

To: Akriti Bopanna on behalf of the Centre for Internet & Society

Date: 24 April 2019

Re: Request No. 20190325-1

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This is in response to your request for documentary information (Request), which was submitted on 25 March 2019 through the Internet Corporation for Assigned Names and Numbers' (ICANN org) Documentary Information Disclosure Policy (DIDP) on behalf of the Centre for Internet & Society (CIS). For reference, a copy of your Request is attached to the email forwarding this Response.

### **Items Requested**

Your Request seeks disclosure of the following information related to the Auction Proceeds from the new gTLD round in 2012.

1. Is [the auction proceeds from the 2012 new gTLD round] in a bank account that has been gaining interest over the past 7 years?
2. Or have they been invested in any other financial schemes?

### **Response**

#### **I. Background Information**

##### **A. New gTLD Auction Proceeds**

In 2012, ICANN organization opened the application window for the New Generic Top-Level Domain (gTLD) Program, enabling the largest expansion of the domain name system. (See <https://newgtlds.icann.org/en/about/program>.) To help guide the applicants through the application process, ICANN org published the Applicant Guidebook which mapped out the different phases an application must go through during evaluation. (See <https://newgtlds.icann.org/en/applicants/agb>.)

Module 4 of the Guidebook (String Contention Procedures) describes situations in which contention for applied-for new gTLDs occurs, and the methods available to applicants for resolving contention absent private resolution: "It is expected that most cases of contention will be resolved by the community priority evaluation, or through voluntary agreement among the involved applicants. Auction is a tie-breaker method for resolving string contention among the applications within a contention set, if the contention has not been resolved by other means." ([Guidebook, § 4.3 \(Auction: Mechanisms of Last Resort\)](#)). Should private resolution not occur, the contention set will proceed to an ICANN auction of last resort governed by the Auction Rules that all applicants agreed to by applying. ([Guidebook, § 1.1.2.10 \(String Contention\)](#)). In furtherance of ICANN org's commitment to transparency, ICANN org established the

Auctions and Auctions Results webpages, at <https://newgtlds.icann.org/en/applicants/auctions> and <https://gtldresult.icann.org/applicationstatus/auctionresults>, respectively, which provide extensive detailed information about the auction process. Any proceeds from the auctions will be reserved and earmarked until the uses of funds are determined by the Board through consultation with the community. (See <https://newgtlds.icann.org/en/applicants/auctions/proceeds>.)

On 10 March 2016, a drafting team composed of representatives of Supporting Organizations/Advisory Committees (SO/ACs) and the Board convened for the first time to prepare a draft Charter for the New gTLD Auction Proceeds Cross-Community Working Group (CCWG-AP). (See <https://community.icann.org/display/CWGONGAP/Cross-Community+Working+Group+on+new+gTLD+Auction+Proceeds+Home>.) In January 2017, the CCWG-AP was formed to develop a proposal(s) on the mechanism to allocate the auction proceeds for consideration and approval by the ICANN Board. (See <https://www.icann.org/public-comments/new-gtld-auction-proceeds-initial-2018-10-08-en>.) In accordance with its charter, the CCWG-AP is also expected to consider the scope of fund allocation and due diligence requirements that preserve ICANN org's tax status, as well as related matters such as potential or actual conflicts of interest. (*Id.*) The CCWG-AP will not make any recommendations or determinations with regard to specific funding decisions (i.e., which specific organizations or projects are to be funded or not). (See <https://community.icann.org/display/CWGONGAP/CCWG+Charter>; <https://gnso.icann.org/sites/default/files/file/field-file-attach/policy-briefing-new-gtld-auction-proceeds-05jun18-en.pdf>.) ICANN org makes available detailed information related to the CCWG-AP on the group's community wiki page at <https://community.icann.org/display/CWGONGAP/Cross-Community+Working+Group+on+new+gTLD+Auction+Proceeds+Home>, including the following:

- CCWG-AP Charter, <https://community.icann.org/display/CWGONGAP/CCWG+Charter>;
- CCWG-AP meeting transcripts from 2017 to the present, <https://community.icann.org/display/CWGONGAP/CCWG+Meetings>;
- CCWG-AP mailing list archives, <https://mm.icann.org/pipermail/ccwg-auctionproceeds/>;
- CCWG-AP work plan, and <https://community.icann.org/display/CWGONGAP/Work+Plan>; and
- CCWG-AP key documents, <https://community.icann.org/display/CWGONGAP/CCWG+Documents>.

On 18 October 2018, the CCWG-AP published its Initial Report for public comment. (See <https://www.icann.org/en/system/files/files/new-gtld-auction-proceeds-initial-08oct18-en.pdf>; <https://www.icann.org/public-comments/new-gtld-auction-proceeds-initial-2018-10-08-en>.) The work of the CCWG-AP is still ongoing.

The Board will review the CCWG-AP's final recommendations for a disbursement mechanism, as approved by the Chartering Organizations, and will then make a decision on the mechanism by which available proceeds should be disbursed, for implementation by ICANN org. (See <https://gac.icann.org/activity/cross-community-wg-new-gtld-auction-proceeds>.) At all times, the Board will continue to make all decisions in furtherance of ICANN org's mission, under consideration of its duty of care and its fiduciary responsibility.

#### B. Investment of the New gTLD Auction Proceeds

The new gTLD auction proceeds are invested conservatively with any interest accruing to the proceeds in accordance with the New gTLD Investment Policy, which is published at <https://www.icann.org/resources/pages/investment-policy-new-gtld-2013-01-07-en>. In furtherance of its commitment to accountability and transparency, ICANN org publishes its yearly audited financials which include a breakdown of the auction proceeds classified as either cash and cash equivalents or investments. (See e.g. Consolidated Financial Statements for Years Ended 30 June 2018 and 2017, <https://www.icann.org/en/system/files/files/financial-report-fye-30jun18-en.pdf>.)

#### C. Board Action related to the New gTLD Auction Proceeds

As part of the Reserve Fund Replenishment Strategy, on 25 October 2018, the Board approved [Resolution 2018.10.25.23](#) directing the President and CEO, or his designee(s), to take all actions necessary to allocate US\$36 million of auction proceeds to the Reserve Fund, as soon as technically feasible. As part of its action, the Board noted:

The remaining auction proceeds continue to be segregated and are not intended to be used for day-to-day operations. The Board will review the CCWG recommendations for a disbursement mechanism, as approved by the chartering organizations, and will then make a decision on the mechanism by which available proceeds should be disbursed, for implementation by ICANN org. At all times, the Board will continue to make all decisions in furtherance of ICANN's mission, under consideration of its duty of care and its fiduciary responsibility.

(Id.)

#### II. Your Request

The DIDP is a mechanism, developed through community consultation, for the disclosure of *documentary* information about ICANN org's operations and within

ICANN's possession, custody, or control that are appropriate for disclosure but has not been already published, unless there is a compelling reason for confidentiality. (See <https://www.icann.org/resources/pages/didp-2012-02-25-en>.) This Request seeks the disclosure of information, not documents, and is not an appropriate DIDP request. Nevertheless, ICANN org has responded to your requested items below.

As a preliminary matter, your Request notes that “[t]here has not been any resolution as to the disbursement of [the auction proceeds] funds since [2012].” As noted above, as part of the Reserve Fund Replenishment Strategy, on 25 October 2018, the Board approved [Resolution 2018.10.25.23](#) directing the President and CEO, or his designee(s), to take all actions necessary to allocate US\$36 million of auction proceeds to the Reserve Fund, as soon as technically feasible.

Item 1 asks if the new gTLD auction proceeds funds are “in a bank account that has been gaining interest over the past 7 years.” Item 2 asks if the auction proceeds have “been invested in any other financial schemes.” The new gTLD auction proceeds to date, net of direct auction costs, are fully segregated in separate investment accounts. The proceeds are invested conservatively with any interest accruing to the proceeds in accordance with the New gTLD Investment Policy, which is published at <https://www.icann.org/resources/pages/investment-policy-new-gtld-2013-01-07-en>. ICANN org notes that the term “financial schemes” is not defined and thus in responding to this Item, ICANN org interpreted the request as understood by ICANN org in the context of the request.

## **About DIDP**

ICANN org’s DIDP is limited to requests for documentary information already in existence within ICANN org that is not publicly available. In addition, the DIDP sets forth Defined Conditions of Nondisclosure. To review a copy of the DIDP, please see <http://www.icann.org/en/about/transparency/didp>. ICANN org makes every effort to be as responsive as possible to the entirety of your Request. As part of its accountability and transparency commitments, ICANN org continually strives to provide as much information to the community as is reasonable. We hope this information is helpful. If you have any further inquiries, please forward them to [didp@icann.org](mailto:didp@icann.org).