



June 15, 2012

Reply Comments of Intellectual Property Constituency (IPC)

(<http://www.icann.org/en/news/public-comment/op-budget-fy13-01may12-en.htm>)

The Intellectual Property Constituency appreciates this opportunity to comment on the Draft FY13 Budget and Operating Plan.

In this reply comment round, we express our support for several of the comments previously made. In particular:

From ccNSO Strategic and Operational Planning Working Group [see <http://forum.icann.org/lists/op-budget-fy13/msg00012.html>] :

- IPC agrees that recent changes to the public comment process have diminished, not enhanced, the ability of constituencies to comment meaningfully on many important topics, including but not limited to the budget.
- IPC agrees that the budget and operating plan lacks focus on developing professionalism and achieving operational excellence.
- IPC agrees that the budget and operating plan includes too many projects (a point conceded by the CFO in a recent webinar), and risks overstressing the capacities of ICANN volunteers.

From Business Constituency [see <http://forum.icann.org/lists/op-budget-fy13/msg00014.html>] :

- IPC agrees that it is extremely difficult to correlate the presentation made in the budget framework document from January 2012 with the organization of the draft budget and operating plan. This makes it nearly impossible to determine whether the concerns IPC expressed regarding the budget framework (see IPC comments of 2/23/12) have been adequately addressed.
- IPC also agrees that the presentation of FY13 priorities (page 2 of the budget document) and of the numerous projects listed beginning on page 53 seem to have originated in the budget document for the first time and are not clearly tied to decisions made by the ICANN board nor to projects previously presented to the community. In particular, projects approved as part of the budget should be

subject to publicly stated timelines, goals and deliverables, and should be the subject of periodic reporting to the community.

We supplement these reply comments with the following observations:

- The new operational category of “Stakeholder Projects and Policy Implementation” (page 9) may be misnamed and lacks any coherent goals that we can determine. In particular, we would like to know what “stakeholder group meetings” this operational category would support.
  - We welcome the statement that “implementation of additional post-delegation rights protection mechanisms will take place” under this activity (page 10). We look forward to more detail on what is proposed and to an opportunity for right holders to play a role in shaping and designing these “additional mechanisms.”<sup>1</sup>
  - Finally, if the operating plan for the upcoming fiscal year includes “arriving at the goal of an objective set of string similarity recommendations for all TLDs,” how will string similarity decisions be made in the next few weeks (during FY12) as part of the new gTLD batching process?
- On contract compliance (page 14), while IPC welcomes the increased resources projected, we question ICANN’s ability to increase headcount by 67% and increase spending by 62% in a responsible and efficient manner in a single year. Repeatedly in the past, the staff has fallen well short of its goals with respect to enhanced contract compliance – on what basis can we be assured that this year will be different?
  - It is also unclear how much of the projected expenditure increase in this function is attributable to resource increases in six areas separate from contract compliance (e.g., information technology, finance), as listed in the second bullet on page 14. This needs to be clarified.
  - We also find it very hard to discern the boundary between spending in this “operational area,” and the \$1.2 million budgeted for a “new compliance system project” (pages 53-54), since the descriptions of the two activities overlap considerably (e.g., operational funding will be used to “replace the current complaint intake systems” while project funding will be used to

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<sup>1</sup> It would also be useful to know what research is planned regarding implementation of RPMs in new gTLDs (page 45).

“consolidate and centralize contractual compliance intake, management and reporting”).<sup>2</sup>

- Finally, it seems odd that plans for contractual compliance make no reference to the Board’s commitment to bring a new Registrar Accreditation Agreement—one of the main contractual agreements the compliance staff is charged with enforcing—into force during FY13, a change that certainly seems to require staff planning and training to implement effectively.

In sum, while IPC applauds the goal of increased resources for contract compliance, a critical reading of the budget and operating plan does not inspire confidence that ICANN has a coherent, thoughtful plan to do more than “throw money at the problem.”

- The content of the activity labeled “organizational effectiveness and improvements (pages 23-24) remains mysterious. It could be informative to learn more about the “advisory body [that] has been formed to assure that the program is bottom-up in both governance and implementation.”
- The activity of “organizational reviews and implementation” contains funding for a review that cannot possibly be commenced during FY13: the “competition, consumer trust, and consumer choice review” which is not to be organized until after new gTLDs have been in operation for one year (page 29). This discrepancy needs to be explained.
- In general, the discussion of organizational activities that takes up most of the first half of the document lacks the specificity one would hope for in a budget document. Most of its sections consist of long lists of bullet points meant to support an overall expenditure figure that is never broken down. This does not go very far toward achieving a document that can be the basis for thoughtful and specific community input.
- The project descriptions on pages 54-59 do provide greater granularity, with specific budget amounts for each project in most instances, which is appreciated. In some cases, though, distinct projects are lumped together under one heading with no indication of resource allocation. A prime example is the very first project, which covers both a new contact compliance intake, management and reporting system, and an seemingly entirely separate “enterprise-wide rollout of

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<sup>2</sup> Such overlaps need to be explained throughout the document. For example, both the “Stakeholder Projects” activity on page 10 and the “Policy Development Support” activity on page 19 claim responsibility for Whois studies. Indeed, the exact same studies are also proposed to be funded as “Whois Program” projects on page 57. Similarly, translation/language services seem to fall under both “community support” (page 17) and “global engagement” (page 22). The prevalence of such overlaps and duplications (indeed, triplications) suggests that the entire operating plan lacks coherence.

Customer Relationship Management System,” with no explanation of why these two initiatives are treated as a single project.

- Moreover, as noted above, there is in many cases unexplained overlap between project and “operational” activities<sup>3</sup>; and there is reason for skepticism that ICANN actually intends to and is capable of executing effectively on such a long list of 25 projects in a single year.
- It is also somewhat alarming to note that, as ICANN embarks on the new gTLD evaluation process, it is so distant from having in place “a set of rules used to determine visual similarity” of TLD strings that it plans to spend \$220K, beginning in July 2012, to “develop and document” such rules (page 56).
- Finally, IPC awaits any and all information about the planned URS summit sessions (one of which, according to the budget document, is to take place within the next two weeks, before the end of FY12!) and what participation its members, whose interests are vitally at stake, will have in such sessions (page 59).

Respectfully submitted,

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

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<sup>3</sup> There is also unexplained overlap between projects. For instance, to “develop and standardize a RESTful Whois specification in the IETF” is part of the Whois program project (page 57); however, “budgets are needed to facilitate the development of the new protocol in the IETF” under the SAC051 Implementation Roadmap project (page 58).