICANN has appropriately [inaudible] administration of a program, as we saw suggested in the question that came to us.

ERIKA MANN:

Thank you, Sam. I will come back to some of the points you made later but I see Marilyn and Alan first, so Marilyn, please go.

MARILYN CADE:

Thanks. Thank you for this clarification. I have some detailed questions. But before go to those, I have a shorter, more direct question. I'm reading in the middle of this, this is much different, about halfway down, from a situation where ICANN retains some or all of the auction funds, as contemplated under mechanisms A and B. I don't recall that we [inaudible] that, but okay. I thought we thought there would be costs of operating A or B and C, and that that would be equally available to each of those three.

Anyway, it goes on to day ICANN retains some or all of the auction proceeds, with the possibility of ICANN, with the community support, using some of those funds to participate at a large-scale project as suggested in the question is much clear and does not raise self-dealing concerns.

I have a concern here. This almost sounds like a bribe. "Okay, go with A or B and ICANN gets to keep a lot of money and we'll do a big large-scale thing. We'll give \$50 million to one entity to do, I don't know, cybersecurity training," or whatever. Thus, removing the responsibility from the entity that is being established and putting money back directly in the hands of ICANN.

MARILYN CADE:

For ICANN decision-making. I have totally missed that idea as a concept, and in fact, thought that was rejected very early, when certain parties thought that we could give huge, very large grants to standards, bodies, or etc., and then they could just do what they want to do with it. So, we need to discuss this at some point. It

doesn't have to be right now. But this sounds extremely challenging to me. Moving this backwards, not forwards.

ERIKA MANN: Thank you, Marilyn. We will pick this up, [your point]. Alan, please.

ALAN GREENBERG: Thank you very much. Two points. On the one that Marilyn just raised, as I have understood it, in all three scenarios, ICANN will reserve the funds until it allocates them in tranches. There is always the possibility that ICANN Board could decide, presumably with this report of the community, that some or all of that money does not go into auction proceeds but it goes somewhere else.

An example that perhaps is relevant is the reconstruction or the evolution of the root server system, which we know is something that ICANN is contemplating. It's out for discussion and it's going to require a bit cost. So, conceivably, the community could decide that some of the money goes into that but that would be applicable to any of the scenarios because ICANN has made it clear that it's not going to give all of the money away at one point, and as long as it has it, it could repurpose it. Maybe it would, maybe it wouldn't, but it certainly legally could.

In terms of the foundation versus other operations, Sam basically said it all but I'll say it in a somewhat different way. If ICANN is either doing this as an internal department or as a separately established corporation, what rules had set are purely rules. They're internal rules, whether ICANN can apply or not.

However, once we call that separate corporation a foundation, there are certain rules that apply and the self-dealing rules and regulatory rules that Sam talked about come up. Let's make it very clear why some of these things are applicable and why they're not. Thank you.

ERIKA MANN: Thank you, Alan. I believe – I hope I'm not missing somebody here. Sam, is this a new hand?

SAM EISNER: Yes, it is.

ERIKA MANN: Then, go first. Or shall I make my [inaudible] or you want to go first?

SAM EISNER: Yeah. I've put some clarifications in the chat. And thanks, Alan, for your intervention. I think that helped frame it as well. I just want to be clear. The response that was given about the foundation and about the self-dealing is not about pre-tranche activities with ICANN, right? We understand there has to be controls about how ICANN might access the funds or not.

We were answering a question about whether or not it would be feasible for ICANN to be part of the recipient of the funds, through a program that is applied for and funded through the auction proceeds. So, that is the issue that we're looking at and not the general obligations that ICANN would have and the expectations

that the community would have over the maintenance of the funds before they got into the tranche.

As Alan and Marilyn indicated, the expectations that ICANN would have over the maintenance of the funds before they go into the tranche remain the same across any of the mechanisms. I just want to be clear what point in time we're discussing here. So, it's really just about ICANN's ability to be part of the funds recipient or beneficiary for an approved and funded program that went through evaluation.

ERIKA MANN:

Thank you so much. I think that's well-understood some but it's good it's clarified again that it's a very particular answer to a very particular question. I believe the important point is where we have to be careful is with the term of self-dealing, because in all three instances – mechanism A, B, and C – there will be an independent evaluation panel, and if the independent evaluation panel comes to conclusion it would love to support – and take the example Alan just raised, a root zone update with many projects and many different project partners, and ICANN is one of them. And in the case mechanism C is saying, "Yes, we would love to do this," then there is no self-dealing and if I [inaudible] the self-dealing concern at least would be not different than it would be in the case of A, B, and C.

So, I think we have to be clear that it's a bit more complex nature between ICANN Org and between ICANN foundation but it allows the same possibility with a bit more complexity, but it's not prohibited to do this. We have to be clear here. And if I continue to

read you the answer from ICANN Org, I think this is what you said, too.

Is there anything we have to add to this? There were some concerns raised by Marilyn that were a bit more general. Marilyn, is there something you would want us to review or are you okay—

MARILYN CADE:

No, Erika. If we're conveying that certain ... I see that Alan thinks that mechanism C is problematic if ICANN is a recipient. I don't think that's quite true. I think if ICANN is ... The way I read this, and this was maybe a meeting or two ago, if ICANN is applying, along with others for a – or is the beneficiary of an applicant's use of funds, that should be equally allowed in all three of the mechanisms. So, that is the clarification that I would look for is not pre-tranche, but post-tranche, ICANN if they are participating along with others who are qualified, such as in something like the root server, and I think it's quite unique to consider that, that that would be equally an opportunity under A, B, or C.

ERIKA MANN:

Yeah. So, I am a member of other foundations which are a mother company, so it's not unique that this happens. Sam remains concerned and she is saying in the chatroom there is not the same self-dealing concern regulatory speaking if ICANN is a project partner for a project funded through the process under A and B, I would say, and I would add C. I agree, Sam. In three cases, they are different in the execution of the regulatory environments. But all three allow this to happen. That's the key point. There is no

prohibition I have ever seen in any foundation which has a mother company or a mother entity where this would be not allowed. And I'm talking about part of American foundation and [inaudible].

So, I would be surprised that this would be prohibited, that there are different self-regulatory, different regulatory concerns, I do agree. And this is something the transition team would have to work on once the mechanism is selected. It's not something we probably have to do now because it's premature. We haven't even selected a single mechanism, so why should we deal with all three scenarios if you are only going to select one mechanism in the end? Just checking if I'm not missing something important because we will have to review this whole section to see that everything is clear and we can all agree upon what we are saying here. So, let me go back to the chatroom. Yeah, Sam, I'm seeing your point. Yeah, we will review this all before we do the reframing of this particular point. Chatroom. Is somebody in the queue? Sam, I see you and I see Maureen. Maureen, please.

MAUREEN HILYARD: Thank you, Erika. I just wanted to raise a concern. I'm terribly sorry I was late coming to the meeting. Just a concern that's within the discussions that we've just been having about the tranches being given out and that funds will be retained by ICANN. Alan has mentioned that ICANN could possibly [inaudible] funds for projects that they really would be probably of value to the community.

But I think I take it back to our first discussions that we had where we were looking at the community projects. When we're talking so much now about ICANN projects and ICANN's use of funds in this

[inaudible] thing, of course. I'm just a little bit concerned that projects that we originally decided on that we're going to benefit communities outside of ICANN to actually support ICANN's work within the communities, that that is going to be listened to the fact that ICANN – there's a potential for ICANN to be using it for projects that are important to them.

The whole purpose for me was that these funds would provide benefit for communities. And if it's taking it away from communities and giving it back to ICANN to make the decision about what they think is important for communities, I think that this is definitely not the track that I feel comfortable with. Thank you.

ERIKA MANN:

Thank you so much, Maureen. I believe it's a topic maybe we should discuss here at this particular point because I believe – but Alan can talk about it himself but I believe he was raising a hypothetical legal point which is true, that Board always has the possibility and the Board made it clear that, if money is needed, because of shortage in the overall budget, the Board would have the possibility to do so. But there was never any discussion or decision or debate which we had where the Board or ICANN Org would make such a recommendation for particular projects. Quite the opposite. I always understood if particular projects would be executed, it would be channeled through auction proceeds projects and funds.

So, I think we shouldn't discuss it because I believe Alan was raising a hypothetical question which is a correct one but I don't

think it relates to the reply we have received so far from the Board or from ICANN Org.

But, Alan, if you want, I'm happy to give you the floor again. But let me finish first what we have to do here [inaudible], and Marika and Joke, we have to clarify – we have to review all the discussions [inaudible] the chatroom and then [inaudible] language which we propose to the CCWG and hopefully we can do this as quickly as possible. So, let me just finalize this [part] and go back quickly to Emily and see if we are able, based on the discussion we had, if we are able to do this.

EMILY BARABAS: Hi, Erika. I see that Alan has his hand up.

ERIKA MANN: I go to Alan in a second. It relates probably to a different item. I just want to understand first, do we have all the bits and pieces together to finalize our work? Then I go to Alan.

EMILY BARABAS: Hi, Erika. Are you asking about the specific paragraph that we've been discussing, if we have any need to edit it? We can certainly go out to the conversation and try, but to be honest, it sounds like there are still some pretty different understandings of the restrictions and requirements which—

ERIKA MANN: That's fine, but I want to have first us to do a draft of a language and then we can send it. It's much easier to review something instead of having endless discussions about endless points. That's too complicated. So, I want us to do a draft and then resend it to this group and then we can discuss it again.

EMILY BARABAS: We can certainly try.

ERIKA MANN: [inaudible]. Alan, please.

ALAN GREENBERG: Thank you. You asked me if I have any comments, and yes, I do. I raise that as a purely hypothetical thing. I'm not a member of the ICANN Board. I'm not privy to any discussions that might have been held or might not have been held. I was simply pointing out that, legally, the money is ICANN's until it allocates it somewhere else, and ICANN can do what it wants.

Now, if you're asking a personal opinion, I happen to think that updating of the root server system is one of the best things that ICANN could use any money for, and if this is a project which we are ultimately allowed to apply for under the auction proceeds, because certainly most of the money would not go to ICANN itself, but to other parties, then I think that would be a dandy way of doing it.

On the other hand, if that's forbidden, then ICANN doing it out of the money not yet allocated I would think is also something, that's a personal opinion. And I'm not saying ICANN could do it. I was just saying legally it is something ICANN could do and it's something we want to consider. Thank you.

ERIKA MANN: Thank you so much, Alan. So, I understood you right and [inaudible] on a personal [inaudible], I share your opinion. I want to ensure, Sam, that the option ... And this is what I understood from your reply and from the Board reply as well, that [inaudible] would not [inaudible] under all three mechanisms.

But we will do a redraft. I don't want us to [inaudible] discuss these items now. We will do a redraft, the leadership team, and then we will resend it, and then please all review it as carefully as possible.

Okay, Emily, let's take the next item. Hopefully, we can take another one. Please.

EMILY BARABAS: Hi, Erika. There's a hand up from Marika.

ERIKA MANN: Okay, Marika. Apologies.

MARIKA KONINGS: Thanks, Erika. Of course, we can discuss this further after the call but there is language already in there that aims to translate the

ICANN Org input that doesn't say that it's prohibited but clearly says that it would need to be considered in each instance whether it could be considered self-dealing. I just wanted to flag that we have language there that I think communicates at least the input that Sam has provided. So, if that needs to be further tweaked, we will definitely need some further guidance from you or the group.

ERIKA MANN: Perfect. Thank you so much, Marika, for the reminder. This was in my memory, too, that I have seen exactly what you are pointing at. I'm just not sure where we have located it in the text. I remember the reply coming from the Board or from ICANN Org but I don't know where we have located it in our text. So, back to you, Emily, please.

EMILY BARABAS: Marika has it highlighted on the screen here, this paragraph. Maybe it's helpful for me to read it.

ERIKA MANN: Yes, please do.

EMILY BARABAS: So, it says, "From the perspective of mechanism C, ICANN would likely not be able to apply for funds granted through a charitable foundation developed to support ICANN's mission due to self-dealing concerns in the administration and oversight of foundations. To the extent that ICANN is not an applicant for funds through the ICANN foundation but is instead among the intended beneficiaries

of the applicant's use of the applied-for grant, each such situation would need to be investigated on the particular set of facts and circumstances to see if self-dealing or indirect self-dealing concerns arise." Thanks.

ERIKA MANN:

Thanks so much. Sam, I just would want you to maybe reconsider if you really want to ... If it's correct to say that this applies only to mechanism C. I wonder if the same language or a similar language shouldn't be used in the case of A and B, too. We don't have to discuss this now, just if you would be so kind to look at this again and the Board, maybe [inaudible]. I believe he is still with us. And Becky – so that you are all three comfortable in either saying it applies only to mechanism C or what we are saying here applies to A and B, too.

So, we will have to put this on an action item, Emily and Marika and Joke, as an action item, like the other one that we have to forward to Xavier. I would want us to do this in this case as well just to review the language here. Does it apply only to mechanism C or A and B, too, back to Sam and to the Board. Back to you, Emily.

EMILY BARABAS:

Thanks, Erika. We're going to scroll down to I believe the bottom of this same page now. This was a clarification that was put forward based on the Board's input. The existing sentence read, "The CCWG agrees with the Board's assessment that proceeds should be allocated in tranches over a period of years." And the new text states, "Regardless of the mechanism implemented." And as a

footnote, the CCWG notes that the ICANN Board has advised that in the case of an ICANN foundation, the proceeds would also be distributed to the ICANN foundation in tranches.

ERIKA MANN:

Yeah. I think it's clear. I think we just want to be maybe a little bit careful of using the term years. I see Marilyn is saying something. In the case it's a very small amount we are talking about, maybe years is maybe too much, so maybe time is maybe better than years. But let me check what Marilyn is saying. This is not related to this item. Several years, Becky is saying. Yeah. Several sounds better. Several leaves it open. It's two years, so it is five or six or ten years. I agree.

Okay, next item, please, Emily. Also, is there something coming up—

EMILY BARABAS:

That's it for this page. Thanks, Erika. We'll continue to scroll down, then. Again, that was just the same edit.

So, this is a clarification in the text that was added in response to the Board's comments on basketing. So, the question that went to the Board was whether the CCWG might want to recommend putting funds into baskets that are devoted to different purposes and the Board advised – and this is just paraphrasing, please don't take it verbatim – that this is an issue that should probably be deferred until the mechanism is already operating and it could be determined whether basketing would be beneficial and how to do that.

So, this additional paragraph tries to speak to that issue based on the Board's response. Did you want me to read it or do you prefer to just let people read it themselves?

ERIKA MANN:

No, I'm wondering something here and I would love to get a quick response from everybody. I believe we shouldn't put this in the text at all. Maybe we should say that we discussed it but then that's an item that should be put in the guidelines and then, based on the mechanism and based on the first one or two years, then the transition team may want to make recommendation for how basketing can be done. Or, actually, it's done already, the entity [inaudible].

So, I believe that's something we should put in the guidelines and we should just paste and copy what we received here from the Board and just have a short reference in the text that we discussed this and we received a reply but we forward this actually to the transition team and put this in the guidelines. This would be my recommendation.

Marika, I see you saying something in Skype. I'm not opening Skype because I'm afraid I will lose again the page I see here, because whenever I do it each time, I lose the access to Zoom and it takes me forever to return. So, if there's something you'd like to say, please just say it.

MARIKA KONINGS: Thanks, Erika. I was just looking ahead and that we only have seven minutes left on the call, so I just was suggesting possible next steps.

ERIKA MANN: Yeah. I'm watching the time. Yeah, absolutely. It's the last item I take, and if everybody agrees with my recommendation, we can finish here. Okay, I think we have [inaudible].

MARIKA KONINGS: Erika, I think that this is what the test is saying or basically saying in the last sentence that this is to be dealt with in the implementation phase. Maybe we already addressed your point.

ERIKA MANN: Yeah. I can't read it because I would have to go back to the other document. The red makes it practically impossible for me to read here. So, even better. Thank you so much, Marika.

Okay, then let's finish the discussion here and let's have a look how much we still have to debate and discuss. Can we get a quick overview, Emily? And then let's go back to our agenda so that we can finalize the rest of the items here today.

EMILY BARABAS: Hi, Erika. So, we have a few more items, so maybe it makes sense to just pause here and talk about next steps rather than going through the last few items.

ERIKA MANN: Exactly. Just tell us the last few items which we haven't debated today and then let's discuss the topics we really need to discuss today, in particular.

EMILY BARABAS: And then I'd pass it on to Marika. Her hand is up.

ERIKA MANN: Perfect. Thank you. Marika?

MARIKA KONINGS: Yes, sorry, trying to get off mute. As noted, there are a couple of items where we're basically just asking whether are there concerns about changes that are made. But there are also I think two items in here where the Board has provided input and will need CCWG guidance on whether or not edits need to be made and I think one relates to the review cycle and the number of reviews, and I think another ones relates to compensation of thee independent evaluators, if I'm not mistaken. So, I think it would be really helpful if everyone can have a look at those and provide their input on the list.

Then, of course, there are still some bigger issue questions. I know that staff has a couple of action items here to rewrite some of the text. It does seem that some of the language that has been there practically from the start is now being rewritten or changed, so I will need some time to look at that and see how we can best do that

and avoid starting from scratch. So, I think we need to have conversation around timing of those next steps. We discussed before the launching of a survey to get an indicative sense of what our members and participants did with regards to whether to recommend one mechanism or multiple. If it's one, which one has the preference here? Is it something that the group wants to include in the final report? It would go out for public comment. And if so, how could we align the timing for that?

One option would be to schedule another meeting next Wednesday to run through the outstanding items and I cannot promise that staff will have had enough time to do the rewrite, but we can do our best. I know that's very close up to the Montreal meeting, so that may be challenging. Or we just continue the conversation in Montreal, but obviously that means that will probably further push out the publication date of the final report for public comment. So, I think that's where we're basically at.

ERIKA MANN:

Thank you, Marika. Yeah, I had hoped we would manage this all today, so that we are able to redraft the text. My tendency is to say we have the discussion in Montreal because I'm worried if we schedule a call next week, I think it's probably too tight and somehow already going to travel. So, it's going to be too tight. So, let's have the discussion in Montreal. But let's, in the meantime, try to redraft the text as much as possible based on the discussion today, and then in an ideal scenario, we can continue maybe by email ahead of Montreal. But that's the only viable option I can see, with regards to those items which we haven't discussed today.

Anybody who wants to ... Marilyn and then Sebastian, please.

MARILYN CADE:

Just very quickly. I appreciate the time limitations but I would ask [Chang] and Erika that for our session in Montreal it be advertised as a working session of the CCWG AP so that people who are newcomers, including fellows and NextGen, don't get the idea that they should be coming in and lobbying on their point of view of what the auction funds should be spent on. That was a miscommunication that happened at one ICANN face-to-face meeting and a number of young people were very confused. They heard about the CCWG AP. They didn't realize it was a working group and thought that they would have an open mic. So, let's make it clear it's a working session. This is not a pause and take questions from the audience. We're trying to conclude this work.

I'm not saying there shouldn't be an opportunity, if time permits, to take questions, but just make sure the [inaudible] clear.

ERIKA MANN:

Absolutely. Understood. Totally agree. We will make no introduction into our work either, so that we really have enough time. Totally agree. Sebastien, please.

SEBASTIEN BACHOLLET:

Thank you very much. Happy to follow the work in Montreal. I just wanted, as there is any other issues, I wanted to raise one. It's come out to my mind when I read letter from the Board, I think we need to have the discussion about ICANN's mission, because when you

look to the letter from the Board and you look to the document, there are different words associated with ICANN mission and I think we need to be clear of what the ICANN mission – what is the limitation around that and which word we need to use. Thank you.

ERIKA MANN: Correct. Thank you so much, Sebastien. That's something we have to do anyhow, so that we always use the same languages and everything is clear. I agree. Marika, can you remind us maybe as last item we quickly talk about the time we have and the day we are convening our meeting in Montreal?

MARIKA KONINGS: Yeah. Thanks, Erika. I'm just putting the link to the meeting in the chat. It's scheduled for Wednesday from 5:00 to 6:30. And per Marilyn's point, we'll change the last sentence of the description. Originally, we had of course planned to present the final report during this meeting, but as we're not there yet, we'll make sure to update the language to reflect that the CCWG will work on finalizing its final report.

ERIKA MANN: Okay. Thank you so much, Marika, and thanks, everyone. We will send an update and then we will see you all in Montreal. Take good care.

UNIDENTIFIED FEMALE: Bye, everybody.

ERIKA MANN: Bye. Back to you, Julie.

JULIE BISLAND: Okay. Thank you, Erika. Thanks, everyone, for joining.

ERIKA MANN: Hi, Ching. Bye-bye, Ching.

JULIE BISLAND: And you can all disconnect your lines. Thanks for joining. Have a good rest of your day or night.

[END OF TRANSCRIPTION]