



Comments of the Intellectual Property Constituency on the New gTLD Auction Proceeds Discussion Paper

The Intellectual Property Constituency (IPC) of the GNSO respectfully submits the following comments on the September 8, 2015 Discussion Paper on gTLD Auction Proceeds.

The IPC thanks the staff for preparing this Discussion Paper as part of its greater mission to seek and consider comments and feedback from various stakeholder groups with respect to the formation of a process and framework by which allocation of funds generated through the process of gTLD application auction proceeds will be determined. The IPC understands the purpose of the Discussion Paper is to set forth ICANN's mission and objectives in terms of seeking stakeholder input, both from ICANN constituencies and the general public, in order to make the process transparent, accessible, and accountable.

IPC commented extensively on this issue during the development of the new gTLD program, and consistently opposed the use of auctions to allocate new gTLDs, in part because of the entirely foreseeable result that huge sums of auction proceeds would accrue to ICANN's account. Now that this has occurred, the equally foreseeable push and pull over the disposition of these proceeds is likely to consume a great deal of the bandwidth and energy of ICANN participants that could otherwise be more directly devoted to fulfillment of ICANN's mission (or to other equally valid pursuits unrelated to ICANN).¹

Overall, the IPC agrees with and supports ICANN's objectives as set forth in the Discussion Paper. In terms of the specific steps proposed by the Discussion Paper, and in order to support transparency and accountability, the IPC has the following recommendations:

1. Pages 6-10 of the Discussion Paper describe the history surrounding the subject of excess proceeds derived from gTLD auctions. In particular, this section of the Paper provides extensive background on the events that led up to the idea of creating a Cross Community Working Group (CCWG) (or an alternative mechanism) to address this issue, most notably the work done at the ICANN52 meeting in Buenos Aires in March 2015. The IPC appreciates the paper's efforts to place this issue in a meaningful historic context; however, the IPC believes that this section could be condensed to provide a more high-

¹ See, e.g., [IPC Comments on "Economic Case for Auctions in new gTLDs" paper](http://ipconstituency.org/PDFs/IPC%20comments%20on%20auctions%20paper%20090708.PDF) (September 7, 2008) (<http://ipconstituency.org/PDFs/IPC%20comments%20on%20auctions%20paper%20090708.PDF>) at 2 ("The unspoken issue hovering over the auctions paper is what ICANN will do with the proceeds of any auctions it holds to allocate new TLDs."); see also [IPC Impact Statement Regarding the Introduction of New gTLDs \(June 7, 2007\)](http://ipconstituency.org/PDFs/IPC%20Impact%20Statement%20re%20new%20gTLDs.pdf), at <http://ipconstituency.org/PDFs/IPC%20Impact%20Statement%20re%20new%20gTLDs.pdf>; [IPC Comments on Terms of Reference for New gTLDs \(January 31, 2006\)](http://ipconstituency.org/PDFs/2006-Jan31_IPC%20Response%20to%20New%20gTLD%20Terms%20of%20Reference.pdf), at http://ipconstituency.org/PDFs/2006-Jan31_IPC%20Response%20to%20New%20gTLD%20Terms%20of%20Reference.pdf.

level summary of the background on this issue. We are concerned that such a detailed and anecdotal history may detract from the overall purpose of the paper: a call for comments on the framework going forward. The IPC is concerned that the message of the discussion paper may be getting lost among the surplus of anecdotal information.

2. The Discussion Paper contemplates seeking input from “other communities such as country code TLD registries (see Discussion Paper, p. 7) on how these organizations have dealt with excess funds. The IPC supports this idea, and would also suggest seeking input from other organizations.

3. The Discussion Paper speaks to certain “take-aways” from the ICANN52 meeting that apparently were shared by meeting participants. Among these included “recognition that **principles** [emphasis added], a process and framework need to be developed before any spending can take place.” (See Discussion Paper, p. 8.) The IPC generally supports efforts to further this premise. However, given the potentially broad scope of “principles” that may dictate the process going-forward, the IPC would suggest that these principles be defined more narrowly at this stage, with a particular aim of protecting stakeholder groups clearly impacted by the gTLD process itself. For example, there have been suggestions that auction proceeds be used for charitable donation, either charities suggested by individual gTLD applicant(s) in an amount corresponding to their auction payment or a more broadly-chosen charitable organization. While the IPC believes these goals are laudable, any such designation would need to be consistent with the principle of reserving gTLD auction proceeds for issues directly related to ICANN’s mission or the purpose of the DNS in general. Therefore, the IPC believes it is important to set forth the guiding principle(s) of this effort at the beginning in order to avoid discussion on options or solutions which ultimately may not be workable or even desirable. (See also Discussion Paper, p. 10, which mandates that proceeds are to be used in support of ICANN’s mission and mandate.)

4. Finally, the IPC generally supports moving forward with a CCWG (see, e.g., Discussion Paper p. 8) to explore this issue. However, the IPC also supports the Board Chair’s position that the process be lean. (See Discussion Paper, pp. 9-10.) The funds generated by the gTLD auction process currently stand at almost 60 million dollars (US) and may ultimately be more, given the existing gTLD applications still in contention. This money provides an unprecedented opportunity to fund projects and resources of incalculable value to the DNS and the relevant stakeholder communities. Therefore, it is imperative that the process be absolutely streamlined to avoid unnecessary expenditures. Therefore, the IPC encourages ICANN and the Board to make use of volunteer and other unpaid efforts to mine data and feedback from the public to the greatest extent possible. Should Board involvement be required (see Discussion Paper, p. 11), such involvement should be limited to instances where Board action is required to implement the proposals and ideas gathered from stakeholders and the community.

The IPC appreciates the opportunity to provide these comments, and looks forward to participation in the next steps of this process.