The ICANN GNSO "Business Constituency"

Comment on Next Steps to Improve the Effectiveness of 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 Next Steps to Improve the Effectiveness of ICANN's Multistakeholder Model[1]

This comment builds on our previous input from Jun-2019[2].

The BC continues our support for processes to enhance ICANN's Multistakeholder Model (MSM). Improvements are needed for the community to continue success in their policymaking, and for our procedures to catch up with the increasing challenges we face.

The BC also appreciates the recognition in the current Public Comment of the efforts being carried out elsewhere by the community, particularly within the Policy Development Policy (PDP) 3.0 and Accountability and Transparency Review Team 3 (ATRT3) initiatives, as there is clear potential for solutions to be arrived at from those vectors.

We also believe, however, that this consultation process has not been conducted with the excellence expected. This effort involved the entire community and important insights have been collected that could lead to significant changes, but there is a tone to the proceedings that seems directed more at letting the community vent their frustrations – rather than at achieving something greater.

Meanwhile, there are pressing matters that need swift resolution for ICANN to remain a relevant global policy body and maintain its unique capabilities. For example, we were unsatisfied with ICANN 65's session on this subject, when attendants were invited to an unrealistic exercise of picking owners for the listed Issues, with no prior communication that this would be the objective of the session. The negligible results achieved were a showcase of the problems faced by ICANN and its community, which the instant request for Public Comment then further diminishes by inviting the community to "identify the actual list of issues that need to be addressed in the work plan."

Importantly, for any issue that is either addressed by another workstream, or should be addressed at a later time, it is vitally important that this initiative to enhance ICANN's MSM establish a well-defined mechanism to ensure that appropriate community feedback is actually channeled into such separate work streams or later work. It would be a true disappointment for the community's work to date to be merely relegated to Public Comment archives and forgotten due to the lack of such a mechanism. In terms of next steps, the request for Public Comment speaks only to the Work Plan, and not specifically to any of the issues being channeled into separate work streams or later work.

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[1] ICANN public comment page at https://www.icann.org/public-comments/multistakeholder-model-next-steps-2019-08-27-en

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

Below, we explore in greater detail the listed Issues following the convention proposed in the Public Comment, prioritizing them in the following way, by each issue that:

1. Must be addressed in the Evolving ICANN's MSM Work Plan.

2. Is fully addressed by a solution being developed in another work stream.

3. Should be discussed and addressed at a later time.

4. This issue is not a priority and need not be addressed to improve the effectiveness and efficiency of ICANN's MSM.

Issue 1 - Prioritization of work

Priority: 1 (Work Plan)

Owner: ICANN Org and SO/ACs

The BC does not believe that "ICANN's Planning Process" by itself is an adequate instrument to address this Issue.

When asked, ICANN Org routinely states that its priorities come "from the community." But community processes that steer this are quite unclear, and such a statement also ignores the increasing effect of outside actors. With regard to priorities set by internal means, how a task is escalated from being a perception into a goal or part of the policymaking process can be hard to trace. Efforts to make this more transparent are too limited in their scope, even though it is demonstrable that at times Public Comments and Additional Budget Requests inform those priorities.

With regard to external factors that generate consequences for ICANN, a clear understanding of this could have softened the blow of large-scale problems such as harmonization with GDPR or the difficulty in allocating community resources to other issues when the U.S. government relinquished its control.

Moving forward, a process where the community can truly assist in setting priorities and in which there is exchange between ICANN Org and involved stakeholders on the matter can be highly beneficial if properly structured, which ties directly to Issue 5: like the chicken and the egg, each will benefit from the other first being solved. This type of dialogue enables the community to offer its expertise and establish priority by actual demand while at the same time being informed by Org of what its position looks internally, which is something that would also help address Issue 3, as it relates to "Cost".

The emphasis of Issue 1 on prioritization seems to presume that the lack of prioritization is the sole cause for the lengthy time it takes for ICANN to make any decision. This approach seemingly ignores prior BC input concerning in-person meetings and evidence-based policy development. BC input on these topics was not composed merely of "suggested solutions" to be cataloged as described in the recent Summary Report of Public Comments.

In particular, as far as the regular meetings are concerned, more attention should be paid to the fact that in-person attendance at ICANN meetings is valuable, and should be used for task-oriented workshops rather than for high-level reports and recaps. We need to recognize that face-to-face engagement often improves the ability to reach consensus, so there should be proper differentiation between what work can be done during pre-meeting preparation time, including through ICANN's pre-meeting policy webinars, versus what is best suited to be handled in person.

Ideally, no presenter at an ICANN meeting should be uttering the phrase, "*these slides and materials have not changed much since our last report*" because time wasted reporting on stalled or established concerns is better spent moving policy forward through task-oriented workshops.

A constructive manner of using reporting sessions would be to arrange a space for representatives of the different Working Groups to have around 15 minutes to brief community members who are not involved in their work on what their current status is, so that a broader picture could be gotten of where the priorities and progress stand.

Issue 2 - Precision in Scoping Work

Priority: 2 (Another stream)

Owner: Pre-existing

The BC believes that the PDP 3.0 initiative and the Updated Operating Standards for Specific Reviews are taking important steps towards the improvement of this Issue, and that work should continue to be supported. It is our opinion that the key factor in improving the effectiveness of the MSM is eliminate the overlap: too often too many different groups are spending too much time on too many of the same questions.

The BC also believes, in support of the facilitator's observation, that the existing and developing approaches to scoping work should apply beyond merely the GNSO PDP. By way of example, the BC previously identified the Open Data Initiative/Program—which clearly falls outside of the GNSO PDO—as an example of a project whose scope has changed multiple times, and consequently has seen ever increasing timelines without producing significant deliverable for the community.

Issue 3 – Efficient Use of Resources and Costs

Priority: 2 (Another stream)

Owner: Pre-existing

As far as Financial resources are concerned, the BC believes that the "Strategic Plan for Fiscal Years 2021 – 2025" and its "Financials" objective should be the forum for this Issue to be better addressed, together with the work of ATRT3 and the alternate work plan proposals within the PDP 3.0 initiative. However, to be clear, these forums should not simply focus on financial resources, but should carry forward an emphasis on the time and capacity of both volunteers and ICANN staff.

Issue 4 - Roles and Responsibilities and a Holistic View of ICANN

Priority: 3 (Later time)

Owner: Board

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. This very Public Comment is an example of that, as owners of Issues are sought to be identified. It cannot be that there is a good definition of roles if a community-wide consultation is necessary to understand who is supposed to be handed responsibility over matters.

This is an Issue that can be better dealt with once others have been addressed, so that in the future these identification efforts become less necessary and work can be done in a more streamlined manner that makes sense for all of the involved community.

Issue 5 – Representation, Inclusivity, Recruitment and Demographics

Priority: 1 (Work Plan)

Owner: ICANN Org and Board

The BC finds the merger of these issue to be inappropriate, as it conflates fundamentally different issues. We indicated in our previous comment the strength in merging what were then "Issue 7: Representativeness and 8: Inclusivity" in one item and then doing the same to "Issue 5: Demographics and 6: Recruitment". However, to coalesce all four items into one shows a fundamental misunderstanding of the issues at hand. More specifically, Representation and Inclusivity are categories primarily related to the structure of ICANN—whether participants are fairly represented in their currently formulated silos.

By contrast, Recruitment and Demographics are categories related to integration of new participants and stakeholder diversity—whether ICANN is able to draw in new participants representative of the global Internet. The facilitator observation that these Issues were grouped together because "the interrelated role they play to support and grow active, informed, and effective stakeholder participation" lacks meaning since the same can be said of essentially all of the Issues on this list.

Accordingly, we discuss them as two separate items below:

Issue 5A: Representation and Inclusivity

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.

The BC understand the root cause of the problem is this case is that the NCPH component groups have their own different Constituencies, which consequently have their own individual opinions. Too often the differences that come up put members of the NCPH at odds, rather than in agreement. This commonly makes the voting default a supermajority for the CPH, which as a group has a clear general common interest. This creates imbalance by means that are not straightforward to observe, but over time has proven to manifest itself in a consistent manner.

NCPH Intersessionals were intended to reduce the gap between CSG and NCSG, and the groups have been trying to find commonalities there. While this was helpful in some cases, it has not created a synergy that is mitigating fundamental differences in policy development ideas. This is unlikely to improve under the current model, so we believe that a review of the structure of the Houses system is imperative for the long-term health of ICANN's MSM.

Issue 5B: Recruitment and Demographics

ICANN does not lack a door in for new and diverse members, the doors just need to be made better and more relevant, as pointed out in our comment to the NextGen@ICANN Program Community Consultation[3].

The BC 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 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. It is a positive step 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 attendees 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.

As far as selection is concerned, this is a concern that has been voiced by the BC several times and has been highlighted in our self-funded "Building Sustained Business Constituency Participation in Latin America" report[4]. 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 for participation, when SMEs from developing countries are as deserving as NGOs, civil society and governmental attendees for the Fellowship funding.

Issue 6 - Culture + Trust + Silos

Priority: 1 (Work Plan)

Owner: ICANN Org and SO/ACs

The BC recalls the input from the Meeting Strategy Working Group from 2016[5] that "the second meeting in the cycle (Meeting B) would be a mid-year meeting focused on SO/AC policy development work as well as cross community interaction and outreach", and it "would have a shortened day agenda, for example 09:00-16:00, providing dedicated time from 16:00 on for cross community collaboration and networking".

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[3] https://www.bizconst.org/assets/docs/positions-statements/2019/2019_09September_10%20BC%20Comment%20on%20NextGen%20program%20consultation.pdf

[4] https://www.bizconst.org/2019-latin-american-outreach-study-and-report

[5] https://meetings.icann.org/en/mswgrecommendations-icannfuturemeetingsstrategyfinalv119jun14.pdf

This meeting structure has since been adopted, and even though there appeared to be clear efforts during ICANN 56 (Helsinki) to further these goals, they have since been forgotten and Meeting B became just a more compressed version of meetings A and C. The entire concept of reducing the impacts of divides generated within the broader ICANN community has been deprioritized.

Without understanding the focus and goals of other stakeholders, it becomes difficult to work in a harmonious way as a group. 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, or we risk continuing the aggravation of the problem.

The ICANN Org and the Community both have roles in resolving this. Org needs to assume leadership to make this into a priority when organizing the regular meetings and online activities, while the Community needs to understand and value the importance of accommodating this type of interaction when planning their participation.

Importantly, overall distrust and the zero-sum mentality that typify current silos are at least in part caused by the structural deficiencies and necessary changes previously identified by the BC and discussed here under Issue 5A. Participant silos lack the incentive to compromise on matters, when in the absence of such compromise, the status quo reigns, and each silo begins to focus more on the unfavorable proposals that they've eliminated than the actual problems they've solved. This is all the more reason why structural issues should not be disregarded and cannot be divorced from the discussion on how to improve the effectiveness of ICANN's MSM.

In a broader sense, it is important to understand where the SO/ACs go for insight, support and information. It seems that there is a need to rely on the Board members linked to the groups, but those are few and their obligations are many. The Contracted Parties also have other avenues such as the Global Domain Divisions (GDD) Industry Summit, but increasing those points of contact across the board could go a long way in helping provide access to data, ease understanding of other groups' viewpoints and create a healthy appreciation inside ICANN of the need to relate to the community on a one-to-one basis.

Issue 7 – Complexity

Priority: 3 (Later time)

Owner: ICANN Org

There is a significant disconnect between what the Issue's current description is and how the community described it. Here it has been characterized as complications originating from governments, while the correct Issue to be addressed is that ICANN is understood by its community to be overly complex in how much information is required to do meaningful work within it, and the number of projects, reports and acronyms pile up in increasing volumes without expectation of that flow slowing down or being made more logical.

The only directly related proposed solution is the Open Data Program (ODP, formerly Open Data Initiative, of which the community has not heard a status update for since early 2019), which could help in the development of solutions to this concern, but does not directly have to do with it. The ODP intends to generate datasets that can later be put together to make better sense of what goes on in the organization, but this does not reduce Complexity by itself, it is only a tool.

ICANN Org should have a sub-team dedicated to more intuitively documenting the status of different groups and policymaking efforts, seeing as currently these efforts are not organized and it is often

unclear where one should go to find a resource. This makes it so that only the most experienced and active members of the community know their way around processes, which on one hand is burdensome on them and on the other can at time create a significant information imbalance for newer or less involved contributors.

The wiki space in particular is used in varied ways by different groups, and its lack of structure is not conducive to good research. There are attempts to make the experience more intuitive, but these are isolated; articles become outdated and there is no proper control of when they should be updated, among other issues. The ICANN website itself does not offer better options with its labyrinthine design, and there are parallel community efforts trying to address these long-standing problems that may duplicate or dilute work, such as was the case of ICANNWiki, over which Org now has significant control over but does not promote.

We would like to repeat our advice that since ICANN's processes, procedures, rules, and Bylaws are numerous and can be difficult to navigate, leading the BC to recommend 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 fairly.

While this is clearly a key Issue, there are others that take precedence. To solve it would require a significant effort to review the way information is structured and delivered, as well as demanding a commitment from the staff and community to respect better practices, from always using the long form of acronyms at least once, all the way to reforming the structure of ICANN's websites and databases.

Issue 8 – Consensus

Priority: 1 (Work Plan)

Owner: All stakeholders

The BC believes this to be at the core of the current issues faced by ICANN, and it is deeply connected with Issue 5A, as it related to "Representation and Inclusivity".

While great effort has been carried out through the PDP3.0 initiative targeting approaches to develop consensus more effectively, a clear definition of what consensus means in relation to the current scale of ICANN needs to be defined in a way that is tolerated by the entire community, with an acknowledgement of when the leaders of a Working Group (WG) should have the ability to make a call for consensus and how to act upon results. It is easy to call into question the legitimacy of a consensus and difficult to prove it.

We have previously noted that in WGs, the 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. This is further compounded by the fact that conference 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.

It is our belief that guidelines need to be put in place to prevent work that does not intend to advance policymaking constructively from being fruitful. Deadlines need to be set and respected, so that members are incentivized to value the time invested by others, and stalling tactics are discouraged.
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This comment was drafted by Mark Datysgeld, John Berard, and Andy Abrams.

It was approved in accord with the BC Charter.