

# COALITION FOR ONLINE ACCOUNTABILITY

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## Framework for FY 11 Operating Plan and Budget Comments of Coalition for Online Accountability (COA) April 1, 2010

The Coalition for Online Accountability (COA) appreciates this opportunity to comment on ICANN's "Framework for the FY11 Operating Plan and Budget" (the "Framework").<sup>1</sup> See <http://www.icann.org/en/public-comment/#op-budget-fy2011>. More information about COA is provided at the end of this submission.<sup>2</sup>

### Introduction

The Framework portrays the upcoming fiscal year as one of relative austerity for ICANN, with the organization spending far beyond its budget for the current year, and with the sharp annual revenue increases characteristic of the past few years flattening to only 2.5 % next year. In this regard, it is instructive that the Framework states that ICANN's funding "come[s] largely from generic registries and registrars that are accredited by, and contracted with, ICANN." (p.9) This statement is misleading. In fact, ICANN's funding comes almost entirely from registrants of domain names in the generic Top Level Domains. These registration fees are paid directly to registrars, and indirectly to registries, each of which ultimately writes checks to ICANN from this revenue, based on formulae in their contracts with ICANN.

While the statement on page 9 of the Framework document about ICANN's funding sources could easily be corrected, what will be more difficult to correct is the mindset that led to the error in the first place.<sup>3</sup> That mindset, which has been reflected in previous ICANN budget

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<sup>1</sup> COA regrets it is unable to provide more comprehensive comments on this document. We note that this is one of thirteen ICANN documents on which public comment periods expire between Sunday, March 28, and Thursday, April 1. Comment periods on at least three other documents close between April 8 and 15. This log-jam in the public comment process casts serious doubt on ICANN's stated commitment, in the Affirmation of Commitments of September 2009, to "responsive consultation procedures." See <http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm>

<sup>2</sup> COA is an active participant in the Intellectual Property Constituency of the GNSO's Commercial Stakeholders Group, and we reference previous IPC budget submissions in this document as follows: IPC 2009 (see [http://www.ipconstituency.org/PDFs/IPC%20submitted%20comments%20on%20FY10%20op%20plan-budget%20042808%20\(2216691\).pdf](http://www.ipconstituency.org/PDFs/IPC%20submitted%20comments%20on%20FY10%20op%20plan-budget%20042808%20(2216691).pdf)) and IPC 2008 (see <http://www.ipconstituency.org/PDFs/Comments%20of%20GNSO%20IPC.PDF>).

<sup>3</sup> The Intellectual Property Constituency called attention to this very point in its budget submissions in 2008 and 2009. IPC 2008 at 2; IPC 2009 at 3. The fact that the statement remains uncorrected speaks volumes.

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American Society of Composers  
Authors & Publishers (ASCAP)

Entertainment Software Association (ESA)

Software & Information Industry Association (SIIA)

Broadcast Music Inc. (BMI)

Motion Picture Association of America (MPAA)

Time Warner Inc.

Recording Industry Association of America (RIAA)

The Walt Disney Company

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and planning documents for many years, is that the organization must cater first to the needs and interests of its contractual partners, rather than to the broader interests of other participants such as domain name registrants, much less to the public interest of Internet users as a whole. Some observers expected that when ICANN entered into the Affirmation of Commitments last year and pledged to act “in the public interest,” this mindset would change. See <http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm>. The Framework suggests that this expectation could be too optimistic.

Given the Framework’s request for comments on the priorities reflected in the document, and on “opportunities for cost reductions,” (p. 5), this submission turns first to those budget categories that are slated for the largest increases in FY 11. We then offer comments on a few other categories.

A. Fastest-growing budget categories

1. DNS Operations  
Security, Stability and Resiliency Operations (SSR)

These are the two fastest-growing budget lines in the Framework document, which calls for budget increases of 92.7% and 26.0% respectively. These are also the two largest proposed increases in dollar amounts, totaling over \$2.6 million. COA does not question the importance of the issues that ICANN proposes to address under these categories in FY 2011; but we are concerned that the Framework falls short in explaining how these dramatic budget increases are proposed to be spent.

In its comments on last year’s budget document, the IPC pointed out “difficulty ... in discerning the boundaries” between these areas, and “in understanding just which entities within the ICANN volunteer structure are responsible for overseeing, commenting on, or having input into how these increased expenditure levels are implemented.” [2009 comments at 2] This problem has not been dealt with in this year’s document. For example, with respect to deployment of DNSSEC, the SSR budget line is said to cover “the costs of DNSSEC implementation” (page 18), while “support needed to accommodate the operation of the DNSSEC efforts” is covered in the “DNS Operations” category. The latter includes “operat[ing] DNSSEC root signing key facilities designs [and] production-quality DNSSEC services for all zones over which ICANN has responsibility.” (page 25) What are the additional “costs of DNSSEC implementation” beyond those just listed? These questions must be clarified before the community can fully evaluate the extraordinary budget increases proposed for these categories.

2. Ombudsman

COA recognizes that, under its by-laws, ICANN simply incorporates the ombudsman’s budget submission “in its entirety and without change” in its budget (see page 26). But the community deserves a more complete explanation for why this budget line should be exempted from the overall fiscal stringency imposed by reduced revenue increases, and accorded a 22% budget increase.

3. Administrative improvements (also referred to as “organizational improvement”)

The 21.1% increase here seems to be attributable mainly to the need to conduct the reviews called for in the Affirmation of Commitments. COA would be pleased if the budget also reflected a decrease in spending on the other organizational reviews to which so much of ICANN’s resources, and the time, energy and bandwidth of volunteer participants, have been devoted in previous years, with so little return. COA fully endorses the comment made by IPC last year: “Organizational reviews would be an excellent place to start” in finding “areas of ICANN work that could be streamlined, reduced or deferred.” IPC 2009 at 4.

B. Other budget categories

4. Constituency support

This budget category is obviously mislabeled. Its name should be changed to “Catering to the needs of contracted parties.”

There are now four stakeholder groups within the Generic Names Supporting Organization. But everything listed under this budget category on pages 21-22 of the Framework supports only two of these stakeholder groups – registrars and registries. The first sentence of this section notes that new TLDs “will increase the number of gTLD registries and ICANN-accredited registrars around the globe,” and the second sentence emphasizes that “increased support for these constituencies continues to be a priority for ICANN.”<sup>4</sup> (emphasis added) The rest of the section lists only deliverables relevant to registries and/or registrars.

This problem could easily be addressed, and without adverse budget consequences, if ICANN were to dedicate one-half of the resources allocated to this budget item – \$3.15 million – to activities intended to support and grow the other half of the GNSO – the commercial and non-commercial stakeholder groups, and the constituencies that make them up. Such an allocation would exemplify an ICANN priority to support all constituencies, not just those representing parties in contractual relationships with ICANN.

Of course, COA does not expect this to occur, because it is clear from the Framework that this is not an ICANN priority to support the participation of non-contracted parties. The Operating Plan for FY 09 called “broadening participation” a “key initiative” for ICANN, and specifically targeted “improv[ing] ICANN’s accessibility to the business community.” But any reference to outreach to independent (non-contracted) businesses was eliminated from the FY10 plan, and has never been seen since. The phrase “business community” does not even appear in the Framework document for FY11. This exemplifies the mindset referred to above, which is not only short-sighted, but also increasingly inconsistent with ICANN’s publicly trumpeted commitment to serve the public interest.

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<sup>4</sup> The Framework seems to use the term “constituency” in a colloquial sense here, or else its drafters are unaware that the Registrar and Registry Constituencies within the GNSO no longer exist.

## 5. Contract Compliance

ICANN has continued to make progress over the past year toward a more robust and effective contract compliance function. COA believes there has also been some progress toward the less measurable but extremely important goal of developing a “compliance culture” within ICANN. COA, and other IPC members, have good working relationships with the ICANN contract compliance staff. But it seems clear to us that much more remains to be done, and significantly increased resources are needed in order to accomplish it.

In this regard, it is disappointing that the budget for contract compliance is slated to increase only 6.5% in FY11, and that by comparison to what is actually forecast to be spent in FY10, the proposed budget line actually represents a decrease. ICANN’s contract compliance activities have far to go to achieve the timeliness, responsiveness and nimbleness needed to effectively enforce ICANN’s contracts with registrars and registries. For an organization like ICANN that uses contractual commitments as a substitute for regulation or laws, this issue goes to the credibility of the entire enterprise and the viability of the much-vaunted “ICANN model.”

The revision of the Registrar Accreditation Agreement that came into force in 2009 provides ICANN staff with some enhanced tools for auditing and compliance. COA, along with the IPC, believes that more extensive amendments are necessary, and is pleased that a process is now underway to identify topics for further amendments. Contract compliance staff have already made a significant contribution to this new process. Both to ensure that the enforcement tools in the 2009 amendments are effectively used, and to expedite progress toward further amendments, full funding for the contract compliance function is critical.

It need hardly be stated that the contract compliance challenge will become even more massive with the rollout of many new gTLDs in the years to come. ICANN should tackle that challenge from a baseline of a contract compliance function that has proven itself to be fully adequate to enforce the existing contracts with registries and registrars. Even taking into consideration the substantial progress made in recent years, ICANN has not yet achieved this adequate baseline. Now is certainly not the time to require ICANN’s contract compliance team to do much more with less – or with scarcely any more – than the resources allocated to it last year.

Respectfully submitted,

Steven J. Metalitz, counsel to COA

COA consists of nine leading copyright industry companies, trade associations and member organizations of copyright owners. These are the American Society of Composers, Authors and Publishers (ASCAP); the Business Software Alliance (BSA); Broadcast Music, Inc. (BMI); the Entertainment Software Association (ESA); the Motion Picture Association of America (MPAA); the Recording Industry Association of America (RIAA); the Software and Information Industry Association (SIIA); Time Warner Inc.; and the Walt Disney Company.