

Getting the ICANN Multistakeholder Strategy Right: Comment One

Sam Lanfranco¹ - February 4, 2014

Preface:

This is an individual four page response to the *ICANN Strategy Panel on Multistakeholder Innovation* document posted January 31, 2014 on the govlab.org website.² It is meant as a critical review, by which I mean demanding, not negative. It assumes that the reader has read the Strategic Panel document.

NOTE: *The posted document has an embedded comment function that would work better of the document were in a final editing stage, or it were used for logging specific concerns. The function is less suitable for logging comments that represent fundamental overviews of the content. (Consider using it to critique a play by Shakespeare).*

My contribution here will be to offer several sets of comments on sections of the document, sections where there are issues that need to be teased forward for more in depth reflection and consideration before embedding them within a vision of ICANN's structure and processes. This is also an invitation to others to carry forward with critical analysis, both on the core document and on any thoughts these contributed comments may generate.

Introduction:

The Strategy Panel document lays out what amounts to a mission/vision statement for the work of the Panel in which it says:

A 21st century organization responsible for coordinating a global, public good such as the Domain Name System (DNS) that ensures the operability, stability and security of one global Internet has to abide by key principles embodied by the type of governance institutions to which we aspire, and which are possible in an era of ubiquitous information and communications technologies.

The panel recognizes that this is not a call to tackle global issues of Internet governance but to "articulate what a 21st century ICANN...could look like and how it could operate", and within a multistakeholder model "...to which we aspire".

Simply put, the *ICANN Strategy Panel on Multistakeholder Innovation* was asked to recommend new models of multistakeholder participatory decision-making for ICANN. The goal is to improve how ICANN engages with global stakeholders in coordinating the Internet's unique identifier space. ICANN's declared values ask that those ways include broad-based inclusive engagement and consensus-based policy making. The panel is

¹Prof Emeritus & Senior Scholar, York University, Toronto, email: lanfran@yorku.ca

² <http://thegovlab.org/the-quest-for-a-21st-century-icann-a-blueprin>

tasked with recommending institutional structures, processes, tools and platforms to support this decision-making process.

The document then turns to a presentation of "key principles" embodied by (in?) the type of governance aspired to (i.e., multistakeholder with broad-based inclusive engagement and consensus-based policy making.). That section warrants a comment in its own right.

However, before turning to a discussion of those key principles it is worth spending a moment or two on the first of a number of issues around Internet Governance that get skated over too lightly, issues which will pose major problems further down the policy making process.

The first has to do with the notion, found in the wording of the document, that calls the Domain Name System a "*global, public good*". Global yes, but neither the Domain Name System, nor the domain name "strings" are public goods. This is not a contestable statement. It is a comment on the inherent properties of the process and the product.

A public good means that access to the good or service is "non-excludable". I can have it and so can you (e.g. the weather report). The letters of the alphabet are public goods, as are the words (strings) constructed from them. DNS products are excludable. I have it, and you don't. The process has elements of rival private goods (multiple registrars) and non-rival monopoly goods (ICANN approval of DNS registries). URLs are private goods. The swarms of corporate and intellectual property lawyers buzzing around the domain name process, new URLs, and the thorny issues tossed up around new gTLD string approval are ample evidence of this.

There are some elements of an *Internet Commons* at play around the Internet ecosystem, and much loose talk about what that means for a "*Free Internet*". This area is not touched on in the document at hand. It is a topic where there should be further discussion, mainly to clear the air as to what each of those actually means in concrete terms for organizational (e.g. ICANN) and Internet ecosystem governance systems.

There is some hint that what is meant by *public good* here actually means "*in the public good*", i.e., an Internet for the good of all. In that case it would be part of a vision statement and not an assumption about the properties of the internet. In either case the challenges surrounding services (DNS) and goods (URLs) issues, not to mention the galaxy of content issues, are at the core of the quest for good ICANN and Internet ecosystems governance models.

This is not being pedantic about the meaning of terms. It is about understanding the challenges that confront ICANN from within the operations of the Domain Name System, as it creates DNS strings, and the resulting registry/registrar process produces URLs as uniquely private goods. This is quite different from pressure for just addressing greater stakeholder involvement in a mature organization operating in a well defined environment.

The Internet is unfolding as a technological revolution with profound human and social system impacts are a pace unparalleled in human history. The virtual spaces of the Internet, where we build, own and do things, are joining those literal spaces within which humanity has spend millenniums building governance models. This is more than an ICANN build with a moving target. It is a build where the very ground on which things are built is in motion, some of that motion driven by technological change, and some driven by how strategic players respond to those opportunities and constraints. In terms of magnitude of the change underway, this makes the impact of the invention of gun powder on human history look like a firecracker in comparison.

ICANN's "build" of its internal governance system is like one more beta build of software. It will be verging on obsolete by the time it has been implemented. So, while while ICANN is not tasked with the global governance of the Internet, ICANN is an integral part of the existing Internet governance system and is (and hopes to remain) an integral part of the future of Internet Governance.. An inescapable part of the mission here is to position itself to play a role in shaping the future of Internet Governance, and not be reduced to the technical administration of parts of the Internet, or administering the DNS process whose governance rules are set elsewhere and do does not reflect those values espoused by ICANN and those who support its vision of the Internet.

ICANN faces a two fold challenge. On one side it must be an innovative player on the DNS administrative and technical sides. On the other side, it must show leadership at the Internet governance and policy levels, both within itself and as a player in the Internet ecosystem. ICANN's multistakeholder consensus-based decision making structure and process also has to confront, or co-exist, with other significant Internet players, with different governance models. These Internet "big fish" are jockeying for strategic policy and governance positions both across, and within, niches of the Internet ecosystem. They pose a further challenge to what ICANN does and how it does what it does. This is a lot more complicated than just being a good steward with a public good.

In summary, the first part of the Strategic Panel MSM document has some shortcomings in its use and definition of terms, and does not quite paint a clear picture of the depth of the challenges facing: ICANN and its governance model; the situation with Internet Governance; and the options open to the Internet's rapidly expanding population of stakeholders. A more careful picture is needed to identify a clearer path forward.

The next comment to follow, "*Comment Two*", will turn to issues around "*key principles*" as handled in the Strategic Panel document. The focus here is kept on this one Strategic Panel MSM governance document to reduce "rain from hail" fatigue.

Postscript:

One of the challenges to stakeholders participating on ICANN's consultative processes is that ICANN documents rain down continuously, like hail on a steel roof. One hears the arrival and it hard pressed to respond within time lines.

This is a particular problem for civil society organizations (CSOs/NGOs/NPOs) where they have broad system wide concerns and mainly operate with volunteer labour. This problem will grow, both for ICANN and for the stakeholders, as more and more people and groups press for stakeholder status within ICANNs policy making and governance strategies.

It is wrong to simply think that more people will make the work either easier or lighter, or ICANN's model of governance more inclusive. Parts of the administrative and Internet systems maintenance work of ICANN is a bit like a textile factory where these people make collars, those make cuffs, and yet another group sews them on shirts. More people can divide up work there.

However the ICANN and Internet ecosystem policy making and governance areas are not factory-like. Preliminary work can be farmed out to strategic panels who, with skill can tease forward the issues, but those issues still have to be dealt with by stakeholders and reconciled with stakeholder interests. This is frequently an evident source of frustration as strategic panels (and experts) watch in dismay as their crafted documents are simply discarded, or are used to justify policies for which they were never intended. How these issues are handled in an ICANN multistakeholder model (MSM) is one of the core challenges here.

The Internet ecosystem stakes are high enough for the corporate sector to allocate funds and skilled labour (mainly legal expertise) to helping shape ICANN documents to reflect their more narrowly defined Internet ecosystem self-interests. Corporate concerns allow them to be more effective in deciding what to focus on and what to ignore. As a result, their interests tend to be well attended to.

The Internet ecosystems stakes are high for governments as well. From the beginning governments underestimated the important of the Internet and are currently hurriedly trying to place catch up without a clear understanding of the impact of the Internet. Within ICANN that are unsure of how to position themselves in GAC, the Government Advisory Committee, and within the Internet ecosystem they are not sure where to position themselves. They remain a wild card in the development of both the ICANN and Internet governance processes.

---- Sam Lanfranco February 4, 2014 -----