

# ICANN Org Assessment: Recommendations of the Cross Community Working Group on New gTLD Auction Proceeds (CCWG-AP)

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## References

- [Final Report](#) of the Cross-Community Working Group on New gTLD Auction Proceeds (CCWG-AP)
- [Report of Public Comments on the Draft Final Report](#) (Public Comment Period 23 December 2019 - 14 February 2020)
- [Report of Public Comments on the Initial Report](#) (Public Comment Period 8 Oct 2018 - 11 December 2018)
- [Board Principles for Report Review](#) (29 September 2019)
- [Financial and Audit Requirements presented by ICANN Finance to the CCWG-AP](#) (15 June 2017)
- [Legal and Fiduciary Requirements note from ICANN org to CCWG-AP](#) (updated May 2016) and [related materials and presentations](#)

## I. Recommendation Summary

The CCWG-AP [Final Report](#) includes a list of 12 recommendations along with implementation guidance and related materials for future parties involved in the process.

The Final Report recommends that the Board selects either Mechanism A or Mechanism B as the vehicle for the next stage of this work.

**Mechanism A:** An internal department dedicated to the allocation of Auction Proceeds is created within the ICANN organization

**Mechanism B:** An internal department dedicated to the allocation of Auction Proceeds is created within the ICANN organization which collaborates with an existing non-profit

The Report notes that there is a **preference for Mechanism A over Mechanism B** amongst the group.

Regardless of Mechanism chosen, the CCWG noted<sup>1</sup> that there are a number of characteristics that are universal for the grant-making:

- The **ICANN Board has legal and fiduciary oversight responsibility.**
- **Safeguards** are in place to ensure legal and fiduciary obligations are met.
- An **independent panel of experts** will evaluate the applications.
- Processes and procedures are in place to ensure that Auction Proceeds are used in a manner that **contributes directly to ICANN's mission.**
- The **directors and officers have an obligation to protect the organization through the use of available resources.** In such a case, while ICANN would not be required to apply for the proceeds, the directors and officers would have a fiduciary obligation to use the funds to meet the organization's obligations if it was necessary to do so.

Many of the recommendations and the included guidance from the CCWG are related. In order to ease review, the recommendations have been assigned a theme through which they will be explored in this assessment. For more on this approach, please see Section II of this document.

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<sup>1</sup> See [CCWG-AP Final Report](#), page 12.

## Recommendation Summary Table

Rec	CCWG Recommendations	Theme
<a href="#">#1</a>	<p>The CCWG recommends that the Board select either mechanism A or mechanism B for the allocation of auction proceeds, taking into account the preference expressed by CCWG members for mechanism A.</p> <p>As part of its selection process, the ICANN Board is expected to apply the criteria outlined by the CCWG in section 4.5 of this proposed Final Report for which additional internal and/or external input may be required (such as providing a reliable cost estimate). The ICANN Board is expected to share the outcome of its consideration with the CCWG Chartering Organizations and, if deemed necessary, involve the Chartering Organizations and/or CCWG implementation team in any deliberations that would benefit from Chartering Organization and/or CCWG implementation team input.</p> <p>The CCWG strongly encourages the ICANN Board to conduct a feasibility assessment which provides further analysis of the recommended mechanisms, including costs associated with each mechanism, so that the Board can take an informed decision about supporting the most appropriate mechanism.</p>	<a href="#">Mechanism</a>
<a href="#">#2</a>	<p>The CCWG recommends that an Independent Project Applications Evaluation Panel will be established. The Panel's responsibility is to evaluate and select project applications. Neither the Board nor staff will be taking decisions on individual applications but the Board will instead focus its oversight on whether the rules of the process were followed by the Independent Project Applications Evaluation Panel. Members of the Independent Project Applications Evaluation Panel will not be selected based on their affiliation or representation, but will be selected based on their grant-making expertise, ability to demonstrate independence over time, and relevant knowledge. Diversity considerations should also be taken into account in the selection process.</p>	<a href="#">Independent Project Applications Evaluation Panel</a>
<a href="#">#3</a>	<p>The CCWG agreed that specific objectives of New gTLD Auction Proceeds fund allocation are:</p> <ul style="list-style-type: none"> <li>- Benefit the development, distribution, evolution and structures/projects that support the Internet's unique identifier systems;</li> <li>- Benefit capacity building and underserved populations, or;</li> <li>- Benefit the open and interoperable Internet</li> </ul> <p>New gTLD Auction Proceeds are expected to be allocated in a manner consistent with ICANN's mission.</p>	<a href="#">Objectives of Proceeds Allocation</a>
<a href="#">#4</a>	<p>The implementation of the selected fund allocation mechanism should include safeguards described in the response to charter question 2.</p>	<a href="#">Safeguards</a>
<a href="#">#5</a>	<p>Robust conflict of interest provisions must be developed and put in place at every phase of the process, regardless of which mechanism is ultimately selected.</p>	<a href="#">Conflict of Interest Provisions</a>
<a href="#">#6</a>	<p>Audit requirements as described [in the report] do not only apply to the disbursement of auction proceeds on a standalone basis but must be applied to all of ICANN's activities in relation to auction proceeds, including the disbursement of auction proceeds if and when this occurs.</p>	<a href="#">Governance Framework and Audit Requirements</a>

#7	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. For the sake of clarity, the recommended Bylaws amendment is not intended to affect the existing powers of the Empowered Community specified under the ICANN Bylaws, including rejection powers on the five-year strategic plan, the five-year operating plan, the annual operating plan, and the annual budget.	<a href="#">ICANN Accountability Mechanisms, Appeals, and ICANN Bylaw Change</a>
#8	The CCWG did not reach consensus to provide any specific recommendation on whether or not ICANN org or its constituent parts could be a beneficiary of auction proceeds, but it does recommend that for all applications the stipulated conditions and requirements, including legal and fiduciary requirements, need to be met.	<a href="#">ICANN org / Constituent Parts Applying for Proceeds</a>
#9	The selected mechanism must be implemented to enable the availability of funds for a specific round as well as the disbursement of the funds for selected projects in an effective and judicious manner without creating a perpetual mechanism (i.e. not being focused on preservation of capital).	<a href="#">Mechanism</a>
#10	Funds availability for disbursement should be staged in tranches over a period of years, regardless of the mechanism implemented. Progressive disbursements may be used to fund projects receiving large grants to be implemented over a period of years. Similarly, progressive disbursements can support projects that could be implemented in shorter periods.	<a href="#">Application Tranches</a>
#11	As one of the objectives for new gTLD Auction Proceeds fund allocation is to contribute to projects that support capacity building and underserved populations, consideration about how this objective can be achieved should be given further consideration during the implementation phase. The CCWG does not have a particular preference about how to achieve the objective but provided guidance for the implementation phase (see hereunder). The CCWG notes that auction proceeds must be used in a manner that supports ICANN's mission.	<a href="#">Objectives of Proceeds Allocation</a>
#12	<p>The CCWG recommends that two types of review are implemented. First, an internal review step will be part of the standard operation of the program. This review may take place at the end of each granting cycle or at another logical interval, such as on an annual basis. The purpose of this review is to have a lean “check-in” to ensure that the program is operating as expected in terms of processes, procedures, and usage of funds. The review may identify areas for improvement and allow for minor adjustments in program management and operations.</p> <p>Second, a broader, strategic review may be an appropriate element of program implementation. This broader review could be used to examine whether the mechanism is effectively serving overall goals of the program and whether allocation of funds is having the intended impact. This strategic review is expected to occur less frequently and may involve an external evaluator.</p>	<a href="#">Reviews</a>

## II. ICANN Org’s Approach for Assessment

### Introduction

#### Purpose

The purpose of this document is to aggregate ICANN org’s assessments and considerations to inform Board action on recommendations in the Final Report of the Cross-Community Working Group on New gTLD Auction Proceeds (CCWG-AP). This assessment includes explanation of the approach and the detailed information pertaining to each recommendation that the Board reviewed and considered in arriving at their decision. Key considerations from this assessment are summarized in the Scorecard, and serve as the basis for the proposed rationale supporting the Board’s decision.

#### Categorization of Recommendations

ICANN org has drafted potential Board action on CCWG-AP recommendations in this assessment. As a result of the assessment, it is recommended that the Board move all recommendations to final action. Approved recommendations are consistent with ICANN's Mission, serve the public interest, and fall within the Board's remit. Further, approved recommendations are clear, have community support, and a clear path to implementation. Implementation of the overall grant-making program will be subject to prioritization, risk assessment and mitigation, costing, and implementation considerations.

#### Next Steps

The Final Report recommendations (and related implementation guidance) together form the basis of an eventual grant-making program which will be called the **ICANN Grant Giving Program**. As such, prioritization for the establishment of the program will mean prioritizing all approved recommendations. Subject to prioritization, risk assessment and mitigation, costing, and implementation considerations an implementation plan will be developed for the approved recommendations and the establishment of the ICANN Grant Giving Program, including resource needs and scheduling considerations, to inform the timing of implementation. ICANN org will engage with representatives from the CCWG-AP should implementation planning require clarification. ICANN org will provide periodic status updates on the progress of implementation work to the Board and the community.

#### Themes and Overarching Considerations

Many of the recommendations in the Final Report are interrelated. Additionally, the CCWG included text outlining the reasoning behind its decisions as well as guidance it intended for review as part of implementation. Some of this reasoning and additional content is applicable or related to more than one recommendation. So that the Report can be easily reviewed to address these nuances, ICANN org divided related recommendations, additional descriptions, and implementation guidance into 10 main themes:

- Mechanism (Recommendations #1, #9)
- Application Tranches (Recommendation #10)
- Independent Project Applications Evaluation Panel (Recommendation #2)
- Objectives of Proceeds Allocation (Recommendation #3, #11)
- Safeguards (Recommendation #4)

- Conflict of Interest Provisions (Recommendation #5)
- Governance Framework and Audit Requirements (Recommendation #6)
- ICANN Accountability Mechanisms, Appeals, and ICANN Bylaw Change (Recommendation #7)
- Reviews (Mechanisms and Overall Program) (Recommendation #12)
- ICANN org / Constituent Parts Applying for Proceeds (Recommendation #8)

The following section breaks down the report theme by theme and outlines:

1. From the CCWG Report
  - a. What the recommendation(s) states
  - b. What information in the report is related to this recommendation in the form of additional descriptions from the CCWG-AP or the CCWG's implementation guidance on this theme
2. For the ICANN org Assessment:
  - a. Dependencies
  - b. Possible clarifying questions that need to be addressed
  - c. Proposed recommended Board action for the related recommendation(s)
  - d. Proposed rationale for Board action
  - e. An assessment of the recommendation(s) against the Board Principles
  - f. Additional notes

## **Board Principles**

The CCWG-AP was tasked with developing a proposal on the mechanism to allocate the proceeds generated from auctions of last resort used to resolve string contention in the New gTLD Program. At the CCWG's request, the ICANN Board provided [a list of principles](#) ("Board Principles") for reviewing the recommendations. Section III also includes org's assessment of the recommendations against the Board Principles.

### III. ICANN org Assessment to Inform Board Action

#### Theme: Mechanism

Recommendation #1	
<p><b>Recommendation Text<sup>2</sup></b></p>	<p>The CCWG recommends that the Board select either mechanism A or mechanism B for the allocation of auction proceeds, taking into account the preference expressed by CCWG members for mechanism A.</p> <p>As part of its selection process, the ICANN Board is expected to apply the criteria outlined by the CCWG in section 4.5 of this proposed Final Report for which additional internal and/or external input may be required (such as providing a reliable cost estimate). The ICANN Board is expected to share the outcome of its consideration with the CCWG Chartering Organizations and, if deemed necessary, involve the Chartering Organizations and/or CCWG implementation team in any deliberations that would benefit from Chartering Organization and/or CCWG implementation team input.</p> <p>The CCWG strongly encourages the ICANN Board to conduct a feasibility assessment which provides further analysis of the recommended mechanisms, including costs associated with each mechanism, so that the Board can take an informed decision about supporting the most appropriate mechanism.</p>
<p><b>Minority Statement</b></p>	<p>The preference for Mechanism A is contested by some in the CCWG and – in a minority statement<sup>3</sup> – the Commercial Stakeholder Group questions this designation and “urges the Board to examine the final polling results closely since the Working Group Consensus is based on this poll.” Additionally, the Intellectual Property Constituency “strongly objects to the adoption of mechanism A by the ICANN Board.”</p>
<p><b>Related Additional Descriptions or Guidance from CCWG-AP Report</b></p>	<p>The CCWG outlined Mechanism A as an “internal department dedicated to the allocation of auction proceeds is created within the ICANN organization” and Mechanism B as an “internal department dedicated to the allocation of auction proceeds is created within the ICANN organization which collaborates with an existing non-profit.”</p> <p>The CCWG outlined<sup>4</sup> that the universal characteristics of the program, regardless of mechanism choice would be:</p> <ul style="list-style-type: none"> <li>• “The ICANN Board has legal and fiduciary oversight responsibility.</li> </ul>

<sup>2</sup> See [CCWG-AP Final Report](#), pages 4 and 21.

<sup>3</sup> See [CCWG-AP Final Report](#), Annex F - Minority Statement, pages 54 and 55.

<sup>4</sup> See [CCWG-AP Final Report](#), page 12.

	<ul style="list-style-type: none"> <li>• Safeguards are in place to ensure legal and fiduciary obligations are met</li> <li>• An independent panel of experts will evaluate the applications.</li> <li>• Processes and procedures are in place to ensure that auction proceeds are used in a manner that contributes directly to ICANN's mission.</li> <li>• The directors and officers have an obligation to protect the organization through the use of available resources. In such a case, while ICANN would not be required to apply for the proceeds, the directors and officers would have a fiduciary obligation to use the funds to meet the organization's obligations if it was necessary to do so."</li> </ul>
<b>ICANN Org Assessment</b>	
<b>Dependencies</b>	The remaining recommendations express characteristics of the proposed mechanism or eventual ICANN Grants Giving Program.
<b>Proposed Recommended Board Action</b>	<p><b>Approve recommendation</b> and direct the ICANN President and CEO, or his designees, to focus on designing implementation of Mechanism A, through which ICANN will have responsibility for the full lifecycle of grant management, applying the universal characteristics outlined by the CCWG.</p> <p>Direct the ICANN President and CEO, or his designees, to take all actions necessary, including utilizing external expertise or service providers in the design and implementation of the ICANN Grant Giving Program, in line with the Board Principles, to develop a Program that is "simple, effective and efficient, with appropriate skills, expertise, and scale to minimize overhead, minimize risks, and maximize the impact of grants issued."</p>
<b>Proposed Rationale for Board Action</b>	<p>The CCWG-AP's Mechanism A specifies that the ICANN Grant Giving Program will be run internally by ICANN, while relying on consultants and partners as needed. Mechanism A is the <b>only</b> proposed mechanism that maintains ICANN as the entity with direct responsibility and accountability for the Grant Giving Program and that allows ICANN to maintain the fiduciary and governance controls necessary to remain legally responsible for the grant-making process.</p> <p>Operating the ICANN Grant Giving Program internally provides significant benefits to ICANN and the ICANN community. It will provide better transparency to the community through ICANN's direct responsibility for reporting of grant recipients on ICANN's own tax filings.</p> <p>The internally run process provides flexibility for ICANN to contract for appropriate support across all aspects of the program, which allows ICANN to build a program that is right-sized to the organization and incorporates external service providers. As ICANN org does not currently perform grant-making work, ICANN org will need to bring in appropriate resources and expertise to support the proper design and implementation of the Grant Giving Program. ICANN org must conduct careful diligence over any service provider brought in to support the Grant Giving</p>

	<p>Program.</p> <p>Developing the ICANN Grant Giving Program internally - as opposed to relying on a single, long-term nonprofit partner for most areas of program design and administration - assures that the ICANN Grant Giving Program will always be run in accordance with ICANN's mission.</p> <p>The Board notes the CCWG's preference for Mechanism A.</p> <p>While Mechanism A specifies that ICANN will have an "internal department" to operate the ICANN Grant Giving Program, ICANN understands this to require ICANN to be the responsible entity, and the ICANN President &amp; CEO to be responsible for determining the internal structure and allocation of resources to implement the Program. This is a key aspect of the implementation design, taking into account the other principles embodied in the CCWG Final Report, such as clear definition of roles and responsibilities and maintaining appropriate separation of roles.</p>
<p><b>Assessment against Board Principles</b></p>	<p>The choice of Mechanism A supports the Board Principles of: Overarching Fiduciary Obligations and Responsibility for Funds; Board Due Diligence; ICANN's Mission; Effective and Efficient Process of Selection and Proposed Mechanism; Preservation of Resources and Use of Existing Expertise; Accountability; ICANN Monitoring and Evaluation; and Transparency.</p> <p>The remaining Principles of Global and Diversity Values, Evidenced-Based Processes and Procedures for Evaluation can be met through this mechanism through careful implementation planning.</p>
<p><b>Additional Notes</b></p>	<p><b>Next Steps and Potential Board Decisions:</b> The selection of the mechanism and directing further work on the design and implementation of the mechanism is a first step. There is still a significant amount of work to be performed, and there may be a need for additional Board decisions throughout the implementation path in order to maintain the Board's key governance and oversight roles.</p> <p><b>Additional Considerations:</b> The CCWG included input in sections 4.1 and 4.3 of the Final Report to help inform the implementation of the mechanism selected.<sup>5</sup> During the Public Comment period on the Draft Final Report, it was noted that it "is really important that during the implementation, this report, the deliberations of the CCWG and its recommendations are followed and the implementation team/process does not modify the objectives and follows all guidelines and recommendations."<sup>6</sup></p>

<sup>5</sup> See [CCWG-AP Final Report](#), page 22.

<sup>6</sup> See [Report of Public Comments on the Draft Final Report](#) (Public Comment Period 23 December 2019 - 14 February 2020), Question #3, Comment #1, page15.

Recommendation #9	
<b>Recommendation Text<sup>7</sup></b>	The selected mechanism must be implemented to enable the availability of funds for a specific round as well as the disbursement of the funds for selected projects in an effective and judicious manner without creating a perpetual mechanism (i.e. not being focused on preservation of capital).
<b>Related Additional Descriptions or Guidance from CCWG-AP Report</b>	The Final Report noted: <sup>8</sup> “The CCWG's focus is on the auction proceeds that are currently available without any assumption that additional proceeds will become available in the future. The role of this CCWG is to identify and to evaluate possible mechanisms to disburse proceeds received through auctions from the 2012 gTLD application round.”
ICANN Org Assessment	
<b>Dependencies</b>	Recommendation #1
<b>Proposed Recommended Board Action</b>	<p><b>Approve recommendation</b> directing the application of the ICANN Grant Giving Program for the proceeds from auctions of last resort within the 2012 New gTLD Program application round.</p> <p>Direct the ICANN President and CEO, or his designees, to provide a recommendation to the Board, when appropriate, regarding the potential of using the ICANN Grant Giving Program for proceeds stemming from future auctions of last resort if such auctions are utilized for future gTLD application processes such as the ones contemplated within the policy recommendations on New gTLD subsequent procedures.</p>
<b>Proposed Rationale for Board Action</b>	<p>The task of the CCWG-AP was to develop a set of recommendations for the distribution of funds collected from auctions of last resort within the 2012 New gTLD round. The Board acknowledges and accepts the CCWG’s recommendation that ICANN should not focus on preservation of capital, and that there is community consensus that the ICANN Grant Giving Program should not be managed in a way that it exists in perpetuity.</p> <p>The Board also acknowledges that the resources devoted by the ICANN Community in the careful deliberation to achieve the CCWG-AP Final Report, as well as the extensive resources that will be used to implement the ICANN Grant Giving Program in alignment with that report, should be used effectively. As a result, the Board preserves the ability to consider if there are appropriate times in the future to leverage the ICANN Grant Giving Program in similar instances.</p>

<sup>7</sup> See [CCWG-AP Final Report](#), pages 13 and 31.

<sup>8</sup> See [CCWG-AP Final Report](#), page 30 under Charter Question #4.

<b>Assessment against Board Principles</b>	The effective and judicious distribution of proceeds without a focus on creating a perpetual mechanism is consistent with Board Principles of: Effective and Efficient Process of Selection and Proposed Mechanism; Preservation of Resources and Use of Existing Expertise.
<b>Additional Notes</b>	None.

## Theme: Application Tranches

Recommendation #10	
<b>Recommendation Text<sup>9</sup></b>	Funds availability for disbursement should be staged in tranches over a period of years, regardless of the mechanism implemented. Progressive disbursements may be used to fund projects receiving large grants to be implemented over a period of years. Similarly, progressive disbursements can support projects that could be implemented in shorter periods.
<b>Related Additional Descriptions or Guidance from CCWG-AP Report</b>	Included as part of the CCWG's description of this recommendation is that it can help refine the objectives, leaves space for reviews to take place, and can help with identifying how to improve diversity of applications and impact following each tranche. This is therefore related to Recommendation #3, Recommendation #12, and Recommendation #11. <sup>10</sup>
<b>ICANN Org Assessment</b>	
<b>Dependencies</b>	Recommendation #1 and impacts implementation and operation of Recommendations #3, #11, and #12.
<b>Proposed Recommended Board Action</b>	<b>Approve recommendation</b> and direct the ICANN President and CEO to implement tranches as part of the implementation of the ICANN Grant Giving Program. The Board further directs the President and CEO, or his designee, to consider the ability to support grants of differing amounts and for projects of differing duration, to maintain the flexibility of the ICANN Grant Giving Program as implemented.
<b>Proposed Rationale for Board Action</b>	As part of its Board Principles, the Board identified the use of tranches as a key tool in helping the Board maintain appropriate oversight and meet its fiduciary obligations. This recommendation is fully aligned with the Board's earlier positioning. Further, this approach will support the continuous improvement of the ICANN Grants Giving Program by providing opportunities to review and optimize the program after each tranche.

<sup>9</sup> See [CCWG-AP Final Report](#), pages 6 and 31.

<sup>10</sup> See [CCWG-AP Final Report](#), page 32

	<p>The Board appreciates the flexibility expressed by the CCWG-AP that the size of a tranche does not limit the potential for funding larger projects over a longer duration of time. The Board also notes that as expressed by the CCWG-AP, within a tranche there is neither a requirement or limitation that each grant be of the same size or duration. This too provides significant flexibility. The Board acknowledges that there may be need for the Board to take additional actions to support the recommended design, and awaits further inputs from ICANN org.</p>
<p><b>Assessment against Board Principles</b></p>	<p>The tranches approach can support the Board Principles of: Overarching Fiduciary Obligations and Responsibility for Funds; Board Due Diligence; ICANN’s Mission; Effective and Efficient Process of Selection and Proposed Mechanism; Global and Diversity Values; Accountability; ICANN Monitoring and Evaluation; and Transparency.</p> <p>The remaining Principles of Global and Diversity Values, Evidenced-Based Processes and Procedures for Evaluation can be met through this mechanism through careful implementation planning.</p> <p>The universal characteristics of the program outlined by the CCWG add further alignment with the Board Principles.</p>
<p><b>Additional Notes</b></p>	<p><b>Best Practices:</b> ICANN org’s implementation team may need to review best practices in relation to size of grants and funding available for each tranche. Implementation may also explore the proposed process for determining the annual budget for the ICANN Grant Giving Program.</p> <p><b>Timeframes for Tranches:</b> The CCWG notes that the “timeframe should be established in line with and guided by strategic objectives for allocation of the auction proceeds. Once it is determined how ‘success’ is defined for allocation of the auction proceeds, the timeframe could be set to support a successful outcome.”<sup>11</sup></p> <p><b>Size of Grants:</b> ICANN org’s implementation team, ICANN org may consider issues related grants of differing sizes, including but not limited to: identification of minimum amounts for grants commensurate with the diligence, reporting and auditing requirements attendant to all grants; identification of conditions under which larger grants may be awarded and the ability or need to stage disbursement over time; and whether there are any grant amounts for which the Board should have specific disbursement approval.</p>

<sup>11</sup> See [CCWG-AP Final Report](#), Section 5.3 Operations, page 30.

# Theme: Independent Project Applications Evaluation Panel

Recommendation #2	
<b>Recommendation Text<sup>12</sup></b>	The CCWG recommends that an Independent Project Applications Evaluation Panel will be established. The Panel’s responsibility is to evaluate and select project applications. Neither the Board nor staff will be taking decisions on individual applications but the Board will instead focus its oversight on whether the rules of the process were followed by the Independent Project Applications Evaluation Panel. Members of the Independent Project Applications Evaluation Panel will not be selected based on their affiliation or representation, but will be selected based on their grant-making expertise, ability to demonstrate independence over time, and relevant knowledge. Diversity considerations should also be taken into account in the selection process.
<b>Related Additional Descriptions or Guidance from CCWG-AP Report</b>	<p>The CCWG notes:</p> <ul style="list-style-type: none"> <li>● “The Independent Project Evaluations Panel should be independent of ICANN and its constituent parts, which include the Board, ICANN org, and the Supporting Organizations and Advisory Committees. No SO or AC, nor the ICANN Board should have representatives - directly or indirectly - on the Evaluation Panel itself.”<sup>13</sup></li> <li>● “ICANN participants are not excluded from applying to serve, but only selected if they have required expertise and demonstrate that they have no conflict of interest that could influence or be perceived to influence their independence.”<sup>14</sup></li> <li>● “The mechanism, and therefore the selected panelists, must be free from not only actual conflicts of interest but also potential or even perceived conflicts of interest. Due care will need to be given during the implementation phase that safeguards are in place to ensure the independence of the members of the [panel].”<sup>15</sup></li> <li>● “The selected mechanism will be responsible for the process of selecting and appointing independent experts to the Independent Project Applications Evaluation Panel, informed by the work done by the CCWG and the criteria / skills identified in the implementation phase.”<sup>16</sup></li> <li>● “Additional details about the operation of the [panel], including the length of the term that its members will serve, will be established during the implementation phase. Industry best practices should be observed, while</li> </ul>

<sup>12</sup> See [CCWG-AP Final Report](#), pages 5 and 6.  
<sup>13</sup> See [CCWG-AP Final Report](#), page 22 under Charter Question #7.  
<sup>14</sup> See [CCWG-AP Final Report](#), Guidance for the Implementation Phase in relation to the Independent (Project) Applications Evaluation Panel, pages 6 and 7.  
<sup>15</sup> See [CCWG-AP Final Report](#), Guidance for the Implementation Phase in relation to the Independent (Project) Applications Evaluation Panel, pages 6 and 7.  
<sup>16</sup> See [CCWG-AP Final Report](#), Guidance for the Implementation Phase in relation to the Independent (Project) Applications Evaluation Panel, pages 6 and 7.

	<p>also taking into account goals and risks that may be specific to the allocation of new gTLD auction proceeds.”<sup>17</sup></p> <p>Additionally, “the provisions outlined in response to [charter question #5] should at a minimum be considered for inclusion in the conflict of interest requirements that will apply to all the parties involved (e.g. the Independent Project Applications Evaluation Panel, the Auction Proceeds Program Review Panel as well as staff supporting the mechanism).”<sup>18</sup></p>
<p><b>ICANN Org Assessment</b></p>	
<p><b>Dependencies</b></p>	<p>Recommendation #1, #4, #5</p>
<p><b>Proposed Recommended Board Action</b></p>	<p><b>Approve recommendation</b> and direct the ICANN President and CEO, or his designees, to ensure that an Independent Selection Panel is part of the resulting implementation of the ICANN Grant Giving Program.</p>
<p><b>Proposed Rationale for Board Action</b></p>	<p>This recommendation confirms that an Independent Evaluation Panel will be convened and will be responsible for the evaluation of applications against the goals and objectives of the ICANN Grant Giving Program, and will be responsible for regularly recommending to the ICANN Board the applicants that should be funded through that cycle’s tranche. The need for an Independent Evaluation Panel originated from the ICANN Board, and approval of this recommendation supports best practices in grant making.</p> <p>The use of an Independent Panel to review applications for grants was requested<sup>19</sup> by the ICANN Board. The Board concurs that the panel should be independent and should have appropriate conflict of interest protections built in. This supports the legitimacy of the ICANN Grant Giving Program and helps ICANN’s directors and officers meet their fiduciary duties in the oversight and management of the program. The Independent Panel will assess applications according to the goals and guidelines defined with the ICANN Grant Giving Program, and will recommend to the ICANN Board which applications should be funded through that year’s tranche.</p> <p>The Board acknowledges that the Board will not be taking decisions on individual applications. The Board will decide whether it will approve the group of applications recommended for funding, and in taking that decision, the Board will consider whether the rules of the process were followed by the Independent Panel.</p> <p>The Board notes<sup>20</sup> that the CCWG-AP provides guidance suggesting that while all</p>

<sup>17</sup> See [CCWG-AP Final Report](#), Guidance for the Implementation Phase in relation to the Independent (Project) Applications Evaluation Panel, pages 6 and 7.

<sup>18</sup> See [CCWG-AP Final Report](#), Guidance for the Implementation Phase in relation to charter question #5, page 7.

<sup>19</sup> See 5 October 2018 [letter](#) from Becky Burr and Maarten Botterman to Erika Mann and Ching Chiao.

<sup>20</sup> See 29 September 2019 [letter](#) from Becky Burr and Maarten Botterman to Erika Mann and Ching Chiao.

	<p>selected panelists “must be free from not only actual conflicts of interest but also potential or even perceived conflicts of interest,” ICANN participants may be selected as panelists if they have the required expertise.</p> <p>The Board also supports the CCWG-AP’s focus on expertise and diversity in the panel composition. In the implementation phase, ICANN org is expected to design the panel - relying on external expertise as appropriate - with proper safeguards and controls, as well as proper expertise to evaluate grant applications in support of ICANN’s mission, and mindful of the breadth and diversity of the expected pool of applicants. ICANN org must also be mindful that the Independent Panel will require sufficient guidance on the principles they are expected to uphold, training on the procedures they are expected to adhere to, and support for the administration of their work.</p> <p>As part of implementation design, ICANN org should also consider a clear definition of roles and responsibilities for ICANN org as it relates to the Independent Panel’s work to avoid improper involvement of ICANN org in the Independent Panel’s processes. The Board also notes<sup>21</sup> that the Independent Panel could benefit from consistency over time (i.e., the composition of each year’s panel should always include some overlap from the previous year to build on experience); and cost-effectiveness (i.e., to focus on the use of auction proceeds to support desired activities and goals, as opposed to administrative costs).”</p> <p>The Board’s acceptance of this Recommendation 2 does not indicate any Board position on the viability of ICANN participants as panelists. The Board stresses the importance of avoiding the potential appearance of conflict of interest at any point in the ICANN Grant Giving Program application process, including among panelists and those applying for funds. The Board expects that clear rules and practices will be defined to mitigate against that risk, and all mitigation strategies should remain available.</p>
<p><b>Assessment against Board Principles</b></p>	<p>The use of an independent panel to evaluate applications for grants, while also having the Board review each slate of selected successful applications to ensure the rules of the process were followed by the Panel supports the Board Principles of: Overarching Fiduciary Obligations and Responsibility for Funds; Board Due Diligence; ICANN’s Mission; ICANN Monitoring and Evaluation.</p> <p>Next steps for implementation should ensure that planning for the Independent Panel supports the remaining Board Principles of: Effective and Efficient Process of Selection and Proposed Mechanisms; Preservation of Resource and Use of Existing Expertise; Global and Diversity Values; Evidence-Based Processes and Procedures for Evaluation; Accountability; and Transparency.</p>

<sup>21</sup> See 5 October 2018 [letter](#) from Becky Burr and Maarten Botterman to Erika Mann and Ching Chiao.

<b>Additional Notes</b>	Many aspects of panel design would need to be addressed in implementation, and ICANN org expects to utilize expertise to support the design and proper implementation of the Independent Panel as a cornerstone of the ICANN Grant Giving Program. Implementation considerations could include: panel size and composition (including expertise and diversity); panelist selection; contracting; compensation; panel member rotation; panel administration processes; training; panel procedures for evaluation and selection; conflict of interest considerations, and others. ICANN org will take into account previous Board statements on these topics. <sup>22</sup>
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## Theme: Objectives of Proceeds Allocation

Recommendation #3 and Recommendation #11	
<b>Recommendation Text<sup>23</sup></b>	<p><b>Recommendation 3:</b> The CCWG agreed that specific objectives of New gTLD Auction Proceeds fund allocation are:</p> <ul style="list-style-type: none"> <li>- Benefit the development, distribution, evolution and structures/projects that support the Internet's unique identifier systems;</li> <li>- Benefit capacity building and underserved populations, or;</li> <li>- Benefit the open and interoperable Internet</li> </ul> <p>New gTLD Auction Proceeds are expected to be allocated in a manner consistent with ICANN's mission.</p> <p><b>Recommendation 11:</b> As one of the objectives for new gTLD Auction Proceeds fund allocation is to contribute to projects that support capacity building and underserved populations, consideration about how this objective can be achieved should be given further consideration during the implementation phase. The CCWG does not have a particular preference about how to achieve the objective but provided guidance for the implementation phase (see hereunder).The CCWG notes that auction proceeds must be used in a manner that supports ICANN's mission.</p>
<b>Related Additional Descriptions or Guidance from CCWG-AP Report</b>	"Other than ensuring that all three goals must support ICANN's mission, the CCWG does not have specific guidance on how these three objectives should be prioritized or translated into specific program elements, such as selection criteria for funding applicants, although the CCWG states that further consideration could be given to weighing certain criteria to indicate priority." <sup>24</sup>

<sup>22</sup> See 29 September 2019 [letter](#) from Becky Burr and Maarten Botterman to Erika Mann and Ching Chiao.

<sup>23</sup> See [CCWG-AP Final Report](#), pages 5 and 6.

<sup>24</sup> See [CCWG-AP Final Report](#), page 31 under Charter Question #6.

In relation to “open and interoperable Internet, the CCWG also developed overarching guidance for proposal review and selection of projects to which auction proceeds may be allocated. This guidance includes the following guidelines for the review and selection of applications seeking auction proceeds funding:”<sup>25</sup>

1. “The purpose of a grant/application must be in service of ICANN's mission and core principles.
2. The objectives and outcomes of the projects funded should be in agreement with ICANN's efforts for an Internet that is stable, secure, resilient, scalable, and standards-based.
3. Projects advancing work related to any of the following topics are encouraged: open access, future oriented developments, innovation and open standards, for the benefit of the Internet community.
4. Projects addressing diversity, participation and inclusion should strive to deepen informed engagement and participation from developing countries, under-represented communities and all stakeholders.
5. Projects supportive of ICANN's communities' activities are encouraged, in so far as these activities are different than those funded currently by ICANN's operational budget.”

Additional evaluation guidance for the Independent Panel is included in the full report.

The CCWG does not have a particular preference about how to achieve the objectives but provided guidance for the implementation phase in the report. The CCWG recommends additional work during the implementation stage to determine how to prioritize or translate the three goals into specific program elements and urges further consideration to weighing certain criteria for priority. One such approach is basketing (see below). The CCWG notes that priorities may need to be adjusted over time and this can be done in review cycles.<sup>26</sup>

One of the suggested approaches from the CCWG to address targeted populations and projects is “divide funds into segments and distribute funds to grant recipients in a series of ‘baskets,’ each with a different programmatic focus.”<sup>27</sup>

Additionally, the CCWG produced guidance for proposal review and selection (see Annex C)<sup>28</sup> and list of example projects (see Annex D)<sup>29</sup> which the CCWG expected to be used as guidance during the implementation process

<sup>25</sup> See [CCWG-AP Final Report](#), page 16 under Section 4.4 Objectives of Fund Allocation, and page 45.

<sup>26</sup> See [CCWG-AP Final Report](#), pages 31 and 32 under Charter Question #6.

<sup>27</sup> See [CCWG-AP Final Report](#), pages 31 and 32 under Charter Question #6.

<sup>28</sup> See [CCWG-AP Final Report](#), Annex C - Guidance for Proposal Review and Selection, pages 44-45.

<sup>29</sup> See [CCWG-AP Final Report](#), Annex D - Example of Projects, pages 46-52.

ICANN Org Assessment	
<b>Dependencies</b>	Recommendations #1, #2, #10. Also related to Recommendation #12 on reviews as these objectives will be reviewed as part of this work.
<b>Proposed Recommended Board Action</b>	<b>Approve recommendations</b> and direct the ICANN President and CEO, or his designees, to develop the stated objectives into clear principles and guidance for use within the ICANN Grant Giving Program. The Board affirms the requirement that the ICANN Grant Giving Program is limited to grants that are consistent with ICANN’s mission and notes that this is a key governance limitation.
<b>Proposed Rationale for Board Action</b>	<p>Recommendation #3 defines that “New gTLD Auction Proceeds are expected to be allocated in a manner consistent with ICANN’s mission.” Proceeds must be allocated in a manner consistent with ICANN’s mission. This is a key governance principle for the ICANN Grant Giving Program that must be in place or ICANN could lose its 501(c)(3) tax exempt public charity status. This limitation has been recognized before, including within the 2012 New gTLD Program Applicant Guidebook,<sup>30</sup> which states that Auction Proceeds “must be used in a manner that supports directly ICANN’s Mission and Core Values and also allows ICANN to maintain its not for profit status.” ICANN org previously advised, “due to its 501(c)(3) tax exempt, public charity status, ICANN must act exclusively in service to its charitable purpose, and as limited by its Mission. Maintaining adherence to Mission is important from source (ICANN) to destination (end recipient) [...]. Requiring alignment to ICANN’s Mission also protects the community’s resources from being used to defend against independent reviews or other challenges that could come if ICANN were to authorize expenditures of funds or resources outside of Mission.”<sup>31</sup></p> <p>The Board notes that significant work remains to translate the CCWG-AP’s broad objectives into clear principles and guidance to help potential applicants understand whether they can qualify for the ICANN Grant Giving Program, and to help the Independent Panel consistently apply the objectives across applicants and cycles. The Board notes the CCWG-AP’s specific focus on underserved populations, and expects that implementation will include defining this objective as well as, where appropriate, considering the best practices of other grantmakers in reaching diverse stakeholders and supporting capacity development.</p> <p>The Board notes that the CCWG-AP’s Final Report includes Annexes C and D, where they offered proposals for review and selection and examples of projects that might achieve the CCWG-AP’s stated objectives. The Board previously communicated concerns<sup>32</sup> to the CCWG-AP regarding the inclusion of these</p>

<sup>30</sup> See [gTLD Applicant Guidebook](#), Version 2012-06-04, Module 4, page 19

<sup>31</sup> See June 2016 “[Memo: To DT for Auction Funds Proceeds CCWG Charter](#)” from Xavier Calvez and Samantha Eisner.

<sup>32</sup> See 31 January 2018 [letter](#) from Becky Burr and Maarten Botterman to Erika Mann and Ching Chiao.

	<p>annexes. The Board stated<sup>33</sup> that while the example project list was a tool for CCWG deliberations, it is in no way indicative of potential future approvals. For clarity, the Board reiterates that it is not adopting Annexes C or D and the examples stated within those annexes should not be relied upon by future applicants or evaluators. There is a clear possibility that actual decisions within the ICANN Grant Giving Program will differ from the outcomes set forth in the Annexes, and no person or entity should rely on the Annexes for any purpose within the actual ICANN Grant Giving Program.</p> <p>The Board notes that during the CCWG deliberations, there was a suggestion of “basketing”, a tool to address targeted populations and projects through the “divi[sion of] funds into segments and distribute funds to grant recipients in a series of “baskets,” each with a different programmatic focus.”<sup>34</sup> The Board deferred the issue of “basketing”, stating:</p> <p style="padding-left: 40px;">While ‘basketing’ could be worthwhile as a tool to achieve specific goals and objectives that appear to be underrepresented within the program, this should be considered in a review of the program, rather than as a limiting factor upon the first launch of applications. Seeing the initial range of applications and interest that comes in without the limitations of basketing will help identify and refine communications and outreach needs for future tranches.<sup>35</sup></p> <p>The Board encourages ICANN org to consider whether the concept of “basketing” should be added as an element for a future review of the ICANN Grant Giving Program.</p>
<p><b>Assessment against Board Principles</b></p>	<p>The stated objectives meet the Board Principle of ICANN’s Mission.</p> <p>Recommendation #11 addressed the Board Principle of “Global and Diversity Values.”</p> <p>The implementation planning should examine how best to address these recommendations in light of the remaining Board Principles.</p>
<p><b>Additional Notes</b></p>	<p><b>Capacity Development and Serving Diverse Stakeholders and Regions:</b></p> <p>During the implementation phase, the CCWG states<sup>36</sup> that “further consideration needs to be given to how to contribute to projects that support capacity building and underserved populations, also in conjunction with the other objectives that have been recommended by the CCWG. In addition to enabling projects that support capacity building and underserved populations, attention should also be</p>

<sup>33</sup> See 31 January 2018 [letter](#) from Becky Burr and Maarten Botterman to Erika Mann and Ching Chiao.

<sup>34</sup> See [CCWG-AP Final Report](#), pages 31 and 32 under Charter Question #6.

<sup>35</sup> See 29 September 2019 [letter](#) from Becky Burr and Maarten Botterman to Erika Mann and Ching Chiao.

<sup>36</sup> See [CCWG-AP Final Report](#), Guidance for Implementation Phase in relation to charter question #6, page 7.

	<p>given to facilitating receipt of applications from diverse geographic regions and communities as well as how to support applications from diverse backgrounds.”</p> <p><b>Previous Board Questions:</b> ICANN org’s implementation team could review the questions set forth by the Board in relation to the objectives as they were being developed by the CCWG.<sup>37</sup></p>
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Theme: Safeguards

Recommendation #4	
<b>Recommendation Text</b> <sup>38</sup>	The implementation of the selected fund allocation mechanism should include safeguards described in the response to charter question 2.
<b>Related Additional Descriptions or Guidance from CCWG-AP Report</b>	<p>The CCWG did not issue any specific guidance on this Recommendation. However, the CCWG’s response to Charter Question #2, which also incorporates its response to Charter Question #3, provides significant guidance to embrace the need for strong safeguards to guide the development of the ICANN Grant Giving Program, aligned with expected legal and fiduciary requirements.</p> <p>The response to Charter Question #2<sup>39</sup> sets out the CCWG’s expectation that the ICANN Grant Giving Program will adhere to the key limitations on funding, including:</p> <ul style="list-style-type: none"> <li>● Need to adhere to ICANN’s mission;</li> <li>● Funds must only be disbursed for lawful purposes;</li> <li>● ICANN must assure there are protections against self-dealing and that decisions are taken without conflict of interest;</li> <li>● Funds cannot be used for private benefit of individuals, including prohibition on grants to individuals, and performing diligence on applying entities;</li> <li>● Funds cannot be used for political activities or lobbying activities; and</li> <li>● ICANN must have measures in place for proper oversight and management of the funds.</li> </ul> <p>The response to Charter Question 3<sup>40</sup> sets out the CCWG-AP’s expectations of safeguards that can be introduced into the ICANN Grant Giving Program. Specifically, the response to Charter Question 3 makes clear that:</p>

<sup>37</sup> See 31 January 2018 [letter](#) from Becky Burr and Maarten Botterman to Erika Mann and Ching Chiao.

<sup>38</sup> See [CCWG-AP Final Report](#), page 5.

<sup>39</sup> See [CCWG-AP Final Report](#), page 24 under charter question #2.

<sup>40</sup> See [CCWG-AP Final Report](#), pages 25-26 under charter question #3.

	<ul style="list-style-type: none"> <li>• ICANN will need to put in place processes to make sure the legal and fiduciary requirements (as affirmed in the response to Charter Question 2) are met; and</li> <li>• The ICANN Board has the ultimate responsibility to make sure funds are used in alignment with ICANN's mission.</li> </ul> <p>The CCWG-AP also identifies some of the operational insights for development of grant-making programs, recognizing that ICANN has internal safeguards that already exist that might support the development of the portions of the ICANN Grant Giving Program that are developed in-house, and cautioning that ICANN will have to make sure that partnering entities also have (or implement) appropriate safeguards.</p> <p>The response to Charter Question 3 also confirms that as ICANN builds out internal capacity to support the ICANN Grant Giving Program, that ICANN will need to ensure proper definition of roles and responsibilities as appropriate to implement internal safeguards for the operation of that Program.</p>
<b>ICANN Org Assessment</b>	
<b>Dependencies</b>	Recommendations #1, #5, #6, #7
<b>Proposed Recommended Board Action</b>	<b>Approve recommendation</b> and direct the ICANN President and CEO, or his designees, to confirm that the ICANN Grant Giving Program is designed with appropriate safeguards to support appropriate legal and fiduciary constraints.
<b>Proposed Rationale for Board Action</b>	<p>The Board thanks the CCWG-AP for its diligence in specifying the full scope of legal and fiduciary constraints that it understood would be necessary within an ICANN Grant Giving Program, and for further specifying that safeguards must be developed to assure proper implementation. This supports the intended legitimacy of the process, and aligns with anticipated requirements for a program of this type. The Board notes that as specified, the CCWG-AP incorporated language that supports key program goals, including being drafted in a way that enables ICANN to develop diligence and criteria to support grant applicants from outside of the U.S. The CCWG-AP's strong focus on all aspects of conflicts of interest - including limitations imposed on applications that may be from entities related to CCWG-AP members or entities related to ICANN Board and executives and staff - are key and appropriate limitations to incorporate.</p> <p>The Board appreciates the CCWG-AP's focus on strong and efficient oversight and management of the funds, from reminders about segregation of duties and responsibilities to setting expectations on the importance of safeguards at all points in the process.</p> <p>While not specified in the CCWG-AP's recommended safeguards, the Board notes the importance of transparency as an additional safeguard and expects that</p>

	ICANN org will design the ICANN Grant Giving Program that is as transparent in its processes as possible.
<b>Assessment against Board Principles</b>	While implementation planning will determine additional specificity regarding this topic, the intention of the recommendation surround safeguarding can lend support to the Board Principles of: Overarching Fiduciary Obligation and Responsibility for Funds; Board Due Diligence; ICANN’s Mission; Preservation of Resources and Use of Existing Expertise; Accountability; ICANN Monitoring and Evaluation; and Transparency.
<b>Additional Notes</b>	<p>The recommendation contains a range of implementation considerations for implementation planning. Some of the items covered in this recommendation include:</p> <p><b>Risk:</b> Implementation will need to examine the risks for the organization and Board in holding, using, managing, and operating the Auction Proceeds (reputational, operational, legal, related to mission...) and the risks and reputational impact for the organization and the Board once the proceeds are distributed in the case of misuse. Implementation should outline how ICANN could mitigate or manage any identified risk(s).</p> <p><b>Panel:</b> The CCWG noted that “due care will need to be given during the implementation phase that safeguards are in place to ensure the independence of the members of the Independent Project Applications Evaluation Panel.”<sup>41</sup></p> <p><b>Roles and Responsibilities:</b> The Board may wish to review the division and recognition of responsibilities between the department responsible for the grants program and ICANN org overall. The CCWG recommends that “measures will be needed to ensure division and recognition of responsibilities between the department handling funds and the rest of the organization. This division and recognition of responsibilities will be particularly important under mechanism A, where ICANN org is handling many aspects of the granting cycle.”<sup>42</sup></p> <p><b>Service Providers:</b> The implementation of Mechanism A should develop safeguards, including fiduciary and audit requirements, for service providers involved in the implementation and operations of the grant program, aligned with CCWG guidance provided for Mechanism B.</p>

<sup>41</sup> See [CCWG-AP Final Report](#), Guidance for Implementation Phase in relation to the Independent (Project) Applications Evaluation Panel: charter questio, pages 6 and 7.

<sup>42</sup> See [CCWG-AP Final Report](#), pages 25-26, under Charter Question #3.

## Theme: Conflict of Interest Provisions

Recommendation #5	
<b>Recommendation Text<sup>43</sup></b>	Robust conflict of interest provisions must be developed and put in place at every phase of the process, regardless of which mechanism is ultimately selected.
<b>Related Additional Descriptions or Guidance from CCWG-AP Report:</b>	<p><u>Process of Controls<sup>44</sup></u></p> <ul style="list-style-type: none"> <li>• CCWG states that “there must be a process of controls on conflict of interests that should be viewed in the broader context of safeguards designed to address ICANN’s legal and fiduciary obligations and considerations. Each phase should include mechanisms supporting fiduciary and auditing requirements.”</li> </ul> <p><u>Conflict of Interest policies<sup>45</sup></u></p> <ul style="list-style-type: none"> <li>• CCWG notes that “a conflicts of interest policy should require those with a conflict to disclose the conflict or potential conflict. The policy should provide clear guidance on what the organization does when a member is in conflict and how conflicts are managed.”</li> </ul> <p><u>Self-Dealing</u></p> <p>The CCWG states the mechanism must protect against self-dealing and to ensure that decisions are taken without conflict of interest. The CCWG states that implementation should consider:<sup>46</sup></p> <ul style="list-style-type: none"> <li>• “Prohibition on auction proceeds being awarded to businesses that are owned in whole or in part by ICANN Board members, executives or staff or their family members and awards that may be used to pay compensation to ICANN Board members, executives or staff or their family members.”</li> <li>• “Segregation of duties amongst those who develop the requirements and those who assist in the identification of potential recipients.”</li> <li>• “Prohibition on awards of assistance to businesses owned in whole or in part by the CCWG members (participating in any phase of the CCWG process), their family members, and awards that would be used to pay compensation to CCWG members or their family members.”</li> </ul> <p><u>Transparency and Ethics<sup>47</sup></u></p> <ul style="list-style-type: none"> <li>• The CCWG notes that: <ul style="list-style-type: none"> <li>○ “Individuals and groups supporting fund allocation should commit to transparency and high standards of ethics.</li> </ul> </li> </ul>

<sup>43</sup> See [CCWG-AP Final Report](#), page 5.

<sup>44</sup> See [CCWG-AP Final Report](#), page 26 under Charter Question #5.

<sup>45</sup> See [CCWG-AP Final Report](#), page 26 under Charter Question #5.

<sup>46</sup> See [CCWG-AP Final Report](#), page 24 under Charter Question #2 and page 26 under Charter Question #5.

<sup>47</sup> See [CCWG-AP Final Report](#), page 26 under Charter Question #5.

	<ul style="list-style-type: none"> <li>○ Transparency could be supported by making publicly available conflict of interest statements and by making application selection criteria objective and publicly available.”</li> </ul> <p><u>Existing ICANN org Measures</u><sup>48</sup></p> <ul style="list-style-type: none"> <li>● CCWG Report outlines a number of measures already in place to support controls on conflicts of interest and that these should be leveraged where possible <ul style="list-style-type: none"> <li>○ “ICANN org has experience in segregating funds.</li> <li>○ ICANN org has the experience and internal controls to maintain appropriate financial accounting practices as contemplated, but would likely need to add new project-related accounting processes.</li> <li>○ ICANN org also has related practices, such as its procurement policy and disbursement policy, which introduce controls over proper procurement and budgetary commitments.</li> <li>○ ICANN org is able to capture financial information by project, which is expected to also contribute to transparency and accountability on the program.”</li> </ul> </li> </ul> <p><u>Mechanism B Considerations (may still apply in relation to the use of experts and service providers)</u></p> <ul style="list-style-type: none"> <li>● The CCWG notes<sup>49</sup> that “in the case of Mechanism B, there needs to be clearly defined roles and responsibilities incumbent upon both ICANN org and the other organization, and an agreement in place about how these roles are carried out operationally. The non-profit would need to have appropriate conflict of interest policies and practices in place for the elements of the program it manages. In addition, ICANN org will maintain oversight to ensure that legal and fiduciary obligations are met.”</li> </ul> <p>“Processes and procedures will need to be put into place to ensure that legal and fiduciary requirements are met. There will need to be clear and state of the art processes of controls on conflict of interest, on ensuring consistency with ICANN’s mission, on evaluating projects/proposals and communicating evaluation results, on decision/approval, on disbursement procedures and requirements, and on monitoring after disbursement (including reporting from the recipients on the use of funds and mechanisms to guard against misuse).”<sup>50</sup></p>
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<b>ICANN Org Assessment</b>	
<b>Dependencies</b>	Recommendations #1, #2, #3, #4, #6, #7, #8, #9, #10, #11, #12

<sup>48</sup> See [CCWG-AP Final Report](#), page 26 under Charter Question #5.

<sup>49</sup> See [CCWG-AP Final Report](#), page 26 under Charter Question #5

<sup>50</sup> See [CCWG-AP Final Report](#), page 25 under Charter Question #3.

<p><b>Proposed Recommended Board Action</b></p>	<p><b>Approve recommendation</b>, and direct the ICANN President and CEO, or his designees, to confirm that appropriate conflict of interest procedures are built into every stage of the ICANN Grant Giving Program.</p>
<p><b>Proposed Rationale for Board Action</b></p>	<p>As with Recommendation 4, the Board thanks the CCWG-AP for its diligence and focus on the area of conflict of interest. This is a key concern for the legitimacy of the ICANN Grant Giving Program, and is also a unique concern for the Board covered by the Board Principles. As the Board works to uphold the highest ethical standards in its conduct, it is aware of the potential of conflicts of interest entering into decision making when ICANN starts its Grant Giving Program. There is a significant amount of money at stake, and the Board reiterated at all stages of the CCWG-AP’s process the need for conflict of interest considerations.</p> <p>From the outset, the CCWG-AP designed a detailed Declaration of Interest process for members to support some aspects of conflict of interest inquiries as the ICANN Grant Giving Program is in operation. Related issues of independence and procedural safeguards are set out across multiple areas of the Final Report, all supporting the same premise - that the ICANN Community wants to see an ICANN Grant Giving Program that is above reproach and developed to the highest standards of ethics. The Board recognizes that as external consultants and partners are brought in, they too must implement, uphold and respect conflict of interest procedures.</p>
<p><b>Assessment against Board Principles</b></p>	<p>The recommendation supports the Principles of Board Due Diligence and Transparency.</p> <p>In its guidance regarding Recommendation 5, the CCWG outlined “a number of measures already in place to support controls on conflicts of interest and that these should be leveraged where possible.”<sup>51</sup> This guidance aligns with Board Principle on “Preservation of Resources and Use of Existing Expertise.”</p>
<p><b>Additional Notes</b></p>	<p><b>Vetting:</b> Additional considerations may need to be made on how to maintain a register of those involved and how potential relationships are vetted.</p> <p><b>Coaching and Consulting:</b> Additional considerations may need to be made regarding coaching and consulting by previously involved individuals to applicants.</p> <p><b>CCWG Guidance for the Implementation Phase in relation to charter question #5:</b> “The provisions outlined in response to this charter question should at a minimum be considered for inclusion in the conflict of interest requirements that will apply to all the parties involved (e.g. the Independent Project Applications Evaluation Panel, the Auction Proceeds Program Review Panel as well as staff supporting the mechanism). These requirements are expected to be developed during the implementation phase. In the case of mechanism B, there will need to</p>

<sup>51</sup> See [CCWG-AP Final Report](#), page 26 under Charter Question #5.

	<p>be clearly defined roles and responsibilities incumbent upon both ICANN org and the other organization, and an agreement in place about how these roles are carried out operationally. The non-profit organization would need to have appropriate conflict of interest policies and practices in place for the elements of the program it manages. In addition, ICANN org will maintain oversight to ensure that legal and fiduciary obligations are met.”<sup>52</sup></p> <p><b>Recusal System for Panel:</b> Regarding conflict of interest and independence of the evaluation panel, “The Board does not believe that reliance on a recusal system is workable or appropriate, as this would undermine the panel’s ability to provide a consistent view across all applications. Rather, each panelist should, to the maximum extent possible, be free of any potential conflict, however remote. In line with best practices for grant-making, recusal can be available, but the program should be designed, and panelists chosen, to eliminate the need to use this tool except in extraordinary and unforeseen situations.”<sup>53</sup></p> <p><b>Simplicity:</b> Program design should be simple to reduce the potential for conflict of interest.<sup>54</sup></p>
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## Theme: Governance Framework and Audit Requirements

Recommendation #6	
<b>Recommendation Text</b> <sup>55</sup>	Audit requirements as described [in response to Charter Question 9] do not only apply to the disbursement of auction proceeds on a standalone basis but must be applied to all of ICANN’s activities in relation to auction proceeds, including the disbursement of auction proceeds if and when this occurs.
<b>Related Additional Descriptions or Guidance from CCWG-AP Report</b>	<p>In response to Charter Question #9 on the governance framework to be followed to guide distribution of the proceeds, the CCWG-AP identified requirements that are incorporated into Recommendation #6:</p> <p><u>Measures of success should be developed for :</u><sup>56</sup></p> <ul style="list-style-type: none"> <li>• Grant impact (to “evaluate and quantify the result of each grant allocated using state of the art processes and evidence-based evaluation methodology”)</li> <li>• Ensuring that policies and procedures exist and are effective to manage the applications for funding including: receiving applications for funding,</li> </ul>

<sup>52</sup> See [CCWG-AP Final Report](#), Guidance for the Implementation Phase in relation to charter question #5, page 7.

<sup>53</sup> See 29 September 2019 [letter](#) from Becky Burr and Maarten Botterman to Erika Mann and Ching Chiao.

<sup>54</sup> See [CCWG-AP Final Report](#), page 29 under Charter Question #9.

<sup>55</sup> See [CCWG-AP Final Report](#), page 5.

<sup>56</sup> See [CCWG-AP Final Report](#), page 27 under Charter Question #9.

evaluating applications for funding; and organizing quality control and/or audit of applications evaluations

- “Risk assessments of projects receiving grants must be conducted as part of the due diligence carried out when assessing applicants.”

#### Verification and compliance<sup>57</sup>

- “ICANN org must be able to design and implement verification procedures to ensure compliance of the funds disbursements with the approved objective”
  - “Organize disbursement process and monitor disbursements,
  - Monitor the compliance of the recipient’s use of the funds with the intended purpose of the grant (which justified approving the application) and establish accountability for use/misuse of resources by grant recipients,
  - Internal audits of projects receiving grants may be conducted. The due diligence, audit, and reporting requirements could vary depending on the nature, size and length of projects funded as well as country of origin.”

#### Reporting and transparency publications<sup>58</sup>

- “ICANN org must put in place reporting and publication processes to ensure transparency on application evaluation procedures, results, and usage of funds”
  - “Explain/report on/publish application evaluation methodology,
  - Explain/report on/publish results of application evaluations,
  - Explain/report on/publish analyses of the effective use of the funds.”

#### Governance framework<sup>59</sup>

- There may be required elements for the framework to meet the legal and fiduciary requirements as affirmed within Recommendation 2.
- Additional elements must include:
  - **Annual independent audit** such as the audit that “ICANN is already subject to as a nonprofit public benefit corporation under California law.”
  - **“Existing requirements resulting from ICANN’s obligations regarding accountability and transparency to the public, as defined in the Bylaws:**
    - Engage with the community on planning, performance and reporting of activities carried out.
    - Be available and ready to respond to inquiries, publish documents and information.”

<sup>57</sup> See [CCWG-AP Final Report](#), page 27-28 under Charter Question #9.

<sup>58</sup> See [CCWG-AP Final Report](#), page 28 under Charter Question #9.

<sup>59</sup> See [CCWG-AP Final Report](#), page 28-29 under Charter Question #9.

	<ul style="list-style-type: none"> <li>○ <b>Roles &amp; responsibilities</b> <ul style="list-style-type: none"> <li>■ Maintaining appropriate legal agreements with partners outlining the respective roles and responsibilities of each entity</li> </ul> </li> <li>○ <b>Decision making</b> <ul style="list-style-type: none"> <li>■ “Decisions should be driven by fiduciary duties of the entities involved and strategic goals of the program.</li> <li>■ By observing the principle of simplicity, the program reduces potential for conflict of interest, streamlines the path to making distributions, and reduces overhead costs associated with running the program.”</li> </ul> </li> <li>● <b>“State of art best practices should be followed:</b> <ul style="list-style-type: none"> <li>○ require measurable uses and outcomes of grants</li> <li>○ transparency on the use of grants</li> <li>○ progressive disbursements</li> <li>○ reporting, which could include different reporting requirements depending on the type of project and/or type of support provided, as well as the amount of the grant”</li> </ul> </li> </ul>
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<b>ICANN Org Assessment</b>	
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<b>Dependencies</b>	Recommendation #1
<b>Proposed Recommended Board Action</b>	<b>Approve recommendation</b> and direct the ICANN President and CEO, or his designees, to incorporate appropriate controls, verification methods and reporting requirements to meet responsible program governance.
<b>Proposed Rationale for Board Action</b>	<p>The Board thanks the CCWG for the recommendation making explicit that appropriate controls and verification are an essential part of a responsible and successful ICANN Grant Giving Program. The Board encourages ICANN org to consider the importance of transparency to the ICANN community in documenting methodology, application results, and demonstrating effective use of funds. Well-designed controls will also support future reviews of the ICANN Grant Giving Program.</p> <p>Instituting controls within the program is an essential safeguard to ensure that ICANN’s commitments to the ICANN community and applicants are being upheld, and that ICANN’s fiduciary and legal obligations are met as the ICANN Grant Giving Program proceeds through implementation.</p>
<b>Assessment against Board Principles</b>	While additional implementation planning will propose the specific regarding the auditing elements, this recommendation and related guidance can lend support to the Principles of: Overarching Fiduciary Obligations and Responsibility for Funds; Board Due Diligence; ICANN’s Mission; Preservation of Resources and Use of Existing Expertise; Evidence-Based Processes and Procedures for Evaluation; Accountability; ICANN Monitoring and Evaluation; Transparency.

<b>Additional Notes</b>	<p><b>Regulatory Audit Requirements and Procedures:</b> ICANN org will ensure that the program meets any regulatory audit requirements for grants, or audit procedures operationally considered necessary for this program. Additional consideration may be needed to determine how the audit requirements outlined in the CCWG-AP report will be applied to the ICANN Grant Giving Program.</p> <p><b>Misuse and Fraud:</b> Additionally, org could develop and build mechanisms, monitoring processes, and procedures to mitigate the risks of fraud, or misuse and corrective actions to be taken.</p> <p><b>Transparency and Accountability:</b> ICANN org’s implementation should also determine how transparency and accountability to the community will be ensured on aspects of the Grant Giving Program.</p>
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Theme: ICANN Accountability Mechanisms, Appeals, and ICANN Bylaw Change

Recommendation #7	
<b>Recommendation Text</b> <sup>60</sup>	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. For the sake of clarity, the recommended Bylaws amendment is not intended to affect the existing powers of the Empowered Community specified under the ICANN Bylaws, including rejection powers on the five-year strategic plan, the five-year operating plan, the annual operating plan, and the annual budget.
<b>Related Additional Descriptions or Guidance from CCWG-AP Report</b>	As part of its response to Charter Question #9, the CCWG-AP stated that the use of ICANN’s accountability mechanisms such as the IRP or other appeal mechanisms to challenge a decision from the Independent Project Evaluations Panel to approve or not approve an application [for inclusion in a tranche] “would create a level of complexity that was deemed not desirable or necessary, after having reviewed how other organizations deal with appeals. Instead, it is the expectation that applicants not selected should receive further details about where information can be found about the next round of applications as well as any

<sup>60</sup> See [CCWG-AP Final Report](#), page 5.

	<p>educational materials that may be available to assist applicants. Also, in the context of the foreseen regular reviews, selected applicants and non-selected applicants may be invited to provide feedback that may help to improve the program further. The CCWG agreed that currently existing ICANN accountability measures such as IRP may not be used to challenge decisions on individual applications. The reason for this recommendation is that the Board will not assess individual applications. The Board will only make decisions related to the overall disbursement of funds based on recommendations from the Independent Project Applications Evaluation Panel.”<sup>61</sup></p>
<p><b>ICANN Org Assessment</b></p>	
<p><b>Dependencies</b></p>	<p>Recommendation #1; Empowered Community approval of the Fundamental Bylaws change</p>
<p><b>Proposed Recommended Board Action</b></p>	<p><b>Approve recommendation</b> and direct the ICANN President and CEO to prepare a Fundamental Bylaws amendment proposal that addresses the specific scope of the recommended change to ICANN’s accountability mechanisms. The Fundamental Bylaws amendment process shall be initiated in sufficient time to allow for Empowered Community approval of the Fundamental Bylaws amendment prior to the launch of the ICANN Grant Giving Program. In the event the Empowered Community rejects the proposed Fundamental Bylaws change, the ICANN President and CEO is directed to seek further guidance from the Board regarding the impact of such rejection on the anticipated launch and operation of the ICANN Grant Giving Program.</p>
<p><b>Proposed Rationale for Board Action</b></p>	<p>The Board supports the balance the CCWG-AP reached in carving out the ability to challenge decisions on specific applications from the broader issue of whether ICANN could be held accountable in the event that its conduct in the operation of the ICANN Grant Giving Program is appropriately challenged through one of ICANN’s accountability mechanisms, such as the IRP or the Reconsideration Process. During the CCWG-AP’s deliberations, the Board was supportive of exploring alternative mechanisms for individual applicants to appeal an Independent Panel’s decision, however the Board recognizes that the CCWG-AP did not wish to explore that potential further “after having reviewed how other organizations deal with appeals.”<sup>62</sup> Instead, the CCWG-AP recommends “[a]pplicants 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 Board accepts this outcome of the CCWG-AP report, while acknowledging that the CCWG-AP’s recommendation necessitates that applicants will not have an opportunity to challenge the Independent Evaluation Panel’s assessment of their application. The Board encourages ICANN org to, during implementation, develop documentation</p>

<sup>61</sup> See [CCWG-AP Final Report](#), page 29 under Charter Question #9.

<sup>62</sup> See [CCWG-AP Final Report](#), page 29 under Charter Question #9.

	<p>to make clear to applicants the limitations on available avenues of recourse.</p> <p>The CCWG-AP’s recommendation creates a large dependency on the success of the Fundamental Bylaws Amendment Process. In the event the Empowered Community rejects an amendment drafted to meet this recommendation, the ICANN Board will need an opportunity to evaluate the impact of such a rejection on the launch of the ICANN Grant Giving Program. As a result, the Board directs that the Fundamental Bylaws Amendment Process be initiated so that it will conclude prior to the launch of the ICANN Grant Giving Program, with an effective date of any approved amendment commensurate with the launch of the Program, to give the opportunity for such evaluation to occur if needed.</p>
<b>Assessment against Board Principles</b>	A dedicated appeal system in place for the ICANN Grants Giving Program can support the Principles of: Effective and Efficient Process of Selection and Proposed Mechanism; Accountability; and Transparency.
<b>Additional Notes</b>	<p><b>Bylaws Change:</b> Future considerations and community input will be needed to change the existing ICANN Bylaws or other related ICANN governance aspects.</p> <p><b>Transparency and Accountability:</b> Additional considerations may be needed to determine how transparency and accountability will be addressed in relation to the limited process of challenges and appeals for individual applications as proposed by the CCWG.</p>

## Theme: Reviews (of Mechanism and of the Overall Program)

Recommendation #12	
<b>Recommendation Text</b> <sup>63</sup>	<p>The CCWG recommends that two types of review are implemented.<sup>64</sup> First, an internal review step will be part of the standard operation of the program. This review may take place at the end of each granting cycle or at another logical interval, such as on an annual basis. The purpose of this review is to have a lean “check-in” to ensure that the program is operating as expected in terms of processes, procedures, and usage of funds. The review may identify areas for improvement and allow for minor adjustments in program management and operations.</p> <p>Second, a broader, strategic review may be an appropriate element of program implementation. This broader review could be used to examine whether the mechanism is effectively serving overall goals of the program and whether</p>

<sup>63</sup> See [CCWG-AP Final Report](#), page 6.

<sup>64</sup> Note: These reviews are in addition to the regular review and reporting of grant progress and metrics which are topics outlined for implementation consideration

	<p>allocation of funds is having the intended impact. This strategic review is expected to occur less frequently and may involve an external evaluator.</p>
<p><b>Related Additional Descriptions or Guidance from CCWG-AP Report</b></p>	<p>The CCWG provided guidance for the implementation phase in relation to Reviews: “The CCWG recommends that as part of the implementation, it should be determined whether these reviews are to be carried out by one panel or two different panels recognizing the importance of the opportunity for the community to participate, factoring in required expertise skills and commitments required. The CCWG understands that the ICANN Board expects eventual processes to support all Board principles, in particular those related to ‘Board Due Diligence,’ ‘Preservation of Resources and Use of Existing Expertise,’ ‘Evidence-Based Processes and Procedures for Evaluation,’ ‘ICANN Monitoring and Evaluation,’ ‘Accountability,’ and ‘Transparency.’”<sup>65</sup></p> <p>The CCWG provided additional information regarding review mechanisms in response to Charter Question 11, where it specified its view of purpose of reviewing the ICANN Grant Giving Program: “It is important to review the functioning of the mechanism in order to to improve, to be transparent and to plan for future development. These reviews offer opportunities to innovate, steer direction, and fine-tune strategy. A combination of internal and external reviews is desirable to capture a multi-faceted process. Review processes should not, however, be used to change purpose without the support of the same community that provided the original mandate.”<sup>66</sup></p> <p>The CCWG explored whether the two types of reviews recommended should be performed by separate groups:</p> <ul style="list-style-type: none"> <li>● “An Auction Proceeds Program Review Panel (APPRP), which would include ICANN community volunteers and invited external experts with expertise in evaluating grant processes.</li> <li>● An Auction Proceeds Program Assessment Panel (APPAP) that would be chartered by the ICANN Board to allow for an assessment of the entire Auction Proceeds program.”<sup>67</sup></li> </ul> <p>However, after CCWG review of input received from the ICANN Board on the proposal to establish these two panels, in which the Board noted the importance of avoiding duplicative and excessively complex structures to conduct these reviews, the CCWG deferred the consideration of whether these reviews are to be carried out by one panel or two different panels to implementation. The CCWG highlighted its focus on the importance of the opportunity for the community to participate, factoring in required expertise skills and commitments required.<sup>68</sup></p>

<sup>65</sup> See [CCWG-AP Final Report](#), page 34 under Charter Question #11.

<sup>66</sup> See [CCWG-AP Final Report](#), page 34 under Charter Question #11.

<sup>67</sup> See [CCWG-AP Final Report](#), page 34 under Charter Question #11.

<sup>68</sup> See [CCWG-AP Final Report](#), page 34 under Charter Question #11.

ICANN Org Assessment	
<b>Dependencies</b>	Recommendations #1, #2, #3, #4, #5, #6, #7, #8, #9, #10 and #11
<b>Proposed Recommended Board Action</b>	<b>Approve recommendation</b> and direct the ICANN President and CEO, or his designees, to implement appropriate program review mechanisms into the ICANN Grant Giving Program.
<b>Proposed Rationale for Board Action</b>	<p>The ICANN Board agrees with the CCWG that reviews of the ICANN Grant Giving Program will be important in making sure that the Program is meeting its objectives and operating as intended.</p> <p>The Board notes that there are two types of review proposed: one that reviews each granting cycle to ensure the Program is functioning as intended; and a less frequent strategic review to ensure that the goals and impact of the program are being met. The timing of the reviews will be conducted based on the needs of the program and are distinct and separate from ICANN's Bylaws-mandated reviews. The Board encourages implementation design to focus on ensuring that these reviews are clearly distinguished from any existing established ICANN review processes and are appropriately designed to the needs of the program.</p> <p>The Board thanks the CCWG for leaving flexibility for review design to implementation, and urges ICANN org to focus on simplicity and best practices in designing reviews. If a review results in an indication that there is a need for fundamental changes to the mechanism or the purposes of the use of funds, those would be significant changes for which additional community input would be required.</p>
<b>Assessment against Board Principles</b>	<p>The purposes of the reviews proposed could lend support to the Board Principles of: Overarching Fiduciary Obligations and Responsibility for Funds; Board Due Diligence; ICANN's Mission; Global and Diversity Values; Accountability; ICANN Monitoring and Evaluation; and Transparency.</p> <p>Implementation planning must take care to ensure that the reviews recommended will support the Board Principles of: Effective and Efficient Process of Selection and Proposed Mechanism; Preservation of Resources and Use of Existing Expertise; and Evidenced-Based Processes and Procedures for Evaluation.</p>
<b>Additional Notes</b>	<p><b>Review Operation, Structure, and Outcomes:</b> Operations and structure of reviews of the Grant Giving Program will need to be determined during implementation. Additional considerations may be needed to identify what type of review outcomes are anticipated and what is the Board's role in approving these recommendations.</p> <p><b>Review Recommendations and Outputs:</b> In instances where reviews recommend substantial changes to the program, additional consideration may be</p>

needed on how review recommendations may be addressed in relation to the original intentions of the CCWG's report.

**Responsibility for Conducting Reviews:** The CCWG recommends that as part of the implementation, it should be determined whether these reviews are to be carried out by one panel or two different panels recognizing the importance of the opportunity for the community to participate, factoring in required expertise skills and commitments required. These reviews should not be confused with ICANN periodic or specific reviews.<sup>69</sup>

**Basketing as a Future Approach:** Related to Recommendations #3 and #11, the CCWG noted that, "The implementation team is expected to consider the input provided by the ICANN Board on this topic ('The CCWG requested the Board's input on 'whether it would be beneficial to recommend that auction proceeds are divided into segments and distributed to grant recipients in a series of 'baskets,' each 'with a different programmatic focus' and if the Board sees any risks or has suggestions related to this approach. The Board believes that the concept of 'basketing' should be deferred. While 'basketing' could be worthwhile as a tool to achieve specific goals and objectives that appear to be underrepresented within the program, this should be considered in a review of the program, rather than as a limiting factor upon the first launch of applications. Seeing the initial range of applications and interest that comes in without the limitations of basketing will help identify and refine communications and outreach needs for future tranches. The Board also reiterates its recommendation, contained in its [submission](#) to the Draft Report Public Comment Period, that the CCWG continue to refine the Goal and Objectives in relation to ICANN's Mission)."<sup>70</sup>

Interrelation with other recommendations including that review implementation planning should consider:

- Building in conflict of interest practices<sup>71</sup>
- How Recommendation #7 (appeals) could evolve the program through applicant feedback<sup>72</sup>
- How recommendation #11 might be addressed through review to confirm the program is reaching target audiences<sup>73</sup>

<sup>69</sup> See [CCWG-AP Final Report](#), page 6 and Guidance for the Implementation Phase in relation to Reviews, pages 8 and 35.

<sup>70</sup> See [CCWG-AP Final Report](#), Guidance for the Implementation Phase in relation to charter question #6, pages 33.

<sup>71</sup> See [CCWG-AP Final Report](#), page 27 under Charter Question #5.

<sup>72</sup> See [CCWG-AP Final Report](#), page 29 under Charter Question #9.

<sup>73</sup> See [CCWG-AP Final Report](#), page 32 under Charter Question #6.

# Theme: ICANN org / Constituent Parts Applying for Proceeds

Recommendation #8	
<b>Recommendation Text</b> <sup>74</sup>	The CCWG did not reach consensus to provide any specific recommendation on whether or not ICANN org or its constituent parts could be a beneficiary of auction proceeds, but it does recommend that for all applications the stipulated conditions and requirements, including legal and fiduciary requirements, need to be met.
<b>Related Additional Descriptions or Guidance from CCWG-AP Report</b>	<p>The CCWG, in response to Charter Question #10, explored the question of whether ICANN, either the org or a constituent part of the community, could be a beneficiary of some of the auction funds. The CCWG offered two potential scenarios:<sup>75</sup></p> <ul style="list-style-type: none"> <li>• “Funds are used by ICANN org distinct from the granting process, for example to replenish the reserve fund.</li> <li>• Funds are allocated through the granting process. In order for a SO/AC (or subpart thereof) to be able to apply for auction proceeds, it would have to meet all of the application criteria and basic due diligence requirements used in the evaluation of any other applicant. Considerations of self-dealing/private benefit as well as conflict of interest would need to be taken into account in evaluating the application. The applicant would need to demonstrate that the proposed use for funds is separate from work that is already funded as part of ICANN’s daily operations. The CCWG anticipates that allocation of funds in this manner would be the exception rather than the rule.”</li> </ul> <p>The CCWG continued that “if ICANN org were eligible to apply [...], particular attention would need to be paid to maintaining division and recognition of responsibilities of staffing, budget, confidential information and operations between the department responsible for proceeds allocation and other parts of the organization that may apply for funds.”<sup>76</sup></p> <p>The CCWG noted that conflict of interest provisions would be particularly important here as this will relate to recommendation #5 and recommendation #6.”</p>
<b>ICANN Org Assessment</b>	
<b>Dependencies</b>	Recommendations #1, #4, #5, #6

<sup>74</sup> See [CCWG-AP Final Report](#), page 5.

<sup>75</sup> See [CCWG-AP Final Report](#), page 30 under Charter Question #10.

<sup>76</sup> See [CCWG-AP Final Report](#), page 30 under Charter Question #10.

<p><b>Proposed Recommended Board action</b></p>	<p>The Board understands the CCWG’s Recommendation 8 to state “that for all applications the stipulated conditions and requirements, including legal and fiduciary requirements, need to be met.” The Board <b>approves this recommendation</b> and directs the ICANN President and CEO to confirm that within the ICANN Grant Giving Program, all applicants meet the stipulated conditions and requirements as otherwise recommended.</p>
<p><b>Proposed Rationale for Board Action</b></p>	<p>The Board notes that while the CCWG did not provide a recommendation on the ability of ICANN org or constituent parts of the ICANN community to be able to receive portions of the Auction Proceeds funds, the CCWG provided clear guidance that any entity applying for funds must meet all specified conditions set forth for the ICANN Grant Giving Program. This can be read in conjunction with the CCWG’s focus on safeguards, legal and fiduciary obligations, and clear conflict of interest procedures. The Board notes that this may be an issue that ICANN org further investigates during implementation.</p> <p>As it relates to ICANN org, the Board reiterates a statement it made in 2018: “ICANN maintains legal and fiduciary responsibility over the funds, and the directors and officers have an obligation to protect the organization through the use of available resources. In such a case, while ICANN would not be required to apply for the proceeds, the directors and officers would have a fiduciary obligation to use the funds to meet the organization’s obligations.”<sup>77</sup></p> <p>To the extent that implementation includes a path for ICANN SO/AC structures to apply for the ICANN Grant Giving Program, the Board cautions that conflict of interest considerations and clear separation of roles and responsibilities be observed. In addition, the Board notes the CCWG’s stated consideration that “the applicant would need to demonstrate that the proposed use for funds is separate from work that is already funded as part of ICANN’s daily operations. The CCWG anticipates that allocation of funds in this manner would be the exception rather than the rule.”<sup>78</sup></p>
<p><b>Assessment against Board Principles</b></p>	<p>While there is not a specific Board Principle supported through this recommendation, this recommendation supports the development of well-defined conditions and requirements, which in turn support the Board Principles in a broad manner.</p>
<p><b>Additional Notes</b></p>	<p>Roles and responsibilities of the ICANN Board, org, and the community will be clearly defined in the design in the grant-making program. Eligibility requirements and conflict of interest considerations defined during implementation should apply to all grantees.</p>

<sup>77</sup> See 5 October 2018 [letter](#) from Becky Burr and Maarten Botterman to Erika Mann and Ching Chiao.

<sup>78</sup> See [CCWG-AP Final Report](#), page 30 under Charter Question #10.