

Annex F: Caretaker IANA Budget Principles

1. Principles

The “caretaker” IANA Budget is defined as an annual operating plan and budget that is established by the CFO in accordance with the following principles (the “**Caretaker IANA Budget Principles**”):

- a. Is based on then-current operations of the IANA functions;
- b. Allows ICANN, in its responsibility to fund the operations of the IANA functions, to “take good care” and not expose itself to additional enterprise risk(s) as a result of the rejection of an IANA Budget by the EC pursuant to the Bylaws;
- c. Allows ICANN, in its responsibility to fund the operations of the IANA functions, to react to emergency situations in a fashion that preserves the continuation of its operations;
- d. Allows ICANN, in its responsibility to fund the operations of the IANA functions, to abide by its existing obligations (including Articles of Incorporation, Bylaws, and contracts, as well as those imposed under law);
- e. Allows ICANN, in its responsibility to fund the operations of the IANA functions, to avoid waste of its resources during the rejection period (i.e., the period between when an IANA Budget is rejected by the EC pursuant to the Bylaws and when an IANA Budget becomes effective in accordance with the Bylaws) or immediately thereafter, by being able to continue activities during the rejection period that would have otherwise needed to be restarted at an incremental cost; and
- f. 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.

2. Examples

- a. Below is a non-exhaustive list of examples, to assist with the interpretation of the Caretaker IANA Budget Principles, of what a Caretaker IANA Budget would logically include:
 - i. employment of staff (i.e., employees and individual long term paid contractors serving in locations where the entity or entities performing the IANA functions does not have the mechanisms to employ such contractors) across all locations, including all related compensation, benefits, social security, pension, and other employment costs;
 - ii. hiring staff (i.e., employees and individual long term paid contractors serving in locations where the entity or entities performing the IANA functions does not have the mechanisms to employ such contractors) in the normal course of business;
 - iii. necessary or time-sensitive travel costs for staff (i.e., employees and individual long term paid contractors serving in locations where the entity or entities

performing the IANA functions does not have the mechanisms to employ such contractors) or vendors as needed in the normal course of business;

iv. operating all existing offices used in the performance of the IANA functions, and continuing to assume obligations relative to rent, utilities, maintenance, and similar matters;

v. contracting with vendors as needed in the normal course of business;

vi. participating in meetings and conferences previously contemplated;

vii. participating in engagement activities with ICANN's Customer Standing Committee or the customers of the IANA functions;

viii. fulfilling obligations (including financial obligations under agreements and memoranda of understanding to which ICANN or its affiliates is a party that relate to the IANA functions; and

ix. participating in engagement activities in furtherance of the approved Strategic Plan.

b. Below is a non-limitative list of examples, to assist with the interpretation of the Caretaker IANA Budget Principles, of what a "caretaker" IANA Budget would logically exclude:

i. hiring staff (i.e., employees and individual long term paid contractors serving in locations where the entity or entities performing the IANA functions does not have the mechanisms to employ such contractors) or entering into new agreements in relation to activities that are the subject of the rejection of the IANA Budget by the EC pursuant to the Bylaws, unless excluding these actions would violate any of the Caretaker IANA Budget Principles;

ii. in the normal course of business, travel not deemed indispensable during the rejection period, unless the lack of travel would violate any of the Caretaker IANA Budget Principles;

iii. entering into new agreements in relation to opening or operating new locations/offices where the IANA functions shall be performed, unless the lack of commitment would violate any of the Caretaker IANA Budget Principles;

iv. entering into new agreements with governments (or their affiliates), unless the lack of commitment would violate any of the Caretaker IANA Budget Principles; and

v. the proposed expenditure that was the basis for the rejection by the EC that triggered the need for the Caretaker ICANN Budget.

Below is another Bylaws issue that I think DT-O needs to discuss in our meeting tomorrow. You will see that it is included in the message I just sent to the CWG Stewardship list.

Here are the relevant comments I included for the issue:

- Paragraph 1.f in Annex F, IANA Caretaker Budget Principles, on page 211 of the redline version (overall page 214) 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.”
 - 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.
 - I wonder whether this clause should be reworded to accommodate such situations; if so, 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.)
 - Note that DT-O plans to discuss this issue in its meeting on 13 April 2016.