



Namibian Network Information Center (Pty) Ltd

CCWG Accountability
ICANN

Your ref.

Your letter of

Our ref.

Date

2015-06-03

Violations of the CCWG Accountability Charter

Sirs

I am the Managing Director of Namibian Network Information Center (Pty) Ltd, the country code Top Level Domain Manager of .NA and have been appointed by the ccNSO as a member to the Cross Community Working Group on Enhancing ICANN Accountability (“CCWG Accountability”).

I wish to make the following comments on the so called “Draft Recommendations” of the CCWG Accountability which on <https://www.icann.org/public-comments/ccwg-accountability-draft-proposal-2015-05-04-en> is listed as *Draft Report Posted for Public Comment* and is referred to in the Executive Summary <https://community.icann.org/download/attachments/52897394/Executive%20Summary-CCWG-en.pdf?version=1&modificationDate=1431368626033&api=v2> as *report*.

1. The document is convoluted, at 143 pages, making a graphical supplement necessary for ease of understanding, which was expensive to produce.

This is clearly the result of a rushed process, where content was subordinated to an arbitrary deadline. Numerous concerns were raised in different levels of vehemence by appointed members of every chartering organizations against this, mine being most vocal and numerous, but were ignored.

2. The poor quality of the process is even more evident by the fact that on 2015-06-01 three additional questions were posted to the comments web site. The CCWG Accountability was informed by a short email posted by staff on behalf of the Co-Chairs. When questioned during the subsequent call on 2015-06-02 Co-Chair Rickert called this a *clerical error*.

This is a clear violation of the charter, as the comment period for these questions now is 2 days and this can not be healed other than by adding an additional 40 (or even 30) days for

diligent consideration.

3. The report, whether it is in fact a proposal or not, also violates the rules of engagement in the charter of the CCWG and hence the charter itself, in that the Co-Chairs not only did not conduct the mandatory Consensus Call but in fact refused to do so when requested and subsequently even refused to allow for the submission of minority viewpoint(s) to be included in the report.

The statement

These recommendations are not presented as the consensus of the CCWG-Accountability at this point,

in the Executive Summary not only serves to circumvent the charter and to confuse the stakeholders but it is even wrong, because the definitions in the charter are

a) Full Consensus - a position where no minority disagrees; identified by an absence of objection

b) Consensus - a position where a small minority disagrees, but most agree

so it is in fact *Consensus* but not *Full Consensus*.

4. The fact that the Comment period per se was already shortened from the required 40 days to 30 days is worrying with regards to process, but in light of the above not that relevant.

From the foregoing alone, the Public Comment Period is a nullity and has to be started afresh.

I do wish to make some comments on content, however. In particular since I have serious concerns about the process of the deliberations by the CCWG Accountability, which I have escalated in terms of the charter to the ccNSO Council.

5. The proposals are overly complex, hard to understand even by members and participants of the CCWG Accountability themselves, and in my view only add additional layers without achieving much, if anything.
6. In particular does the document not contain discernible content relevant to ccTLD Managers which is hardly surprising considering the dynamics within the CCWG Accountability.

As I have written in my comments to the CWG Stewardship's 2nd Draft Proposals, ccTLD Managers only need

Root Zone Change Request Management – not including delegation and redelegation (NTIA IANA Functions Contract: C.2.9.2.a)

and

Root Zone “WHOIS” Change Request and Database Management (NTIA IANA Functions Contract: C.2.9.2.b)

whereas ICANN needs the IANA Function. And the root zone.

No other service provided by the IANA Function Manager is required, per se, by a ccTLD Manager, including DNSSEC.

Delegation service is a one time occurrence, which does not affect the ccTLD Manager once completed and it must also be said that hardly any ccTLD Manager wishes to avail oneself of un-consented revocation services by the IANA Function Manager.

7. (Individual) ccTLD Managers need accountability by the ICANN Function Manager, for the decisions it (in this context the Board) takes against them and for the way its staff interacts with incumbent and/or prospective ccTLD Managers.

The charter clearly states that all accountability issues other than operational and administrative ones of the IANA Function (which are to be addressed by the CWG Stewardship, where, unfortunately, they are not being addressed to any relevant extent) fall under the CCWG Accountability.

8. Without a shadow of a doubt is the root zone a database and thus clearly an asset, ie some form of property, even though it is very closely linked to the services such as *Root Zone Change Request Management* and *Root Zone "WHOIS Change Request and Database Management*.

I firmly believe the root zone can exist without the services surrounding it, but absolutely not can the services exist without the root zone.

9. Now the issue is not what type of property it is, per se, but what will happen to it.

In other words, who owns the root zone, will ownership be transferred, at all? And if so how and when?

From this the question follows, what will happen if only the functions to manage but not the ownership of the root zone, and/or the root zone itself are transferred.

10. It also raises the unanswered question under what statutory powers this transfer will occur.

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

It was not helpful that a SubTeam created purely for funneling legal questions to what is termed Independent Counsel, or rather a single participant (not even a member) of this SubTeam, decides which questions are relevant and it was particularly unhelpful that requests to look at this accountability (ie from a "higher level") were rejected or ignored by the Co-Chairs.

As far as ccTLD Managers are concerned, whether they are members of the ccNSO, present or future, or not, the CCWG Accountability has not only failed its mandate, but in a manner that can hardly be described accountable.

In conclusion, as one of the ccNSO appointed member of the Cross Community Working Group on Enhancing ICANN Accountability, I do not support this document nor the recommendations made therein.

I am not convinced this can even be rectified with the current methodology.

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

Eberhard W Lisse