

APNIC EC Meeting Minutes

Extraordinary Face-to-Face Meeting, APNIC 33

Thursday, 1 March 2012

Meeting Start: 19:20 (UTC +05:30)

Present

Akinori Maemura
James Spenceley
Kenny Huang
Gaurab Raj Upadhaya
Che-Hoo Cheng
Ma Yan
Paul Wilson

Geoff Huston
Craig Ng

Apologies

Wendy Zhao

Agenda

1. Waiver of Notice
2. APNIC NIR Membership Agreement
3. India NIR Update
4. AOB

Minutes

The Chair of the Executive Council called the meeting to order at 19:20 (UTC+0530).

1. Waiver of Notice of Meeting

The Chair noted that Wendy Zhao has submitted a waiver of notice of meeting.

The EC unanimously passed a motion to formally waive notice of the meeting.

Motion to waive notice of meeting proposed by Gaurab Raj Upadhaya, seconded by Kenny Huang

2. APNIC NIR Membership Agreement

The APNIC EC unanimously resolved to accept the draft NIR Membership Agreement, as attached, as the standard NIR Membership Agreement to be used for all new NIRs established from this point in time.

Motion to accept the NIR Membership Agreement proposed by Kenny Huang,

seconded by Che-Hoo Cheng

3. India NIR Update

In consideration of the EC having made an assessment of the capability of the applicant such that it has been judged to meet the full set of criteria for recognition as a National Internet Registry, the APNIC EC unanimously resolved to recognise National Internet Exchange of India as the operator of the National Internet Registry for India, effective as from the signing of the NIR Membership Agreement with APNIC.

Motion to recognise the India NIR proposed by Gaurab Raj Upadhaya, seconded by Kenny Huang

4. AOB

There were no items of other business.

Meeting closed: 20:00 (UTC+0530) Thursday 1 March 2012

Standard APNIC NIR Membership Agreement

General details

Member's details

Name of organization: _____

Address for notices and legal correspondence:

a) Street or postal address:

b) Email address:

Country or Economy: _____

Following details to be inserted by APNIC Pty Ltd

Account name (as assigned by APNIC Pty Ltd):

Membership date: _____

Renewal dates: _____

Recitals

- A. APNIC Pty Ltd ("the Company") is a non-profit proprietary limited company incorporated under Australian law.
- B. The Company is committed to acting in accordance with the interests and wishes of its membership in pursuing the following objectives:
- To support APNIC Members in fulfilling their responsibilities as managers of Internet resources;
 - To promote the representation of the APNIC membership and the Internet community of the Asia Pacific region by ensuring open and transparent communications and consensus-driven decision-making processes;
 - To promote responsible management of Internet resources throughout the Asia Pacific region, as well as the responsible development and operation of Internet infrastructures;
 - To promote and advance technical policy development in relation to APNIC services, and to Internet resource management in general;
 - To provide high-quality Internet resource management services to APNIC Members, namely resource allocation services, registration and database services, and membership administration and support services;
 - To assist Internet development activities in the Asia Pacific region, relating to the above objectives.
- C. Under the Company's Articles of Association (Article 9.3), the Company has the power to establish, regulate, and delegate certain

powers to a Special Committee. The Company has established a Special Committee called APNIC, referred to here as "the Special Committee".

- D. The Special Committee is subject to the Company's Articles of Association and governed by By-laws (created under Article 9.4). The organizational structure of the Special Committee includes Members, General Meetings, an Executive Council (appointed by the Members), and a General Secretariat (the Company's staff).
- E. A category has been established within the APNIC membership for National Internet Registries (NIRs), which serve organizations within their respective countries or economies. NIRs provide procedures and services that take account of local cultural differences, while operating in a way that remains consistent with regional and global resource management policies.
- F. In consideration of the Company accepting the Applicant as a Member of the Special Committee and recognizing the Member as the NIR for the economy listed in this agreement, and the Member agreeing to pay all relevant Membership Fees, the Company and the Member agree that the following terms will govern their relationship.

1 Definitions

The definitions and interpretation provisions of the APNIC Definitions Document (available at the Company's website at <<http://www.apnic.net>>) apply to this agreement.

2 Term

2.1 Commencement & term

This agreement commences upon the membership date and is effective for one year. Upon the commencement of this agreement, and during the term of this agreement (including any renewed term), the Company recognizes the Member as the NIR for the country or economy specified in this agreement.

2.2 Membership fees and renewals

- (a) The Company will invoice the Member in accordance with the Fee Schedule upon signing this agreement, then annually thereafter. The Member must pay the invoiced fee to the Company, before the due date for payment.
- (b) The Member may renew its membership by paying the Company the renewal fee by the due date. By renewing its membership, the Member will be deemed to have agreed to the terms of the Standard APNIC NIR Membership Agreement as it exists at the time of renewal.

2.3 Termination

- (a) The Company may terminate this agreement in any of the following circumstances:
 - (1) The Member fails to renew its membership within 30 days of the due date;
 - (2) The Members fails or becomes unable to comply with any of its obligations set out in this agreement;
 - (3) The governmental endorsement of the Member to act as the NIR for its country or economy is withdrawn;
 - (4) The Member experiences an insolvency event as

defined in the APNIC Documents;

- (5) The Member organization undertakes any change to its nature, constitution or circumstances, which puts it in breach of this agreement or any APNIC Document;
 - (6) The Member commits a substantial breach of this agreement or any APNIC Document.
- (b) In relation to circumstances described in clause 2.3(a)(1), 2.3(a)(2), 2.3(a)(3) or 2.3(a)(4), the Company may immediately terminate the agreement by written notice to the Member, and revoke all of the Member's rights under the APNIC Documents.
- (c) In relation to circumstances described in clause 2.3(a)(5) or 2.3(a)(6), the Notice, Response, and Appeal provisions of clause 4 shall apply.
- (d) Upon termination:
- (1) The Company has the right to reinstate the membership of the members of the NIR, as Members of the Company, provided that such members enter into a Membership Agreement with the Company; and
 - (2) At the Company's request, the Member must give all reasonable assistance to the Company to facilitate the efficient and effective transfer of the membership of the members of the NIR, to the Company.
- (e) For clarity, the Member's obligations in clause 2.3(d)(2) survive the termination of this agreement.

3 Obligations

3.1 The Company's obligations

- (a) The Company must:
- (1) Establish and maintain mechanisms which support open communications within the Asia Pacific Internet community, for the development of policies and procedures relating to Internet resource management;
 - (2) Promote and support training and educational activities relating to development of Internet services and responsible management of Internet resources;
 - (3) Undertake other activities as required by the Members in support of Internet development within the Asia Pacific region;
 - (4) Consider all requests relating to the operations of the Company that are made by Members either directly or through the Executive Council;
 - (5) Ensure that the Executive Council considers all requests relating to the operations of the Company that are referred to it either by the Members directly or through the Company;
 - (6) Provide rights and services (including delegated resources) to the Member in accordance with the APNIC Membership Schedule and other APNIC Documents;
 - (7) Not disclose to any person (except to the General Secretariat, Internet Administration Authorities,

staff and contractors performing necessary work for APNIC who sign a non-disclosure agreement, or as legally required to do so) any confidential information which the Member provides to the Company;

- (8) Maintain the APNIC Documents in accordance with the Document Review Policy, and make all reasonable efforts to keep current versions of those documents publicly available on the Company's website;
- (9) Recognize and recommend the Member as the chosen NIR for the country or economy concerned and as the registry of choice for ISPs, end users and other customers in the NIR's country or economy.

(b) The Member acknowledges that the Company:

- (1) Is not under any obligation to provide any registration or other services to the Member; and
- (2) May suspend the provision of any registration or other services to the Member,

if, at any time, the Company reasonably considers that the Member's organizational or technical capacity is inadequate, for it to thoroughly implement all aspects of the Company's address management policies.

3.2 Member's obligations

The Member must:

- (a) Promptly pay all fees and charges due to the Company in accordance with the Fee Schedule;
- (b) Not provide any information to the Company or the Special Committee which is false or misleading;
- (c) Inform the Company as soon as possible of any changes in material information which the Member has previously supplied to the Company or the Special Committee;
- (d) Comply with this agreement and all APNIC Documents, including "Criteria for the recognition of NIRs in the APNIC region" and "Operational policies for National Internet Registries in the APNIC region" as amended from time to time;
- (e) Enter into a formal membership agreement or other suitable contractual arrangement with its own members, requiring its members to comply with all APNIC Documents and other address management policies, and to take all reasonable steps to enforce compliance with such agreement or arrangement;
- (f) Provide to the Company on request, material evidence of compliance with the terms of this agreement and all APNIC Documents and policies as amended from time to time;
- (g) Guarantee the freedom of Local Internet Registries (LIRs), ISPs, and end users in their country or economy to choose between the Company and the Member as the registry from which they will receive Internet Resources.

3.3 Liability and indemnity

- (a) The Member and the Company acknowledge that the following clauses 3.3(b) and 3.3(c) are essential in order to protect the membership as a whole and the Company's ability to pursue the aims expressed in

Recital B.

- (b) To the extent permitted by law, the Company excludes all liability to the Member arising out of or in connection with this agreement, the APNIC Documents or delegated resources. This exclusion applies, without limitation, to all liability in contract or tort for actions or omissions of the Company or the Special Committee and their employees, agents, and contractors, but does not apply to liability arising directly from:
 - (1) Personal injury, including sickness and death;
 - (2) Loss of, or damage to, tangible property (including both the property of the Member and third party property);
 - (3) An unintentional infringement of intellectual property rights (other than any passing off, infringement of patent or trade secret, or legal proceedings or enforcement proceedings in the United States and/or Canada in respect to the infringement of intellectual property rights);
 - (4) A breach of confidentiality or privacy,

to the extent caused or contributed to by any act or omission of the Company or the Special Committee and their employees, agents, and contractors.
- (c) The Member indemnifies the Company against the full amount of all expenses, losses, damages, and costs that the Company may incur as a result, whether directly or indirectly, of any breach of this agreement or any APNIC Document by the Member, its employees, contractors, or agents.
- (d) For clarity, this clause 3.3 survives the termination of this agreement.

4 Notices, responses, and appeals

4.1 Notice

- (a) If the Company reasonably believes that the Member has breached this agreement or any of the APNIC Documents then the Company must send a written notice ("Notice") to the Member.
- (b) The Notice must:
 - (1) Describe the nature of the breach that the Company believes has occurred, and the course of action necessary to remedy the breach;
 - (2) Specify a reasonable period for the Member to provide a response to the breach notice within the terms of clause 4.2, or to take the action necessary to remedy the breach; and
 - (3) Advise the Member of the Company's intended action if the breach is not remedied.

4.2 Response to Notice

The Member must, by the time specified in clause 4.1(b)(2) send the Company a response to the Notice detailing that either:

- (a) The Member has not committed the breach; or
- (b) The Member has remedied the breach in accordance with clause 4.1(b)(1); or
- (c) Exceptional circumstances exist which justify the Company retracting or revising the Notice.

4.3 Subsequent actions

If the period specified in clause 4.1(b)(2) expires and, taking full account of any responses received under clause 4.2, the Company reasonably believes that the breach has not been remedied then the Company may, in its discretion, either send the Member:

- (a) A subsequent Notice as described in clause 4.1(b); or
- (b) A written notice immediately revoking some or all of the Member's rights under the APNIC Documents (including, without limitation, delegated resources); and/or immediately terminating this Membership Agreement.

4.4 Appeal to Executive Council

If the Member believes that the Company has failed to adequately consider all relevant circumstances or has acted unreasonably in sending a revocation notice under clause 4.3(b), then the Member may appeal to the Executive Council, which must consider the appeal within 30 days. If the Executive Council decides that the Member's appeal is justified then the Company will withdraw the revocation notice.

4.5 Acknowledgment by Member

The Member acknowledges that:

- (a) If the Member receives a notice under clauses 2.3 or 4.3(b) then the Member must immediately cease using the delegated resources specified in the notice; and
- (b) If the Member fails to comply with clause 4.5(a), then subject to the court's discretion, the Company may by an injunction or similar remedy restrain the Member from using the relevant delegated resources.

5 General

5.1 APNIC Documents

The Member agrees that:

- (a) The APNIC Documents may be amended from time to time in accordance with the Document Review Policy;
- (b) Any such amendments are binding upon the Member;
- (c) APNIC Documents as they exist from time to time form an integral part of and apply fully to this agreement; and
- (d) If the membership is either terminated or not renewed, the Member shall continue to be bound by the provisions of this agreement and other APNIC Documents to the extent that the provisions relate to the use of resources or disputes arising from this agreement or any other APNIC documents.

5.2 Assignment and Sub-contracting

- (a) The Member must not, without the prior written consent of the Company:
 - (1) Sell, transfer, delegate, assign, sub-contract, licence; or
 - (2) Mortgage, charge or otherwise encumber,
 any right under this agreement, or permit another body to assume or perform any obligation under this agreement.
- (b) The Member's obligations to the Company under this agreement remains, and is not reduced, by the Member doing any of the things described in clauses 5.2(a)(1) or 5.2(a)(2), even if the Company gives its consent to the Member under clause 5.2(a).

5.3 Governing law

The Member agrees that:

- (a) This agreement is governed by the laws of Queensland, Australia.
- (b) Subject to the Dispute Resolution Document, the Member and the Company irrevocably submit to the exclusive jurisdiction of the courts of Queensland, Australia.

5.4 To the extent not excluded by law

The rights, duties and remedies granted or imposed under the provisions of this agreement operate to the extent not excluded by law.

5.5 Order of precedence

To the extent of any inconsistency, the terms and conditions contained within this agreement will prevail over any other Membership Agreement executed between the parties.

Executed as an agreement:

Signed for
[insert company name of Member]

by its authorized representative:

in the presence of:

Signature of authorized representative

Signature of Witness

Full name of authorized representative
(please print)

Full name of Witness
(please print)

Official company title of authorized representative
(please print)

Signed for APNIC Pty Ltd

by its authorized representative:

in the presence of:

Signature of authorized representative

Signature of Witness

Full name of authorized representative
(please print)

Full name of Witness
(please print)

Official company title of authorized representative
(please print)