



Comment on Evolving ICANN’s Multistakeholder Model

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Business Constituency Submission

GNSO//CSG//BC

Background

This document is the response of the ICANN Business Constituency (BC), from the perspective of business users and registrants, as defined in our Charter:

The mission of the Business Constituency is to ensure that ICANN policy positions are consistent with the development of an Internet that:

1. promotes end-user confidence because it is a safe place to conduct business
2. is competitive in the supply of registry and registrar and related services
3. is technically stable, secure and reliable.

BC comment on Evolving ICANN's Multistakeholder Model

The BC is pleased to submit these comments on the call for public input on Evolving ICANN's Multistakeholder Model (MSM)¹. We believe that if the community, the Board, and ICANN Org staff fully commit to this process of reevaluation, it can be an important step towards enhancing the institution and allowing it to continue being effective in fulfilling its mission, as well as being a reference in how multistakeholder engagement advances global policymaking.

Contrary to what might have been indicated by some parties, ICANN's MSM is not the problem. The BC believes that ICANN's legitimacy is derived largely from its commitment to that model as was intended in the creation of the institution, and our focus should be in enhancing and sustaining it going forward, something that is reflected in the suggestions detailed below.

Issue 1: Timing of decision-making: *Our processes take too long*

The BC believes that GNSO policy Working Groups are one area in which there is opportunity for greater efficiency in engagement and effective use of the ICANN meetings themselves. To justify attendance in person, concrete progress in key decisions is needed. We need to recognize that face to face engagement often improves the ability to reach consensus.

Preparatory work by staff and community Working Groups can advance and "tee up" possible decisions at the face to face sessions. Effort should be made to make good use of the in-person attendance at ICANN meetings and use it for task-oriented workshops rather than for reports. There should be proper differentiation between what work can be done during pre-meeting preparation time versus what is best suited to face-to-face discussion.

Another area where some greater consideration may be due, is how "evidence-based policy development" is viewed. While there is no doubt that policy development should be evidence-based, it is often the case that evidence that is unsatisfactory, questionable or highly debatable results from time-consuming and expensive efforts to obtain evidence upon which to base policy. Unfortunately, it is often the case at ICANN that neutral fact-based data is either not available, suppressed, or ignored in the ICANN Org reports.

For a specific example, community surveys within the RPM Review PDP generally yielded very low response rates and, as a result, evidence of questionable value. Such surveys should be kept short, used sparingly, and potentially offer incentives to increase response rates.

¹ ICANN public comment page, at <https://www.icann.org/public-comments/evolving-multistakeholder-model-2019-04-25-en>

Moreover, experts within the Working Group are often well acquainted with what may be considered anecdotal evidence, which ultimately turns out to be no worse than the evidence obtained. Thus, greater balance should be sought between time-consuming evidence collection and reliance upon the experience of expert Working Group members, so that policy may be developed in a more efficient manner, without compromising on quality.

Working group members are unable to be neutral if they are chartered to bring a specific advocacy position but if chartered to consider fact-based information, they will be able to advance understanding of facts for their sending organization. The BC believes that ICANN Org has a responsibility to support neutral, fact-based research and also neutral resources to the relevant WGs, as justified by documented requests.

Issues 2. Complexity, 3. Culture and 4. Prioritization of Work

ICANN is constantly under pressure from outside actors – whether governments, or other sources, such as IGOs. There is also low awareness in certain sectors of the economy about the institution, seeing as its work, while fundamental to the core functioning of the Internet, is often invisible. For instance, it falls off the radar of almost all CEOs, for both large and small companies and NGOs.

This is a concern that has been often cited in the lead-up to this consultation, but it remains perhaps the most vital topic at hand. This issue was observed in the IANA Stewardship Transition and the more recent WHOIS EPDP, sending the community into a priority mode that forces other important activities to take a back seat. These kinds of challenges to ICANN’s legitimacy and integrity are deserving of recognition and study.

The BC believes that the present challenges addressed by the EPDP were not fully avoidable, but an earlier warning mechanism that was recognized by the community and ICANN Org would have been very beneficial. The present approach of ICANN Org to gather pending legal proposals in its legislative/regulatory tracker should be improved in order to help advise all involved stakeholders.

In this sense, the CCWG-IG is still relevant and the BC finds its work important, noting that at recent meetings, over 45 attendees and 5-6 Board members were in attendance. We suggest that each stakeholder group participating in the future CCWG-IG should be encouraged to focus a quarter of its effort on identifying issues of general concern to ICANN, and to forward the results of that to the community in a quarterly announcement to establish what the upcoming issues are on a global level.

In addition, with specific respect to complexity, ICANN’s processes, procedures, rules, and Bylaws are numerous and can be difficult to navigate for new and experienced participants alike. The BC recommends the creation of an additional independent new staff role whose sole responsibility would be to serve as an expert advisor on ICANN procedure. This individual would provide non-binding advice to promote consistency in procedural analysis and ensure that ICANN’s rules are applied uniformly and fairly².

² <https://forum.icann.org/lists/comments-enhancing-accountability-06may14/pdfnaEDV6lz59.pdf>

Issues 5. Demographics and 6. Recruitment

We believe these issues should be merged and discussed as a single concern.

This is a concern that has been voiced by the BC several times and has been recently highlighted in our self-funded “Building Sustained Business Constituency Participation in Latin America” report³. The tendency of engagement programs such as the Fellowship, which has been one of the drivers of bringing new talent into ICANN, has been limited in its effectiveness for the BC based on our independent analysis.

This is influenced in no small part by the fact that selection has heavily favored the civil society and government sectors, with a 1:10 proportion in relation to businesspeople among selectees. In the past, we believe that there has been a bias against approving businesses – yet SMEs from developing countries are as deserving as NGOs and civil society and governmental attendees for the Fellowship funding.

Efforts made by ICANN programs, staff, and the broader community as well, need to give proper value to all actors in order to ensure that the institution’s voice remains strong, relevant and adequately represents people from all sectors and origins. We feel this is an important step in increasing ICANN’s legitimacy and ensuring that the MSM functions as intended.

We also feel that there should be better communication between ICANN staff, SO/ACs, leaderships and Outreach committees in each of the communities to help newcomers find their way to the groups in which they will be the most effective, and when such people arrive at the group, coaching mechanisms should be in place to receive them properly. As it is, this happens in an *ad-hoc* manner that leaves it pretty much up to chance if a candidate will be picked up by a more experienced member or not. It stands to reason that a lot of talent ends up being lost.

The lack of information about program applicants is a barrier to our ability to undertake a more personalized engagement. If the registration information provided to ICANN could be more descriptive, it would be helpful. The BC Outreach Chair has recently engaged to ensure that approved Fellows submit SOIs, which while after the fact, is still a step that we feel is important.

The BC suggests that more “pre-engagement” could take place, to identify those who might be qualified to fit a certain niche. Asking first-time meeting attendants and Fellows if they would be interested in having a call to learn more about a group they might want to join would be an improvement worth making.

An initiative that builds upon what was once the Onboarding Program should ideally be in place. The original program was discontinued due to misalignment of expectations, but future attempts at such programs need to cast a wider net and not be limited to hand-picked individuals, rather focusing on how to properly integrate SO/AC mentors with new prospects, and help them better incorporate into the ICANN environment.

Issues 7. Representativeness and 8. Inclusivity

It is our opinion that these issues should be merged and discussed as a single concern.

The questions of representativeness and inclusivity are at the core of ICANN’s MSM, and ought to be regularly evaluated with a view to maintaining the legitimacy and perception of relevant engagement

³ <https://www.bizconst.org/2019-latin-american-outreach-study-and-report>

across all stakeholders. It is timely to consider how SO/ACs are organized, what their roles and functions are, and what are the consequences that come from that.

For example, the joining of the CSG and NCSG in the NCPH created challenges within that broader group. This decision was imposed by Board members and was not at that time welcomed as a solution by the BC; we believe it was not seen as desirable by other stakeholders either.

The introduction of NCPH Intersessionals was a measure that was intended to reduce the gap between CSG and NCSG, and the groups have been trying to find commonalities there, but while this was helpful to bridge very strong divides and has addressed certain administrative decisions, it has not created a synergy that is mitigating fundamental differences in policy development ideas.

It is not clear that there is a direct affinity between the CSG and the NCSG, and we believe that this imposed alliance needs to be reevaluated, taking into account the views of those forced into this “house” model.

We question the benefit of weighted voting in the GNSO Policy Council which changes the balance of input and influence in policy development, especially in the GNSO processes. We continue to support an advisory role for governments and their early engagement in relevant policy making processes and decisions. Enhancing engagement through ensuring that the views of different community stakeholders in the GNSO are taken on an equal footing was the basis of creating the different stakeholder groups in the GNSO. The weighted voting arrangement challenges the willingness of all in the community to engage in negotiations and to build relationships “across the aisle”.

One factor that fuels in-GNSO disputes is the limited number of GNSO seats on the Board, which are only 2 of the 15 seats. Considering that gTLDs are responsible for 98% of ICANN’s revenue and for most of ICANN’s policy work, 2 seats seems like an insufficient representation for the GNSO. One way to get around this would be to give 2 of the 8 NomCom seats to the GNSO. This would still allow the NomCom to name 6 of the 15 board members, while giving more room to accommodate the many stakeholders of the GNSO. A potential working model would be that each of these GNSO stakeholder groups would get one board seat: Registrars, Registries, Commercials, Non-Commercials.

The BC suggests that the weighted voting be removed, the structure of the GNSO Policy Council be returned to its former state, and that the balance of representation on the Board is better considered, so that all stakeholders feel properly represented and thus more willing to engage in a more productive manner, knowing that their voice would ultimately have a clear carrier on the Board.

Issue 9. Consensus

In Working Groups, it has at times come across that volume of participation and ever lengthening timelines can affect desired outcomes, and it can be the case that a false sense of consensus is unduly created through the use of those means, which stands as a detriment to the multistakeholder policy development process. This is further compounded by the fact that calls that are supposed to move working discussions forward end up being consumed with parallel or trivial debates, discouraging the participation of more goal-oriented volunteers.

Thus, the ability of the leaders of a WG to make a call for consensus needs to be further detailed, so that a chair/co-chair team can move work forward in a consistent manner. This means that a definition of what consensus means in relation to the current scale of ICANN needs to be outlined. The work of the GNSO Council in the PDP3.0 effort should be supported, especially in this regard.

If no concrete solutions are found, it may be necessary to ensure that whoever leads any project/program, both at the community and at Org level, should as a necessity have at least one international project management certification (such as PMP or PRINCE2) or similar qualification, to appreciate the need for precise scoping and timeliness of implementation, leading the community by example.

Issues 10. Precision in Scoping the Work and 19. Work Processes

The BC understands the view that as it stands, policy processes at ICANN are too open-ended and don't favor goal-oriented discussion. Projects should have a defined goal and clearer deadlines, as almost anything crafted either by the community or ICANN organization has a tendency to slip away, have its scope changed multiple times, and consequently have ever increasing timelines.

We offer as one example the Open Data Initiative, now apparently named the Open Data Program (even though ICANN's website does not reflect this). The project was being idealized as far back as the 2014 report "The Quest for a 21st Century ICANN", in which the BC already showed strong support for the idea in its public comments. Work on "open data" was eventually started by community members, went through different iterations, was internalized by the ICANN Org, had deadlines established and discarded, changed leaderships, changed names, and has yet to deliver a single dataset to be analyzed by the community, falling into a perpetual state of making promises and not delivering on them.

This is an example of how the whole ICANN structure is allowed to function, and why that needs to change. More measurable goals and deadlines need to be established and then adhered to. While changes may be needed to adjust a work plan, there must be more transparency when ICANN Org makes such changes.

Issue 11. Accountability

There are two long-standing accountability concerns held by the BC that we feel warrant consideration.

First, the BC generally believes that several of its specific public comment suggestions are inadequately reflected in staff summaries or worse, ignored by ICANN management and the Board. We continue to be disappointed that our best attempts at submitting carefully considered and substantiated comments are not adequately or accurately reflected in public comment summaries⁴.

Members of the constituency have identified multiple times that analyses ignore or superficially include BC comments that take us weeks to develop, working across the diverse views of our members. We do our best to be factual, and then find out the outcome of this effort ends up ignored or diminished.

For this reason, we ask that greater consideration is given to properly transcribing the suggestions of all stakeholder to these documents, so that the effort invested in contributing to the process in a meaningful way is acknowledged.

Second, while the Accountability and Transparency Review (ATRT) remains a good example of effective volunteer selection by respective groups that make up the ICANN community, the BC remains concerned at the continued trend for top-down decisions on who can participate in volunteer groups⁵.

⁴ <https://forum.icann.org/lists/comments-atrt2-recommendations-09jan14/pdfYar6LeM22d.pdf>;
<https://forum.icann.org/lists/comments-atrt2-02apr13/pdfBKbJCzoXx8.pdf>

⁵ <https://forum.icann.org/lists/comments-atrt2-02apr13/pdfBKbJCzoXx8.pdf>

The most recent example of this trend is the formation of the Technical Study Group on Access to Non-Public Registration Data.

Issues 12. Transparency

It is expected that neutrality and objectivity is exercised by ICANN staff in the writing of public comment summaries, seeing as their objective is to provide these documents in a fully impartial manner. It is paramount that the community feels that this is the case, as it is the only way for real long-lasting trust to be built between staff and stakeholders.

Attention should also be paid to the fact that since some of the analyses for the summaries are undertaken by unidentified consultants, it would be an important measure to have all of those involved in the drafting of documents listed as a contributor, in a measure that would help boost confidence in the transparency of the process.

Also, the costs of ICANN Org and Board travel to their “retreats” (three per year) and travel to other events is never discussed as a transparency issue, but definitely should be, as transparency and trust in the organization and in the Board’s integrity are interrelated.

13. Costs

Recently it has become more of a topic how much certain activities cost ICANN. Staff members have mentioned that the EPDP was very expensive, and that the community does not understand the cost dimension of policy work. This is of concern.

ICANN costs are not limited to policy development, but also include expenses for ICANN Org’s potentially extensive internal meetings, as well as Board travel to closed workshops and external meetings, etc., and it has proven challenging to understand how the Org justifies these expenses in a transparent manner.

If ICANN Org is now objecting to the costs of policy development activities and the ICANN Board are engaging in that discussion, it then becomes quite noticeable that better communication needs to come from ICANN, and the community needs a clear-cut way to visualize what are the costs of different approaches and options.

ICANN exists as a policymaking entity only if the community can fulfill its role, and no amount of travel and internal meetings by ICANN staff are enough to further the institution's core mission. The BC suggests that it is ICANN’s responsibility to fully fund core work related to its mission, with the EPDP activities being only one example. ICANN Org’s duty is to support its community’s needs.

Issue 16. Efficient Use of Resources

It is our belief that greater care should be exercised so that service-level targets are not set in such a way that diminishes the quality of important work being carried out by ICANN staff. For example, public comment summaries vary greatly both in terms of breadth and quality of analyses and timeline for delivery, which generally have a target date of two weeks from the close of the public comment window.

Anecdotal evidence suggests that these published deadlines are one of the reasons for the perceived decline in quality of some comment summaries. In many cases, the value of high-quality summaries outweighs that of strict adherence to the two-week service level.

Also, members of ICANN staff often hold the unenviable position of having to reconcile diverging views within the community. They should feel free to carry out their roles without fearing that they will be unfairly punished for engagement in divisive work⁶. At a minimum, interventions by ICANN staff should be encouraged during the policymaking process when they would be able to correct indisputably erroneous factual, policy or even legal assumptions and conclusions. This would streamline the process and help avoid pointless debate that does not move the generation of effective policies forward.

Issues 18. Silos and 20. Holistic view of ICANN

The Policy Forums were at first created with the premise that they would allow actors from different SO/ACs more opportunities to communicate and work directly with each other, decreasing the formation of silos. This seems to have become less of a priority, as has the entire concept of reducing the impacts of divides generated within the broader ICANN community.

If proactive steps are not taken towards bridging gaps between different stakeholders, it seems logical that compromises will become increasingly harder to achieve. This is a systemic concern that needs to be addressed from a planning perspective, and brought back to the forefront of the community's concerns.

The best and most impressive aspects of ICANN's MSM culture have often been lost or overshadowed with the passage of time, seeing as efforts are not made to reinforce this in each public meeting and engagement. The BC sees opportunities in further advancing ICANN's reputation as a world reference in Internet Governance, continuing to showcase the strength of its structure in arenas external to ICANN.

For this to be achieved, greater efforts must be made to consistently remind and instill in the community the essential cooperative nature required for the success of the unique MSM promoted by ICANN. This can be facilitated by all officers, Outreach committees, GNSO and ccNSO, ASO, ALAC, SSAC and GAC Working Group chairs, etc., as a routine matter in order to avoid losing sight of these important aspects.

Further Issues:

Incentives and recognition

A matter that also dates back to the 2014 report "The Quest for a 21st Century ICANN", the question of incentives, doesn't seem to have progressed much during this time, if at all. Work is still rewarded mostly by self-satisfaction or by a recognition by one's employer, which while valuable, can only be expected to take most volunteers so far. In view of the need to address issues such as burnout and timely work delivery, we think that it is appropriate to provide some form of incentive to volunteers.

A non-controversial, low cost, and easy to implement mechanism would be to recognize the efforts of volunteers in an opt-out honor list published on the ICANN website through a page dedicated to that purpose. In this way, any person that agrees to participate would appear in search engines for their

⁶<https://mm.icann.org/pipermail/comments-icann-accountability-13nov17/attachments/20180114/7a6193ff/BCCCommentonWS2RecommendationsforICANNStaffAccountability-0001.pdf>

involvement in projects, also making it easier for them to point to such achievements in a clear manner when applying for jobs, scholarships, and other selection processes. The visibility of most volunteers who perform work within ICANN needs to be raised, because at the moment, only those in key positions reap such benefits. Any initiative that achieves this is a valid one.

Postmortem and capture

With the exception of this important macro exercise, the MSM very rarely sees postmortem analyses to determine why certain elements of any given policy development process were successful or unsuccessful. This form of analysis is absolutely critical for the community to learn from our mistakes and avoid future ones.

It should become mandatory that this be performed in some way, whether that analysis is conducted by community volunteers, ICANN staff, or even independent third parties. Periodic calls could be put out for academics and specialists to develop meaningful research whenever major feats of policy work are concluded, such as was the case with the IANA stewardship transition.

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This comment was drafted by Mark Datysgeld, with help from Zak Muscovitch, Jimson Olufuye, Andy Abrams, Marilyn Cade, John Berard, and Steve DelBianco.

It was approved in accord with the BC charter.