

## Registries Stakeholder Group Statement

Issue: **ICANN Reserve Fund: Proposed Replenishment Strategy**

Date statement submitted: **25 April 2018**

Reference URL: <https://www.icann.org/public-comments/reserve-fund-replenishment-2018-03-06-en>

### Background<sup>1</sup>

The ICANN Reserve Fund was created in 2007 with a target level of 12 months of ICANN's Operating Expenses. At the time, the budget was approximately \$50 million USD. Since then, operational surpluses and investment returns have been allocated to the Reserve Fund, to progressively reach the intended target level. By 2014, the Reserve Fund had reached 11 months of Operating Expenses.

Starting in 2014, withdrawals from the Reserve Fund were made to fund the IANA Stewardship Transition ("Transition") expenses. In total, US\$36 million were withdrawn for this purpose. Since 2014, successive budgets did not contribute any surplus due to the increase in ICANN's Operating Expenses, with the exception of FY18 during which ICANN Org allocated US\$5 million to the Reserve Fund. As a result of these two factors, the level of the Reserve Fund dropped significantly. Today, that level represents approximately 6 months of Operating Expenses at ICANN's current expense plan.

Based on its fiduciary duties, and considering the significant growth and risk profile that ICANN has seen since the creation of its Reserve Fund, the Board determined that the Reserve Fund required to be reviewed, especially in light of the significant drop in its level.

The Board therefore created a working group, supported by the ICANN org, which evaluated the Reserve Fund. This evaluation led to defining an updated rationale and target level for the Reserve Fund. Considering the importance of the Reserve Fund to ICANN's financial stability and sustainability, the Board determined that public input was necessary and requested ICANN org to post the analysis performed on the rationale and target level in a first consultation paper for public comment at the end of 2017.

The review of the Reserve Fund is happening in three steps:

- a. ICANN Reserve Fund - **Rationale and Target Level**  
[RySG comment \(30 Nov 2017\)](#) - [ICANN Report Public Comments](#)  
[ICANN Board Resolution 4 Feb 2018](#) (updated Rationale, 12m Target Level confirmed)
- b. ICANN Reserve Fund - **Replenishment Strategy** (ongoing consultation)
- c. ICANN Reserve Fund - **Reserve Fund Governance** (expected Autumn 2018)

The Board also determined that, once the rationale and target level have been updated, further work would be required to define a strategy to replenish the Reserve Fund from its current level to its minimum target level of 12 months of Operating Expenses, which is the subject of this (second) consultation paper on the Reserve Fund.

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<sup>1</sup> *Background: intended to give a brief context for the comment and to highlight what is most relevant for RO's in the subject document – it is not a summary of the subject document.*

### Registries Stakeholder Group (RySG) comment:

The Registries Stakeholder Group (RySG) welcomes the opportunity to comment on the proposed replenishment strategy for the ICANN Reserve Fund and notes the ICANN Board's 4 February 2018 decision confirming a Reserve Fund Target Level at a minimum of 12 months of operating expenses.

### Overarching comments

The RySG is firmly of the view that ICANN should operate in a fiscally restrained manner at all times; that is, **ICANN's operating expenses should be comfortably less than, not equal to, ICANN's income in any given financial year**. In this context, we note that a financially prudent ICANN will necessarily be a lower risk operation and therefore that the targeted 12 month Reserve Fund will be more than adequate to mitigate the appropriate risks. Moreover, ICANN operated in such a fiscally prudent manner will be able to work **towards** the targeted (12 month) Reserve Fund over a number of years and need not establish the targeted level in too short a time frame.

The RySG is therefore of the view that it is the direction of travel, i.e. regular Reserve Fund contribution on an annual basis that is the critical factor here and not the speed of travel. Put plainly; **we do not agree that the 12 month target for the Reserve Fund needs to be reached within five years**. Indeed, here we reiterate our view that the 12 month target is excessive. Each year that ICANN makes a contribution to the Reserve Fund, the overall position is further de-risked from the present situation. Moreover, ICANN does not necessarily need to cover for all aspects of its operation with the Reserve Fund but rather the Reserve Fund should be targeted first and foremost towards ensuring the operation of critical core operations, such as the IANA function within PTI.

### Suggested sources of funding

With regard to the suggested Sources of funding, the RySG wishes to make the following comments:

#### *Contribution from ICANN Org*

The RySG is firmly of the view that the sole source of appropriate funding for the replenishment of ICANN's Reserve Fund is an ongoing, annual contribution from ICANN Org. ICANN's increase in cost base in the recent past has been excessive and ICANN must get its spending under control such that it generates an annual surplus which can and must be directed towards replenishment of the Reserve Fund.

Replenishment by this mechanism could be undertaken consistent with all four guiding principles outlined in section F of the Replenishment Strategy consultation document. Moreover, a fiscally prudent ICANN will by definition have a reduced cost base such that even the generous proposed 12 month Operating Expenses target for the Reserve Fund will itself be reduced and therefore more readily achieved.

### *Auction Proceeds*

The RySG is of the view that a sole determination through this process to use “Auction Proceeds” to contribute to the ICANN Reserve Fund is not appropriate because (a) there is an ongoing multi-stakeholder process already underway to determine the appropriate uses of the auction funds, (b) we are of the view that the Reserve Fund must be supported from ICANN’s appropriately managed operating funds and (c) because the possible uses of Auction Funds described in the New gTLD Applicant Guidebook clearly did not specifically contemplate such a use. An ICANN determination through this comment process would not only potentially undermine the multi-stakeholder process already underway, but may set the precedent of allowing the ICANN Organization to circumvent any future such multi-stakeholder process when it deems appropriate.

With respect to the substance of using Auction Proceeds towards replenishing the Reserve Fund, we note that the possible uses of Auction Funds were contemplated in the new gTLD Applicant Guidebook as follows:

“... Possible uses of auction funds include formation of a foundation with a clear mission and a transparent way to allocate funds to projects that are of interest to the greater Internet community, such as grants to support new gTLD applications or registry operators from communities in subsequent gTLD rounds, the creation of an ICANN-administered/community-based fund for specific projects for the benefit of the Internet community, the creation of a registry continuity fund for the protection of registrants (ensuring that funds would be in place to support the operation of a gTLD registry until a successor could be found), or establishment of a security fund to expand use of secure protocols, conduct research, and support standards development organizations in accordance with ICANN's security and stability mission.”

Utilizing the Auction Proceeds for ICANN Org’s own purposes was therefore not explicitly included as a permissive purpose in the Applicant Guidebook. However, should it be determined by the CWG Auction Proceeds process that such a use of Auction Funds is permissible AND there be a community consensus determination through this comment process on replenishment that there is a requirement for Reserve Fund top-up beyond that provided for by regular, annual contributions from ICANN Org, then the use of Auction Funds in this context may be appropriate as a supplement to the regular, annual contributions from ICANN Org.

### *Leftover funds at the end of the new gTLD program*

The prospective use of excess application fees is a clear violation of ICANN Policy, which states that application fees (for new gTLDs) should cover the costs of the program. The RySG is clearly and firmly of the view that the allowable use of the such funds is constrained to cover the costs of the implementation and execution of the new gTLD program or such other program as agreed to by a consensus of the applicants that were themselves the source of such funds.

### *Additional funds from Contracted Parties*

The RySG is astounded to see the document even contemplate 'Additional Funds from Contracted Parties' as a possible source of funding to replenish the Reserve Fund, not least because such a suggestion goes against the document's own Guiding Principle F (iii) that '*any financial burden on contracted parties, and by default registrants, should be avoided*'. For the absolute avoidance of doubt, we are firmly against the use of additional funds from Contracted Parties and the associated financial burden on registrants and would not agree to any increase of our fees as required in the applicable Registry Agreements.

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