

## **IPC Comments on Framework for the FY11 Operating Plan and Budget**

**April 01, 2010**

The IPC is pleased to provide comments on the following sections of ICANN's Proposed Framework for the FY11 Operating Plan and Budget (<http://www.icann.org/en/planning/ops-budget-framework-fy2011-en.pdf>). The IPC remains readily available to assist ICANN in implementing these suggestions to better align the operating plan and budget with its mission of coordinating the DNS on behalf of the public's interest. As such, the IPC believes that the interests of non-contracting parties must be better integrated into ICANN's budget before it can begin to meet this objective. The IPC offers the following suggestions and comments to assist ICANN in making progress along this path.

### Section 2: Executive Summary of the FY11 Framework

This section begins with a discussion of the FY10 Operating Plan and Budget, starting with an overview of items that have been successfully completed, followed by a list of "clear challenges," the foremost of which is completing FY10 on budget. Among the factors for the extra budget pressure are "the costs associated with delays in key programs such as the New gTLD Program." However, IPC believes that delays in the new gTLD program were foreseeable given the initial fast-track approach adopted by ICANN, which did not adequately address rights protection mechanisms and key technical concerns, and that continued delays are foreseeable given that such concerns have yet to be sufficiently addressed. ICANN should consider whether budgeting for certain key programs such as the New gTLD Program would benefit from taking a long view -- e.g., envisioning an implementation process across several fiscal years, with a lower projected budget for gTLD implementation and delegation annually.

ICANN also notes that it faces a significant challenge in "determining where to focus efforts," and asks: "is it ever appropriate to say a piece of policy or implementation work will simply have to wait until a higher piece of work is completed?" The GNSO Council should prioritize the various policy development processes based upon a realistic assessment of resources from ICANN, the Council and the broader community. ICANN should budget for higher policy development costs, given the past struggles with contract compliance, the large number of abusive domain name registrations that continues to grow, and both the certainties and uncertainties presented by the new TLD program (both IDN ccTLDs and new gTLDs).

### Section 4.1: New gTLD Implementation and Delegation

This budget area is slated for a spending decrease of 11% in FY11, but is still second of the 15 Organization Activities listed in the Framework for the FY11 Operating Plan (p. 15) in terms of expense, at \$6.77 million. Despite apparent progress, many of the new gTLD overarching issues have yet to be thoroughly addressed, and conceivably might not be addressed sufficiently within FY11. Because the FY11 projected revenue is nearly even with expenses, ICANN should consider a long-term budget for gTLD Implementation and Delegation that can be spread out over several fiscal years, freeing up resources for FY11 and beyond to be used for organizational activities that in IPC's view remain underfunded, such as Contractual Compliance and better

Rights Protection Mechanisms in existing and new gTLDs. Actual revenue and costs of the gTLD program are not reflected in the Framework for the FY11 Operating Plan, but are addressed in greater detail in Section 7.

#### Section 4.2: IDN Implementation

The Proposed Framework asserts a decrease of 9.2% to \$1.14 million in FY11. The decrease is attributable to the lower requirements for outside consultants, which seems reasonable given the FY10 launch of IDN ccTLD Fast Track program. IPC notes that ICANN failed to obtain financial commitments from ccTLD operators, which would make operation of the IDN ccTLDs more budget-neutral to ICANN.

#### Sections 4.3: IANA and Technological Operations Improvements, 4.4: Security, Stability and Resiliency, and 4.13: DNS Operations

We commend ICANN for including in the proposed FY11 Operating Plan a substantial increase for all three of these budget items (18.1% for IANA and Technological Operations Improvements, 26.0% for Security, Stability and Resiliency, and 92.7% for DNS Operations). However, as with the FY10 Operating Plan, IPC has difficulty identifying the boundaries of these areas, as well as understanding which ICANN entities are responsible for implementation and oversight of the increased resources.

Again, these three budget areas appear to overlap substantially. For instance, the Security, Stability and Resiliency budget item includes “costs for DNSSEC implementation” and additional DNS security projects, but “ensuring the stability and security of the DNS” and “operat[ing] production-quality DNNSEC services” are organized under the DNS Operations budget item, and “manage root zone request processing” is listed under the IANA budget line. ICANN released its draft Plan for Enhancing Internet Security, Stability and Resiliency (SSR) in May 2009 and its Proposed Strategic Initiatives for Improved DNS Security, Stability and Resiliency (SSR) on February 12, 2010. Both documents reinforce the impression that these three budget items overlap significantly. Clear delineation of these three budget items would allow for better community understanding of ICANN’s proposed resource allocation.

#### Section 4.5: Contractual Compliance

We are happy to see some progress in this area over the past year, but again far less than appeared to be promised in the FY10 Operating Budget. For many years, IPC has been urging ICANN to implement a credible, comprehensive program to monitor compliance with, and to enforce, its contracts with gTLD registries and with accredited registrars. The entire ICANN experiment depends on using contractual agreements as a substitute for government regulation. The viability of that experiment remains in question so long as those agreements are not consistently and predictably enforced. Over the past few years ICANN has begun to bring credibility and respect to its compliance efforts, yet much more remains to be done.

The FY11 Plan asserts that there will be an increase of 6.5%, to \$3.4 million, for contract compliance. Increased compliance resources are certainly necessary, but will not be sufficient to create the “culture of compliance” throughout ICANN that ICANN senior staff has told the IPC

was its goal. We reiterate that more concerted efforts are needed to raise dramatically the profile of compliance issues from the viewpoint of contracted parties; to strengthen the fledgling efforts of ICANN to communicate to the public about its compliance activities; and to adopt a more strategic approach, which focuses on compliance efforts that will deliver the greatest impact for domain name registrants and Internet users.

There has been progress on some of these fronts over the past year, but the question of strategy, which is probably the most important one, appears to have advanced the least so far. Yet we appreciate that outreach efforts are increasing, including the quarterly compliance reports and increased accessibility to compliance staff. Still we look forward to working with ICANN staff over the next year to continue working towards ICANN's strategic and systemic goals.

We note that the "external ICANN contract compliance advisory council" contemplated in last year's plan seems to have been discarded, though we thought it could be of great value in evaluating ICANN's successes and shortcomings in this field, and recommending what tough steps ought to be taken to improve the track record and build the "culture of compliance". It remains our hope that such a council should be populated by reaching out to law enforcement, corporate compliance specialists, and auditing organizations, as well as experts in combating online fraud, cybercrime, counterfeiting, piracy, and similar misconduct. A council so constituted could provide a real-world, open and transparent perspective on how ICANN can do a better job of enforcing its contracts. This will be particularly important as the High Security TLD program moves forward, particularly to the extent it might be considered a certification program.

Last year we welcomed ICANN's plan to hire a Whois compliance manager, and to train and support auditors in three additional global regions. Yet ICANN appears not to have followed through on that plan, as there is no publicly identified Whois compliance manager, and we understand that ICANN has only hired one regional auditor in Asia. In particular with respect to Whois, in light of the very clear Affirmation of Commitments on this point, ICANN needs to do MUCH more to improve the accuracy of Whois data.

The recently published Whois accuracy study seemed to have taken more than a year to produce despite its modest sample size, yet clearly indicates a widespread problem with Whois accuracy that ICANN has inadequately attempted to address over the past many years. We appreciate that ICANN lists this as the first priority in this area, and hope ICANN makes dramatically more progress on this critical issue this year, than was accomplished last year. Extra budget needs to be set aside not just for compliance functions in this area, but also for policy development.

As for the Whois data problems reporting system (WDPRS), IPC repeats its request from last year, that ICANN devote some of ICANN's public relations spending to publicizing the availability of this system among consumers, domain name registrants, anti-phishing and other anti-fraud organizations, and civil and criminal law enforcement agencies, with the goal of making its use routine, not exceptional, whenever users encounter registrant contact data that appear false.

IPC further notes the statement made last year by ICANN that “a key focus in FY10 will be asking the community to consider what contractual/policy tools are necessary to make compliance efforts even more effective and more cost efficient in the long term.” There seems to have been little if any movement on this since then, though we note the second proposed focus on better IT systems and tools for the compliance team. We continue to believe there is considerable potential for advancing this goal through improved contract terms, both in the Registrar Accreditation Agreement at the registrar level, and in the various registry agreements, notably those that are being prepared for applicants to operate new gTLD registries. We welcome the proactive involvement of ICANN staff in achieving stronger contractual provisions in both these arenas.

IPC has reviewed the listed priorities in this part of the FY11 plan. Given that many of the priorities listed in the FY10 plan, and our comments on them, have not been achieved, it is hard to justify a point by point analysis of ICANN’s list of priorities in this area, some of which are longstanding priorities, and some new.

However, we do strongly encourage ICANN to pursue the third listed priority with vigilance: “Manage, respond to, and measure the volume of incoming complaints about registrars and registries as well as Whois data inaccuracy complaints from consumers.” This must be done in an open and transparent manner so that the data can be properly verified and acted upon. Again, this will require not only increased budget for compliance efforts, but also for policy development to prevent the harms caused to consumers and businesses, which are demonstrated by many of the complaints that are filed.

#### Sections 4.6 – 4.10.

ICANN plans on increasing its budget for Constituency Support (up 3.8%), Core Meeting Logistics (up .8%), Policy Development Support (up 12.8%) and Global Engagement and Increasing International Participation (up 8.6%). While IPC supports increased participation in policy development, we believe that such participation must come from all elements of the Internet community, including registrants, Internet users, private internet businesses, intellectual property holders, etc. Yet, it appears from the specifics of the plan that ICANN is still failing to reach in any real way beyond contracted parties in its policy making process and oversight activities. While there is some lip service paid to reaching out to other constituencies, virtually all Constituency Support, Core Meeting Logistics, Policy Development support and Global Engagement activities revolve around contracted parties rather than support for activities that obtain input from or discuss current issues with representatives of other constituents such as private sector internet businesses or intellectual property owners.

We believe that a key problem with the Proposed Framework is lack of budget to promote adequate growth of the non-contracting Constituencies. We suggest that ICANN make a firm commitment of funds over the next 3 years to enable the non-contracted constituencies to hire more professional help, cover travel to meetings, conduct outreach, etc. Such a grant would enable the non-contracted constituencies each to have better control over their fate, and would put them closer to par with respect to all the resources ICANN expends on such efforts for its contracting parties, including dedicated Staff, regional meetings only of contracted parties, etc.

#### Section 4.11: Ombudsman

This budget area is slated for a spending increase of 22%. The FY11 Framework does not provide any explanation for this substantial increase. IPC believes that an explanation should be provided in the FY11 draft plan.

#### Section 4.15: Administrative Improvement

The fourth largest spending increase called for in a single area is "Administrative Improvement," where a 21.1% increase to \$2.23 million is foreseen. According to ICANN, this increase is largely attributable to the "volume of reviews to be executed in a timely and efficient manner."

While generally they are required by ICANN's bylaws, it is unclear what value (if any) will be derived from these reviews. Several past reviews have been ignored, in particular with respect to GNSO restructuring. IPC is concerned about ICANN diverting resources to these reviews that could be used more productively in addressing problems with the management of the domain name system, in particular abusive domain registrations and malicious use of the DNS.

#### Section 5.

In the economy we are currently facing, IPC believes ICANN should be budgeting conservatively. Consequently, we believe it is a mistake for ICANN to anticipate higher FY11 registrar revenues, ccTLD revenue, and Other revenues than currently forecasted for FY10. For example, ICANN has budgeted almost \$2 million more in registrar revenue than it budgeted for FY10 and this amount is also almost \$650,000 more than the FY10 forecast. Similarly, ICANN budgets ccTLD revenue to be the same as its budget for FY10, even though the forecast for FY10 is almost 25% below the FY10 budget. Likewise, ICANN budgets Other revenue to be the same as its budget for FY10, even though the forecast for FY10 is over 33% below the FY10 budget.

#### Section 6

IPC notes ICANN's goal to adopt budgets that add approximately \$10 million per year to the Reserve Fund in order to achieve the Reserve Fund target level equivalent to one year of operating expenses. Over the past two years, ICANN has adopted budgets with a \$5 million annual Reserve Fund target with the expectation that the additional resources would be spent preparing the new gTLD program, and those same resources would be recouped from new gTLD application fees in order to replenish the Reserve Fund. However, as the new gTLD program and application process are expected to be revenue-cost neutral (pp. 16, 32), it is unclear how ICANN will effect this plan.

As further delays to the new gTLD program are conceivable, we generally caution ICANN in relying on recouped resources from application fees, and to consider this in "fine tuning" the determination of the appropriate level for the Reserve Fund.

#### Conclusion

The IPC remains readily available to further assist ICANN in developing an operating plan and budget that reflects the value in its mission of coordinating the DNS on behalf of the public's interest. Thank you for considering our views.