

**Statement of the Non-Commercial Stakeholders Group on the
[Proposed Replenishment Strategy for the ICANN Reserve Fund](#)**

1. The Non-Commercial Stakeholders Group (NCSG) welcomes the opportunity to comment on the replenishment strategy for the ICANN Reserve Fund that the organization published on 6 March 2018. This is an issue that we have been monitoring closely, and our comments today follow on from our statement last December in which we offered input on the rationale and target level for the Reserve Fund.¹ In summary, we strongly support the list of guiding principles for the proposed replenishment strategy, and the replenishment strategy itself is one that we are largely comfortable with. However, we do not support taking funds from the New gTLD Auction Proceeds fund in order to replenish the Reserve Fund.
2. The NCSG represents the interests of non-commercial domain name registrants and end-users in the formulation of Domain Name System (DNS) policy within the Generic Names Supporting Organisation (GNSO). We are proud to have individual and organisational members in over 160 countries, and as a network of academics, Internet end-users, and civil society actors, we represent a broad cross-section of the global Internet community. Since our predecessor's inception in 1999 (the Non-Commercial Domain Name Holders Constituency, NCDNHC), we have facilitated global academic and civil society engagement in support of ICANN's mission, stimulating an informed citizenry and building their understanding of relevant DNS policy issues. We believe our evidence-informed public interest-orientated contributions provide balance against state and market interests.

Replenishment Period

3. The NCSG supports the proposed replenishment period which would see the Reserve Fund brought to the agreed target level in three to five years.

ICANN Org Should Make Contributions to the Reserve Fund

4. The NCSG supports in principle the proposal that ICANN org make an annual contribution to the Reserve Fund through the achievement of operational savings. In the context of a tightening budget, we appreciate that ICANN will likely need to undergo an organizational restructuring in the service of its remit, and our concern is that this could impact the ICANN community and the support that we require in order to do our work. In the proposed FY19 Budget and Operating Plan, for instance, the ICANN community was targeted by ICANN for cuts. From what we understand, departments were given internal targets of cuts to meet, and rather than look inward, most departments sought to cut community support. This is unacceptable. While the community should not be immune from cuts, we do ask that when ICANN is considering areas where cost-savings might be able to be achieved, first provide a rationale for the cut, and then engage in a formal community consultation before any decisions are made. It is our strongly held belief that when you cut community support, you weaken community participation in ICANN's policy development processes, and by extension, hamper ICANN's own legitimacy.

¹ See: Statement of the NCSG on the ICANN Reserve Fund Rationale and Target Level, 1 December 2017, <https://mm.icann.org/pipermail/comments-reserve-fund-12oct17/2017q4/000012.html>.

Additional Fees on the Contracted Parties Would Hurt Domain Name Registrants

5. The vast majority of ICANN's revenue comes from gTLD and ccTLD domain name registrants. The NCSG does not support ICANN imposing an additional fee or a fee increase on the contracted parties to contribute to the Reserve Fund, as these costs will either directly or indirectly be passed on to registrants. We believe, broadly, that all communities at ICANN will oppose this recommendation. Other entities which deal with dynamic markets tend to vaccinate themselves from the illusion of an endless source of income by developing a cost-based budget first, and justifying every year its budget to the providers of said income. We suggest that ICANN do the same.

We Do Not Support the Use of Auction Proceeds

6. We strongly oppose the proposal to take between \$36 million and \$53 million from the New gTLD Auction Proceeds fund to replenish the Reserve Fund. As we stated last December, these funds are supposed to be sequestered, and we feel it is a fundamentally unsound practice to dip into those funds to top up the Reserve Fund. To do so would make ICANN more vulnerable to a financial crisis since its ongoing expenditure would no longer be constrained by ongoing revenues. In addition, we note that in *Ruby Glen, LLC v ICANN* before the United States District Court for the Central District of California, ICANN's legal counsel explicitly argued that the auction proceed funds could not be used for operating purposes:

Should an ICANN auction occur, the auction proceeds are first used to offset the administrative costs of the auction. (ER920, Guidebook § 4.2 n.l.) The remainder of the auction proceeds are held in a segregated account until the Internet community develops, and the ICANN Board authorizes, a plan to use the funds for charitable purposes consistent with ICANN's mission, core values, and status as a not-for-profit entity. (Id.; SER73, Weistein Decl. ¶ 13.) Accordingly, ICANN does not retain remaining auction proceeds for its own operational use. (Id.)²

Given this filing, we believe it would be inappropriate for ICANN to use auction proceeds to replenish the Reserve Fund, an activity that we consider to be an operational expense.

Quarterly Updates

7. It is important for the community to be able to see how decisions made in relation to the Reserve Fund are being delivered and to be able to measure the impact. The NCSG would welcome a quarterly report updating the community on the state of the Reserve Fund.

Conclusion

8. Thank you again for opening this conversation up to the community. We are grateful to ICANN for this opportunity to share our perspective on this important issue. In summary, given the level to which the Reserve Fund has been depleted, we believe the only way to replenish it is by cutting costs and focusing on activities central to ICANN's core mission.

² <https://www.icann.org/en/system/files/files/litigation-ruby-glen-icann-answering-brief-30oct17-en.pdf>