

September 1, 2017

Dear Erika and Ching,

Thank you for your letter received on May 22, 2017 on behalf of the Cross Community Working Group on New gTLD Auction Proceeds (CCWG-AP) in response to the Board email of March 2nd 2017.

On behalf of the Board, I am delighted to see that we are aligned in our thinking regarding the points discussed in the original email. Specifically, in response to your letter, the Board would like to add the following acknowledgements and requested clarifications:

- The Board is pleased to see the importance that the CCWG has placed on understanding the legal and fiduciary constraints and that the CCWG welcomes participation from ICANN Legal and Finance
- Regarding cost of operation and budget, the ICANN Organization has confirmed that the current level of support that is being provided to the CCWG is the standard level of support that is provided to a CCWG. This includes staff resourcing, the mailing list, wiki page, and conference call and Adobe Connect facilities. This standard support level is not subject to any special budget requests or related oversight
- As referenced by the CCWG, there is no additional budget allocation for other items, as the current plans of the CCWG have not yet identified any particular need or request(s). Should there be any potential needs identified in the future that the CCWG agrees to request, that request would be submitted for consideration and potential approval in line with ICANN's budgeting processes, including getting the support of the SOs and ACs. We appreciate the CCWG's confirmation that – should additional resources be identified and approved – managing such resources would be carried out in a transparent and efficient manner
- Thank you for confirming that the 5% nominal goal will feature in considerations regarding eventual overhead costs. The point, of course, is to be mindful of overhead and ensure that it is line with best practices of similar programs. The appropriate percentage will ultimately depend on the mechanism selected to disburse auction proceeds
- While the overall level of participation in the CCWG is encouraging and welcome, we would like to add clarifications to the concept of casting a “wide net” in the work of the CCWG. As the CCWG notes, the term “wide net” in our previous communication refers to wide-spread participation in and awareness of the CCWG's work
- We note the CCWG's concern that the recent modifications to the ICANN Bylaws that resulted in the restatement of ICANN's mission in a limited and enumerated manner may create restrictions on some of the outcomes that those in the CCWG would have liked to have seen achieved. From the beginning of the idea of auctions of last resort in

the New gTLD Program, it has always been made clear that proceeds, if they were collected, would need to be used in alignment with ICANN's mission. The ICANN Board is responsible for assuring that the organization stays within mission, and does not have the ability to apply the mission in a broader interpretation here than it could for general operations. If the CCWG is dissatisfied with the restrictions that the enumerated mission statement places on the outcomes of the CCWG's work, that is a fundamental question for the ICANN community to resolve, as the ICANN Board is holding the organization to the mission that the ICANN community developed through the Enhancing ICANN Accountability process

- Wide participation and awareness is also tied to the fifth point in the Board's note in the email of March 2nd: "...the focus should be on general principles and objectives. Choices of specific projects will be made in the next phase" and is also related to the topic of conflict of interest for which the CCWG has asked for additional clarity. These are related topics as the CCWG-AP should get inputs from a wide range of people and organizations before it chooses specific objectives or criteria
- Regarding the request for clarification on Conflict of Interests: the Board welcomes the Declaration of Intention and the CCWG's future deliberation on "What conflict of interest provisions and procedures need to be put in place as part of this framework for fund allocations?" This question is important to consider in relation to the framework; however, it is also important to consider what provisions and procedures should be put in place for the CCWG's work, particularly as the CCWG works to establish overarching goals and objectives for the use of proceeds. When acting on the CCWG recommendations, one of the questions that the Board must consider is "Was this decision taken without conflict of interest?" At that time, each Board member's interest will be evaluated, but it will also be important for the Board to understand, and rely on a transparent record of, the interests that influenced the development of the recommendations that the Board is considering. One of the outcomes that the Board wishes for this process is to do all that we can to avoid challenges in the future to the outcomes of the CCWG's work. This includes avoiding, to the extent possible, even the perception of conflicts of interest in the CCWG deliberations. These perceptions can be mitigated by rules such as maintaining up-to-date declarations of interest, setting clear expectations of when these declared interests should be stated on the record, as well as gaining a common understanding among members and participants about when an interest on a particular issue might be viewed as so pervasive that a member or participant should abstain from participation. These are difficult and important self-governance questions that we are asking the CCWG to consider. We expect that all participants and members will bring valuable voices and experiences to the table. Part of a successful outcome of this process will be when we have the benefit of these voices resulting in recommendations that are not challenged based on allegations that these voices steered outcomes to favored causes for the purpose of benefitting personally or professionally from the allocation of those funds. There are Conflicts of Interest policies that are in use by Review Teams performing Specific Reviews for ICANN, and these may serve as guidance for how to address conflicts issues.

We hope that this input provides additional clarity for the CCWG and look forward to following the CCWG's work as it progresses. Thank you again for your leadership in this important task.

On behalf of the ICANN Board,

Steve Crocker