



Namibian Network Information Center (Pty) Ltd

By E-Mail

Cross Community Working Group
on Enhancing ICANN Accountability
Internet Corporation for
Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536, USA

Your ref.

Your letter of

Our ref.

Date

2015-12-02

Minority Opinion

Dear Co-Chairs

I am Managing Director of Namibian Network Information Center (Pty) Ltd, the country code Top Level Domain ("ccTLD") Manager of .NA. I created .NA and have 24 years uninterrupted service and corresponding experience as the ccTLD Manager for .NA.

I am appointed by ICANN's country code Names Supporting Organization ("ccNSO") as a Member to the Cross Community Working Group on Enhancing ICANN Accountability ("CCWG Accountability").

The CCWG Accountability submits a "Draft Proposal on Work Stream 1 Recommendations" ("Third Draft Proposal") which in terms of its Charter must focus on

[...] mechanisms enhancing ICANN accountability that must be in place or committed to within the time frame of the IANA Stewardship Transition.

The Third Draft Proposal does **not** do so.

Accordingly I do not agree with and hereby formally record my Objection to the Third Draft Proposal:

1. I fully support, adopt and incorporate herein the Objection voiced by the Member appointed by the GNSO to the CCWG, Ms Robin Gross.

I join with her in her Minority Opinion. In particular I underline the serious concerns of Ms Gross regarding the proposed increase to the powers of Advisory Committees ("AC") and their proposed elevation to the same status and powers as Supporting Organizations ("SO").

2. The Third Draft Proposal is entirely silent on accountability measures for ICANN relating to its dealing with ccTLD managers.

This omission is fatal.

3. I still have very strong concerns about the way the CCWG Accountability has dealt with ICANN's Accountability to Human Rights.

Anything more restrictive than

Within its mission and in its operations, ICANN will respect fundamental human rights, inter alia the exercise of free expression, free flow of information, due process and the right to property.

is unacceptable.

4. The questions

- under what statutory powers this transfer will occur,
- what in fact it is that is transferred, and
- what is not transferred

remain unanswered.

And they **must** be answered in order for any transfer of the functions and/or the root zone to occur.

5. I have previously placed on record my observations regarding the legitimacy of the way in which the CCWG has conducted itself during its deliberations which has been, more often than not, in violation of its own Charter.

I renew my Objection against this exclusionary process¹.

6. The entire proposal has been cobbled together in extreme haste.

We (the representative Members of the CCWG) have been subjected to an arbitrary, self-imposed and entirely unrealistic timetable and deadline.

7. Regrettably, the Third Draft Proposal bears the fruit of this extreme haste. It is overly complex, hard to understand even by many of members and participants of the CCWG Accountability themselves.

8. Even after its publication the Third Draft Proposal contains significant errors and material inaccuracies.

The version put out for public comment stated (in Appendix A):

As of 29 November 2015, the proposal has received the consensus support of the CCWG-Accountability with no objections or minority statements recorded for Chartering Organization consideration

This is simply **untrue**.

¹I renew my Objection to the previous "Draft Recommendations" from 2015-06-03 and to the "Draft Proposal" from 2015-07-30 and incorporate them by reference herein.

The CCWG was unambiguously on notice since 2015-11-02 of the Objections and Minority Opinions of two SO Chartered Members (Ms Gross and myself) and Ms Gross' Minority Opinion was in fact submitted on 2015-11-29².

9. The Third Draft Proposal has subsequently been declared to be **dynamic** and subject to changes and additions.

This is procedurally fatal, since no reasonable reviewer could produce an opinion on a proposal which is subject to change after its publication.

10. The **drastic** shortening of public comment periods is another example of the apparently intentional exclusivity of the process.

Even if the previous fatal flaws did not exist, this would, in itself, be fatal to the legitimacy of the CCWG process and the Third Draft Proposal.

Fortunately the Final Proposal, if any, can still be subjected to a proper public comment period.

11. I submit that the Third Draft Proposal simply adds additional layers of bureaucracy without achieving much, if anything.
12. The IANA transition involves novel and unsettled questions that may implicate the interests of a wide array of entities. This includes both the public and private sector and engages both domestic US and international interests.

The CCWG Accountability should be result driven and provide its considered views on the important issues presented by the transition in a more reasoned and full discussion instead of rushing to produce something to meet a self-imposed deadline for which there is simply no justification.

13. Repeatedly the NTIA found it necessary to advise, and did so in no uncertain terms, that the CCWG was not meeting the terms of reference set by the NTIA.

I submit that the Third Draft Proposal still does not meet these.

14. I fully support, adopt and incorporate herein the views expressed with such stark clarity by Philip Corwin in his visionary and prescient article of November 2014 in which he stated³:

The result of this flawed approach will be that, if the CWG-Stewardship group has completed its work by July 2015, the CCWG will be under intense internal and external institutional and political pressure to agree that it has "done enough" to meet the woefully low bar set by this Charter for Work Stream 1 mechanisms, with decisions on all remaining work deferred for later.

In the presence of these Objections it follows that the proposal does not have Full Consensus and I submit these minority viewpoints to be added to the Third Draft Proposal as required by the

²Although no deadline was provided for its inclusion despite repeated requests for the dissenting statement submission process to be explained I feel submitting my own Minority Opinion today still did not allow for sufficient time to thoroughly peruse the more than 300 pages split into 28 different files.

³http://www.circleid.com/posts/20141110_accountability_group_charter_sets_the_bar_too_low/ (accessed 2015-12-01)

Charter.

I urge ccTLD Managers to reject this proposal and the NTIA not to accept it as is.

A handwritten signature in black ink, consisting of several overlapping loops and a final flourish.

Eberhard W Lisse