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Governmental Advisory Committee Comment on Evolving ICANN’s Multistakeholder Model of Governance

Introduction

The GAC believes that effective consideration of the various issues that have been identified by this project so far - as they specifically pertain to the ICANN multistakeholder model of governance - can be assisted by grouping the issues into three key strategic areas - First, the structure and model of the policy development process; second, re-examining with some strategic clarity the fundamental roles and responsibilities of the various community structures, the ICANN Board and the ICANN organization (ICANN org); and third, achieving clarity and making firm operational commitments regarding resources and capabilities that are provided to support community participation and engagement.

References to specific issues from the public comment proceeding Issues List are incorporated into various headings and footnotes in this document, as well as in Annex A at the end of the document, where appropriate.

1. Considerations Regarding the Effectiveness of the ICANN Policy Development Process

As community workloads increase and issues and subjects considered become more complex, the future effectiveness of the ICANN Policy Development Process rests on the ability to properly prioritize and organize the work and to be clear about how decisions are reached among a diverse and highly motivated community. It would also be useful for policy development processes to commit to structured timeframes, including dates for conclusion of

efforts so as not to unnecessarily carry on for extended periods creating a burden on the time and monetary resources of its participants.

a. Prioritization of Policy Issues (Addressing issues # 1 and 4 of the public comment proceeding [Issues List](#))

As the GAC shared with the ICANN Board in at ICANN63 in Barcelona, there appears to be a need to balance the objectives, including process with outputs. Process has the potential to take precedence over substantive and timely outcomes (for example, the work by the EPDP and the ICANN Board and ICANN Org on GDPR-related issues; and the New gTLD Subsequent Procedures PDP and its associated processes on geographic names and the Competition, Consumer Trust and Consumer Choice Review). The complexity of the current arrangements may, to some extent be self-imposed - rather than required by factors beyond the community's and ICANN's control. Thus, any simplification should logically be within the capacity of the community.

The question of priority-setting has been discussed at several meetings, but not yet resolved in a manner that is meaningful to GAC members and probably other members of the community as well.¹

Although challenging, individual Supporting Organizations (SOs) or Advisory Committees (ACs) could normally set their own priorities, but cross community prioritizing is needed. Past experience demonstrates that truly urgent matters can be prioritized by the community (e.g., the IANA transition, in which the community focused, achieved consensus and completed the work). But when particular matters are less globally urgent or less important, the challenge is higher. Sometimes even the determination of what is NOT a priority can be difficult and requires a thorough understanding of the issues.

Finally, there must be some globally agreed upon ceiling for the number of efforts that are running in parallel.² All parts of the community need to be a part of this process. Community members need to work together rather than battling each other out for who has got the most

¹ Section addresses Issues #1 and #4 of the public comment proceeding [Issues List](#)

² Section addresses Issue #4 of the public comment proceeding [Issues List](#)

time on the schedule. We could all try to agree, as a start perhaps, on the maximum number of policy development processes supporting organizations can run at the same time. Or possibly when you are setting up in your working group or cross-community working group that you identify other work streams that relate to it.³

b. Decision making (Addressing issue #9 of the public comment proceeding [Issues List](#))

Decision-making is one of the defining features of ICANN. The model is capable of solving complex policy and technical challenges, provided that each stakeholder group is able to participate and contribute effectively within their respective roles and responsibilities. It is flexible and adaptable, while not overlooking the inherent difficulty of forging agreement among heterogeneous groups and interests.⁴

c. Organizing the Work (Addressing Issues # 1, 2, 4, 15, 16, 17 and 19 of the public comment proceeding [Issues List](#))

Many GAC members feel overloaded with work. An average GAC member may have something like one to five hours a week at their disposal for the processes of ICANN. An individual may have five or ten or 15 other international processes to follow. And if the participant would try and meaningfully participate in all relevant work streams, they may need 20 hours or even 50 hours a week, which is something that somehow does not match. As a result, only “insiders” with a firm grasp of the issues can meaningfully participate.

There is a sense among many GAC members that there are too many issues being addressed in parallel tracks.⁵ It would be helpful to introduce some form of annual goal setting and planning (either calendar or fiscal year) by which specific annual objectives could be established on certain key issues identified by the ICANN community. This would allow community participants to prioritize and plan their participation and contributions to ICANN work.⁶

³ **Section addresses:** Issues #4 and #9 of the public comment proceeding [Issues List](#)

⁴ **Section addresses:** Issue #9 of the public comment proceeding [Issues List](#)

⁵ **Section addresses:** Issues #15 and #19 of the public comment proceeding [Issues List](#)

⁶ **Section addresses:** Issues #2, #4, #17 of the public comment proceeding [Issues List](#)

It is not possible that a single person or a small group of people can work everywhere on every ICANN topic. Individuals should be able to concentrate on the areas in which they are expert or supposed to be expert, by dividing or sharing the work. For example, during the recent Work Stream 2 deliberations, the group distributed nine topic areas to nine different groups who could each focus and concentrate time and attention on particular areas and then comments could be made by the whole group on specific areas.⁷

One area in which immediate progress can be made is in the reduction of multiple or parallel working or duplications. At past public meetings there are many times when single topics are discussed in multiple sessions. These sessions could be consolidated.⁸

d. Working Group Model Considerations (Addressing issues # 7 and 19 of the public comment proceeding [Issues List](#))

i. Make-up of Working Groups - Representation

The policy development process provides the flexibility to consider different types of PDP Team structures, for example, reference is made to working groups, task forces, committees or drafting teams. To ensure representation as well as empowerment of WG members, different team structures should be considered, for example, having members designated by SO/AC/SG/Cs while individuals can join as participants or observers. This model has worked efficiently in recent Cross-Community Working Groups. At the same time, there may not be a one-size fits all so different alternatives could be explored so that the approach that is best fit for a specific PDP can be chosen. A good example of this new PDP work approach with a cross community feel can be seen in the New gTLDs Subsequent Procedures Work Track 5 PDP.⁹

There have been some discussions in the GNSO “PDP 3.0” effort (e.g., in recommendation 2 of the relevant GNSO paper¹⁰) to have appointed representatives in the PDP WGs, which, to some governments, would seem to be very valuable. Some governments believe it may help in having

⁷ **Section addresses:** Issues #1, #4, #16, #17 and #19 of the public comment proceeding [Issues List](#)

⁸ **Section addresses:** Issues #1, #4, #16, #17 and #19 of the public comment proceeding [Issues List](#)

⁹ **Section addresses:** Issues #7 and #19 of the public comment proceeding [Issues List](#)

¹⁰ **Source:** [GNSO Policy Development Process 3.0: How to increase the effectiveness and efficiency of the GNSO Policy Development Process](#) - See Improvement 2, page #8.

more streamlined and effective processes, and may also help in having representatives who are more motivated, responsible, accountable and representative of wider interests, and less prone to what some have identified as “social loafing”, to restating positions or even apparently “trolling” others, while at the same time maintaining the openness of the working groups.

In fact, that PDP 3.0 recommendation 2 could be a precondition for contributing to solving many of the other identified problems (in the quality of discussions or in consensus-building) as it would allow facilitators to better gauge the levels of support for different positions in the wider community beyond very specific positions espoused sometimes by small but vocal groups of well-resourced people whose level of representativeness of broader constituencies may be unclear.

2. Considerations of the Appropriate Roles and Responsibilities of the ICANN Board, the ICANN Org and the Community

Clarity about the roles and responsibilities of various parts of the ICANN community are critical to maintaining a healthy and effective multistakeholder governance model. The ICANN Bylaws generally support this concept. If there is effective communication of what role everybody has and what work they're engaged on and what their forward look is, then people have a better understanding.¹¹

a. Community Role (Addressing Issues #15 and 19 of the public comment proceeding [Issues List](#))

As enumerated in the following relevant sections of the ICANN bylaws, composition and powers of the Empowered Community (EC) equip them with an overarching position when compared to the ICANN Board:

1. Section 6.1. Composition and Organization of the Empowered Community; and
2. Section 6.2. Powers and Acknowledgements.

However in practice, the EC's role seems to have been diminishing due to non-utilization. Therefore, the EC has been empowered by the bylaws to be empowered.

¹¹ **Section addresses:** Issues #12, #14 and #16 of the public comment proceeding [Issues List](#)

Further work can be done to help all community members meaningfully participate directly in the policy development process - consistent with the role of the particular SO or AC with which they are affiliated but with some practical flexibility. For example, as stated in ICANN's Bylaws, while "recognizing that governments and public authorities are responsible for public policy", the GAC role is viewed within ICANN as an advisory body "on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues". However, earlier engagement from governments can flag issues of concern or address critical obstacles that can be addressed early in the policy development process - rather than after a consensus recommendation decision is reached. Recent PDP innovations have included the participation of GAC members. This is a good thing and should be expanded.

As flagged earlier, the community has yet to fully consider and utilize its "empowered" community (EC) powers. As members of the EC get more familiar with their roles, they may begin to more actively engage in the process or they may simply be comfortable with the knowledge that exercise of an EC power is a useful mechanism which is considered by the Board and ICANN org, and that will protect from any problematic actions.

b. ICANN Board Role

The Board's general reliance on community consensus and its deferral in certain situations to community consensus is a positive role to adopt. Current Bylaws protections ensure that substantial community consensus should not be overruled by the Board without clear reasoning and considerable (e.g., supermajority) support. Nevertheless, the Board should remain respectful of the advice received from its advisory committees. At present, most of that advice comes in to the Board relatively later in the policy development process. Perhaps the structure should contemplate calling for that advice earlier in the process.

GAC members have discussed how, in certain situations, the Board take a more proactive role when an issue has (already) been thoroughly discussed within the community. This means that the Board also consider more actively engaging in facilitating policy development, including its finalization considering all inputs from all SO/ACs, without just taking a procedural role and remanding issues to the community in case of conflict. This could assist in mediating and

resolving differences of views and/or give all parties an incentive to actively participate in the process before it comes before the Board.

c. ICANN org Role

Based on section 2.1. (General Powers) of the ICANN bylaws, the powers of ICANN shall be exercised by, and its property controlled, and its business and affairs conducted by or under the direction of the Board. Nevertheless, provisions of section 3.6 (a) (iii) requires the ICANN Board to request the opinion of the Governmental Advisory Committee (GAC) and take duly into account any advice timely presented by them on its own initiative or at the Board's request.

In respect of the above, the role of ICANN org under the ICANN Board should not be seen to interfere or suppress the GAC role.

3. Operational Considerations of Community Participation and Engagement – Managing Culture and Resources

One of ICANN's core values is to seek and support, "broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making to ensure that the bottom-up, multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent" (Bylaws Section 1.2.c.ii). In the view of the GAC, it is not only among ICANN's core values but also critical to ICANN's legitimacy to act in the global public interest to allow non-expert stakeholders to meaningfully participate in ICANN's processes and make their voices, their needs and interests heard, and duly take them into account in order to act and make decisions that are in fact, in the global public interest.

As the result of deliberations before and during ICANN60 and ICANN64, the GAC shared views with the At Large Advisory Committee (ALAC) that resulted in subsequent GAC advice and views shared with the ICANN Board about steps that ICANN could take to ensure that multi-stakeholder deliberations were the result of informed participation by engaged members of the community. Much of the GAC's advice was not limited to governments but was applicable to the entire community. Several of those thoughts and ideas are incorporated in this section.

a. Onboarding New Community Members (Addressing issues #2 and 4 of the public comment proceeding [Issues List](#))

Policy development processes at ICANN processes require meaningful participation. This goes beyond having just “open” processes but implies and requires many of the measures mentioned above, as well as capacity-development measures that can empower new participants and participants from underrepresented regions and groups. This also implies that there is an effective diversity and rotation in key roles, otherwise newcomers can be crowded-out by long standing community members.

b. Establishing baseline community knowledge of issues (Addressing Issues #2 and 4 of the public comment proceeding [Issues List](#))

ICANN’s communications philosophy must enable informed participation of all stakeholders in the true sense of the organization’s core values. There is a gap between informing the potentially interested public via the ICANN website and newsletters, due to extensive and complicated documents understandable only by experts. For a non-expert stakeholder who wants to be an informed participant, the former material is often not very useful, and the latter takes too much time and effort to be of use. If ICANN really wants to maximize informed participation, there should be an effort to arouse the interest from all stakeholder groups.

Legitimate policy development recommendations are based on common facts debated by informed community participants. Ensuring that participants share a common understanding of the facts surrounding an issue is an important element of setting this foundation. At ICANN, the traditional tool for setting this stage has been the Issue Report. This report should incorporate or be supplemented by an executive summary or some other documentation that can explain and synthesize a complex or difficult issue into understandable short summaries (e.g., one-pagers, two-pagers, five-pagers) before or coincident with sending a matter out for public comment.

This baseline is achievable - as proven in the context of the IANA transition process, where very complex legal constructs and models were compressed into understandable one-pagers, two-pagers, diagrams, and ten-page executive summaries. Aided by that documentation, a larger-than-usual group of diverse participants was able to read, understand, and establish views on

key topics that enabled many to meaningfully participate and contribute. This concept should become the rule rather than the exception at ICANN.¹²

c. Documentation Considerations (including structure and content) (Addressing Issues #2 and 4 of the public comment proceeding [Issues List](#))

Enabling informed, inclusive and meaningful participation in the complex processes and activities of ICANN is a challenging objective. Access to relevant information is the first prerequisite among many others. ICANN today is a remarkably open and transparent organization that produces and publishes massive amounts of information about all aspects of its activities. But paradoxically, the sheer volume of information has turned into a problem for many stakeholders.

The more information is available, the greater the need for a logical and user-friendly document management system. And the more complex the substance matter in their details, the greater effort is needed to present relevant issues – in an understandable form.

The information flood is especially challenging for stakeholders who have limited resources to deal with ICANN-related issues and are not able to become “ICANN insiders” that follow and participate in ICANN’s work on a daily basis. This is in particular but not only the case for many end-user volunteers and government representatives.

To address the problem, a multi-pronged approach is necessary. Bringing order to the document management system, as suggested above, should be relatively easy and could be considered “low-hanging fruit”.

ICANN org should develop a simple and efficient document management system that allows non-experts to easily and quickly access and identify documents, starting with defining minimal requirements that ensure that every document has a title and a date or reference number, identifies the author and indicates intended recipients, makes reference to the process it belongs to and explains the acronyms used in the document.

¹² **Section addresses:** Issues #2 and #4 of the public comment proceeding [Issues List](#)

Consistent with the baseline knowledge advice above, ICANN staff should produce easily understandable executive summaries, key points and synopses (using e.g. info graphs, videos and other innovative ways of presenting information) for all relevant issues, processes and activities, so that also non-expert stakeholders will be able to (a) quickly determine if a particular issue is of concern to them and (b) if yes, to participate in the policy process easily and effectively, on equal footing with other stakeholders. This should be done at least, but not only, before putting issues up for public comment. Attention should be paid to using plain English (and if possible, translations into other languages) in order to allow non-English native speakers to understand the issues.

There should also be better accessibility of the work streams and easier access on the Web site, better signaling of papers, in a sense, who is issuing a paper to whom, a clear reference to the process that this paper is part of a discussion, explanation of acronyms that you know if you see something that whether this is of relevance to you or not, whether this is the latest document because it has a date or a version number on it. All these small things and more user-friendly guidance on the Web site to find out what are the ongoing work streams throughout ICANN and also in each silo, so that attempts would be made to reduce the time, in particular, for the non-insiders, for those who have limited resources, that they would more easily find access to a particular work stream that they are interested in.¹³

d. Other Participation considerations (Addressing issues # 2 and 8 of the public comment proceeding [Issues List](#))

When combined effectively, trusted, clear communication channels and useful operational tools are important elements that enhance transparency. Another important consideration to meaningful stakeholder participation - potentially adding another layer of complexity - is language. Imagine facing the wide array of ICANN matters and issues when English is your second or your third language. Potential ideas for addressing this include empowering the regional offices of ICANN to go beyond the standard webinar model and have them engage directly on substantive matters in the language(s) of their region¹⁴.

¹³ **Section addresses:** Issues #2 and #4 of the public comment proceeding [Issues List](#)

¹⁴ **Section addresses:** Issues #2 and #8 of the public comment proceeding [Issues List](#)

Availability and expertise of governments in the process are very limited, in particular, in the overwhelming majority of cases due to the lack of sufficient qualified staff and limited time that could be devoted to the efforts in comparison with other stakeholders which are supported by a considerable amount of time, expertise and efforts assigned to the task in any subject. Governments will not be in a position to carefully follow and duly attend all these PDPs and other groups which is a real and practical problem which needs to be addressed.

i. Translation of Content

In addition to the general ICANN policy of translating content and interpreting in-person discussions in the six United Nation languages, ICANN org has accommodated the GAC by providing live interpretation support in Portuguese. These capabilities are appreciated and some GAC members believe these accommodations need more attention and commitment - particularly with respect to translated documents. For the Arabic language, for example, see this ICANN.org web page - <https://www.icann.org/ar/ec> [icann.org]. The first page is translated but the documents on many of the links on the page are not translated. Moreover, some GAC members note that the translation could be improved to ensure sufficient technical and specialized standards necessary for the subjects discussed at ICANN.

ii. Remote participation tools

GAC members are appreciative of ICANN org's efforts to provide capable remote participation opportunities through telephone and internet connections, but note that even in this modern age, the capabilities are not universally available. For example, during the latest transition to the Zoom platform, there are still several countries where Zoom is unavailable, and solutions must be found for these situations as soon as possible.

Conclusion

The principles and concrete requests outlined above are part of a much larger effort that can help maintain an inclusive, informed and meaningful multistakeholder environment at ICANN -

an environment in which all community input is fully considered, priorities are carefully weighed, and a volunteer-based system is thoroughly encouraged and supported.

Annex A: GAC Comments & Public Comment Issue List Checklist

Issue #	Issues	See GAC Comment Section(s):
1	ISSUE: Timing of decision-making: Our processes take too long	<ul style="list-style-type: none"> ● 1.a. Prioritization of Policy Issues ● 1.c. Organizing the Work
2	ISSUE: Complexity	<ul style="list-style-type: none"> ● 1.c. Organizing the Work ● 3.a. Onboarding new community members ● 3.b. Establishing Baseline Community Knowledge of Issues ● 3.c. Documentation Considerations ● 3.d. Other Participation Considerations
3	ISSUE: Culture	N/A
4	ISSUE: Prioritization of Work	<ul style="list-style-type: none"> ● 1.a. Prioritization of Policy Issues ● 1.c. Organizing the Work ● 3.a. Onboarding new community members ● 3.b. Establishing Baseline Community Knowledge of Issues ● 3.c. Documentation Considerations
5	ISSUE: Demographics	N/A
6	ISSUE: Recruitment	N/A
7	ISSUE: Representativeness	<ul style="list-style-type: none"> ● 1.d. Working Group Model Consideration
8	ISSUE: Inclusiveness	<ul style="list-style-type: none"> ● 3.d. Other Participation

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		Considerations
9	ISSUE: Consensus	<ul style="list-style-type: none"> • 1.a Prioritization of Policy Issues • 1.b Decision making
10	ISSUE: Precision in Scoping the Work	N/A
11	ISSUE: Accountability	N/A
12	ISSUE: Transparency	N/A
13	ISSUE: Costs	N/A
14	ISSUE: Trust	N/A
15	ISSUE: Roles and Responsibilities	1.c. Organizing the Work 2.a. Community Role 2.b.ICANN Board Role
16	ISSUE: Efficient Use of Resources	1.c. Organizing the Work
17	ISSUE: Volunteer Burnout	1.c. Organizing the Work
18	ISSUE: Silos	
19	ISSUE: Work Processes	1.c. Organizing the Work 1.d.Working Group Model Consideration 2.a. Community Role 2.b.ICANN Board Role
20	ISSUE: Holistic view of ICANN	
21		