

CCWG Auction Proceeds – CSG Minority Statement – May 28, 2020

The Commercial Stakeholders Group (CSG), consisting of the Business Constituency, the Internet Service Providers (ISP and ISPCP), and the Intellectual Property Constituency (IPC) hereby submit a Minority View with regard to the CCWG Auction Proceeds Final Report. The need for a Minority Statement arises for two reasons: (1) In light of the final polling results, the CSG questions the stated preferential status afforded to mechanism A (An internal department dedicated to the allocation of auction proceeds is created within the ICANN organization) and (2) One CSG Constituency, namely the IPC, specifically strongly opposes mechanism A as posing unreasonable risk to ICANN. Accordingly, as a pre-condition to forming an internal ICANN grant allocation department of any kind, the Board should refer the matter to the Board Risk Committee (BRC) for further assessment.

The Final Report states on page 4 as follows: Poll results indicate that members have a preference for mechanism A (An internal department dedicated to the allocation of auction proceeds is created within the ICANN organization), followed by 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 organization).

Although the CSG did not challenge the Consensus designation, this stems from the fact that both Mechanisms A and B are being recommended to the ICANN Board for further evaluation. Because two mechanisms are recommended for further evaluation by the Board and only 3 participants in the final poll listed mechanism C as first choice, the designation of “Consensus” may be applicable, but without actually providing a complete picture. In fact, Working Group appointed members and (non-appointed) participants taken together polled at ten (10) persons in favor of mechanisms other than A, while eight (8) persons polled in favor of A. In this regard, the votes of those who did not select A as first choice were “split” between two mechanisms more independent from ICANN than A, i.e. mechanism B (An internal department dedicated to allocation of auction proceeds is created within the ICANN organization which collaborates with an existing non-profit organization) and mechanism C (creation of an independent ICANN foundation.)

The CSG urges the Board to examine the final polling results closely since the Working Group Consensus is based on this poll. The results reveal that the stated “preference” for mechanism A “among Working Group members”, resolves to a virtual tie when participant results are considered. Including the participants who polled, three (3) polled in favor of mechanism B as the first choice, while only one (1) polled in favor of mechanism A. Accordingly, the actual count in the final poll was eight (8) votes for mechanism A and seven (7) votes for mechanism B. Further, as stated above, when the votes for mechanism C, formation of an independent foundation, are properly viewed as being opposed to mechanism A, the number of persons preferring a mechanism other than A is ten (10) in comparison to just eight (8) votes preferring A.

Separately, for its part, the IPC strongly objects to the adoption of mechanism A by the ICANN Board. The IPC’s strong opposition is based on the following considerations:

- (1) Administration of Auction Proceeds funds, even taking into account the Independent Evaluation Panel process recommended in the Final Report, should be as distant (arm’s length) as possible from everyday administrative tasks of a body whose Mission is limited, Establishment of such a grant-making department unnecessarily expands ICANN’s current narrow remit.
- (2) Establishment of the fund and making of grants is already encumbered by a need to amend Fundamental ByLaws so that grants may not be challenged via the Request for Reconsideration and Independent Review Panel processes,
- (3) To the extent that ICANN would inevitably need to “staff up” to administer grant-making functions internally, such an operation should be kept at a minimum to avoid the downside risk of having to shut it down when funds are depleted, and
- (4) Retaining control of the administration of grant funds within an internal department of ICANN creates, at the very least, the appearance of self-dealing in relation to funds intended for public use, thus exposing the corporation to unreasonable risk.

The CSG thanks all members and participants for their hard work in producing the CCWG Auction Proceeds Final Report and is especially appreciative of the efforts of Co-Chairs Erika Mann and Ching Chiao, as well as those of ICANN staff.

Respectfully submitted, Anne Aikman-Scalese, CCWG Auction Proceeds Member