

Response to the October 18 Letter of “The NPOC Leadership”

21 October 2011

To the ICANN Board

We are writing to you in our capacities as members of the outgoing Executive Committee of the Noncommercial Stakeholders Group (NCSG). NCSG has just concluded a successful SG-wide election for its Chair and for 4 GNSO Council seats. Robin Gross, who ran unopposed, will be the new NCSG Chair. Eight people, covering all but one world region, ran for 4 open GNSO Council seats. The top 4 vote-getters (**bolded**) will take their seats on the Council at the end of the Dakar meeting.

Name	Region	Number of votes
<b>Wendy Seltzer</b>	<b>NA</b>	<b>111</b>
<b>Wolfgang Kleinwachter</b>	<b>EU</b>	<b>95</b>
<b>Joy Liddicoat</b>	<b>AP</b>	<b>91</b>
<b>Rafik Dammak</b>	<b>AF</b>	<b>88</b>
Nuno Garcia	EU	31
Debra Hughes	NA	31
Alain Berranger	NA	31
Hago Elteraifi Mohamed Daffalla	AF	10
None of the above		4

The election process rigorously followed the NCSG charter, which the Board just approved. The election schedule was approved by the NCSG Executive Committee, with full agreement between NPOC and NCSG Executive Committee members, in July. The election was preceded by a vote to ratify the new charter, which required a minimum of 60% of the entire membership to cast an affirmative ballot. Prior to the charter ratification vote the NCSG chair, Avri Doria, initiated an extensive and time-consuming check-in process that determined who was an active member and who was not. Organizations and individuals listed as NCUC members who did not check-in were listed as inactive and ruled ineligible to participate in this election. Approximately 100 NCUC members were removed from the voting list as a result of this process, far more than the small number of questionable NPOC applications.

New member admissions concluded September 7, a month before the balloting, as required by the NCSG charter. When the election was initiated October 7, according to the plan established in July, there were no objections from NPOC to going ahead with the election. The administration of the election (distribution and counting of ballots) was done by ICANN itself, so we assume that the Board can trust the results.

A letter sent to you by Debra Hughes on Tuesday October 18 now asks the Board to overturn the results of this election. The demand to nullify an election that ICANN itself administered, an election that

carefully followed the procedures set out in a Board-approved charter and which yielded an unambiguous result, is an extraordinary claim. The costs to ICANN's legitimacy and to the support and morale of those who worked hard to make the charter ratification and election happen would be incalculable if this happened.

The call for overriding the will of the SG is all the more remarkable given that the disagreements over membership applications to which Ms. Hughes refers occurred back in August. Ms. Hughes knew at the beginning of September – one month before the election started – that the NCSG EC had made the decisions to which she now objects. So apparently Ms. Hughes, who was a candidate in the election, has waited until after the election to raise her objections.

Ms. Hughes now claims that our membership admission process was unfair and did not follow the charter. We will address those claims in depth below, but before we do we wish to call your attention to one critical fact:

*The disputed membership applications of which Ms. Hughes speaks could not have altered the results.*

That is, if the NCSG had abandoned due diligence and given voting rights to every organization NPOC submitted, NPOC members would have accounted for another 40 votes in total. Even if we assume that ALL of those votes would have gone to any of the 4 non-elected candidates, and that NONE of them would have gone to the top 4, the results of the Council election would *not* be different. And the NCSG Chair election was uncontested, so those results could not differ. Note also that more prospective NCUC members were eliminated from the vote by the active status check than were NPOC members, so we applied procedures impartially. Those facts, by themselves, will dismiss Ms. Hughes' call for overturning the election results.

We do, however, welcome public discussion of our membership application process in order to correct the misinformation disseminated in the NPOC Leadership letter. We believe that NPOC itself needs to be subjected to serious questions about the potential for capture and manipulation of SG membership. We believe that the actions of the NCSG Executive Committee were fully justified and that a dispassionate analysis of the record will support what was done.

Hughes makes it seem as if NCSG EC members arbitrarily and capriciously rejected applications from their group. In fact, NPOC itself is primarily responsible for the fact that many membership applications were either not acceptable or not ready before the 30 day pre-election deadline. Despite repeated encouragement to have their new members apply directly to NCSG, NPOC deliberately kept its members disconnected from NCSG until the last minute. NPOC did not supply the EC with a list of applicant organizations until July 26, 2011.

Once we did get NPOC's list of applicants, we were frankly shocked at what appeared to be either sloppiness or a crude attempt at capture. While many applicant organizations were fine and were quickly approved, serious irregularities were apparent in others.

Please note that Section 2.4 of the NCSG charter explicitly authorizes the Executive Committee to “Approve new NCSG members, administer and maintain membership records, and determine membership status.” The Executive Committee applies the charter criteria to individual applicants in order to determine their compliance. We take that responsibility very seriously, given the dangers of capture and manipulation in multi-stakeholder environments.

As an example, one organization claimed as an NPOC member, the Canadian Foundation for the Americas (FOCAL), proved to be nonexistent. A news release posted on the FOCAL web site in July 2011 stated that it had lost its funding and would cease operations as of September 1, 2011. Yet after this was made known Ms. Hughes still included FOCAL in lists of organizations applying for membership. Indeed, one of NPOC's most active members and a candidate for Council, Alain Berranger, sent an email claiming to be its representative on September 5, nearly a week after the organization had ceased operation.

One person, a commercial trademark lawyer, claimed to represent no less than three different nonprofit organizations, but was never able to produce letters of authorization from the nonprofit's officers. We think it is a highly questionable practice to allow a single representative to aggregate the votes of multiple organizations.

Ms. Hughes complains that the NCSG EC did not simply accept the representatives that NPOC's two leaders designated for organizations. But throughout the GNSO's history, organizations seeking membership in constituencies and SGs have applied directly on their own behalf. NPOC, however, has relied on an indirect model in which Amber Sterling submits applications on behalf of other organizations. Initially, they did not even provide the EC with the names and contact information of the representatives. The potential for abuse here should be obvious, so we felt obligated to independently verify the legitimacy of each application. We sent email messages to known officers of the organization asking for confirmation of their interest in NCSG and verification that the person designated as their representative was in fact authorized to represent them. When those letters did not come, the applicant was not approved.

Following our requests for emails from applicant officials authorizing their representative, a number of such emails did come in. They were, however, identical form letters prepared for the new members by NPOC's leadership. Nevertheless, despite this questionable practice the authorizations were accepted, and the new members were duly admitted to NCSG. In other cases, the requested authorizations never came.

Other NPOC applicants were rejected because of their commercial nature. It is clear from the charter, (Section 2.2.1 (4)) and a longstanding policy of noncommercial representation in ICANN, that mere nonprofit status does not qualify an organization for the NCSG. A vast number of entities that exist to promote commercial purposes are organized as nonprofits, such as the Recording Industry Association of America (RIAA) or the International Trademark Association (INTA). No one could reasonably argue that those organizations belong in the NCSG. Thus the NCSG EC rejected the application of the US Olympic Committee, which makes more than 2/3 of its revenue from sports licensing enterprises and

belongs in the CSG. While there may be disagreements about this, under the charter it is fully within the authority of the NCSG EC to make these decisions.

We refer to 'the NPOC Leadership letter,' but we do not know whether it represents the views of the NPOC constituency as a whole. The publicly archived members email list of NPOC shows that the letter was never submitted to its membership and there is no discussion of the election issue on that list. (See <http://forum.icann.org/lists/npoc-voice/>)

Moreover, aside from Alain Berranger, there has been very little participation by NPOC members on the NCSG-wide members list. Similarly, there has been very little participation by NPOC representatives in the SG's monthly conference calls, gatherings during ICANN meetings, etc. NCUC people have openly invited them to make themselves known and get involved, but to no avail. It therefore is not surprising that a majority of NCSG voters did not support NPOC's candidates and their positions over the alternatives. We believe everyone in NCSG would welcome a diverse, transparently managed new constituency that brings a distinctive focus on non-profit operational concerns (not only trademark protection) and engages in policy dialogue with other SG members, but to date that has not been the experience.

There are many more details and facts regarding this case that we could make you aware of. As we enter the Dakar meeting, there is no time for us to draft, and probably no time for you to read, a more detailed and carefully documented analysis. The facts, however, are on our side and we will be happy to supply any additional information as we proceed.

Sincerely,

Avri Doria, Interim NCSG Chair

Milton Mueller, NCSG EC member

Rafik Dammak, NCSG EC member

Konstantinos Komaitis, NCUC Chair