Preliminary Comments of Intellectual Property Constituency

On FY13 ICANN Budget Framework

http://www.icann.org/en/planning/ops-budget-framework-fy2013-en.pdf

February 23, 2012

The Intellectual Property Constituency (IPC) appreciates this opportunity to submit preliminary comments on the Framework for the FY13 Operating Plan and Budget (Framework). We look forward to submitting more extensive comments jointly with the other Commercial Stakeholder Group constituencies during the reply round.

IPC believes that ICANN's budget documents are important expressions of its priorities and policies, and consequently has frequently commented on them, most recently during the FY 12 budget development cycle (see http://forum.icann.org/lists/op-budget-fy2012/pdfXyrihH1SjI.pdf, [April 4, 2011], and http://forum.icann.org/lists/op-budget-fy12/pdft3tW9iYoSR.pdf [June 16, 2011]). A recurring theme in these comments is our frustration over the lack of transparency and high level of obfuscation in the ICANN budget process.

In this cycle so far, we commend ICANN for making some important improvements, notably in the more granular presentation of current and planned ICANN projects. However, the Framework still lacks enough detail on critical matters, especially regarding ICANN core operations, and thus makes it far more difficult than it should be to comment meaningfully.

Core Operations

As the Framework indicates on page 9, Core Operations account for $63.1 million of ICANN's $75.1 million operating budget, or 84%. Fourteen categories of Core Operations are listed on page 11 of the document. But virtually no other information is provided, either on what is being spent on these categories in the current fiscal year; what is planned to be spent on them in FY 13; what are the priorities for the organization under each category; and how those priorities will be advanced by the budget proposal.

As always, the topic of Contract Compliance provides a good example of the problem. Beyond its listing on page 11, we are told on page 28 that there will be an "increase in compliance activity"; that "compliance audits" will be performed; and that ICANN will "implement and improve automation through systems." There is also a discussion on page 16 of a $400k Compliance Improvements project, which seems to address some of the same areas (e.g., data tools and annual audits). But the Framework tells us nothing about how big an increase in resources the Contract Compliance function will receive; how its headcount will be expanded; and whether there will be any change in its reporting structure within the organization.

All these issues must be addressed if ICANN is to achieve a minimally acceptable level of compliance.

As IPC observed in its comments on the budget framework in April, 2009, and repeated last year: "The entire ICANN experiment depends on using contractual agreements as a substitute for government regulation. The viability of that experiment remains in question so long as those agreements are not consistently and predictably enforced." http://forum.icann.org/lists/op-budgetfy2010/pdf4fj6V4c2H5.pdf. It hardly needs to be stated that the contract compliance challenge will become even more massive with the rollout of many new gTLDs, beginning in FY 13. Furthermore, it can now be anticipated that there may be substantial amendments to the Registrar Accreditation Agreement taking effect in FY13, which will also present a significant challenge to the contract compliance function. It remains disappointing and frustrating that the budget and operating plan framework document presented to the community provides so little information on how ICANN plans to meet these challenges, which are central to ICANN's entire model, and how much it will spend to do so.

The list of FY13 ICANN Priorities on page 6 also lists "build on contractual compliance" as priority #4. A number of unanswered questions remain about how this list of FY13 ICANN priorities was developed, and whether approval of the FY13 budget will include Board endorsement of this list. IPC was pleased to see a reference to contract compliance among the list of priorities; but by itself, this phrase is virtually meaningless and thus cannot be the basis for meaningful comments on whether ICANN is according this topic sufficient priority in its budget.

Finally, the inclusion of "IDN Fast Track" among the Core Operations for FY13 requires further explanation in light of the statement on page 32 that $0 revenue is expected in this area due to "reduced applications received." This seems to mean that no applications for IDN Fast Track ccTLDs are expected after June 30, 2012, which raises the question of how much ICANN plans to spend during the next fiscal year simply to wind down the program.

Projects

Comparing this year's budget framework document to the one presented last year, the most significant improvement has to do with ICANN "Strategic Projects." Page 12 presents a list (we assume an exhaustive one, though this should be explicitly stated) of those projects being undertaken in FY12 and those proposed for FY 13. We also commend the staff for providing proposed budget figures for these projects on page 13, and project summaries for some of them on pages 15-20. Although projects account for only about 15% of planned ICANN spending, the increased transparency is much appreciated. We urge that it be extended to the much larger slice of the budget pie represented by Core Operations.

Furthermore, greater transparency is needed in the project area as well. The goals of each project should be clearly identified, along with its anticipated deliverables in each Fiscal Year, so that the community can better evaluate the projects and whether they are making adequate progress. This basic information about projects should be updated at least annually.

IPC offers the following preliminary comments and questions on the following FY 12 projects that are slated to be continued in FY13:

1. P1204 – Advance Whois Program:

- How much of the $622k budgeted for this project in FY13 will be devoted to the first bullet point listed on page 15 ("facilitate and promote discussion about technical evolution of Registration Data Directory Services and potential use of new protocol")? What new protocol is being referred to? How does this aspect of the project overlap with P 1231, Restful Whois?

- Last month, ICANN's CEO stated in a letter to NTIA Administrator Larry Strickling that "ICANN staff members have developed and recommended a solution for internationalized registration data (to ensure clarity of Whois information using characters other than English). That proposal is being considered for adoption as a standard by the Internet Engineering Task Force." (http://www.icann.org/en/correspondence/beckstrom-to-strickling-11jan12-en.pdf) Has this proposed solution been shared with the community? Under which ICANN project is the preparation of this proposal and its discussion at IETF being financed, and how much is being spent?

- Under the second bullet point in the summary on page 15: a number of forthcoming developments in the remainder of FY12 and early in FY13 may impact the timing of, and even the necessity for, some of the Whois studies mentioned. These developments include Board action on the recommendations of the Whois Policy Review Task Force established pursuant to the Affirmation of Commitments, and the impending renegotiation of the ICANN registry contract for .com. How have these developments been taken into account?

2. P1212 – New gTLD Applicant Support

IPC is concerned to note that ICANN plans to spend 40 cents on "communication and operation" of this program for every dollar disbursed in "financial or non-financial support" of potential new gTLD applicants ($800k budget figure v. $2M fund for applicant support, which is apparently off-budget). This suggests that overhead will account for nearly 30% of the overall program. How does this ratio compare with other comparable programs to assist underserved communities?

3. P1218 – OEI Elad Levinson

How much is being spent on this project in FY12? Is the proposed $195k for FY 13 an increase or decrease? The summary provided on page 17 indicates that the project results from a Board recommendation but offers no details about what exactly is being done to improve ICANN's "operations and processes, staff development, culture, morale, and leadership, and the impact of globalization on ICANN." Can more detail be provided? Why is this project labeled with the name of a staff member in FY12 but not in FY 13?

4. P1219 – ATRT Recommendations

Here too, how does the $300k budgeted for FY13 compare with spending in FY12? The chart on page 13 allocates this project to the FY 13 priority to "enable effective and constructive early participation of the GAC in the policy development process," but the summary on page 16 does not mention the GAC and suggests that this project will focus on "Board and Policy development." More detail on this project is needed.

5. P1222 – contract compliance

See discussion above. The fact that $400k is budgeted to be spent on audits, a new "consolidated and integrated 'Compliance Intake, Management and Reporting System'," and other "improvements and expansion" does little to answer the overarching question of how ICANN plans to step up its compliance activities to meet the challenges presented by new gTLDs and RAA amendments.

6. P 1231 -- Restful Whois

As noted above, the demarcation of this project from P1204, and the role of this project in the internationalized registration data solution referenced by Rod Beckstrom, need to be clarified. It would also be valuable to know how much was spent on this project in FY12, as well as its specific objective.

7. New projects: IDN Variant Management

IPC notes that ICANN plans to spend $2.8 million on this topic in FY13, more than it plans to spend from its main budget ($2.64 million) on all other operational matters involved in launch of the new gTLD program. Considering that ICANN plans to be in a position to delegate new IDN gTLDs as soon as January 2013, it is somewhat surprising that "a single report identifying issues to six common scripts," much less work on "development and implementation of solutions to those issues," will not be completed before the new fiscal year starts, and therefore must be funded in the FY13 budget. Similarly, it is unclear how ICANN can effectively manage string contention issues in the IDN space if studies on "visual similarity rules" are not even scheduled to be launched until July 1, 2012. A clearer explanation of these significant projects and their relationship to the new gTLD launch would be welcomed.

8. New Projects: Trademark Clearinghouse and URS (Uniform Rapid Suspension)

While IPC is gratified that ICANN is budgeting for the expenses involved in rolling out these two main Rights Protection Mechanisms applicable to new gTLDs, we are unable to evaluate (and hence to provide feedback on) whether the amounts budgeted for these projects ($300K and $150K respectively) are adequate, without much more detail on how these funds are proposed to be spent.

9. New Project: Intercessional [sic] Meetings

IPC (as well as other constituencies within the CSG) has already sought ICANN financial support through the SO/AC funding request mechanism for an intersessional meeting, probably to take place in the vicinity of an ICANN office. We assume that the proposal for "a number of 'pilot' regional intercessional community meetings" is without prejudice to our request, which does not really fit this description. In any event IPC needs much more information in order to evaluate this $130k project proposal, which supposedly arises from the expressed desires of "non-contract community members" but about which we have not been consulted.

10. New Project: Additional Rights Protection Mechanisms

ICANN is prudent to budget as an additional project the development of additional RPMs to address defensive registrations in the new gTLDs, which are clearly needed. We withhold any judgment on the appropriateness of the proposed funding level ($110k) until more details are available.

Thank you for considering IPC's views. As noted above, we hope to supplement these preliminary comments in a joint submission in the reply round.

Respectfully submitted,

Steve Metalitz, IPC president, on behalf of the Intellectual Property Constituency