

DT-O Message to CWG list 14 April 16

Jonathan/Lise,

Please find below the recommendations from DT-O regarding three areas related to the Draft Bylaws. Note that the recommendations were supported by everyone on the DT-O call that occurred earlier today and that there was limited time to get feedback from those not on the call. Also note that Xavier Calvez and Elise Gerich were on today's call and contributed significantly to the recommendations.

Section 22.4 (b)

This section currently reads as follows: "At least 45 days prior to the commencement of each fiscal year, ICANN shall prepare and submit to the Board a proposed annual budget of ICANN for direct costs for ICANN's IANA department, all costs for PTI, direct costs for shared resources between ICANN and PTI and support functions provided by ICANN to PTI and ICANN's IANA department for the next fiscal year (the "**IANA Budget**"), which shall be posted on the Website."

DT-O supports a requirement that the IANA Budget be approved earlier than the ICANN Budget and believes that having the IANA Budget approved prior to consideration of the final ICANN Budget will:

- Remove any dependency of IANA services funding from approval or veto of the ICANN Budget
- Allow more time for resolution of a veto of the IANA Budget
- Provide increased confidence that IANA services will continue without interruption.

DT-O recommends paragraph 22.4 (b) be changed to the following, with the understanding that the Bylaws drafters may improve the wording as long as the intent is preserved: "Separately and in addition to the general ICANN planning process, PTI shall prepare and submit to the PTI Board a proposed operating plan and budget for the IANA functions for the upcoming planning cycle. Such proposed operating plan and budget shall provide appropriate information to enable a consultation process allowing for broad community engagement and input, including appropriate steps for addressing such community input. The proposed operating plan and budget for the IANA functions, resulting from such process, shall be submitted to ICANN as input prior to and for the purpose of being included in the proposed ICANN operating plan and budget, itself then subject to a broad consultation process, including appropriate steps for addressing community input."

DT-O recognizes that some terms such as 'PTI' may change as the implementation process proceeds and assumes that any necessary edits in that regard will be made when possible.

Annex F: Caretaker IANA Budget Principles

Principle 1.f presently says: "Notwithstanding any other principle listed above, prevents ICANN, in its responsibility to fund the operations of the IANA functions, from initiating activities that are subject to community consideration (or for which that community consultation has not concluded), including without limitation, preventing implementation of the expenditures or undertaking the actions that were

the subject of the IANA Budget that was rejected by the EC and triggered the need for the Caretaker IANA Budget.”

DT-O discussed the following regarding 1.f:

- This clause seems appropriate in a case where the EC rejects the budget because it does not support funding certain actions or thinks that too many funds are allocated to those actions.
- But what about a situation in which the EC rejects the budget because it believes that insufficient funds are budgeted for certain actions? In a case like that, it might not be necessary to prevent funding of the actions while the dispute is resolved; in other words, it might be fine if the actions proceeded at the reduced funding level until a decision is made on increased funding, especially if taking the actions at the reduced funding level would not negatively impact the actions if increased funding was provided later.

DT-O recommends that this principle be reworded to accommodate situations like the example cited above. Here is a suggestion for rewording it: “Notwithstanding any other principle listed above, prevents ICANN, in its responsibility to fund the operations of the IANA functions, from initiating activities that are subject to community consideration (or for which that community consultation has not concluded), including without limitation, preventing implementation of ~~the-any contentious~~ expenditures or undertaking ~~the-any contentious~~ actions that were the subject of the IANA Budget that was rejected by the EC and triggered the need for the Caretaker IANA Budget.”

If 1.f is reworded, then a change may also need to be made in section 2.b.v, Examples of expenditures that would be excluded from a Caretaker Budget: “the proposed expenditure that was the basis for the rejection by the EC that triggered the need for the Caretaker ICANN Budget.” (Note that a minor edit is needed: it should say Caretaker IANA Budget, not Caretaker ICANN Budget.)

PTI Budget Dependencies

On 12 April, Sharon Flanagan sent the following table to the CWG Client Committee and to Chuck Gomes requesting that DT-O provide input to the sections highlighted in yellow. DT-O’s responses are highlighted in green in the Bylaws Reference column.

BUDGET DEPENDENCIES – DRAFT ICANN BYLAWS

	CCWG Final Proposal Language	Corresponding ICANN Bylaws Section Reference
	ICANN Budget and IANA Budget	
3	The CWG-Stewardship recommends that the IFO’s comprehensive costs should be transparent and ICANN’s operating plans and budget should include itemization of	See Section 22.4(b)(ii) [<i>Note to CWG:</i> The highlighted language regarding the project level and below is not covered in current draft ICANN bylaws.]

	CCWG Final Proposal Language	Corresponding ICANN Bylaws Section Reference
	<p>all IANA operations costs to the project level and below as needed.</p>	<p>DT-O does not believe that this should be in the Bylaws. First of all, the term ‘project level applies to the financial system that ICANN uses now and that might change in the future. DT-O definitely believes that sufficient detail must be provided to allow thorough review and analysis by the community but what is sufficient will vary by the situation. DT-O also believes that the following element of the recommended rewording of paragraph 22.4 (b) as included above will adequately cover this in the Bylaws.</p>
4	<p>An itemization of IANA costs would include “Direct Costs for the IANA department”, “Direct Costs for Shared resources” and “Support functions allocation”.</p> <p>Furthermore, these costs should be itemized into more specific costs related to each specific function to the project level and below as needed.</p>	<p>See Section 22.4(b)(ii)</p> <p>[<i>Note to CWG</i>: The highlighted language regarding the project level and below is not covered in current draft ICANN bylaws.]</p> <p>See the DT-O comments in item 3 above.</p>

	CCWG Final Proposal Language	Corresponding ICANN Bylaws Section Reference
5	<p>PTI should also have a yearly budget that is reviewed and approved by the ICANN community on an annual basis.</p>	<p>See Section 22.4(b)(ii) and Section 22.4(b)(vi).</p> <p>“At least 45 days prior to the commencement of each fiscal year, ICANN shall prepare and submit to the Board a proposed annual budget of ICANN for direct costs for ICANN’s IANA department, all costs for PTI, direct costs for shared resources between ICANN and PTI and support functions provided by ICANN to PTI and ICANN’s IANA department for the next fiscal year (the “IANA Budget”)</p> <p>[Note to CWG: is above sufficient or should it read as marked below? Also is 45 days acceptable prior to commencement of fiscal year sufficient?:</p> <p>“At least 45 days prior to the commencement of each fiscal year, ICANN shall prepare and submit to the Board a proposed annual budget of <u>PTI and the IANA department, which budget will include itemization of the ICANN for</u> direct costs for ICANN’s IANA department, all costs for PTI, direct costs for shared resources between ICANN and PTI and support functions provided by ICANN to PTI and ICANN’s IANA department for the next fiscal year (the “IANA Budget”)]</p> <p>Note that DT-O recommends a change to the above clause. See the comments under Section 22.4 (b) above.</p>

	CCWG Final Proposal Language	Corresponding ICANN Bylaws Section Reference
6	<p>PTI should submit a budget to ICANN at least nine months in advance of the fiscal year to ensure the stability of the IANA services. It is the view of the CWG-Stewardship that the IANA budget should be approved by the ICANN Board in a much earlier timeframe than the overall ICANN budget.</p>	<p>[Note to CWG: The highlighted language regarding the budget timeframe is not covered in current draft ICANN bylaws, including language regarding the submission of PTI budget to ICANN nine months prior to the fiscal year. Given that this is a PTI requirement, it could be included in the PTI Bylaws instead.]</p> <p>DT-O believes that this recommendation can be addressed in the IANA budget development process that will be prepared during implementation work in the next few months; see item 7 below. It is also important to note that the rewording of Draft Bylaws paragraph 22.4 (b) above ensures that the IANA budget would be approved in a much earlier timeframe than the overall ICANN budget.</p>
7	<p>The CWG (or a successor implementation group) will need to develop a proposed process for the IANA-specific budget review, which may become a component of the overall budget review.</p>	<p>[Note to CWG: This language regarding CWG processes is not covered in the current draft ICANN bylaws, but we would expect this language to be covered in CWG internal processes rather than in the ICANN bylaws.]</p> <p>DT-O agrees. This is an implementation issue.</p>

Please let me know if you have any questions.

Chuck Gomes

On behalf of DT-O