

ATLAS II Thematic Group on the Globalization of ICANN

TG 2 Team:

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Abstract

ICANN has been created to provide a global infrastructure to manage worldwide Internet resources like domain names, IP addresses and Internet parameters. To be really "global", ICANN needs to provide a framework where all stakeholders worldwide can interact on equal footing, without cultural, geopolitical, gender, or other barriers to participation. Moreover, ICANN needs to be accountable to the global Internet community: the globalization of ICANN is strictly linked to the ability of the multi-stakeholders to set checks and balances to verify that ICANN is really independent from local constraining factors limiting the global equal access to the process.

Questions

1. Inclusion and diversity: Are there barriers to participation that limit or hinder participation based on cultural, geopolitical, economical, linguistic, gender, or other differences? If so, how do we address them?
2. Equal global multistakeholder model: Are there any stakeholder groups that are less represented, or have a lesser voice in the Policy Development Process? If so, how do we put in place mechanism to foster equal participation? What are the mechanisms to ensure that the Policy Development Process receives global input and addresses the needs and expectations of all stakeholders?
3. Constitutional & legal mechanisms: Are the Bylaws drafted in compliance with international law principles or are they orientated to a local, not global, jurisdiction? Are the draft agreements for contracted parties like, but not limited to, registries and registrars compliant with international law and in any case not in contrast with legal systems in jurisdictions other than the one where ICANN is incorporated? Are there mechanisms to allow contracted parties to comply with the local laws enforced in their jurisdiction?
4. Accountability: Are the accountability mechanisms (to be addressed in a different thread) globally fair? Will all the different global stakeholder groups have the same power to enforce checks and balances on ICANN's behavior?
5. Operational matters: Is ICANN's footprint global, covering the global Internet community on equal footing? Is communication privileging specific local communities (linguistically, geopolitically, or other) over the global multi-stakeholder community? Are users worldwide given the same opportunities to contact ICANN and to provide their opinion, advice, comment, or complaint? Is access to ICANN's facilities (physical or online presence) equal to all stakeholders? Are ICANN operations sufficiently shielded from local jurisdiction, i.e. can ICANN survive a change of the political attitude in one or more countries without disruption of its operations worldwide?

Agenda

[ATLAS II - TG2 - AGENDA \(Detailed\).docx](#)

Reference Documents

[Thematic Group 2 Document Store](#)

Report

FINAL VERSION TO BE INCLUDED IN THE DECLARATION:

The final version to be included in the Declaration and endorsed by the ALAC will be placed here.

FINAL DRAFT VERSION TO BE ENDORSED BY THE ATLAS II PARTICIPANTS

The final draft version to be endorsed by the ATLAS II participants will be placed here.

FIRST DRAFT SUBMITTED

The first draft submitted will be placed here.

(V2/Final Draft)

Thematic Group 2 – Globalisation of ICANN

Draft Report

I. Introduction

Thematic Group 2 was tasked with a review of ICANN's effort to provide a framework where stakeholders worldwide can effectively interact on an equal footing with no barriers to full participation. This framework must also provide the higher levels of transparency and accountability and ensure that the multiple stakeholders have the ability to verify that ICANN is free of any restrictions, domestic or otherwise, that interfere with its ability to provide the required services and support as per its mandate.

The review was therefore divided into the following thematic areas:

1. Inclusion and Diversity

Are there barriers to participation that hinder and limit based on cultural, geopolitical, economical linguistic and gender or other differences?

2. Equal Global MSM

Are there stakeholders groups that are less represented, or have a lesser voice in the PDP?

If so, do we put in place mechanisms to foster equal participation?

What are the mechanisms to ensure the PDP receives global input and addresses the needs and expectations of all stakeholders?

3. Constitution and Legal Mechanisms

Are the bye-laws drafted in compliance with Int'l law principles or are they oriented to a local, not global jurisdiction?

Are contracts - with contracted parties compliant with Int'l law and in any case not in contrast with legal systems other than the home jurisdiction of ICANN?

4. Accountability

Are the accountability mechanisms globally fair?

Will all the different global stakeholder groups have the same power to enforce checks and balance on ICANN's behaviour?

5. Operational Matters

Is communication privileging specific local communities?

Is ICANN's footprint global, covering the global internet community on equal footing?

Are users worldwide given the same opportunities to contact ICANN and to provide their opinion, advice, comment or complaint?

Is access to ICANN's facilities equal to all stakeholders?

Are ICANN's operations sufficiently shielded from local jurisdiction, i.e. can ICANN survive a change of the political attitude in one or more countries without disruption of its operations worldwide?

As a basis and support for the discussions, two subject matter experts provided their perspectives on the areas of focus. This report outlines the nature of the discussions, conclusions and recommendations on the way forward.

II. Findings/Recommendations

The findings and conclusions members of the thematic group are as follows:

II.1 Inclusion and diversity

ICANN has made some progress in being more inclusive but some issues still remain to be addressed. Some of these are outside of ICANN's direct remit and will require partnerships and collaborations to be effectively addressed. Others are directly within ICANN's control. These are as follows:

- With respect to ICANN meetings, there is uneven geographic representation and participation due to lack of access, understanding of the subject matter, lack of awareness and a general feeling that there is a level of unresponsiveness on the part of the policymakers within ICANN to local concerns. There is a sense that a lack of equity in stakeholder access and representation exist and as a consequence, an inability to influence policy.
- Geographic regions are underrepresented in working groups where most of the policy development takes place. The reasons are various from cultural, structural, political, to capacity. In some regions the layer of the enabling infrastructure for access is limited or is only now being addressed.
- There continues to be a challenge with effective language interpretation and translation, both for the spoken word but in particular for the published documents.

If ICANN adopts a mandate to improve the engagement process, it should begin by taking the following steps.

- ICANN must accelerate the stationing of its staff closer to the end users around the world. This would mean rebalancing the staff placement with greater focus on the areas where the access to the Internet is growing and where growth is more likely to occur.
- The next evolution of language services must adopt further extension of live scribing for all meetings and generally extend the current translation and interpretation processes. Special attention should be given to the production of documents to eliminate the lag in the publication between English language documents and other language sets. More human translators in the process, possibly sourced from end user community groups, could assist in product improvement and output. It should be noted that real time scribing is currently offered at Board Meetings, meetings of the GAC, the public forum and the opening ceremonies of ICANN meetings. Research has indicated that scribing is several times more expensive than interpretation.
- ICANN must implement a range of services to facilitate access by the differently abled communities. Extensive consultation with the community is required so to ensure that the services provided are fit for purpose.
- ICANN must also further address the issues of gender imbalance

II.2. Equal Global MSM

The discussion here centered on the theme that there is unequal influence and power in the ICANN's multistakeholder model (MSM). The general belief is that structural as well as capacity differences contribute to this state of affairs. Even within regions, some sub-regions seem to be more represented than others. Achieving equity will involve capacity-building and further support for engagement to stakeholder groups currently less engaged.

ICANN should consider doing more of the following:

- Awareness raising campaigns across underrepresented regions in collaboration with At-Large Structures
- Extensive Education programmes across underrepresented regions in collaboration with other Internet focused organisations.
- Revising the internal balance of stakeholder representation to ensure that appropriate consideration is given to all views, proportionally to their scope and relevance.

II.3 Constitution and Legal Mechanisms

The ICANN by-laws do not specifically conflict with principals of international laws but also do not specifically take special cognizance of international law. ICANN is a California corporation and therefore operates in compliance with California law. This means that while the by-laws may not themselves contravene international law or the laws of other nations, the by-laws also do not compel ICANN to take cognizance of or make efforts to remain in compliance with international law or the laws of other nations.

Contracts between the ICANN and contracted parties, as expected, are made in compliance with ICANN's by-laws and the laws of California and the United States. It is not unexpected, therefore, that there would be legal conflicts with contracted parties especially since they operate in vastly different legal jurisdictions. ICANN has extended specific provisions, for example, allowing registrars to apply for waivers of contractual provisions in order to remain in compliance with their local laws. But from all reports these provisions appear ineffective, inefficient and hard to implement, and no comprehensive solution has been offered.

The primary recommendation is that ICANN must take steps to adjust their legal and organizational structures to more comprehensively reduce, if not eliminate, the legal conflicts between ICANN requirements and contracts and national laws. These steps include the following:

- Inclusion of language in the by-laws to commit ICANN to a 'reasonable' level of sensitivity and appropriate deference to international law and the laws of other nations.
- Consider incorporating ICANN in a different or multiple legal jurisdiction(s) that would permit ICANN to better observe and respect national, local or regional laws.
- The possibility of moving ICANN principal office or seat to a location perceived to be 'neutral' in terms of the application of laws (e.g. Geneva)
- The evolution of ICANN's legal structure to one more along the lines of a Treaty based organization. It would be instructive for ICANN to evaluate similar organisations for guidance and action.

ii.4 Accountability

The accountability mechanisms of ICANN do not facilitate access and/or input from the global Internet community at present. The primary example of this is the Affirmation of Commitment (AoC) with the U.S. Department of Commerce. Even though the principles of accountability are enshrined in that agreement, the very nature of this bilateral document does not provide global community scrutiny and input.

It is recognized that there is an Independent Review Process (IRP) in place within ICANN internally but there are some issues of transparency in this process. The IANA transition will be a tremendous opportunity to begin to develop an accountability mechanism that is accessible to the global Internet community.

Incorporating ICANN in a different or multiple jurisdictions would provide additional tools for accountability and overcome the perceived obstacle of having to hold ICANN legally accountable through the application of California law in California courts using California attorneys.

ii.5 Operational Matters

It is clear that ICANN's global footprint does not cover the global Internet community on an equal footing and there are weaknesses that need to be addressed. There was general agreement that ICANN needs to be closer to the members of the global community...especially in the underserved areas. Access to the ICANN's facilities by the global community can also be improved. The difficulties highlighted included the following:

- ICANN support staff are physically difficult to contact (there was however a debate as to whether this was absolutely necessary)
- The current instance of the ICANN website is unhelpful and does not easily facilitate access by global users, in particular disabled persons
- Translated documents are not available online
- There are issues that require immediate response depending upon constituency. ICANN needs to take into consideration specific geographic and cultural tendencies (i.e the need to speak with live operators)
- Some of the online social media used by ICANN for their outreach is sometimes blocked by governments.
- As a consequence of ICANN being incorporated in the U.S., stakeholders from specific countries are subject to commercial embargoes which may hinder or entirely prevent individuals from such countries from being funded or fully participating.

There was a clear consensus that ICANN needs to improve its global footprint if it is to effectively support its global Internet community. The recommendations include the following:

- ICANN to open regional offices but with a clear strategy and subject to a cost-benefit analysis, since ICANN cannot open in every location.
- Legal structure of ICANN be changed to one along the lines of a treaty organization or international NGO.
- ICANN to improve their direct communications regardless of time zones.
- ICANN to be sensitive to the fact that social media is sometimes blocked by governments.
- ICANN must ensure translations are made available in a timely manner
- ICANN should evaluate and increase the effectiveness of its support for participation by global stakeholders (funding for At Large, fellowships, translations etc.) in regard to actual policy input produced and/or local outreach made by those who are supported.

ICANN should consider expanding the size of such support (e.g. the size of the ALAC and of regional At Large leaderships, the number of people funded to attend meetings, the number of fellowships, the number of languages for translations...) with a specific objective to increase further the internal diversity of global participation.

Incorporating ICANN in a different or multiple jurisdictions, restructuring ICANN and/or relocating ICANN to a neutral country such as Switzerland could assist in shielding ICANN from local jurisdiction bias and politics such that ICANN could better survive a change of the political attitude in one or more countries without disruption of its operations worldwide.

III. Conclusion

It must be understood that managing the integrity and sustainability of the Internet space, especially considering its rapid growth is an evolving, complicated process. In its sixteen years of existence ICANN has made tremendous steps in ensuring that consistent global stakeholder participation was part of the overall Internet ecosystem. If ICANN is truly to become the global organization, it must ensure that the entire Internet community is comfortable with its level of access, participation and input into decision making processes and production of global policies.