



17 October 2023

RE: Response to [GNSO Council letter](#) dater 3 October 2023

Sebastien Ducos
GNSO Council Chair
GNSO

Dear Sebastien,

Thank you for your letter dated 3 October 2023 that includes a response to my request of 15 August 2023. Your letter has been published on the [Correspondence page](#) of ICANN.org for transparency.

I appreciate the GNSO Council's position on ICANN's engagement with the former Cross Community Working Group on Auction Proceeds (CCWG-AP) members. As the CCWG-AP is no longer in existence, we acknowledge that those individuals are not in any representational role within the Chartering Organizations, and our engagement is intended to keep those who dedicated so much time to this effort updated on the progress. We will handle communication and interaction accordingly.

As the CCWG-AP is concluded, it is also important to recognize that the guidelines for Cross Community Working Groups do not reserve any role for the Chartering Organizations to approve implementation efforts after the Board acts on a CCWG recommendation. If the GNSO and other SO/ACs wish to evolve those CCWG guidelines to incorporate an affirmative role for Chartering Organizations within implementation efforts, we suggest that conversation is for the community, and not for unilateral action by ICANN org or Board.

I also appreciate you sharing the concerns expressed by some members of the Council on the implementation of the adopted recommendation from the CCWG-AP on access to ICANN's accountability mechanisms ("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"), as well as on the clarity of the rationale. In a 27 July 2023 email to Anne Aikman Scalese, I provided some detail to preview the Board's rationale for the decision:

As the org team considered the impact of seeking a fundamental Bylaws change that altered the scope of ICANN's Independent Review Process and the Reconsideration Request Process while making sure that those changes were as narrowly tailored to the CCWG-AP's recommendations as possible, significant concerns were uncovered. While the amendments would equally impact applicant and third-party access to accountability mechanisms, the contemplated amendments would actually be quite narrow in impact and could create significant loopholes for the use accountability



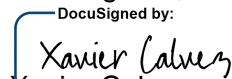
mechanisms by either applicants or third parties to still challenge actions within the Grant Program. The Board's revised action was reached after evaluating other ways to achieve as much of the CCWG-AP's intended goal as possible, while also upholding ICANN's core commitments to accountability and to having its accountability mechanisms remain available. The Board's resolution and supporting rationale (if adopted) will provide additional detail.

The Board and ICANN org have maintained a consistent dialogue on this issue over the past months, as other former members of the CCWG-AP also shared their thoughts on the Board's intended action. One of the areas of focus for the Board is the concern you share in the letter of the potential precedential effect of the Board's use of terms and conditions to limit access to accountability mechanisms. As this situation poses a very unique set of circumstances - where Chartering Organizations from across the ICANN community affirmatively supported a recommendation limiting access to ICANN's accountability mechanisms - the future impact of this decision can be mitigated. The Board's rationale will be clear in setting out its commitment and expectation that this is not a broad opening for the use of contracts to limit access to accountability mechanisms. In addition, the Board's forthcoming action will identify additional protections against such contractual limitations being replicated in unrelated situations for the ICANN community to consider discussing.

Please be assured that the concerns raised within your letter (as well as the GNSO Council letter itself) have been shared with the Board and will be addressed more fully within the rationale that accompanies the Board's anticipated decision.

I would like to thank you for your continued support for the ICANN Grant Program.

Kind regards,

DocuSigned by:

Xavier Calvez