At-Large Future Challenge R3 White Paper Workspace

White Paper: "Making ICANN Relevant, Responsive and Respected"

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Introduction

The Internet Corporation for Assigned Names and Numbers (ICANN) is well into its second decade. Overall, informed Internet users and professionals consider that ICANN has performed its role as a technical coordinator of the Internet's unique identifiers rather well, ensuring the reliability and enhancing the security of the Domain Name System (DNS). This stewardship occurred over a period during which the number of Internet users grew by several orders of magnitude to more than two billion today, and when practically all areas of human activity have come to rely on the Internet, arguably the first truly global infrastructure in history. Amazing though the quantitative growth has been, the qualitative change of the Internet has proven to be even more fundamental, from a narrow, optional extra communication channel into a must-have, broad platform of essential and critical services for a large part of humanity. The Internet now has to deal with governance and policy issues far more complex, and more intertwined with other spheres of life than in 1998 when ICANN was set up. Many of the difficulties ICANN is now faced with come from the magnitude and speed of change.

The Challenges facing ICANN

Accordingly, questions are now being raised about whether the present ecosystem of Internet governance, including ICANN, is able to adapt to such momentous change. The challenges fall into four main areas:

1) The global public interest:

In a continuously evolving and challenging environment, will ICANN be able to keep pace with growing public interest requirements and adapt its methods to serve the global public better without being captured by narrow interests?

ICANN, in its Affirmation of Commitments (AOC), has committed itself to making decisions that are in the interest of a global public made up of internet users. As the size and diversity of this global public grew, its needs too have evolved. In its pioneering years, ICANN served a public of a few million for whom the Internet represented a novelty rather than a necessity. Today, the duty to serve the interests of a greater public -- the billions of people for whom the Internet is an indispensable global facility -- takes on an entirely different meaning. The global public interest that ICANN is beholden to uphold is increasingly more complex and challenging to address. The key question is whether ICANN will be able to keep pace with the growing public interest requirements and adapt its methods to serve the public better without being captured by narrow interests that have prevailed in the past. One of the main factors that limit ICANN's ability to rise up to the challenge is its ambiguous concept of "public interest" and its lack of a clear public-interest engagement strategy. By keeping its concept of "public interest" ambiguous, ICANN is perceived to pay lip service to it. There are examples in the past and present where this ambiguity has led to unsatisfactory outcomes in terms of responses to problems, conflict resolution/minimization and regulation enforcement, and visible inequities within the the multi-stakeholder process. All of this serves to undermine the public's confidence in ICANN, which has shown clear indications of erosion. The increasing success of alternatives to the multi-Top Level Domain naming paradigm is one such indication of this growing crisis of confidence. In addition, ICANN's lack of a clear public-interest engagement strategy, geared towards the present and future importance of the Internet to the world, also undermines the respect and trust of Internet users towards ICANN. To serve the global public satisfactorily and restore public confidence, ICANN must develop a clear concept of public interest to guide its policy development processes as well as a clear public-interest engagement strategy.

2) The multi-stakeholder model (MSM) vs. an inter-governmental approach

Is ICANN's multistakeholder approach sufficiently robust and sustainable in the long run under increased pressure from governments and inter-governmental organizations?

Many sovereign states first dismissed the Internet and the Domain Name System (DNS) as a marginal, passing phenomenon. Having finally understood their critical importance, some states are now attempting to regain control through specific inter-governmental structures, with potentially damaging consequences to the innovation and development of the Internet, and possibly to its global accessibility and end-to-end functioning as we know it. ICANN's value proposition and strength in contrast to any inter-governmental approach, is its multi-stakeholder, bottom-up policy development model. While

defending the benefits of this model, ICANN has neglected to improve it to meet demands, which have grown more differentiated with the expansion of the Internet and the types of its users. In a decade, ICANN has grown from a small group of closely-connected pioneers to an entity with global responsibilities and worldwide operations. ICANN's continuous cycles of internal organizational reviews have failed to identify the substantive changes demanded by this shifting environment. The proliferation of constituencies and stakeholder groups in the ICANN structure needs to be accompanied by real efforts to achieve and maintain equality and balance among various stakeholder interests. Protections must exist to ensure that consensus procedures can no longer be opaquely circumvented for political expediency. By-laws governing the status and role of stakeholders need to be revised so as to fully engender the informed consent of all ICANN's components, including sovereign states represented through its Governmental Advisory Committee (GAC).

3) Global governance:

Are the arrangements related to the governance of the Internet's critical resources, including that of ICANN's own internal governance, adequate to meet the needs of a growing and diverse community of internet users worldwide?

The governance arrangements for the Internet's critical resources are a point of continuous global interest and concern. Correspondingly, the internal governance arrangements of the organizations responsible for the management of the Internet's critical resources, such as ICANN, have been and will continue to be subject to intense global scrutiny and concern as well. Given the rapid growth of internet users worldwide and the increasing diversification of user needs, ICANN needs to grapple with the crucial question of how to evolve its governance arrangements to meet the legitimate expectations of the worldwide Internet community, who are ever more a producer and consumer of content, in an ever more diversified cultural and linguistic context, while preserving the multistakeholder approach and avoiding the pitfalls of inter-governmental solutions. The weaknesses in ICANN's internal governance arrangements are of great concern to the international community. These weaknesses have even been acknowledged by the NTIA itself based on the additional requirements recently added to the IANA functions, which touch on the structural separation of policymaking from implementation, robust organization-wide conflict of interest policy, heightened respect for local country laws and consultation and reporting requirements to increase transparency and accountability to the international community. ICANN's ability to fulfill the new requirements is questionable, particularly when internal dynamics within ICANN have restrained it from effectively reforming itself despite the creation of publicly visible reform efforts such as the Accountability and Transparency Review Team (ATRT). Slow progress in addressing ICANN's internal governance weaknesses combined with the failure to speed up the internationalization of ICANN towards a shared global responsibility in governing the Internet's critical resources, will continue to fuel

vociferous contention over the legitimacy of ICANN and promote alternatives such as the inter-governmental solutions.

4) Institutional and practical cooperation:

Can ICANN coordinate and cooperate effectively with organizations that have been set up to deal with Internet governance issues beyond ICANN's remit of technical coordination?

The governance of the Internet deals with complex issues of public policy with multiple overlapping jurisdictions and actors (both state and non-state). ICANN's mandate pertains to technical coordination, but its technical, operational, and management decisions regarding the Domain Name System (DNS) have significant impact on other non-technical policy issues that fall under the rubric of Internet Governance. These non-technical issues include intellectual property, privacy, e-commerce, security and even human rights and cultural (including language) diversity. Given the interconnectedness between ICANN's technical policies and the non-technical policies under the jurisdiction of other organizations, for the sake of the global public interest, ICANN has an obligation to reach out to the organizations and establish effective working relations. ICANN has yet to demonstrate the ability to proactively, adequately and appropriately reach out, coordinate and cooperate with organizations outside of its technical coordination remit. Strained relations with international entities, partly due to the ambitions and power politics of some national authorities or intergovernmental organizations, have sometimes been aggravated by a poorly calibrated message from ICANN. Some of the friction may also have been caused by the lack of ICANN's adequate and appropriate response to emerging challenges and by its failure to draw from the strengths of its own multi-stakeholder nature.

Recommendations:

The above are some of the concerns that are being expressed, with increasing vigour, from many sources including those who would seek to undermine or even eliminate ICANN. In response, the following recommendations are made to initiate the kind of in-depth change required for ICANN to adapt to these and other future challenges:

Stakeholders, global relations, partnerships: a necessary overhaul
- Publish ICANN's appraisal of challenges in the international and institutional fields, and its programme for the coming year in this respect, as a mandatory component of its Strategic Plan.
- Transform the roles of the Governmental Advisory Committee (GAC) and At-Large Advisory Committee (ALAC) from purely advisory to involvement in policy formation. This measure shall not be implemented separately from, nor before, a coordinated

reform of structures affecting all Supporting Organizations (SOs) and Advisory Committees (ACs).

- Provide qualified and stable Staff and other resources to ensure a permanent, trustworthy and dynamic relationship with other entities in the Internet ecosphere (IGF, ITU, WIPO, ISOC...). These relationships will not be engaged solely by ICANN staff, but augmented and highlighted by its stakeholders.
- Study the conditions under which Country-code Top-Level Domains (ccTLDs) shall be harmonized with ICANN's general standards.
- In the Board's Global Relationships Committee (GRC), include non-Board members with experience in external forums of Internet governance as well as international and institutional affairs

Structural changes within ICANN

- Ensure that ICANN's default behaviour is for all proceedings, minutes and staff documentation to be open, unless of an expressly confidential nature (i.e. about explicitly determined subjects such as personnel issues or contracts dealing with trade secrets).
- Make the Board the executive committee of the ICANN community.
- Redirect the fiduciary duty of Directors to the community, not to ICANN itself.
- Improve the articulation between the Board and the CEO: the Board to provide direction and oversight, the CEO to propose, implement, control and report.
- Remove the CEO from the list of voting Board members to the position of being permanently in attendance, except when the Board decides otherwise.
- Reorganize the roles and relationships of Supporting Organizations (SOs) and Advisory Committees (ACs), with explicit aim to improve balance and avoid silos.
- Reform the procedures within the Board's Governance Committee (BGC) to increase transparency, accountability, and freedom from the risk of capture.
- Review the structure, procedures and name of the Nominating Committee.
- Ensure that progress reports by ICANN, including its compliance and enforcement activities, are reviewed by an independent body (self-evaluation by Staff is contrary to the principle of fair assessment).
- Study the extension of the duties of the Ombudsman to include the role of "independent objector" and consideration of "freedom of Information" requests regarding documents deemed confidential.
- Give all due consideration to Conflicts of Interest, and correct any situation where such a conflict, real or perceived, is detrimental to mutual trust and harmful to the public interest. Accepting mere statements of interest while allowing vested interests to influence policy affecting them is inefficient, and harmful to ICANN's credibility.
- Provide for relevant whistle-blowing (e.g. regarding conflicts of interest), with proper rules protecting both the corporation and prospective whistle-blowers.
- Provide permanent and qualified staff support for each stakeholder group.