



Comment on Enhancing the Effectiveness of ICANN’s Multistakeholder Model – Next Steps

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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 Enhancing the Effectiveness of ICANN’s Multistakeholder Model – Next Steps¹

Introduction

The BC would like to commend ICANN org. on following up on this important project. We have contributed to it extensively in the past^{2,3,4}, and continue to do so with the expectation of stronger and sharper outcomes. We consider this task to be a priority from which the community cannot shy away, especially in light of the ever-evolving challenges faced during the global pandemic. More than ever, an effective model needs to be put into place for multistakeholder decision making to thrive.

Foremost, however, we would like to point out to ICANN org that the current draft states, “the community was asked to rank six topics **in order of priority**” (emphasis added), but as set forth on page 338 of the *Draft FY21-25 Operating & Financial Plan and Draft FY21 Operating Plan & Budget*⁵, the request was rather different. The language presented was: “of the six proposed workstreams in the work plan, please rank them from 1 – 6 according to which issue represents the most **‘ripe fruit’ opportunity**. That is to say, an approach or solution to the issue can be developed in a **shorter period of time** and with a **lesser amount of resources needed**.”

Prioritization lends itself to a metric of importance, but ICANN used a metric of expedience. This reinterpretation of the question can easily lead to a misunderstanding of the community response, which was not based on importance or urgency, but rather on what would be the easiest challenges to be addressed.

This sort of key language needs to be presented with clarity for us to be able to establish a conversation in which the ICANN community can express what feels is the most needed at the moment. We stress this point especially seeing as prioritization has been defined as the number one topic in the current Public Comment.

¹ ICANN comment page, at <https://www.icann.org/public-comments/multistakeholder-model-next-steps-2020-06-04-en>

² June 2019: https://www.bizconst.org/assets/docs/positions-statements/2019/2019_06June_13%20BC%20Comment%20on%20Evolving%20ICANN%20Multistakeholder%20Model.pdf

³ October 2019: https://www.bizconst.org/assets/docs/positions-statements/2019/2019_10October_14%20BC%20comment%20on%20Evolving%20Multistakeholder%20model%20.pdf

⁴ February 2020: https://www.bizconst.org/assets/docs/positions-statements/2020/2020_02February_25%20BC%20Comment%20on%20ICANN%20FY21%20Budget%20and%20FY21-25.pdf

⁵ <https://www.icann.org/en/system/files/files/draft-op-financial-plan-fy21-25-opplan-fy21-20dec19-en.pdf>

In a previous comment we wrote that: “When asked, ICANN Org routinely states that its priorities come ‘from the community.’ But community processes that steer this are quite unclear.”

The issue outlined above can be seen as an example of this. Words carry meaning, particularly within policymaking, and a process that establishes clear demands and ground rules is all but essential moving forward. This also points out the error of relegating “Roles and responsibilities” to the bottom of the list for later consideration. In our view, it has a higher priority, perhaps the highest.

Roles and responsibilities

In our view, “Roles and responsibilities”, now relegated to the project’s backlog, encompasses a set of actions that need to be carried out first or even in parallel to the actions proposed. A lack of clarity on roles and responsibilities undermines the likelihood that the community can deliver on any of the other five priorities.

It fact, it may not be a process, but better seen as a constant engagement and assessment of what are the functions of the parties involved in any given project. It needs to be an objective that is contained within all others, and that is thought of as a goal of the community.

We reassert this from our previous comments:

“The BC does understand that the definition of roles within ICANN is supported by the Bylaws, and the clarity of those roles has increased after the IANA transition, but there are deeper considerations to be made regarding this Issue. It is unlikely that there is a good definition of roles already in place if a community-wide consultation such as this one is necessary to understand who is supposed to be handed responsibility over matters.”

Structural concerns

The BC continues to have strong concerns over the role structure plays in the success or failure of ICANN initiatives. Structure continues to be the most significant gap in community efforts to enhance the effectiveness of the multistakeholder model.

While this concern has been dismissed in all three previous consultations, it is critical that ICANN recognizes the difficulty in optimizing a model that does not have a fundamental structure that is adequately designed. It is our view that current structural defects exacerbated over time by the two-house structure within the GNSO will only continue to undermine the effectiveness of the multistakeholder model.

Currently, the balance of stakeholders is set up in a way that does not properly consider the underlying incentives of each group, forcing very difficult or sometimes impossible compromises to achieve even simple goals. Thus, the problems identified by the community with regard to “Consensus, Representation, and Inclusivity” are merely the symptoms of an underlying structural imbalance which remains unaddressed. We advise that the organization’s continuous dismissal of this issue as a priority is harmful to the furtherance of ICANN as a strong international institution.

For evidence of our point, we cite this specific example from a previous comment:

“Too often the differences that come up put members of the NCPH at odds, rather than steer them towards the negotiation of a middle ground. This commonly makes the voting default to a supermajority for the CPH, which as a group has a clearer general common interest. This throws decision making off balance in ways that are not straightforward to observe, but over time have proven to manifest in a consistent manner.”

That is why we believe:

“It is timely to consider how SO/ACs are organized and what are the consequences that come from that. As a prime 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, but it was still enacted.”

Having addressed a matter that the BC sees as an overarching issue, we will now turn to the more granular elements of the Public Comment.

Goals

For reference, the input being sought during this Public Comment is described as follows:

- **The Work Plan:** Several work processes, mechanisms, and actions for each work area of the Section II Work Plan are identified in the table(s) that follow the Addressing the Gap(s) section of each of the priority work areas below. Are they sufficient to address the identified gaps? Similarly, are there other gaps and related actions that may address those gaps that should also be included in the Work Plan?
- **Remaining Work Areas:** As discussed in Section IV below, the three remaining work areas will also benefit from the identified work that is already underway and the output of the Section II Work Plan. Community input on the draft Work Plan made it clear that there are groups willing and able to address some of the remaining work areas discussed in Section III of this paper. While the Board has focused this updated Work Plan on the top three priority areas, it also wants to make clear that any additional actions community participants would like to initiate to help address these work areas are welcomed. Are there any actions that your community group would like to initiate or coordinate? Additionally, are there any community efforts missing from this list?
- **Evaluation:** Do you support the idea of using existing mechanisms to evaluate progress on the three high-priority work areas, including the actions already underway and those proposed, to address the identified gaps? This evaluation may be conducted in the context of the strategic plan or another, more suitable mechanism identified by the community.

On the identified priorities

We believe the current list of six topics is sufficient to address the identified gaps, but as noted, we do not agree with the order they should be tackled.

What are described as “Remaining Work Areas” are equally essential, and community input on the Draft Work Plan shows that there are groups willing and able to address some of the remaining work areas discussed in Section III of this paper. While the Board has focused on their view of what are the top three priority topics, there is also room to address the remaining ones. For the BC, we are more than ready to help out on all six, particularly “Roles and responsibilities”.

We do support the idea of using existing mechanisms and encourage new ones to evaluate progress on the identified work areas. Actions already underway ought to be continued, but additional negotiation and resolutions strategies should be investigated. This might be a way to change the dynamics of the current insufficient voting structures.

Even though the BC has offered comment beyond the scope of the call for input, we do want to address the specific requests being posed. We will close with our view on the three priorities set by the staff.

Prioritization of the work and efficient use of resources

Among the many resources listed aimed at ameliorating these matters, one question remains: how is this going to be properly communicated to all but the most dedicated community members who put in several hours every day on ICANN work? The prioritization should be understood by all, even those who are mildly engaged. What do the Board and Policy Team propose as solutions to the matter of communicating the current status of priorities to the community? Could it come in the form of a bimonthly call specifically aimed at informing of these matters so that concerns can be taken to SO/AC leadership and quickly reverted to the Board and staff? Should it be a newsletter?

If many great mechanisms are in place but they do not reach their intended audience, they are fundamentally failing. This is an active concern of the BC, which represents business stakeholders the world over, who do not necessarily have the dedicated resources needed to participate at a very high level, but still want to understand and be a part of the prioritization process.

Further to that same concern, the multitude of “work processes, mechanisms and actions” is evidence of the currently unsystematic nature of this approach to the multistakeholder model. How are average community members interested in enhancing the effectiveness of the model supposed to know in which stream they should focus their efforts? How can they determine where to participate and where to voice their concerns?

It is a daunting choice, which is why many community members with sincere interests in improving the multistakeholder model feel compelled to participate in, advocate within, and keep tabs on, the entire glut of “work processes, mechanisms and actions”⁶. A thoughtful effort to enhance the effectiveness of the model should necessarily work to consolidate the current myriad of streams, because they lack the cohesiveness to encourage enough meaningful community participation and produce optimal outcomes.

⁶ Including: ATRT reviews; operational planning processes; leadership engagement; Board prioritization work; project cost support team; public meeting planning; PDP 3.0; consensus playbook; WS2 Accountability; NomCom Review; improving public comment proceedings and other staff publications; among others.

Precision in scoping the work

The BC has previously commented that the management of processes within ICANN should be entrusted to people with proven project management skills, and the document seems to hint at that. This is not exclusionary in any sense, but rather a useful practice that can at least increase the odds of success of any given initiative. Many previous efforts have been too ad-hoc, unstructured, and with much of the process developed after the fact.

A strong commitment needs to be made in the choice of a leader to any project that transcends community notoriety and extends into the field of specific competence in project management, mediation, and other essential skills. At a minimum, individuals under consideration for community leadership should be able to express a clear project management plan. Careful work needs to be done in synergy between staff and leaders, in order for a clear understanding of matters to be reached and diversionary tactics to be detected early and acted upon.

The BC has also previously commented that it is our opinion that a key factor in improving the effectiveness of the model is to eliminate overlap: too often too many different groups are spending too much time on too many of the same questions.

Consensus, representation, and inclusivity

As discussed above, issues concerning consensus, representation and inclusivity are symptoms of longstanding structural issues. These problems cannot be remediated until the underlying structural problems are addressed. Our comments on structure notwithstanding, the solutions currently presented do not address the core of this matter, which is: how to resolve a disagreement once all viewpoints are properly included and represented?

We urge ICANN to delve further into this existential question for this implementation of the multistakeholder model: how to ensure that the system is set up to facilitate consensus-driven, bottom-up decision making that is fair, transparent, and whose legitimacy is universally accepted by the community?

This comment was drafted by Mark Datysgeld, Andy Abrams, John Berard, Jay Chapman, and Arinola Akinyemi.

It was approved in accord with our charter.