

# GNSO gTLD Registries Stakeholder Group Statement

**Issue:** ICANN Draft Five-Year Strategic Plan

**Date:** 26 June 2014

**Ref:** <http://www.icann.org/en/about/planning/strategic/draft-strategic-plan-2016-2020-10apr14-en.pdf>

## General Comments:

The RySG notes that much of the development of this strategic plan was done prior to the NTIA announcement regarding the IANA function. As this announcement has resulted in two significant streams of work relating to IANA Transition and ICANN Accountability, we believe it is important that this be factored into the next iteration of the Strategic Plan to the extent that this is possible, given the timing of the respective processes.

## Introduction, p.2

“Over the fourteen-month process, related initiatives such as the Affirmation of Commitments Reviews, the Regional Engagement Strategies, and Strategy Panels informed the Plan.” With regard to the reference that the “Strategy Panels informed the Plan”, we find this surprising considering that the plan was posted before the comment period ended on the draft reports of the panels. This seems inconsistent with the statement earlier in the same paragraph that says “This Five-Year Strategic Plan was created in accordance with ICANN’s commitment to the multistakeholder approach.”

## Focus areas for the next five years, p.5

One key focus area is missing: fiscal responsibility. While it is mentioned indirectly in Goal 3.4 it should be a primary focus area, particularly given the exponential growth of ICANN’s revenue stream in recent years.

## Objective 1, p.6

“Evolve and further internationalize and regionalize ICANN’s implementation of the multistakeholder approach”

Goal 1.3 should be changed as follows: “Evolve *bottom-up multistakeholder* policy development and decision-making processes, structures and meetings to be more inclusive, efficient, effective and responsive to the changing needs of our diverse, global stakeholders.”

## Goal 1.1, p.7

“Further internationalize and regionalize ICANN to be more relevant, inclusive, connected and collaborative worldwide.”

Under ‘Measures’, the fourth bullet should be changed as follows: “Tracking expansion of the Fellowship Program (by region / language; by involvement in ICANN initiatives; by stakeholder area).”

Another useful measure of the Fellowship Program would be to understand how fellowship participants have integrated into the ICANN mainstream of policy development and are engaged in activities. It would also be useful to understand the extent to which ICANN is required to subsidise activities to enable continued participation.

With regard to “Number of governments and international entities endorsing ICANN’s globalized functions”, this measure is meaningless without a base to start from and an understanding of what is meant by ‘globalized functions’. It also questions how this information would be captured: questionnaires sent to governments?

Under ‘Phasing’, the first bullet “Year 1: Plan based on gap assessment” - The gap has been known to the community and ICANN for years so it seems odd that it will take another year for planning. This phase should be shortened otherwise ICANN risks being in a perpetual state of assessing gaps and planning when real actions are required.

#### Goal 1.2, p.8

Under ‘Measures’, the second bullet “Recognition of ICANN’s international status by X governments, territories or international organizations” - It is unclear what this actually means and how it is linked to Goal 1.2: “Bring ICANN to the world by creating a balanced and proactive approach to regional engagement with relevant stakeholders”.

#### Goal 1.3, p.9

“Evolve policy development and decision-making processes, structures and meetings to be more inclusive, efficient, effective and responsive to the changing needs of our diverse, global stakeholders.”

Suggest changing the third bullet under ‘Outcomes’ as follows: “Meeting and engagement program supporting the global bottom-up multistakeholder model.”

The last bullet under ‘Outcomes’ says: “Evolved processes that allow under-represented countries and communities to identify topics of interest to them.” It is not clear what “identify topics of interest to them” means relative to policy development. It must be recognized that the policy development undertaken within the ICANN construct is generally narrow in focus and in the GNSO impacts the operations of registries and registrars; and within the ccNSO is even more constrained and ultimately non-binding. It is important to ensure that ‘policy’ discussions within ICANN relate to ICANN and are not expanding into the territory of Internet Governance.

The fifth bullet under ‘Risks’ says: “Unable to break out of siloed policy development.” There seems to be an assumption that policy development is siloed. Those assumptions are not accurate—anyone can join a policy development working group, but as pointed out above, it needs to be recognized that ‘policy topics’ will be narrowly contained. There is definitely a need to improve cross-community collaboration so it would be appropriate to have as an outcome “improve cross community collaboration.”

The third to last bullet under ‘Measure’ says: “Percentage of consensus recommendations directed to Board by SO/ACs.” This seems to assume that it is always possible to reach consensus, which is a very naïve assumption in the global environment we operate in, especially for highly contentious issues where there are very divergent points of view.

The second to last bullet under ‘Measure’ says: “Number of policy recommendations from SO/AC adopted by Board.” To be a meaningful measure, this should be a relative, not an absolute number.

#### Objective 2, p.10

“Continue to support a healthy, stable and resilient unique identifier ecosystem.”

It is unclear what this objective is serving to address. Is it the purely technical aspect of the operation of the domain name system or is it related to the growth of the domain name industry. We believe it is important when referencing the domain name system that this not be conflated with other terms such

as 'ecosystem' as this creates the perception of a risk of mission creep beyond names and numbers. Ecosystem has become a 'catchall' phrase that is overused and can be misleading.

#### Objective 2.1

"Foster and coordinate a healthy, stable and resilient identifier ecosystem."

The third to last bullet under 'Measure' - It is not clear how measuring the implementation of SSAC recommendations adopted by the Board is a useful measure, particularly as the Board has no binding authority to compel ccTLD operators to comply with SSAC recommendations.

The RSSAC is expected to release a report regarding DNS capabilities and this should be factored into this section when this becomes available.

There needs to be some kind of benchmarking attached to these measures with regard to what constitutes 'healthy, stable and resilient'.

#### Objective 2.3, p.13

"Support the evolution of domain name marketplace to be robust, stable and trusted"

From the RySG perspective this is a very important objective. ICANN has a responsibility to support the industry it regulates through its compliance function and the Global Domains Division (GDD).

For example, new entrants to the domain name industry, via the new gTLD program, may not be aware of ICANN processes or unwritten rules about best practices and accepted behaviour. Further, the base registry agreement for the new gTLDs contains many new requirements that are untested or subject to multiple possible interpretations. ICANN has an education and outreach obligation to these new entrants with regard to ensuring a trusted domain name industry.

We note that the measures include confidence in ICANN's compliance function and "regular measurement of compliance function performance". Reporting on compliance function's performance against published targets was part of a key recommendation from the WHOIS Policy Review Team in 2012. However, there is no mention of performance targets in ICANN's [WHOIS Implementation Chart](#) nor were they published elsewhere by ICANN. This needs to be rectified immediately.

Conversely, we would suggest that measures be identified with regard to confidence in the services provided by the GDD. As the number of registry operators increase exponentially, it is critical that GDD services meet the needs of the registry operators and are subject to measurable performance targets.

In light of the above, we suggest adding three new bullets under 'Phasing' as part of Year 1 scope:

- Develop and publish a code of conduct (modelled on best practices of comparable regulators) and performance targets for ICANN's compliance function
- Develop and publish measurable performance targets for the GDD
- Fund a body (independent of ICANN) to ensure compliance of ICANN's obligations to the contracted parties and conduct annual audits on compliance and GDD operations

We also suggest adding a new bullet under 'Measure' as follows:

- Annual audit results showing ICANN's compliance function and the GDD meeting or exceeding their performance targets

### Objective 3, p.14

“Advance technical and operational excellence.”

The RySG strongly support the introductory paragraph on this page: “As the Internet and world around us changes, so too must ICANN. We will not change *Why* we do what we do. We will not change *What* we do. But to respond to the many and varied external forces that our global stakeholders face, we must continue to perfect *How* we do what we do.”

We suggest adding to goal 3.4: “Ensure ICANN’s long-term financial accountability, stability and sustainability while ensuring that value-add justifies the costs incurred.”

### Goal 3.1, p.15

“Ensure structured coordination of ICANN’s internal technical and operational resources.”

As the operation of the GDD portal and other ICANN technical infrastructure impacts the ability of new gTLD registry operators to meet their contractual obligations and reporting requirements, it would be useful to have specific outcomes identified for ICANN’s internal operations in order to better understand what these are, rather than the blanket statement of “Global IT infrastructure performing at 99.99% uptime ...”. Some of the infrastructure operated by ICANN is more critical than others and this should be recognized and appropriate measures developed.

### Goal 3.2, p.16

“Develop a globally diverse culture of knowledge, expertise and technical sophistication within ICANN’s Board, staff and stakeholders that attracts top talent.”

Top talent should be recruited through best hiring practices. To this end, we suggest adding a new bullet under ‘Measure’ as follows:

- Benchmark ICANN’s hiring and recruitment practices against that of comparable global non-profit organizations.

### Goal 3.3, p.17

“Create role clarity for the Board, staff and stakeholders.”

It became evident in Singapore that the processes by which decisions are made, or should be made, are not well-understood or have a common interpretation. We believe that it is important to evaluate the various processes as contained in ICANN bylaws and other documents in order to achieve this goal. Therefore, we suggest the inclusion of an outcome related to understanding processes in order to understanding role clarity.

The last bullet under ‘Risks’ says: “Conflict caused by differing views of what is the bottom-up approach and when it is / is not appropriate.” It is important to note that the opposite of ‘bottom-up’ is ‘top-down’. Making top-down decisions should only be done in rare cases and with great caution because they can seriously compromise the critical multistakeholder model.

#### Goal 3.4, p.18

“Ensure ICANN’s long-term financial accountability, stability and sustainability.”

The continued lack of transparency around the financial accounting process has been an ongoing concern for the RySG and we strongly suggest that one more outcome be added: “Provide transparency of budget detail with enough lead time to allow community input to be acted on before Board action.”

We would also note that we believe that ICANN has a public interest responsibility to ensuring that the budget is developed with this consideration in mind, and that it is critical that resources are not diverted or wasted in a way that compromises ICANN’s critical mission to ensure the security and stability of the Internet. Therefore we recommend the inclusion of an outcome: ICANN’s budget is managed in the public interest.

We definitely agree that “Lack of cost control” is a risk.

#### Objective 4, p.19

“Clarify and established ICANN’s role in the Internet governance ecosystem”

This must be done in a bottom-up multistakeholder manner. There is some concern among the RySG that ICANN staff and the Board are being ‘captured’ by Internet Governance issues at the expense of operational excellence and staying true to ICANN’s narrow remit. With the recent NetMundial meeting and development of IG principles and roadmap now settled and behind us, we do not believe that ICANN should be seen as the ‘defacto’ place for broader IG discussions. We believe that the most effective way for ICANN to be recognized and accepted as the organization responsible for co-ordination of the Internet’s unique identifiers is to be exemplary in the manner in which this role is undertaken.

#### Goal 4.2, p.21

“Create a balanced and proactive approach to engagement with governments and IGOs.”

The most important word in this goal is ‘balanced’. Being proactive in engaging with governments and IGOs is a good idea. But it must always be remembered that governments and IGOs are just a subset of all stakeholders so engagement with them must be balanced with engagement with other stakeholders.

The first bullet under ‘Outcomes’ says: “ICANN’s legitimate role is unquestioned and fully trusted by relevant Internet organizations, governments, international organizations worldwide.” Why are governments and international organizations singled out? ICANN’s role must be judged as legitimate and be fully trusted by other stakeholders as well. The fact that governments and international organizations are singled out gives the impression that they are more important than civil society, businesses, infrastructure providers, users, etc.

#### Objective 5, p.23

“Develop and implement a global public responsibility framework.”

The terms ‘public responsibility’ and ‘public interest’ are difficult to define because they vary significantly by across jurisdictions and interest groups. That is why it is very critical that efforts to define these terms and implement this objective be done in a fully bottom-up multistakeholder way.

Goal 5.1 p.24

“Act as a steward of the public interest”

To the point above, public interest is difficult to define; but to this goal it leaves the question open of ‘act as a steward of the public interest’ of what? of the management of the domain name system, or world peace?

Goal 5.2, p.25

“Promote ethics, transparency and accountability.”

We definitely agree with the first ‘Outcome’ shown: “Shared agreement on what accountability means in the context of ICANN.” In that regard, true accountability must involve both internal and external (independent) accountability.

We therefore suggest adding two new bullets under ‘Risks’ as follows:

- Failure to identify or enforce non-compliance with accountability and transparency processes.
- Tension between public interest accountability and corporate and legal accountability.

To address those risks, we suggest adding a new bullet under ‘Measure’ as follows:

- Employ an Ethics Counsel reporting directly to the Governance Committee of the ICANN Board

## **RySG Level of Support**

1. Level of Support of Active Members: Supermajority
  - 1.1 # of Members in Favor: 22
  - 1.2 # of Members Opposed: 0
  - 1.3 # of Members that Abstained: 0
  - 1.4 # of Members that did not vote 9

## **2. Minority Position(s):**

1. Level of Support – Active Members: Supermajority
  - Total # of eligible Voting RySG Members<sup>1</sup>: 32
  - Total # of Voting and Non-voting RySG Members: 38
  - Total # of Active Voting RySG Members<sup>2</sup>: 31
  - Minimum requirement for supermajority of Active Voting Members: 21
  - Minimum requirement for majority of Active Voting Members: 17
  - Names of Members that participated in this process:
    1. Afilias, Ltd.
    2. Charleston Road Registry (non-voting member)
    3. .CLUB Domains LLC
    4. CORE (non-voting member)
    5. Donuts Inc.
    6. DotAsia Organisation
    7. dotBERLIN GmbH & Co. KG
    8. dotCooperation
    9. Dot Kiwi Ltd.
    10. Dot Latin, LLC
    11. DotShabaka Registry
    12. dotStrategy Co.
    13. Employ Media LLC
    14. Famous Four Media
    15. Foundation for Assistance for Internet Technologies and Infrastructure Development (FAITID) (non-voting member)

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<sup>1</sup> All top-level domain sponsors or registry operators that have agreements with ICANN to provide Registry Services in support of one or more gTLDs are eligible for membership upon the “effective date” set forth in the operator’s or sponsor’s agreement (Article III, Membership, ¶ 1). The RySG Articles of Operations can be found at [http://gtldregistries.org/sites/gtldregistries.org/files/Charter\\_of\\_the\\_gTLD\\_Registries\\_Stakeholder\\_Group.pdf](http://gtldregistries.org/sites/gtldregistries.org/files/Charter_of_the_gTLD_Registries_Stakeholder_Group.pdf)

<sup>2</sup> Per the RySG Articles of Operations, Article III, Membership, ¶ 4: Members shall be classified as “Active” or “Inactive”. A member shall be classified as “Active” unless it is classified as “Inactive” pursuant to the provisions of this paragraph. Members become Inactive by failing to participate in a Constituency meeting or voting process for a total of three consecutive meetings or voting processes or both, or by failing to participate in meetings or voting processes, or both, for six weeks, whichever is shorter. An Inactive member shall have all rights and duties of membership other than being counted as present or absent in the determination of a quorum. An Inactive member may resume Active status at any time by participating in a Constituency meeting or by voting.

16. Fundació puntCAT (inactive)
17. GMO Registry, Inc. (non-voting member)
18. ICM Registry LLC
19. Minds + Machines
20. Museum Domain Management Association – MuseDoma (inactive)
21. Neustar, Inc.
22. Plan Bee LLC
23. Public Interest Registry - PIR
24. Punkt.wien GmbH
25. Punkt Tirol GmbH
26. Punto 2012 S.A. de C.V.
27. Radix FZC
28. Rightside Registry (non-voting member)
29. Societe Internationale de Telecommunication Aeronautiques – SITA
30. Starting Dot Limited
31. Telnic Limited
32. The Foundation for Network Initiatives “The Smart Internet”
33. Top Level Design LLC
34. Tralliance Registry Management Company (TRMC)
35. Uniregistry Corp. (non-voting member)
36. Universal Postal Union (UPU)
37. VeriSign
38. XYZ.COM LLC
39. Zodiac

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Regarding the issue(s) noted above, the following position(s) represent(s) the views of the ICANN GNSO gTLD Registry Constituency (RySG) as indicated. Unless stated otherwise, the RySG position(s) was (were) arrived at through a combination of RySG email list discussion and RySG meetings (including teleconference meetings).