Subject: Appeal against the non-consensus determination on proposal AFPUB-2018-GEN-001-DRAFT06 (Abuse Contact Policy Update – Draft 6).

Dear Appeal Committee,

I'm appealing against the declaration of non-consensus made by the PDWG co-chairs during the open mic session of the AFRINIC32 on-line meeting, on 17th September 2020 (https://www.youtube.com/watch?v=F7EJploR38c&t=3h29m48s), confirmed in the mailing list on 21st September (https://lists.afrinic.net/pipermail/rpd/2020/011372.html).

I consider that the valid formal announcement of the decision is the one on the RPD list, as it is the one that contains in a complete, clear and readable format, the chairs reasoning for their decision. In this summary, the co-chairs indicated:

> "6.   Abuse Contact Update
>
> The proposal makes it mandatory for AFRINIC to include in each resource registration, a contact where network abuse from users of those resources will be reported. The proposal whois DB attribute (abuse-c) to be used to publish abuse public contact information. There's also a process to ensure that the recipient must receive abuse report and that contacts are validated by AFRINIC regularly. However, there some opposition to the proposal there are:
>
> a.   Staff analysis on how it affects legacy holder not conclusive (not sure why this should affect legacy holders)
> b.   The proposal doesn't state what will be the consequences of one member fails to comply. Why are we creating the abuse contact when there is no consequence for not providing the abuse contact
> c.   Abuse contact email and issues with GDPR concerning the whois database
> d.   No proper definition of the term Abuse
> e.   To force members to reply to their abuse email is not in the scope of AFRINIC.
>
> Chairs Decision: No rough consensus"

Date of the appeal: 30/9/2020

Date of the decision made by the Chair(s):   17/9/2020

Reference to the chair(s) decision:
                    https://lists.afrinic.net/pipermail/rpd/2020/011372.html

Evidence of a failed attempt to resolve the disagreement through discussion

The following links to emails in the RPD list archive, show how several community members, in addition to the author, have clarified the aspects that the chairs considered as valid-objections for declaring non-consensus in this proposal, both before and after the decision. Note that for brevity, only the first email (in chronological order) of each contributor is being listed, as several of them continued the discussion afterwards:

Patrick Okui (https://lists.afrinic.net/pipermail/rpd/2020/011053.html)
Jordi Palet (https://lists.afrinic.net/pipermail/rpd/2020/011252.html)
Alan Levin (https://lists.afrinic.net/pipermail/rpd/2020/011271.html)
Jaco Kroon (https://lists.afrinic.net/pipermail/rpd/2020/011304.html)
Frank Habitch (https://lists.afrinic.net/pipermail/rpd/2020/011316.html)
Fernando Frediani (https://lists.afrinic.net/pipermail/rpd/2020/011351.html)
Mukhangu Noah Maina (https://lists.afrinic.net/pipermail/rpd/2020/011361.html)
Mark Elkins (https://lists.afrinic.net/pipermail/rpd/2020/011363.html)
Saul Stein (https://lists.afrinic.net/pipermail/rpd/2020/011377.html)
Gregoire Ehoumi (https://lists.afrinic.net/pipermail/rpd/2020/011538.html)

All them will be copied in the appeal submission, in order to seek their support for the appeal.

Detailed description of the grounds for appeal

My understanding is that there are both, generic issues in the overall consensus determination done by the co-chairs, and specific issues regarding this proposal.

All the aspects cited in the following lines have been extensively discussed in the list after the chair(s) decision. Many of them were already clarified an identified by the author and other community members as non-valid objections during the previous discussion and during the meeting.

1. Generic issues in the consensus determination.

   Despite the good faith of the co-chairs, they haven't properly followed the PDP, and indeed it has been violated in several aspects. Good intentions can never be accepted as an excuse if that means not strictly following the PDP, as there is no way to have a clear border line of what is acceptable and what not.

   1.1. PDP section 3.3. states "The Policy Development Working Group has two Chairs to perform its administrative functions". This means the management of the PDWG, the PPM, the RPD list and determine consensus.

1.2. The determination of the rough consensus is made explicit by section 3.4.2., which states "The Chair(s) determine(s) whether rough consensus has been achieved during the Public Policy Meeting".

1.3. The PDP doesn't provide any authorization to allow the co-chairs to determine consensus by making it conditional or even suggesting the authors to change the proposal text in order to be able to confirm consensus and move it to the "Last Call". The section 3.4.3. states only "A final review of the draft policy is initiated by the Working Group Chair(s) by sending an announcement to the Resource Policy Discussion mailing list. The Last Call period shall be at least two weeks. The Working Group Chair(s) shall evaluate the feedback received during the Public Policy Meeting and during this period and decide whether consensus has been achieved".

1.4. There is no mention in the PDP of any possible change. It is understandable that editorial suggestions may be arranged, and this has been the practice for several years. The changes being suggested for one of the policies brough to the last call, have not been simple editorial changes but rather complex policy text changes that are yet to be discussed by the Working Group.

1.5. It is even less understandable that the opportunity to change text "in order to be able to declare consensus" is not provided in an indiscriminate and fair way to all the proposals. Could it be possible that all the proposals by just changing some points, could reach consensus in each PPM? Why then is it needed, following PDP section 3.4.1., that "The author(s) shall make the necessary changes to the draft policy according to the feedback received", so having new versions to accommodate the community inputs?

1.6. Suggestions from the chairs are always welcome, however, they should state that those are "suggestions", and clearly mark them as inputs from community members (chair-hat-off). And in that case, will be considered by the authors, which will be free to address them. Chairs should also summarize the community discussion (chair-hat-on), in an objective and non-intrusive manner, as part of the rationale for the decision about the rough consensus, and more specifically stating what are the valid-objections that haven't been addressed neither by the authors nor the community.

1.7. Further to that, the chairs indicated on 22nd September (https://lists.afrinic.net/pipermail/rpd/2020/011415.html), that they acted in order to come with the "best solution" based on CPM section 3.2.3. (Fairness), however, the complete section 3.1 (Scope of the PDP), is towards the community, as re-stated in section 3.2. (Policy Development Principles), not in order to attribute special prerogatives to the co-chairs, and this can be observed because the co-chairs are only named after that section.

2. Specific issues regarding the proposal being appealed.

    2.1. "a. Staff analysis on how it affects legacy holder not conclusive (not sure why this should affect legacy holders)"
    As indicated by the AFRINIC Impact Assessment and clarified during the presentation and further in the email from the staff (https://lists.afrinic.net/pipermail/rpd/2020/011534.html), there is no provision in the CPM for legacy holders, as they aren't bound to the CPM. This was made also clear by the author in the presentation, so it **can't be a valid objection for any policy proposal** with the current CPM.

    2.2. "b. The proposal doesn't state what will be the consequences of one member fails to comply. Why are we creating the abuse contact when there is no consequence for not providing the abuse contact"
    None of the policies in the CPM state what are the consequences of non-policy compliance. This is handled according to legal documents (see section 8 of the bylaws) and not having an overall policy for a clearer definition of those consequences, is up to the AFRINIC, as a legally established organization to decide, unless a clearer guidance is set by a new policy, which should apply to the complete CPM. In fact, in previous version of this proposal there was text in that direction and the community discussed against that, so it was decided to remove it to make all the CPM more coherent and not having some policies with and others without that. As a consequence, this aspect **can't be taken as a valid objection for any policy proposal**.

    2.3. "c. Abuse contact email and issues with GDPR concerning the whois database"
    It looks like this has been brought to the discussion only during the chair(s) presentation in the open mic, and as they didn't state that it was an individual (as a community member) discussion, it is clearly not appropriate and out of scope of their duties. Further to that, the CPM is not responsible of legal compliance of AFRINIC as an organization. In any case, the author responded to that in a thread discussing the way the chairs decided about consensus (https://lists.afrinic.net/pipermail/rpd/2020/011435.html). The staff further clarified it (same email as 2.1. above). This anyway, very obvious, as the abuse contact has not, legally, differences with any other existing whois database contacts, so once more, clearly this **can't be taken as a valid objection against this policy proposal**.

    2.4. "d. No proper definition of the term Abuse"
    This proposal is about making mandatory and functional, the already existing abuse contact (CPM section 8). At the same time the proposal asks for a periodic validation by AFRINIC and scalation in case of issues. The proposal, as it has been extensively discussed in the list, doesn't involve AFRINIC, in deciding if anything is an abuse or not. It is

up to the parties involved in the case to decide about it and take decisions accordingly. This means there is no difference regarding this point with the existing section 8 of the CPM, and consequently, this **can't be taken as a valid objection against this policy proposal**.

2.5. "e. To force members to reply to their abuse email is not in the scope of AFRINIC"

This proposal is not asking members to accept any abuse case as a valid abuse case. It is about ensuring the they can receive the cases, and handle them, responding even if they wish "I ignore abuse cases", but the victims of possible abuse cases have the right to know if this is going to be handled or ignored, so they can take appropriate decisions. If there is no abuse contact, if there is no way to contact resource holders which may not know that their customers are abusing other networks, it is not just bad for the victims, but also for those operators. If the abuse contacts are made mandatory and the emails aren't handled, then AFRINIC will not be able to validate them and one of the main goals of AFRINIC is to have a complete and accurate database for all the resource holders.

The AFRINIC bylaws, already state that in several sections.

For example, section 3.4(i) indicates that the resources are provided "for the purposes of enabling communications via open system network protocols and to assist in the development and growth of the Internet in the African region". If the operators in the region don't have a functional abuse contact, if they don't respond to possible abuse cases, then all the region will suffer from increased filtering, which will be against this provision of the bylaws.

Similarly, section 3.4(iii), indicates "to promote responsible management of Internet resources throughout the African region, as well as the responsible development and operation of Internet infrastructures", which once more, is clearly against the fact of not responding to abuse cases.

Further to that, section 8.2(ii), states "the Board, acting reasonably and in good faith, determining that the Resource Member has ceased to satisfy criteria for admission to membership of the Company or ceased to comply with Number Resources Management Policies", clearly indicate that the community rules (the policies contained in the CPM), are to be followed, so it can't be out of scope of AFRINIC to request members to have mandatory contacts, which are functional (so you respond in those contacts, as a responsible utilization of recourses), neither validate those contacts.

If the contacts aren't functional and respond to presumable abuse cases, then the cases are, as stated by the staff (see reference in 2.1 above), sent to the AFRINIC organization, which clearly is against the responsible use of the resources, as it further creates an increased

workload which shall be paid with the membership fees. The consequence of that is not only a direct additional cost to all the members, but indirectly an increased disconnection from AFRINIC resource holders from all the other regions, which have the same or equivalent mandatory abuse contact policies as the one presented by this proposal.

The RSA, section 2(g) also state "provide and ensure accurate contact information are stored in AFRINIC databases".

If AFRINIC doesn't adopt policies that ensure that the resource holders make a reasonable use of the resources (including possible abuse cases), the victims can claim the relevant costs to AFRINIC, and then AFRINIC, following section 9(a) of the RSA, will be able to claim those cost to the resource holder. Those costs, clearly can include damages to other AFRINIC members, as the continued avoidance to respond to abuse cases, can bring consequences for all the region, now that all the other regions have implemented such abuse contacts policies.

All that said, once more it is clear that this **can't be taken as a valid objection against the proposal**.

Please confirm the reception of this appeal and that all the requirements are met.

I remain at your disposal for further clarifications which may help to resolve this appeal as soon as possible.

Thanks in advance for your work!

Jordi Palet
jordi.palet@theipv6company.com