II. Multistakeholder Approach to Internet Governance

A. Does the multistakeholder approach continue to support an environment for the internet to grow and thrive? If so, why? If not, why not?

The multistakeholder approach brings together a phenomenal wealth of experience and knowledge on many important matters, and at minimal cost. ICANN needs to nurture and support this resource, rather than seeing it as a mechanism to simply implement a predetermined position.

B. Are there public policy areas in which the multistakeholder approach works best? If yes, what are those areas and why? Are there areas in which the multistakeholder approach does not work effectively? If there are, what are those areas and why?

The long running IGO-INGO Curative Rights Protection Mechanisms PDP [1] provides a very useful case study of why organization hierarchies fail. The problems begin to arise as people in the hierarchy gain positions though power rather than competence.

The representatives of the IGOs wished ICANN to change ICANN's consensus dispute mechanisms to help them combat online abuse. The evidence submitted to the working group was very weak and none (not one!) of the examples of harms cited could have actually been solved even if all of the curative rights mechanisms were amended to accommodate the IGOs wishes in their entirety.

URDP & URS are simply the wrong tools for the job because the stated harms the IGOs are seeking to address (and other additional harms) can already be dealt with in an easier, quicker and significantly cheaper way than using UDRP & URS. The overwhelming majority of registrars when contacted are willing to deal with such harms at no cost and in a very timely manner. In the unlikely event a registrar would not wish to help ICANN has contractual provisions in place to investigate the reasons for such a decision.

The representatives of the IGOs had lobbied politically at the highest letter even getting his Excellency Ban Ki-moon to articulate their concerns [2] and possibly because of the pressure brought to ICANN by the GAC through their communiqués on the matter ICANN as an organization and key players in the stakeholder model felt they needed "to do something", promoting a fundamentally flawed report [3] from a professor of international law and designing a ridiculously inelegant and expensive curative rights protection mechanism which would almost certainly never be used to give the appearance of "doing something".

[1] https://community.icann.org/display/gnsoicrpmpdp
[2] http://mm.icann.org/pipermail/gnso-igo-ingo-crp/2017-September/000845.html
[3] http://mm.icann.org/pipermail/gnso-igo-ingo-crp/2018-May/001202.html

C. Are the existing accountability structures within multistakeholder internet governance sufficient? If not, why not? What improvements can be made?

The working group model could do to be strengthened.

More formal evidence and examination procedures
Prevention of process abuse e.g. slow-walking & arbitrary deadlines
Term limits for administrative posts
Improving and strengthening of working group appeal mechanisms

D. Should the IANA Stewardship Transition be unwound? If yes, why and how? If not, why not?

ICANN seems to have lost direction and often seems more concerned with introspection and popularity amongst governments and international organizations, than originality and creation or even strengthening the management of the DNS in the public interest.

E. What should be NTIA's priorities within ICANN and the GAC?

Security of tenure

Without security of tenure people and organizations will never have the confidence to invest the same levels time, energy and resources. This is especially true of smaller organizations which often have limited resources to deal with risk or complexity.

Confidence in security of tenure comes from:

Open Public WHOIS records
Fair and transparent dispute mechanisms
A competitive registrar market
Cooperative registry agreements for future price stability

Open public WHOIS

ICANN should not be litigating its WHOIS policy in a regional jurisdiction. GDPR simply requires registrars to get consent for all uses (e.g. including escrowing data out the EU) where this consent is not forthcoming the registrar of record should populate the WHOIS record with its own contact details and be responsible for all uses of the domain.

Introducing real competition to the DNS

From the 1998 MOU part of ICANN mission was to introduce competition

II.C.2. Competition - This Agreement promotes the management of the DNS in a manner that will permit market mechanisms to support competition and consumer choice in the technical management of the DNS. This competition will lower costs, promote innovation, and enhance user choice and satisfaction. [4]

More specifically

V.C.9.c. Potential consumer benefits/costs associated with establishing a competitive environment for gTLD registries. [4]

One way of establishing competition is to allocate the rights to run a registry for a fixed term and on expiry of that term hold an invitation to tender for a subsequent term.

The alternative approach to registry competition which ICANN has tried to adopt is to award each gTLD to a registry in perpetuity and then try and generate the competition, sort under the various MOUs, by awarding new additional gTLDs to competing registry companies. Whilst this approach has had provided substantial benefits for ICANN's contracted parties this approach has provided very few tangible consumer benefits.

It is also becoming apparent that many of the benefits ICANNs preferred approach bestowed on its contracted parties are becoming seriously diminished and it is difficult to see how ICANN is meeting it obligations as costs are significantly higher, there has been little innovation, and consumers are more persuaded to stay with the pre-ICANN alternatives with the greater security of tenure and price stability they enjoy.

[4] https://www.ntia.doc.gov/page/1998/memorandum-understanding-between-us-department-commerce-and-internet-corporation-assigned-

F. Are there any other DNS related activities NTIA should pursue? If yes, please describe.

Cooperative registry agreements for future price stability.