

# **ICANN Draft FY19 Operating Plan and Budget and Five Year Operating Plan Update**

## **Public Comment from Registries Stakeholder Group**

### **1. Introduction**

The Registries Stakeholder Group (RySG) welcomes the opportunity to comment on the ICANN Draft FY19 Operating Plan and Budget and Five Year Operating Plan Update. We recognise that the income expectations for the FY19 require ICANN, in sharp contrast to previous years, to undertake some belt tightening. The Registries Stakeholder Group is strongly supportive of this.

### **2. Overarching points**

#### *2.1. Towards a more cost-conscious ICANN org*

The RySG is pleased to see that the proposed expenses do not exceed the projected revenue for FY19, and firmly appreciates the organisations focus on cost control and savings through optimizing internal processes and procedures. We would like to see this mark the beginning of a change in culture, characterised by a more cost-conscious ICANN that works well within the fiscal constraints imposed by limited funds.

#### *2.2. Forecasted ICANN revenue*

Reliable forecasts, characterised by their scrutiny and realism, are fundamental to put together a realistic budget and to avoid unpleasant surprises, such as the shortage ICANN is experiencing in the current fiscal year. The RySG advises ICANN to continue to conduct checks on its forecasts and to re-evaluate the methodology used to predict its income in order to prevent another funding shortfall such as that which the organization experienced in FY18.

#### *2.3. Replenishing the ICANN Reserve Fund*

ICANN's current Investment Policy determines that it should target a Reserve Fund equal to minimum 12 month's operating expenses. It is a matter of current discussion as to how the Reserve Fund should be replenished, and indeed whether that 12-month level should be amended. The RySG reiterates its view that the Reserve Fund is intended to allow ICANN to continue providing its core function, and that the fund's target level should be based on a detailed estimate of the resources required to continue operation in survival mode rather than on a fully expensed one-year budget basis. Moreover, the RySG view is that regardless of the determination as to how the ICANN Reserve Fund is replenished, diligent cost control of ICANN's expenditure is a vital ongoing component. The budget process for FY 19 and beyond must anticipate an annual contribution to the Reserve Fund from ICANN's income.

#### *2.4. Policy Development and Policy Implementation*

A budget necessarily balances competing demands and projects around an organization's mission and objectives. For ICANN, funding the policy development process and associated

policy implementation work is a core obligation that should take priority over other projects at times when trade-offs are required.

## 2.5. New gTLD Program Fund Being Used for Regular Operations

We are concerned that resources from the New gTLD fund are being used to fund general operations. The estimated expenses for the full program have increased by \$14M with little to no transparency as to the reason for the change. Without sufficient transparency, the concerning conclusion we can draw is that New gTLD funds are being used (inappropriately) in order to fund regular ICANN operations.

## 3. Comments on the draft FY19 Operating Plan and Budget

### Policy Development

#### 3.1. Implementation of Subsequent Procedures for New gTLDs

The RySG understands the FY19 draft budget does not account for development or resources towards the next round(s) of new gTLDs<sup>1</sup>. It is anticipated that the Subsequent Procedures PDP will complete its work by December 2018 with an expectation that the consensus recommendations will be adopted by the Board prior to the conclusion of FY19.

It is important to recall that the current GNSO Policy on the Introduction of New Generic Top-Level Domains<sup>2</sup> includes, as its very first principle, the statement that “*New generic top-level domains (gTLDs) must be introduced in an orderly, timely and predictable way*”. This principle was implemented in the 2012 round Applicant Guidebook (which stated, “*ICANN’s goal is to launch subsequent gTLD application rounds as quickly as possible*”<sup>3</sup>) and reiterated by the ICANN Board in Resolution 2012.02.07.054: “*ICANN is committed to opening a second application window for the New gTLD Program as expeditiously as possible.*”<sup>4</sup>

Knowing how long it takes to implement this type of complex program, the RySG asked ICANN to begin the implementation work nine months ago.<sup>5</sup> Despite not wanting to set a definitive timeline for the implementation of the next round(s) of new gTLDs, in response to the RySG request, the then-ICANN Board Chair acknowledged that “Some amount of preparatory work could be done in parallel to the PDP Working Group’s discussions.”<sup>6</sup>

However, the proposed FY19 budget and operational plan not only does not include specific allocations for such preparatory work, but it states affirmatively that “*No resources are in the FY19 budget for this implementation work.*”<sup>7</sup>

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<sup>1</sup> See Document #2, Section 2.5.1, on page 21.

<sup>2</sup> <https://gnso.icann.org/en/drafts/pdp-dec05-fr-a-18jun07.pdf>

<sup>3</sup> Section 1.1.6 at page 1-20.

<sup>4</sup> ICANN Board Resolution 2012.02.07.054 <https://www.icann.org/resources/board-material/resolutions-2012-02-07-en#4>

<sup>5</sup> <https://www.icann.org/en/system/files/correspondence/rysg-to-crocker-marby-09jun17-en.pdf>

<sup>6</sup> <https://www.icann.org/en/system/files/correspondence/crocker-to-diaz-26jul17-en.pdf>

<sup>7</sup> <https://www.icann.org/en/system/files/files/proposed-total-budget-fy19-19jan18-en.pdf>

In its FY08 Plan and Budget, before the GNSO had formally adopted the new gTLD Policy, ICANN recognized that developing the New gTLD Program would require significant start-up investment.

As such, in July 2009, two years prior to the launch of the new gTLD round, ICANN budgeted over \$7.5 million towards the implementation of the gTLD round, specifically towards “*the staff, professional services, and technical costs required to complete the development of the implementation of the New gTLD policy recommendations as well as those costs necessary to prepare for New gTLD application processing (e.g. advanced staffing of the application processing function).*”<sup>8</sup>

Although the new gTLD process was, and likely will be in subsequent procedures, both self-funded and offset by application fees, ICANN understood that it would need to budget adequate resources to implement the new gTLD policy, including, but not limited to:

- a) recruitment of staff for the new gTLD program office
- b) professional service fees associated with the production of the Applicant Guidebook
- c) the development of systems to handle objections, dispute resolutions, and technical/business/financial reviews, and
- d) the creation and implementation of a communications strategy across many different languages, to announce and promote the expansion to the global Internet community.

While the GNSO is still engaged in the policy development process for determining what changes will be required for the introduction of additional new gTLDs, it is anticipated that such policy work will be completed during FY19. Many of the same costs that were incurred for the 2012 round of new gTLDs will be required for the next round, which could start as soon as FY20 or FY21. It is our understanding that although some of the resources from the 2012 round can be repurposed for subsequent rounds, there are a number of resources that cannot, such as the application system and other technical systems that were designed for one time use and therefore must be built up from scratch.

The RySG is also concerned that with ICANN org, having converted new gTLD staff to Operations, has no personnel working on preparations for a next round, which could lead to a further delay. ICANN should, to the greatest extent possible, assign staff with knowledge and experience from the previous round to work on preparing for future application procedures, since putting together a new team will cost time and money in the long run.

If ICANN does not start budgeting for start-up preparation costs, as well as for employees and professional services in FY19, there is no possibility that ICANN will be in a position to commence subsequent procedures in FY20 or possibly even FY21 for that matter. ICANN cannot afford to wait until after the ICANN Board approves the GNSO recommendations to start preparatory work on implementation.

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<sup>8</sup> <https://www.icann.org/en/system/files/files/adopted-oplan-budget-fy10-07jul09-en.pdf>

### *3.2. new gTLD program fund*

The RySG is concerned with several parts of the proposed budget for the New gTLD Program located in Document 2, Section 4.

ICANN now estimates the remaining balance of excess application fees to be \$81.8M, down from \$95.8M estimated in February 2017. To rationalise this change, ICANN points to an additional \$8M in “evaluation expenses” in FY19 and FY20. This considerable amount raises a number of questions: Why is there such an amount of \$8M in unanticipated evaluation costs? Was ICANN expecting that there wouldn’t be evaluations in FY19 and FY20? If so, how many evaluations were performed in FY18 and how many are anticipated in FY19 and FY20? We note here that currently only 9 contention sets remain to be resolved. A related concern is the amount of money ICANN is paying per evaluation, and whether there are no better alternatives.

ICANN also estimates an additional \$4.4M in “overheads” for FY19 and FY20 without providing any detail for these allocations. Why is an additional \$4.4M being allocated to the New gTLD budget? What are these allocations to the budget and are they appropriately classified under the New gTLD budget vs. the Operating budget? What are the current allocations to the New gTLD budget?

The RySG requested more detail on these issues a few months ago in a letter to ICANN: “It would be helpful and is appropriate for ICANN to provide the RySG with a detailed accounting of expenses to date. Organizational operating expenses are line items more suited to ICANN’s regular budget. If the ICANN organization anticipates further spending of application fees in this or other manners, we request, first, a reasonable forecast for their likely use, and second, deeper involvement in the associated budgeting process. The RySG does not necessarily presume the cogency of such expenditures.”

We are very concerned about the new estimated costs; in absence of a detailed explanation we tend to believe that not all of these costs are part of the 2012 program. Therefore, we request ICANN to provide much more transparency and detail before such estimates go into the approved budget.

### *3.3. Support for GNSO Council Planning Session*

The GNSO Council recently held a successful three-day face-to-face Development and Planning Session to focus, away from the heavy schedule of and ICANN meeting, on councillor development and policy management planning. The RySG believes that this productive and useful session can help to support the effectiveness of ICANN’s core policymaking function, and that these types of discussions are also important in light of the Council’s new responsibilities following the IANA transition and as part of the Empowered Community. Therefore, we support the Community budget request submitted by the GNSO Council<sup>9</sup> to organise a similar workshop in FY19, and ask that future budgets anticipate that these meetings are organised on an annual basis.

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<sup>9</sup><https://community.icann.org/download/attachments/79433704/FY19%20Community%20Requests%20GNSO%20Council%20Strategic%20Planning%20Session%20-%2031%20January%202018.pdf?api=v2>

### *3.4. Document development*

We refer to our Community budget request for ongoing support of the RySG Document Development and Drafting Pilot Program<sup>10</sup>. This support is necessary for ongoing effective functioning of the SG.

### *3.5. Constituent Travel support*

We refer to our Community budget request relating to the RySG travel support funding relating to ICANN's GDD Summit in FY19<sup>11</sup>.

The RySG takes note of the proposed reduction of the number of travel seats for the Fellows and NextGen<sup>12</sup> programs to their 2015 levels. This reduction should go hand in hand with a further optimization of these initiatives and we encourage ICANN to proactively measure the success of these programs through the use of metrics such as continued active participation by the recipients of these funds in community policy work.

### *3.6. GDPR*

ICANN org anticipates implementation work for GDPR to conclude in FY18 and therefore, no resources have been allocated specifically for GDPR-related implementation work in FY19. The RySG is concerned that this is an overly optimistic assumption and that a failure to budget adequately for the GDPR-related work that will take place in FY19 will have an adverse impact on ICANN's finances.

### *3.7. ICANN Projects*

The RySG welcomes a more cost-conscious ICANN that works well within the fiscal constraints imposed by limited funds, and is therefore concerned that a number of budget expenditures and projects do not seem to comport with such a responsible and prudent approach. The RySG urges ICANN to duly reconsider each aspect of these expenditures, and, if deemed necessary, better justify why the expense is needed. Some examples are included below.

The ICANN budget marks a recurring 800k USD per year for Trademark Clearinghouse Operations and Service Evolution (project ID 176954). The RySG expects that the TMCH activity is sufficiently funded from the fees received from trademark owners.

The draft Budget foresees 200k for the development of Internet Health Indicators (project ID 32006), 800k for the Domain Abuse Activity Reporting (DAAR) (project ID 178906), and 100k to update the metrics of the gTLD Marketplace Health Index (project ID 154218). The

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<sup>10</sup>[https://community.icann.org/download/attachments/79433704/RySG%20FY19%20Community%20Request\\_Priority%202\\_Final.pdf?api=v2](https://community.icann.org/download/attachments/79433704/RySG%20FY19%20Community%20Request_Priority%202_Final.pdf?api=v2)

<sup>11</sup>[https://community.icann.org/download/attachments/79433704/RySG%20FY19%20Community%20Request\\_Priority%202\\_Final.pdf?api=v2](https://community.icann.org/download/attachments/79433704/RySG%20FY19%20Community%20Request_Priority%202_Final.pdf?api=v2)

<sup>12</sup> The RySG assumes that the number of 15 funded travel seats as mentioned in the text on page 22 (doc #2) and on page 20 (doc #4) is correct and the figure in the accompanying tables is erroneous.

RySG is not convinced of the added value of these projects, which imply recurring costs, have flawed designs and do not meet the needs of the community in the most appropriate way. This mismatch and therefore potentially wasted expenditure could have been avoided if effort had been done to involve the community in the project specification, design and development from an early stage.

The RySG would like to better understand the envisaged outcome of the Recurring Activity Complaints Office Operations (project ID 177014), and why compliance outreach needs a double effort of 400k (project ID 31665) and 100k (project ID 176295).

The RySG is concerned about the 1.1 M envelope for the Universal Acceptance Initiative (project ID 19104). It is worrying that a project of this size is developed and run without public consultation with the ICANN community.