

Cross-Community Working Group on Auction Proceeds – Comments on Initial Report
By Anne Aikman-Scalese (IPC member commenting individually and not on behalf of IPC)

Thank you for the opportunity to comment on the Preliminary Recommendations of the Initial Report of the Cross-Community Working Group on Auction Proceeds. I was present at the presentation at ICANN 63 and appreciated hearing about all the work that has gone into developing this report. I have the following comments regarding the Preliminary Recommendations:

Recommendation # 1: Of the two mechanisms preferred by the CCWG, only Mechanism B affords the opportunity for ICANN to separate the process of awarding funds from (1) internal conflicts of interest with stakeholder groups and (2) ICANN appeal mechanisms that would normally apply to a decision to award funds such as Request for Reconsideration and Independent Review Panel. In order for ICANN to be seen as an effective organization in the world community, it must separate itself from accusations of bias toward stakeholders, especially those which provide operating income to the organization. If an award is potentially going to be made to any ICANN stakeholder group member, that award must be independently evaluated in order to be respected in the ICANN community and in the world telecommunications community. While suggestions of an independent Panel are helpful, these would not remedy the appearance of conflict if an award is made to a member of a stakeholder group or constituency when ICANN staff itself is involved in administering applications and grants of funds. Therefore, the only means of ensuring that grants may safely be awarded to a member of a stakeholder group would be to place the grant-making process outside the ICANN organization. Further, the ICANN organization does not have professional staff in the grantmaking arena and staff is therefore exposed to numerous pitfalls in rules, regulations, and best practices standards applicable to such organizations. Thus, placing the grant-making inside the ICANN organization not only poses a risk of diverting ICANN from its Mission as stated in the ByLaws, but also exposes the organization to additional risk of claims and liability. Mechanism B is thus the preferred mechanism and a contractual agreement with a third party with professional and legal expertise in administering grants should afford additional safety to ICANN from (a) legal claims, (b) professional blunders of inexperienced staff, (c) formal filings for Requests for Reconsideration and Independent Review Panels and (d) claims from the wider world telecommunications community of impropriety in grant-making or the appearance of impropriety.

Recommendation # 2: The specific objectives of fund allocation are laudable, but may be overly broad in light of ICANN's Mission. Care should be taken to revise the objectives to be defined in a manner which is restricted by ICANN's Mission and these guidelines should be communicated to an independent third party selected in a bidding process to be conducted by ICANN staff to select a supremely qualified and experienced third party provider pursuant to Mechanism B.

Recommendation #3 and # 4: Support

Recommendation #5: If Mechanism B is selected, Recommendation 3 and 4 are much easier to accomplish and it would be much easier for a member of an ICANN stakeholder or constituency group to apply for and qualify for an allocation of funds. Failure to place the grant-making function outside of ICANN org will automatically restrict the ability of such applicants to receive grants due to apparent conflicts of interest and should be strictly avoided.

Recommendation # 6: Agree, however, please note that Subsequent Procedures is waiting to see what is recommended and adopted by the Board in relation to Auction Proceeds since the Mechanism chosen could affect policy recommendations related to dealing with Auction Proceeds in the next and any subsequent (or continuous ongoing) rounds.

Recommendation # 7: Agree but the “mix” of such grants according to tranche should be determined by a professional grant-making organization with experience in the grant-making field.

Recommendation # 8: Agree. In this regard, the 2012 round produced very few results in relation to Applicant Support. Accordingly, the CCWG should step back and take a serious look at the role of Applicant Support in ICANN's Mission and develop specific guidelines for a third party in Mechanism B that will in fact promote assistance to underserved applicants needing financial support. Failure to address this glaring concern will open ICANN to substantial criticism in the wider world telecommunications community.

Recommendations # 9 and # 10: Agree.

It should be noted that other activities in the community such as the EPDP on the Temporary Specification and the Subsequent Procedures Working Group as well as several ongoing Reviews have drawn attention away from the very important topic of Auction Proceeds. In this regard, a second public comment period is appropriate after the CCWG has completed the next phase of its work.

Thank you for the opportunity to comment. My comments are my own and are not made on behalf of the firm.

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