



## Namibian Network Information Center (Pty) Ltd

---

CCWG Accountability  
ICANN

Your ref.

Your letter of

Our ref.

Date

2015-08-01

### Minority Viewpoints

Dear Co-Chairs

I am the Managing Director of Namibian Network Information Center (Pty) Ltd, the country code Top Level Domain (“ccTLD”) Manager of .NA with 24 years uninterrupted service and corresponding experience. I have been appointed by ICANN’s county code Names Supporting Organization (“cc-NSO”) as a member to the Cross Community Working Group on Enhancing ICANN Accountability (“CCWG Accountability”).

I had previously (2015-06-03) had to comment on the so called “Draft Recommendations” of the CCWG Accountability<sup>1</sup> after its publication, I was prevented by the Co-Chairs from submitting my minority viewpoints to be added to the “report” which I view to be in violation of its Charter<sup>2</sup>.

The CCWG Accountability submits a 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.*

It does **not** do so.

I do not agree with, and formally object to the proposal for the following reasons:

1. The proposal is rushed (due to an arbitrary, self-imposed and unrealistic deadline), overly complex, hard to understand even by members and participants of the CCWG Accountability themselves, and in my view only adds additional layers without achieving much, if anything:
  - a) One of the members of the CCWG Accountability stated in a revealing email to the

---

<sup>1</sup><http://forum.icann.org/lists/comments-ccwg-accountability-draft-proposal-04may15/msg00020.html>

<sup>2</sup><https://community.icann.org/display/acctcrosscomm/Charter>

main list on 2015-07-30<sup>3</sup>:

*I think it's also important to note the proposal currently under discussion changes nothing about ICANN's day-to-day, month-to-month, or even year-to-year operations and community engagement structures. Only in very rare cases would the proposed Sole Member community empowerment model come into play. [...]*<sup>4</sup>

*While the anticipated model establishes important checks and balances and shared authority through a community empowerment mechanism, with an escalation path to enforce them, it otherwise doesn't structurally change ICANN at all.*

- b) In the Statement of Policy on the Management of Internet Names and Addresses<sup>5</sup> due process requirements were already made in 1998:

*The Green Paper envisioned the new corporation as operating on principles similar to those of a standard-setting body. Under this model, due process requirements and other appropriate processes that ensure transparency, equity and fair play in the development of policies or practices would need to be included in the new corporation's originating documents.*

In my view ICANN's failure to ensure due process has been the norm rather than the exception.

- c) Assuming an Independent Review Panel staffed by eminent jurists to be correct in stating<sup>6</sup>:

*93. [...] the Panel is of the unanimous view that certain actions and inactions of the ICANN Board (as described below) with respect to the application of DCA Trust relating to the .AFRICA gTLD were inconsistent with the Articles of Incorporation and Bylaws of ICANN.*

it is painfully obvious that this proposal would not have prevented these *certain actions and inactions*.

2. I have very strong concerns about the way the CCWG Accountably 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, in particular the exercise of free expression, free flow of information and due process.*

is unacceptable.

---

<sup>3</sup><http://mm.icann.org/pipermail/accountability-cross-community/2015-July/004650.html>

<sup>4</sup>The sentence removed [...] draws the conclusion: "In my opinion, its existence would be a powerful deterrent to bad behavior and would therefore become an available but largely unneeded tool." with which I do not agree, at all. Just the opposite is true.

<sup>5</sup><http://www.ntia.doc.gov/federal-register-notice/1998/statement-policy-management-internet-names-and-addresses>

<sup>6</sup><https://www.icann.org/en/system/files/files/final-declaration-09jul15-en.pdf>

3. The proposal obviously does not contain accountability measures for ccTLD Managers.

I have in my previous comments stated why this is necessary and remain convinced that it is.

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 commented on the process of the CCWG Accountability which I view as in violation of its Charter and non-inclusive.

Therefor I renew my objections against the process, for the record..

I must, unfortunately, point out that despite several members/participants requesting sufficient time to duly consider the final version of this proposal prior to drafting minority viewpoints, if any, and even the Ombudsman expressing concerns about fairness in this regard<sup>7</sup> Co-Chairs allowed less than 24 hours for consideration of the complete, final *frozen* document. Depending on the time zone one found oneself in this allowed mere minutes, in practical terms, for addition of Minority Viewpoints such as these into the proposal.

I find myself in agreement with the conclusions of the visionary article by Phil Corbin in which he stated as early as November 2014<sup>8</sup>:

*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.*

and am concerned that he may be correct in saying:

*But once the transition has transpired the urgency will be gone, community cohesion may erode, and IANA-related leverage will be forfeited. And even if worthwhile recommendations emerge post-Transition the Board will retain ultimate authority to reject any and all through intransigence. Therefore, a vitally important and historic opportunity for lasting and meaningful ICANN accountability may be squandered unless this Charter is further considered and strengthened prior to final adoption and commencement of the CCWG's work.*

In the presence of this objection it follows that the proposal does not have Full Consensus and I submit these minority viewpoints to be added to the proposal as required by the Charter.

---

<sup>7</sup><http://mm.icann.org/pipermail/accountability-cross-community/2015-July/004641.html>

<sup>8</sup>[http://www.circleid.com/posts/20141110\\_accountability\\_group\\_charter\\_sets\\_the\\_bar\\_too\\_low/](http://www.circleid.com/posts/20141110_accountability_group_charter_sets_the_bar_too_low/)

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