# MAAWG

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| **To:** | Internet Corporation for Assigned Names and Numbers (ICANN) |
| **From:** | Messaging Anti-Abuse Working Group (MAAWG) |
| **Date:** | June 16th, 2011 |
| **Subject:** | Comments on ICANN's Draft FY2012 Budget |

To whom it may concern:

Thank you for the opportunity to comment on ICANN's Draft Budget for FY2012, as provided at
http://www.icann.org/en/financials/proposed-opplan-budget-v1-fy12-17may11-en.pdf

The Messaging Anti-Abuse Working Group (MAAWG) is an international non-profit industry-led organization founded to fight online abuse such as phishing, botnets, fraud, spam, viruses and denial-of-service attacks. MAAWG draws technical experts, researchers and policy specialists from a broad base of Internet Service Providers and Network Operators representing over one billion mailboxes, and from key technology providers, academia and volume sender organizations. The multi-disciplinary approach at MAAWG (http://www.MAAWG.org) includes education, advice on public policy and legislation, development of industry best practices, guidance in the development of industry standards and the facilitation of global collaboration.

## Our Interest in ICANN's Budget and Operations

MAAWG members, and our members' customers, like all Internet users, rely daily on Internet names. We need ICANN to continue to offer a reliable, high performance, cost effective, scalable and trustworthy system of domain names. We begin our comments by considering specific and tactically-focused areas uniquely related to the MAAWG mission of combating messaging abuse before proceeding to a more strategic review of ICANN's overall financial status.

## Part I. ICANN Budget Initiatives Specifically Related to Abuse and Misuse of Internet Names

A primary area of focus for MAAWG is ensuring that Internet names do not serve to facilitate or enable messaging abuse or cyber criminality. Thus, in reviewing your proposed budget for the coming year, we particularly wanted to see that appropriate financial support was being provided for work in crucial areas such as:

- Registrar oversight, including
  - Aggressive enforcement of existing contractual obligations
  - Adoption of appropriate improvements to the Registrar Accreditation Agreement

- Whois operations and usability, including
  - Whois service availability monitoring
  - Whois data quality control and auditing
  - Efforts to control abuse of private and proxy registration services

- Scalable access to zone file data given the imminent addition of new gTLDs

- Cooperation with law enforcement, government regulators, and non-governmental organizations endeavoring to prevent or respond to cybercrime and Internet abuse

Activities mentioned in the budget that align well with the above priorities include Section 4.5, page 14, Contractual Compliance ($4.25 million, an increase of 25% over FY11).  We specifically note, and will closely watch, ICANN's planned work to:

- "Provide additional resources to solidify and progress the current processes needed to proactively monitor and enforce the contractual provisions of registrar and registry"

-  "Improve communications with, and reporting to, the community"

- "Enforce existing policy relating to Whois, including refining Port 43 monitoring tool and methodology and continuing to monitor and enforce registrars' obligation to provide public access to Whois and publish findings as least once a year"

- "Conduct FY12 Whois Data Reminder Policy Audit and publish findings"

- "Further improvements to the Whois Data Problem Reporting System and analyze complaint data to assess trends, determine compliance actions"

- "Compile and communicate compliance statistics and facts and data to inform deliberations and policy recommendations"

- "Implement an upgrade or replacement of the consumer complaint intake system (C-Ticket), to improve data collection and analysis, overall enforcement of contracts and reporting to the community while continuing to automate key business functions"

- "Develop stronger relationships through dedicated outreach to registries and registrars in Europe, Middle East, Africa, South America, and Asia Pacific regions by June 30, 2012"

Those are all excellent and worthwhile activities and we applaud ICANN for funding that work.

We remain concerned, however, that even if fully staffed with 15 people, and taking full advantage of opportunities to obtain additional help in the form of professional services contracts, it will be difficult for the compliance department to discharge all of its critical responsibilities. The Contractual Compliance Department should be kept in mind for potential additional staff slots as ICANN's financial circumstances continue to evolve.

We also note Section 4.9, Global Engagement and Increasing International Participation, budgeted for $8.006 million for FY12, an increase of 17.9% over FY11.

As part of ICANN's global engagement, in addition to the other meetings where ICANN is routinely present, we explicitly invite and encourage ICANN to send a representative (or representatives) to routinely participate in MAAWG member meetings. For planning purposes, note that MAAWG normally meets three times a year, once in San Francisco, once in Europe, and once on the East Coast.

Unfortunately, there are some areas where we do NOT see any specific work planned, even though there are pressing community needs. In particular:

- We see no programmatic funding relating specifically to moving scalable zone file access forward (c.f., http://www.icann.org/en/topics/new-gtlds/zone-file-access-en.htm). While improved zone file access was originally couched in terms of new gTLD requirements, the need for improved zone file access transcends the new gTLD proceed and should be explicitly targeted for funding support.

- We also see limited effort to reach out and effectively engage law enforcement, ensuring that their legitimate needs for access to ICANN-related information are being effectively met.

MAAWG strongly supports our law enforcement partners in the fight against spam and other forms of messaging abuse.

- It is our understanding that Bobby Flaim of the Federal Bureau of Investigation has been exceptionally active in reaching out to ICANN. Given that Mr. Flaim is a representative of a key cyber law enforcement agency, we would urge ICANN to carefully consider the LE concerns he has articulated on behalf of the law enforcement community. To the maximum extent possible, we would like to see ICANN address the law enforcement community's needs in its FY12 budget.

## Part II. Some General Observations On ICANN's Financial Status

ICANN's ability to offer stable, high performance and reliable domain names, and ICANN's ability to identify and police those who would misuse or abuse the domain name system, are ultimately dependent on it having the financial resources it needs to do so.  Therefore, when we looked beyond the narrow issues of particular concern to our members, as described in Part I above, we were concerned to see:

- A 13% increase in operating expenses, as described in Figure 5-6 on page 43

- Yet only a 6.5% increase in revenue, as described in Figure 5-2 on page 35.

Compounded year over year that divergence is not sustainable.  Runaway costs at those levels have the potential to financially derail ICANN.

That said, we know that the launch of the new gTLD program is (or may be) imminent. If the new gTLD launch does finally take place, ICANN would go from essentially a break-even budget (showing an anticipated surplus of just $158,000), to one with an estimated $18.843 million in additional net income.

However, like ICANN itself, we do not yet know if ICANN will be able to successfully launch the new gTLD program this coming year. Based on the complexity of the new gTLD program and ICANN's consensus-based decision-making process, the new gTLD program may very well encounter further delays. Given that uncertainty, ICANN cannot, and should not, rely on that potential income being available. Therefore, we believe ICANN must either take steps to contain its expenditures or increase its revenues.

Let us look first at a few obvious opportunities for increasing revenues.

## A. Potential Opportunities to Increase Revenue

### *Example 1: Institute Meeting Attendance Fees.*

Attendance at ICANN meetings is currently free. This means, with the exception of sponsorship income (estimated at just $900,000 FY12), meeting costs are entirely paid (cross-subsidized) by funds obtained from other program sources. Core meeting logistic expenses are currently expected to cost $5.8 million for FY12. (See the draft budget on page 15.)

If ICANN was to begin charging an attendance fee, which is more typical of other major Internet meetings (e.g., the IETF currently charges $800 per person per meeting), ICANN could potentially defray a material portion of its costs.  This would also ensure the attendees present have demonstrated a serious interest in the matters being discussed.

We recognize that charging an attendance fee may cull those who see only marginal value to participating in ICANN meetings, but this may be a good thing. Smaller meetings, after all, offer many advantages beyond simple cost containment, including more flexibility in arranging meeting locations and more opportunities

for meaningful engagement among those who do choose to attend and participate.

While assessing meeting fees would unquestionably help ICANN's financial picture, we do not believe ICANN's financial constraints can be relieved solely through something as straightforward as the imposition of a meeting attendance fee. Adjustments will likely also need to be made to ICANN's core domain-based revenue streams, as discussed next.

## *Example 2: Normalizing Per-Domain Fees.*

As Table 5-3 on page 36 of the budget illustrates, four TLDs (com, net, org and info) contribute over 94% of ICANN's registry revenue. While we understand the legacy nature of the diverse registry cost structures reflected in that table, and understand that those costs may be contractually constrained in the short term, in the longer term ICANN should consider negotiating a normalized per-domain fee structure.

There is no inherent reason why some TLDs should have per-transaction fees of $0.25/domain, while other (essentially equivalent) domains should have transaction costs that are 200%, 300% or 400% times that rate. Setting a uniform per-transaction fee would level the playing field and alleviate ICANN's budget crunch while eliminating any dependency on the long-pending new gTLD effort.

While we could discuss what might be an appropriate per-domain rate, let's assume that all fixed annual registry fees are eliminated and all registrations are charged at dot net's current $0.75 per domain rate. Use of that rate, uniformly applied to all projected 131,899,000 transactions would take ICANN from a barely-break-even budget with revenues of $34,752,570 to registry revenues of $98,924,250, an increase of 284%.

That fee increase, even if directly passed along to customers, would have negligible impact on virtually all customers who have registered domains in use (rather than speculation). Even for someone who owns a relatively large number of domains, say a portfolio of a hundred gTLD domains, an increase of $0.50/domain/year would only represent a cost increase of just $50.00 per year.

We do not mean to imply that adding a meeting participation fee, or normalizing domain costs, are the only options for increasing ICANN's revenue picture because we believe many other opportunities also exist. On the other hand, we do believe these are two examples of options worthy of serious consideration by ICANN leadership. We are sure ICANN's leadership and staff can readily identify many others.

## B. Working to Decrease Expenses

We also believe that there are opportunities for ICANN to contain its costs.

## *Example 3: Professional Services Should Not Be Used as a Substitute for Needed Permanent Staff*

While there are many areas that could be scrutinized, let's begin by considering ICANN's expenditures on professional services. These expenses for professional services represent procurement of services above and beyond those currently provided by ICANN staff.

ICANN currently anticipates paying $17.276 million on professional services in FY12 (see Figure 5-11 on page 48 of the draft budget). The amount ICANN is spending on professional services is large, perhaps too large, exceeding 50% of ICANN's expenditure on in-house personnel, as reported in Figure 5-7 on page 43. We urge ICANN to recognize that professional services which are improperly employed to deliver routinely required "baseline" services are a costly alternative to maintaining dedicated full- or part-time in-house staff.

For example, ICANN apparently anticipates the purchase of $2,715,000 worth of professional legal services in FY12. While prevailing legal rates vary from jurisdiction to jurisdiction, let's assume that competent senior corporate legal counsel can be obtained for $400,000 per year (or less), including benefits, in most markets. At that rate, ICANN could have a dedicated staff of nearly seven in-house attorneys at its disposal for what it is paying in outsourced legal fees. Alternatively, if ICANN does not have legal requirements sufficient to occupy a legal team of that size, substantial opportunities for reducing legal expenses may exist.

### Example 4: Bad Debt Service

At Section 5.3 on page 54, we see that bad debt expense is budgeted at $900,000 for FY12. That amount, representing previously billed but uncollectable Accounts Receivable represents another opportunity for ICANN to potentially control its costs.

ICANN might begin by better characterizing its bad debt problem. Is it a matter of a few large debts not being satisfied? Or are many smaller debts in default? Are all appropriate measures being used to attempt recovery of those bad debts? If so, what are those measures? Could additional measures, such as referrals to professional collection agencies or filing liens against identifiable creditor assets be taken? Are all uncollectable debts being reported to credit reporting agencies? Alternatively, could better risk management practices, such as improved credit screening or use of professional bonding, forestall some of the potential bad debt expense?

## C. Financial Process and Reporting Issues

### Example 5: Cost Accounting

We also urge ICANN to employ standard cost account approaches in presenting information about its budget for community consideration. As currently disclosed, ICANN's draft budget has only anecdotal information defining whether a particular increase in costs is the result of:

- An increase in units of service demanded
- An increase in the cost per unit, or
- A change in the mix of services demanded.

For full transparency, we need specific numerical data on all those factors. For example, consider ICANN's language translation services, budgeted at $900,000 on page 50 in the draft budget. Did that amount change from last year? If so, by how much and in what ways?

Did the number of *hours* of language translation services required go up, and if so, by how much? What drove that increase in demand? Were translation services being delivered in more languages? Are more meetings or more documents being translated? Are longer or more complex documents requiring more time to complete?

What about the *price per hour*? Did the overall market price for translation services increase across the board?

Or did the *mix* of translation services demanded change? For example, did the total demand for translation services remain constant, as did the translation services price card, only to have demand for a comparatively expensive-to-translate language, such as Chinese or Arabic, displace an inexpensive and easy-to-translate language such as Spanish or French?

More information is needed to allow us to understand year-to-year cost variances.

## *Example 6: Capital Budgeting and New Project Selection*

When building capital budgets (as described in 5.3.3 on page 55 of the draft budget) or selecting new projects to undertake (see pages 19-20), does ICANN employ any formal capital budgeting process or new project selection criteria?

For example, in for-profit corporations, new investments may be required to exceed a threshold rate of return, or a set of potential projects may be ranked according to their net present value. Does ICANN employ any similar financial ranking or screening of potential new projects (or potential new capital investments)? If so, the process and assumptions underlying that capital budgeting and project selection model should be explicitly described as part of the final FY12 budget.

## *Example 7: Hedging Currency Exchange Risk*

Page 56 of the proposed budget mentions that while ICANN's revenue is denominated in dollars, approximately 20% of its expenses are in non-US dollar currencies. Does ICANN currently employ any strategy (such as non-speculative use of currency options or futures) to hedge or offset potential fluctuations? As a global organization, has ICANN considered routinely maintaining operational accounts in Euros, pounds sterling, or other required global currencies, as well as in U.S. dollars?

## D. Comments on ICANN's Reserve Fund

On page 57 of the draft budget, ICANN also explicitly requested community feedback on its Reserve Fund, including questions about the most appropriate target level for that fund. Currently ICANN's budget target for that fund is one year's operating expense. In FY2012, that would translate to a target of $67 million. If the new gTLD program becomes a reality, the new Reserve Fund target would become $84.93 million. As mentioned on draft budget page 42, the Reserve Fund balance is currently $52.1 million.

Consistent with its original annual Reserve Fund contribution target (see page 57 of the budget draft), we would encourage ICANN to renew its commitment to increasing its Reserve Fund by *at least* ten million a year until it either reaches $84.93 million dollars, or the amount of ICANN's then-current annual operating expense.

MAAWG would also urge ICANN to change how it conceptualizes (and refers to) its Reserve Fund. Specific "reserves" can and should be accrued when known capital expenditures can be anticipated. For example, if ICANN has large and expensive computer or network components (such as large routers) that it knows it will need to replace in five years, it would be reasonable and prudent to potentially accrue $1/5^{th}$ of those costs each year over that five-year period. That way, when the expensive equipment reaches end-of-life, reserve funds will be available to replace it. To the best of our knowledge, however, ICANN has a comparatively modest capital infrastructure with robust cash flows, and can currently internally fund its small-scale capital projects from cash.

Our impression, which may be mistaken, is that ICANN views its reserve fund similar to how a University might view an endowment. If our impression is correct, and if further accruals are not prohibited by constraints associated with ICANN's non-profit status, we encourage you to grow your "Reserve Fund/"Endowment" even beyond the $84.93 million target mentioned above.

We would also encourage you to consider a somewhat more aggressive investment strategy. While a very conservative investment strategy obviously shelters the organization's resources from potential losses, an *overly* conservative investment strategy might result in near nil yields in today's market (or what are effectively negative yields, given even modest rates of inflation).

Given ICANN's long-term investment objectives, it might be able to safely expand its holdings to include low cost passive index funds or well-diversified institutional-grade mutual funds. We would urge ICANN to discuss this issue further with an appropriate financial advisor.

**Conclusion**

Thank you for this opportunity to comment on ICANN's FY12 draft budget.

If you would like us to discuss any of our remarks in more depth, or if you have any questions, please do not hesitate to get in touch.

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Sincerely,

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