

**From:** Erika Mann

**Date:** Tuesday, July 30, 2019

**To:** Maarten Botterman, Becky Burr, Samantha Eisner, Xavier J. Calvez

**Subject:** New questions for ICANN Board and Org

Dear Maarten, Becky, Sam, Xavier -

it took the leadership team a bit longer to finalize our remaining questions to you. The CCWG AP is currently very active and I assume that we will have a lively debate tomorrow on Wednesday.

I'm sending these questions to you together to allow you to comment on them all, in case you like to do so.

We're looking forward to hearing from you and thank you for your constant support,  
Erika

**Questions for the Board:**

1. The CCWG is considering whether it would be beneficial to recommend that auction proceeds are divided into segments and distributed to grant recipients in a series of "baskets," each with a different programmatic focus. For example, the CCWG could recommend that a segment of funds could be devoted to supporting least developed countries and then describe a set of goals associated with that basket. The advantage of such a 'basket' approach is that a certain amount is pre-allocated and other projects would not get overshadowed by specific requests. There is no need to segment the total funding amount into baskets but one could - and probably should - do this only for very few specific goals. Many funds are practicing such an approach. Do you think such an approach would be beneficial? Do you see any risks? Do you have any suggestions about how the CCWG should approach this work?
2. The CCWG plans to include additional language with Annexes C and D in response to the concerns raised in the Board's January 2018 letter. If these additions are included in the report, does the Board have any additional concerns regarding Annex C and D, and if so, how might the CCWG address these concerns? Specific changes:
  - The CCWG has edited the Guidance document (now known as "Annex C") in the Initial Report to include the following: "Consistency with the ICANN mission is a necessary but not sufficient condition for funding. Evaluators may consider the scope, openness to innovation and impact of the proposed project in light of the overall purpose of the auction proceeds. Evaluators will be informed by ICANN Org's budget and associated documents concerning categories of projects already covered by ongoing operations, as well as any legal and fiduciary constraints. Examples provided are specifically intended to be illustrative, not definitive."
  - In addition, ICANN Legal has proposed including the following disclaimer language to Annex D: "Inclusion on this list as an example is not a guarantee of funding for projects that are designed to be identical or similar to such examples. Every application must be

subject to review on its own merits and in conjunction with the funding available in any tranche. Similarity to any example is not a sufficient basis challenge action on an application."

- ICANN Legal also recommended including a footnote in Annex D that reads: "Any decision on ICANN's mission is reserved to the ICANN Board and must take into account all of the facts and circumstances present within an application. Whether a project might be consistent with ICANN's mission is also a separate issue from the other legal and fiduciary requirements that must be met."
3. The CCWG is considering a proposal that outlines the recommended role for the ICANN community in oversight and process review (attached).
- First, an Advisory Board with narrowly defined responsibilities: 1. "perform an annual review of the ongoing operational process" and 2. "At the request of the external project evaluation group, the AB may be asked for guidance and/or clarification by the evaluation group. Such guidance or clarification may be desired to address general issues or specific project applications, but all such requests will be general in nature and not reference application specifics."
  - Second, a Program Evaluation Panel chartered by the Board Organizational Effectiveness Committee to do an assessment after a certain period of time of "the whole funding process to understand whether adjustments are needed in relation to the defined goals."
  - To summarize, is the Board comfortable with the role of the Advisory Board as proposed? Does the Board consider it appropriate for the OEC to charter the Program Evaluation Panel as outlined in the proposal?
4. Under Mechanism C, a new foundation would be established with a new Board that would have a narrowly-defined scope focused specifically on the foundation goals. Is the ICANN Board comfortable with such a role for a newly created foundation Board? And, if yes, what kind of safeguards would the Board want to put in place to ensure legal and fiduciary obligations of the ICANN Board will not be challenged in potential future conflicts?

#### **Questions for Xavier:**

1. The CCWG is interested in understanding the relative costs of staffing associated with mechanisms A and C. Noting that new staff members would potentially need to be hired in both scenarios, but that existing ICANN staff would likely be resourced in mechanism A, is it possible to provide a high-level overview of the cost differential highlighting which elements account for this difference? For the sake of discussion, assume that:
  - 20 people would be needed to staff either an internal department or a foundation.
  - ICANN staff members who want to temporarily work at the Foundation could be outsourced and continue to receive the same compensation.
2. Page 7 of the Initial Report includes the following description of Mechanism A: "An internal department dedicated to grant solicitation, implementation and evaluation is created within the

ICANN organization. All grants are listed in ICANN's annual tax recordings." Several questions have come up regarding this description:

- Is it correct that each grant allocated under this mechanism would be individually listed in ICANN's tax filings and if so, is it necessary to include the text "all grants are listed in ICANN's annual tax recordings" in the mechanism description?
- If it is important to keep this text, should "tax recordings" be changed to "tax filings" or "tax return"?
- Are ICANN's tax returns publicly available?
- If tax returns are not public, do they need to be made available upon request?

**Questions for Sam:**

1. The CCWG is considering whether it would be beneficial to recommend that auction proceeds are divided into segments and distributed to grant recipients in a series of "baskets," each with a different programmatic focus. For example, the CCWG could recommend that a segment of funds could be devoted to supporting least developed countries and then describe a set of goals associated with that basket. The advantage of such a 'basket' approach is that a certain amount is pre-allocated and other projects would not get overshadowed by specific requests. There is no need to segment the total funding amount into baskets but one could - and probably should - do this only for very few specific goals. Many funds are practicing such an approach. Do you think such an approach would be beneficial? Do you see any risks? Do you have any suggestions about how the CCWG should approach this work?
2. Under Mechanism C, a new foundation would be established with a new Board that would have a narrowly-defined scope focused specifically on the foundation goals. Is ICANN Legal comfortable with such a separate role for the newly created foundation Board? And, if yes, what kind of safeguards would the Board want to put in place to ensure legal and fiduciary obligations of the ICANN Board will not be challenged in potential future conflicts?