



February 8, 2019

Dear Mr. Calvez,

The Intellectual Property Constituency (IPC) of the Generic Names Supporting Organization (GNSO) appreciates the opportunity to comment on ICANN's Draft Operating Plan and Budget for Fiscal Year 2020. See <https://www.icann.org/public-comments/fy20-budget-2018-12-17-en>.

Executive Summary

These comments will focus on Operation Plan and Budget items that are relevant to the Intellectual Property Constituency (IPC). In general, the IPC applauds ICANN for early publication of the Fiscal Year 2020 Operating Plan and Draft Budget. We also support the evolution of the ICANN planning process including strategic plan, operating plan, budget, and frequency of the Organization's operational and financial updates. In addition, the IPC is pleased with the additional level of detail in the current Fiscal Year 2020 draft and looks forward to continued improvement. With that being said, greater transparency of the budget elements is required in order for community members to conduct a proper analysis. In addition, for future budgetary reviews, the IPC requests greater frequency of current state of actuals vs budget on a quarterly basis. The specific comments of the IPC as to each section of the FY 2020 Draft Budget are provided below.

FY20 Budget Introduction and Highlights

Section 6.0 Funds Under Management

- The IPC would like to understand the strategy and timeline associated with the replenishment of the Reserve Fund, as referenced in this section.

Section 7.4 Data Protection and Privacy

- In regards to the currently evolving GDPR requirements, where does ICANN propose to source contingency dollars for potential unforeseen costs?

Section 3.0 Financial Overview

3.3.1 Draft Budget FY20 compared to Adopted FY19 Budget

ICANN has stated the FY20 funding is forecasted to remain unchanged from the FY19 actuals and given the fact that ICANN did not include Depreciation and Bad Debt into this Forecasted Budget, the IPC would like to understand the following:

- 1) What action(s) is ICANN taking to ensure applicants are qualified to operate as a Registrar in order to avoid unnecessary overhead expenses of application and onboarding process of any contracted party in the event of a voluntary or involuntary termination? For example, the family of Registrars known as [Pheenix](#), terminated approximately 300 registrars within the first twelve (12) months being under contract in the calendar year of 2017.
- 2) Given the downturn in the drop catching market, it is highly likely that a significant amount of bad debt was associated with the [Pheenix family](#). This debt may have totaled 2.2MM (i.e. \$1MM in application fees and over \$1.2MM in annual fees). What action is ICANN taking to pursue collection of the bad debt associated with contracted parties? What is the average bad debt year/year and include trend analysis?
- 3) The Draft FY20 Budget, total personnel under ICANN Operations is four-hundred and fifty (450). The IPC requests the breakout between ICANN staff and contractors/consultants/vendors , including total compensation and ancillary staff activities.
- 4) Governance Support is increasing from twenty to twenty-three (23) in FY20 according to the draft budget. The IPC requests additional detail on ICANN staff vs third party headcount in addition to the supporting activities and programs that account for the \$10.2MM total spend on this item.
- 5) As it pertains to the ICANN Board, the IPC would like greater transparency with respect to total budget, staff and third party resources devoted to the Board, including travel, events and administration support.
- 6) As stated by IPC in its November 2018 comments, IPC supports the conclusion that a minimum of 1 year's budget be the target goal of ICANN's reserve fund. This level supports industry best practice. At the time of commenting on the FY19 Budget, it provided for a modest increase of US\$4.7 million in ICANN's reserve fund by virtue of project investment gains and indicates that "periodically, any funds in excess of this are transferred to the Reserve Fund. However, the Section 3.1.1. indicates that the FY19 Budget was adopted with no allocation to the Reserve Fund and the FY20 Budget provides only for US\$3.0 million.
- 7)

Section 3.1.2 ICANN Operations FY19 Forecast compared to Adopted FY19 Budget

Within the table described at ICANN Operations, the IPC would like to understand the activities and key performance indicators of the Global Stakeholder Engagement organization that represents a total of 31 personnel.

With respect to the budget for Contractual Compliance and Consumer Safeguards, the IPC notes that the total compliance budget appears to be funded at US\$5.4 million which is only a 2% increase over FY19. However, the list of potential costly project is long, including (i) needing additional resources directed to support enhanced audits for Transparency in Infrastructure Abuse and Compliance, (ii) managing the impacts of GDPR compliance, (iii) monitoring and enforcement of DNS abuse (which will undoubtedly increase due to GDPR) and (iv) audits that are particularly related to DNS abuse. IPC asserts that this Compliance and Consumer Safeguards' budget may be under-estimated. Further, IPC continues to stress the importance of transparency in the ICANN compliance process including how contracts are interpreted so that we may have levels of predictability and reliability when matters are escalated. ICANN would be well served to consider developing easily accessible resources that explain contract compliance outcomes. IPC has noted these issues in prior comments relating to ICANN budget practices.

Section 3.4 Risk and Opportunities

Under the Risk category, the proposed budget indicates a "medium" potential of 1.5MM in GDPR compliance. Please explain if these funds are for the ICANN Org to become compliant with GDPR obligations OR if this is an estimated additional spend within the ICANN Compliance team (currently represents 29 headcount) to enforce these obligation on the Contracted Parties. If the latter, please provide additional details that support this estimated spend.

Section 3.7 ICANN Operations FY21 Projections

The funding for Professional Services reflects over 20MM from FY18 Actuals to FY21 Projections. Given the significant amount of funding with no transparency, the IPC requests a breakdown of resources (i.e. headcount, vendors, contractors) and related activities.

Appendix A: Registrar Fees

The IPC notes that each of the 2500+ Registrars are under the 2013 RAA, therefore the 2009 version is no longer in use by ICANN.

Privacy and Proxy Accreditation Program

The IPC requests detail on the expected funding associated with the implementation of the Privacy and Proxy Accreditation Program that has reached the final stages within the implementation review team. There is no mention of fees throughout the proposed budget for Privacy and Proxy Service Providers. The draft of the Privacy and Proxy Implementation Guide in the "Application and Provider Financial Obligations" section, includes two fees (1) One Time Application and (2) Annual Accreditation for Non-Affiliated and Affiliated parties. These fees represent significant funding that remains absent from the current draft.

Respectfully submitted,

Intellectual Property Constituency