

STAFF ASSESSMENT for AFPUB-2016-GEN-001-DRAFT-04: Internet Number Resources Review by AFRINIC

Proposal	AFPUB-2016-GEN-001-DRAFT-04
Title	Internet Number Resources Review by AFRINIC
URL	https://afrinic.net/en/community/policy-development/policy-proposals/2073-internet-number-resources-review-by-afrinic
Assessed	26/April/2017

1.0 Staff Understanding of the Proposal

- AFRINIC to conduct resource utilization reviews (audits) of IPv4, IPv6 and ASN resources randomly, periodically and/or triggered by a whistleblower to ensure compliance with policy provisions and all terms of the AFRINIC RSA.
- Non-Compliant resources to be recovered (and can be reallocated).
- An arbitration team (whose decision is final) to be instituted *(by AFRINIC)* to handle any complaints by members unsatisfied with the review/audit report.
- A report of all review/audit activity conducted every year will be published on the website, contents of which must comply with the Mauritius Data Protection Act as well as any NDA in place with any AFRINIC member.

2.0 Staff Comments

- On Sec 13.6 - Our previous concerns that AFRINIC may be legally exposed regarding what member data can be published in the annual "Compliance Report" seem to have been addressed by the inclusion of "*in accordance with Mauritius Data Protection Act and NDA with members.*" The act however, only concerns personal information. The kind of information to include in the compliance report should preferably be to the discretion of AFRINIC.
- Authors to clarify on if the arbitration process can be initiated by the member anytime during or (only) after the review is completed. There also needs to be a time limit around when the arbitration process must complete (for the arbitration team to produce their findings/report).
- On Staff Workload: All review requests shall be handled First in, First Out (at staff discretion) - in which case, no significant impact to staff workload is expected.
- On the clause: "The review shall be conducted in full transparency and neutrality". Authors need to expound more on what this means - as AFRINIC cannot disclose details of an ongoing audit/review to the public while doing the review - if this is what authors meant by "transparency".
- On the Clause: "AFRINIC shall publish the resources to be recovered for a period of three (3) months; during which the organization may at any time, seek compliance" - AFRINIC will add "remarks" attributes

to the concerned whois database objects, with information regarding the ongoing review. We think that this is sufficient to address the "publish" requirement in this clause.

3.0 Comments from Legal Counsel

Legal Counsel's Assessment

1. In the implementation phase staff will have to deal with evidence emanating from several jurisdictions. Moreover, staff will face the arduous task of assessing evidence/information/data from different sources and of different evidential value. Staff will be burdened with testing the reliability of this evidence/information/data to assess and weigh these evidences and to decide whether same may be used to establish abuse or wrongful use of Internet Number Resources.

The possibility of collecting evidence/information/data coming from different sources via affidavits or depositions before Commissioner of Oath may have to be envisaged to partly ease pressure on staff.

AFRINIC will have to protect itself and act only on reliable, cogent and admissible evidence before finally revoking allocation of resources which the investigated member claims has been prejudicial to it and consequently claims for compensation. This possibility should always be envisaged. The increasing value of IPv4 resources point in that way.

2. What *modus operandi* should be put into place to "hear" the investigated party to ensure fairness? The policy proposal does not provide anything in this regard and should address it.
3. It will not always be possible to confront the investigated party with data/documents/evidence coming from third parties who may have disclosed same in confidence and have expressly refused to be named or referred to.
4. The arbitration referred to in the proposal has to be effected within the jurisdiction of one country – and the main question is – which would this country be?
5. Section 13.5 of the proposal states: "*the outcome of the arbitration process is unequivocal*". This is in contradiction of, *Articles 1027 to 1027-9 of the Code de Procedure Civile of Mauritius which provides that a party to an arbitration may seek the "annulation "of an award by seizing the Supreme Court.*
6. The "Mauritius Data Protection Act" only applies to personal information/data.

4.0 Implementation:

4.1 Timeline & Impact

The proposal as written will significantly expose AFRINIC to legal battles from its members. The legal analysis provided puts AFRINIC in an uncomfortable position to implement this proposal, unless author have addressed the issues satisfactorily.

4.2 Implementation Requirements

An arbitration process needs to be put in place by AFRINIC as required by the proposal.