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Will PDP 3.0 Save the Multi-Stakeholder Model?

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For the past several months, there has been much discussion within the ICANN community about something called "PDP 3.0". This has been raised in a number of different contexts including as part of ICANN's new governance review. But what exactly is PDP 3.0? And, will it save ICANN's multi-stakeholder governance model? I believe that if we are to save the multi-stakeholder model then now is the time to address the big issues not just the low hanging fruit on the surface — a new approach to achieving consensus across parties with widely differing views is needed.

First, let's consider the story of the PDP so far. The PDP is ICANN's Generic Names Supporting Organization's Policy Development Process — the primary means by which the ICANN community develops and implements new policies for generic top-level domains. The results of some PDPs can also substantially revise commitments and obligations by ICANN's contracted parties; namely domain name registries and registrars. Many believe that the success of ICANN's multi-stakeholder model is tied directly to the success of the PDP.

In the past 20 years, the PDP has gone through several revisions. The most significant of which occurred approximately a decade ago through a working group that I had the privilege of chairing.[1] This working group conducted an overhaul of the PDP, which included mandating working groups, developing the PDP manual, amongst other enhancements to a process in which many in the ICANN community had lost confidence. Whilst PDPs remain a prolonged process, the operation of most PDPs has been significantly improved.

This brings us to what is now called PDP 3.0, which is primarily based on a discussion paper drafted by ICANN's policy staff and the subsequent discussions by the GNSO Council. The paper and discussions have resulted in a number of proposals that hope to increase the effectiveness and efficiency of the PDP. Yet, for the most part, the recommendations do not represent a major overhaul to the PDP, but rather add much-needed clarifications and definitions to those pieces of the PDP already in place. In reality, this does not represent PDP 3.0, but rather perhaps PDP 2.5.

The real problem I have with "PDP 3.0", is that it is aimed at addressing the symptoms of issues with the multi-stakeholder model rather than the issues themselves. Namely, how do you get diverse groups of people, organizations, and governments to have the appropriate incentives as well as the authority to come to a consensus on highly contentious and complex issues which impact individual freedoms, commerce, political climates and organizational effectiveness on a global level? The issues of incentive and authority to cooperate have been the key issues faced by ICANN since day one.[2]

What are the problems with PDP 2.0?

As discussed in ICANN's paper in May 2018, the real and perceived issues with PDPs involve (a) working group dynamics, (b) working group leadership, (c) an increase in the complexity of subject matter, and (d) the role of the GNSO Council in the PDP. A final report was published in October 2018 and incorporated feedback from the Community (PDP 3.0 Final Report).

The problems with working group dynamics stem partly from the dramatic increase in the number of people signing up to participate. However, the level of participation in working groups remains low even with greater membership. There are a number of people that sign up for these groups to be aware of the discussions going on, but do not actively participate, nor do they contribute to the outcomes of the working group. Compounding these issues is the time many PDPs take to complete, so many of the participants either drop out or move on to the next "issue of the day."

The increased size of PDPs presents the difficulty of moderating and facilitating productive discussions. Leaders of these groups are required to contribute a significant time commitment that can last several years. There is no formal training for any of the working group leaders and most are required to learn the rules as they go along. As one of the co-chairs of a current PDP, despite having chaired multiple groups over the past two decades within ICANN, I am still learning how to be an effective leader every day. Personally, ongoing leadership and facilitation training would benefit me greatly.

As ICANN and the global nature of Internet governance continue to evolve, the complexity of PDPs has increased. There are greater interdependencies between issues, which for PDP participants means an ever-growing amount of information that is expected to be

"reviewed and digested by working group members."[3]

Finally, the precise role of the GNSO Council in managing the PDP process is relatively vague and has been without a clear definition for a number of years. This vagueness has trickled down into the uncertain role of Working Group Liaisons. It has been clear that the GNSO Council is responsible for ensuring PDPs meet certain milestones and timelines, but the mechanisms and scope of this responsibility have not always been apparent.

What exactly is PDP 3.0?

Thus far, PDP 3.0 is a series of incremental improvements to symptoms of issues in the multi-stakeholder model. As stated above none of these proposals represent an overhaul of the PDP, but rather, changes that can be made without requiring changes to the ICANN Bylaws nor impacting existing PDPs.

For example, to improve working group dynamics, there are proposals to draft a "terms of participation" describing the expectations of working group members, and potentially introducing limitations or a cutoff date for new members to join a working group. There is also a recommendation in the ICANN Discussion Paper to consider alternatives to the popular open working group model which recognizes that there may not be a one-size-fits-all solution for all PDPs. It is worth noting that the PDP on New gTLD Subsequent Procedures (SubPro PDP) has already created an alternative working group for issues dealing with geographic names at the top level. This group has four co-leads comprised of representatives from the GNSO, ccNSO, governments as well as the At-Large community.

There are also proposals to make incremental improvements to PDP leadership. These proposals include mechanisms to address potential capture, a more active role in defining the job of GNSO Council Liaisons, and documented expectations for PDP leaders. Presumably, this would also include a written description that outlines the roles, responsibilities, and expertise required of PDP leaders.

Finally, the ICANN Discussion Paper recommends the enforcement of deadlines, required notification to any changes in work plan, reviews of PDP leaders and making use of the PDP's flexibility to deal with situations where it becomes apparent that no consensus can be achieved. There is some discussion of having available independent conflict resolution and/or mediation experts following the anecdotal success of this in the expedited PDP reviewing the collection and processing of domain name registrant data.

The GNSO Council established a small working group of its own members and ICANN policy staff to implement these recommendations. In December 2018, this working group posted an implementation plan to begin putting these recommendations

into practice. At ICANN 64 in Kobe, Japan, an update from the small group was given to the Council, but admittedly the group has not yet made any real progress.

What is not in PDP 3.0 and why it misses the boat

PDP 3.0 does not address community concerns on the lack of clear guidelines and methodologies for measuring consensus in PDPs. In fact, most of the discussion at the GNSO Council meeting at ICANN 64 centered around certain groups that were unhappy about the lack of clear guidelines on measuring consensus. Some groups were unhappy that despite their objections to a recent PDP's recommendations, consensus was declared. Others claimed that they have been virtually ignored in all previous PDPs by being significantly outnumbered.

Although I do not disagree that the development of guidelines to measure consensus is important, it fails to recognize the real issue of addressing how to facilitate consensus. Before we tackle the issue of measuring whether consensus was in fact achieved, we really need to create incentives for working group members to have the willingness and ability to come to consensus. After all, what use is having the proper measurement tools when we all know it is virtually impossible to achieve consensus in the current environment?

This problem is not one that is limited to only one or a few stakeholders. A common tension arising in PDPs is that the outcome of the PDP will impact the obligations of ICANN's contracted parties. Naturally, contracted parties have little desire to increase their contractual obligations to ICANN or ICANN's regulatory authority over them without substantial justification. In contrast, ICANN's non-contracted parties have limited understanding of how contracted parties operate, have little incentive to limit their desire to regulate the contract the parties, and contemplate their own beliefs, views or interests first and foremost. Further compounding the tension is that governments are guided by their own political agendas and are not used to "negotiating" with private entities: nor do the government representatives that attend or participate in ICANN have the authority to compromise on policy issues without the support and buy-in from the governments they represent.

To make matters even more interesting, with respect to nearly every issue that is addressed through ICANN's multi-stakeholder process, there are some individuals, entities or organizations that benefit from the status quo. If they believe that compromise will in some way put them in an inferior position, the only incentives they have are to either delay or to ensure that consensus is never achieved. The next few months in SubPro look likely to place these problems in the spotlight. With SubPro lacking even a clear goal in wanting the next round to start as soon as possible, consensus and compromise seem almost impossible.

This is not intended as a criticism of any of the participants, but rather an acknowledgment that we all have a shared set of problems and need to work together to resolve them.

Achieving consensus & Next Steps

PDP 3.0 is not the solution to the substantive problems identified above. It is akin to patching up a ceiling after water leaks without repairing the source of the underlying leak. Sure, it will make the roof look good in the short term. But in the long term water will burst right through the ceiling again. PDP 3.0 may serve as a small patch to the policy development process in the short term, but in the long term, it does not fix the underlying problems.

At ICANN 64, I was encouraged that an effort was underway at the request of the current ICANN Board Chair, Cherine Chalaby to look more closely at the ICANN Governance model. If done right, this effort could include an in-depth analysis of the issues raised in this paper. I very much look forward to contributing to this effort.

One of the most common questions that is asked of me as a Co-Chair of the SubPro PDP is "how will we measure consensus"? This is asked by both those that support or oppose recommended changes as well as those that support the new gTLD process moving more quickly and others that either do not want new gTLDs or caution against having another round so soon (albeit that once implementation is completed it will be nearly a decade after the launch of the 2012 round).

Of course, this is an important question and I am not downplaying it at all. But the more important questions are: (a) how can we develop recommendations that are supported by a consensus of working group members?; (b) how can each member of the working group take the uncomfortable step out of their own comfort zone to develop a solution that everyone can live with?; (c) how can we all work to close issues out rather than rehashing issues that have been discussed for years?; and (d) rather than just bringing up additional issues, how can we also propose solutions?

I have always been a true believer in the multi-stakeholder model for the Internet's naming and number systems. Let's make this work together!

[1] The PDP Work Team was one of the working groups established as part of an extensive GNSO Improvements project. The Final Report of the PDP Work Team can be found here.

[2] The ICANN policy staff paper does touch on consensus building as well as working group members' willingness and ability to compromise, but

does not go into much detail. See https://mm.icann.org/pipermail/council/attachments/... at p. 6-7 and https://gnso.icann.org/sites/default/files/file/... p. 7 and 8.

[3] See PDP 3.0 Final Report

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