

# New gTLD Auction Proceeds Discussion Paper

## STATUS OF THIS DOCUMENT

This is a discussion paper on the proceeds from ICANN-conducted auctions for contested new generic Top-Level Domain (gTLD) strings<sup>1</sup>.

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<sup>1</sup> For more information about ICANN and its work, visit [ICANN.org](http://icann.org); for more information about the new gTLD program associated with these proceeds, visit <http://newgtlds.icann.org/en/>.

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# 1 Executive Summary

This is a discussion paper on the proceeds from ICANN-conducted auctions for contested new generic Top-Level Domain (gTLD) strings<sup>2</sup>. This paper aims to capture the information and input on this topic to date as well as outlining potential questions and issues to be addressed in the subsequent phases of the process to determine next steps in relation to new gTLD Auction Proceeds.

This paper is published for as broad as possible public comment in order to allow for additional input before the paper is submitted to a drafting team, which is anticipated to be tasked with developing a proposed charter for a Cross-Community Working Group for consideration, unless another approach is suggested as part of the public comment period and which is then deemed preferable.

This paper calls for broad, open and inclusive public comment and encourages participation from all sectors, regions and levels of engagement both within and outside the ICANN community.

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## 2 Background

### 2.1 New gTLD Program

*"The purpose of an auction is to resolve contention in a clear, objective manner. It is planned that costs of the new gTLD program will offset by fees, so any funds coming from a last resort contention resolution mechanism such as auctions would result (after paying for the auction process) in additional funding. Any proceeds from auctions will be reserved and earmarked until the uses of funds are determined. Funds 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.*

*Possible uses of auction funds include formation of a foundation with a clear mission and a transparent way to allocate funds to projects that are of interest to the greater Internet community, such as grants to support new gTLD applications or registry operators from communities in subsequent gTLD rounds, the creation of an ICANN-administered/community-based fund for specific projects for the benefit of the Internet community, the creation of a registry continuity fund for the protection of registrants (ensuring that funds would be in place to support the operation of a gTLD registry until a successor could be found), or establishment of a security fund to expand use of secure protocols, conduct research, and support standards development organizations in accordance with ICANN's security and stability mission."*

New gTLD Applicant Guidebook – Section 4.3.

The new gTLD Program established auctions as a mechanism of last resort to resolve string contention. Most string contentions (approximately 90% of sets scheduled for auction) have been resolved through other means before reaching an auction conducted by ICANN's authorized auction service provider, Power Auctions LLC. However, it was recognized from the outset that significant funds could accrue as a result of several auctions. As such, these auction proceeds have been reserved and earmarked until the Board authorizes a plan for the appropriate use of the funds. Board, staff, and community are expected to be working together in designing and participating in the next steps addressing the use of new gTLD auction proceeds.

### 2.2 Current Financial Status

Cost and proceeds in relation to the new gTLD Program can be broken down into two distinct buckets:

1. New gTLD Applicant Evaluation Fees – these fees pay for the application evaluation costs, the historical development costs repayment, and the hard-to-predict costs, including risks. Unspent application fees are fully segregated in dedicated bank and investment accounts.

2. New gTLD Program Auction Proceeds – these are distinct, ring-fenced funds arising from last resort auctions, used to resolve string contention and conducted using an ICANN-authorized auction service provider. The proceeds, net of direct auction costs are fully segregated in separate bank and investment accounts.

This discussion paper relates specifically to the new gTLD auction proceeds and does not discuss or deal with the new gTLD applicant evaluation fees. These funds are completely segregated from each other.

In relation to new gTLD Program Auction Proceeds, 13 contention sets have been resolved via ICANN Auction since June 2014. The total net proceeds to date are \$58.8 million USD. Details of the proceeds can be found at <http://newgtlds.icann.org/en/applicants/auctions/proceeds>. As of 31st August 2015, 27 contention sets remain to be resolved, although it is important to keep in mind that approximately 90% of contention sets scheduled for auction are resolved prior to the auction. The total amount of funding resulting from auctions, will not be known until all relevant applications have resolved contention.

## 3 Community & Board Discussions to date

### 3.1 Community discussions to date

Since the launch of the new gTLD Program, numerous suggestions have been made, such as during the ICANN public forum sessions at ICANN meetings, on how new gTLD auction proceeds should be spent including; suggestions that the funds should be donated to charitable organizations, support for applicants in future rounds, programs to promote new gTLDs and consumer protection, the creation of an ICANN trust, to returning the money to the applicants from the current round. A non-exhaustive overview of these contributions can be found in Annex A.

#### 3.1.1 GNSO Council initiative to launch a Cross-Community Working Group

However, it was not until March 2015 that the Generic Names Supporting Organization (GNSO) started discussing a possible process for facilitating the conversation around new gTLD auction proceeds during the ICANN meeting in Singapore (see <https://singapore52.icann.org/en/schedule/sat-gnso-working/transcript-cwg-new-gtld-auction-07feb15-en>). As part of that discussion, it became clear that there was interest from the GNSO to commence formal conversations on the topic of new gTLD auction proceeds and following which, the GNSO Council reached out to other ICANN Supporting Organizations (SOs) and Advisory Committees (ACs) to determine whether there would be interest to form a cross-community working group (CCWG) on this topic. Based on the feedback received from the different ICANN SO/ACs (see <http://gnso.icann.org/en/drafts/new-gtld-auction-proceeds-recs-responses-19mar15-en.pdf>), the GNSO Council decided to move forward with the creation of a CCWG by, as a first step, forming a drafting team to develop a proposed charter for such a CCWG, which could then be considered by all ICANN SO/ACs interested in participating. As a result a call for volunteers to form a drafting team to develop a charter for the CCWG was circulated.

However, taking into account the community workload as well as the opportunity the ICANN Meeting in Buenos Aires meeting provided to discuss the topic in further detail, the Chair of the GNSO Council, Jonathan Robinson, proposed to hold off on bringing the drafting team

together at that stage (see <http://gnso.icann.org/en/correspondence/robinson-to-so-ac-board-02jun15-en.pdf>), and to first take advantage of the ICANN meeting in Buenos Aires to 1) solicit initial community feedback on the approach for and scope of this work, 2) inform the community about the history as well as current facts in relation to the new gTLD auction proceeds, and 3) hear from other communities such as country code TLD registries on how they have that dealt with the question of additional funds. As a result, two community sessions were organized during the ICANN meeting in Buenos Aires.

### 3.1.2 SO/AC High Interest Topic Discussion

The SO/AC High Interest Topic Session is a joint community activity designed to explore hot topics broadly impacting ICANN's multi-stakeholder community and to encourage broader collaboration on issues between ICANN's Advisory Committees and Supporting Organizations. During this moderated session, SO-AC Leaders share their perspectives on high interest topics they have selected specially for this session. For the session during the ICANN Meeting in Buenos Aires in June 2015 'The Use of New gTLD Auction Proceeds - The Community Discussion Process, Next Steps and Other Considerations' was chosen as the topic.

This particular session was scheduled with two panels. The first panel brought together SO-AC community leaders and/or their representatives addressing the following questions:

- What process should be used for deciding on how to use the new gTLD Auction Proceeds? It has been proposed that a cross-community working group should be formed. Is this the right approach? If not, what alternatives are available?
- What should be the role of the ICANN Board in this process?
- What considerations should the drafting team that will be responsible for developing the charter for the cross-community working group take into account as it develops its draft?

The second panel consisted of representatives from each of the At Large RALOs and the GNSO Stakeholder Groups and Constituencies, who addressed the following questions:

- What general concepts or criteria will need to be factored in as part of the cross-community working group deliberations?

- How to ensure broad participation and involve experts from other sectors in the cross-community working group?
- How to deal with potential conflict of interests?

Since the session was set up as an initial idea generation session, many ideas and suggestions were shared which can be reviewed in further detail [here](#). Nevertheless, there were a number of general take-aways from the session that appeared to be shared amongst many of the participants namely:

- 1) There is broad and substantial interest in this topic;
- 2) There are many ideas and suggestions for how the new gTLD auction funds could or should be spent;
- 3) There is recognition that principles, a process and framework need to be developed before any spending can take place.
- 4) There appeared to be support for moving forward with a Cross-Community Working Group, but at the same time the door is still open to consider alternative approaches to deal with the issue.

### **3.1.3 Pre-CWG New gTLD Auction Proceeds Workshop**

Following the SO/AC High Interest Topic Discussion, a pre-CWG new gTLD Auction Proceeds workshop was organized a couple of days later during the ICANN Meeting in Buenos Aires. The workshop was an opportunity to 1) learn about the background and current status of the new gTLD auction proceeds; 2) receive an overview of the actions undertaken to date; 3) hear about the Board's discussions to date on this topic; 4) obtain a recap from the SO/AC High Interest Topic Discussion, and; 5) an opportunity to learn from a number of ccTLDs that have dealt with excess proceeds. Further details concerning items 1-4 have been covered in previous sections. The detailed presentations of the ccTLDs that participated in the session (CIRA, Nominet and SIDN) can be found [here](#) and it is recommended that these are reviewed in detail, but a number of common themes could be deducted:

- Extensive research and benchmarking of other initiatives was carried out as part of intelligence gathering phase before any decisions were taken;

- Creation of a separate trust, fund or committee to clearly separate allocation of excess proceeds from daily operations was deemed preferable;
- The identified scope, focus and eligibility criteria for excess proceeds clearly aligned with the mission of each organization;
- Lessons learned from these initiatives and others can provide valuable input to the discussions in relation to new gTLD auction proceeds.

### **3.1.4 Proposal to Develop Discussion Paper**

As part of the discussions during the SO/AC High Interest Topic Discussion as well as the Pre-CWG new gTLD Auction Proceeds Workshop it was suggested that a next step in this conversation could be the development by ICANN Staff of a discussion paper which would provide an overview of the discussions to date as well as provide an overview of the issues that have been flagged throughout these discussions that should be considered by the drafting team as it commences its work on the draft charter for the CCWG. Furthermore, putting out this discussion paper would also provide an opportunity for those that have not spoken up to date to provide their input and guidance to the drafting team and/or suggest alternative mechanisms to deal with this issue that may not have been considered. It is the expectation that this discussion paper as well as the associated public comment forum is a first opportunity of many more to come to provide input and guidance on this topic.

## **3.2 ICANN Board**

In statements that can be dated back to ICANN40, the ICANN Board has committed to broad and open participation in designing the process to deal with new gTLD Auction proceeds and subsequent next steps, noting that it would consider the full and careful process for decision-making at a stage when the level of proceeds are better known. In his contribution to the new gTLD Auction Proceeds Workshop that was organised during ICANN53, Steve Crocker, Chairman of the Board, highlighted that, building on previous discussions, he considers the following issues of critical importance for the process design:

- Broad, open and inclusive dialogue – any discussions need to be open and transparent, and allow for broad participation, listening to the views of all;
- Conflicts of Interest – there is a need to consider conflicts of interest before work can begin;

- Lean process – any process must be lean and cost-effective so as not to diminish funds;
- Separation of idea suggestion and idea selection – it is important to start by sharing and brainstorming ideas prior to any structured work;
- Measured pace – principles and strategy should be examined first before further considerations. Process should not be rushed;
- ICANN's Mission and Mandate – must keep in mind that proceeds are to be used in support of ICANN's mission and mandate.

## 4 Issues to be considered and addressed

Based on the discussions to date as well as recent experience with other CCWGs, there are a number of issues that should be considered by the drafting team that is expected to be tasked with developing a proposed charter<sup>3</sup> for a CCWG (unless an alternative mechanism is identified). These include amongst others:

- **Focus on framework development:** What set of principles should underpin any framework development? What questions should serve as a guide to the CCWG to structure its work and ensure focus on a framework for allocating new gTLD auction proceeds, instead of ideas for how new gTLD auction proceeds can be spent?
- **Intelligence gathering / Expert involvement:** What information / outreach should be conducted upfront to ensure that input as well as lessons learned are provided by ccTLD Registry Operators as well as other organizations that have dealt with surplus proceeds? Similarly, as the CCWG recommendations need to take into account ICANN's not for profit status, external expertise / advice may be required to ensure that this is not the case as well as provide input concerning fiscal options available taking into account the principles the CCWG may have defined.
- **Board involvement:** Clarify what the expected / desired involvement and role of the Board is, both with regards to participation but also how the Board is expected to consider the CCWG recommendations following approval by the chartering organisations (see for example how this was dealt with in the CCWG-Accountability- <https://www.icann.org/resources/board-material/resolutions-2014-10-16-en#2.d>).
- **Conflicts of interest:** How to avoid conflicts of interest, i.e. preventing those from developing the framework being able to directly benefit from the new gTLD auction proceeds? Should there be any specific rules in place that specify that participation in the drafting team and/or CCWG would automatically exclude members / participants from directly benefiting from the

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<sup>3</sup> A charter typically sets out the problem statement, goals & objectives, scope, deliverables, timeframes, reporting, membership requirements, staffing, organization and rules of engagement for a CWG. Examples of recent CWG charters can be found at <https://community.icann.org/x/2grxAg> and <https://community.icann.org/x/KYMHAW>.

allocation of new gTLD auction proceeds? If so, how would this be enforced? If not, how can the perception or actual conflict of interest be avoided?

- **Participation:** Consider whether the model that has been recently used for the CCWG-Stewardship (see <https://community.icann.org/x/2grxAg>) and CCWG-Accountability (see <https://community.icann.org/x/KYMHAW>) which includes members that are appointed by chartering organizations to ensure communication between the CCWG and the chartering organization as well as participation by anyone interested should also apply to this CCWG or another model should be considered.
- **Outreach:** As can be seen from this document, discussion on this topic has largely originated from within the ICANN community, so there is a need to examine how to ensure broad participation and input into this effort, including reaching those that may not typically be involved in ICANN processes? How can additional efforts be undertaken in addition to the traditional communication channels?
- **Linkage with other efforts:** Efforts such as the Enhancing ICANN Accountability CCWG which may result in changes to ICANN's mission as it is currently stated in the Bylaws, as well as the work that is expected to be initiated on defining the public interest, may have an impact on the efforts of this CCWG and as such should be monitored and their outcomes considered as part of the CCWG deliberations.
- **Implementation:** Clearly define the expected scope of the CCWG with regards to implementation – is the CCWG expected to define the overall framework and principles, but how this is implemented is done separately, or is the CCWG also expected to play a role in developing the implementation of the framework and principles?

This set of issues is expected to serve as a starting point for the drafting team that is expected to develop a charter for a CCWG on new gTLD auction proceeds (or by an alternative mechanism should one be identified). It is the anticipation that additional issues and/or guidance may be provided in response to the public comment forum on this discussion paper, possible alternative mechanisms that could be considered instead of a CCWG as well as other input that may benefit the anticipated deliberations of the drafting team or alternative mechanism.

## 5 Next Steps

This discussion paper is published for public comment to allow for broad, open and inclusive input, including from outside the ICANN Community, on the issues outlined in this paper as well as any other aspects that should be considered by the drafting team that is expected to be tasked with developing a charter for a Cross-Community Working Group on new gTLD Auction Proceeds. The discussion paper as well as the public comments received will be submitted to the drafting team to serve as initial input to help inform their deliberations (or to an alternative mechanism should one be identified). Following the finalization of the CCWG charter, the drafting team is expected to submit the finalised version to all ICANN Supporting Organizations and Advisory Committees for their consideration.

## Annex A - Previous Statements from Community of Auction Funds

This section goes through suggestions on process and use from online articles, Board correspondence, and public forums from ICANN40 up until ICANN51.

This section references any commitments to “new gTLD spend” (i.e. both auction and fees) simply because most speakers are not specific and may not have identified between the two. Given the substantial issue in this topic, this should not be considered an exhaustive list.

### SUGGESTION TOPICS

- Consulting the Community on Potential Uses
  - Ken Stubbs, Public Forum, [ICANN40](#)
  - Raimundo Beca, Public Forum, [ICANN43](#)
  - Marilyn Cade, Public Forum, [ICANN48](#)
  - Paul Foody, Public Forum, [ICANN48](#)
  - Avri Doria, Public Forum, [ICANN48](#)
  - Kavouss Arasteh, Public Forum, [ICANN48](#)
  - Chuck Gomes, Public Forum, [ICANN48](#)
  
- Unsuccessful auctionee compensation for expenses incurred during application to auction
  - Tina Viney (APAN CEO who was one of the applicants for .salon) wrote to ICANN Board in Dec 2014 to request this.  
<https://www.icann.org/en/system/files/correspondence/vinney-to-icann-board-04dec14-en.pdf>
  - Adrian Kinderis, Public Forum, [ICANN48](#)
  
- Public Interest Projects that have a strong link to ICANN’s core functions.
  - Recommended by a [2003 academic paper](#) (page 38) by prior to gTLD auctions (the document explored how new gTLD program could function) by Karl Manheim and Lawrence Solum.
  
- Donating funds to charitable organizations
  - [Stephanie Duchesneau](#) raises this as a suggestion made by others
  
- ICANN Auction Money Should go to a Charity of the Applicants Choice

- Annalisa Roger, Public Forum, [ICANN 44](#)
  - Louie Lee, Public Forum, [ICANN 48](#)
- Fund open source DNS projects and upgrade DNS libraries
  - Community suggestion via [John Levine](#)
  - Ken Stubbs, Public Forum, [ICANN 42](#)
- Marketing plan to increase new gTLD registrations
  - [Christa Taylor](#), DOT TBA Founder
  - [Kurt Pritz](#) also discusses the DNA plan for reinvestment into promotion of domains and their use
- Subsidize future rounds of new gTLDs to expand the geographic diversity of the DNS
  - [Stephanie Duchesneau](#) raises this as a suggestion made by others
- Developing Public Education Programs on the New DNS Landscape
  - Jillian Andrews, Public Forum, [ICANN 47](#)
- Allocate Funds to Promote New gTLDs and Consumer Protection
  - Ching Chiao, Public Forum, [ICANN 48](#)
  - Jordyn Buchanan, Public Forum, [ICANN 48](#)
- Reduce the Application Fee in Future Rounds
  - Ching Chiao, Public Forums, [ICANN 48](#)
  - Jordyn Buchanan, Public Forums, [ICANN 48](#)
  - Bruce Tonkin, Public Forum, [ICANN 51](#)
- Funding Projects Addressing Issues related to Universal Acceptance of New gTLDs with focus on IDNs
  - Adrian Kinderis, Public Forum, [ICANN 48](#)
  - Jordyn Buchanan, Public Forum, [ICANN 48](#)
- “Promote Internet Development Globally” by placing money in a trust (possibly overseen by NETmundial Initiative) for Internet development efforts. Also suggests others may contribute- Danny Aerts of .se (<https://www.iis.se/english/blog/time-to-spread-the-muck-icann/>)
  - Two notable examples are:
    - [Nominet Trust](#)- Funding, networking, and knowledge base development.
    - [SIDN Fund](#)- set up by .nl to “provide financial support to projects that promote innovation, education, research, security and trust, application reach and constructive use of the Internet in the Netherlands.” Launched April 2015.
- Combatting cyber-squatting, lower Rights Protection Mechanisms fees, or other RPM related activities.

- Capacity Building and Outreach community suggestions via [Philip Corwin](#)
- Creating a Foundation to Inform the Global Public on Internet Governance
  - Klaus Stoll, Public Forum, [ICANN48](#)
- Strengthening Participation of Stakeholders from Developing Countries
  - Marilyn Cade, Public Forum, [ICANN48](#)
  - Paul Foody, Public Forum, [ICANN48](#)
- Strengthening the Capacity of the Broad Community to Contribute to the SSR of the Internet
  - Marilyn Cade, [ICANN48](#)
  - Paul Foody, [ICANN48](#)
- Funding the Emergency Back-End Registry or the EBERO System
  - Adrian Kinderis, Public Forum, [ICANN48](#)
- Support Public Interest Processes
  - Zahid Jamil, Public Forum, [ICANN48](#)