

Enhancing ICANN Accountability

ICANN has done very well as a Global Organization with a multi-stakeholder form of Governance, considering the fact that a) Internet is new, b) the Internet has expanded far more expansively and rapidly than conceived even by the Founding fathers, c) ICANN is new, d) the responsibilities entrusted to ICANN are huge and Global, and, more significantly e) the model of Governance as a higher model over existing Governance models is evolutionary and new

NTIA oversight has served its purpose well and helped ICANN strengthen its organizational framework in performing its tasks in the management of Critical Internet Resources.

There are imbalances and gaps, tasks to be performed, but so far the progress has been on the right track, worthy of being ranked “satisfactory” considering a) to e) as above. With these initial remarks, this comment affirms faith in ICANN and presents the following points as ways of further evolving ICANN as a more Accountable and more Transparent organization, without implying any need to assume that the Organization needs to “reform”.

The process of improving Accountability and Transparency could be approached not as a task of establishing or strengthening oversight, audit or scrutiny systems, not as a process of creating more rules for greater complexity, but rather as a larger, ongoing exercise of constantly strengthening the foundation of ICANN, its multi-stakeholder model, and constantly improving the overall design of the framework for the processes.

With this approach, this comment is organized, rather than as answers to suggested questions, as follows:

Overall Balance in ICANN Governance

The overall design of ICANN Governance could be modelled along the concept of separation of powers and balance, with the Board and Executive, in their corresponding functions, considered accountable for the policies and actions of the entire organization, the ICANN Community further evolved to be a collective (cross-constituency) multi-stakeholder House and the existing reconsideration / Ombudsman processes separated and strengthened as an independent, internal Judicial organ.

Accountability

The notion of Accountability needs to be Total at this level. The Board is accountable for the outcomes of all policy recommendations from the Community adopted by the Board or those policies framed by internal Board process. The Board “owns” Executive action or inaction, who in turn owns the actions of all Staff and the External Consultants engaged. For this degree of Accountability to be feasible, the Board Members require an unconstrained framework to

discharge their responsibilities. There have been instances of Board abstention from legally complex decisions or excessive abstention from programs with the complexities of adverse community perception. The Organization requires to design a framework for those Accountable to work at ease, with personal legal safeharbours, and be awarded appropriate financial compensations. The Accountability of Chairs of ACs/SOs/Committees is also to be explored by discussion.

Transparency in Governance

With the exception of the Governmental Advisory Committee and the SSAC and RSSAC, most ICANN Community deliberations are sufficiently open and transparent. The ICANN Board had a practice of holding at least one Staff Report and Board Meeting, but at least in the recent ICANN meetings, the agenda for Open Board meeting has been reduced to ceremonial resolutions or adoption of resolutions on which agreement have already been reached after earlier deliberations. While this observation is made, it is also acknowledged with equal or more emphasis that the Board requires in-camera sessions to deliberate on most issues. This acknowledged, the Board could make part of its deliberations transparent, by continuing on the traditions of one Open Board meeting during the ICANN meeting, and some of the other Board sessions open for Remote participation with restrictions on outsider interventions that could interrupt the flow of the Board deliberations. With the exception of informal and unstructured conversations among Board Members, all Board discussions and Board Committee discussions need to be archived for transparency, without edits, with the exception of absolutely essential exceptions. The Nomcom could also consider increasing the number of Observer Status Board seats with full meeting privileges, uncompensated, and if fair, unfunded, after subjecting the candidates to a lighter nomcom process, with stipulations if required, on the Observers to refrain from seeking actual Board positions for the immediate next term. Where there is a fair request for information, the Board or Executive might not cite legal disclaimers, confidentiality clauses, or non-disclosure agreements, so to the extent possible, ICANN as an organization serving in Global Public Interest has to consider appropriate clause for transparency while engaging external services.

Reconsideration

It would be prudent to strengthen the internal reconsideration processes by expanding the Office of the Ombudsman and separating the Board Reconsideration process into a separate, independent internal judicial function to resolve any concerns that may arise concerning ICANN Governance. Such a body could include one or two fair Community Leaders as well as two or three Judicial experts of as high a stature as ICANN could practically engage. This would ensure a greater balance between the Community and the Executive/Board and would serve to assure an overall mechanism for fair Governance.

Community

The rationale to work towards a collective, cross-constituency multi-stakeholder House occurs from the thinking that Policy Development ought to evolve into a Community process rather than a process led by one Advisory Committee or Supporting Organization. (This comment comes from a participant of one Advisory Committee who has seen sufficient value in the policy recommendations of the Advisory Committee, as an independent comment, not even informally discussed with any of the fellows on any of the points mentioned in this comment.)

The broader consideration is that ICANN, as much as feasible, over the next few years, could move towards balanced policy recommendations, from the status quo of policy recommendations led by one AC or SO or Committee which considers topics relevant to that AC/SO/Committee's sphere of responsibility. Instead of recommendations arising from different Advisory Committees and Supporting Organizations, policy positions at this level, and all recommendations as singular, cross-constituency recommendations reflecting rough consensus for Board adoption or Board action. A better framework for Cross Constituency deliberations could be created by establishing a Mutli-stakeholder House that would meet for two full days during the ICANN meeting, following two days of AC/SO/Committee sessions where policy positions would be drafted by rough consensus at the AC/SO/Committee level, to be then brought to the Mutli-Stakeholder House for deliberations and final policy recommendations. The Multi-Stakeholder House, which would include all Stakeholders from the ACs/SOs/Committees in Participative or where preferred, Advisory roles. Topics that concern any expert committee, such as Security Policy could still arise from the House by way of Expert Committee recommendations constituted from time to time, with a predominance of experts. If the ICANN Community is so unified into a balanced multi-stakeholder House, it would amount to a firm foundation that would take care of most of the Accountability and oversight concerns.

Nomcom

The role of the Nomcom is of paramount importance in ICANN governance. Only by appointing the right people to Board and Constituency positions could ICANN ensure that as an organization it further evolves into an organization accountable to the global Internet stakeholders. Nomcom could also be consulted in appointment Executive and of all Global staff positions, without rigid constraints on geographical or gender balance, but with a broad directive to achieve average regional and gender balance during successive years.

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