

2 March 2024

RE: Proposed Update to Recommendation 7 by the New gTLD Auction Proceeds Cross-Community Working Group (CCWG-AP).

Herve Clemente, Chair, ACO AC
Gregory DiBiase, Chair, GNSO
Alejandra Reynoso Barral, Chair, ccNSO
Nicolas Caballero, Chair, GAC
Jonathan Zuck, Chair, ALAC
Ram Mohan, Chair, SSAC
Jeff Osborn, Chair, RSSAC

Dear Chartering Organizations of the Cross-Community Working Group on Auction Proceeds,

I am writing to you to request that each Chartering Organization consider a proposed update to Recommendation 7 issued by the new gTLD Auction Proceeds Cross-Community Working Group (CCWG-AP).

The CCWG-AP's Recommendation 7 sets out limitations on the use of ICANN accountability mechanisms (namely, the Independent Review Process, IRP, and Reconsideration process) to challenge decisions made on individual applications within the Grant Program. The CCWG-AP offered this recommendation to minimize use of the proceeds for purposes other than grants, such as administrative costs or legal fees. The ICANN Board continues to support the CCWG-AP's goal in making this recommendation.

As evidenced in conversations with the community since July 2023, and the Board's 26 October 2023 decision when revisiting Recommendation 7, ICANN has identified challenges in implementing the recommendation exactly as written by the CCWG-AP. Recommendation 7 currently states:

*Existing ICANN accountability mechanisms such as IRP or other appeal mechanisms cannot be used to challenge a decision **from the Independent Project Applications Evaluation Panel** to approve or not approve an application. Applicants not selected should receive further details about where information can be found about the next round of applications as well as any educational materials that may be available to assist applicants. The CCWG recognizes that there will need to be an amendment to the Fundamental Bylaws to eliminate the opportunity to use the Request for Reconsideration and Independent Review Panel to challenge grant decisions. (Emphasis added.)*

In the rationale accompanying the Board's October 2023 decision, the Board explained its concern with this limitation to decisions taken by the Independent Project Applications Evaluation Panel:

Today's decision supports the CCWG-AP's fundamental recommendation to protect against the use of potentially protracted accountability processes and the corresponding depletion of the funds available for award within the Grant Program. In order to account for the design work that has progressed since the Board's June 2022 action which defines different stages of assessment of individual applications, from admissibility to eligibility to substantive evaluation by an Independent Application Assessment Panel, the Board expects the limitation to restrict access to ICANN's accountability mechanisms for all decisions on those individual applications, not limited only to those made by the Independent Application Assessment Panel (as stated within the CCWG-AP recommendation). Anything short of this comprehensive view makes it possible that some applicants could have access to ICANN's accountability mechanisms for decisions on their individual applications as long as that action wasn't taken by the Independent Application Assessment Panel. If allowed, this uneven access to the accountability mechanisms still risks the use of auction proceeds to defend against accountability challenges on individual application decisions in a manner the CCWG-AP wished to protect against.

As a way to implement as much of the CCWG-AP's Recommendation 7 as possible, the Board directed ICANN org to use the Grant Program Terms and Conditions to limit Grant Program applicant's access to the IRP and Reconsideration processes for decisions on individual applications. The Board acknowledges that parts of the ICANN community do not support the path the Board selected, in large part because it resulted in an implicit change to a recommendation issued out of a CCWG, without garnering the support of the chartering organizations to the CCWG. The Community also challenged the fact that third parties still remain able to challenge decisions on individual applications.

The Board has been considering whether there are further ways to meet the community's broader intention with Recommendation 7. If the phrase "from the Independent Project Applications Panel" is removed from Recommendation 7, many of the Board's concerns that supported the October 2023 action would be addressed. The Board also notes that removal of that phrase would support what it has always understood to be the intention of the CCWG-AP in making Recommendation 7 - to preserve the auction proceeds for funding projects, not challenges. Therefore, the Board asks for the Chartering Organizations' support in considering an update to the recommendation. Specifically, the Board asks for each Chartering Organization to the CCWG-AP to approve an update to Recommendation 7 that would remove the phrase

“from the Independent Project Applications Evaluation Panel” from the text of the recommendation.

If the Chartering Organizations approve this update, the Board believes that there is a path to full implementation of the CCWG-AP’s Recommendation 7, including the ability to apply the restriction to third parties.

Full implementation also requires the ICANN Empowered Community to approve the Fundamental Bylaws Amendments to Article 4, Section 4.1 of the ICANN Bylaws. That proposed amendment, initiated by the Board and currently [posted for public comment](#), empowers cross-community working groups with five or more Chartering Organizations to make recommendations that would limit access to the IRP or Reconsideration processes, so long as certain thresholds and participation by Decisional Participants in the ICANN Empowered Community are supportive of the recommendations. Unanimous approval of the updates by the Chartering Organizations to the CCWG-AP would meet those threshold and participation requirements.

The ICANN Board confirms that the update to Recommendation 7 and the successful completion of the Fundamental Bylaws Amendment Process on Article 4, Sections 4.1 of the ICANN Bylaws are joint dependencies to the Board’s approval of any slate of successful applications within the first application cycle of the ICANN Grant Program.

While the application cycle is planned to launch on 25 March 2024, the earliest a slate of successful applications is expected to be provided to the ICANN Board is December 2024. With the community’s commitment to realizing the potential of the ICANN Grant Program, we can manage both dependencies before the Board is requested to approve a resolution on the first slate of successful applications.

We are therefore asking the Chartering Organizations to the CCWG-AP to each consider an update to Recommendation 7 to remove the phrase highlighted above by 17 May 2024. Please provide documentation of your group’s approval when available.

Sincerely,



Tripti Sinha, Chair
ICANN Board of Directors