

SCORECARD- CCWG on Auction Proceeds Final Report Recommendations – Board Action

For more background, see ICANN Org Assessment: Recommendations of the Cross-Community Working Group on New gTLD Auction Proceeds (CCWG-AP)

Recommendation	Proposed Board Action and Options	Proposed Rationale Overview
Topic: Mechanism		
<p>#1. The CCWG recommends that the Board select either mechanism A or mechanism B for the allocation of auction proceeds, taking into account the preference expressed by CCWG members for mechanism A.</p> <p>As part of its selection process, the ICANN Board is expected to apply the criteria outlined by the CCWG in section 4.5 of this proposed Final Report for which additional internal and/or external input may be required (such as providing a reliable cost estimate). The ICANN Board is expected to share the outcome of its consideration with the CCWG Chartering Organizations and, if deemed necessary, involve the Chartering Organizations and/or CCWG implementation team in any deliberations that would benefit from Chartering Organization and/or CCWG implementation team input.</p> <p>The CCWG strongly encourages the ICANN Board to conduct a feasibility assessment which provides further analysis of the recommended mechanisms, including costs associated with each mechanism, so that the Board can take an informed decision about supporting the most appropriate mechanism.</p>	<p>Approve recommendation and direct the ICANN President and CEO, or his designees, to focus on designing implementation of Mechanism A, through which ICANN will have responsibility for the full lifecycle of grant management, applying the universal characteristics outlined by the CCWG.</p> <p>Direct the ICANN President and CEO, or his designees, to take all actions necessary, including utilizing external expertise or service providers in the design and implementation of the ICANN Grant Giving Program, in line with the Board Principles, to develop a Program that is “simple, effective and efficient, with appropriate skills, expertise, and scale to minimize overhead, minimize risks, and maximize the impact of grants issued.”</p>	<p>The CCWG-AP’s Mechanism A specifies that the ICANN Grant Giving Program will be run internally by ICANN, while relying on consultants and partners as needed. Mechanism A is the only proposed mechanism that maintains ICANN as the entity with direct responsibility and accountability for the Grant Giving Program and that allows ICANN to maintain the fiduciary and governance controls necessary to remain legally responsible for the grant-making process.</p> <p>Operating the ICANN Grant Giving Program internally provides significant benefits to ICANN and the ICANN community. It will provide better transparency to the community through ICANN’s direct responsibility for reporting of grant recipients on ICANN’s own tax filings.</p> <p>The internally run process provides flexibility for ICANN to contract for appropriate support across all aspects of the program, which allows ICANN to build a program that is right-sized to the organization and incorporates external service providers. As ICANN org does not currently perform grant-making work, ICANN org will need to bring in appropriate resources and expertise to support the proper design and implementation of the Grant Giving Program. ICANN org must conduct careful diligence over any service provider brought in to support the Grant Giving Program.</p> <p>Developing the ICANN Grant Giving Program internally - as opposed to relying on a single, long-term nonprofit partner for most areas of program design and administration - assures that the ICANN Grant Giving Program will always be run in accordance with ICANN’s mission.</p> <p>The Board notes the CCWG’s preference for Mechanism A.</p> <p>While Mechanism A specifies that ICANN will have an “internal department” to operate the ICANN Grant Giving Program, ICANN understands this to require ICANN to be the responsible entity, and the ICANN President & CEO to be responsible for determining the internal structure and allocation of resources to implement the Program. This is a key aspect of the implementation design, taking into account the other principles embodied in the CCWG Final Report, such as clear definition of roles and responsibilities and maintaining appropriate separation of roles.</p>

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<p>#9. The selected mechanism must be implemented to enable the availability of funds for a specific round as well as the disbursement of the funds for selected projects in an effective and judicious manner without creating a perpetual mechanism (i.e. not being focused on preservation of capital).</p>	<p>Approve recommendation directing the application of the ICANN Grant Giving Program for the proceeds from auctions of last resort within the 2012 New gTLD Program application round.</p> <p>Direct the ICANN President and CEO, or his designees, to provide a recommendation to the Board, when appropriate, regarding the potential of using the ICANN Grant Giving Program for proceeds stemming from future auctions of last resort if such auctions are utilized for future gTLD application processes such as the ones contemplated within the policy recommendations on New gTLD subsequent procedures.</p>	<p>The task of the CCWG-AP was to develop a set of recommendations for the distribution of funds collected from auctions of last resort within the 2012 New gTLD round. The Board acknowledges and accepts the CCWG's recommendation that ICANN should not focus on preservation of capital, and that there is community consensus that the ICANN Grant Giving Program should not be managed in a way that it exists in perpetuity.</p> <p>The Board also acknowledges that the resources devoted by the ICANN Community in the careful deliberation to achieve the CCWG-AP Final Report, as well as the extensive resources that will be used to implement the ICANN Grant Giving Program in alignment with that report, should be used effectively. As a result, the Board preserves the ability to consider if there are appropriate times in the future to leverage the ICANN Grant Giving Program in similar instances.</p>
<p>Topic: Application Tranches</p>		
<p>#10. Funds availability for disbursement should be staged in tranches over a period of years, regardless of the mechanism implemented. Progressive disbursements may be used to fund projects receiving large grants to be implemented over a period of years. Similarly, progressive disbursements can support projects that could be implemented in shorter periods.</p>	<p>Approve recommendation and direct the ICANN President and CEO to implement tranches as part of the implementation of the ICANN Grant Giving Program. The Board further directs the President and CEO, or his designee, to consider the ability to support grants of differing amounts and for projects of differing duration, to maintain the flexibility of the ICANN Grant Giving Program as implemented.</p>	<p>The use of tranches was requested by the Board and outlined as a Board Principle. This is a key tool to help the Board maintain appropriate oversight and meet its fiduciary obligations. It also supports the continuous improvement of the ICANN Grant Giving Program by providing opportunities to review and optimize the program after each tranche.</p> <p>The Board appreciates that the CCWG-AP recognized the need for flexibility in that the size of a tranche does not limit the potential for funding larger projects over a longer duration of time. As expressed by the CCWG-AP, the Board notes that within a tranche there is neither a requirement or limitation that each grant be of the same size or duration which also provides significant flexibility. The Board acknowledges that there may be need for the Board to take additional actions to support the recommended design, and awaits further inputs from ICANN org.</p>

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Independent Project Applications Evaluation Panel		
<p>#2. The CCWG recommends that an Independent Project Applications Evaluation Panel will be established. The Panel’s responsibility is to evaluate and select project applications. Neither the Board nor staff will be taking decisions on individual applications but the Board will instead focus its oversight on whether the rules of the process were followed by the Independent Project Applications Evaluation Panel. Members of the Independent Project Applications Evaluation Panel will not be selected based on their affiliation or representation, but will be selected based on their grant-making expertise, ability to demonstrate independence over time, and relevant knowledge. Diversity considerations should also be taken into account in the selection process.</p>	<p>Approve recommendation and direct the ICANN President and CEO, or his designees, to ensure that an Independent Selection Panel is part of the resulting implementation of the ICANN Grant Giving Program.</p>	<p>This recommendation confirms that an Independent Evaluation Panel will be convened and will be responsible for the evaluation of applications against the goals and objectives of the ICANN Grant Giving Program, and will be responsible for regularly recommending to the ICANN Board the applicants that should be funded through that cycle’s tranche. The need for an Independent Evaluation Panel originated from the ICANN Board, and approval of this recommendation supports best practices in grant making.</p> <p>The use of an Independent Panel to review applications for grants was requested by the ICANN Board. The Board concurs that the panel should be independent and should have appropriate conflict of interest protections built in. This supports the legitimacy of the ICANN Grant Giving Program and helps ICANN’s directors and officers meet their fiduciary duties in the oversight and management of the program. The Independent Panel will assess applications according to the goals and guidelines defined with the ICANN Grant Giving Program, and will recommend to the ICANN Board which applications should be funded through that year’s tranche.</p> <p>The Board acknowledges that the Board will not be taking decisions on individual applications. The Board will decide whether it will approve the group of applications recommended for funding, and in taking that decision, the Board will consider whether the rules of the process were followed by the Independent Panel.</p> <p>The Board notes that the CCWG-AP provides guidance suggesting that while all selected panelists “must be free from not only actual conflicts of interest but also potential or even perceived conflicts of interest,” ICANN participants may be selected as panelists if they have the required expertise.</p> <p>The Board also supports the CCWG-AP’s focus on expertise and diversity in the panel composition. In the implementation phase, ICANN org is expected to design the panel - relying on external expertise as appropriate - with proper safeguards and controls, as well as proper expertise to evaluate grant applications in support of ICANN’s mission, and mindful of the breadth and diversity of the expected pool of applicants. ICANN org must also be mindful that the Independent Panel will require sufficient guidance on the principles they are expected to uphold, training on the procedures they are expected to adhere to, and support for the administration of their work.</p> <p>As part of implementation design, ICANN org should also consider a clear definition of roles and responsibilities for ICANN org as it relates to the Independent Panel’s work to avoid improper involvement of ICANN org in the Independent Panel’s processes. The Board also notes that the Independent Panel could benefit from consistency over time (i.e., the composition of each year’s</p>

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		<p>panel should always include some overlap from the previous year to build on experience); and cost-effectiveness (i.e., to focus on the use of auction proceeds to support desired activities and goals, as opposed to administrative costs).”</p> <p>The Board’s acceptance of this Recommendation 2 does not indicate any Board position on the viability of ICANN participants as panelists. The Board stresses the importance of avoiding the potential appearance of conflict of interest at any point in the ICANN Grant Giving Program application process, including among panelists and those applying for funds. The Board expects that clear rules and practices will be defined to mitigate against that risk, and all mitigation strategies should remain available.</p>
<p>Topic: Objectives of Proceeds Allocation</p>		
<p>#3. The CCWG agreed that specific objectives of New gTLD Auction Proceeds fund allocation are:</p> <ul style="list-style-type: none"> - Benefit the development, distribution, evolution and structures/projects that support the Internet’s unique identifier systems; - Benefit capacity building and underserved populations, or; - Benefit the open and interoperable Internet <p>New gTLD Auction Proceeds are expected to be allocated in a manner consistent with ICANN’s mission.</p>	<p>Approve recommendations and direct the ICANN President and CEO, or his designees, to develop the stated objectives into clear principles and guidance for use within the ICANN Grant Giving Program. The Board affirms the requirement that the ICANN Grant Giving Program is limited to grants that are consistent with ICANN’s mission and notes that this is a key governance limitation.</p>	<p>Recommendation #3 defines that “New gTLD Auction Proceeds are expected to be allocated in a manner consistent with ICANN’s mission.” Proceeds must be allocated in a manner consistent with ICANN’s mission. This is a key governance principle for the ICANN Grant Giving Program that must be in place or ICANN could lose its 501(c)(3) tax exempt public charity status. This limitation has been recognized before, including within the 2012 New gTLD Program Applicant Guidebook (page 19, Module 4), which states that Auction Proceeds “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.” ICANN org previously advised, “due to its 501(c)(3) tax exempt, public charity status, ICANN must act exclusively in service to its charitable purpose, and as limited by its Mission. Maintaining adherence to Mission is important from source (ICANN) to destination (end recipient) [...]. Requiring alignment to ICANN’s Mission also protects the community’s resources from being used to defend against independent reviews or other challenges that could come if ICANN were to authorize expenditures of funds or resources outside of Mission.”</p>
<p>#11. As one of the objectives for new gTLD Auction Proceeds fund allocation is to contribute to projects that support capacity building and underserved populations, consideration about how this objective can be achieved should be given further consideration during the implementation phase. The CCWG does not have a particular preference about how to achieve the objective but</p>		<p>The Board notes that significant work remains to translate the CCWG-AP’s broad objectives into clear principles and guidance to help potential applicants understand whether they can qualify for the ICANN Grant Giving Program, and to help the Independent Panel consistently apply the objectives across applicants and cycles. The Board notes the CCWG-AP’s specific focus on underserved populations, and expects that implementation will include defining this objective as well as, where appropriate, considering the best practices of other grantmakers in reaching diverse stakeholders and supporting capacity development.</p> <p>The Board notes that the CCWG-AP’s Final Report includes Annexes C and D, where they offered proposals for review and selection and examples of projects that might achieve the CCWG-AP’s stated objectives. The Board previously communicated concerns to the CCWG-</p>

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<p>provided guidance for the implementation phase (see hereunder). The CCWG notes that auction proceeds must be used in a manner that supports ICANN’s mission.</p>		<p>AP regarding the inclusion of these annexes. The Board stated that while the example project list was a tool for CCWG deliberations, it is in no way indicative of potential future approvals. For clarity, the Board reiterates that it is not adopting Annexes C or D and the examples stated within those annexes should not be relied upon by future applicants or evaluators. There is a clear possibility that actual decisions within the ICANN Grant Giving Program will differ from the outcomes set forth in the Annexes, and no person or entity should rely on the Annexes for any purpose within the actual ICANN Grant Giving Program.</p> <p>The Board notes that during the CCWG deliberations, there was a suggestion of “basketing”, a tool to address targeted populations and projects through the “divi[vision of] funds into segments and distribute funds to grant recipients in a series of “baskets,” each with a different programmatic focus.”¹ The Board deferred the issue of “basketing”, stating:</p> <p style="padding-left: 40px;">While ‘basketing’ could be worthwhile as a tool to achieve specific goals and objectives that appear to be underrepresented within the program, this should be considered in a review of the program, rather than as a limiting factor upon the first launch of applications. Seeing the initial range of applications and interest that comes in without the limitations of basketing will help identify and refine communications and outreach needs for future tranches.</p> <p>The Board encourages ICANN org to consider whether the concept of “basketing” should be added as an element for a future review of the ICANN Grant Giving Program.</p>
<p>Topic: Safeguards</p>		
<p>#4. The implementation of the selected fund allocation mechanism should include safeguards described in the response to charter question 2.</p>	<p>Approve recommendation and direct the ICANN President and CEO, or his designees, to confirm that the ICANN Grant Giving Program is designed with appropriate safeguards to support appropriate legal and fiduciary constraints.</p>	<p>The Board thanks the CCWG-AP for its diligence in specifying the full scope of legal and fiduciary constraints that it understood would be necessary within an ICANN Grant Giving Program, and for further specifying that safeguards must be developed to assure proper implementation. This supports the intended legitimacy of the process, and aligns with anticipated requirements for a program of this type. The Board notes that as specified, the CCWG-AP incorporated language that supports key program goals, including being drafted in a way that enables ICANN to develop diligence and criteria to support grant applicants from outside of the U.S. The CCWG-AP’s strong focus on all aspects of conflicts of interest - including limitations imposed on applications that may be from entities related to CCWG-AP members or entities related to ICANN Board and executives and staff - are key and appropriate limitations to incorporate.</p> <p>The Board appreciates the CCWG-AP’s focus on strong and efficient oversight and management of the funds, from reminders about segregation of duties and responsibilities to setting expectations on the importance of safeguards at all points in the process.</p>

¹ See [CCWG-AP Final Report](#), pages 31 and 32 under Charter Question #6.

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		<p>While not specified in the CCWG-AP’s recommended safeguards, the Board notes the importance of transparency as an additional safeguard and expects that ICANN org will design the ICANN Grant Giving Program that is as transparent in its processes as possible.</p>
<p>Topic: Conflict of Interest Provisions</p>		
<p>#5. Robust conflict of interest provisions must be developed and put in place at every phase of the process, regardless of which mechanism is ultimately selected.</p>	<p>Approve recommendation, and direct the ICANN President and CEO, or his designees, to confirm that appropriate conflict of interest procedures are built into every stage of the ICANN Grant Giving Program.</p>	<p>As with Recommendation 4, the Board thanks the CCWG-AP for its diligence and focus on the area of conflict of interest. This is a key concern for the legitimacy of the ICANN Grant Giving Program, and is also a unique concern for the Board covered by the Board Principles. As the Board works to uphold the highest ethical standards in its conduct, it is aware of the potential of conflicts of interest entering into decision making when ICANN starts its Grant Giving Program. There is a significant amount of money at stake, and the Board reiterated at all stages of the CCWG-AP’s process the need for conflict of interest considerations.</p> <p>From the outset, the CCWG-AP designed a detailed Declaration of Interest process for members to support some aspects of conflict of interest inquiries as the ICANN Grant Giving Program is in operation. Related issues of independence and procedural safeguards are set out across multiple areas of the Final Report, all supporting the same premise - that the ICANN Community wants to see an ICANN Grant Giving Program that is above reproach and developed to the highest standards of ethics. The Board recognizes that as external consultants and partners are brought in, they too must implement, uphold and respect conflict of interest procedures.</p>
<p>Governance Framework and Audit Requirements</p>		
<p>#6. Audit requirements as described above do not only apply to the disbursement of auction proceeds on a standalone basis but must be applied to all of ICANN’s activities in relation to auction proceeds, including the disbursement of auction proceeds if and when this occurs.</p>	<p>Approve recommendation and direct the ICANN President and CEO, or his designees, to incorporate appropriate controls, verification methods and reporting requirements to meet responsible program governance.</p>	<p>The Board thanks the CCWG for the recommendation making explicit that appropriate controls and verification are an essential part of a responsible and successful ICANN Grant Giving Program. The Board encourages ICANN org to consider the importance of transparency to the ICANN community in documenting methodology, application results, and demonstrating effective use of funds. Well-designed controls will also support future reviews of the ICANN Grant Giving Program.</p> <p>Instituting controls within the program is an essential safeguard to ensure that ICANN’s commitments to the ICANN community and applicants are being upheld, and that ICANN’s fiduciary and legal obligations are met as the ICANN Grant Giving Program proceeds through implementation.</p>

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ICANN Accountability Mechanisms, Appeals, and ICANN Bylaw Change		
<p>#7. 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. Applicants not selected should receive further details about where information can be found about the next round of applications as well as any educational materials that may be available to assist applicants. The CCWG recognizes that there will need to be an amendment to the Fundamental Bylaws to eliminate the opportunity to use the Request for Reconsideration and Independent Review Panel to challenge grant decisions. For the sake of clarity, the recommended Bylaws amendment is not intended to affect the existing powers of the Empowered Community specified under the ICANN Bylaws, including rejection powers on the five-year strategic plan, the five-year operating plan, the annual operating plan, and the annual budget.</p>	<p>Approve recommendation and direct the ICANN President and CEO to prepare a Fundamental Bylaws amendment proposal that addresses the specific scope of the recommended change to ICANN’s accountability mechanisms. The Fundamental Bylaws amendment process shall be initiated in sufficient time to allow for Empowered Community approval of the Fundamental Bylaws amendment prior to the launch of the ICANN Grant Giving Program. In the event the Empowered Community rejects the proposed Fundamental Bylaws change, the ICANN President and CEO is directed to seek further guidance from the Board regarding the impact of such rejection on the anticipated launch and operation of the ICANN Grant Giving Program.</p>	<p>The Board supports the balance the CCWG-AP reached in carving out the ability to challenge decisions on specific applications from the broader issue of whether ICANN could be held accountable in the event that its conduct in the operation of the ICANN Grant Giving Program is appropriately challenged through one of ICANN’s accountability mechanisms, such as the IRP or the Reconsideration Process. During the CCWG-AP’s deliberations, the Board was supportive of exploring alternative mechanisms for individual applicants to appeal an Independent Panel’s decision, however the Board recognizes that the CCWG-AP did not wish to explore that potential further “after having reviewed how other organizations deal with appeals.”² Instead, the CCWG-AP recommends “[a]pplicants not selected should receive further details about where information can be found about the next round of applications as well as any educational materials that may be available to assist applicants.” The Board accepts this outcome of the CCWG-AP report, while acknowledging that the CCWG-AP’s recommendation necessitates that applicants will not have an opportunity to challenge the Independent Evaluation Panel’s assessment of their application. The Board encourages ICANN org to, during implementation, develop documentation to make clear to applicants the limitations on available avenues of recourse.</p> <p>The CCWG-AP’s recommendation creates a large dependency on the success of the Fundamental Bylaws Amendment Process. In the event the Empowered Community rejects an amendment drafted to meet this recommendation, the ICANN Board will need an opportunity to evaluate the impact of such a rejection on the launch of the ICANN Grant Giving Program. As a result, the Board directs that the Fundamental Bylaws Amendment Process be initiated so that it will conclude prior to the launch of the ICANN Grant Giving Program, with an effective date of any approved amendment commensurate with the launch of the Program, to give the opportunity for such evaluation to occur if needed.</p>
Reviews (Mechanisms and Overall Program)		
<p>#12. The CCWG recommends that two types of review are implemented. First, an internal review step will be part of the standard operation of the program. This review may take place at the end of each granting cycle or at another</p>	<p>Approve recommendation and direct the ICANN President and CEO, or his designees, to implement appropriate program review mechanisms into the ICANN Grant Giving Program.</p>	<p>The ICANN Board agrees with the CCWG that reviews of the ICANN Grant Giving Program will be important in making sure that the Program is meeting its objectives and operating as intended.</p> <p>The Board notes that there are two types of review proposed: one that reviews each granting cycle to ensure the Program is functioning as intended; and a less frequent strategic review to</p>

² See [CCWG-AP Final Report](#), page 29 under Charter Question #9.

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<p>logical interval, such as on an annual basis. The purpose of this review is to have a lean “check-in” to ensure that the program is operating as expected in terms of processes, procedures, and usage of funds. The review may identify areas for improvement and allow for minor adjustments in program management and operations.</p> <p>Second, a broader, strategic review may be an appropriate element of program implementation. This broader review could be used to examine whether the mechanism is effectively serving overall goals of the program and whether allocation of funds is having the intended impact. This strategic review is expected to occur less frequently and may involve an external evaluator.</p>		<p>ensure that the goals and impact of the program are being met. The timing of the reviews will be conducted based on the needs of the program and are distinct and separate from ICANN’s Bylaws-mandated reviews. The Board encourages implementation design to focus on ensuring that these reviews are clearly distinguished from any existing established ICANN review processes and are appropriately designed to the needs of the program.</p> <p>The Board thanks the CCWG for leaving flexibility for review design to implementation, and urges ICANN org to focus on simplicity and best practices in designing reviews. If a review results in an indication that there is a need for fundamental changes to the mechanism or the purposes of the use of funds, those would be significant changes for which additional community input would be required.</p>
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ICANN org / Constituent Parts Applying for Proceeds

<p>#8. The CCWG did not reach consensus to provide any specific recommendation on whether or not ICANN org or its constituent parts could be a beneficiary of auction proceeds, but it does recommend that for all applications the stipulated conditions and requirements, including legal and fiduciary requirements, need to be met.</p>	<p>The Board understands the CCWG’s Recommendation 8 to state “that for all applications the stipulated conditions and requirements, including legal and fiduciary requirements, need to be met.” The Board approves this recommendation and directs the ICANN President and CEO to confirm that within the ICANN Grant Giving Program, all applicants meet the stipulated conditions and requirements as otherwise recommended.</p>	<p>The Board notes that while the CCWG did not provide a recommendation on the ability of ICANN org or constituent parts of the ICANN community to be able to receive portions of the Auction Proceeds funds, the CCWG provided clear guidance that any entity applying for funds must meet all specified conditions set forth for the ICANN Grant Giving Program. This can be read in conjunction with the CCWG’s focus on safeguards, legal and fiduciary obligations, and clear conflict of interest procedures. The Board notes that this may be an issue that ICANN org further investigates during implementation.</p> <p>As it relates to ICANN org, the Board reiterates a statement it made in 2018: “ICANN maintains legal and fiduciary responsibility over the funds, and the directors and officers have an obligation to protect the organization through the use of available resources. In such a case, while ICANN would not be required to apply for the proceeds, the directors and officers would have a fiduciary obligation to use the funds to meet the organization’s obligations.”</p> <p>To the extent that implementation includes a path for ICANN SO/AC structures to apply for the ICANN Grant Giving Program, the Board cautions that conflict of interest considerations and</p>
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		clear separation of roles and responsibilities be observed. In addition, the Board notes the CCWG's stated consideration that "The applicant would need to demonstrate that the proposed use for funds is separate from work that is already funded as part of ICANN's daily operations. The CCWG anticipates that allocation of funds in this manner would be the exception rather than the rule." ³
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³ See [CCWG-AP Final Report](#), page 30 under Charter Question #10.