ARTICLE 19 response to the Draft Enhancing the Effectiveness of ICANN's Multistakeholder Model

Introduction

ARTICLE 19 welcomes the efforts of the Internet Corporation for Assigned Names and Numbers (ICANN) to hold this Public Consultation[1] on the next steps of Enhancing the Effectiveness of ICANN's Multistakeholder Model[2].

The consultation is important as it informsICANN's strategy for delivering its functions by taking into account views from the various stakeholders within the ICANN community, in line with ICANN's Strategic Plan for Fiscal Years 2021-2025.

We thus appreciate the opportunity to provide ICANN with our position on the draft proposal for Enhancing the Effectiveness of ICANN's Multistakeholder Model and we look forward to the discussions that will follow. This statement is made on behalf of ARTICLE 19. We also endorse comments by the Generic Names Supporting Organization (GNSO) Council and the Non Commercial Stakeholder Group (NCSG).

About ARTICLE 19

ARTICLE 19 is an international human rights organisation that works to protect and promote free expression, which includes the right to speak, freedom of the press and the right to access information. With regional programmes in Africa, Asia, Europe, Latin America and the Middle East and North Africa, we champion freedom of expression at the national, regional and international levels. The work of ARTICLE

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[1] ICANN Public Comments on Enhancing the Effectiveness of ICANN's Multistakeholder Model – Next Steps
<https://www.icann.org/public-comments/multistakeholder-model-next-steps-2020-06-04-en> accessed July 27, 2020

[2] Draft Model for Enhancing the Effectiveness of ICANN's Multistakeholder Model – Next Steps
<https://www.icann.org/en/system/files/files/enhancing-effectiveness-multistakeholder-model-next-steps-04jun20-en.pdf> accessed July 27, 2020

19's Digital Programme focuses on the nexus of human rights, Internet infrastructure, and Internet governance.

At ICANN, we engage through the ICANN Empowered Community as members of the Generic Names Supporting Organization (GNSO) under the Non Commercial Stakeholder Group (NCSG), Non Commercial Users Constituency (NCUC) and as members of the At-Large Advisory Committee (ALAC) directly as part of the European Regional At-Large Organization (EURALO). We work within the ICANN community with the main purpose of raising awareness and building coalitions within the community in response to the human rights implications of the Domain Name System (DNS). We aim to ensure that Section 27.2 of the ICANN Bylaws (on Human Rights) and other Bylaws with an impact on Human Rights are implemented in full and put the user at the centre of policy development processes.

Summary

In July 2020, ARTICLE 19 reviewed the draft proposal for Enhancing the Effectiveness of ICANN's Multistakeholder Model (MSM).

We respond to the following questions put forward by the ICANN Org and ICANN Board in the draft consultation document and the accompanying webinar:

- Whether there are gaps between general objectives of the MSM Model and current works in progress and whether there are any other gaps that are not currently identified or properly addressed.
- How to evaluate current works in progress regarding enhancements brought to the MSM.

On the first question, we conclude that the draft proposal contains some positive questions and suggestions for improving the MSM model but is overall vague in addressing how improvements are to be made practically, as it fails to account for six sections of the recent Workstream 2 Recommendations. For ICANN to be effective in its operations, it must take into consideration the recent Workstream 2 Recommendations, especially those on human rights. ARTICLE 19 recognises that

the Internet is a global resource that should be managed in the public interest and appreciates the unequivocally important role that ICANN has to play in this regard.

On the second question, we find that the use of metrics such as timeframes and budgets may create a sense of urgency for completing priorities, but do not address the root causes of the failure to achieve consensus, which have already been identified by other documents such as the Workstream 2 Recommendations.

ARTICLE 19 urges ICANN to consider the recommendations below, which would help align the draft proposal more closely with international best practice.

Whether there are gaps between general objectives of the MSM Model and current works in progress and whether there are any other gaps that are not currently identified or properly addressed.

We welcome the identified priority areas under the three overarching themes in the MSM venn diagram, i.e. 1) Prioritization of Work and Efficient Use of Resources 2) Precision in Scoping the Work and 3) Consensus, Representation, and Inclusivity.

However, we note that the document only highlights two relevant Workstream 2 issues within the theme of Consensus, Representation, and Inclusivity; these are 1) Diversity and 2) Recommendations to increase SO/ AC Accountability.

The draft document thus leaves out other crucial Workstream 2 recommendations that have an impact on ICANN culture, trust, and silos within the community. These include: 1) Guidelines for Good Faith, 2) Recommendations for a Framework of Interpretation for Human Rights, 3) Jurisdiction of Settlement of Dispute Issues, 4) Recommendations for Improving the ICANN Office of the Ombudsman, 5) Recommendations to increase Staff Accountability and 6) Recommendations to improve ICANN Transparency.

The importance of these recommendations cannot be underestimated. They affect the Board removal process, human rights implementation by both ICANN Org and the ICANN Empowered Community, ICANN operations as a global entity that is able

to settle disputes free from US government control following the IANA transition, ICANN staff accountability and ICANN Org transparency.

The document as it is currently drafted is more community-focused and minimizes the important role of ICANN Org and the ICANN Board within the ICANN MSM. For the MSM to be effective, stakeholders must be able to trust that ICANN Org is transparent, its staff are accountable and disputes that arise within the community will be resolved in an environment that facilitates due process, free of special interests.

The failure to include these six recommendations in this draft proposal would be an oversight, as the current proposal does not accurately reflect how ICANN Org impacts decision-making, alongside the ICANN community, and fails to account for the impacts of the relative power differentials between different stakeholder groups that Workstream 2 Recommendations attempt to address. This is the case as the proposal as drafted seems to portray that for the ICANN MSM to be effective, the burden lies only with the ICANN community and not with the two other key actors; ICANN Org and the ICANN Board.

ARTICLE 19 recognises that the Internet is a global resource that should be managed in the public interest and appreciates the unequivocally important role which ICANN has to play. We submit that these six recommendations should be included under either 1) Prioritization of Work and Efficient Use of Resources or 2) Precision in Scoping the Work.

How to evaluate current works in progress regarding enhancements brought to the MSM.

We appreciate that ICANN is conducting a self assessment of its MSM. The questions posed through the consultation posit the complicated nature of multi-stakeholder initiatives. These questions include: *"should progress be evaluated based on meeting objectives within a particular time frame or budget? Or should more subjective metrics be used, such as: Is there a sense that consensus is*

better defined and thus more achievable? Would partial progress on these goals be sufficient to declare the effort a success?"

First, the use of timeframes and budgets as metrics may create a sense of urgency for completing priorities, but they do not address the root causes of the failure to achieve consensus, which have already been identified in other documents such as the Workstream 2 Recommendations. The use of timeframes as an indicator can have adverse implications for the participation of non-commercial stakeholders including, notably, civil society, as they do not have the same resources and capacities dedicated to participating in ICANN as their commercial stakeholder counterparts.

Second, we would like to flag that the question on the use of budgets as an indicator of the effectiveness of the MSM is new, since, in previous consultations on the topic, this had not been identified as an issue. Budgets can be used as a positive metric in instances where more funds are allocated towards increasing the participation of underrepresented stakeholders such civil society and academia, especially those from the Global South. The use of these funds for diversifying the perspectives within the ICANN community would serve as a more useful indicator of the strength of the MSM.

Third, we would like to submit that the second proposed solution on the use of subjective metrics appears more achievable as it would accommodate the unpredictability of stakeholder negotiations. For example, an assessment of whether there is a sense of consensus and whether partial progress on the goals would be sufficient to declare the effort a success would be welcome as a more results-oriented approach. We further recognise that these metrics are in line with the proposed GNSO Policy Development Process (PDP) 3.0 and the Consensus Playbook. These two proposals, if used properly, will enhance the MSM in the long-term, as they set clear standards, outline skills needed for every PDP and set measurements on whether every input from PDP participants is taken on by PDP chairs.

Conclusion

ARTICLE 19 is grateful for the opportunity to engage with ICANN in this process in light of the five objectives under ICANN's Strategic Plan for Fiscal Years 2021-2025.

We look forward to continued collaboration to strengthen human rights considerations in the Domain Name System and particularly in ICANN's policies and procedures. We welcome further engagement opportunities and avail ourselves in case of any questions or concerns.

If you would like to discuss this analysis further, please contact Ephraim Percy Kenyanito, Senior Digital Program Officer, at ephraim@article19.org. Additionally, if you have a matter you would like to bring to the attention of the ARTICLE 19 Digital Programme, you can contact us by e-mail at digital@article19.org.