Evolution and Internationalization of ICANN

- Area: ROADMAP FOR THE FURTHER EVOLUTION OF THE INTERNET GOVERNANCE ECOSYSTEM
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Abstract

CGI.br understands that ICANN?s evolution shall be guided by two main tenets: (1) ICANN has to be fully internationalized and has to develop a proper framework for both vertical and horizontal accountability; and (2) ICANN's institutional evolution shall seek a better equilibrium among all stakeholders and among all countries. Instead of specific proposals, this document highlights goals to be pursued after the NetMundial meeting and posits requirements to be observed and questions to be asked in the course of that quest. CGI.br assumes that ICANN shall remain the responsible institution for the assignment of names and numbers and understands that keeping ICANN as focal point for those activities is the best alternative for the assurance of a unique and global Internet. It does not mean that ICANN?s operation and governance system are to remain unchallenged. Instead, it means that it is better to count on a fully established system to be enhanced than to start a whole new system.

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CGI.br - Brazilian Internet Steering Committee (Note 1)

Summary

The Brazilian Internet Steering Committee (CGI.br) understands that ICANN's evolution shall be guided by these main tenets: (1) the organization has to be fully internationalized and it has to develop a proper framework for both vertical and horizontal accountability; and (2) ICANN's institutional evolution shall seek a better equilibrium among all stakeholders, as well as among the different countries. Instead of listing a set of specific proposals, this document highlights some objectives to be pursued after the NetMundial meeting and posits some requirements to be observed and some questions to be asked in the course of that quest. It bears on the assumption that ICANN should be the responsible institution within the Internet governance ecosystem for the assignment of names and numbers, including the full spectrum of the IANA functions. CGI.br understands that the maintenance of ICANN as a focal point for those activities is the best alternative for the assurance of a unique and global Internet, for it has the established technical capacity and the policy-making mechanisms that can keep the Internet running without compromising its availability in the furtherance of current global Internet governance discussion fora, such as NetMundial and IGF. It does not mean that ICANN's operation and its governance system are to remain unchallenged. It simply means that it is better to count on a fully established system to be enhanced than to start a whole system from scratch.

1. The role for an internationalized ICANN

CGI.br supports the measures that have been taken in regard to ICANN's internationalization, but understands that so far they have been focused mainly on the operational level of its mandate (Note 2). Far more important than those efforts is placing ICANN under a new international legal-institutional framework that replaces the current contract (the Affirmation of Commitments) with the USA government and removes ICANN's direct or indirect subordination to the US legal system (Note 3). In realistic terms, this goal may be achieved within a 5 to 10 years time frame, following a sequence of steps that are still to be devised, following a roadmap for the international Internet governance ecosystem that is expected as one of the outcomes of multistakeholder fora like NetMundial, IGF, and others.

One of the main IANA functions is the global coordination of the allocation and registration of IP addresses. ICANN is still legally responsible for this function, but its practical execution is completely decentralized by the global structure of five different Regional Internet Registries (RIRs). These RIRs have in turn created a coordination forum - the Number Resource Organization (NRO). The RIRs and the NRO coordinate the process of distribution of IPv4 and IPv6 blocks, also taking into account a well designed and

consensual strategy for the transition of the number resources. CGI.br strongly believes that this is a very good example of how other IANA functions can be decentralized and delegated, without removing the overall institutional responsibility of ICANN over those functions. It also serves as a very suitable model for the internationalization of IANA functions.

The sound solution for the internationalization of ICANN - considering that it should keep all its current responsibilities - has to encompass the discussion of adequate solutions for the effective internationalization of all IANA functions (not only the allocation and registration of IP addresses). In the search of an adequate legal and institutional framework that replaces the current contract with the US government, it will be extremely relevant to decide which entity, or set of entities, will be made responsible for the management of the root zone file, such as to guarantee its stability, security, and reliability. An adequate direction for that matter can be the assignment of this task to a set of international entities (in a way similar to the RIRs/NRO structure for IP allocation) that are already responsible for other aspects of the Internet governance, that operate in a well-balanced multistakeholder model, and that bear the required technical qualifications.

A third aspect of the evolution of ICANN towards its internationalization is its accountability. ICANN is currently accountable to the US government, according to the goals and mechanisms that are established by the AoC. In theoretical terms, those present to the NetMundial meeting shall bear in mind the fact that there are different sorts of accountability that depend mostly on the nature of the relations and of the interest of the actors in a specific institutional setting (Note 4). Within democratic political institutions, for instance, vertical and horizontal accountability are two different components of overall accountability (Note 5). Vertical accountability means that each specific organ within the ICANN chart has to be fully accountable to its direct constituents. Horizontal accountability means that, within the ICANN system, every single organ has to be fully accountable to all others as well. And all of the system has to be fully accountable to Internet users in general, in a reliable, open and transparent, and timely manner. How can ICANN, in an international legal and institutional framework different from the AoC and from the current bylaws that guide the corporation, be accountable to the public interest, represented by all end users of the Internet, in a way that is consistent with universally accepted principles of use and governance of the Internet which respect fundamental human rights and promote social, economic, and cultural progress of citizens of all countries?

An adequate roadmap for the evolution of the global Internet governance ecosystem, together with a roadmap for the internationalization of ICANN, must firstly look for this set of principles for the use and governance of the Internet, from which the definition of accountability mechanisms for ICANN will be possible. In a certain way, the set of

stakeholder groups that are present in ICANN also represents the international public interest, expressed by a set of principles for use and governance of the Internet - or, with the appropriate improvements in the structure and operation of ICANN, they may be able to represent this public interest. A possible way for improving the accountability of ICANN is to assign the oversight responsibility within the new institutional setting to be proposed as an outcome of NetMundial to already existent stakeholder groups within the ICANN system. Another approach would be the assignment of that oversight to entities outside ICANN, as long as they are recognized as representative of the international public interest. A clear advantage of this second approach is the avoidance of an overlapping reality, in which the organization responsible for policy making is also responsible for the oversight of policy implementation.

2. Leveling the playfield among stakeholders and countries

In a paper presented at the 8th Annual GigaNet Symposium, Laura DeNardis and Mark Raymond classified multistakeholderism according to the type of stakeholders involved (States, firms, non-governmental organizations, and/or international organizations) and the nature of authority relations enshrined within a specific political community (hierarchical, polyarchic, or anarchic). The matrix derived from those two variables yields thirty three different forms of multistakeholderism (Note 6). CGI.br has its own model of governance - recognized as a best practice within several different fora, including the Internet Governance Forum and ICANN itself. It has successfully created a decalogue of fundamental principles for the use and governance of the Internet in Brazil. Both CGI.br's governance model and its decalogue can inform the way forward for the global governance of the Internet, not only because they represent the commitment of all stakeholders involved, but also because it expressly deals with cultural and socio-economic developmental issues that can serve the purposes and interests of developing and the least developed countries in global governance at large (Note 7).

A first step on that direction shall be the establishment of a serious and permanent discussion about the appropriate contours of multistakeholderism for Internet governance in the 21st Century. Bearing in mind the study conducted by DeNardis and Raymond, CGI.br believes that the best model comprises all of the relevant actors within their scope of action and is polyarchic in form (the one in which authority is neither centralized within a single entity nor inexistent).

Despite being polyarchic in nature, ICANN multistakeholder governance sometimes can tilt between anarchy (in which economic and political power outside institutional constraints is the enforcing mechanism) and hierarchy (in which the Board or the GAC, for

instance, imposes restrictions on the action of other stakeholders). In light of that abstract reality, analyses of the structure and operation of ICANN have revealed various problems regarding an inadequate balance among the various stakeholder groups. Examples of problems are: the inadequacy of the mechanism for governments' participation via the GAC; the very small influence of civil society upon the final decisions of the GNSO and the Board; and the capture of ICANN by the domain industry (both registries and registrars). To these problems we must add the lack of balance among different countries, whereby developing countries (both their governments and representatives of their civil societies and private sectors) have a very small influence on the policy cycle. The current structure of ICANN, including the Board, the SOs and the ACs, with their respective roles, and in particular the daily operation of these bodies, do not seem to achieve an adequate balance among all stakeholder groups and among all countries (Note 8).

Although the improvements regarding transparency and accountability suggested by the ATRT 1, and revised and enhanced by the ATRT 2, go in the right direction, they lack enough generality, since they basically reflect priorities and conditions expressed by the AoC. A revision of those recommendations under a much more general framework could bring important enhancements to the structure and operation of ICANN.

In the following, we suggest some specific paths to be followed. This is merely illustrative and shall be taken as a point of departure for further discussions:

1. Even if the GAC keeps its role as an advisory body to the Board, government representatives should participate effectively in the policy development processes in the GNSO. Governments' influence on those policies only when they are being considered by the Board for final deliberation should be avoided, as it represents an unduly advantage over other stakeholder groups.
2. The weight of registries and registrars in the policy development processes should be reduced. The current structure of "houses" in the GNSO gives them the same weight as all other stakeholder groups together, while, in fact, those other groups represent the interests of all other sectors of the society and are thus better placed to represent the public interest.
3. The structure and the role of the ALAC should be revised, since there is a clear redundancy among the ALAC and stakeholder groups in the GNSO; also the ALAC does not take part in the policy development processes in the GNSO. If the ALAC is meant to represent, in theory, the interests of all Internet users, who should be considered as very important stakeholders (maybe even the most important ones), this seems highly contradictory. Besides, the participation of individuals and entities

in the ALAC neither follows transparent rules nor guarantees an adequate global representation of users.

4. The composition of the Board should be revised in order to reflect a better balance among stakeholder groups, considering the ultimate goals of ICANN, which should be materialized by a set of principles adopted by the organization for the use and governance of the Internet. In particular, in order to reinforce its multistakeholder nature, the number of Board seats allocated by the NomCom could be reduced, thus increasing the slots for Board members directly elected by the SOs.
5. Sufficient funds should be provided to promote and ensure the participation of individuals representing stakeholder groups from developing countries. Mechanisms should be implemented to ensure their effective participation in the different organizations, committees, and working groups of ICANN.
6. Once an adequate and balanced participation of all stakeholder groups (including governments) and all countries in the policy development processes in the GNSO is ensured, the role of the Board regarding the final approval of those policies should be revised. The Board should have only an oversight role over those processes, in a way to guarantee that they follow the adequate balance among all stakeholder groups and that the public interest has been served. The guidance for the Board shall derive from the overarching set of principles for the use and governance of the Internet to which ICANN should be committed. Also the Board accountability and transparency mechanisms should be improved, in such a way that the global society is able to check that the actions of the Board are consistent with the safeguard of those principles.

Notes:

1. CGI.br thanks the collaboration of Mr. Diego Rafael Canabarro in the drafting of this document. He is a PhD candidate in Political Science and Research Assistant to the Center for International Studies on Government (CEGOV) at the Federal University of Rio Grande do Sul (UFRGS), Brazil.

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