

ICANN | IPC

The GNSO Intellectual Property Constituency (IPC) appreciates the opportunity to comment on the "Enhancing the Effectiveness of ICANN's Multistakeholder Model – Next Steps" paper (Next Steps paper).¹ The IPC strongly believes in the multistakeholder model (MSM) and remains hopeful that the broader Evolving MSM process can generate helpful and lasting reforms to strengthen it. The IPC's comments here incorporate and build on comments filed with ICANN on the Evolving MSM filed 16 October 2019² and 25 June 2019.³ Though we appreciate the work that went into creating the Next Steps paper, the IPC remains concerned that the Evolving MSM process will be ineffective in resolving any of the issues set out in the Final Issues list.

The Next Steps paper proposes a focus on the topics the community chose as the top three priorities through public comments, namely: prioritization of the work and efficient use of resources; precision in scoping the work; and consensus, representation, and inclusivity. Perhaps most important to the IPC is the topic of consensus, representation, and inclusivity, which the Next Steps paper characterizes thusly: "community input indicated that the ICANN community has difficulty reaching consensus in policymaking and other work processes for a variety of reasons, primarily among which is a lack of incentives for stakeholders to compromise."

Yet, as with the Evolving MSM document, ICANN simply proposes several community solutions that intend to address the identified issues through existing workstreams, such as PDP 3.0 and the Consensus Playbook. While the IPC is hopeful that the Consensus Playbook can help provide community leaders with tools to better shepherd consensus policymaking, neither Playbook nor PDP 3.0 actually address the lack of incentives for Working Group members to compromise on a solution. Rather, it implicitly assumes that all Working Group members have shared goals to get to a balanced compromise policy position for the benefit of the Internet, ignoring the fact that participants all represent different interests, many of which may benefit from no changes to the status quo, and others that would only benefit from changes in the status quo. It is unlikely that muddling through the very same processes that suffer from an underlying lack of incentive toward compromise will yield substantive changes to the MSM.

Additionally, the IPC remains concerned that many problems with the MSM have been identified through this exercise, only to be dropped, conflated or otherwise excluded from the list, including, most importantly, flaws in the underlying structure of the GNSO. Not addressing the underlying flaws in the two house structure of the GNSO, pitting lockstep contracted parties against highly polarized and thus diluted commercial and noncommercial stakeholders, ultimately fails to address the root cause of nearly all representativeness, inclusivity, consensus, silos, and distrust issues identified in this exercise. This exercise improperly focuses on the symptoms, rather than the underlying disease.

A year ago, the primary procedural problem with the Evolving MSM process was the lack of any clear, actionable and measurable relationship between the issues identified and existing workstreams to address those issues. Today it is evident, based on the sheer number of workstreams, processes and

¹ <https://www.icann.org/public-comments/multistakeholder-model-next-steps-2020-06-04-en>

² <https://mm.icann.org/pipermail/comments-multistakeholder-model-next-steps-27aug19/attachments/20191017/5ae37820/IPCCommentsreNextStepstoImprovethetheEffectivenessofICANNMSMOct142019-0001.pdf>

³ <https://mm.icann.org/pipermail/comments-evolving-multistakeholder-model-25apr19/attachments/20190613/4b072e47/IPCCommentreEvolvingMSM13Jun2019-0001.pdf>

2 August 2020

review mechanisms, that the danger is that they are individually too diluted to be effective. There are simply too many of them for the community to know how to participate meaningfully. The IPC therefore suggests that ICANN consolidate these processes and mechanisms into a more focused effort explicitly geared towards resolving issues with the MSM.