

CCWG-Accountability (WP1): Draft Content for the Second Public Comment Report

Budget and Strategic Plan Reconsideration (5.2)

V3 – 22 July 2015

Draft Author: Jonathan Zuck

Notes for WP1:

Several issues were raised in Paris:

1. IANA Budget. The rough consensus was that while the community required this power just as much over the IANA budget, it should perhaps be separated from the general ICANN budget.
2. Round Trips: A Rough consensus formed that two(2) should be the max before an escalation should occur. There should also probably be a time box for a veto.
3. It was suggested that the basis should be made explicit, be consensus based and driven by public comments.

All three of these issues are addressed in this draft, including a 15 time limit on vetos and board response.

The following items should be discussed by the WP1:

1. Does the IANA budget have sufficient protection in this process?
2. Is 15 days enough for veto and turn around?
3. What questions should we ask the community to answer, preferably in a constrained, or even binary fashion?

5.2 Power: reconsider/reject budget or strategy/operating plans

- 01 The right to set budgets and strategic direction is a critical governance power for an organization. By allocating resources and defining the goals to which they are directed, strategic/operating plans and budgets have a material impact on what ICANN does and how effectively it fulfills its role. Financial commitments are made on behalf of the organization that are difficult to unwind after the fact.
- 02 Today, ICANN's Board makes final decisions on strategic and operating plans and on budgets. While ICANN consults the community in developing strategic/business plans, often these budgets and strategic plans are put to the community without sufficient detail to facilitate thoughtful consideration. For example, the CWG-Stewardship proposal has expressed a requirement for the budget to be transparent with respect to the IANA

function's costs and clear itemization of such costs. Furthermore, there is no mechanism defined in the Bylaws that requires ICANN to develop such plans in a way that includes a community feedback process. Even if feedback was unanimous, the Board could still opt to ignore it.

- 03 The IANA budget (PTI Budget), in particular, requires protection as recommended by the CWG on IANA Transition. The IANA functions budget must be managed carefully and not decreased (without public input) regardless of the status of the other portions of the budget.
- 04 The process by which budgets, operating plans and strategic plans are developed must be enhanced to include greater transparency and community involvement earlier such that community buy-in is a byproduct of the process. Improved interaction between the staff, board and community is essential for strategic planning within a multi-stakeholder organization. While the CCWG doesn't consider the notion of a "pre-approval" to be wise, a considerable effort to improve these processes is embedded in the Work Stream 2 plan. Successful reform in this area will render this new power nearly anachronistic as the community will have been an integral part of budget and strategic plan development. Absent such community involvement the power of the community to send a budget or strategic plan back to the board for reconsideration is even more critical.
- 05 Accordingly, this new power would give the community the ability to consider strategic & operating plans and budgets (both ICANN general and PTI) after they are approved by the Board (but before they come into effect) and reject them based on perceived inconsistency with the purpose, Mission and role set out in ICANN's Articles and Bylaws, the global public interest, the needs of ICANN stakeholders, financial stability or other matters of concern to the community. The rationale for any community veto would be consensus based and concern issues raised in the consultations conducted before the Board approved the budget or plan. It is important to note that this recommended power does not enable the community to make direct changes to the budget or plan, but rather to halt its implementation and return it to the board for further refinement.
- 06 Given the issues that constitute the basis for a veto will have been raised during the community consultation that leads to a plan or budget being considered by the board, a period of 15 days (following a successful petition by an SO or AC to raise the question – see below) is sufficient for the community to decide to veto a budget or operating plan. Because time pressures are less acute in respect of strategic plans, a period of 30 days can be allowed for a strategic plan.
- 07 To allow the board and staff appropriate time to absorb the veto and propose a revised budget or operating plan, 40 days minimum should be added to the budget / operating planning process. If this time cannot be added for practical reasons due to the nature of the budget approval process, the consequence as noted above is that a rejection would see ICANN operating on the previous year's budget until the disagreement was resolved.
- 08 Because time pressures are less acute in respect of strategic plans, 60 days should be added to the strategic planning process.
- 09 If the community exercised this power, the Board would have to absorb the feedback that came with the decision, make adjustments and pass amended plans. The planning process should be structured so this can be done before there was any day-to-day impact on

ICANN's business arising from the power being exercised. The CCWG-Accountability believes the timeframes set out above allow for this.

- 10 In a situation of significant and sustained disagreement between the community and the Board regarding a proposed annual budget, ICANN would temporarily continue to operate according the previous year's approved budget. Far from operational paralysis, the result would be the equivalent of a "continuing resolution", under which the organization would continue to operate under last year's budget.
- 11 The Board will have a limited time (40 days, as noted above) to resolve the situation of not operating with an approved budget by considering the community's feedback and proposing a revised budget. If the Board is unable or unwilling to do so, other Community Powers (as set out in this part of the Second Public Comment Report) are available if the community wanted to take the matter further.
- 12 The community will be limited to two rejections of budgets or operating plans per cycle before resorting to other accountability mechanisms in order to avoid ongoing use of the previous year's budget. Because of the longer-term nature of the strategic plan, there will be no limit to the number of rejections allowed.
- 13 This power does not allow the community to re-write a plan or a budget: it is a process that requires reconsideration of such documents by the Board if the community feels they are not acceptable. If a plan or budget is rejected and sent back, **all** the issues must be raised on that first return. This requirement is designed to prevent an endless cycle of new revisions that could theoretically lead to unnecessary delay in the development of these plans rather than targeted accountability.
- 14 A plan or budget that has been rejected cannot be sent back again with new issues raised, but the community can reject a subsequent version where it does not accept the Board's response to the previous rejection.
- 15 It is expected that the reforms to the plan development process contemplated for Work Stream 2 would render the use of this power highly unlikely but should inefficiencies to its implementation surface, the details would be subject to review by scheduled review of ICANN accountability and transparency.
- 16 At the appropriate point in the planning cycle the challenge period would be open, and any SO / AC participant in the community powers mechanism would be able to raise the question. That is, it is a petition by an SO or AC's governing Council or similar (within fifteen days of the announcement of the board's decision) that triggers a decision by the community whether or not to reject the budget or plan.
- 17
- 18 A **2/3** level of support in the mechanism would be required in the mechanism to reject the ICANN general budget or strategic plan the first time: a **3/4** level of support for subsequent rejection/s. In the case of the IANA budget, the first veto would require a **simple majority** and **2/3** level of support for a subsequent veto.

19 **QUESTIONS AND OPEN ISSUES:**

- 20 *11a) What is a reasonable period of time for the community to consider a budget before deciding to veto it, especially given the requirement that the issues are raised during the public consultation?*
- 21 *11b) What is a reasonable time for the board to consider community objections to a budget or strategic plan before they must respond with a revised budget?*
- 22 *11c) Do you believe the ICANN and IANA budgets should be treated separately in terms of thresholds and locked minimum for the IANA functions based on the previous year's budget? .*