

Draft ICANN FY17 Operating Plan and Budget - RySG Comments

28 April 2016

The gTLD Registries Stakeholder Group (RySG) appreciates the opportunity to submit its input regarding the Draft ICANN FY17 Operating Plan and Budget (Plan).

We want to first of all express our sincere appreciation for two things related to the Plan: 1) It was posted for public comment with nearly two full months allowed for review and comment; 2) it contains expense detail down to the project level.

It was our understanding from the ICANN Finance Team that additional cost detail was supposed to be provided by the end of March for projects having a value of at least \$1.5M. But as far as we are aware, this never happened. If we missed it, please point us to it. If it was not done, please explain why and inform us when it will happen.

Here are some highlights of the comments that follow:

- The RySG is very concerned that planned expenses are growing faster than planned revenue.
- Universal Acceptance is a high priority for gTLD registry operators but this is not included as a multi-year project.
- Given the importance of the policy development activities, it would appear that the \$6.3m budgeted for this portfolio is considerably low when compared to other portfolios.
- More detail should be provided on the components that comprise Support Operations, given the \$22.1m attributed to this function.
- Increasing the number of GAC members is a misleading measure in determining whether the goal of “clarify the role of governments in ICANN...” is being met, particularly, if ICANN continues to increase the level of travel support for GAC attendees.
- Spending on Compliance activities should stay within the bounds of what registries and registrars are contractually obligated to do.

To make it easier for readers of these comments to refer to the full documents posted for public comments and hence see the full context of our comments, we provide the links to those documents:

Request for public comment announcement

<https://www.icann.org/public-comments/op-budget-fy17-five-year-2016-03-05-en>

Draft ICANN FY17 Operating Plan & Budget

<https://www.icann.org/en/system/files/files/proposed-opplan-budget-fy17-05mar16-en.pdf>

Spreadsheet with cost detail at the project level

<https://www.icann.org/en/system/files/files/proposed-opplan-budget-portfolio-project-spreadsheet-fy17-05mar16-en.xlsx>

Note that the comments below are presented under the applicable headings from the Plan.

3 – ICANN Operations

3.1 Resource Utilization

Similar to what we communicated in our comments a year ago for the Draft FY16 Operating Plan & Budget, we again are concerned that planned expenses are growing too fast and faster than planned revenue. In particular, revenue is forecasted to grow by \$11.6M (9.6%) while expenses are projected to grow by \$17.8M (16.3%). We appreciate the fact that planned expenses balance planned revenue but we would suggest that continuing to simply spend all of increased revenue is not the only option; because gTLD registries, registrars and registrants fund well over 95% of ICANN's revenue, reducing gTLD fees should be considered as well.

Considering the growth of the domain name industry with the ongoing introduction and growth of new gTLDs and considering what seem to be increasing security issues in the global economy, we support the expense increases for the GDD and IT/Cyber Security. And we support the 5.3% increase in SO/AC Policy & Engagement considering what seems to be an ever increasing policy development workload, especially in the GNSO. But these four areas only account for \$7.9M out of a total increase of \$17.8M in expenses. We understand that industry growth has an impact on some of the other areas as well, but question whether all the increases are warranted and suspect that costs could be controlled more tightly.

Because of higher than normal unknown expenses for FY17, we have some empathy for a one-year contingency fund but we think this should be a one-time event. ICANN's very predictable revenue combined with the fact that expenses are typically relatively easy to predict means that a contingency fund should be unnecessary.

In addition, we recommend that ICANN reassess the need to target for such a large reserve fund. Any such reassessment should be done with significant input from the community, especially those who provide the majority of ICANN revenue. We believe that setting aside too many funds for unknown expenses undermines ICANN's accountability.

With regard to the reserve fund, we believe that it would be helpful to describe ICANN's policy/procedures for managing it in the Operating Plan and Budget or at least provide a link to such information. To ensure that the reserve funds are managed effectively, we think that the following principles should be applied: 1) a reasonable amount should be maintained in a fairly liquid form so that it is readily available to meet unanticipated needs such as an emergency need to replace part of the infrastructure in case of a physical disaster or a longer term telecommunications failure; 2) funds should be maintained in at least two independent and reliably rated financial institutions; 3) some of the funds should be kept in relatively low risk accounts that provide opportunities for growth; 4) ICANN's investment portfolio and investment policy should be reviewed regularly with input from the community.

We note that Governance support costs increased more than SO/AC policy & engagement. Why? Is this because of the new accountability measures? If not, this is concerning because, in our opinion, policy development is one of the most important elements of the multi-stakeholder model.

3.2 Support & Revenue

How were the percentages for high & low registry revenue estimates calculated? Are we correct in assuming that the 'best estimates' were used in the draft budget?

For legacy TLD renewals, what rate was assumed for the China-based volumes from 4Q15? Publicly traded registry operators already have guided that those rates likely will be very low (< 10%).

Why is ccTLD revenue fixed to amounts the same as the last several fiscal years when ccTLDs are experiencing comparable growth to gTLDs?

Using the Best Estimates, note that revenue from gTLDs is 128.8M, 97.3% of Ops revenue. In the FY16 forecast, it was 117.1M, 96.9%. In other words, the share of ICANN revenue coming from gTLD sources is continuing to grow from already very high levels.

3.3 Operating & Capital Expenses

What is the average percentage of salary increase for FY17? What is the average percentage increase of fringe benefits for FY17?

45 new employees were hired in FY16. It would be helpful to see a breakdown of those new hires by department, by project and by geographic location. It also would be helpful to know the inflation rates in the applicable geographic locations where ICANN has staff.

3.4 Multiyear Projects

Referring to the first row of the table in this section, what impacts are anticipated to contracted parties from the new Enterprise Resource Planning (ERP) system?

The second sentence of the third paragraph of this section says: "For FY17, all but the IANA Stewardship Transition project are suggested to be funded from ICANN's annual revenues." It would be helpful to see a detailed listing of the projects that will be funded from the reserves in FY17.

Regarding the 'ICANN Contribution to IPv6 Uptake' project, what does 'will look at contractual parties and ccTLD operators' mean? From where does ICANN derive any authority to engage registries or registrars on IPv6 adoption?

We note that Universal Acceptance is not included as a multiyear project. Why is that? It definitely seems to be one that will be ongoing over many years.

3.5 Risks & Opportunities

Were the dollar amounts of the risks & opportunities in the table below calculated using the assumptions in the low and high revenue estimates?

5 – New gTLD Program

5.1 New gTLD Financial Summary

The explanation of the ‘Others’ category says: “This includes actual risk costs of -\$5.0M and net investment gains of -\$4.0M. Future risk cost through the end of the program cannot be estimated.” What do the Actual Risk Costs include? What is the plan for the very large amount allocated for Future Risk Costs? Why can no estimate be made of future risk costs? Is staff arguing that the total Remaining Balance must be retained until the end of the Program (which could be years away) ‘just in case’?

With regard to New gTLD excess revenue and the Last Resort Auction funds, we repeat a couple of the things we said in our comments for Section 3.1 above. We believe that it would be helpful to describe ICANN’s policy/procedures these funds in the Operating Plan and Budget or at least provide a link to such information. To ensure that these funds are managed effectively, we think that the following principles should be applied: 1) funds should be maintained in at least two independent and reliably rated financial institutions; 2) the funds should be kept in relatively low risk accounts that provide opportunities for growth.

7 – FY17 Operating Plan & Budget – Description

7.3 - 1.1 Further globalize and regionalize ICANN functions

SO/AC Leaders’ question regarding justification for a planned Outreach office in Nairobi, Kenya still has not been satisfactorily addressed. Under 7.3, KPI appears to be “availability for region = success” – regardless of whether it was asked for or any rationalization of the investment is available.

7.4 - 1.2 Bring ICANN to the world . . .

We wonder whether the proposed metrics are skewed. For example, the Fellowship Program criteria doesn’t consider applicants from many parts of the world.

Portfolio 1.3.1 Support Policy Development, Policy Related & Advisory Activities

\$6.3M is budgeted for this portfolio. That represents only 4.8% of ICANN’s total FY17 expenditures. Considering the importance of policy development and multistakeholder processes, this percentage seems quite low?

7.8 - 2.2 Proactively plan for changes in the use of unique identifiers and . . .

“Technical Reputation Index will measure ICANN’s reputation for technical excellence in both the ICANN and broader Internet communities”. How will this be calculated?

Portfolio 2.2.4 Security, Stability, and Resiliency of Internet Identifiers

- It seems appropriate that a large majority of the total expenses for Goal 2.2 is spent on SSR. (\$3.8M out of \$5.1M, 74.5%).

7.9 - 2.3 Support the evolution of domain name marketplace to be robust, . . .

Item 3 says: “Show stable healthy year over year growth in the domain name industry” What does this mean? What does ‘stable’ mean?

The third bullet under Portfolio 2.3.1 (WHOIS Coordination & Implementation) says: “Determining whether there is a better system for providing information about gTLD domain names, consistent with applicable data protection and privacy laws.” To measure this would require collection and updating of ‘applicable data protection and privacy laws’ around the world. How will that be done? Is \$200K for ICANN personnel sufficient for doing this?

The description of Portfolio 2.3.2 (GDD Registrant Engagement & Support) says: “Support, engagement and advocacy for the global registrant community.” In reading the description of the two projects included for this portfolio, we concluded that this is a customer service function. Is that correct? If so, the \$800K budgeted for this seem reasonable, \$700K for personnel (6.4 FTEs). In the description, it might be helpful to refer readers to the spreadsheet or PDF files listing the projects and/or expanding the description a little for those who might not take the time to go to those files.

The description of Portfolio 2.3.3 (GDD Technical Services) says: “Projects to enhance systems, services and technical subject matter expertise related to a safe, secure, and reliable operation of the DNS”. We note that this portfolio contains two projects: 26015 - GTLD Technical Compliance Monitoring; and 122002 - Ongoing Operations & Policy Research Administration - FY17. This is a good example of the helpfulness of the project level detail provided in the Microsoft Excel and PDF files.

The description of Portfolio 2.3.4 (Internationalized Domain Names) says: “Description: Support the introduction and universal acceptance and adoption of Internationalized Domain Names (IDNs). The \$1.2M budgeted for this seems very worthy. Noting that \$800K is budgeted for professional services, it would be helpful to identify what professional services are planned. Referring to the projects spreadsheet, we see that this portfolio includes seven (7) projects but only four (4) of them have any funds allocated: three for IDN variants and one for ccTLD evaluations. In other words, except for the indirect benefits that may be accrued from the variant work and the evaluation of IDN ccTLDs, there are no funds for actually facilitating universal acceptance of IDNs, which we think is a mistake. Are funds for universal acceptance budgeted elsewhere? If so, that should be noted here or the portfolio description should be changed. If not, then we strongly believe that funds should be budgeted to support universal acceptance of IDNs and to promote IDNs in general.

The description of Portfolio 2.3.5 (New gTLD Program) says: Projects and ongoing activities in support of the new gTLD Program. Because this is an \$11.7M portfolio, we think it would be useful to specifically refer to the projects spreadsheet in the description and list the five projects included.

Portfolio 2.3.8 (Next gTLD Round Planning) is an important area for gTLD registries and registrars so the \$2.5M budgeted is appreciated.

The description of Portfolio 2.3.9 (Universal Acceptance) says: “ICANN support to the Internet community to enable all protocol valid domains - including ccTLDs, gTLDs, and IDNs - to work in applications regardless of the age or script. This work is intended to support the goals of the user choice, user confidence, and competition.” Universal acceptance is a critical issue for the RySG. Are we correct in assuming that universal acceptance of IDNs is covered in this portfolio rather than Portfolio 2.3.4 even though the description of 2.3.4 includes universal acceptance of IDNs? We note that \$1.3M is budgeted

for professional services for this portfolio. Because of its importance, we request that more detail be provided regarding what services are being considered.

7.11 – 3.1 Ensure ICANN’s long-term financial accountability, stability and sustainability

The RySG believes that this goal should include a portfolio for cost benefit analysis and cost control of projects, especially major projects.

Item 1 under this goal says: “Achieve financial roadmap annual targets (as designed in FY16).” Where can the targets be found? If they are still to be developed, who will do that and when?

The description of Portfolio 3.1.5 (Support Operations) says: “Various programs and projects that support functional operations. This description is terribly inadequate for a \$22.1M portfolio. This is definitely a case where the projects spreadsheet is very useful but we still think that a little more detail should be provided in the description, possibly by listing the key elements of the 8 projects for which funds are budgeted: hub offices, staff morale & awards, HR operations, talent acquisition, L.A. Office construction, CEO Office Management, & Meetings Team. We have not seen yet but are expecting additional cost detail for the two projects that have expenses of \$1.5M or more: 124942 - FY17 Office of the CEO Management; 126421 - FY2017 Meetings Team Ongoing Operations and Coordination.

7.15 - 4.1 Encourage engagement with the existing Internet governance ecosystem . . .

How does ICANN define the term ‘Internet governance’? It is essential to understand this considering that ICANN’s mandate is supposed to be limited to management of technical identifiers (names and numbers) and not trying to solve all problems online across myriad jurisdictions.

The description of Portfolio 4.1.1 (Coordination of ICANN Participation in Internet Governance) says: “This portfolio includes those projects that coordinate ICANN’s support for and participation in the Internet Governance Ecosystem as well as collaboration with other entities in the ecosystem on projects and initiatives of shared interest.” Would “investments” in initiatives like NetMundial or the Chinese forum be included here? How can the community obtain some predictability before the new CEO goes on a spending spree?

7.16 - 4.2 Clarify the role of governments in ICANN and work with them. . .

The success of this goal will be achieved by the following metric: “Increase # of GAC members (level of actual active participation and level of representation at ICANN meetings).” This could be a misleading metric if ICANN continues to offer travel support to more GAC attendees. It would seem to be more meaningful to measure the level of active participation instead of just attending meetings. Contributions such as GAC list activity and meeting interventions are examples of what might be good metrics.

The description of Portfolio 4.2.2 (Engagement with Governments and IGOs) says: “This portfolio includes those projects supporting and coordinating outreach and engagement with governments and IGOs nationally, regionally and internationally to increase governments’ knowledge of and participation in the global Internet Governance ecosystem.” This seems to go beyond ICANN’s mission. Wouldn’t it

be more appropriate to word it something like the following: “. . . increase governments’ knowledge of and participation in the ICANN multi-stakeholder governance system”? Could this portfolio be combined with 4.3.1 (Support Internet Governance Ecosystem Advancement)?

7.18 - 4.4 Promote role clarity and establish mechanisms to increase trust . . .

The full statement of this goal is: “Promote role clarity and establish mechanisms to increase trust within the ecosystem rooted in the public interest.” This goal is difficult to achieve let alone measure because there is no consensus within the community about how “public interest” should be defined within the ICANN context, and it may be very difficult to reach agreement on a definition because the term ‘public’ is itself extremely diverse.

The description of Portfolio 4.4.1 (Contractual Compliance Functions) says: “Day-to-day activities to ensure compliance by registrars and registries with their contractual obligations to ICANN and to report back to the community.” It seems that current ICANN Compliance’s reporting confuses day-to-day activity with functional performance. The RySG would like to see reports on the performance of the ICANN Compliance function in order to better measure its efficiency and effectiveness, especially in light of the threefold increase (from \$2M to \$6M) of its annual budget over the past few years.

The description of Portfolio 4.4.3 (Contractual Compliance and Safeguards) says: “Projects relating to: (1) outreach to ICANN constituents regarding contractual compliance; (2) development of an analytic and nuanced approach to complex contractual compliance issues; and (3) cooperation and coordination on consumer safeguards that are beyond the scope of pure contract compliance.” This could easily result in mission creep. ICANN is not a consumer protection agency.

The RySG has had a significant concern over the last year or so about what we believe is a disconnect between ICANN Compliance enforcement activities and registry agreement requirements. The implementation of New gTLD Registry agreement Specification 11 3.b is a prime example as to why this is a big concern.

To ensure that spending on Compliance activities stays within the bounds of what registries are contractually obligated to do, we recommend that all Compliance activities be matched with specific registry agreement terms for both FY16 and FY17 and that the percentage of the compliance activities that could not be correlated with contract requirements be measured and published. This data could then be used to identify instances where inquiries were initiated by ICANN Compliance staff that were outside the scope of contractual obligations so that adjustments can be made in compliance actions accordingly. We note that these comments apply to all ICANN agreements with contracted parties including the Registry Agreements, the Registrar Accreditation Agreements, and Escrow Agreements.

7.20 - 5.1 Act as a steward of the public interest

Here is the activity listed for this goal: “To ascertain ICANN is acting within its global public interest mandate, ICANN will seek to measure and baseline the % of action by ICANN in decision making and how rationales are including the public interest assessments as part of decision making.” ICANN is a public benefit corporation under California law; any other jurisdiction’s definition of “public interest” is not necessarily global or consistent with ICANN’s mandate. This should be clarified.

It is proposed that the success of this goal be measured by the following: “# of ICANN decisions and advice (Board, staff and stakeholders) that are rationalized based on common consensus-based definition(s) and understandings of public interest within ICANN's remit.” What happens if it is not possible to develop ‘common consensus-based definitions’?

The description of Portfolio 5.1.3 (Legal Internal Support) says: “Provide legal support to all functions at ICANN. How do the budgeted legal costs of \$4.3M trend against previous year(s)?

7.21 - 5.2 Promote ethics, transparency and accountability across the ICANN community

The description of Portfolio 5.2.1 (Affirmation of Commitments (AoC) Reviews) says: “Conduct mandated, regularly scheduled reviews of ICANN commitments and ICANN entities to support effectiveness and ongoing improvement in ICANN’s accountability and governance structures. Support effective community engagement and Board assessment and development of plans to maximize improvements to each entity and benefits to ICANN as a whole. Integrate outcomes into strategic planning efforts.” We think that the description should include which AoC Reviews are budgeted. Does the amount budgeted include implementation of the current CCT Review?

The description of Portfolio 5.2.2 (Organizational Reviews) says: “Conduct regularly scheduled reviews of ICANN entities to support their effectiveness and ongoing improvement; Support Board assessment and development of plans to maximize improvements to each entity and benefits to ICANN as a whole.” We think the description should include which organizational reviews are budgeted. Is it expected that independent reviews would be performed by third parties? If so, shouldn’t there be funds budgeted under professional services? Does the budget include implementation of the GNSO Review? If not, it should.