

EVOLVING THE ICANN MULTISTAKEHOLDER MODEL

The present exercise to strengthen the multistakeholder process is not only to be viewed as of relevance to ICANN's Governance, but as an exercise that would contribute to the evolution of an expanded model of governance beyond ICANN. The multistakeholder model is pioneered and reasonably well experimented in DNS governance by ICANN, and is to be regarded as fit to be replicated in other organizations across stakeholder groups, and could well be the next phase of evolution in Parliamentary and Government processes.

Especially at a point of time when various challenges have demonstrated the need for increased process effectiveness simultaneously in democracies around the world, the multi-stakeholder model requires to be preserved as an evolutionary pathway for the process of governance in general. The multistakeholder model is a model for liberal reflection and participative governance. In the ICANN context, the model is effective for DNS governance and in the global context, possibly for overall governance.

By the conventional model, the Governments, acting alone, are not doing everything right, not all the time, not in a manner that wouldn't seem right when reviewed 50 years hence. Besides, the tasks are far too numerous, weary and too burdensome for Governments to address them alone, as opposed to the evolutionary multistakeholder model wherein Governments would address the issues with extended expertise and strengths and solve problems far more swiftly and effectively by drawing the necessary strengths of business and civil society and other stakeholders.

Even within this framework, it is not accurate to say that Governments act alone or in isolation of other participants. Some form of Business-Government interaction has always prevailed in every part of the world in policy making, without a formal structure, causing progress, and at the same time some unintended imbalances, in different countries in different ways, by lobbies and interest groups in one country and by other forms of partnerships, some legitimate, some inappropriate in another country.

Multistakeholder model could formally bring in Business to policy making while making the process of policy making equanimous and balanced by the inclusion of other stakeholders. In different parts of the world the successful progression of the ICANN's multistakeholder model is beginning to inspire the thinking that the model in which the stakeholders participatively share the burden is useful in policy making and governance. Further evolution and better success of the ICANN multi-stakeholder model would help elevate the process of governance in many parts of the world, in Governments, in large non-governmental and International organizations as well as in the private sector.

With this thinking, the priorities are ranked as 1. Trust, 2. Accountability, 3. Culture, 4. Silos, 5. Holistic view of ICANN, 6. Consensus, 7. Timing of decision-making 8. Complexity, 9. Transparency and 10. Roles and Responsibilities. The issues are linked to one another.

Trust

Could be viewed as three distinct challenges:

- a) Building Stakeholder Trust in the multistakeholder process, which is a task
- b) Building stakeholder trust within and among themselves.
- c) Building global trust in the ICANN multistakeholder process

Accountability

ICANN has always considered it important to define Accountability, with work on Accountability and Transparency by the three ATRT phases and the cross community work on Accountability during IANA Transition. The exercises have progressed in a direction to define accountability as as a notion of 'answerability' by instituting checks and balances.

Work on ICANN Accountability has recommended and created new processes for safeguards, on the premise that new Community powers would provide the necessary challenges against abuse of Board powers. However, these measures have dispersed responsibilities due to lack of clarity on who is to be held accountable for the decisions needed for the pursuit of the overall mission of ICANN and on developments that may occur to the distortion of the overall purpose of the Organization. Accountability of the ICANN Board as well as the Accountability of the ICANN organization needs to be discussed. AC/SO and Staff Accountability measures work at one level, whereas ICANN Accountability is epitomized by a Board Accountability and Organizational Accountability design.

These topics are not to progress as exercises to create more processes that may actually slow down and even limit the effectiveness and responsiveness of the organization. We could come up with a new solution that may neither entirely depend on a oversight, nor on challenges and limitations.

The ICANN Board, Community Leaders and Staff leaders are individuals. The propensity of the Organization to be effective, correct and just depends on who the Organization attracts to be its constituents. If the Organization in general and the Board, AC/SO leadership, nominated members and Staff leaders are to be of such stature, traits and commitments that they are not to be expected to deviate from the larger purpose, we will have an accountability framework around an organization that would require minimal oversight. Such an Accountability framework would ensure good governance.

The framework would be such that ICANN Board would deem itself accountable for its actions and inactions that affect ICANN. All the constituents of ICANN would consider themselves accountable for ICANN's actions and inactions that affect the DNS, and the larger Internet,

even if such actions of ICANN or any of its parts happen WITHOUT discernible directives or consent from within ICANN.

ICANN Accountability has to evolve further as a higher process than it is already, with ample external advice of insights.

Culture

There is a distinct ICANN culture or the DNS culture. ICANN participants are participants with a sense of commitment and belonging, they travel half way around the world to attend the ICANN meeting, most of them with a focus on work that makes the trip wherein the sights they see are the interiors of the airports, meeting venue and the hotel. No one complains about sessions that start at 8 am or the occasions when the meeting last past midnight. This deserves praise and this culture needs to be preserved.

What limits this culture are Silos.

Silos

Participants of one AC / SO tend to group together and work in isolation to arrive at their positions and advance them, which limits the goodness of the ICANN culture and the effectiveness of the multistakeholder process. ICANN is moving towards Open sessions even in the GAC, Cross Community deliberations and CC working groups, which have considerable addressed the problem of work being done disconnected in silos. The ICANN organization could also help by allowing all participants the option and support to arrive a day earlier and leave stay at least till Saturday to encourage cross community informal interaction which would build greater trust between the ACs and SOs to pave way for formal progress in cross community work.

Holistic View of ICANN

Geographic demarcations are minimal in the ICANN multistakeholder process and need to be further minimized. This global process has to become more global, and for this to happen, stakeholders from various geographies may have to wear the aura of global participants.

The emerging stature of ICANN as a global body is in no way diminished from that of more formalized multilateral organizations.

The decision making in the multi-stakeholder process needs to be different and swifter, just as the processes of debate and discussion here are far different from the conventional processes. ICANN's participation process is distinct from parliamentary processes and UN rules of procedure, that simplicity needs to be preserved for the free flow of constructive solutions.

In the multistakeholder process, rules have to be guidelines for broad conduct, with ample flexibility. Minimise the rules.

Consensus and the time taken for Decisions:

Rough and quick consensus would suffice on most issues and proposals. Certain processes such as IANA transition or new gTLD program design are of far reaching consequences and require exhaustive deliberation and word by word scrutiny, but not all.

All issues are discussed in “Working Groups” that take a long time to arrive at position papers. Proposals and Issues could be classed into two or three groups in terms of sensitivity, urgency and significance.

There could be a) formally constituted cross-community working groups b) relatively lighter cross-community working groups on specific policy questions and c) Policy/Implementation task groups for rough consensus by a week long deliberation which could also be constituted as a permanent rough consensus groups with a dynamic participation design to enable participants to move in and out of the ‘permanent’ role based on participant’s interest in issues under discussion. It is also important that ICANN does not get into a mode of long deliberations to define a process to design process changes, or to make the existing process longer by introducing an additional process stage for debating on the class of working group/task group to be constituted for every issue in question.

What is achievable is rough consensus which needs to be several times swifter than it takes now. One stakeholder group or a subclass of any stakeholder group may have strong positions that delay the process, which could only be balanced by achieving a reasonable balance in the overall stakeholder design.

The Accountability process of the IANA transition emphasised the role of the Community and empowered the Community, after which the Board and Executive seem to have subscribed to a pattern of waiting for Community recommendations or inputs for any decision. The Board and the Executive are empowered by default to take decisions and act on the decision; The exercise of empowering the community did not alter the stature of the Board and Executive, nor did it ‘call for’ inaction by the Board and Executive until Community processes conclude for every issue on the table. Board directives and executive decisions and actions are to be deemed harmonious when concurrent to related community processes, sometimes even interventionally with fair exchanges or explanations for understanding. The ICANN Community is mature enough to understand the wisdom of the Board and occasional exigencies for timely action by the Executive and, more importantly, the need for a smooth flow in operations which at times require decisions without time gaps.

Over and above the balance achieved by Board, Executive and Community processes, the multistakeholder process needs to include a notion of non-trivial oversight for rare interventions of wisdom.

Such an oversight might already prevail in the ICANN processes in some measure and it needs to be more extensively multistakeholder. There was a comment during an ICANN discussion on the processes that “we were specifically organized in order to not get things done” which is not

to be dismissed in its entirety, and at the same time, not to be seen as a design towards any narrow end. However, for the multistakeholder process to evolve, any oversight that may necessarily have to exist needs to be detached. In matters related to the DNS, it is not only the commercial stakeholders who have horses in the race, but Governments out of concerns of the times. It requires a bit of unlearning of the multilateral processes for the multistakeholder process to evolve.

Complexity

The multistakeholder process is far less complex than the multilateral processes. One way to look at the issue of “complexity” is to take a contrary view as that of a design not elaborate enough in its early phase of evolution. The stakeholders are broadly classed as three groups, that of Business (mostly DNS business), User Interests and Government.

In ICANN, are there are imbalances by design, intended or unintended? ACs and SOs are classed in a manner that an intended advantage occurs and continues for one stakeholder group or a subsection of a stakeholder group. The role of ACs as the name suggests is advisory, but why did the design assign advisory roles for one or more stakeholder groups who ought to have been seated proportionately around the table? Why are ACs, by design, name and powers, advisory, with further safe harbours in the processes to render the advice non-binding?

In the present framework, the contracted parties make the Contractor’s policy. In order for this status quo to be perpetuated, the multi-stakeholder process is effectively weakened structurally, by perpetuating the flaws in the design of the process and the flow of the processes and by controlling participation.

Despite all this, a certain balance is achieved, but ICANN, in its long term deliberations on the evolution of the multistakeholder process, could consider if the multistakeholder process requires a little more complexity, that of moving beyond the traditional notions of balance between light and dark, black and white, and even beyond the notions of trilateral balance. Balance does not occur when you see only extremes. There are more than two extremes to be balanced in the multistakeholder process. Perhaps -perhaps- there are six or even seven aspects to be balanced, each one against all other, concerns for Security, Privacy, Rights or Freedom etc, balanced by a more elaborate class of stakeholder groups to bring in perspectives, for instance, from Academia or Commercial Users or International Organizations.

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