

ICANN Atlas II, London, June 2014

Issues that may be addressed in preparation for the At Large participation in the ICANN bottom-up Multistakeholder (MS) policy development process.

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- (c) to break down the 'silos' in the ICANN 'bottom-up' policy development process (PDP).

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The following topics, chosen by the Atlas II organisers, are all relevant but there is a significant degree of overlap and duplication. I have been asked to concentrate on point 1; so I just add a few comments that might be taken into consideration with respect to the other points:

1. **The future of multi-stakeholderism (MS)**

First, At Large needs to have a view about, if not to resolve, some philosophical, even etymological, questions:

- There is a debate as to whether MS is a substitute for democracy (thus shifting the balance of power towards commercial operators and against governments and users) or whether it is a new, higher, form of democracy where stakeholders and especially Civil Society (CS) have enhanced opportunities to participate in policy making, previously reserved to governments and economically resourced lobbies.
- Historically the 'stakeholder' meant something quite different: the stakes were (still are) the wooden stakes supporting the fencing-off of part of the Commons. Today the term has come to represent anyone with an interest in the outcome. All stakeholders are equal, albeit that some stakeholders are more equal than others.

For instance, in modern, Internet terms, a Registry with a generic-word gTLD has absolutely NO 'stake' in that string. Words are the Commons of the languages. Even in English. *A fortiori* in all the other languages of the world.

- This is more than an academic quibble: actually, by what right are 'stakeholders' admitted into the decision making process?

Economic interests? So, we have the Registries and (nowadays especially) the Registrars. Also, the Business interests (are they distinct?)

Democratic or other Governmental interest? So, we have the GAC although some governments would prefer a different kind of governmental forum.

Civil Society and the user interest? Here we are at the heart of the At Large problem: If the practical effect of multistakeholderism is to diminish the role of governments, then it is incumbent on Civil Society to lead user interests and, in practice, act as the surrogate of governmental public interest values in those parts of the decision making process (e.g. PDP) which governments are not able to reach.

– This line of thought gives rise to two practical issues:

(a) What is the representativity and consequently the credibility of Civil Society? For all that Civil Society spokespersons engender understanding and support, I would guess that 99% of the general public has never heard of the issues, let alone of 'their' spokespersons in this context.

(b) there is a part of Civil Society, which argues that governmental participation in multistakeholderism is intrinsically illegitimate; including the concept that individual government officials are in practice only representing their own local, bureaucratic interests; and therefore may be qualified if not ignored. Not so: Granted, many governments have a long way to go to catch up with the Internet, but asking them to 'go fish' is not part of the solution.

In ICANN terms, this means that At Large and NCUC (Non-Commercial Users Constituency; part of GNSO) should be merged. There is no room in ICANN for Civil Society in opposition to the GAC. That would be the end of multistakeholderism.

So, the original question 'what is the future of multistakeholderism?' needs an answer. It is about the public interest. In this context, the public interest is about consumer protection, competition or regulation to prevent exploitative monopolies, non discriminatory and affordable access, and - given what we have seen with the disgraceful new gTLD program – the absolute protection of the linguistic Commons of all societies, world-wide.

Unless Civil Society and governments, together, can deliver the public interest, across the board, multistakeholderism will not survive as a workable governance concept.

2. **The globalization of ICANN**

ICANN has extended its global reach, slowly, during the past 15 years. This has been reflected in the composition of the ICANN Board, the diversity of the Supporting Organisations and Advisory Committees, and Civil Society and At Large membership.

However, in practice, globalisation falters when we look at who can actually participate. There is a fundamental imbalance:

- governmental participants are paid for by their governments and thus by their taxpayers;
- corporate participants are paid for by their companies who, generally, expense their costs against taxable profits, so they are indirectly paid for by the taxpayer.
- private, civil society participants have to be financed either by themselves, privately, or by their NGO (at the expense of the NGO's other responsibilities), or quite indirectly by a university or research project.

The consequences are evident in any typical meeting about Internet Governance.

If such a scenario were to become general knowledge as to the governance of a fundamental global

resource, the scope for contestation of the multistakeholder model becomes obvious.

Not to speak of the real global implications of this proposition. More generally, ICANN has to think in terms not only of those who are there (and indeed there are many), but more to the point - if the multistakeholder model is really to survive globally – those who are currently NOT there.

3. **Global Internet: The User Perspective**

These issues can be reduced to a few fundamental concepts: (a) User privacy (b) no Surveillance (c) unsolicited advertising is assimilate to Spam and must be easily filtered out.

Actually, I presume that the long-standing debate about Spam in the ITU is not really about e-mail Spam, but about unsolicited advertising. Indeed, in terms of the consumption of - in many countries, expensive – bandwidth, the advertisements are a much greater problem that traditional e-mail Spam.

4. **ICANN Transparency and Accountability**

Allow me to propose an ALAC project to review the so-called Vertical-Integration decision in the GNSO:

(a) ICANN is responsible for regulating the conditions of competition between Registries and Registrars. ICANN is expected to act neutrally and without conflicts of interest.

(b) Who, exactly, was present in which GNSO meetings, or other relevant meetings (including conference calls) which discussed this issue? (Review: minutes, recordings and transcripts.)

(c) Which individuals, representing which companies or other interested parties, were advocating which economic or business options in this regard?

(d) What exactly was submitted to the ICANN Board for decision? Which Board members spoke in support of the GNSO proposal? Did the Board know that the decision that they were taking was of a far-reaching nature, probably undermining the principles of competition policy, on the basis of which ICANN was originally constituted?

5. **At-Large Community Engagement in ICANN**

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