Response to Documentary Information Disclosure Policy Request

To:     Asvatha Babu on behalf of the Centre for Internet & Society

Date:   23 November 2016

Re:     Request No. 20161024-10

_____

Thank you for your Request for Information dated 24 October 2016 (Request), which was submitted through the Internet Corporation for Assigned Names and Numbers (ICANN) Documentary Information Disclosure Policy (DIDP) on behalf of The Centre for Internet & Society (CIS) on 24 October 2016.  For reference, a copy of your Request is attached to the email forwarding this Response.

**Items Requested**

Your Request seeks the disclosure of documentary information relating to the New gTLD auction proceeds.  Specifically, you seek the following:

"1) Documents showing the Board's decisions on the plans for the expenditure of proceeds from the gTLD auctions.

2) All presentations and proposals from any working group at ICANN to the ICANN board regarding the expenditure of the gTLD auction proceeds."

**Response**

Auctions facilitated by ICANN under the New gTLD Program are a last resort "tie-breaker method for resolving string contention among the applications within a contention set, if the contention has not been resolved by other means."  (Applicant Guidebook (AGB), Module 4.3, https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf.)  Information regarding these auctions are published on the "Auctions Results Page" at https://gtldresult.icann.org/application-result/applicationstatus/auctionresults, which includes all contention sets that have been resolved through the ICANN facilitated auction process, the details of each auction, including the string, the contention set, the date of the auction, the name of the winning applicant, the winning application ID number, and the winning price.  (*See* https://gtldresult.icann.org/application-result/applicationstatus/auctionresults.)

Your Request seeks documentary information regarding the disbursement of the New gTLD auction proceeds. Information regarding auction proceeds can be found on the "Auction Proceeds Page", available at https://newgtlds.icann.org/en/applicants/auctions/proceeds.  It was recognized from the outset of the New gTLD Program that significant funds could accrue as a result of several auctions. The auction proceeds have been reserved and earmarked until the Board authorizes a plan for the appropriate use of the funds through consultation with the

community. (*See id.*)  ICANN is committed to broad, open, and inclusive dialogue on next steps in relation to these proceeds and, ultimately, how they may be used.  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.  In March 2015, the Generic Names Supporting Organization (GNSO) started discussing a possible process for facilitating the conversation around new gTLD auction proceeds during ICANN52 such as a Cross-Community Working Group (CCWG). In September 2015, the New gTLD Auction Proceeds Paper was published. (http://newgtlds.icann.org/en/applicants/auctions/proceeds/discussion-paper-07sep15-en.pdf.)   This paper aimed to capture the information and input regarding the auction proceeds to date as well as outlined 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.  The New gTLD Auction Proceeds Paper was published for public comment in order to allow for additional input prior to submission to a drafting team, which was tasked with developing a proposed charter for a Cross-Community Working Group. (https://www.icann.org/public-comments/new-gtld-auction-proceeds-2015-09-08-en)  The public comment period was opened from 8 September to 8 November 2015, with 28 contributions received.  (*See* Report of Public Comments at https://www.icann.org/public-comments/new-gtld-auction-proceeds-2015-09-08-en#summary.)  There was general support for moving forward with a CCWG.  (*See id.*)

Following the public comment period, the New gTLD Auction Proceeds Paper was updated and submitted to the different ICANN Supporting Organizations (SOs) and Advisory Committees (ACs) to confirm the interest of those that want to move forward with the creation of a drafting team to develop a charter for a CCWG. (*See* https://gnso.icann.org/en/drafts/new-gtld-auction-proceeds-07dec15-en.pdf.)  The Drafting Team's work commenced in February 2016.  (*See* https://meetings.icann.org/en/marrakech55/schedule/mon-lac-space/presentation-new-gtld-auction-proceeds-07mar16-en.pdf.)  The work of the Drafting Team can be found on the Community Wikispace at https://community.icann.org/display/NGAPDT/New+gTLD+Auction+Proceeds+Drafting+Team+Home.

To date, a CCWG on auction proceeds has not yet been formed.  The Charter was adopted on 7 November 2016 (https://community.icann.org/display/NGAPDT/Charter?preview=/59644825/61611902/CCWG%20Auction%20Proceeds%20-%20clean%20-%20FINAL%20Charter%20-%209%20September%202016.docx).  The CCWG's Goals and Objectives are outlined in the Charter as:

> The CCWG is tasked with developing a proposal(s) for consideration by
> the Chartering Organizations on the mechanism that should be developed

in order to allocate the new gTLD Auction Proceeds. As part of this proposal, the CCWG is also expected to consider the scope[1] (see for further details below) of fund allocation, due diligence requirements that preserve ICANN's tax status as well as how to deal with directly related matters such as potential or actual conflicts of interest. The CCWG will NOT make any recommendations or determinations with regards to specific funding decisions (i.e. which specific organizations or projects are to be funded or not).

(*Id.*) The SO/ACs are currently in the process of identifying members and possible co-chairs for the CCWG. (https://community.icann.org/display/NGAPDT/New+gTLD+Auction+Proceeds+CCWG+Home)

Item 1
Item 1 requests the disclosure of the "[d]ocuments showing the Board's decisions on the plans for the expenditure of proceeds from the gTLD auctions." The Board acknowledged the importance of the CCWG's work in a letter from Steve Crocker, Chairman of the ICANN Board, on 2 February 2016. (*See* https://community.icann.org/display/NGAPDT/Background+Documents?preview=/58730906/58730908/Board%20Letter%20-%2011%20Feb%202016.pdf.) "The CCWG is empowered to gather ideas and create one or more proposals which the Board will consider in final decision making." (*Id.*) As discussed above, the community consultation process regarding the appropriate use of the auction proceeds is currently ongoing. Therefore, the ICANN Board has not made any decisions on the plans for the expenditure of proceeds from the gTLD auctions. Accordingly, there are no documents responsive to this item.

Item 2
With respect to Item 2 of your Request seeking "[a]ll presentations and proposals from any working group at ICANN to the ICANN board regarding the expenditure of the gTLD auction proceeds", as noted above, a CCWG on auction proceeds has not yet been formalized. As such, there have been no presentations or proposals from this Working Group on this topic and no other Working Groups have been tasked with developing or presenting proposals on this topic to the ICANN Board. As such, ICANN does not have any documents responsive to this request.

All documents from Drafting Team are available on the Community Wikispace at https://community.icann.org/display/NGAPDT/New+gTLD+Auction+Proceeds+Drafting+Team+Home, including meeting transcripts (https://community.icann.org/display/NGAPDT/WG+Meetings), presentation materials (https://community.icann.org/display/NGAPDT/WG+Meetings), draft documents (https://community.icann.org/display/NGAPDT/Draft+Documents), comments received on draft charter following ICANN 56

---

[1] See also Note to Auction Proceeds DT re. legal and fiduciary principles

(https://community.icann.org/display/NGAPDT/Comments+received+on+Draft+Charter+at+and+following+ICANN56), background documents (https://community.icann.org/display/NGAPDT/Background+Documents) and correspondence (https://community.icann.org/display/NGAPDT/Correspondence). Additionally, the presentation from the Drafting Team during ICANN 55 is available at https://meetings.icann.org/en/marrakech55/schedule/mon-lac-space/presentation-new-gtld-auction-proceeds-07mar16-en.pdf.

Further, over the course of the last two years, many Community discussions have been held that have included Board members, including: ICANN53 New gTLD Auction Proceeds Workshop (https://buenosaires53.icann.org/en/schedule/wed-cwg-new-gtld-auction); ICANN53 High Interest Session in Buenos Aires (in addition to workshop) (https://buenosaires53.icann.org/en/schedule/mon-soac-high-interest); ICANN56 Cross-Community session (https://icann562016.sched.org/event/7NE0/cross-community-session-charter-for-the-ccwg-on-auction-proceeds); 13 October 2016 Webinar on the Draft Charter (https://gnso.icann.org/en/node/49999); and 7 October 2015 Webinar on the Discussion Paper (https://gnso.icann.org/en/group-activities/calendar/2015).


**About DIDP**

ICANN's DIDP is limited to requests for documentary information already in existence within ICANN 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 makes every effort to be as responsive as possible to the entirety of your Request.  As part of its accountability and transparency commitments, ICANN continually strives to provide as much information to the community as is reasonable.  We encourage you to sign up for an account at ICANN.org, through which you can receive daily updates regarding postings to the portions of ICANN's website that are of interest.

We hope this information is helpful.  If you have any further inquiries, please forward them to didp@icann.org.