



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

2016-02-25

Revised 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 "Final Proposal on Work Stream 1 Recommendations" ("Final Proposal") which in terms of its Charter ("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 Final Proposal does **not** do so.

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

1. I still have serious concerns regarding the proposed increase to the powers of Advisory Committees ("AC") and their proposed elevation to similar status and powers as Supporting Organizations ("SO").
2. The Final 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.

The Final Report must state, at a minimum, that:

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

without **any** qualifications.

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 zone¹ 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.

The latest example, occasioning this revision of this Minority report, previously submitted 2016-02-16, is so egregious that it requires some detail:

- a) The ICANN Board voiced objections against a provision (74) in Recommendation #2 (on which Consensus had been reached), **after** the Final Proposal had been completed.
- b) Two of the Co-Chairs (in the absence of the third) then re-opened the deliberations culminating in a teleconference on 2016-02-23 where they put the issue to a vote when no Consensus was reached either way.
- c) Besides that the Charter is **not** silent on voting it is noteworthy that the Co-Chairs permitted the ICANN Staff Liaison, and 11 ICANN Board Members (two of which were not even registered² as Participants to the CCWG Accountability (Ms Hemrajani and Mr Chehadé) to vote on the issue.
- d) The Co-Chairs then sent out an email stating that, as a broad majority had been in favor of removing the contentious provision, the provision was removed from the Final Proposal.
- e) I have been unable to find “*Broad Majority*” in the Charter, only “*Full Consensus*” and “*Consensus*”, from which follows anything else is “*No Consensus*”.
- f) The now Really Final Proposal was then transmitted to the Charting Organizations, without any period of Public Comment, nor waiting for updates to the existing Minority Statements or new Minority Statements being submitted, which was to be done within 48 hours.

¹see also [http://www.grassley.senate.gov/sites/default/files/judiciary/upload/2015-09-22_CEG_Cruz_Goodlatte_Issa_to_GAO_\(Report_on_ICANN_Oversight_Transfer\).pdf](http://www.grassley.senate.gov/sites/default/files/judiciary/upload/2015-09-22_CEG_Cruz_Goodlatte_Issa_to_GAO_(Report_on_ICANN_Oversight_Transfer).pdf), last accessed 2016-02-24

²<https://community.icann.org/pages/viewpage.action?pageId=50823968>, last accessed 2016-02-24

I renew my Objection against this exclusionary process³.

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 Final Proposal bears the fruit of this extreme haste.

It is overly complex, hard to understand even by many of the members and participants of the CCWG Accountability themselves. During the telephone conference on 2016-02-23⁴ it took 22 minutes just to give a summary of the issue at hand.

8. 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 Final Proposal.

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

9. I submit that the Final Proposal simply adds additional layers of bureaucracy without achieving much, if anything.
10. The IANA transition involves novel and unsettled questions that may impact 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.

11. 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 Final Proposal still does not meet these.

12. I note Minority Statements by the Appointed Members Olga Cavalli (GAC), Tijani Ben Jemaa (ALAC), Izumi Okutani (ASO), and Robin Gross (GNSO) and join Ms Gross' Minority Statement.

I need to point out that the Charter foresees Minority Statements only in cases of disagreement. One Appointed Member of each Chartering Organization disagreeing is **not** a small minority.

It follows that the Final Proposal does **not** have Consensus.

I **strongly** urge ccTLD Managers to reject this Final Proposal and the NTIA not to accept it as is.

³I renew my Objection to the previous "Draft Recommendations" from 2015-06-03, the "Draft Proposal" from 2015-07-30 and the "Third Draft Proposal" from 2015-12-02 and incorporate them by reference herein.

⁴5a to 5f on the preceding page

I submit this Minority Statement to be added to the Final Proposal as required by the Charter.

A handwritten signature in black ink, consisting of several loops and flourishes, appearing to read 'Eberhard W Lisse'.

Eberhard W Lisse