

<b>Distribution</b>	Public
<b>Date</b>	14 October 2019

---

## Governmental Advisory Committee Comment on Next Steps to Improve the Effectiveness of ICANN’s Multistakeholder Model

---

### Introduction

The Governmental Advisory Committee (GAC) welcomes the opportunity to further contribute to this community-wide effort, following the submission of the original [GAC comments submitted on 13 June 2019 regarding Evolving ICANN’s Multistakeholder Model](#). These comments are intended to share GAC views regarding several specific questions presented in the request for Public Comments during this phase of the work effort.

This document is structured to highlight the GAC’s viewpoints on several of the seven remaining issues and topics identified during this phase of the work effort. For each of the identified issues on which this document comments, an attempt is made to address the three major questions raised, as applicable:

1. Is there an existing solution or a solution being developed in other work streams that could sufficiently address the issue?
2. If there isn’t a solution that will sufficiently address this issue, who should take on the task of developing a solution (e.g. Advisory Committee, Supporting Organization, community, ICANN Board, ICANN organization)? Please be specific about which entity or which community process should take on the task.
3. How would you prioritize the issue?
  - a. Must be addressed in the Evolving ICANN’s MSM Work Plan.
  - b. Is fully addressed by solution being developed in another work stream.
  - c. Should be discussed and addressed at a later time.
  - d. This issue is not a priority and need not be addressed to improve the effectiveness and efficiency of ICANN’s MSM.

**I. Strengthen ICANN’s bottom-up multistakeholder decision-making process and ensure that work gets done and policies are developed in an effective and timely manner.**

The future effectiveness of the ICANN Policy Development Process rests on the ability of community members to properly prioritize and organize the work and to be clear about how decisions are reached among a diverse and highly motivated community. As community workloads increase and the topics, issues and subjects to be considered become more complex, it would 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.

**Issue 1: Prioritization of the work**

- Is there an existing solution or a solution being developed in other work streams that could sufficiently address the issue?

The need for priority-setting is critical for an overall strengthening of the multistakeholder decision making process and has been raised by the GAC in several different ways at different times. Unfortunately, a focused effort that might resolve the matter in a manner that is meaningful to the GAC and probably other members of the community as well has not materialized.

Although challenging, individual ICANN Supporting Organizations (SOs) or Advisory Committees (ACs) have 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 community agreed upon “ceiling” for the number of efforts that are running in parallel. All parts of the community need to be a part of this process.

- Who will take on the task of developing a solution or an approach to address the issue?

By definition priority setting by members of a multistakeholder community requires input from across the entire community. This is an ideal discussion area for the Chairs of the ICANN Supporting Organizations and Advisory Committees. Through regular gatherings at ICANN Public Meetings those leaders have already been given the opportunity by ICANN org to discuss issues of common interest. Moreover, they are positioned to be well aware of the respective priorities of their community groups and capable of recommending courses of action that are practical and actionable.

Community leaders and ICANN Org should be given the flexibility and resources to conduct telephone calls and conduct several face to face meetings to discuss this issue and time to seek feedback from their communities as ideas, concepts and plans are developed. Staff or contractor resources should also be made available to support these efforts.

- How would you prioritize the issue?

Community leaders should be asked to consider making recommendations to the community for potential prioritization approaches or methodologies in time for consideration before the ICANN72 Meeting, as part of the Evolving ICANN's MSM Work Plan.

#### **Issue 4: Roles & responsibilities**

- Is there an existing solution or a solution being developed in other work streams that could sufficiently address the issue?

The GAC reiterates its input from the [GAC Public Comment in June 2019](#), regarding the need for a clear, shared understanding of the distinct roles and responsibilities of the ICANN community. The GAC particularly sees this need relative to the role of the ICANN Board.

As noted in the [GAC's Public Comment in June 2019](#), 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, as noted in the [Next Steps to Improve the Effectiveness of ICANN's Multistakeholder Model](#) document. Nevertheless, what the GAC wishes to reiterate since it is not currently

captured in the document, is that the Board should remain respectful of the advice received from its advisory committees.

- Who will take on the task of developing a solution or an approach to address the issue?

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"*.<sup>1</sup>

The GAC also wishes to bring to attention another comment not captured in the document relative to how, in certain situations, the Board can take a more proactive role when an issue has (already) been thoroughly discussed within the community. This means that the Board could also consider more actively engaging in facilitating policy development (including its finalization), taking into account inputs from all SO/ACs, rather than 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 give all parties an incentive to actively participate in the process before it comes before the Board.

Further communication between the ICANN Community and ICANN Board to ensure 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.

Staff or contractor resources should be made available to support or facilitate these community efforts.

---

<sup>1</sup> [ICANN Bylaws, Section 12.2](#)

- How would you prioritize the issue?

This issue should be addressed in the Evolving ICANN's MSM Work Plan. Community leaders should be asked to consider making recommendations to the community in time for consideration before the ICANN72 Meeting.

## **II. Support and grow active, informed, and effective stakeholder participation.**

The multistakeholder model can simply not function without active and informed stakeholders. Those stakeholders must have the structures, systems and resources necessary to conduct their work. ICANN has a good foundation in place for these capabilities but more work is needed. The Policy Development Process (PDP) itself is an important foundational element for addressing these issues.

### **Issue 5: Representation, inclusivity, recruitment & demographics**

- Is there an existing solution or a solution being developed in other work streams that could sufficiently address the issue?

The current GNSO "PDP 3.0" project provides a useful model for identifying and addressing many of the representation challenges in policy development. That effort should be leveraged and public participation broadened as those recommendations are identified.

The current Information Transparency Project (ITP) could also be leveraged to consider and evaluate improved communication methodologies, further expand onboarding resources and test multi-language web site capabilities for all formal ICANN documents.

Policy development processes at ICANN require meaningful participation. This goes beyond having just "open" processes, but implies and requires capacity-development measures that can empower new participants, particularly those from underrepresented regions and groups. This also implies that there should be effective diversity and rotation in key roles, otherwise newcomers can be crowded-out by long-serving community members.

The policy development process, generally, provides community leaders with a flexible framework for considering different types of PDP workstructures (e.g., working groups, task forces, committees or drafting teams). The ICANN Supporting Organizations continue to make progress in practicing flexibility to fashion organizational frameworks that can position

community members for informed and productive policy discussions (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 effort).

The current GNSO “PDP 3.0” project provides a useful model for identifying and addressing many of the representation challenges in policy development. The GNSO PDP 3.0 effort is being managed with existing ICANN org resources. Incremental increases may be needed to effect broader community contributions to the effort. The ITP is also already resourced and much of the improvements consideration could be leveraged among that work.

### **Other Participation considerations**

When combined effectively, trusted, clear communication channels and useful operational tools are important elements that enhance transparency and can help grow the community.

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 region.

Availability and expertise of governments in the policy development process at ICANN are very limited, in many cases due to the lack of sufficient well-informed delegation members (delegations are small) and limited time and resources that are available to devote to ICANN work - 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 are simply not in a position to carefully follow and duly attend the full range of PDPs and other matters. This is a real and practical problem which needs to be addressed.

- How would you prioritize the issue?

As the GNSO PDP 3.0 effort is already well-underway, even accounting for expanded public comment on those recommendations, that work could make substantial progress by the end of ICANN FY20. It is understood that the ITP is on a slightly longer timetable but that effort could be leveraged to show results by the end of ICANN FY21.

### III. Sustain and improve openness, inclusivity, accountability, and transparency.

#### Issue 7: Complexity

- Is there an existing solution or a solution being developed in other work streams that could sufficiently address the issue?

The current summary of the issue of complexity within the document for public comment does not address the actual content but merely the accessibility of information via various programs within the organization. If ICANN really wants to maximize informed participation, there should be a concerted effort to arouse the interest of participants from all stakeholder groups.

The GAC welcomes the opportunity to reiterate that ICANN's communications philosophy must enable informed participation of all stakeholders in the true sense of the organization's core values. The GAC has noted that there is a gap between informing the potentially interested public via the website and newsletters, and experts with extensive and complicated documents understandable only by them. 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.

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 issues 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 reform 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.

- Who will take on the task of developing a solution or an approach to address the issue?

Improvements to traditional tools like Issues Reports do not require substantial community investments but can be incorporated by support staff as part of current operations.

- How would you prioritize the issue?

This issue should be addressed in the Evolving ICANN's MSM Work Plan. 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 issues is an important element of setting this foundation.

#### **Issue 8: Consensus**

- Is there an existing solution or a solution being developed in other work streams that could sufficiently address the issue?

As noted by the GAC in June 2019, decision-making is one of the defining features of ICANN, and is typically made by consensus. ICANN's multistakeholder 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.

Each stakeholder group should be able to participate and contribute effectively within their respective roles and responsibilities to achieve consensus. As noted within the Next Steps to Improve the [Effectiveness of ICANN's Multistakeholder Model](#), the GNSO PDP 3.0 Implementation Plan is developing approaches to reaching consensus more effectively in GNSO PDPs.

- How would you prioritize the issue?

The issue of consensus is addressed for PDPs within the context of the GNSO PDP 3.0. Broader consensus topics should be addressed as part of the Evolving ICANN's MSM Work plan. As the

GNSO PDP 3.0 effort is already well-underway, even accounting for expanded public comment on those recommendations, that work could make substantial progress by the end of ICANN FY20. The GNSO PDP 3.0 effort is being managed within existing ICANN org operational resources. Incremental increases may be needed to effect broader community contributions to the effort.

### **Conclusion**

The GAC looks forward to further discussions on these matters at the ICANN66 Montreal Public Meeting.