ICANN Board Inputs - CCWG WS2 Diversity Report

Summary: The CCWG-Accountability provides a report on the topic of Diversity with three areas of recommendations:
1) Defining Diversity
2) Measuring and Promoting Diversity
3) Supporting Diversity

The ICANN Board appreciates the opportunity to provide input to the CCWG WS2 report on recommendations to improve ICANN's diversity. We are providing these inputs to the Diversity Subgroup, with a copy to the public comments for the wider community, to support further deliberations by the Subgroup and CCWG-Accountability.

There are many useful ideas presented, and a number of actionable and implementable recommendations. There are some recommendations where further clarification would serve to avoid misinterpretation or unintended consequences for ICANN. This input is not intended to interfere with this work, but rather to provide observations and information to further the Subgroup and CCWG-Accountability's efforts as it finalizes its full report.

Across the recommendations, the implementation will require resources and support from across the ICANN Community, as every ICANN SO and AC must participate in this effort in order to achieve full implementation. While ICANN organization can produce reports and make items available on the websites, etc., the component SOs and ACs must modify their work practices in order to meet many of the recommendations. ICANN organization cannot impose this change. Additionally, it is important that these recommendations are considered in light of existing or emerging data protection and privacy legislation, including for example the GDPR. The ICANN Board is interested in hearing the thoughts of the SOs and ACs on their support of these recommendations and their ability to deliver on the recommendations.

Regarding Recommendations for Defining Diversity

This section includes a recommendation that all SO/AC/groups[1] agree that the following 7 key elements of diversity should be used as a common starting point for all diversity considerations within ICANN:
- Geographic/regional representation
- Language

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[1] In the context of the Diversity Questionnaire and throughout this report, the term SO/AC/groups refers to:
      SO – ccNSO, GNSO, ASO
      AC – ALAC, GAC, RSSAC, SSAC
      Groups – ICANN Board, ICANN staff, NomCom, Stakeholder Group or Constituency, RALO
When recommendations in this report refer to ICANN, it means all of those entities included in SO/AC/groups.

- Gender
- Age
- Physical Disability
- Diverse Skills
- Stakeholder group or constituency

This section also includes a recommendation that each SO/AC/group should identify which elements of diversity are mandated in their Charters or ICANN Bylaws and any other elements that are relevant and applicable to each of its levels including leadership (Diversity Criteria) and publish the results on their websites.

As a global organization, diversity is extremely important to the ICANN Board and ICANN organization, and as such we support these recommendations as written. However, with regard to these recommendations, it is important to note the following elements specific to the Board and ICANN organization.

The Board considers diversity on a regular basis. The diversity of the Board is required under the ICANN Bylaws, and we agree that diversity is important, in its many forms, in the ICANN ecosystem. Diversity is also an important element in reflecting and more effectively dealing with the concerns of the broader global Internet community.

With regard to the ICANN Board, the Board considers other factors of diversity beyond the requirements reflected in the Bylaws. The Board has in recent years focused on identifying needs of skills, while also having quality members that adhere to ICANN's values and mission. The Board supports diversity inclusive of, but not limited to, the dimensions listed, and believes everyone should be treated with respect. Diversity is a key asset, as it's that plurality of views, experiences, thoughts and reflections that makes Board discussions richer, and ultimately helps the Board reach better and more balanced decisions. However, with the exception of the mandate in the Bylaws for specific geographic diversity, achievement of specific diversity targets is secondary to the primary concerns noted above. Of course, the Board does not control its composition; the community groups that appoint to the Board are responsible for the balance of diversity.

The ICANN organization is committed to diversity and enjoys a widely diverse workforce across many dimensions. ICANN has always embraced the obligations imposed by Equal Opportunity Employment laws, as well as laws of other places where it does business, which obligate that the ICANN organization cannot take certain classifications or characteristics into account when making employment decisions or setting job requirements.[2] For example, ICANN does not and cannot have quotas established along many of the identified diversity elements. ICANN

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[2] As an Equal Opportunity Employer, the organization does not discriminate against qualified employees or applicants because of race, color, religion, sex, pregnancy, childbirth or related medical conditions, family care status, national origin, ancestry, citizenship, age, marital status, physical disability, mental disability, medical condition, sexual orientation, veteran status, or any other characteristic protected by U.S. state or federal law.

organization regularly reports on the diversity of its workforce in the ICANN CEO Reports, available at https://www.icann.org/presidents-corner, which report on factors such as geographic distribution, age, and gender balance (across all staff and at the Senior Executive level) and is proud of the diversity reflected therein.

Because of the legal restrictions, ICANN organization cannot meet the letter of recommendations requiring specific diversity goals. ICANN organization is encouraged to participate in further reporting and consideration of improvements in the spirit of these recommendations. However, if ICANN organization is not comfortable with reporting on certain diversity components, ICANN organization may not be able to provide as broad of reporting as contemplated.

Regarding Recommendations for Measuring and Promoting Diversity

The recommendations in this section call for the measurement of many aspects of diversity, some of which, for example, relating to translation and interpretation, are already tracked.

To note, though, there may be competing privacy interests that may weigh against ICANN's (or the other SO/AC/group's) ability to collect diversity information. For example, in June 2017, ICANN organization expanded its diversity questionnaire as part of its meeting registration process, in part to try to start collecting information along the lines of the diversity elements noted in the Subgroup's work report. However, concerns were quickly raised on the propriety of collecting some of the information, and ICANN responded to community concerns and removed the new questions.

It would be helpful to understand how privacy interests were considered as part of the development of these recommendations. The availability of a "prefer not to respond" option in various collection vehicles may mitigate the impact, but could also have implications for the effectiveness of data collection efforts to achieve the goals set out in the subgroup's report. In addition, in light of GDPR and other similar laws and regulations, the concept of creating databases to store information on personal characteristics could become unworkable.

Regarding Recommendations for Supporting Diversity

While the ICANN Board and organization are supportive of the recommendations in this section, it is important to note that these recommendations, as well as several previous recommendations in the report, will require ICANN staff support and could impose ongoing resource requirements.

ICANN operates within a specific budget based on limited funding. Recommendations that add costs to ICANN's operations result in the organization making trade-offs with other items, such as the implementation of new policies, or innovation of existing programs or services. They might also establish a situation

where the organization is unable to effectively meet community expectations with either the new recommendations or existing obligations. The CCWG-Accountability should consider these factors when providing guidance on the extent these recommendations should be implemented.

The Board and organization appreciate the subgroup's majority opinion that implementation of the recommendations should be left to the ICANN organization to determine appropriate mechanisms and structures. However, guidance is needed regarding the extent of implementation of these recommendations, especially with regard to the privacy-related concerns and resource considerations previously noted.

Regarding the invitation for input and comment on the idea of an Office of Diversity

We understand from the report that there are a small number of participants that are advocating for the establishment of an Office of Diversity, and that no recommendation has been issued from the CCWG on this topic. The report identifies that the role of this office would be to independently support, record and keep track of issues including complaints from the community on diversity issues within the organization, and could include the reporting responsibilities.

The idea of this office is not fully defined. It is not clear how this structure would be implemented, what resources would be required to establish and maintain this office, or how to address the overlapping responsibilities that are already handled within ICANN. Given the lack of clarity around this office, lack of consensus support within the subgroup (and presumably within the CCWG-Accountability and the broader community), and noting the previously-mentioned budget and funding constraints and considerations, the Board is not in a position to accept this item if it were to be presented as a formal consensus-based recommendation in the final WS2 report.

Acknowledgment

We thank the CCWG-Accountability and the Diversity Subgroup for its work on the draft recommendations and look forward to providing further inputs as appropriate during the finalization of the recommendations by the community.