

## **ICANN BOARD PAPER NO. 2016.02.03.2h**

**TITLE:** **USG IANA Stewardship Transition – Additional FY16 Expenses and Funding**

**PROPOSED ACTION:** **For Board approval**

### **EXECUTIVE SUMMARY:**

The Board previously approved the FY16 Operating Plan and Budget, which included an estimated budget envelope of US\$7 million for the USG IANA Stewardship Transition (“THE PROJECT”) to be funded by the Reserve Fund. This estimated envelope was produced in March 2015 and included approximately a US\$0.5 million of external legal advice expenses, based on the assumption available at the time the budget was finalized that both the accountability and transition tracks were expected to be completed with a target date of end of September 2015.

As the community work relative to the accountability track of this initiative has continued throughout FY16 to date, actual expenses from July 2015 to the end of November 2015 have reached approximately US\$7 million, including US\$4 million for external legal advice, consuming the budgeted envelope for the entire fiscal year. Furthermore, it is expected that the community work will continue through the remainder of the fiscal year, with an estimated additional spend for the last 7 months of the fiscal year that could reach US\$8 to US\$9 million, including US\$3 to US\$3.5 million of external legal advice.

The Accountability estimates above relate only to the Work Stream 1 (WS1). The Work Stream 2 (WS2) will be the subject of a specific and separate Board approval of expenses and funding.

As this initiative’s expenses and funding through a release from the Reserve Fund was approved by the Board up to US\$7 million, the ICANN Board is now being asked, as an interim measure, to approve an additional budget envelope of US\$4.5 million that ICANN can work with to be funded through a release from the Reserve Fund to cover the estimated costs that are either already incurred or to be incurred from December 2015 until the end of the ICANN 55 Meeting in Marrakech. In addition, costs control mechanisms need to be defined and implemented to ensure that future expenses envelopes are not exceeded.

Based on the total expenses for FY15 and FY16, currently estimated to be US\$24.7 million, the Reserve Fund balance is expected to decrease to approximately US\$60 million, which represents only 6-8 months of ICANN operating expenses (vs the historical target level of 12 months). The ICANN Board plans to initiate a community discussion on how to replenish the Reserve Fund.

**STAFF and BOARD FINANCE COMMITTEE RECOMMENDATION:**

The Board Finance Committee has recommended that the Board approve additional expenses for the USG IANA Stewardship Transition initiative of up to US\$4.5 million for expenses incurred from December 2015 to the end of the ICANN55 Meeting in Marrakech, through the release of funds from the Reserve Fund.

**PROPOSED RESOLUTION:**

Whereas, on 25 June 2015, the Board approved the FY16 Operating Plan and Budget, which included an estimated budget envelope of US\$7 million for the USG IANA Stewardship Transition Project (the Project) to be funded by the Reserve Fund.

Resolution Text Superseded

Whereas, it is projected that the cost to complete the Cross-Community Working Group on Enhancing ICANN Accountability's (CCWG) Work Stream 1 recommendation development work and, to carry out the implementation work (including bylaws drafting) during the remaining seven months of FY16 to be US\$8 to 9 million, including US\$3.5 million for additional external legal advice.

Whereas, the Board Finance Committee (BFC), the co-chairs of the CCWG and the Cross-Community Working Group to Develop an IANA Stewardship Transition Proposal on Naming Related Functions (CWG) met on 28 January 2016 to address this escalating cost issue.

Resolution Text Superseded

Whereas, the Board Finance Committee met on 2 February 2016 to follow up on the actions agreed during the call on 28 January 2016, and determined as an interim measure to recommend to the Board to approve an expenditure of US\$ 4.5 million to cover the current estimate of costs of the Project from December 2015 until the end of the ICANN 55 meeting in Marrakech, and that cost would be funded from the Reserve Fund.

Whereas the Board reiterates on its 25 June 2015 statement that the Board is “committed to supporting the community in obtaining the advice it needs in developing recommendations in support of the transition process, and also notes the importance of making sure that the funds entrusted to ICANN by the community are used in responsible and efficient ways. Assuring the continuation of cost-control measures over the future work of the independent counsel is encouraged.” (See <https://www.icann.org/resources/board-material/resolutions-2015-06-25-en#2.c>).

Resolved (2016.02.03.xx), the Board approves a budget envelope of up to US\$4.5 million, as an interim measure, to cover the costs of the Project incurred from December 2015 to the end of the ICANN55 in Marrakech (in addition to the budgeted envelope of US\$7 million included in the already approved FY16 Operating Plan and Budget) to be funded through a fund release from the Reserve Fund.

**PROPOSED RATIONALE:**

Rationale Text Superseded

Rationale Text Superseded

Considering its exceptional nature and the significant amount of costs anticipated to be incurred, the funding of this Project could not be provided through the Operating Fund. Accordingly, when the Board approved the FY15 and FY16 Operating Plans and Budgets, it included the anticipated funding of the transition initiative costs through a corresponding withdrawal from the Reserve Fund.

Rationale Text Superseded

The costs on the USG Stewardship Transition Initiative incurred through the first five months of FY16 totaled US\$7 million, an amount equal to the total envelope budgeted for the entire of FY16. Furthermore, the expenses projected for the remaining seven months of FY16 are estimated at US\$8 to US\$9 million, including US\$3.5 million in external legal advice expenses.

Considering the strategic importance for this initiative to be successfully completed, the Board needs to approve additional expense envelopes for FY16 and identify the funding source.

Based on the extracts from Section 4 of the Charters of the CCWG and CWG, the Board acknowledges that the CCWG and CWG, through their co-chairs, are responsible for defining and requesting staff support, meeting support, experts and facilitators. The CCWG and CWG co-chairs are also responsible for defining and requesting additional advisors or experts and, doing so by providing ICANN with rationale and expected costs.

The CCWG Charter states: *“The ICANN Staff assigned to the CCWG-Accountability will fully support the work of the CCWG-Accountability as requested by the co-chairs, including meeting support, document drafting, editing and distribution and other substantive contributions when deemed appropriate by the CCWG-Accountability. ICANN will provide access to relevant experts and professional facilitators as requested by the CCWG-Accountability Chairs.”* The CWG charter contains the same statement as above.

The CCWG Charter continues *“[...] the CCWG--Accountability may also identify additional advisors or experts to contribute to its deliberations [...]. Should additional costs be involved in obtaining input from additional advisors or experts, prior approval must be obtained from ICANN. Such a request for approval should at a minimum include the rationale for selecting*

*additional advisors or experts as well as expected costs.”*

The CWG Charter reads: *“The chairs of this charter’s drafting team, Jonathan Robinson and Byron Holland, will write to ICANN seeking reasonable travel resources for CWG members to participate in face-to-face CWG meetings, but on the understanding that the CWG will make every effort to hold any face-to-face meetings concurrent, or in conjunction with regularly scheduled ICANN meetings.”*

Rationale Text Superseded

The above requests are consistent with previous communication issued by ICANN’s CFO:

- to the CCWG co-chairs on 14 October 2015 through a letter on the ICANN website (see <https://community.icann.org/display/acctcrosscomm/Costs+of+independent+legal+advice>) requesting the co-chairs to provide estimates for external legal advice.
- to the CWG and CCWG co-chairs, an email dated 30 November 2015, providing actual costs incurred by the four-month period ending 31 October 2015 and requesting to provide the ICANN CFO with cost estimates for the external legal advice expected to be incurred from 31 October 2015 until 30 June 2016.

In addition, as the amount of expenses incurred for this initiative totals an estimated US\$24.7 million for FY15 and FY16, it is expected that the Reserve Fund balance will be approximately reduced to US\$60 million, corresponding to approximately 6 to 7 months of Operating Expenses, well below its current target level of 12 months of Operating Expenses or approximately US\$113 million. As a result, the Board will initiate a process to identify a solution to replenish the Reserve Fund by the estimated amount of US\$24.7 million (or its actual amount once known). The ICANN Board plans to initiate a community discussion on

how to replenish the Reserve Fund.

The Board expects that as the community groups continue to incur costs for the initiative, they will perform cost management exercises. Rationale Text Superseded

This action will not have a direct impact on the security, stability and resiliency of the domain name system.

This is an Organizational Administrative Function that does not require public comment.

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