

APNIC EC Meeting Minutes

Teleconference
Thursday 24 April 2008

Meeting Start: 3:00 pm (UTC +1000)

Present

Akinori Maemura
Che-Hoo Cheng
Kusumba Sridhar
Ming-Cheng Liang
Ma Yan
Paul Wilson

Geoff Huston
Irene Chan

Apologies

Kuo-Wei Wu
Mao Wei

Agenda

1. Roll Call and Agenda bashing
2. Minutes of Last Meeting and Matters Arising
3. Finance Report
4. Director-General's Report
5. Legacy IPv4 Space
6. Conflict of Interest Considerations
7. APNIC 28 Location and Scheduling
8. Joint RIR Board Meetings
9. APNIC Position on ICANN contract and NRO incorporation
10. APNIC EC selected member of the NRO Number Council
11. AOB

Minutes

1. Roll Call and Agenda bashing

There were no changes to the agenda.

2. Minutes of Last Meeting and Matters Arising

The minutes from the meeting of 20 March 2008, as amended, were approved.

Action ec-08-013: Secretariat to publish minutes of 20 March 2008 meeting

Review of action items:

- Action ec-08-006:** Secretariat to advise KPMG of the adoption of Phase II of the fees consultancy
completed
- Action ec-08-007:** EC Chair to advise APNIC Fees WG on the current status of the fees study
completed
- Action ec-08-009:** EC to evaluate CNNIC response at the April 2008 EC meeting
deferred to May 2008 EC meeting
- Action ec-08-010:** Secretariat to prepare a briefing paper on the IPv6 Per-Address Fee schedule
to be incorporated into KPMG Fee Study
- Action ec-08-011:** Secretariat to obtain legal advice concerning conflict of interest for EC members
completed
- Action ec-08-012:** Secretariat to publish minutes of 26 February 2008 meeting
completed

3. Finance Report

The EC considered the February 2008 March Financial Report (attached). It was noted that review of the 2008 budget will be scheduled for the next EC meeting to take into account a number of additional activities and some further corrections to some financial estimates.

The EC accepted the monthly financial report for March 2008.

4. Director-General's Report

The D-G noted that, as chair of the NRO EC, he chaired a meeting of the RIR Boards at the ARIN meeting in April 2008. Matters arising from this meeting are scheduled on the agenda for this EC meeting.

The D-G proposed that the next step in the study of the feasibility of a APNIC branch office would be the inclusion of this matter as a focus topic in the 2008 / 2009 APNIC membership survey, providing a metric of the level of membership interest in such an initiative. The EC considered this topic and agreed to include this topic in the next membership survey at this point in time.

The D-G has met with KPMG and initiated the second phase of the Fees Study, with the work proposed to commence as of 1 May 2008. It is envisaged that this activity will include an EC retreat in July 2008, and an objective of producing a report to the EC on 1 November 2008.

It was reported that APNIC will be undertaking the secretariat function for the Information Society Innovation Funds (ISIF) project for 2008 and 2009. All of APNIC's costs associated with this activity are covered by ISIF.

On HR matters it was reported that Syliva Cadena has been hired as the ISIF project officer.

5. Legacy IPv4 Space

The EC considered a draft Memorandum of Understanding regarding an inter-RIR agreement relating to the disposition of returned IPv4 address space that was originally assigned to end users prior to the adoption of the RIR framework ("legacy" address space) (attached).

The topic is to be discussed further on the EC mailing list.

6. Conflict of Interest Consideration

The EC considered legal advice on the topic of provisions for managing conflict of interest situations on the part of EC members (attached). The AC agreed to proceed with implementation of the recommendations of this report.

Action ec-08-014: Secretariat to implement Conflict of Interest recommendations.

7. APNIC 28 Location and Scheduling

The EC determined to defer consideration of the proposal to host APNIC 28 until the May EC meeting.

8. Joint RIR Board Meetings

The notes from the April Joint RIR Boards meeting held at the ARIN meeting in April have been circulated. It was proposed that APNIC endeavour to send up to 2 Board members to each of forthcoming RIR meetings to continue this level of contact. The EC requested that dial-in options also be made available for such meetings. The budgetary implications of this initiative would be included in the revised APNIC 2008 budget.

9. APNIC Position on ICANN contract and NRO incorporation

The EC noted the commitment made in the exchange of letters with ICANN regarding the intent to work towards a formal relationship with ICANN within one year of the exchange of letters. The EC reiterated its previous commitment of support for a formal relationship with ICANN and its support for incorporation of the NRO, and requested that this be made known to the Boards of the other RIRs.

Action ec-08-015: Secretariat to draft note of APNIC EC support for NRO incorporation and formal contract with ICANN.

10. APNIC EC selected member of the NRO Number Council

The EC passed a motion to appoint Tomohiro Fujisaki to serve on the NRO Number Council for the remainder of 2008, following the resignation of Toshiyuki Hosaka.

11. Next meeting

15 May 2008 (Teleconference)

Meeting closed: 4:45 pm (UTC+1000)

Summary of Action Items

- Action ec-08-013:** Secretariat to publish minutes of 20 March 2008 meeting
- Action ec-08-014:** Secretariat to implement Conflict of Interest recommendations.
- Action ec-08-015:** Secretariat to draft note of APNIC EC support for NRO incorporation and formal contract with ICANN.



APNIC

Monthly financial report (in AUD)

For the month ending March 2008

Asia Pacific Network Information Centre

1. Balance Sheet

Statement of Financial Position (AUD)					
	31/03/2008	% of Total Asset or Liab+Equity	% change from 31/12/2007	Year-End 2007	Year-End 2006
CURRENT ASSETS					
Cash	6,525,700	43%	-1.5%	6,626,341	5,696,300
Term deposit investment	2,300,000	15%	0.0%	2,300,000	3,300,000
Receivables	1,553,343	10%	110.5%	737,859	1,474,467
Others	407,413	3%	25.1%	325,739	347,259
TOTAL CURRENT ASSETS	10,786,456	71%	8.0%	9,989,939	10,818,026
NON-CURRENT ASSETS					
Other financial assets	1,066,664	7%	-12.8%	1,222,666	1,148,369
Property, plant and equipment	1,583,791	10%	-5.0%	1,667,091	1,494,461
Long term deposit investment	1,700,000	11%	0.0%	1,700,000	2,000,000
TOTAL NON-CURRENT ASSETS	4,350,455	29%	-5.2%	4,589,758	4,642,830
TOTAL ASSETS	15,136,911	100%	3.8%	14,579,696	15,460,856
CURRENT LIABILITIES					
Payables	503,744	3%	-55.8%	1,139,160	1,458,382
Provisions	918,683	6%	3.4%	888,178	707,834
Unearned revenue	4,704,729	31%	23.2%	3,817,898	4,271,275
TOTAL LIABILITIES	6,127,156	40%	4.8%	5,845,236	6,437,490
EQUITY					
Share capital	1.00	0%	0.0%	1.00	1.00
Reserves other financial assets investment *	(66,750)	0%	-173.5%	90,827	143,620
Retained earnings	9,076,504	60%	5.0%	8,643,633	8,879,745
TOTAL EQUITY	9,009,755	60%	3.2%	8,734,461	9,023,366
TOTAL LIABILITIES & EQUITY	15,136,911	100%	3.8%	14,579,696	15,460,856

Notes:

For comparison purposes the following exchange rates apply:

- (1) ATO official monthly average rate for March 2008 is 0.9365
- (2) ATO official notes spot rate for 31 Dec 2007 was 0.8875 and for 31 Dec 2006 respectively 0.7938

* The negative value in "Reserves on other financial assets investment" is due to the revaluation of our investment in unit trusts based on the market valuation as at the end of March.

2. Profit and Loss Statement

2.1 Expenses

The approved Budget for 2008 has been incorporated into this report and compared with the actual year to date account balances at the end of March 2008.

EXPENSES (AUD)	Mar-08 Actual	YTD Actual	YTD %	Budget 2008	YTD (**) Budget 2008	YTD Budget Variation	YTD Budget Variation %
Bank charges	5,239	17,414	0.8%	83,573	20,893	(3,479)	-16.7%
Communication expenses	14,722	44,379	2.1%	231,783	57,946	(13,566)	-23.4%
Computer expenses	7,713	22,130	1.1%	162,390	40,598	(18,467)	-45.5%
Depreciation expense	50,664	154,631	7.4%	641,480	160,370	(5,739)	-3.6%
Sponsorship and Publicity expenses	266	27,353	1.3%	190,883	47,721	(20,368)	-42.7%
Doubtful debt expenses	0	57	0.0%	20,126	5,032	(4,974)	-98.9%
ICANN contract fee	71,250	71,250	3.4%	285,000	71,250	0	0.0%
Insurance expense	10,475	32,135	1.5%	121,526	30,382	1,754	5.8%
Meeting and training expense	17,784	25,574	1.2%	183,841	45,960	(20,386)	-44.4%
Membership fees	4,438	13,357	0.6%	69,496	17,374	(4,017)	-23.1%
Miscellaneous expenses	14	707	0.0%	5,534	1,384	(677)	-48.9%
Office operating expenses	8,205	21,639	1.0%	88,616	22,154	(515)	-2.3%
Postage & delivery	7,807	12,353	0.6%	36,586	9,147	3,206	35.1%
Printing & photocopy	452	12,970	0.6%	31,526	7,882	5,089	64.6%
Professional fees	41,204	67,202	3.2%	544,172	136,043	(68,841)	-50.6%
Recruitment expense	6,029	32,060	1.5%	90,503	22,626	9,435	41.7%
Rent and outgoings	40,805	120,525	5.8%	666,245	166,561	(46,037)	-27.6%
Salaries and personnel expenses	366,311	1,075,217	51.7%	5,402,753	1,246,789	(171,573)	-13.8%
Staff Training/conference expenses	16,094	36,231	1.7%	84,305	21,076	15,155	71.9%
Tax expense	0	0	0.0%	44,928	11,232	(11,232)	-100.0%
Translation expenses	0	0	0.0%	73,871	18,468	(18,468)	-100.0%
Travel expenses	118,838	291,975	14.0%	1,439,033	359,758	(67,783)	-18.8%
TOTAL EXPENSES	788,307	2,079,162	100.0%	10,498,170	2,520,643	(441,482)	-17.5%

2.2 Revenue

REVENUE (AUD)	Mar-08 Actual	YTD Actual	YTD %	Budget 2008	YTD (**) Budget 2008	YTD Budget Variation	YTD Budget Variation %
Interest income	138,273	176,410	7.0%	721,997	180,499	(4,089)	-2.3%
IP Resource application fees	101,408	293,119	11.7%	963,960	240,990	52,129	21.6%
Membership fees	518,486	1,541,561	61.4%	6,962,908	1,740,727	(199,166)	-11.4%
Non-members fees	10,419	32,079	1.3%	198,316	49,579	(17,500)	-35.3%
Per Allocation fees	196,877	454,894	18.1%	1,912,246	478,062	(23,168)	-4.8%
Reactivation fees	0	1,268	0.1%	17,936	4,484	(3,216)	-71.7%
Sundry income	1,575	18,880	0.8%	214,885	53,721	(34,841)	-64.9%
Foreign Exchange gain/(loss)	(366)	(6,178)	-0.2%	0	0	(6,178)	0.0%
TOTAL REVENUE	966,670	2,512,033	100.0%	10,992,248	2,748,062	(236,029)	-8.6%

2.3 Operating Profit/ Loss

Revenue and Expenses (AUD)	Mar-08 Actual	YTD Actual	YTD %	Budget 2008	YTD (**) Budget 2008	YTD Budget Variation	YTD Budget Variation %
Total Revenue	966,670	2,512,033	100%	10,992,248	2,748,062	(236,029)	-8.6%
Total Expenses	788,307	2,079,162	100%	10,498,170	2,520,643	(441,482)	-17.5%
OPERATING PROFIT/ (LOSS)	178,363	432,871		494,077	227,418	205,453	8.9%

Notes:

(1) The significant variance of (\$171,573) reported for Salaries and wages is due to the following:

- Significant amounts of annual leave taken by APNIC staff during January, all of which had been accrued and expensed in previous years
- The budget includes allowance for existing positions still not filled as at the end of March.
- The annual budget includes an allowance for average annual salary movement of 5%

(**) YTD Budget and Variation values are based on a prorated calculation of the annual budget.

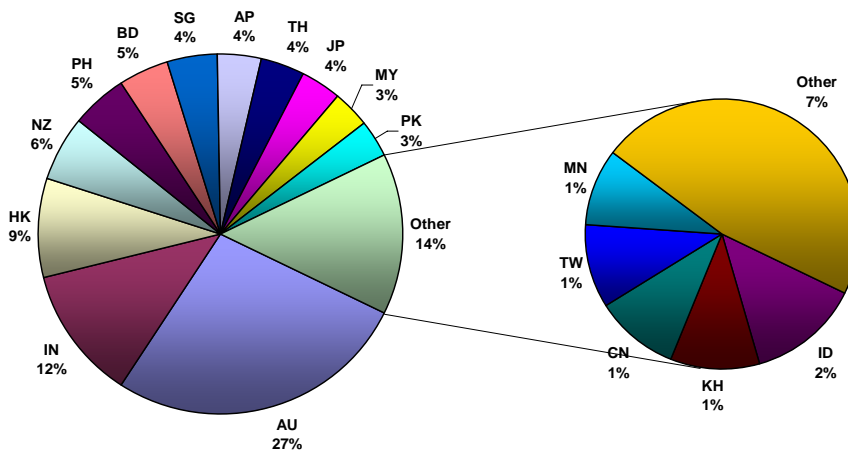
3. Membership

3.1 Membership statistics

At the end of March 2008, APNIC had a total of 1,675 members serving 51 economies. There were 39 new members; whilst 15 member accounts were closed during the month. The economies in which APNIC has the highest number of members are Australia (451 members), India (202 members), and Hong Kong (150 members).

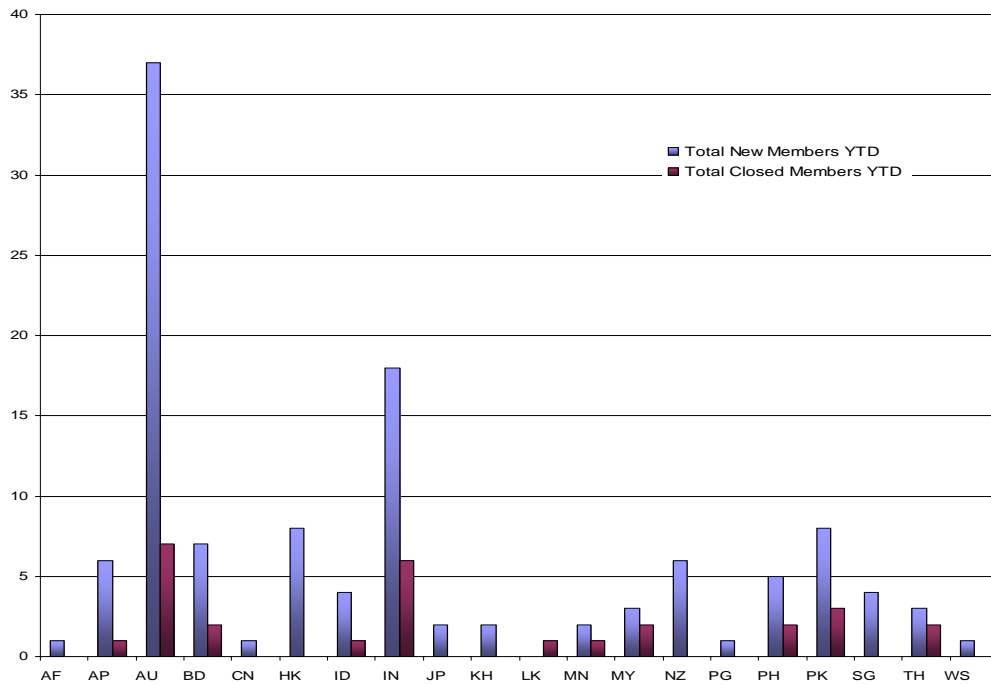
3.1.1 Membership by Economy

The following chart shows APNIC membership distribution by economy.



3.1.2 Year to date movement by Economy

The chart below illustrates by economy, the number of members that have joined or closed their membership year to date in 2008. The highest numbers of new members are from Australia (37), followed by India (18). The majority of the closures are due to members are either non contactable, or the business is no longer operating.



3.1.3 Membership by Category

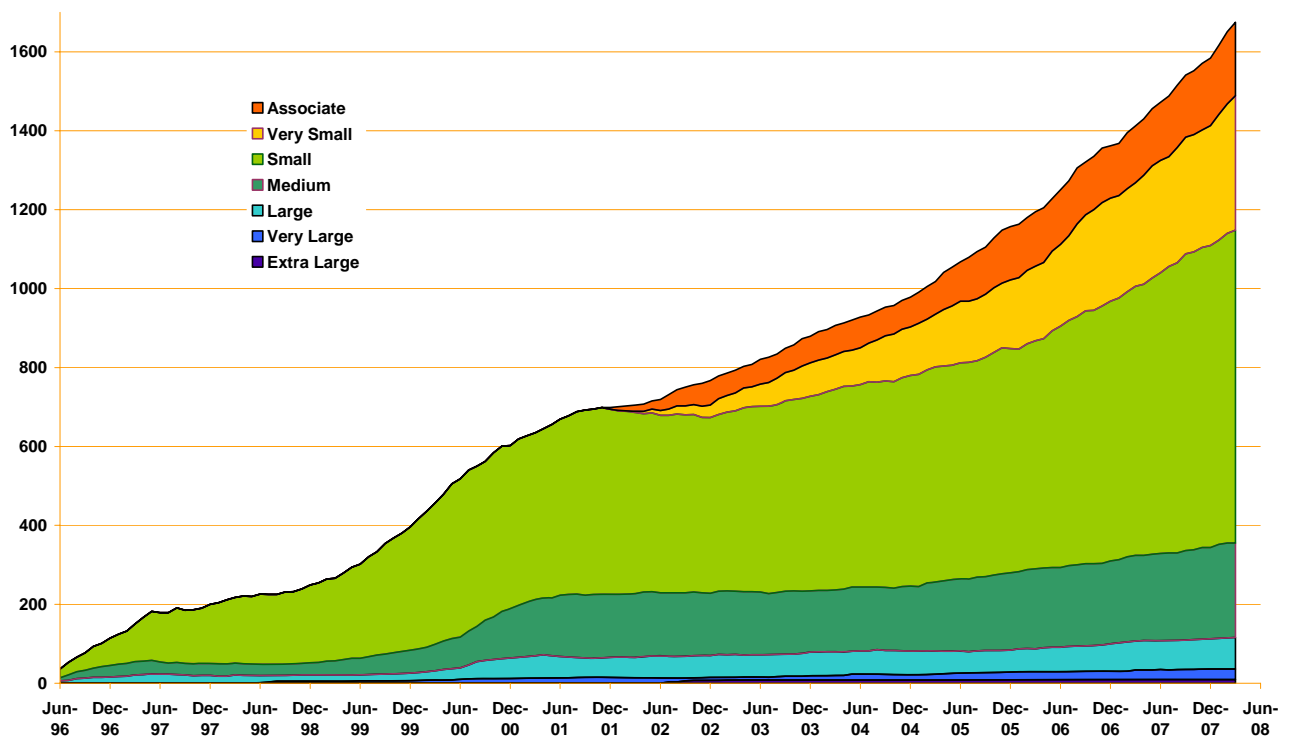
The following table shows the monthly changes in membership and provides an analysis of the membership tiers of APNIC; this table shows that 47% of APNIC members are included in the Small membership tier.

Membership	Total	New	(Closed)	Size	Total YTD	Total YTD (%)
	Feb-08	Mar-08	Mar-08	Change Mar-08	Mar-08	Mar-08
Extra Large	9	0	0	0	9	1%
Very Large	27	0	0	0	27	2%
Large Member	78	1	0	1	80	5%
Medium	241	0	(3)	1	239	14%
Small	785	7	(4)	5	793	47%
Very Small	328	13	(2)	2	341	20%
Associate	183	18	(6)	(9)	186	11%
TOTAL	1651	39	(15)	0	1675	100%

The table below compares the actual growth of membership at the end of March 2008 with the budgeted annual growth on a monthly pro-rata basis.

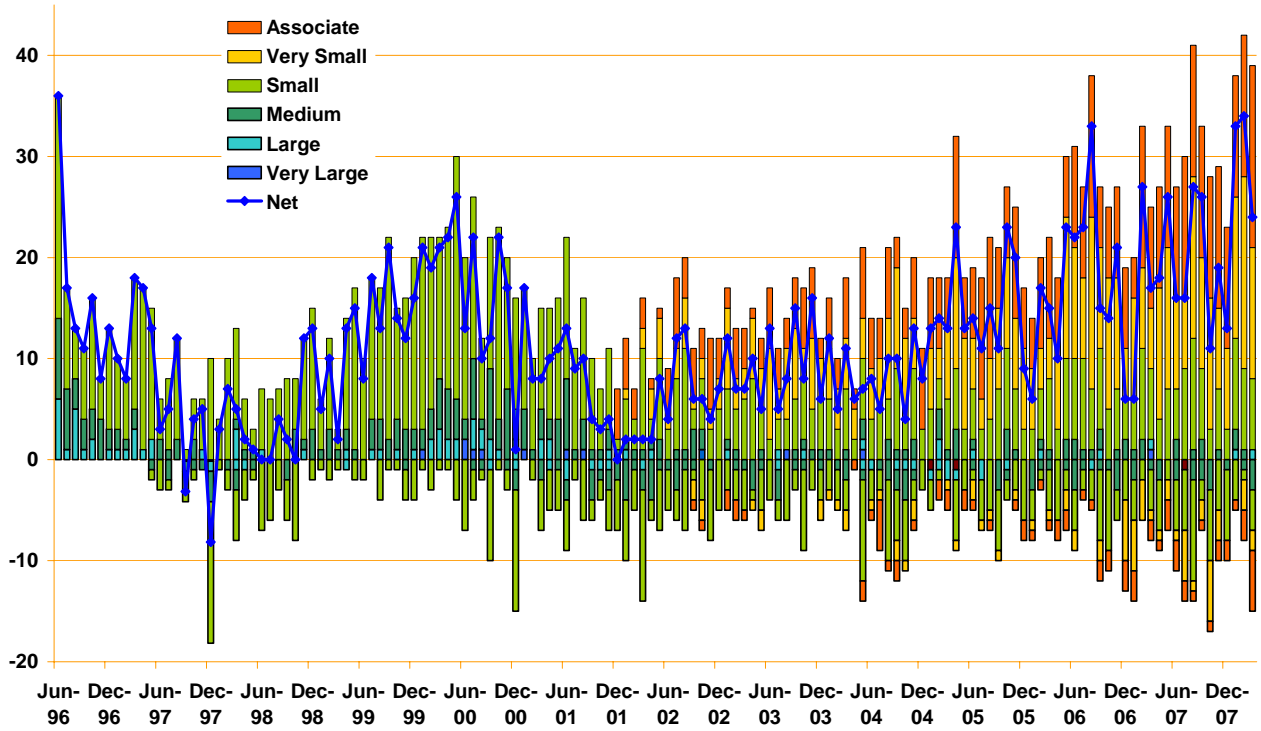
Membership	Actual Total EOY 2007	Actual Total YTD Mar-08	Actual Growth YTD 2008	Budgeted Total EOY 2008	Budgeted Growth EOY 2008	Budgeted Growth YTD (*)	Variation Actual vs. Budget (*)
Extra Large	9	9	0	9	0	0	0
Very Large	27	27	0	34	7	2	-2
Large Member	77	80	3	83	6	2	2
Medium	231	239	8	259	28	7	1
Small	765	793	28	894	129	32	-4
Very Small	304	341	37	405	101	25	12
Associate	171	186	15	219	48	12	3
TOTAL	1584	1675	91	1903	319	80	11

The graph below is based on historical figures of the total number of members since the establishment of APNIC's membership system in 1996. This graph illustrates the strong growth in APNIC membership.



3.1.4 Membership Movement

The graph below illustrates the monthly movements of APNIC membership since 1996.



DRAFT Memorandum of Understanding

This agreement, among the Regional Internet Registries (RIRs) as members of the Number Resource Organisation (NRO), reaffirms the commitment of its signatories to the responsible management of Internet resources, and in particular of IPv4 address space known as Legacy Address Space (defined below).

Whereas the RIRs:

- are formed and act in the common interests both of their constituent community members and of the global Internet community;
- have defined their relationship under the NRO MoU, whose provisions also govern this agreement;
- are each charged with responsibility for the management of Internet number resources within their respective regions;
- undertake shared responsibility for IPv4 "Legacy Address Space", which is here defined as the address space assigned prior to the formation of the RIRs (including all former Class A address space, and the class B and C blocks previously designated "various registries" by the IANA);
- may in the process of that management incidentally or actively recover some part of the Legacy Address Space from parties to which it was delegated;
- recognise that responsibility for such recovered address space continues to reside with the RIRs jointly, rather than with the individual RIR concerned;
- and recognise that the future redelegation of such recovered address is a matter of common interest to all RIR constituents and stakeholders;

Therefore agree:

- that concerted efforts will be made to recover Legacy Address Space which is currently unclaimed, unused, or no longer required by the parties to which it was delegated;
- that after any such incidental or deliberate recovery, the subject address space will be held by the RIR, pending a joint decision on its redelegation by the RIRs or NRO (except in the case of former Class A blocks, which will be returned to the IANA and then available for reallocation under the appropriate global policy);
- that such address space will not be redelegated by any RIR before such a decision is made;

And commit as follows:

- to recognise a request from any RIR to commence discussions towards this decision; and
- to make concerted efforts from that time towards a joint agreement on an appropriate mechanism for redelegation of an agreed portion of recovered address space among the RIRs, and to implement such an agreement in a timely manner;
-

And, finally, also confirm that nothing in this agreement can override the respective regional policies or policy processes of any RIR.

Our ref: MDE:0396716

25 March 2008

Paul Wilson
Director General
Asia Pacific Network Information Centre
PO Box 2131
MILTON QLD 4064
By email: pwilson@apnic.net

Dear Paul

APNIC Pty Ltd - Officers duties and procedures regarding conflicts of interest

You have asked us to advise you regarding conflict of interest issues for APNIC officers, particularly members of the Executive Council (**EC**) arising as a result of their dual roles as officers of APNIC and employees of APNIC member organisations.

Specifically, you have asked us the following questions:

- 1 Are there different types of conflicts of interest for APNIC EC members? If so, how should each type be managed and recorded?
- 2 Will declarations be required to fulfil disclosure obligations?
- 3 If declarations are required, how frequently do these declarations need to be made?
- 4 How should EC member declarations of conflicts of interest be recorded by APNIC?

As previously stated in our advice dated 17 September 2007, members of the EC will be deemed 'officers' both under the Corporations Act 2001 (Cth) (**Corporations Act**) and at common law, and as such, will have specific obligations and liabilities to avoid conflicts of interest and to act in good faith and in the best interests of APNIC Pty Ltd.

Executive Summary

In answer to your specific questions (1) - (4) noted above, we summarise the following:

- 1 There will be 'general' and 'specific' types of conflicts of interest for APNIC EC members.
 - 1.1 'General' conflicts of interest will be those arising solely due to an individual's affiliation with a member organisation which has appointed them to the EC and will be held in common with all other EC members. 'Specific' conflicts of interest will be those that are not held in common with all other EC members and give rise to potential material gain or benefit being enjoyed by the EC member or their member organisation.
 - 1.2 For 'general' conflicts of interest, standing notice should be given of the conflict. For 'specific' conflicts of interest, an EC member should disclose the interest, and then excuse themselves from any discussion or voting on the item in accordance with the procedure listed in the EC Member's Handbook.
- 2 Declarations of potential conflicts of interest should be used by APNIC officers to disclose conflicts of interests. We have **attached** a draft form to this advice for your review and consideration.
- 3 Declarations should be made at the commencement of an EC member's term with APNIC. Declarations should also be made throughout any officer's term if any 'specific' conflicts arise or the nature or extent of an already disclosed conflict changes.
- 4 Declarations of 'specific' conflicts of interests should be given at EC meetings and should then form part of the EC minutes of the meeting and also be filed separately in the EC Conflict of Interest Register.

Conflicts of interest under Australian law

The legal framework regarding conflicts of interest in Australia consists of three layers of regulation. These include the statutory obligations imposed by legislation such as the Corporations Act, the common law and any internal company documentation such as Company Bylaws.

Conflicts of interest under the Corporations Act 2001

The Corporations Act sets out statutory provisions that must be strictly adhered to by directors and officers in the avoidance of conflicts of interest.

Directors and officers of corporations have particular statutory obligations to disclose conflicts of interest. These obligations can be found in section 191, which states that if a director or officer has a material personal interest in a matter that relates to the affairs of the company, then this interest must be disclosed.

In relation to officers, the Corporations Act sets out general obligations regarding good faith and use of position. These provisions will be applicable in the context of conflicts of interest regarding officers. The relevant provisions are set out below:

Section 181: Good faith - civil obligations

(1) A director or other officer of a corporation must exercise their powers and discharge their duties :

(a) in good faith in the best interests of the corporation;

(b) for a proper purpose.

Generally speaking, a duty of good faith under the law involves the requirement of "honesty in fact." Examples of the duty for corporate officeholders include that officers must exercise their powers in the interests of the company, must not misuse their powers, must avoid conflict between their personal interests and those of the company, and must not take advantage of their position for personal benefits.

The additional requirement that an action be "in the best interests of the corporation," requires consideration of the constituencies that may be relevant in the situation. This can include groups such as shareholders, creditors, employees or members. In APNIC's particular circumstance, the "best interests of the corporation," would not be considered solely as the best interests of the shareholder, but would include the best interests of all the membership.

Section 182: Use of position - civil obligations

(1) A director, secretary, other officer or employee of a corporation must not improperly use their position to:

(a) gain an advantage for themselves or someone else; or

(b) cause detriment to the corporation.

The above provisions will be relevant where an officer with a conflict of interest acts with preference to his gain or advantage or resultant detriment to the corporation. In these circumstances, the officer could be guilty of a breach of the Corporations Act.

Conflicts of interest under the common law

In addition to the obligations under the Corporations Act, the common law also imposes duties on officers. These duties reflect that officers are considered by the law to be in a fiduciary relationship with the corporation. A fiduciary relationship under the law is one of trust and confidence, and a fiduciary has strict obligations to act in the best interests of the other party (in this instance, the corporation).

As such, if a director or officer has a real or substantial possibility of a conflict of interest, under the common law they will be obligated to disclose the nature and extent of the interest to the corporation. Furthermore, depending on the circumstances of the conflict, the director or officer may have a further obligation to take positive steps to protect the company's interests. For example, if the officer is aware, as a result of their conflict of interest, of a potentially detrimental situation for the corporation, it will not be enough to simply disclose their conflict of

interest. In such a situation, they will have a positive obligation to take appropriate action to ensure that the corporation is not placed in a harmful situation.

Conflicts of interest under internal company documentation

There are a number of relevant internal APNIC company documents which discuss officers conflicts of interest. These include the EC Member's Handbook (**the Handbook**) and the APNIC Bylaws (**Bylaws**), both of which outline obligations of officers in relation to conflicts of interest.

EC Member's Handbook

The Handbook clearly states that although the EC is delegated powers from the director of APNIC, EC members have obligations to act honestly and in the best interests of APNIC, and to avoid conflicts of interest.

We do believe that the Handbook should be amended to include a short statement regarding the conflict of interest test that will trigger the necessity for disclosure of EC members conflicts. This statement should follow the 'disclosure test' under the Corporations Act. We would suggest something similar to the following statement:

If an EC member has a conflict of interest, that is, a material personal interest in a matter that relates to the affairs or decisions of the Executive Council of APNIC, then this interest must be disclosed by filling out the conflict of interest declaration attached to this Handbook.

Please note that the use of declarations for disclosure of conflicts of interest is discussed in further detail below.

APNIC Bylaws

The Bylaws also contain directions regarding conflicts of interest for officers. Article 35 of the Bylaws state that members of the EC, "shall serve on the Executive Council in their personal capacity and shall act in the best interests of the APNIC membership and not the Member organisation to which that individual belongs."

Relevantly, the Bylaws also provide for the indemnification and liability insurance for members of the EC. However, before the EC can take advantage of the indemnification, Bylaw 63 requires them to have acted honestly and in good faith, and to have made decisions with a view to serving the best interests of APNIC. This pre-condition to indemnification reflects the pre-conditions to the operation of liability defences under the Corporations Act and to coverage under director and officer liability insurances. Accordingly, if a director or officer does not disclose a conflict of interest then they may lose the benefit of the officer liability insurance and APNIC indemnity.

Conflicts of interest under English law

The relevant legislative framework governing conflicts of interest under English law is the *Companies Act 2006* (**Companies Act**). The Companies Act has similar provisions to the Australian Corporations Act regarding the general duties of directors and officers.

In relation to directors, the Companies Act provides that they have a specific duty to disclose any interest that he or she may have in relation to a proposed transaction and to exercise their powers independently. Furthermore, section 175 of the Companies Act (set out below) states that they also have a duty to avoid conflicts of interest.

Section 175 Duty to avoid conflicts of interest

(1) A director of a company must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.

(2) This applies in particular to the exploitation of any property, information or opportunity (and it is immaterial whether the company could take advantage of the property, information or opportunity).

The English statutory provisions reflect the position of the Australian law regarding the necessity for directors and officers to avoid conflicts of interest and to act in the best interests of the corporation. These provisions also reflect the principles of USA company law including the *Sarbanes-Oxley Act 2002*, also known as the *Public Company Accounting Reform and Investor Protection Act 2002*.

Conflicts of Interest issues for the APNIC EC

Due to the EC being comprised of individuals from member organisations, there will be inherent conflicts of interest that arise due to the decision-making functions of the EC overlapping with EC members employer interests. However, these conflicts will generally fall under two categories, with different recommended disclosure procedures for each.

General Conflicts of Interest

The first category are 'general' conflicts of interest, which are those conflicts held in common with all members of the EC. These conflicts arise for EC members solely as a result of being employees of member organisations and are uniform for all EC members. The nature and extent of these conflicts of interest will be held in common with all other members of the EC and will not be particular to the member organisation to which an individual belongs.

Specific Conflicts of Interest

The second category are 'specific' conflicts of interest and will include any particular conflicts which are not held in common with all other members of the EC. These conflicts can still arise as a result of an individual's employment with a member organisation but will be particular to the individual or member group to which the individual belongs. This would include, for example, where some organisations are associated with National Internet Registries (**NIRs**), which is an affiliation not shared with the general membership, or where an EC member has a personal business interest affected by a particular EC decision.

Best Practice - Procedure for disclosures of Conflicts of Interest for the APNIC EC

General conflicts of interest arising due to membership of the EC

As noted above, there will be general conflicts of interest for EC members arising solely due to an individual EC member's affiliation with their respective member organisations. In these

situations, the nature and extent of the conflict is held in common with all the other members of the EC.

It would be best practice in these situations for each individual EC member to give 'standing notice' of the conflict at the beginning of their term on the EC. The procedure for giving 'standing notice' of a conflict (using the Corporations Act as guidance) would be for an individual EC member to give details of the nature and extent of the interest either orally or in writing. This should occur at an EC meeting or alternatively, should be given to the APNIC Secretary General. If the notice of the conflict of interest is given at an EC meeting then it should be recorded into the minutes of the meeting. If the standing notice is given to the APNIC Secretary-General in writing, it must then be tabled at the next EC meeting.

Standing notice of an interest should occur at the commencement of each members term on the EC and will constitute sufficient notice of the general conflict of interest for the duration of a member's term on the EC. The standing notice would include details of the following:

- The nature of the individual's member organisation and how its nature relates to the decision-making capacity of the EC; &
- The individual's role within their member organisation and any personal interest they have within the organisation.

It is important to note that if any further matters arise that alter the nature or extent of the member's conflict, then this will need to be further disclosed. Whilst the standing notice would constitute sufficient notice of the general conflict interest for the duration of the individual's tenure on the EC, it would not constitute sufficient disclosure if the nature or extent of the interest changed.

Specific conflicts of interest arising for EC members

As noted above, specific conflicts of interest will arise for EC members when a conflict does not arise solely due to their affiliation with a member organisation, which is a conflict that is held in common between all EC members. Examples of specific conflicts will include when an individual EC member has a personal business interest in a transaction affected by an EC decision or where their member organisation has an affiliation with an NIR.

The EC Handbook contains procedures for the declaration of conflicts of interest in the conduct of business for the APNIC EC. These procedures will be relevant for disclosure of specific conflicts and should be followed. Article 10, Part 4 of the EC Handbook states the following:

All elected members of the Executive Council serve on the Executive Council in their personal capacity and shall act in the best interests of the APNIC membership and not the member organisation to which that individual belongs.

An Executive Council member may declare a conflict of interest in the consideration of an item of business for the Executive Council.

Council Members declaring a conflict of interest will excuse themselves from the discussion of the item and abstain from the vote on any motion related to the item.

The Member's declaration of conflict of interest and the abstinence from any vote will be recorded in the minutes of the Executive Council meeting.

We believe the Handbook should be amended to ensure that it is clear that EC members have a mandatory obligation to disclose specific conflicts of interest. Therefore, the second paragraph of Article 10 of the Handbook should read as follows:

An Executive Council member must declare any conflict of interest. This should occur in the consideration of an item of business for the Executive Council.

If this amendment is made then it will be clear to EC members that the procedure when a specific conflict of interest arises is to declare it to the EC meeting, excuse themselves from the discussion of the item and then abstain from any vote on the motion.

These 'specific' conflicts should form part of the EC minutes of the meeting and also should be filed separately in the EC Conflict of Interest Register.

Further relevant duties for APNIC EC members

It is also pertinent to emphasise that in instances where APNIC EC members have conflicts of interest, these individuals must ensure they act in accordance with their other duties as officers of APNIC. EC members have duties to ensure that they act in good faith in the best interests of APNIC and that they do not improperly use their position to gain an advantage for themselves or their employer organisations.

With particular reference to instances where EC members have a conflict of interest, as officers of APNIC it will be critical that they evaluate EC decisions without any bias to their own position. Where a conflict has already been correctly disclosed, the critical issue that will expose an officer to liability will be whether they allowed this conflict to affect their decision-making to ensure a personal benefit for themselves or their member organisation.

Recommendations

All conflicts of interest must be disclosed by APNIC officers to ensure compliance with their duties. Conflicts of interest should be disclosed by way of declaration and APNIC officers must be aware that this is an ongoing process. If an already disclosed conflict of interest changes, then an officer needs to disclose this further change.

Specifically regarding EC members, the recommended disclosure process is as follows:

Inherent conflict of interest - initial term of EC membership

- EC members completing a 'standing notice' of their conflict of interest as an employee of a particular member organisation.
 - This would comprise written notice given by an individual upon their election to the EC of the nature of their member organisation and its relationship with APNIC, and their role within that member organisation.
 - This notice would be in written form, given at the individual's first EC meeting, and would become part of the minutes of the meeting.

- If any aspect of the conflict of interest changes, then the EC member should disclose this change.

Arising conflict of interest - during term of EC membership

If a conflict of interest arises during the course of the officer's EC membership, then the procedure to be following by that member is the following:

- EC members must disclose their conflict of interest to the EC.
- EC members must then excuse themselves from the discussion of the issue and abstain from any voting on the issue.
- Conflicts to be recorded to form part of the EC minutes of the meeting and also be filed separately in the EC Conflict of Interest Register.

Other general officers duties

An EC member with a disclosed conflict of interest must also ensure that they satisfy their further duties as officers of APNIC. This will include ensuring that any decision they make in which they have a disclosed general interest, is made in the following manner:

- In good faith. That is, honestly and with no reference to any benefits they may personally receive as a result of the decision.
- In the best interests of the corporation. This will include consideration of all APNIC's members and the future direction of the corporation.

As indicated above, officers of a corporation have serious obligations under the Australian Corporations Act and the common law which reflect their obligations under UK and US law to ensure that their decisions are in the best interests of the corporation and made in good faith.

Amendments to Handbook

As stated above, we recommend some amendments to the Handbook to ensure that duties regarding conflicts of interest are clear. The following amendments are recommended:

- The insertion of a statement regarding the conflict of interest test that will trigger disclosure. We suggest the following:
 - *If an EC member has a conflict of interest, that is, a material personal interest in a matter that relates to the affairs or decisions of the Executive Council of APNIC, then this interest must be disclosed by filling out the conflict of interest declaration attached to this Handbook.*
- The amendment of Part 4, Article 10 to read as follows:
 - *All elected members of the Executive Council serve on the Executive Council in their personal capacity and shall act in the best interests of the APNIC membership and not the member organisation to which that individual belongs.*

An Executive Council member must declare any conflict of interest. This should occur in the consideration of an item of business for the Executive Council.

Council Members declaring a conflict of interest will excuse themselves from the discussion of the item and abstain from the vote of any motion related to the item. The Member's declaration of conflict of interest and the abstinence from any vote will be recorded in the minutes of the Executive Council meeting.

Please don't hesitate to contact me with any queries.

Yours sincerely

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