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

Budget and Strategic Plan Reconsideration (5.2)

V2 – 15 July 2015 (Frozen)
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Notes for CCWG:

While the majority of comments supported this community power, there were two main concerns raised:

1. Operational deadlock. There would be no deadlock because of the continuing resolution to operate on last year's plan. The bigger problem would be preventing this from being permanent.

2. A couple of comments recommended some sort of cap on the number of round trips a budget or strategic plan can make. The text below was updated to include this recommendation in conditional form.

3. The need for a better up front process. While we are not chartered to improve the process by which strategic plans and budgets are developed, such discussions are on the table for WS2.

While not resulting in substantive changes to the document two concerns are addressed in expanded explanatory text.

The following items should be discussed by the CCWG:

1. How best to prevent the board from sitting on last year's budget. An automatic decrease in the size of the budget has been suggested.

2. Should the budget and strategic plans be treated differently in terms of deadlines and round trip caps?

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 strategy, operations plans and 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 process by which budgets 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 in 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.

0204 Accordingly, tThis new power would give the community the ability to consider strategic & operating plans and budgets 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 community consultations conducted before Board approval could would raise the concerns; based on that feedback that would form the basis of such a rejection, the Member SOs/ACs would have the power to reject the budget. It is important to note that this recommended power does not enable the community to make direct changes to the budget but rather to halt its implementation and return the budget to the board for further refinement.

03   Time would be included in planning and budgeting processes for the community to consider adopted plans and decide whether to reject such plans (timeframe to be determined). These processes would also need to set out the required level of detail for such documents. The CWG-Stewardship has expressed a requirement for the budget to be transparent with respect to the IANA function's costs and clear itemization of such costs. Note that improvements to the community's input into these processes are for consideration by the CCWG-Accountability as part of Work Stream 2 efforts.

0405 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.

0506 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. The Board must however resolve the situation of not operating with an approved budget. Eventually it will have to reconcile itself to the community's view. If the Board is unable or unwilling to do so, other mechanisms (as set out in this part of the First Public Comment Report) are available if the community wanted to take the matter further. It has been suggested in the initial public comments that perhaps the community should be limited to two rejections of these plans per cycle before resorting to other accountability mechanisms in order to avoid paralysis.

07   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. Where a plan or budget has been 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 unnessesary delay in the development of these plans rather than targeted accountability. That 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.

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0608   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.

0709   As this power would become part of existing planning processes (incorporated into the Bylaws as required), it does not raise questions of standing in respect of someone raising a complaint.

0810   At the appropriate point in the planning cycle the challenge period would be open, and any participant in the community powers mechanism would be able to raise the question. A 2/3 level of support in the mechanism would be required in the mechanism to reject a first time: a 3/4 level of support for subsequent rejection/s.

0911   **QUESTIONS AND OPEN ISSUES:**

12   *11a) Do you agree that the power for the community to reject a budget or strategic plan would enhance ICANN's accountability? Do you believe the annual budget should be decreased from the previous year if the board and community fail to reconcile their differences?*

1013   *11b) Do you believe there should be a cap on rejections of a particular plan by the community, requiring escalation to other accountability mechanism, to prevent paralysis?*

1114   *11cb) Do you agree with the list of requirements for this recommendation? If not, please detail how you would recommend amending these requirements.*