



IPC PRELIMINARY COMMENTS

December 12, 2014

The Intellectual Property Constituency (IPC) of ICANN's Generic Names Supporting Organization submits the following preliminary comments on ICANN's draft 5-year operating plan. See <https://www.icann.org/public-comments/proposed-opplan-budget-2016-2020-2014-11-11-en>.

To a great extent, these preliminary comments consist of questions posed to the drafters of the plan. We look forward to receiving responses from ICANN staff in time to incorporate into final comments during the reply round that ends January 5. In any event, IPC reserves the right to supplement these comments during the reply round.

IPC's questions include the following (page references are to the draft plan at <https://www.icann.org/en/system/files/files/proposed-opplan-budget-2016-2020-10nov14-en.pdf>):

- P. 12: The "SO-AC Special Request process" would be eliminated after FY 17. What will replace it? Will these requests be folded into the overall budget process, and if so, how? Or will ICANN simply provide (e.g.) IPC with a "block grant" that it could spend on anything within a menu of possible activities, as we decide would best enhance our effectiveness?

Whatever replaces the SO-AC Special Request process will need to be designed and fit for the purpose of significantly increasing concrete ICANN support for the participation of non-contracted stakeholders in the policy development and other work of ICANN. Unless adequately addressed, the huge shortfall in such support will make it impossible for ICANN to achieve many of the other stated goals of its strategic plan. Although ICANN advocates strongly for the multi-stakeholder bottom-up process in its stated goals, its financial commitment toward that end is inadequate to support parity of participation in the process, in particular as to those stakeholders who do not enjoy financial gains from sales of registrations. This is a fundamental structural problem not addressed in the Draft Operating Plan.

- Pp. 14-15: Over the next 5 years, the "Identifier registration data access/update system" will be developed, approved, prototyped, revised, beta tested and put into production. What is it? A search of the ICANN site suggests this phrase occurs nowhere but in this document. Please explain this system, and how if at all it relates to the current (Whois) or future registration data system for gTLDs.

- Same pages, same questions as to “DNS/Unique Identifiers health metrics.” What are these?
- Same pages, same questions as to “ICANN legitimacy survey.” What is this?
- P. 17: Why is it a goal to “show stable healthy year over year growth in the DN industry” over each of the next four years? Despite evidence of recurrent confusion on this point from some in the ICANN senior staff, ICANN is not a trade association for the domain name industry. Isn’t it perfectly plausible for ICANN to achieve its strategic objective of a “robust, stable and trusted domain name marketplace” even if the “industry” is not “growing”?
- P. 18: “Community bandwidth and focus to provide direction and feedback” is listed as a dependency on this page. Why only with regard to financial accountability? Community bandwidth is a dependency for ICANN’s success in almost every area – isn’t it? Where in the draft plan does ICANN plan to take any concrete steps to conserve and to utilize more efficiently this scarce and dwindling resource?
- Pp. 23-25: There seems to be a lot of overlap among the three strategic goals discussed on these pages. For example, the FY 18 entry for goal 4.1 and 4.2 (pages 23 and 24) is almost verbatim identical. Can ICANN more clearly distinguish among these goals?

Finally, IPC has a number of questions concerning the metrics proposed in the plan as “key performance indicators.” We see the suggested metrics as straw men and encourage them not to be cemented, but expressed more generally in the 5-year plan, and solidified with community input to have more practical measures of programmatic success. For example, answers to the following questions could be useful:

- Strategic Goal 1.3 (page 12): measuring “active participation” in policy development. Some of this is quantifiable, some of it much less so (e.g., a person who frequently posts to a working group mailing list may be adding little more than “+1”). How does ICANN propose to reflect this qualitative variation in participation in measuring “active participation”?
- Goal 2.3 (page 17): measuring “# of abuse incidents compared to the # of registrants” could be misleading on both ends. This metric could unjustifiably favor registries (or registrars) with high-volume registration models, since a given number of incidents would have comparatively less impact on this ratio. At the same time, unless “abuse incident” is more specifically defined, the numerator of this ratio could lump together technical, “paperwork” type violations with truly serious problems. How does ICANN propose to avoid these pitfalls?
- Goal 3.3 (page 21): “knowledge level of Board, staff and stakeholders”: how would this be measured, by whom, and against what standard?

- Goal 4.1 (page 23): the number of MOUs between ICANN and “international organizations” is certainly countable, but does this metric take into consideration how meaningful any particular MOU might be in practice?
- Goal 4.3 (page 25): “# of governments and other stakeholders willing to have a national multistakeholder distributed IG structure.” Why is the metric “willing to have” rather than “having”? Who determines this willingness? Who decides whether a particular nation’s “IG structure” (or the structure a particular stakeholder or government is “willing to have”) meets these criteria?
- Goal 5.1 (page 27): “# of ICANN decisions and advice that are rationalized based on common consensus based definition of public interest”—does any such definition exist? If it did, could this metric be satisfied simply by reciting the right “magic words” in the stated “rationalization”? If not, how would the number be determined?

As stated above, IPC looks forward to meaningful responses to these questions so that it can prepare more comprehensive comments on the draft 5-year operating plan before the end of the reply round.

Respectfully submitted,

Steve Metalitz, IPC VP