



Comment on ICANN Reserve Fund: Proposed Replenishment Strategy

Status: FINAL

Version: 3

25-Apr-2018

Business Constituency Submission

GNSO//CSG//BC

Background

This document is the response of the ICANN Business Constituency (BC), from the perspective of business users and registrants, as defined in our Charter.

The mission of the Business Constituency is to ensure that ICANN policy positions are consistent with the development of an Internet that:

1. promotes end-user confidence because it is a safe place to conduct business
2. is competitive in the supply of registry and registrar and related services
3. is technically stable, secure and reliable.

Comment on Proposed Replenishment Strategy for ICANN Reserve Fund, as posted for public comment on 6-Mar-2018.¹

The request seems straight-forward enough: *ICANN organization seeks public comment on the Reserve Fund replenishment strategy.*

Per earlier BC comments, we prefer a level of reserves equal to 12-17 months of operating expenses. So we view a reserve of 12 months of operating expenses as an irreducible minimum.

It's necessary to understand how ICANN Org got to a point where the reserve needs to be replenished. First, we see these implications for different sectors of the ICANN community:

For **contracted parties** that collect fees from **registrants** to cover most of ICANN's budget, there is a question of whether new fees should be imposed or existing resources, collected and ear-marked for other purposes, should be re-directed.

For **civil society** and small businesses who rely on funding from ICANN to foster participation in policy and programs, any reduction could mean a loss of effectiveness.

For the **technical community** and **Regional Internet Registries**, a failure to show fiscal accountability may raise questions about the legitimacy of ICANN's stewardship.

For **country code operators** who voluntarily fund ICANN, fiscal shortfalls might suggest mismanagement, fostering a loss of confidence and a reduction in those contributions.

For the **business community** in general and the BC specifically, a diminished reserve can hamper the organization in ways that curtail meaningful initiatives (e.g., Whois in the era of the European GDPR) or limit its reach just as ICANN begins to stand up as a model of empowered community decision-making. It also could imply that ICANN Org, if faced with a catastrophic

¹ ICANN public comment page at <https://www.icann.org/public-comments/reserve-fund-replenishment-2018-03-06-en>

challenge to its normal funding mechanisms, would lack the necessary resources to continue its core functions.

How did it come to this? ICANN is clear-eyed in its view of how growth has outstripped predictable resources:

“The Reserve Fund was created in 2007 with a target level set at a minimum of 12 months of Operating Expenses. It has been funded through operational excesses. Over the past years, ICANN's operations have grown, its risk profile has evolved, and withdrawals have been made to fund the IANA stewardship transition expenses.”

It is clear from its own assessment that ICANN Org ignored indications that revenue growth was slowing and would not meet expectations that led it to undertake new activities and expenses.

The recent pledge by ICANN Org management at ICANN61 in Puerto Rico that it would live within its means could be a good first step, although the proposed FY19 budget indicates that ICANN Org continues to assume it can afford significant staff increases. And it remains to be seen whether ICANN Org will honor this pledge in the FY19 budget.

What else can be done may have well been captured in the recent public comments on the “ICANN Draft FY19 Operating Plan and Budget and Five-Year Operating Plan Update.” We urge ICANN Org and the Board to revise the FY19 budget per comments by the BC and others, rather than rubber-stamp the proposed draft budget.²

That need not be re-hashed here. Our focus is on the best ways for ICANN to replenish its Reserve Fund.

The scope of the problem is this:

The most recently published level of the Reserve Fund is US \$ 70 million (as of Dec-2017). Using the FY19 Draft Budget as a measurement for the 12 months of Operating Expenses, the Reserve Fund minimum level should be US \$138 million, resulting in a minimum shortfall between the currently published level and the minimum target level of US \$ 68 million.

We agree that ICANN Org can and should generate US \$5 million in operating surplus for **annual** contributions to replenish its Reserve Fund. We consider this an essential part of the replenishment strategy that enforces fiscal discipline on ICANN Org.

We make one other assumption: that new fee increases for domain names are a last resort, both practically and politically. Practically, because just as ICANN is grappling with revenue short-falls on

² 11-Mar-2018, BC comment on ICANN’s proposed FY19 budget, at http://www.bizconst.org/assets/docs/positions-statements/2018/2018_03%20March_%2012%20BC%20comment%20on%20ICANN%20FY19%20Budget%20Proposal.pdf

long-term business objectives, so too are Registries and Registrars. Politically, because such a cost increase would ultimately fall on Registrants.

Instead of raising domain fees, we recommend that ICANN Org focus on re-allocation of funding and fiscal discipline.

Replenishing the Reserve Fund with Annual Operating Surpluses

First, in the five budget years FY2019 through FY2025, we recommend continuing the contribution of US \$ 5 million each year from the ICANN operating budget to the Reserve. That is a total of US \$ 25 million over 5 years.

Use of Auction Proceeds to Replenish the Reserve Fund

Second, regarding use of new gTLD Auction proceeds, the BC is actively participating in the CCWG regarding use of new gTLD Auction Proceeds (CCWG-AP), which should be allowed to complete its work in defining potential activities that are in support of ICANN's core mission.

As to whether auction proceeds should be available to replenish the Reserve Fund, the BC recently [endorsed](#) the idea of using auction process to replenish reserves, though we did not specify an amount:³

“The BC reiterates our Nov-2017 suggestion that the community process on use of new gTLD Auction Proceeds should thoroughly examine using some of those proceeds to replenish the Reserve Fund. “

The \$36 million ICANN Org spent on the **IANA Stewardship Transition and ICANN Accountability Enhancements** was for public benefit to ensure that the multi-stakeholder community continue managing IANA and have more oversight over ICANN. The money ICANN spent helped the M-S community demonstrate to governments (USG in particular) and other stakeholders that this transition could maintain security, stability and resiliency and increase ICANN Org's accountability to the global internet community.

However, it would be premature and inappropriate to route around the CCWG-AP process by claiming auction proceeds to address ICANN Org's deficient Reserve Fund. Further, the BC is concerned that doing so would start down a slippery slope where ICANN Org eschews fiscal discipline because it can count upon bail-outs from auction proceeds.

Use of unspent gTLD Application Funds

Third, we recommend a re-allocation of unspent new gTLD applications funds of US \$ 17 million to the Reserve Fund.

³ 11-Mar-2018, BC comment on ICANN's proposed FY19 budget, at http://www.bizconst.org/assets/docs/positions-statements/2018/2018_03%20March_%2012%20BC%20comment%20on%20ICANN%20FY19%20Budget%20Proposal.pdf

Overall Principles

Overall, the BC proposes the following principles for Reserve Fund replenishment:

1. ICANN should maintain a balanced budget that reflects community supported expenditures.
2. ICANN operating expenses should not grow beyond the organization's ability to maintain an adequate Reserve Fund. That includes the requirement that operating expenses must be reduced in order to generate an annual surplus of \$5 million to replenish the Reserve Fund.
3. Legal costs related to new gTLD applications should not compromise ICANN Org's ability to deliver the proposed \$17 million contribution to the Reserve Fund.
4. The CCWG-AP should take on-board input received via this consultation regarding use of auction proceeds for replenishing the Reserve Fund.
5. The community should provide comment on the final plan to replenish the Reserve Fund.

--

This comment was drafted by John Berard, Jimson Olufuye, and Steve DelBianco, with edits from Denise Michel, Chris Wilson, and Marilyn Cade.

It was approved in accord with the BC Charter.